

# EXHIBIT 1

**SENATE CONCURRENT  
RESOLUTION No. 49**

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**STATE OF NEW JERSEY**

**216th LEGISLATURE**

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INTRODUCED JANUARY 27, 2014

**Sponsored by:**

Senator **STEPHEN M. SWEENEY**  
District 3 (Cumberland, Gloucester and Salem)  
Senator **LORETTA WEINBERG**  
District 37 (Bergen)  
Assemblyman **VINCENT PRIETO**  
District 32 (Bergen and Hudson)  
Assemblyman **LOUIS D. GREENWALD**  
District 6 (Burlington and Camden)  
Assemblyman **JOHN S. WISNIEWSKI**  
District 19 (Middlesex)

**SYNOPSIS**

Constitutes special committee of Senate and General Assembly entitled  
"New Jersey Legislative Select Committee on Investigation."

**CURRENT VERSION OF TEXT**

As introduced.

(Sponsorship Updated As Of: 1/28/2014)

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1 A **CONCURRENT RESOLUTION** constituting a special committee of  
2 the Senate and General Assembly entitled the "New Jersey  
3 Legislative Select Committee on Investigation."

4  
5 **WHEREAS**, The Port Authority of New York and New Jersey (Port  
6 Authority) is a bi-state agency established by compact between the  
7 State of New York and the State of New Jersey; and

8 **WHEREAS**, On March 15, 2012, the General Assembly adopted  
9 Assembly Resolution 61, constituting the Assembly Transportation,  
10 Public Works and Independent Authorities Committee (committee)  
11 as a special committee of the General Assembly to investigate all  
12 aspects of the finances of the Port Authority, including, but not  
13 limited to, the Port Authority's 10-year capital plan, the allocation  
14 of the revenue generated from the Port Authority's toll increase  
15 plan and how that revenue is being spent, and the salary, overtime,  
16 and other compensation paid to officers and employees of the Port  
17 Authority; and

18 **WHEREAS**, Assembly Resolution 61 conferred powers pursuant to  
19 chapter 13 of Title 52 of the Revised Statutes on the committee  
20 including, but not limited to, the power to issue subpoenas to  
21 compel attendance and testimony of persons and the production of  
22 books, papers, correspondence, and other documents; and

23 **WHEREAS**, On February 14, 2013, the General Assembly adopted  
24 Assembly Resolution 91, continuing the committee as a special  
25 committee of the General Assembly through noon on Tuesday,  
26 January 14, 2014; and

27 **WHEREAS**, Through fall 2013, the committee received limited and  
28 incomplete responses to the subpoenas it issued in investigating the  
29 finances of the Port Authority; and

30 **WHEREAS**, Subsequent events have highlighted serious issues with the  
31 finances, management, and operations at the Port Authority; and

32 **WHEREAS**, Between September 9, 2013 and September 13, 2013, the  
33 Port Authority reassigned access lanes in Fort Lee, New Jersey to  
34 the George Washington Bridge, without providing notice to  
35 commuters or officials from Fort Lee; and

36 **WHEREAS**, The lane reassignment caused considerable traffic delays,  
37 significantly inconvenienced motorists, impaired public safety, and  
38 had financial consequences for the Port Authority; and

39 **WHEREAS**, Pursuant to authority granted to the committee pursuant to  
40 Assembly Resolutions 61 and 91, the committee issued subpoenas  
41 to compel attendance and testimony and the production of  
42 documents from current and former Port Authority employees  
43 concerning the reassignment of access lanes in Fort Lee onto the  
44 George Washington Bridge; and

45 **WHEREAS**, The testimony and documents received by the committee  
46 raised questions about who made the decision to reassign access  
47 lanes in Fort Lee, the events leading up to the morning of  
48 September 9, 2013, when Port Authority employees reassigned the

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1 lanes, and whether the decision to reassign the lanes violated any  
2 State or federal laws or any ethics rules, regulations, or codes; and

3 **WHEREAS**, Pursuant to authority granted to the Select Committee on  
4 Investigation (ASI committee) pursuant to Assembly Resolution 10,  
5 the ASI committee issued subpoenas to compel the production of  
6 documents from individuals and entities concerning the  
7 reassignment of access lanes in Fort Lee onto the George  
8 Washington Bridge; and

9 **WHEREAS**, On January 16, 2014, the Senate adopted Senate  
10 Resolution 1, constituting the Senate Select Committee on  
11 Investigation (SSI committee) as a special committee of the Senate  
12 to investigate the organizational structure and management of the  
13 Port Authority; all aspects of the finances, operations, and  
14 management of the Port Authority; and any other matter raising  
15 concerns about abuse of government power or an attempt to conceal  
16 an abuse of government power including, but not limited to, the  
17 reassignment of access lanes in Fort Lee, New Jersey to the George  
18 Washington Bridge; and

19 **WHEREAS**, Given the enormity of the issues which have been exposed  
20 in the aftermath of the reassignment of access lanes in Fort Lee to  
21 the George Washington Bridge, it is fitting for the Legislature  
22 through an appropriate committee to further investigate all aspects  
23 of the finances, operations, and management of the Port Authority  
24 and any other matter raising concerns about abuse of government  
25 power or an attempt to conceal an abuse of government power;  
26 now, therefore,

27

28 **BE IT RESOLVED** by the Senate of the State of New Jersey (the  
29 General Assembly concurring):

30

31 1. There is constituted a special committee of the Senate and  
32 General Assembly entitled the "New Jersey Legislative Select  
33 Committee on Investigation," comprising 12 members. Eight  
34 members are to be appointed by the Speaker of the General  
35 Assembly, not more than five of whom shall be of the same  
36 political party. The Minority Leader of the General Assembly shall  
37 submit to the Speaker a list of the Minority Leader's  
38 recommendations of members to the special committee. Four  
39 members are to be appointed by the Senate President, not more than  
40 three of whom shall be of the same political party. The Minority  
41 Leader of the Senate shall submit to the Senate President a list of  
42 the Minority Leader's recommendations of members to the special  
43 committee. There shall be two co-chairs of the special committee,  
44 one of whom shall be appointed by the Senate President from  
45 among the appointed members and one of whom shall be appointed  
46 by the Speaker from among the appointed members.

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1 2. The New Jersey Legislative Select Committee on  
2 Investigation shall investigate all aspects of the finances,  
3 operations, and management of the Port Authority of New York and  
4 New Jersey and any other matter raising concerns about abuse of  
5 government power or an attempt to conceal an abuse of government  
6 power including, but not limited to, the reassignment of access  
7 lanes in Fort Lee, New Jersey to the George Washington Bridge.

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9 3. For the purposes of carrying out its charge under this  
10 resolution, the New Jersey Legislative Select Committee on  
11 Investigation shall:

12 a. have all the powers conferred under the laws and the  
13 Constitution of the State of New Jersey and the United States,  
14 including, but not limited to, the following powers:

15 (1) conferred pursuant to chapter 13 of Title 52 of the Revised  
16 Statutes, including, but not limited to, the power to issue subpoenas  
17 to compel attendance and testimony of persons and the production  
18 of books, papers, correspondence, other documents and materials,  
19 and electronic records and data;

20 (2) to hold hearings, take testimony under oath, and receive  
21 documentary or physical evidence relating to the matters and  
22 questions it is authorized to investigate or study;

23 (3) to use any and all reasonable means of interviewing or fact  
24 gathering, including, but not limited to, preliminary conferences or  
25 interviews;

26 (4) to convene a meeting or hearing to determine the adequacy  
27 of the return and rule on the objection if a return on a subpoena or  
28 order for the production of documentary evidence is incomplete or  
29 accompanied by an objection;

30 (5) to utilize the powers provided under R.S.52:13-3 or hold the  
31 Port Authority in contempt of the committee;

32 (6) to make findings and reports to the Senate and General  
33 Assembly of any recommendations, including recommendations for  
34 enforcement, that the committee may consider appropriate with  
35 respect to the willful failure or refusal of any person to appear  
36 before it, to answer questions or give testimony during an  
37 appearance of that person as a witness, or to produce before the  
38 committee any books, papers, correspondence, other documents and  
39 materials, and electronic records and data in compliance with any  
40 subpoena;

41 (7) to respond to any judicial or other process, or to make  
42 application to the courts of this State, any other state, or the United  
43 States;

44 (8) to report possible violations of any law, rule, regulation, or  
45 code to appropriate federal, State, or local authorities; and

46 (9) to adopt additional rules or procedures not inconsistent with  
47 this resolution.

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1 b. take custody and control of all books, papers, correspondence,  
2 other documents and materials, and electronic records and data  
3 received by:

4 (1) the Assembly Transportation, Public Works, and Independent  
5 Authorities Committee pursuant to subpoenas issued under the  
6 powers granted to the committee by Assembly Resolution 61 and  
7 Assembly Resolution 91 of the 215th Legislative Session; and

8 (2) the Select Committee on Investigation pursuant to subpoenas  
9 issued under the powers granted to that committee by Assembly  
10 Resolution 10 and such other documents, records, or other data that  
11 may be in the possession of that committee.

12 c. have the authority to exercise any available remedies to  
13 enforce subpoenas issued by the Select Committee on Investigation  
14 pursuant to Assembly Resolution 10.

15

16 4. a. The New Jersey Legislative Select Committee on  
17 Investigation shall be entitled to call to its assistance and avail itself  
18 of the services of the employees of the State of New Jersey, any  
19 political subdivision of the State, and any agency thereof, as may be  
20 required and as may be available for that purpose, and to employ  
21 any other services as may be deemed necessary, in order to perform  
22 the duties provided herein, and within the limits of funds  
23 appropriated or otherwise made available for that purpose.

24 b. The New Jersey Legislative Select Committee on  
25 Investigation shall be entitled to call to its assistance, employ, and  
26 avail itself of the services of special counsel retained to assist the  
27 New Jersey Legislative Select Committee on Investigation.

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29 5. The Select Committee on Investigation constituted by  
30 Assembly Resolution 10 and the Senate Select Committee on  
31 Investigation constituted by Senate Resolution 1 are hereby  
32 dissolved.

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34 6. This resolution shall take effect immediately and the special  
35 committee's powers pursuant to chapter 13 of Title 52 of the  
36 Revised Statutes shall expire at noon on Tuesday, January 12, 2016.

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38

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STATEMENT

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41 This resolution constitutes a special committee of the Senate and  
42 General Assembly, entitled the "New Jersey Legislative Select  
43 Committee on Investigation," charged with investigating all aspects  
44 of the finances, operations, and management of the Port Authority  
45 of New York and New Jersey and any other matter raising concerns  
46 about abuse of government power or an attempt to conceal an abuse  
47 of government power including, but not limited to, the reassignment

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1 of access lanes in Fort Lee, New Jersey to the George Washington  
2 Bridge.

3 The special committee is to be made up 12 members. Eight  
4 members are to be appointed by the Speaker of the General  
5 Assembly, not more than five of whom may be of the same political  
6 party. The Minority Leader of the General Assembly is to submit to  
7 the Speaker a list of the Minority Leader's recommendations of  
8 members to the special committee. Four members are to be  
9 appointed by the Senate President, not more than three of whom  
10 shall be of the same political party. The Minority Leader of the  
11 Senate shall submit to the Senate President a list of the Minority  
12 Leader's recommendations of members to the special committee.  
13 There shall be two co-chairs of the special committee, one of whom  
14 shall be appointed by the Senate President from among the New  
15 Jersey Legislative Select Committee on Investigation's appointed  
16 members and one of whom shall be appointed by the Speaker from  
17 among the New Jersey Legislative Select Committee on  
18 Investigation's appointed members.

19 For the purposes of carrying out its charge, this resolution  
20 confers upon the New Jersey Legislative Select Committee on  
21 Investigation all the powers conferred under the laws and the  
22 Constitution of the State of New Jersey and the United States,  
23 including, but not limited to, the following powers:

- 24 • to issue subpoenas to compel attendance and testimony of  
25 persons and the production of books, papers,  
26 correspondence, other documents and materials, and  
27 electronic records and data;
- 28 • to hold hearings, take testimony under oath, and receive  
29 documentary or physical evidence;
- 30 • to use any and all reasonable means of interviewing or  
31 fact gathering, including, but not limited to, preliminary  
32 conferences or interviews;
- 33 • to convene a meeting or hearing to determine the  
34 adequacy of the return and rule on the objection if a  
35 return on a subpoena or order for the production of  
36 documentary evidence is incomplete or accompanied by  
37 an objection;
- 38 • to make findings and reports to the Senate and the  
39 General Assembly of any recommendations;
- 40 • to utilize the powers provided under R.S.52:13-3 or hold  
41 the Port Authority in contempt of the committee;
- 42 • to respond to any judicial or other process, or to make  
43 application to the courts of this State, any other state, or  
44 the United States;
- 45 • to report possible violations of any law, rule, regulation,  
46 or code to appropriate federal, State, or local authorities;  
47 and
- 48 • to adopt additional rules or procedures.

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1 In addition, the New Jersey Legislative Select Committee on  
2 Investigation is to take custody and control of all books, papers,  
3 correspondence, other documents and materials, and electronic  
4 records and data received by the Assembly Transportation, Public  
5 Works, and Independent Authorities Committee pursuant to  
6 subpoenas issued under the powers granted to the committee by  
7 Assembly Resolution 61 and Assembly Resolution 91 of the 215th  
8 Legislative Session; and the Select Committee on Investigation  
9 pursuant to subpoenas issued under the powers granted to the  
10 committee by Assembly Resolution 10 of the 216th Legislative  
11 Session and such other documents, records, or other data that may  
12 be in the possession of that committee.

13 The resolution provides that the New Jersey Legislative Select  
14 Committee on Investigation may call to its assistance, employ, and  
15 avail itself of the services of special counsel retained to assist the  
16 New Jersey Legislative Select Committee on Investigation.

17 Finally, the resolution dissolves the Select Committee on  
18 Investigation constituted pursuant to Assembly Resolution 10 and  
19 the Senate Select Committee on Investigation constituted pursuant  
20 to Senate Resolution 1.

21 The resolution expires at noon on Tuesday, January 12, 2016.

# EXHIBIT 2

## Could Chris Christie Become President?

His brash, no-B.S. style has made Americans on both sides of the aisle fall for him. But can the Chris Christie Phenomenon take the Governor Next Door all the way to the White House in 2016?

BY MICHAEL SMERCONISH | JUNE 27, 2013



"It's just crazy and I'm tired of dealing with the crazies."

That was classic Chris Christie, two years ago this month in response to criticism after he appointed a Muslim lawyer named Sohail Mohammed to the New Jersey Superior Court. Christie was fed up with the spread of baseless linkage between his nominee and Sharia law, which is when he channeled Jack Nicholson from *As Good as It Gets*.

It wasn't the first—or last—time he's suggested that crazy be sold someplace else.

In the aftermath of the slaughter at Sandy Hook Elementary, the NRA aired a commercial that called President Obama “just another elitist hypocrite” for opposing armed guards in American schools while his own daughters get Secret Service protection (overlooking, of course, the unique risks faced by children of a sitting president).

Christie pounced. “Reprehensible” is what he called the NRA ad.

It's why we like him. Indeed, it's why he's become a phenomenon, beloved by regular Joes and celebrities alike. (At the recent White House Correspondents' Dinner, my conversation with Christie was interrupted by a fawning Tracy Morgan.) He's what we've been waiting for: a no-B.S. politician who refuses to empanel a focus group or put his finger to the wind before telling us what he thinks. A New Jersey-style Republican—meaning a centrist—who is willing to reach across the aisle, even if it means alienating his party's normal constituencies, to do the right thing.

In the short term, that authenticity will continue to serve Chris Christie well. A Rutgers-Eagleton poll in June charted his 70 percent approval rate; he held a gargantuan \$4 million fund-raising edge over a Democratic opponent you've likely never heard of (Barbara Buono).

It's the next step that's more complicated. Is he *too* real to be elected president? Will those same attributes that win him plaudits and essentially guarantee his reelection this November ultimately prove to be his limitation nationwide?

That he wants to run in 2016 seems certain, given the election calendar he contrived after the passing of U.S. Senator Frank Lautenberg. Instead of scheduling the Senate general election on the same date as his own gubernatorial contest, he set the former for three weeks prior to his own, lest having Cory Booker on the ballot diminish his own margin and lessen his national appeal.

But if you ask me, for the man George W. Bush fondly nicknamed “Big Boy” to become the first New Jersey politician since Woodrow Wilson to be elected president, he'll need to overcome two major obstacles: his party and his mouth.

Neither will be easy to do.

That the country needs someone not beholden to the extremes is obvious. Modern Washington has never been so polarized. Consider that for the past 31 years, the *National Journal* has been taking the ideological temperature of the Congress by analyzing select roll-call votes to establish a comparison among members. In its most recent analysis, in 2012, even the most liberal Republican member of the Senate was still to the right of the most conservative Democrat. (The House was just slightly more heterogeneous.)

Resist any temptation to say it's always been like that—it hasn't. On Ronald Reagan's watch in the early 1980s, the *National Journal* determined, nearly 60 percent of the Senate was comprised of moderates. In fact, there were so many moderate Republicans that they had their own weekly gathering, the Wednesday Lunch Club, with nearly two dozen members, including Arlen Specter, John Heinz, Warren Rudman, Alan Simpson, Bob Dole, Ted Stevens and Nancy Kassebaum. Today? The moderates are missing, and in Congress, cooperation is the new C-word.

But not for Christie, who launched his reelection with a commercial saying: “As long as you stick to your principles, compromise isn't a dirty word. ... Chris Christie, the Governor.”

Christie's willingness to reach across the aisle was never more evident than when Superstorm Sandy hit during the final days of the 2012 presidential campaign. Despite the surrogate-speaking he'd done for Mitt Romney, which included delivering the keynote address at the Republican National Convention in Tampa, Christie was quick to acknowledge President Obama's response. (“The President has been all over this, and he deserves great credit.”)

That's the kind of behavior sure to win independent support in a general election nationwide; unfortunately, it also kept Christie from being invited to the Conservative Political Action Conference in March—and it might come back to haunt him in the Iowa caucuses (where Rick Santorum prevailed in the last go-round).

Which raises the question: Can Christie win a GOP nomination for president while continuing to rebuff the party's more doctrinaire elements?

The answer depends, in part, on what happens with the GOP itself. When the dust settled from the party's 2012 loss, Republican National Committee chair Reince Preibus oversaw an “autopsy” that resulted in the release of a 100-page postmortem. The goal was to explain why the Republican nominee had lost the popular vote for the fifth time in the past six presidential elections. Amid the findings was this tidbit: “Debates must remain a central element of the GOP nominating process, but in recent years there have been too many debates, and they took place too early. ... [T]he Party should create a system that results in a more rational number of debates.”

But “rational” describes neither the number of GOP debates in 2012 *nor* their content. What was said in those forums had a devastating impact on the GOP brand and, consequently, the Romney campaign, and could do likewise to Christie should he be faced with the conservative litmus tests. When Christie told NBC's Brian Williams in May, “I'm a damn good Republican,” he must have been thinking of the party when he came of age in the 1980s, not now. Former Florida governor Jeb Bush has noted that his father, George H.W. Bush—and even Ronald Reagan—would have a difficult time being nominated by the GOP in its current, ultraconservative incarnation.

Chris Christie does have conservative bona fides. His willingness to confront public unions and his fiscal and political reforms have won praise on the right. He's tried to abolish the Council on Affordable Housing, New Jersey Republicans appreciated his elimination of the Office of the Public Advocate, and he partially privatized the state medical helicopter system. In 2011, Christie targeted public-sector employees in order to fix New Jersey's crippled pension system, and his adjustments are projected to save the state \$130 billion over the next three decades. Plus, in his 2012 State of the State address, Christie resolved “to reduce income tax rates for each and every New Jerseyan. In every tax bracket. By 10 percent across the board.” (That fiscal

prudence was forgotten when Christie scheduled the special election to choose Lautenberg's successor: "I don't know what the cost is, and I quite frankly don't care," he said. "I don't think you can put a price tag on what it's worth to have an elected person in the United States Senate.")

Still, we can already imagine the contents of a Rand Paul, Rick Santorum, John Thune or Michele Bachmann opposition research book on Christie. Ann Coulter might have told Sean Hannity that Christie's conservative critics "lie" about him to make him sound more liberal than he is (she professes to "have eyes only for Chris Christie"), but some of his positions won't easily be dismissed by the loyal ideologues who come out in primaries to not only vote for the likes of Sharron Angle ("Second Amendment remedies"), Christine O'Donnell ("I'm not a witch"), Richard Mourdock (pregnancy from rape is a "gift from God") and Todd Akin ("legitimate rape")—but also to nominate presidential candidates.

In September 2011, *New York* magazine proffered "five things conservative voters would hate about Chris Christie." They obviously left a few off the list, but it hardly mattered: The publication got heavy circulation amongst the already angst-ridden. Christie's defense of Judge Mohammed received mention, as did his position on immigration: In 2010, he told Politico that America needs to come up with a "clear path to citizenship." (As U.S. Attorney, Christie also said that "being in this country without proper documentation is not a crime." And in 2008, *Lou Dobbs Tonight* correspondent Bill Tucker reported that Christie prosecuted a mere 13 immigration cases over a five-year span, then compared that to the 597 prosecuted in Kansas in that same time frame.)

And honestly, those examples just scratch the surface. Christie's positions on key issues are often far more moderate—or at least far more nuanced—than those on the extreme right:

- **Guns.** While shying away from commenting on a federal assault-weapons ban this year, Christie has spoken in support of some forms of gun control. Campaigning for governor in 2009, he told Hannity: "I want to make sure that we don't have an abundance of guns out there." And he has opposed an effort to make concealed-weapon permits valid across state lines, saying "each state should have the right to make firearms laws as they see fit."
- **Abortion.** During a 1994 campaign for Morris County freeholder, Christie told voters that it was "no secret that I am pro-choice" and admitted to having once donated to Planned Parenthood. While he's since had the same epiphany realized by Reagan and Romney—he's now pro-life, with exceptions for rape, incest, and the life of the mother—it's hard to believe his earlier position won't be an issue.
- **Gay rights.** While he disappointed gays and lesbians when he vetoed a New Jersey marriage equality bill in 2012 (he endorsed a statewide referendum instead), Christie did part company with his Roman Catholic faith when he told Piers Morgan that he doesn't see homosexuality as a sin. And he supports equal legal status for gay couples, saying, "I think we can have civil unions that help to give the same type of legal rights to same-sex couples that marriage gives them."
- **Health care.** Christie refused to establish a state-run exchange for the implementation of the Affordable Care Act, but he's breaking with many of his fellow GOP governors by participating in the expansion of Medicaid.
- **Global warming.** Christie has acknowledged the human contribution to global warming. ("Climate change is real ... human activity plays a role in these changes," he said in 2011.) In his May interview with Brian Williams, which focused on the aftermath of Superstorm Sandy, Christie said he is still a "climate-change believer." That's sure to cause problems within the GOP base, notwithstanding the banner headline on page one of the *New York Times* the day after the broadcast: "Heat-Trapping Gas Passes Milestone, Raising Fears."

Christie is a lot like many Americans on the issues—a mixed bag who defies one-word categorization. Such independent thinking would help win a general election, but it's a death knell in primary season.

Two previous moderate Republican presidential candidates faced similar conundrums when confronted with a party more conservative than they were. One shifted positions and benefited when his far-right opponents cannibalized one another; the other remained consistent and withdrew before Super Tuesday. There are lessons for Christie in the experiences of Mitt Romney and Rudy Giuliani, respectively.

So what would be his approach?

Would the pragmatist who reached across the aisle when catastrophe hit stand straight-faced and tell primary voters he'd be uncompromising on the budget? I doubt it. Picture Christie onstage back in August 2011 at the debate sponsored by Fox News at Iowa State University. That was the evening Byron York from the *Washington Examiner* asked Rick Santorum a question that morphed into the notorious "10 for one" debacle:

*"Democrats will demand that savings come from a combination of spending cuts and tax increases, maybe \$3 in cuts for every \$1 in higher taxes," York noted. "Is there any ratio of cuts to taxes that you would accept? Three to one? Four to one? Or even 10 to one?"*

Santorum said no, prompting Fox's Bret Baier to put this question to all eight of the candidates onstage: "Can you raise your hand if you feel so strongly about not raising taxes that you'd walk away on the 10-to-one deal?" To big applause, every single hand—even Jon Huntsman's—was held high in the air.

I'd like to think Chris Christie would have kept both hands in his pockets. And that even though he supports the death penalty, he would not have applauded when, at the Reagan library one month later, Rick Perry was saluted for having overseen 234 executions.

I'd also like to think he wouldn't have remained silent when the idea of a man dying without insurance was welcomed. That came in Tampa, when Wolf Blitzer had an awkward exchange with Ron Paul. At a debate sponsored by the Tea Party Express, Blitzer put to Paul a hypothetical about a man without health insurance who has lapsed into a coma.

"Congressman, are you saying that society should just let him die?" The candidates stayed quiet, while a few in the audience shouted "Yeah!" Maybe this would have been another chance for Christie to confront crazy, unafraid to incur the wrath of the crowd by exhibiting some reasonableness.

The “let him die” exchange happened on the same night that Rick Perry was booed for having ordered young girls in Texas to get the HPV vaccine. (Perry’s action also prompted Michele Bachmann to repeat on the *Today* show the medically unfounded allegation of a mother who claimed the vaccine caused her daughter’s mental retardation).

Ten days later, Perry’s sinking support was further weakened when he said that those who wouldn’t give a chance to children born here to illegals were heartless.

But, of course, a bigger story in Orlando that night came when a soldier serving in Iraq was actually booed. U.S. Army Reserve Captain Stephen Hill spoke of his own sexuality and wanted to know if any of the candidates would reinstate “Don’t ask, don’t tell.”

How would Chris Christie have responded?

I’d like to think he’d have begun by thanking the man for his service. But maybe not.

**Christie had his own run-in with a vet**, one of a dozen outbursts since he was elected governor. When they take place in front of crowds, they usually bring the house down, and they attract thousands—sometimes hundreds of thousands—of YouTube views. Each has been the sort of encounter that plays well in New Jersey’s hardscrabble political world—but that might not be so well accepted on a wider stage.

Which raises the second major obstacle he faces. Christie’s independence, frankness and brains are assets. But his bombast might be a liability.

One nationally renowned Republican consultant I spoke to recognized Christie as a top contender, but described his looming third-act problem, to borrow a showbiz term: “How will his tough Jersey demeanor wear over time in the rest of the country? The GOP primary will ultimately be decided mostly in the highly mannered South, and the general election is won or lost in Midwestern and Sunbelt suburbs. That is a long way from Passaic County, New Jersey. Whether Christie can elevate his persona from a braying Jersey brawler always looking for enemies to scrap with to a presidential leader with a reassuring and elevated tone is the big open question of his campaign.”

One can already imagine a negative TV spot (like that run by Hillary Clinton in 2008) where a red phone rings at 3 a.m., juxtaposed with a montage of examples of Christie’s intemperance and questioning his ability to deal with Vladimir Putin, Kim Jong Un and Mahmoud Ahmadinejad. There’d be lots of tape to choose from. And while there are certainly two sides to each encounter—some of his victims deserved his wrath—at a certain point, the sheer volume of his obstreperousness may overwhelm.

Certainly, no other politician would have told the teacher in Rutherford who complained of not being compensated for her own education or experience, “Well, then, you know what, you don’t have to do it.” And only Christie, a few months later, would have responded to another teacher, in Raritan—who charged that he’d done nothing but “lambaste” teachers—by saying: “I sat here, stood here, and very respectfully listened to you. If what you want to do is put on a show and giggle every time I talk, well then, I have no interest in answering your question. ...” (Christie did then proceed to give a long and substantive answer.)

Loretta Weinberg was his next foil. The state Senate majority leader upset Christie when she sought to link him to Essex County executive Joe DiVincenzo, who’d been in hot water for receiving a pension payment while still in office. Christie, incensed by Weinberg’s “hypocrisy,” implored the media to “please take the bat out on her for once.”

When Assemblywoman Valerie Vainieri Huttle accused the Governor of misusing state resources by taking state police helicopters across the state, including to his son’s baseball games, he let her have it, too: “She should really be embarrassed at what a jerk she is.”

For another member of the Assembly, the label wasn’t “jerk,” but “numbnuts.” That was Christie’s response to Reed Gusciora, who, after the Governor’s veto of a marriage equality bill, compared him to segregationists George Wallace and Lester Maddox.

“Partisan hack” was once his descriptor for Senator Lautenberg, again generating loud applause. This time the debate was over Christie’s proposed merger of Rowan University and Rutgers-Camden, opposed by Lautenberg.

That merger was also the catalyst for a subsequent dressing-down of a former Navy SEAL. William Brown confronted Christie last March at a town hall in Florence. A videotape of the exchange and published news accounts document the aggressiveness of Brown’s questioning, which prompted Christie to say: “Let me tell you something. After you graduate from law school, you conduct yourself like that in a courtroom, your rear end is going to be thrown in jail, idiot.”

“I’m a combat veteran Navy SEAL, how’s that?” Brown responded before being escorted from the room by police.

There’s a thin line between channeling Warren Beatty in *Burroughs* and bullying. Drop an expletive once and you’re Everyman. (No one of these instances is itself a game-changer.) Twice, and you raise some eyebrows. But a dozen instances, and counting, might not play so well in New Hampshire.

We don’t elect effete men president (think John Kerry ordering a Swiss cheese-steak at Pat’s), but since the nuclear age began, we also haven’t elected anyone so heavy-handed. Reagan was perceived as resolute; Christie’s temper could give some pause when it comes to entrusting him with the nuclear codes or the ability to commit troops. Bullying could also offend political and trading counterparts, from the British and Japanese to the Chinese and Russians. Maybe his second term as governor will be different. Perhaps a guy who is apparently committed to the life change of getting his weight under control can do the same thing with the other function of his mouth.

This fall, long before Christie has to navigate the narrow-mindedness of his party’s nomination process or attempt to sell the nation on his straight talk,

two intangibles will begin to play themselves out: the election of Lautenberg's successor, and the implementation of Obamacare. Chances are that Cory Booker or some other Democrat will be elected to the Senate in the special election on October 16th, and should any legislative battle come down to a single vote, it will be a reminder to the GOP of Christie's missed opportunity to appoint a Republican to fill the entire unexpired portion of Lautenberg's term. That same month, the insurance exchanges under the Affordable Care Act will go online. This is where uninsured individuals, families and small businesses will go to shop for coverage and rates. In a best-case scenario, they'll be the equivalent of Orbitz.com for health insurance. More likely, the initiation of a mammoth new government program will bring hiccups at the onset, as Penn's Zeke Emanuel recently forecast in the *Wall Street Journal*:

*"Setting up the exchanges will pose a host of technological challenges, such as digitally linking an individual's IRS information (which determines a subsidy level) to the insurance offerings in the individual's home area and to employment data—while simultaneously factoring in Medicaid eligibility. Bugs in the computer software are bound to pop up, and the quality of the user experience will undoubtedly need improvement."*

Any such "bugs" that combine people's access to health care and their finances could be the equivalent of the recent IRS 501(c)4 scandal on steroids, just in time for the Tea Party to reenergize its base in 2014. Americans may well come to love Obamacare the way they now support Medicare, but it's doubtful that affinity will mature by 2014. Instead, Republicans will get an added bump in what should already be a strong year for the GOP. Since 1950, the party of a president in his second term has almost always lost the midterm elections. (The exception was 1998, under Bill Clinton.)

The impact on Christie? Against the backdrop of the implementation of Obama-care, we are probably headed for the third national election in a row where the economy and health care are the dominant issues. While there will be stories about previously uninsured individuals now obtaining coverage, and those with preexisting conditions now being protected, and young adults able to stay on their parents' plans, they could be outweighed by Drudge Report anecdotes concerning the release of personal information into the wrong hands that will be hyped, Benghazi-style, by the right to drive the GOP base in 2014, à la 2010. A big win for the GOP in the midterms will then give conservative stalwarts a case of beer muscles just in time for the 2016 primary process. Their takeaway? Stay the conservative course with a true believer like Marco Rubio or Ted Cruz, not a Northeastern RINO like Chris Christie.

And that's just what Hillary Clinton is counting on. ☐

# EXHIBIT 3

## 8 who could run against N.J. Gov. Chris Christie: Democrats to watch

Jarrett Renshaw/The Star-Ledger By Jarrett Renshaw/The Star-Ledger

Email the author | Follow on Twitter

on March 04, 2012 at 6:00 AM, updated March 05, 2012 at 2:57 PM

**TRENTON** — State Sen. Richard Codey, a funeral director with a disarming sense of humor, is racking up miles on his Cadillac these days as he crisscrosses the northern part of the state attending fundraisers and parades in crucial swing districts.

Barbara Buono, a state senator and lawyer from affluent Metuchen, recently tapped an unlikely outsider for political advice — the Chicago-based firm that helped put Barack Obama in the White House.

Lou Greenwald, a snappily dressed lawyer from South Jersey and newly anointed Assembly majority leader, has darted up the northbound lanes of the Turnpike more and more in recent weeks to meet and greet leading Democrats.

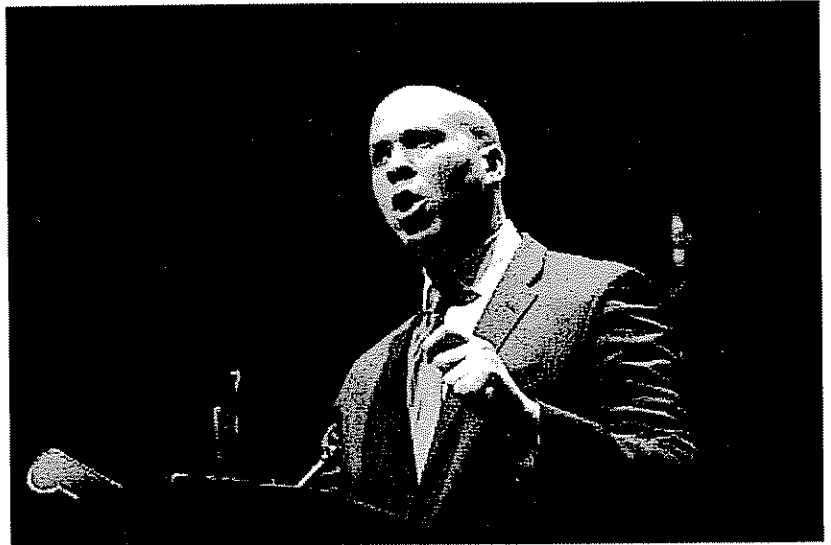
The clock is ticking in anticipation of the 2013 governor's race. And although the contest won't gear up in earnest for a year, potential Democratic candidates are already making moves that suggest they're assessing their chances and their allure to donors.

Hanging over all is Newark Mayor Cory Booker, who many politicians say would be an instant frontrunner in a Democratic primary if he decided to run — a possibility he dismisses.

Ultimately, the survivor of the first contested statewide Democratic primary in more than a decade will probably face the daunting challenge of derailing Gov. Chris Christie, who is on the short list of Republican vice presidential prospects and could make a run for the White House himself in 2016.

In a sign of the contest's significance, Gov. Martin O'Malley of Maryland, chairman of the Democratic Governor's Association and self-appointed sparring partner of Christie, has zeroed in on it.

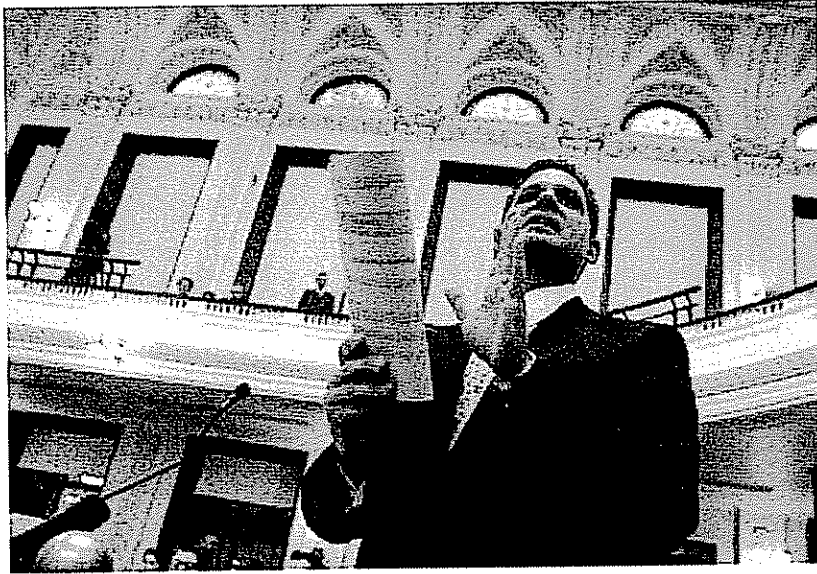
"I think there is a fairly wide-open field right now," O'Malley said in a recent interview. "Whoever emerges as the



Tim Farrell/The Star-Ledger

Newark Mayor Cory Booker delivers his sixth State of the City address at NJPAC on March 1. Many feel Booker could be a formidable opponent to Chris Christie for governor in 2013, should he choose to run.

ultimate candidate has a tremendous advantage of not being Chris Christie."



Saed Hindash/The Star-Ledger

Assemblyman Lou Greenwald in this June, 2011 Star-Ledger file photo. Greenwald could be a possible candidate to go up against Chris Christie for N.J. governor in 2013.

O'Malley, 49, who harbors his own presidential ambitions in 2016, said the national Democratic Party would like nothing better than to shoot down Christie's rising star in his home state. "We are particularly interested in New Jersey, and I think there are a number of good candidates," O'Malley said. "The governor is very vulnerable."

O'Malley has already met with several potential candidates, including Booker, who has a formidable state and national profile.

"He can raise \$20 million in a heartbeat," said state Sen. Ray Lesniak (D-Union), a Booker friend. "His voter identification and approval ratings are through the roof. In the primary, if

he were to run, he can't lose."

Booker, 42, says, "I am not running for governor in 2013," and insists he is focused on continuing to revitalize the city and getting re-elected in 2014.

Not long ago, he set up a federal political action committee, an indication he may also be eyeing the U.S. Senate seat held by Frank Lautenberg, which comes open in 2015, when the feisty senator will be 90.

For now, Booker has hired the veteran political consultant Mark Matzen — who was in Gov. Jon Corzine's administration and helped U.S. Rep. Rush Holt (D-12th Dist.) win election — to meet with county chairmen and other influential Democrats.

After working closely with Christie during the early part of the governor's term, he has distanced himself on several thorny issues.

Booker has also become more aggressive in his relations with the city council, which several Democrats said is intended to answer critics who claim he is more interested in appearances on the national stage than on managing his city. Just last week, he sharply criticized the council in his State of the City message, leading two members to leave the stage in protest.

Speculation about his intentions were also stoked by his recent reshuffling of his political team. The mayor says it was more of a recalibration than evidence of higher aspirations.

Whatever Booker decides, said Brigid Harrison, a political science professor at Montclair State University, he's smart not to tip his hand early. She said after almost six years as mayor, Booker suffers from some lack of credibility in Newark and would have trouble gaining support for school reform and other issues if people thought his ambitions lay elsewhere.

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In weighing a potential clash with the popular Christie, Democrats like to point to the 1997 re-election of Gov. Christie Whitman as a political parable. According to a Quinnipiac Poll released last week, Christie was viewed favorably by 55 percent of the state's registered voters.

Whitman, a Republican star at the time, also with approval ratings above 50 percent, was considered invincible, but she eked out a victory against the little-known mayor of Woodbridge, James McGreevey, by 1.1 percent of the vote.

The 1997 election was also the last contested gubernatorial primary among Democrats. McGreevey won by a mere 9,993 votes — a margin of 2.7 percent — over U.S. Rep. Rob Andrews (D-1st Dist.) by securing the support of the party organizations in Essex and Middlesex counties in a race that helps illustrate a statewide path to victory.

"Whoever wants to win the primary must get the line in two of the state's three Democratic counties of Hudson, Essex and Middlesex," said Ben Dworkin, a political science professor at Rider University.

According to Trenton watchers, that line could also include Lisa Jackson, who headed the state Department of Environmental Protection before President Obama chose her to run the Environmental Protection Agency, and Senate President Stephen Sweeney of Gloucester County, who has grown accustomed to trading punches with Christie over the past two years. Rep. Frank Pallone (D-6th-Dist.) has long been considered a potential gubernatorial candidate, but most Democrats believe his eyes are on a U.S. Senate seat.

## **RICHARD CODEY**

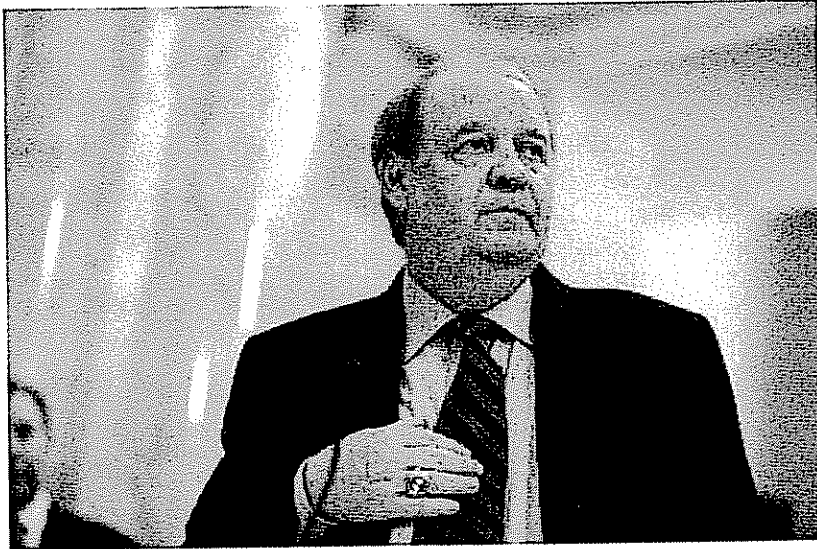


Ed Murray/The Star-Ledger

Assemblyman John Wisniewski in this January, 2011 Star-Ledger file photo. Wisniewski may be one of the Democrats to challenge Chris Christie for the governorship in 2013.

New Jerseyans have fond memories of Codey's 14-month stint as governor after McGreevey resigned. Political experts agree the affable Codey, 65, presents a legitimate threat to Christie, though few think that in the end he'll decide to challenge Christie.

And despite nearly four decades of casting votes in the Legislature and collecting scar tissue along the way, his record has never undergone the scrutiny of a governor's race. "He is beloved by New Jersey voters, but he certainly has political baggage in the party," Harrison said.



Patti Sapone/The Star-Ledger

Former Senate President Richard Codey addresses the Senate during the 2010 gay marriage vote at the Statehouse. Codey is said to be beloved by N.J. voters, but it is unclear whether he could withstand the scrutiny of a gubernatorial race.

Codey, who was ousted as Senate president by Sweeney after the 2009 elections, has become much more visible in recent months, delivering speeches and shaking hands at political fundraisers in such crucial Democratic strongholds as Hudson and Bergen counties and community events like a recent children's book reading in Garfield where he donned a Dr. Seuss cap.

"Codey always shows up at events, but he has shown up to more lately," said Lou Stellato, chairman of the Bergen County Democratic Party. "He had people lined up out the door at a recent breakfast."

But publicly, Codey, of Roseland, remains coy about his aspirations.

"As I've told everyone, I will make a decision sometime after the November election," he said in a recent interview. "Right now, our priorities need to be on the presidential and other elections."

His biggest obstacle might not be other Democrats or Christie, but longtime nemesis George Norcross, one of the state's most influential Democrats. Norcross, the Camden County Democratic chairman, helped engineer Codey's ouster as Senate president in 2010, and most party leaders find it hard to imagine him embracing a Codey candidacy.

## BARBARA BUONO

Buono, a Middlesex County attorney who runs five miles a day, has been the most visible of the potential candidates, and according to colleagues and political consultants plans to run no matter who else enters the race.

A staunch defender of the state's public employee unions and advocate for women's issues, Buono has staked out the progressive wing of the party and spent the past several months crisscrossing the state trying to forge new

relationships. She frequently tweets about her travels, often accompanied by hash tags like #voiceofthemiddleclass.

Buono, 58, raised an impressive \$344,203 in her state Senate campaign last year, the largest amount she has ever collected. She has stepped up her fundraising efforts — some say to test her strength and appeal — and if that is the case, she passed the test.

She has also hired AKPD Message and Media, a leading Democratic consulting firm founded by David Axelrod, President Obama's senior campaign adviser. While other potential candidates have issued cryptic statements on their aspirations, Buono's leave little room for interpretation.

"We have a governor who is indifferent to the plight of New Jerseyans and who's in denial that property taxes are a crushing burden to our families," Buono said in a written statement. "I intend to be a voice for New Jersey's families."



Patti Sapone/The Star-Ledger

Former Senate Majority leader Barbara Buono speaks during a 2010 press conference. Buono has not made much of a secret of her ambitions to challenge Gov. Christie, but her divisiveness within the Democratic party could present challenges.

But if she runs, it will be from a weakened position. Democrats ousted her as Senate majority leader in January, robbing her of the ability to post or block bills that she could have used to barter for support. It also underscored her fractured relationship with party leaders, which will probably cost her support in crucial counties, including her own.

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Greenwald, a 16-year assemblyman from Camden County, rose through the legislative ranks and was rewarded by being elected Assembly majority leader in January after a bitter intraparty struggle with Assemblyman Joe Cryan of Union County.

A lawyer with a sharp tongue and quick wit, the 44-year-old Greenwald helped beat back a cabal of dissatisfied Democrats led by Cryan and hold together an alliance between South Jersey and Essex County. It is a bond that could prove useful if he can harness it in the primary.

Norcross' influence — and so South Jersey's — has never been greater, which could raise Greenwald's chances of entering the race. But most say if he chooses not to run he is likely to be the next Assembly speaker.

Greenwald, who declined to comment for this article, has in recent

### RELATED COVERAGE:

weeks met with influential Democrats in North Jersey and positioned himself as a unifier in the fractured Democratic Party. He is positioned to play a prominent role in advancing the party's goals, including property tax relief, raising the minimum wage and legalizing same-sex marriage.

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*Star-Ledger staff writer **David Giambusso** contributed to this report.*

*Note: Due to an editing error, the original version of this article misstated where state Sen. Richard Codey resides. He lives in Roseland, not West Orange.*

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• **Poll: Who would you vote for in a Booker-Christie 2013 match-up?**

• **Gubernatorial race between Cory Booker, Chris Christie, would be dead even, poll finds**

• **Sen. Codey may run for governor in 2013, ally says**

# EXHIBIT 4

## News and Press Releases

### 8 who could run against N.J. Gov. Chris Christie: Democrats to watch

March 04, 2012

Published: Sunday, March 04, 2012, 6:00 AM Updated: Monday, March 05, 2012, 2:57 PM  
By Jarrett Renshaw/Statehouse Bureau

TRENTON — State Sen. Richard Codey, a funeral director with a disarming sense of humor, is racking up miles on his Cadillac these days as he crisscrosses the northern part of the state attending fundraisers and parades in crucial swing districts. Barbara Buono, a state senator and lawyer from affluent Metuchen, recently tapped an unlikely outsider for political advice — the Chicago-based firm that helped put Barack Obama in the White House. Lou Greenwald, a snappily dressed lawyer from South Jersey and newly anointed Assembly majority leader, has darted up the northbound lanes of the Turnpike more and more in recent weeks to meet and greet leading Democrats. The clock is ticking in anticipation of the 2013 governor's race. And although the contest won't gear up in earnest for a year, potential Democratic candidates are already making moves that suggest they're assessing their chances and their allure to donors. Hanging over all is Newark Mayor Cory Booker, who many politicians say would be an instant frontrunner in a Democratic primary if he decided to run — a possibility he dismisses. Ultimately, the survivor of the first contested statewide Democratic primary in more than a decade will probably face the daunting challenge of derailing Gov. Chris Christie, who is on the short list of Republican vice presidential prospects and could make a run for the White House himself in 2016. In a sign of the contest's significance, Gov. Martin O'Malley of Maryland, chairman of the Democratic Governor's Association and self-appointed sparring partner of Christie, has zeroed in on it. "I think there is a fairly wide-open field right now," O'Malley said in a recent interview. "Whoever emerges as the ultimate candidate has a tremendous advantage of not being Chris Christie." 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Star-Ledger staff writer David Giambusso contributed to this report.

# EXHIBIT 5



## Bridgagate resonates in Vermont as Wisniewski raises money: The Auditor

Assemblyman John Wisniewski leads Assembly investigation committee into GWB lane closures  
Assemblyman John Wisniewski (D-Middlesex) is shown at a bridgagate hearing. The assemblyman on Saturday raised money for Vermont Democrats. (Saed Hindash/The Star-Ledger)

**The Auditor | NJ Advance Media for NJ.com** By **The Auditor | NJ Advance Media for NJ.com**  
on October 05, 2014 at 1:51 PM, updated October 06, 2014 at 2:48 AM

Maybe all that time on MSNBC paid off.

State Assemblyman John Wisniewski (D-Middlesex), whose public profile has increased substantially because of his leadership of the legislative committee investigating the George Washington Bridge scandal, headlined a fundraiser Saturday night for the Vermont State Democratic Party at the home of its chair, Dottie Deans.

And Wisniewski's Bridgagate credentials were apparently a draw in a state more familiar with covered bridges than double-decked, 14-lane interstate suspension spans like the GWB.



This is a picture of a covered bridge in Vermont. It looks nothing like the George Washington Bridge.

Visit-  
Vermont.com

The invitation to the "Pumpkins & Politics" fundraiser that The Auditor obtained made prominent reference Wisniewski's role investigating the scandal, mentioning it in a short bio before noting his 18 years in the Assembly and his chairmanship of the transportation committee.

Tickets to the North Pomfret, Vermont fundraiser ran from \$50 for general admission to \$500 for a host.

The Auditor wondered if Wisniewski was building good-will among out-of-state Democrats that could come in handy if he decides to run for governor here in 2017, even if five New Jersey counties — including Wisniewski's native Middlesex — have more people than the entire state of Vermont.

But in a phone interview, Wisniewski said gubernatorial prospects had nothing to do with it. Instead, he said, he's known Deans since he was New Jersey Democratic chairman and she was vice-chair of the party in her state, and they're both members of the Democratic National Committee.

"We continue to bump into each other once or twice a year and she asked if I'd be interested in coming up and speaking to her people," Wisniewski said. "It has to do with helping out a friend and coming up to Vermont."

And yes, Wisniewski is bringing home some maple syrup.

## MORE POLITICS

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# EXHIBIT 6

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# Mercer bash brings out potential Democratic Party candidates for governor

BY MAX PIZARRO AT 09/02/14 1:53PM



Three possible candidates for the 2017 Democratic nomination for governor – and U.S. Sen. Cory Booker (D-NJ) – are scheduled to attend a party fundraising event tonight for the Mercer County Democrats, proof that Mercer has muscled up since the last Democratic Primary.

Confirmed on the guest list in Ewing this evening are Senate President Steve Sweeney (D-3), Jersey City Mayor Steven Fulop, and Assemblyman John Wisniewski (D-19).

Not in attendance tonight, another gubernatorial prospect, former U.S. Ambassador to Germany Phil Murphy will attend a Friday dinner party with Mercer County Executive Brian Hughes.

Fulop and Sweeney have been playing political chess with each other for almost year across the great sprawling board of New Jersey.

Others expected to be in attendance this evening – also anchored by Hughes – include Assemblyman Joe Cryan (D-20) and Assemblywoman Bonnie Watson-Coleman (D-15) – two former party chairs ready

to depart the legislature: the latter in hopes of landing the CD12 Congressional seat as her party's nominee to replace the retiring U.S. Rep. Rush Holt (D-12), and the former as he runs for Union County sheriff.

In a Middlesex v. Mercer matchup, Mercer's Watson Coleman in June defeated state Sen. Linda Greenstein (D-14) for the support of the party to succeed Holt.

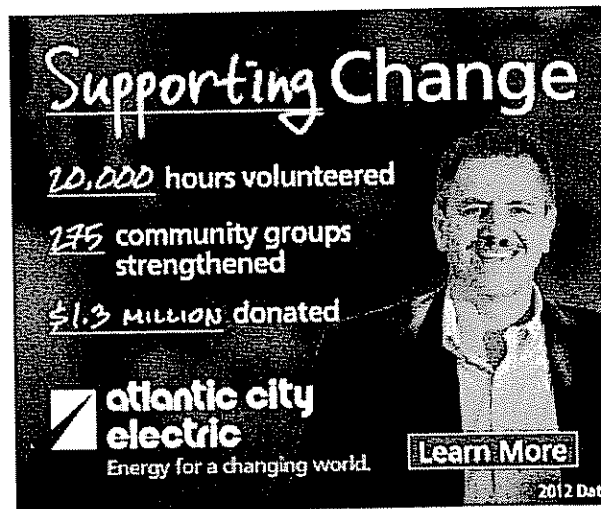
Mercer Democrats will honor Holt this evening at the party.

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## Trending Now

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**Bergen County Exec's Race: Donovan, Tedesco counterpunch over TV ad accusations**



**Winners and Losers: Week of October 13th**



**Is McGreevey watching the West Orange mayor's race and the Frank Addonizio jump**



**Christie says he 'hasn't given any deep thought' to Bell's gold standard**

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**"I'm excited as hell about CD 5. We have encouraged Congressman [Steve] Israel to get involved in CD 5."**

—Democratic State Party Chairman John Currie



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- \$1.3 MILLION donated

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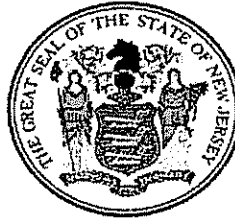
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# **State of New Jersey**

## Property Tax Convention Task Force

**The Report of the  
Property Tax Convention Task Force  
to the  
Governor and Legislature**

A Plan to Hold a Property Tax Convention

“Finding A Fairer System”

**December 31, 2004**



State of New Jersey  
NEW JERSEY PROPERTY TAX CONVENTION TASK FORCE

CHAIR  
Carl E. Van Horn, Ph.D.

VICE CHAIR  
Michael R. Cole, Esq.

December 31, 2004

Honorable Richard J. Codey  
Acting Governor and Senate President

Honorable Albio Sires  
Speaker of the General Assembly


Dear Gentlemen:

We hereby transmit the Report of the Property Tax Convention Task Force (Task Force) as required by its enabling act, P.L. 2004, c. 85. As directed by that law, the Task Force has developed recommendations regarding the process of conducting a constitutional convention designed to change the existing property tax system.

In considering these recommendations, we analyzed comments offered at our public hearings from a wide array of individuals from across the State and across the country. We found scholars' constitutional law suggestions as compelling as citizen descriptions of the problem of high property taxes.

We conclude the mission you have given us with the strong belief that reform of New Jersey's property tax system is needed and that, should the Legislature decide that it is appropriate to authorize a Property Tax Convention to achieve reform, then such a Convention should be conducted in accordance with these recommendations.

Respectfully submitted,

  
Carl E. Van Horn, Ph.D.  
Chair

  
Michael R. Cole, Esq.  
Vice Chair

**Members of the Property Tax Convention Task Force**

Carl E. Van Horn, Ph.D., Chair	Professor, Bloustein School, Rutgers University
Michael R. Cole, Esq., Vice Chair	Partner, DeCotiis, Fitzpatrick, Cole & Wisler
Hon. John H. Adler	New Jersey State Senator and Judiciary Chair
Ida Castro, Professor	Chair in Civil Rights, CUNY School of Law
Susan A. Cole, Ph.D.	President, Montclair State University
Sherryl A. Gordon	Executive Director, AFSCME Council No. 1
Hon. Leonard Lance	New Jersey State Senate Minority Leader
Terrence Malloy	Business Administrator, City of Bayonne
Hon. Kevin J. O'Toole	New Jersey State Assembly Deputy Minority Leader
Hon. Gary Passanante	Mayor, Somerdale
Ernest C. Reock, Jr., Ph.D.	Professor Emeritus, Rutgers University
Hon. Joseph J. Roberts, Jr.	New Jersey State Assembly Majority Leader
Hon. Jo-Anne B. Schubert	Mayor, South Bound Brook
Cy Thannikary	Chairman, Citizens for Property Tax Reform
Richard Van Wagner, Sr.	Former New Jersey Senator and Assemblyman

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A Plan to Hold a Property Tax Convention

“Finding A Fairer System”

**Report of the Property Tax Convention Task Force**

This report, dated December 31, 2004, contains the recommendations of the Property Tax Convention Task Force and is respectfully submitted to the Governor and Legislature as required by law.

**Executive Summary**

P.L. 2004, c. 85 (the Act) was signed into law on July 7, 2004, creating the Property Tax Convention Task Force (Task Force). The Act passed the New Jersey State Legislature with bipartisan support, with the State General Assembly voting 63-16-1 and the State Senate 31-9.

The Task Force consists of 15 members: nine appointed by the Governor; two appointed by the Senate President, one of whom is a member of the Senate and one a member of the public; two members appointed by the Speaker of the General Assembly, one of whom is a member of the General Assembly and one a member of the public; one member appointed by the Minority Leader of the Senate who is a member of the Senate; and one member appointed by the Minority Leader of the General Assembly who is a member of the General Assembly. In accordance with the Act, all members have substantial expertise and experience in State and local government matters, constitutional law, public finance or other related areas. The Task Force was chaired by Professor Carl E. Van Horn, who was appointed to that post by the Governor, consistent with the Act, and Michael R. Cole, Esq., served as Vice Chair.

Section 3 of the Act charges the Task Force with:

Considering and developing recommendations regarding the process of conducting a constitutional convention designed to change the existing property tax system. Such recommendations shall include, but not be limited to, the recommended method for the **selection of delegates** to the convention, the appropriate **scope** of the convention’s inquiry and the method for consideration of the convention’s recommendations, and shall identify the specific issues or questions that the **convention** should consider as well as the estimated **costs** of the convention.

Consensus was formed on nearly all issues, but where that was not possible despite the very best efforts and intentions of all, it is faithfully noted in this report.

As detailed in this report, the Task Force recommends:

### **Selection of Delegates**

- Delegates should be elected by voters simultaneously with the vote on the holding of the Convention at the general election in November 2005.
- Delegates should be elected by district using the 40 current legislative districts.
- To help ensure a diverse and representative group of Delegates, there should be either (a) 80 elected Delegates, two from each district, plus 10 additional Delegates to be appointed in the following manner: two each by the Governor, Senate President, Senate Minority Leader, General Assembly Speaker, and Assembly Minority Leader, or (b) 120 elected Delegates, three from each district, with no appointed Delegates.
- Legislators and all other elected officials should be permitted to seek election as a Delegate.
- All of the current qualifications for Assembly candidates should be used for Delegate candidates, including the requirement of 100 nominating petition signatures.
- Positioning on the ballot should be rotated so that the “luck of the draw” does not influence the election results.
- Delegate elections should be nonpartisan, and neither party affiliation nor any slogan should appear next to a candidate’s name on the ballot, and bracketing by two or more candidates should be prohibited.
- There should be no public financing of Delegate campaigns because public financing of elections in New Jersey is untested (except at the gubernatorial level) and the results of the pilot “clean elections” program for legislative elections will not be known until after the 2005 general election, and also because of the concern about costs.
- There should be a \$500 limit on contributions to Delegate election campaigns from any source.

- **Candidates or advocacy groups who spend in excess of a voluntary \$25,000 spending limit should be required to include in all of their Convention-related political communications a statement that they have exceeded that voluntary limit.**
- **Candidates whose spending does not exceed the \$25,000 voluntary limit should be authorized to include in their political communications a statement that they are staying within that voluntary limit.**
- **Delegates should not be compensated for their service but should be reimbursed for necessary out-of-pocket expenses.**

### Scope

- **The enabling act should clearly state that the Convention will be strictly limited to considering and making recommendations to reform the current system of property taxation and that these recommendations must further one or more of the following goals: eliminating inequities in the current system of property taxation, especially as they affect low and moderate income residents; ensuring greater uniformity in the application of property taxes; reducing property taxes as a share of overall public revenue; providing alternatives that reduce the dependence of local governments on property taxes; and providing alternative means, including possible increases in other taxes, of funding local government services.**
- **The enabling act should include language substantially identical to that found in A-1786 of 2004 (Roberts) and S-263 of 2004 (Adler) regarding the “thorough and efficient” clause and affordable housing obligations.**
- **There should be a requirement that proposals be revenue neutral, which should be clearly defined and verifiable.**
- **A Convention authorized to propose both statutory changes and Constitutional amendments is preferred; but if the legislation necessary to grant the authority to propose statutory changes is not approved by the necessary three-fifths majority in the Legislature next year, then a Convention that can propose only constitutional amendments still should be allowed to proceed.**

- A panel of three retired jurists, to be appointed by the Chief Justice of the Supreme Court of New Jersey, should review proposals during the course of the Convention and before final adoption by the Convention to make sure the proposals do not exceed the Convention's scope and are consistent with the mandate for the Convention and any limitations in place, and there should be a presumption of validity for proposals that the panel has determined to be consistent with the mandate and any limitations.
- The Convention enabling act should require that any legal challenge to the Convention's proposals must be filed under a very short time frame and should provide for expedited court review of any challenges.

### The Convention

- The Convention should be held at Rutgers University in New Brunswick.
- The Convention should convene soon after the Delegate election in order to organize itself and give direction to staff for research projects. The Convention should complete its work by July 31, 2006.
- Research for the Delegates before the Convention, including the compilation of draft rules for operation of the Convention, should be prepared by the Legislative Services Commission.
- Delegates should set the rules for Convention operations, except that the Legislature should specify in the enabling act that approval of proposals for submission to the voters requires a majority vote of all those serving as Delegates.
- The Convention should not be permitted to present to the voters separate questions on each of its specific proposals but should be required to present a comprehensive proposal as a single question.
- Convention proposals should be placed on the 2006 general election ballot immediately following the Convention.
- The Convention should be authorized to conduct a public education campaign about its proposals, but the campaign should be neutral in content.

### Costs

- \$3.845 million should be appropriated for pre-Convention, Convention, and post-Convention activities.

## I – INTRODUCTION

The Property Tax Convention Task Force (“Task Force”) developed its recommendations on how to hold a Property Tax Convention through a remarkable, and perhaps unprecedented, public process that ultimately involved nine public hearings and six working sessions that were open to the public. In fact, the use of a Task Force to advise the Legislature on the details of calling a Convention is itself unprecedented, a new approach, nationally, to state constitutional change.

However, the idea of conducting a *limited* Convention is not unprecedented and is entirely within the power of the Legislature and the people. New Jersey’s Constitution is one of just nine state constitutions that have no provision for conventions, and this leaves maximum discretion to the Legislature and the people to limit their conventions, according to a report from the Center for State Constitutional Studies at Rutgers University. This is in part based upon State history; the 1947 convention was limited *from* considering the method of apportionment, while the 1966 convention was limited *to* considering questions of apportionment.

All of the public hearings and working sessions of the Task Force were recorded and transcribed. (A complete list of the hearings and working sessions is included as Appendix #1 to this report.) The public hearings were conducted in four phases: members of the public; former Governors, State Treasurers, Supreme Court Justices and other officials; advocacy groups (education, business, labor, seniors, environment, civil rights, urban, etc.); and constitutional scholars and other experts. (Those who presented comments to the Task Force are listed in Appendix #2 to this report.)

To further facilitate public involvement, the Task Force established a website (<http://www.state.nj.us/convention/>) that contains links to all hearing transcripts and audio recordings of each hearing and meeting. The public comment period ran until the date of the completion of this report through a variety of means, including e-mail to the Task Force website. Other sources of input compiled by the Task Force came from examination of advocacy group and other websites, e-mail to former Governor James E. McGreevey and to Acting Governor Richard J. Codey, letters, agency reports and studies, citizen telephone calls, and faxes.

In total, more than 150 people testified at the hearings, more than 600 people attended the hearings, and still hundreds more corresponded or communicated via e-mail on the Task Force website or through other means. (Appendix #3 contains a summary of this written correspondence.) All of this input was invaluable to the Task Force.<sup>1</sup>

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1. In addition, the Task Force benefited from the advice of its two consultants, G. Alan Tarr, Distinguished Professor of Political Science at Rutgers University, Camden, and Director of the Rutgers Center for State Constitutional Studies (CSCS); and Robert F. Williams, Distinguished Professor of Law at Rutgers University School of Law-Camden and Associate Director of CSCS. (The CSCS Background Papers are available at the Center’s website: <http://camlaw.rutgers.edu/statecon/tax.html>.) The Task Force

The majority of those who testified before the Task Force took the opportunity to let it be known, in no uncertain terms, their strong belief that reform of New Jersey's property tax system is needed and that a Property Tax Convention is the best (and perhaps only) way to achieve meaningful reform. This report reflects the Task Force's recommendations about how such a Convention should be conducted should the Legislature and the Governor decide that it is appropriate to put before the voters the question of whether to hold such a Convention.

## **II – SELECTION OF DELEGATES**

This section concerns the process by which Convention Delegates would be selected.

### **Simultaneous Election**

**Delegates should be elected by voters simultaneously with the vote on the holding of the Convention at the general election in November 2005.**

By way of historical background, the enabling act for the 1947 convention provided for a simultaneous vote. The 1966 enabling act did not provide for voter approval of the convention, but only for voter election of delegates, since it was in response to a New Jersey Supreme Court mandate to address legislative apportionment.

The Task Force considered the comments of some witnesses that a Delegate election as part of the general election could be lost in the numerous issues that are traditionally on the ballot in a gubernatorial election year such as 2005, and the Task Force determined that would not be the case. Rather, the Task Force sees a benefit of a general election vote for Delegates in that the large number of voters adds credibility to the vote as an expression of the will of the people. The Task Force also recognizes that a simultaneous election is much less expensive than selecting Delegates at a special election, but it does not believe that those committed to addressing the problem of burdensome property taxes will be deterred from seeking election as a Delegate simply because the outcome of the election, as to whether to hold a Convention, will not be known prior to seeking election as a Delegate.

For 2005, the procedure would be separate votes on the ballot for the Convention and for electing Delegates. A voter who votes "no" on the Convention question still would be able to vote for Delegates, as was the case in 1947. The rationale is that a voter

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also received assistance from staff at the following agencies: Department of Transportation, Division of Elections, Division of Law, Election Law Enforcement Commission, Governor's Office, and Office of Legislative Services. Finally, the Task Force acknowledges the assistance and hospitality of staff at Rutgers University in New Brunswick (where all of the working sessions were held) and of Bergen Community College, Mercer County Community College, and Camden County College, Blackwood, which each hosted a public hearing.

who disapproves of a Convention still should have a voice in the Delegate selection process in the event a Convention is held. Votes cast in the Delegate candidate election would be counted whether or not the voter had voted on the question of holding a Convention.

### Districts

**Delegates should be elected by district using the 40 current legislative districts.**

This is the approach in all of the recent Convention bills<sup>2</sup> and even reflects the manner of the 1947 enabling act (although legislative apportionment at the time was based upon county boundaries). Also, such an apportionment system would satisfy any one-person, one-vote concerns that may apply to the selection of Delegates.

### Number of Delegates

**To help ensure a diverse and representative group of Delegates, there should be either (a) 80 elected Delegates, two from each district, plus 10 additional Delegates to be appointed in the following manner: two each by the Governor, Senate President, Senate Minority Leader, General Assembly Speaker, and Assembly Minority Leader, or (b) 120 elected Delegates, three from each district, with no appointed Delegates.**

The Task Force unanimously agrees that in determining the number of Delegates the Legislature should be guided by the goal of trying to ensure that the Delegates to the Convention reflect the diversity of the State and the full range of interests that are concerned with property tax reform. However, the Task Force could not agree on the best method for achieving this goal. Nonetheless, two specific proposals emerged from the Task Force's deliberations, and each received the support of roughly half of the members.

#### 80 elected plus 10 appointed Delegates

Under this proposal, there would be 80 elected Delegates (two from each district) plus 10 additional Delegates to be appointed by the legislative leadership of both parties (with each of the four leaders appointing two Delegates) and the Governor (two appointments). Under this proposal, the enabling act would specify that the criteria for the 10 additional Delegates is to provide demographic diversity. Further, the enabling act would specify that the appointments would be made within 10 days of the meeting of the

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2. Reference to "the recent Convention bills" means A-1786 of 2004 (Roberts), S-263 of 2004 (Adler), S-1392 of 2004 (Lance), A-540 of 2002 (Roberts), S-478 of 2002 (Adler), A-2955 of 2000 (Lance/Roberts), and S-1800 of 2000 (Schluter/Adler).

Board of Canvassers to certify the election of the Delegates, at which time the demographic diversity needs will be known. The Legislature may want to consider having the 10 additional Delegates appointed collectively by the legislative leadership and the Governor as a slate.

Although the 1947 and 1966 conventions did not have any appointed delegates, the Legislature has the authority to permit appointed Delegates. The Task Force's consultants (Professors Tarr and Williams) and Professor Gerry Benjamin of SUNY-New Paltz all noted that silence by a state constitution on Delegate selection provides an opportunity for the use of appointed Delegates. The New Jersey Constitution is silent on conventions and therefore provides such an opportunity. Also, any one-person, one-vote issues that might apply to Delegate selection could be addressed by asking the voters to approve this in the ballot question.

The proponents of this proposal believe that the regular election process may not guarantee a truly diverse group of Delegates and that the appointment of additional Delegates would help to achieve the appropriate balance. Also, these Task Force members are concerned that a Convention with significantly more than about 90 Delegates could prove to be unwieldy, thereby making it more difficult to carry out the work of the Convention and achieve consensus on reform proposals.

#### 120 elected Delegates and no appointed Delegates

Under this proposal, there would be 120 elected Delegates (three from each district) and there would be no provision for appointed Delegates. The proponents of this proposal believe that it is unwise to create two types of Delegates (elected and appointed) and that the chances for creating a more diverse Delegate pool are greater if there simply were more elected Delegates. The proponents of this proposal also note that there were no appointed delegates to the 1947 or 1966 conventions.<sup>3</sup>

#### Legislators/Elected Officials as Delegates

**Legislators and all other elected officials should be permitted to seek election as a Delegate.**

Some at the Task Force public hearings recommended that Legislators should qualify to participate, while others suggested the opposite, and still others suggested not allowing local elected officials to be Delegates. According to the Office of Legislative Services (OLS), only Montana and Tennessee have constitutional provisions barring

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3. Task Force member Assemblyman Kevin J. O'Toole does not support either of these proposals and instead believes that there should be 120 elected delegates, three from each district, and that in each district the Republican, Democrat, and independent/unaffiliated candidate receiving the highest number of votes should be seated as delegates.

Legislators as Delegates. (12/1/04 OLS memo to Senator Lance, included in Appendix #5.) <sup>4</sup>Legislators were permitted to be delegates at both the 1947 and 1966 conventions, as they are in all of the recent Convention bills. A compelling benefit of this recommendation cited by the Task Force is the right of the voters to choose who should be Delegates.<sup>4</sup>

### Petitions/Qualifications

**All of the current qualifications for Assembly candidates should be used for Delegate candidates, including the requirement of 100 nominating petition signatures.**

Various options were considered which lead to this recommendation. Hearing speakers noted the dedication and significant time needed to acquire 100 signatures, and the Task Force recommends that as sufficient. The goal is to encourage ordinary citizens to run and not to make the hurdle too high. One hundred petition signatures is deemed appropriate to be accessible yet still substantial. Regarding the Assembly qualifications of Article IV of the Constitution that Delegate candidates must meet, such candidates must be 21 years old, a resident of the State for at least two years, a resident of their district for at least one year, and entitled to the right to vote.

### Ballot Position

**Positioning on the ballot should be rotated so that the “luck of the draw” does not influence the election results.**

All of the recent Convention bills call for this procedure, in which the county clerk would change the order of the names from one election district to the next. The Legislature should consider providing for the placement on the ballot of the listing of Delegate candidates separate from the listing of candidates for other offices.

### Partisan Identification/Bracketing/Slogans

**The Delegate elections should be nonpartisan, neither party affiliation nor any slogan should appear next to a candidate’s name on the ballot, and bracketing by two or more candidates should be prohibited.**

Nonpartisan means that partisan party affiliation is not allowed on the ballot. Expert testimony to the Task Force supported nonpartisan Delegate elections. It is believed to focus the electorate and the candidates on the issues. Once elected, the Delegates continue that focus, which in turn can be expected to lead to meaningful

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4. Task Force member Assemblyman Kevin J. O’Toole dissents from this recommendation and believes that Legislators should not be permitted to serve as Delegates.

proposals. Professor Dawn Clark Natch of Northwestern University Law School, a former Illinois state legislator, gubernatorial candidate and delegate to the very successful 1970 Illinois constitutional convention, provided written testimony that a nonpartisan Delegate election makes it possible for convention discussion and coalition-building across party lines. For similar reasons, the Task Force also opposes slogans on the ballot.

Bracketing is defined in prominent court cases as the identification of a group of candidates in a column under the same slogan (*Harrison v. Jones*, 44 N.J. Super. 456 (App. Div. 1957)). None of the recent Convention bills allow bracketing for the Delegate election. It is supported in partisan elections, which desire to have this fact brought to the attention of the voter, and it was used in 1947 and 1966 for conventions whose scopes involved an issue of partisan interest, legislative apportionment. The Task Force recommends prohibiting bracketing, as it is a partisan election mechanism that does not serve the interests of the Convention Delegates seeking to amend their Constitution.<sup>5</sup>

### Public Financing

**There should be no public financing of Delegate campaigns because public financing of elections in New Jersey is untested (except at the gubernatorial level) and the results of the pilot “clean elections” program for legislative elections will not be known until after the 2005 general election, and also because of the concern about costs.**

While there is significant interest among the Task Force members in having some form of public financing for the Delegate election, there also is a recognition that there is no base of experience from which to draw. The only publicly financed elections are those for Governor, which clearly would not be a model that could be used. Also, while New Jersey may be moving in the direction of increasing the scope of public financing of elections, the results of the first experiment in this regard, the “clean elections” pilot program for legislative elections, will not be known until after the 2005 election. The Task Force also is concerned about the potential cost of a publicly financed Delegate election. For example, even a minimal program of providing a mailing for those candidates who were the subject of a negative campaign could cost several million dollars. If just one candidate in each district qualified for the mailing, that would mean a mailing to each of the over 5 million registered voters in the state. Despite the lack of public financing, the Task Force suggests that a Convention website be maintained that includes candidate information, and that debates organized by an independent civic organization be encouraged.

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5. Task Force member Assemblyman Kevin J. O’Toole believes that partisan identification should be permitted consistent with his proposal described in footnote 3.

### **Campaign Contributions**

**There should be a \$500 limit on contributions to Delegate election campaigns from any source.**

Five hundred dollars for Delegates is a limit that is lower than Legislators' limits of \$2,600 from individuals and certain entities and \$8,200 from other entities. This \$500 recommendation is similar in implementation to the current gubernatorial election system administered by the Election Law Enforcement Commission (ELEC), making it less costly and more efficient to administer, and this lower limit is needed to reduce the effect of money in the process. ELEC would promulgate rules for the Delegate election, investigate potential campaign finance violations, and make campaign finance reports publicly available.

### **Campaign Spending**

**Candidates or advocacy groups who spend in excess of a voluntary \$25,000 spending limit should be required to include in all of their Convention-related political communications a statement that they have exceeded that voluntary limit.**

**Candidates whose spending does not exceed the \$25,000 voluntary limit should be authorized to include in their political communications a statement that they are staying within that voluntary limit.**

\$25,000 is the limit on expenditures in exchange for public financing that is set forth in some of the recent Convention bills (A-540 of 2002 (Roberts) (before its amendment), S-478 of 2002 (Adler) (before its amendment), A-2955 of 2000 (Lance/Roberts), and S-1800 of 2000 (Schluter/Adler)). Even in the absence of public financing, as noted below, the Task Force decided that there should be a method for encouraging restraint on campaign spending. Thus, the Task Force recommends a voluntary limit of \$25,000 along with a requirement that candidates and issue advocacy groups place a political identification statement on campaign materials they distribute and disclose within that statement if they have spent in excess of the \$25,000 figure.

### **Delegate Expenses/Compensation**

**Delegates should not be compensated for their service but should be reimbursed for necessary out-of-pocket expenses.**

An analysis prepared for the Task Force indicates that compensation levels did not appear to affect convention delegate demographics in the past in other states. (CSCS memo presented at 12/3/04 Task Force meeting, in Appendix #5.) Thus, and given the concerns about cost, the Task Force recommends that Delegates not be compensated.

However, reimbursement for necessary out-of-pocket expenses should be provided. Out-of-pocket expenses should be interpreted with a view towards special needs, such as occasional child-care expenses of the Delegates, which could likely be accommodated in the budget presented below. According to a legal analysis made available to the Task Force, reimbursement of Delegates for expenses would not preclude members of the Legislature from serving as Delegates, while a salary or other compensation would do so under provisions of the Constitution. (12/1/04 OLS letter to Senator Adler *et al.*, in Appendix #5.)

### III – SCOPE

This section describes subjects to be considered by the Convention in recommending fundamental change to the property tax system and providing relief to property taxpayers, as well as the limitations on the scope of the Convention, revenue neutrality, the nature of Convention proposals (constitutional only or statutory as well), and the review of Convention proposals.

#### Subjects for Consideration

**The enabling act should clearly state that the Convention will be strictly limited to considering and making recommendations to reform the current system of property taxation and that these recommendations must further one or more of the following goals: eliminating inequities in the current system of property taxation, especially as they affect low and moderate income residents; ensuring greater uniformity in the application of property taxes; reducing property taxes as a share of overall public revenue; providing alternatives that reduce the dependence of local governments on property taxes; and providing alternative means, including possible increases in other taxes, of funding local government services.**

If there is to be a Property Tax Convention, the sole purpose of such a Convention should be to reform New Jersey's property tax system. This is clearly the purpose of such a convention as envisioned in the statute that created the Task Force. The goal of reforming the property tax system so that the level of property taxes is reduced and the burden of property taxes is more fairly allocated will be a difficult one. Should the Legislature and the people decide to convene a Property Tax Convention, the goal of property tax reform can best be achieved through a limited Convention whose sole mission is property tax reform.

While some who testified before the Task Force said that a Convention also should pursue the goal of reducing government spending, there currently are opportunities each year to pursue that goal through the annual budget process at the State and local levels. A Property Tax Convention would not be an appropriate substitute for this process. Moreover, the Task Force is mindful of the scholarly advice it received

suggesting that, if a Convention were empowered to also address the level and purposes of spending, there would be no way to effectively confine the scope of the Convention to totally ensure against it becoming a forum for debate about divisive social issues. This in turn would make achievement of the central goal of property tax reform even more difficult.<sup>6</sup>

### **Limitations**

**The enabling act should include language substantially identical to that found in A-1786 of 2004 (Roberts) and S-263 of 2004 (Adler) regarding the “thorough and efficient” clause and affordable housing obligations.**

If the Legislature clearly states that the exclusive purpose of the Convention is property tax reform, then this affirmative statement of the mandate of the Convention would also operate as a prohibition against consideration of subjects not encompassed by that mandate, such as the basic rights set forth in Article I of the Constitution. The Constitution’s guarantee of a thorough and efficient education and the obligations of municipalities to provide affordable housing, like the rights in Article I, would not be subjects within the mandate of a Property Tax Convention. But because of the nature of those issues, it still would be prudent for the Legislature to specify in the enabling act the restrictions regarding the “thorough and efficient” clause and municipal affordable housing obligations.

### **Revenue Neutrality**

**There should be a requirement that proposals be revenue neutral, which should be clearly defined and verifiable.**

All of the recent Convention bills have required revenue neutrality and define it as “the aggregate amount of all revenues enacted under the powers of the State, as accurately as can be estimated and measured, shall be the same after changes recommended by the Convention as they were before such changes.” The Task Force recommends that this requirement and definition be used with the understanding that this outcome may be modified by economic developments in subsequent fiscal years. Also, the Task Force recommends that the Convention have available to it professional fiscal analysts to advise the Convention on this issue.

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6. Task Force member Michael R. Cole would authorize the Convention to examine spending at all levels of government and propose limits and efficiencies concerning same. The dissents of Task Force members Senator Leonard Lance and Assemblyman Kevin J. O’Toole on scope and limitation issues are included in Appendix # 6 to this Report.

### Constitutional Amendments/Statutes

**A Convention authorized to propose both statutory changes and Constitutional amendments is preferred; but if the legislation necessary to grant the authority to propose statutory changes is not approved by the necessary three-fifths majority in the Legislature in 2005, then a Convention that can propose only constitutional amendments still should be allowed to proceed.**

In order for a Convention to be authorized to propose both constitutional and statutory changes, the Legislature would have to approve and submit for voter approval two separate pieces of legislation. One would be a bill to authorize a Convention, which would require only a simple majority vote of the Legislature in order to appear on the ballot. The other would be a concurrent resolution to temporarily amend the Constitution to permit the Convention to propose statutory changes. In order for this proposal to appear on the ballot in 2005, the Legislature would have to approve the concurrent resolution by a three-fifths majority.

Ideally, a Property Tax Convention should have the capability to consider both statutory and constitutional changes since many of the current policies that affect the property tax system are embodied in statutes while some others are found in the Constitution. But a Convention that would be able to propose only constitutional changes still could be successful in achieving property tax reform because such a Convention could, for example, propose binding, guiding principles that the Legislature would be required to implement. For these reasons, the Task Force recommends flexibility regarding this issue. The bill to authorize a Convention should be permitted to take effect regardless of whether the resolution regarding the temporary constitutional amendment is adopted. If both the bill and the concurrent resolution were adopted, then the Convention would be able to address both constitutional and statutory changes. If only the bill were adopted, then the Convention still would take place but would be permitted to address only constitutional changes.<sup>7</sup>

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7. Task Force members Susan A. Cole and Michael R. Cole dissent from the recommendation that the Convention be enabled to propose statutory changes as well as constitutional amendments. They believe the creation of laws rests within the authority of the Legislature and the Governor, with all of the checks and balances, rules and procedures, and ultimate accountability to the voters that the legislative process entails. In their judgment, a constitutional Convention should be limited to constitutional amendments. Task Force member Ernest C. Reock, Jr., suggests in general that the Convention be authorized to propose statutory changes only, rather than amendments to the State Constitution. In particular, in order to avoid rigid controls in a changing world, he urges that any tax or budget limitations be presented to the voters as statutory, rather than constitutional, measures.

## **Proposal Review**

**A panel of three retired jurists, to be appointed by the Chief Justice of the Supreme Court of New Jersey, should review proposals during the course of the Convention and before final adoption by the Convention to make sure the proposals do not exceed the Convention's scope and are consistent with the mandate for the Convention and any limitations in place, and there should be a presumption of validity for proposals that the panel has determined to be consistent with the mandate and any limitations.**

The Task Force consensus favors the legitimacy provided by a review of three retired jurists. An opinion of the Office of Legislative Services provides a basis for such a retired jurist review (5/29/02 letter to Senator Adler, in Appendix #5). Also, several of the recent Convention bills provide for this type of review.<sup>8</sup>

In the 1947 enabling act, the Secretary of State provided the review. However, the only limitations on that convention were simple and obvious – no change in the boundaries of counties and no change in the system of legislative apportionment. So, a more substantive review by a neutral panel was not necessary.

In 1966, the State Attorney General would have been authorized to review proposals since he was designated as the convention's legal officer prior to the convention by the State House Commission.

## **Legal Challenges**

**The Convention enabling act should require that any legal challenge to the Convention's proposals must be filed under a very short time frame and should provide for expedited court review of any challenges.**

There is a need to require a short time frame in which suits may be filed and expedited court review of objections to Convention proposals. This would prevent a situation where an opponent of the proposals could delay a public vote by filing suit on the eve of the election.

---

8. Sec A-1786 of 2004 (Roberts), S-263 of 2004 (Adler), and S-1392 of 2004 (Lance).

## **IV – THE CONVENTION**

This section of the report concerns Convention operations and proposals.

### **Location**

**The Convention should be held at Rutgers University in New Brunswick.**

Literature regarding the 1947 convention and the 1966 convention shows that Rutgers University was selected for a number of reasons, including: distance makes it independent of the concerns of Trenton; desire to host the Convention; collegial atmosphere that would encourage nonpartisanship; central location in the State; and ability to set up a special reference library and other work areas. All of these reasons also justify conducting the Property Tax Convention at Rutgers.

### **Dates**

**The Convention should convene soon after the Delegate election in order to organize itself and give direction to staff for research projects. The Convention should complete its work by July 31, 2006.**

The Task Force considered the several configurations of past conventions and current legislative proposals. In addition, they considered that a general election for electing Delegates would permit an earlier start than the late winter or early spring commencement reflected in those configurations. On that basis, the Task Force recommends that the Convention convene shortly after the election in order to consider Convention rules, organizational issues, and such other relevant matters within the Convention's scope as they shall determine. If the Convention chose, there could then be a break during which there would be a refining of those rules and other organizational matters and receipt of research materials. The Convention could then reconvene in the spring and conclude its work by late July, which would provide sufficient time to notify the public of the Convention proposals. The Task Force makes this recommendation recognizing that Article II and Article IX regarding legislative notice requirements for public questions and proposed Constitutional amendments, respectively, do not apply to the Convention, since the Constitution is silent on Conventions, but also recognizing that compliance with the three-month advance publication requirement of Article IX would be prudent and appropriate. This time frame would also enable the public to be fully informed about the proposals adopted by the Delegates.

## Research

**Research for the Delegates before the Convention, including the compilation of draft rules for operation of the Convention, should be prepared by the Legislative Services Commission.**

All of the recent Convention bills state that all pre-Convention research is to be undertaken by the Legislative Services Commission (LSC), which shall also recruit Convention staff. Some recent bills would direct the State House Commission (SHC) to make physical arrangements with Rutgers University. Previous conventions utilized similar State agency assistance, including the Department of Treasury, Office of the Attorney General, and others.

The enabling act should reflect that LSC is to provide the pre-Convention research, including the draft rules. As noted above, the Convention should convene shortly after the Delegate election in order to consider various matters such as SHC's physical arrangements and LSC's research efforts.

## Rules

**Delegates should set the rules for Convention operations, except that the Legislature should specify in the enabling act that approval of proposals for submission to the voters requires a majority vote of all those serving as Delegates.**

The 1947 and 1966 enabling acts permitted convention delegates to set their own rules by majority vote. Current bills provide the same authorization. Given precedent, the enabling act should state that Convention rules will be set by the Delegates, but that votes on proposals for submission to the voters require a majority vote of all those serving as Delegates, in order to demonstrate a strong consensus for any proposals.

## Manner of Presentation of Proposal to Voters

**The Convention should not be permitted to present to the voters separate questions on each of its specific proposals but should be required to present a comprehensive proposal as a single question.**

The Office of Legislative Services provided an opinion stating that, if a Convention were to be authorized by a temporary constitutional amendment to propose statutory changes as well as constitutional amendments, then both the statutory changes and the constitutional amendments could be submitted for voter approval as a single ballot question. (12/8/04 OLS letter to Senator Lance, in Appendix #5.) Since Article IX of the Constitution envisions voting on each amendment proposed by the State Legislature separately and distinctly, the one-proposal approach should be specifically

addressed in the Convention enabling law for clarity and approved by the voters at the November 2005 general election. It is unlikely that the Convention would propose competing comprehensive proposals, but the Legislature may want to consider not precluding that possibility.

### **Timing of Presentation of Proposal to Voters**

**Convention proposals should be placed on the 2006 general election ballot immediately following the Convention.**

The New Jersey State Constitution does not address constitutional conventions, but Article II regarding submission of statewide public questions arguably requires submittal of Convention proposals at a general election (as opposed to any other election). Moreover, several constitutional scholars providing testimony to the Task Force cited the benefits of this approach and noted that it comports with the spirit of the Constitution. It is preferable based upon the likely familiarity of the public with the results of a recently concluded Convention, and it is a means to avoid an inordinate amount of time for the public to grow weary of an extended campaign. The 1947 and 1966 conventions by their enabling acts placed their proposals on the immediately following general election ballot, and all of the recent Convention bills follow this course. As with the public question as to the holding of a Convention, the Task Force sees a benefit of a general election vote for proposals in that the large number of voters adds credibility to the vote as an expression of the will of the people.

### **Public Education**

**The Convention should be authorized to conduct a public education campaign about its proposals, but the campaign should be neutral in content.**

Constitutional scholars testifying before the Task Force stated that providing voter education on the Convention proposals serves to ensure that voters are engaged in the reform of their Constitution, as is envisioned in the Constitution. In fact, an "address to the people" regarding the proposals is specified in all of the recent Convention bills.

In 1947, public education was a priority of the Convention. Provision for distribution of an "address to the people" was provided for in the 1947 convention enabling act. As a result, public education was initiated by that convention's delegates, who approved newspaper and radio ads, the mailing of three million summaries of the proposed Constitution to the public, and the printing of 600,000 full copies of the proposed Constitution, out of funds remaining from the convention appropriation that had been provided by the Legislature. (Connors, Richard J., *The Process of Constitutional Revision in New Jersey: 1940-1947*, page 189.)

In 1966, public education was also a priority of the Convention, which appointed a committee of eight delegates to publicize the general election ballot question on the new Legislative apportionment system. (Reock, Ernest C., Jr., *Unfinished Business*, page 221.)

Public education for Convention proposals is not intended to mean that the State is to pay to convince the public one way or the other. For this reason, the Task Force recommends that the public education effort be neutral in content. The same system that is in use for assuring the validity of explanatory statements for ballot questions could be used regarding the neutrality of the public education materials.

### V – COSTS

#### All stages of Convention planning and operation

**\$3.845 million should be appropriated for pre-Convention, Convention, and post-Convention activities.**

Appropriations in recent legislation range from \$4 million to \$15 million. The staff presented and the Task Force accepted the following proposed budget:

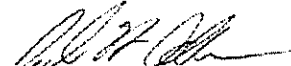
<u>PRE-CONVENTION</u>	<u>Estimate</u>
Delegate and Convention Election	1,150,000
\$500,000 cost to review petitions, rotate candidates from district to district, train board workers	
\$500,000 candidate stmts. collected, camera ready, print, mail	
\$100,000 sample ballot qstns. written, camera ready, print, mail	
\$50,000 ELEC monitoring	
Research, facilities, staff for up to 1month	
\$50,000 research	
\$5,000 facilities	
\$10,000 staff	<u>65,000</u>
<b>SUBTOTAL OF PRE-CONVENTION</b>	<b>\$1,215,000</b>

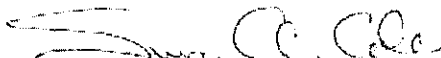
<b><u>CONVENTION</u></b>	
Printing, transcripts, notices, audio	675,000
\$420,000 printing	
\$70,000 transcripts	
\$5,000 notices	
\$180,000 audio	
Meals, Rutgers charges, other agency help	340,000
\$180,000 meals	
\$60,000 Rutgers	
\$100,000 other agency help	
Experts and constitutional scholars	120,000
\$60,000 experts	
\$60,000 constitutional scholars	
Staff/Delegate expenses	
\$210,000 Delegate out of pocket	
\$90,000 staff out of pocket and unforeseen expenses	
\$145,000 Director, counsel, 2 press, 2 accountants, 4 aides	<u>445,000</u>
<i>SUBTOTAL OF CONVENTION</i>	<u>\$1,580,000</u>
<b><u>POST-CONVENTION</u></b>	
General Election with proposal vote and proposals statement	1,000,000
\$420,000 for costs related to Convention proposals vote including ads and notice to municipal clerks, etc.	
\$380,000 proposal statement, camera ready, print, mail on expanded sample ballot that requires larger paper	
\$200,000 public education using same amount spent in 1947	
ELEC monitor of issue groups	<u>50,000</u>
<i>SUBTOTAL OF POST-CONVENTION</i>	<u>\$1,050,000</u>
<b><u>TOTAL</u></b>	<b><u>\$3,845,000<sup>9</sup></u></b>

9. Task Force member Assemblyman Kevin J. O'Toole dissents from this recommended budget. He questions the pre-Convention amount because the election of delegates and the referendum on the convention call will be held at a general election under the recommendations, and the amount cited may include costs that are normally incurred in a general election. Task Force member Ernest C. Reock, Jr., proposes that the budget allocation for an independent Convention staff and consultants be substantially increased to reduce the necessity for Convention delegates to rely on lobbyists and special interest staff for expert advice.

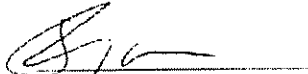
Signed and Submitted By:


  
Carl E. Van Horn, Chair

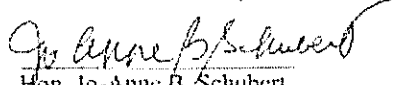
  
Hon. John H. Adler

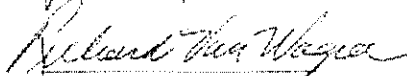
  
Susan A. Cole


  
Hon. Leonard Lance


  
Hon. Kevin J. O'Toole


  
Ernest C. Roock, Jr.

  
Hon. Jo-Anne B. Schubert

  
Richard Van Wagner, Sr.


  
Michael R. Cole, Vice Chair

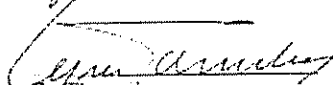
  
Ida Castro

  
Sherryl A. Gordon

  
Terrence Malloy

  
Hon. Gary Passanante

  
Hon. Joseph J. Roberts, Jr.

  
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# EXHIBIT 8

**SPECIAL SESSION  
JOINT LEGISLATIVE COMMITTEE**

**PUBLIC EMPLOYEE  
BENEFITS REFORM**

**FINAL REPORT**

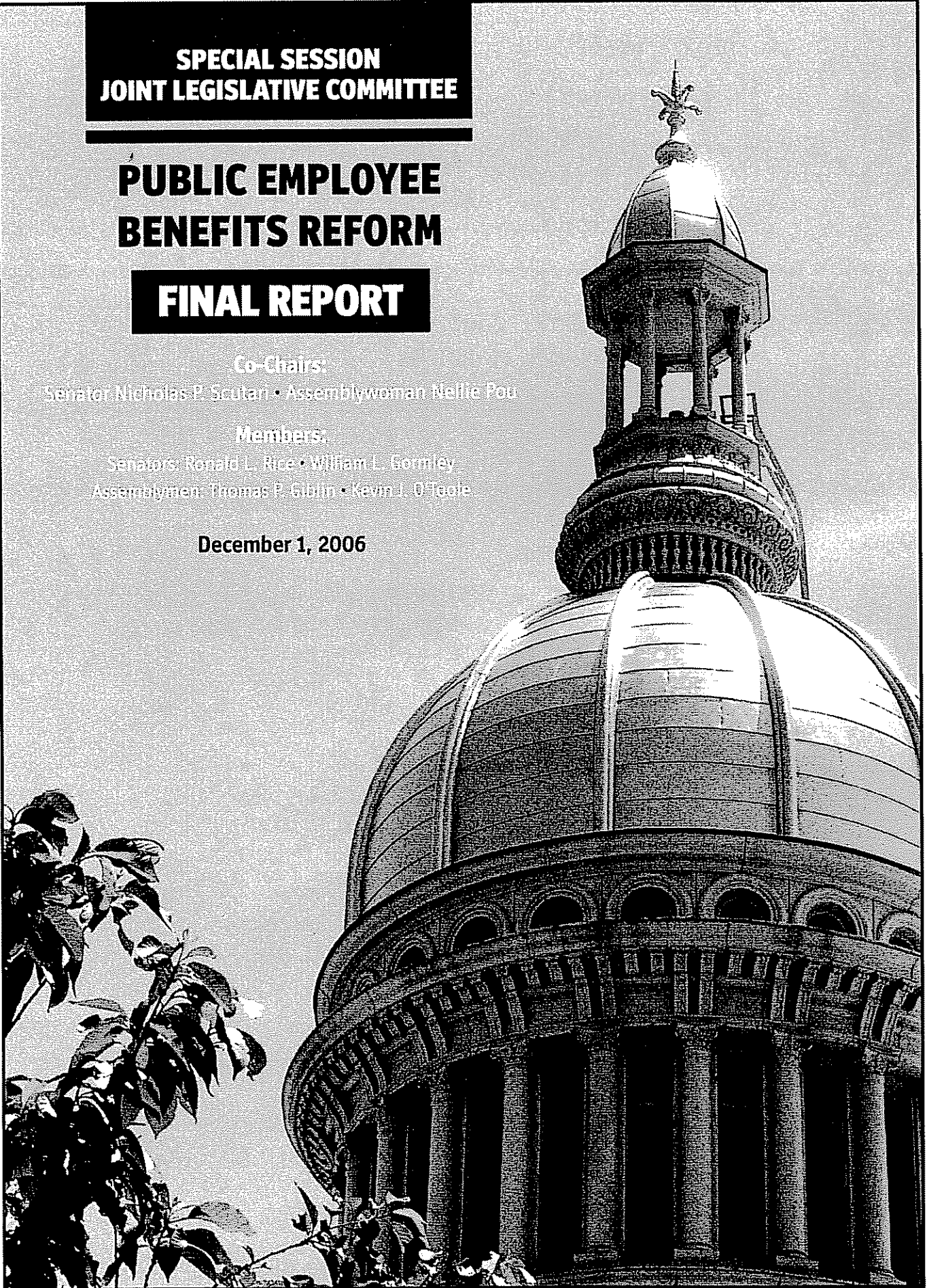
**Co-Chairs:**

Senator Nicholas P. Scutari • Assemblywoman Nellie Pou

**Members:**

Senators: Ronald L. Rice • William L. Gormley  
Assemblymen: Thomas P. Giblin • Kevin J. O'Toole

**December 1, 2006**



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## **I. Executive Summary**

Pursuant to Assembly Concurrent Resolution No. 3, the Joint Legislative Committee on Public Employee Benefits Reform was charged with identifying proposals that will terminate abuses of the pension systems and control the cost of providing public employee retirement, health care and other benefits.

The Joint Legislative Committee on Public Employee Benefits Reform finds:

- New Jersey's retirement systems have an \$18 billion unfunded liability.
- The four main contributors to this unfunded liability are:
  - State and local government employer pension "holidays" totaling \$8 billion over seven years;
  - Negative investment returns resulting in a \$20 billion loss;
  - Costly pension benefit enhancements and early retirement incentive programs; and
  - Continuous increases in both active and retiree enrollment.
- State Health Benefits Program expenditures total \$3.6 billion annually.
  - These expenditures have risen by 150% over the past five years and will double by 2010;
  - State and local governments will soon have to recognize the long-term implications of these employee health care benefits on their financial statements, similar to the way pension obligations are presented;
  - The State's health care benefits unfunded liability is estimated to exceed \$20 billion.
- Detrimently altering the retirement benefits of active members of the retirement systems who have accrued at least five years of service credit, or of retired members, would be unconstitutional as an impairment of contract based on a legal opinion provided by the nonpartisan Office of Legislative Services and similar legal advice prepared by the Office of the Attorney General for the State Treasurer.

- For the benefit of taxpayers, government employees and retirees, and public employers, measures both to ensure that the retirement systems are financially sound and to control the rise in health care benefit costs must be implemented.
- Pension abuses and gimmicks must be terminated through a series of legislative and regulatory measures.
- Implementation of State Health Benefits Program cost-savings strategies will help curtail rising expenses.
- Pension and health care benefits are a significant and increasingly expensive obligation that State and local governments have to their current and former employees. These taxpayer financed benefits contribute to the cost of local property taxes borne by State residents and, therefore, short-term and long-term solutions are necessary.
- The Joint Committee's recommendations identify long term savings through wide-ranging reforms while maintaining the essential components of a competitive system of pensions and benefits, for the workers who deserve it.
- The reforms recommended by this Joint Committee are overdue. Whether some of these reforms are achieved through collective bargaining rather than through legislation is less significant than ensuring that they are, in fact, achieved. Collective bargaining notwithstanding, it is clear that the Legislature needs to attach permanency to a number of the recommended reforms.

The Joint Legislative Committee on Public Employee Benefits Reform recommends:

Pension Benefits

- *Recommendation 1:* Limit defined benefit pension plans to full-time career employees and establish new defined contribution program for all new part-time employees, elected officials and full-time appointed officials
- *Recommendation 2:* Increase retirement age to 62
- *Recommendation 3:* Reduce benefit formula for new members from N/55 to N/60
- *Recommendation 4:* Cap pensionable salary, which is now unlimited, to Social Security wage contribution limit - \$97,500 for 2007

- *Recommendation 5:* Base “high salary” pension benefit calculations for new members on higher number of years
- *Recommendation 6:* Designate one job for one pension
- *Recommendation 7:* Repeal non-forfeitable right to pension benefits after five years of pension service
- *Recommendation 8:* Limit pension enrollment eligibility to \$5,000 minimum salary
- *Recommendation 9:* Allow all non-vested employees to opt into defined contribution program
- *Recommendation 10:* Exclude all professional service contractors from membership in PERS
- *Recommendation 11:* Require Division of Pensions and Benefits to investigate compensation increases that exceed reasonably anticipated annual compensation increases
- *Recommendation 12:* Close Prosecutors Part of PERS
- *Recommendation 13:* Close Workers Compensation Judges Part of PERS
- *Recommendation 14:* Repeal special retirement benefit enhancement in PFRS
- *Recommendation 15:* Prohibit non-uniform public employees from enrolling in PFRS
- *Recommendation 16:* Require forfeiture of retirement system benefits for public officials convicted of crimes involving abuse of office
- *Recommendation 17:* Replace accidental and ordinary disability benefits with private disability insurance coverage
- *Recommendation 18:* Continue moratorium on benefit enhancements in State-administered retirement systems
- *Recommendation 19:* Continue moratorium on early retirement incentives, except in cases of regionalization and consolidation initiatives resulting in cost savings

- *Recommendation 20:* Eliminate use of excess valuation assets to reduce employers' normal contributions in State-administered retirement systems
- *Recommendation 21:* Use consistent and generally accepted actuarial standards for pension valuations

#### Health Benefits

- *Recommendation 22:* Require all active public employees to pay some portion of cost of health care insurance premiums
- *Recommendation 23:* Require future retirees to pay some portion of cost of health care insurance premiums
- *Recommendation 24:* Provide flexibility to local government employers participating in SHBP to negotiate different levels of cost sharing and plan selection with their current employees
- *Recommendation 25:* Require that SHBP benefits changes negotiated by State be applied to local governments
- *Recommendation 26:* Limit SHBP participation to those who work at least 35 hours per week
- *Recommendation 27:* Allow local employers participating in SHBP to provide monetary incentives to public employees who elect to waive SHBP coverage
- *Recommendation 28:* Prohibit out-of-State purchased pension service from being creditable towards post-retirement health care benefits
- *Recommendation 29:* Prohibit multiple health care coverage in SHBP
- *Recommendation 30:* Offer SHBP basic health care plan at low cost to public employees and determine cost to employee of SHBP plan according to sliding scale with regard to employee's compensation
- *Recommendation 31:* Mandate use of mail order for maintenance prescriptions and encourage generic drug utilization for SHBP participants
- *Recommendation 32:* Require SHBP bulk purchasing of pharmaceuticals
- *Recommendation 33:* Study use of pharmacy benefits manager
- *Recommendation 34:* Require Division of Pensions and Benefits screening of SHBP for ineligible participants

- *Recommendation 35:* Establish disease and chronic care management program for all SHBP participants

Other Benefits

- *Recommendation 36:* Limit sick leave compensation payable upon retirement to \$15,000 for all local government and board of education employees
- *Recommendation 37:* Limit accumulation of vacation leave to one year for all local government and board of education employees
- *Recommendation 38:* Eliminate State's sick leave injury program
- *Recommendation 39:* Increase interest rate charged for pension loans in State-administered retirement systems
- *Recommendation 40:* Review number of State holidays for public employees
- *Recommendation 41:* Ban dual elective office holding

Senator Gormley and Assemblyman O'Toole wish to note that, while they agree with the thrust of this report, they would like to place on the record their firmly held opinion that effective reform requires stronger recommendations in several areas. They would like to acknowledge that the co-chairs have graciously agreed to include their reservations in the relevant parts of this report.

## **II. Introduction**

On June 6, 2006, New Jersey Senate President Richard J. Codey and Assembly Speaker Joseph J. Roberts, Jr. announced “an unprecedented special legislative session” that would work throughout the summer and fall to enact reforms aimed at reducing New Jersey’s property tax burden. The session began on July 28, when Governor Jon S. Corzine addressed a Joint Session of the Legislature, noting that New Jersey’s property tax levy currently totals \$20 billion and provides 46 percent of the State’s tax revenues. Without changes to the present system, that amount will reach nearly \$40 billion within a decade.

After the Governor’s address, Assembly Concurrent Resolution No. 3 was passed by both Houses. It created four bicameral, bipartisan Joint Committees to review and formulate proposals to reform property taxes: (1) the Joint Legislative Committee on Public School Funding Reform, to address public school funding and expenses; (2) the Joint Legislative Committee on Government Consolidation and Shared Services, to address shared services and regionalized functions at all government levels; (3) the Joint Legislative Committee on Public Employee Benefits Reform, to control pension system abuses and the costs of public employee benefits; and (4) the Joint Legislative Committee on Constitutional Reform and Citizens Property Tax Constitutional Convention, to consider property tax reform through amendments to the State Constitution and other proposals.

The four Joint Committees followed an open and inclusive process. Throughout the State and at various hours, they held 32 public meetings, broadcast live and archived on the Internet, and nine public hearings. They solicited testimony in person and through teleconferencing from State and national experts, academics, practitioners, and officials; reviewed thousands of pages of background material; and received over 3,700 public emails. Both partisan and nonpartisan staff contributed research and policy analysis to the work of the Joint Committees and their members. The following is the report of the Joint Legislative Committee on Public Employee Benefits Reform.

### **III. Background**

#### Joint Committee Members

As required by Assembly Concurrent Resolution No. 3, the Joint Committee consisted of six legislative members. Senators William L. Gormley, Ronald L. Rice and Nicholas P. Scutari were appointed by Senate President Codey, who also designated Senator Scutari as Co-Chairman. Assemblymen Thomas P. Giblin and Kevin J. O'Toole and Assemblywoman Nellie Pou were appointed by General Assembly Speaker Roberts, who also designated Assemblywoman Pou as Co-Chairwoman.

#### Joint Committee Charge

When the special session was announced, the Senate President and General Assembly Speaker noted the charge of the Joint Committee would be to use the Report of the Benefits Review Task Force as a starting point for suggesting changes to the current public employee pension and health benefit systems. The report, issued on December 1, 2005, was the product of a special committee of 10 public officials and private citizens created by Governor Codey, pursuant to Executive Order No. 39 of 2005. The Task Force offered more than 30 recommendations for structural changes that would make the systems equitable and save taxpayer money. Among the specific recommendations were ending pension boosting, tacking and other systemic abuses, including ending pensions for vendors and contractors; implementing strategic pension reforms, including adjustments to the defined benefit plans so that the retirement allowance calculation is based on the highest five or three years of salary, depending on the type of retirement, instead of the highest three years or one year of salary, as it is currently; and implementing strategic health care reforms, including requiring all public employees and retirees in the State Health Benefits Program (SHBP) to contribute to the cost of their health care benefits.

### Materials Provided to Joint Committee

To facilitate and inform the Joint Committee's work, binders containing pertinent information were compiled for each member by the staff of the Office of Legislative Services. Beginning with a copy of Assembly Concurrent Resolution No. 3, the binders included the Report of the Benefits Review Task Force, followed by documents that give a complete and current description of New Jersey's State government workforce. These initial sections are followed first by a section with detailed information about the State's pension systems for public employees and more general information about public pension systems in general, including in different states, and then a section with detailed information about State-provided health benefits for public employees and more general information about health benefits, including for public employees in other states. Media articles about public pensions and health benefits, legislation on those issues introduced in the 2006-2007 session of the Legislature, and media polling results on public employee salaries complete the materials in the binder.

### Joint Committee Plan

To provide the public with as much access to the Joint Committee's deliberations as possible, the members adopted a committee work plan with several elements. It was agreed that meetings were to be held regularly, with some occurring in Trenton and some in different parts of the State. Public notice about the meetings would be given at least five days before their occurrence and the public would be invited to attend. Information about the meeting times, the documents in the binders and complete transcripts of the meetings were to be available on the Internet site set up for each special Joint Committee on the homepage of the New Jersey Legislature. Most of the Joint Committee's meetings were televised. In order for Joint Committee members to learn more about the State's pension systems and the health benefits, experts on those issues were asked to make public presentations. Among those testifying were public officials from the Division of Pensions and Benefits in the Department of the Treasury, including Mr. Frederick J. Beaver, Director of the Division, Mr. John D. Megariotis, the Division's Deputy Director of Finance and Ms. Florence Sheppard, the Division's Deputy Director of Benefit

Operations. Also providing information were Mr. William A. Reimert, an actuary with Milliman Global and Mr. Philip D. Murphy, chair of the Benefits Review Task Force. Many representatives from labor organizations, business, county and municipal organizations and members of the general public attended the meetings and offered information to the Joint Committee.

#### Summary of Comments Received by Electronic Mail

The Joint Committee received a total of 875 public emails over the course of its deliberations. The emails were helpful in highlighting areas of potential reform and offered a broad array of recommendations. While the recommendations represented a wide range of opinions and perspectives, several common messages emerged. One message heard by the Joint Committee was that New Jersey public sector pensions and benefits need to be brought in line with the private sector. Another message heard by the Joint Committee was that many current, career public sector employees believed changes to the pension and benefits system would violate the commitment the State made to them over the course of their careers and ignore the fact that they have paid their fair share of pension contributions into the system.

Emails were received and reviewed by the members of the Joint Committee on a daily basis and a number of the suggestions led to specific recommendations present in the final Joint Committee report. Examples of recommendations contained in the public emails to the Joint Committee that became part of the final report include:

- Increase the interest rate on pension loans
- Align the State retirement age with the Social Security retirement age
- No pension for politicians found guilty of a crime
- Eliminate pension boosting and tacking
- Public employees must contribute to the cost of medical insurance
- Make the State Health Benefits Program more flexible and offer a PPO
- State employees should not be allowed to collect more than one pension
- Cut back on State holidays
- Implement a two tier system for pensions

Many of these ideas were included in multiple emails and many of the emails offered a variety of solutions. One-hundred-forty-four (144) of the emails recommended some type of public pension reform, including the use of a 401(k) or making significant changes to the existing defined benefit pension plans. One-hundred-forty-two (142) of the emails recommended changes to the health benefits system, including reductions in benefits and increased cost sharing for public employees. Over 136 of the emails focused on ending abuse and gaming of the pension system. One-hundred-twenty-six (126) of the emails were written in support of maintaining the current level of public worker benefits. Finally, 123 emails recommended reducing government spending, reducing the size of the workforce, and running the State more like a business.

The emails submitted to the Joint Committee helped reinforce the importance of this Joint Committee's charge: to address abuses of the system and to control the costs of public employee retirement, health, and other benefits without unfairly diminishing protections afforded to the full-time, rank and file employees who have earned and contributed to their pensions. The public input and open communication was an important element to this process.

#### **IV. Summary of Meetings**

The Joint Legislative Committee on Public Employee Benefits Reform (Joint Committee) held a total of nine public meetings over three months. Seven of the meetings were held in the State House Annex in Trenton, one was held at Clifton High School, in Clifton, Passaic County and one was held at Gloucester County College, in Sewell, Gloucester County. The following is a summary of each meeting.

## Overview of Pensions and Health Benefits

August 9, 2006 Meeting of the  
Joint Legislative Committee on Public Employee Benefits Reform

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On August 9, the Joint Committee met in Committee Room 4 of the State House Annex to organize and receive a presentation by Frederick J. Beaver, Director of the Division of Pensions and Benefits. The meeting began with opening remarks by each Joint Committee member. Co-Chair Scutari spoke first; he discussed the current state of the pension system, and the task ahead of the Joint Committee. Co-Chair Pou then delivered her opening remarks, in which she defined the problems before the Joint Committee and the goals that the Joint Committee should seek to achieve. Senator Rice expressed his concerns regarding not blaming rank-and-file government workers for the issues before the Joint Committee, and commented that the Joint Committee should look to the health care industry in its examination of the rising costs of health care. Assemblyman Giblin discussed the issues facing the Joint Committee, and the scope of the reform measures the Joint Committee would recommend. Senator Gormley stated that the Joint Committee's process would be meaningless unless there were simultaneous contract negotiations held with public employees, and spoke about specific legislation that had been previously enacted regarding public employee pensions. Assemblyman O'Toole spoke about the experiences that shaped his thinking about public employee benefits, and mentioned some of the issues he felt the Joint Committee should explore in detail.

Following these opening comments, Co-Chair Scutari introduced Frederick J. Beaver, Director of the Division of Pensions and Benefits. Accompanying Mr. Beaver was Deputy Director of Finance, John D. Megariotis, and Deputy Director for Benefit Operations, Florence Sheppard.

The Joint Committee received a PowerPoint Presentation from Director Beaver, in which he provided the Joint Committee with the basic facts of the State-administered pension

systems. Mr. Beaver stated that the State of New Jersey has the second largest public employee benefits program in the nation. The mission of the program is to attract and retain a skilled and competent workforce. The Division of Pensions and Benefits administers nine pension systems, three supplemental retirement savings plans, the State Health Benefits Program (SHBP), and various voluntary benefit plans. There are more than 740,000 active and retired participants in defined benefit plans, 16,000 participants in the defined contribution program, 802,000 covered lives in the SHBP, and over 122,000 participants in the various voluntary benefits plans. State benefits program costs are estimated to rise to \$6.3 billion by fiscal year 2010.

Joint Committee members asked Mr. Beaver a number of questions to solicit additional information on the scope and cost of the current pension and health benefits systems. The topics discussed included:

- The pension loan program;
- How public employee salaries and benefits compare to those in the private sector;
- The different contribution rates for employees in different pension systems;
- Information on employees who hold multiple jobs;
- How New Jersey compares with other states' funding of pension systems;
- The new GASB accounting standards;
- Local employers reentering SHBP;
- The total unfunded liability of the systems;
- Changes in retirement calculations; and
- Other issues and recommendations that the Joint Committee may consider.

## Legal Issues Related to Changes to Pension Benefits

August 23, 2006 Meeting of the  
Joint Legislative Committee on Public Employee Benefits Reform

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The August 23 meeting of the Joint Committee was held in Committee Room 11 of the State House Annex. Each Co-Chair gave an opening statement, in which they stated that the purpose of the meeting was to receive a presentation from the Office of Legislative Services (OLS) on the legal parameters related to changes to pension benefits. Co-Chair Pou introduced Peter J. Kelly, Principal Counsel of OLS. Accompanying Mr. Kelly was Pamela H. Espenshade, Principal Counsel.

Mr. Kelly stated that OLS was asked to address the following question: whether the Legislature, by law, may reduce the retirement benefits that have been provided for public employees in the statutes establishing the various State-administered retirement systems. He stated that it was OLS's opinion that legislation that has the effect of detrimentally altering the retirement benefits of active members of State-administered retirement systems who have accrued at least five years of service credit, or of retired members, would be unconstitutional as violative of the federal and State constitutional proscription against impairment of the obligation of contracts. Mr. Kelly summarized OLS's reasoning as follows:

- In 1997 the New Jersey Legislature enacted a statute that confers on a public employee a non-forfeitable right to pension benefits established by law after the employee has served for five years;
- In enacting that law the Legislature intended to establish a contractual right;
- Both the federal and State constitutions prohibit the impairment of a contract; and therefore,
- Promised retirement benefits cannot be altered.

Mr. Kelly then discussed the context of New Jersey case law and case law in other jurisdictions with respect to this issue and described how the philosophy underlying public employee pensions has evolved. He described the 1997 enactment of N.J.S.A.43:3C-9.5 which established, for members of State-administered retirement systems, a non-forfeitable right to receive benefits.

Mr. Kelly described how a statute is itself treated as a contract when the language and circumstances evince a legislative intent to create private rights of a contractual nature enforceable against the State. He noted that when a state impairs a contract to which it is a party, the state's self interest is at stake and the courts will more closely scrutinize a legislative assessment of reasonableness and necessity. He described the standards of review that must be met, and concluded that when these standards are applied to legislation having the effect of reducing pension benefits to which, by law, non-forfeitable rights have attached, it is apparent that the state would be impermissibly impairing the obligation of a contract to which it is a party.

Mr. Kelly noted, however, that in many states that recognize contractual or vested rights of a public employee in a state or local pension system, those rights are subject to a reserved legislative power to make reasonable modifications in the plan, or to modify benefits, if there is a simultaneous, offsetting new benefit of equal or greater value. Thus, such a substitution of one benefit for another may be permissible without impairing the obligation of a contract as long as the change is reasonable and any disadvantage to the members is accompanied by offsetting and counterbalancing advantages.

Mr. Kelly stated that OLS believes that when a member has served and retired, all of the conditions precedent to the receipt of a pension have been fulfilled and the member's benefits may not be changed to his or her detriment. Additionally, increases in benefits can become a contractual right. Although it appears that the retirement benefits for members with fewer than five years of service could be detrimentally altered, implementation of any change may have to be limited to prospective application. That is

because it would be inequitable to rescind credit earned for the period prior to completing five years of service.

Following Mr. Kelly's presentation, the Joint Committee members asked several questions of Mr. Kelly and Ms. Espenshade. The topics of discussion included:

- Whether other states have similar laws regarding non-forfeitable rights;
- What impact repealing the 1997 law would have;
- What level of benefits is guaranteed to public employees;
- Under what circumstances the contractual right to a pension could be impaired;
- Whether the State can change benefit levels for employees with less than five years of service credit;
- Distinctions between rights guaranteed to active and retired employees;
- The funding of the pension systems;
- Issues regarding individuals holding multiple public jobs; and
- The counterbalancing of pension and health benefits.

The Joint Committee members then discussed the future meetings of the Joint Committee, and whether the Joint Committee should continue to focus on the pension systems, or shift its focus to health benefits.

## State of the State Pension Systems

August 24, 2006 Meeting of the  
Joint Legislative Committee on Public Employee Benefits Reform

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The Joint Committee met on August 24 in Committee Room 11 of the State House Annex. Co-Chair Scutari and Co-Chair Pou made their opening remarks, and Co-Chair Scutari introduced Frederick J. Beaver, Director of the Division of Pensions and Benefits. Mr. Beaver began by addressing several of the Joint Committee's concerns from the previous day's meeting, including how public employee pension systems are different than private sector systems and the auditing process. Mr. Beaver then gave a PowerPoint presentation to the Joint Committee in which he discussed actuarial methodology and the budget implications associated with the pension systems, the history of the pension systems, the current status of the various plans, and the Benefits Review Task Force.

Mr. Beaver began by discussing the nature of a defined benefit plan, and the risks associated with such a plan. He discussed how experience determines the key drivers for funding defined benefit plans, such as life expectancy, the size of the workforce, the length of career service, salary growth, and inflation. He noted that gains and losses are recognized over a rolling five years to limit volatility. He stated that actuarial value of the assets versus the actuarial liabilities determines both funding status and the need for employer contributions. Funding of a defined benefit plan requires dynamic change over time. As an example, he noted that currently the systems have an unfunded accrued liability of about \$18 billion, which is amortized over a 30-year period. He stated that the cost of pension and other employee benefit programs is increasing at a rapid pace, and the challenge is finding adequate funding to meet an ever growing demand among competing interests.

Mr. Beaver then discussed the funding of all the pension systems, including the asset to liability ratio for each system, and where New Jersey ranks with the funding of its

systems nationally. He described the recent history of pension funding in New Jersey, including the issuance of pension obligation bonds, the authorized temporary changes in the actuarial method, the authorized use of surplus assets to offset employer contributions, the reduced employee contributions for PERS and TPAF, and the backloaded debt service. He noted that surpluses grew in the late 1990's due to proceeds from the bond sale. Investment returns declined beginning in fiscal year 2001, and benefits were enhanced for PERS and TPAF in fiscal year 2002, and PFRS in fiscal year 2000, adding over \$5 billion in liabilities to the systems. There were limited or no employer contributions to the systems for seven years; by fiscal year 2004 the pension contribution "holiday" came to an end, and the phase-in of contributions was adopted. Mr. Beaver stated that New Jersey's liabilities are growing faster than its assets. To address these issues, Mr. Beaver suggested that the employers must make or increase the employer pension contribution, work to improve investment performance, and better match growth in assets and liabilities.

The recommendations of the Task Force report were then discussed, with Mr. Beaver delineating which were long and short term goals, as well as other recommendations. The members of the Joint Committee asked Mr. Beaver questions on several topics, including:

- The unfunded accrued liability of the pension system;
- Changing the retirement age;
- The standard for full-time employment as it relates to enrollment in a pension system;
- The impact to PERS if employees with less than five years service credit and new employees were placed in a 401(k) plan;
- Remittance of local employee and employer contributions;
- Qualifications for being in the SHBP;
- The pension loan program;
- The rate of return on the pension fund;
- Disability retirement;
- Employees who hold multiple public jobs;

- The issue of “tacking” several public jobs;
- Being able to opt out of a pension system;
- The purchasing of service credit;
- Longevity concerns;
- The funding ratios for each pension plan; and
- Recommendations to simplify the pension system.

## Defined Benefit and Defined Contribution Pension Plans

August 31, 2006 Meeting of the  
Joint Legislative Committee on Public Employee Benefits Reform

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On August 31, the Joint Committee met in Committee Room 11 of the State House Annex. Co-Chair Pou began the meeting by mentioning a legal opinion that was released by the Attorney General on August 25 that concurred with the OLS opinion presented to the Joint Committee on August 23. Based on these two opinions, Co-Chair Pou stated that it is not likely that the Joint Committee would be able to negatively affect the pensions of current public employees. However, she stated that the Joint Committee would still have the ability to make significant changes to the pension systems that would foster long-term cost savings through real reform. She stated that the purpose of the day's meeting was to look at different options for public employee pension systems, including both defined benefit and defined contribution plans. The Joint Committee would also focus on two-tier retirement plans for the State public employee workforce. She noted that transitions to two-tier benefits plans were currently being implemented in this State at New Jersey Transit, which the Joint Committee would hear testimony from later that day. Co-Chair Scutari opened the meeting by stating that he was interested in exploring hybrid plans that retain the defined benefit element of the current system, while including a defined contribution component. He noted that they can serve to reduce the employer's overall liability while, at the same time, providing guaranteed retirement income to employees.

Co-Chair Scutari then introduced Frederick J. Beaver, Director of the Division of Pensions and Benefits. Accompanying Mr. Beaver was Deputy Director of Finance, John D. Megariotis, and Deputy Director for Benefit Operations, Florence Sheppard. Mr. Beaver delivered a PowerPoint presentation on the Alternate Benefit Program (ABP) to the Joint Committee. Mr. Beaver spoke about the following with respect to the ABP: the history of the program, the current membership and costs, who is eligible to participate, the employer and employee contribution rates, vesting, long-term disability, life

insurance, and pension loans. Joint Committee members were then given the opportunity to ask several questions of Mr. Beaver and his staff, including questions about:

- Administrative costs of ABP as compared to the defined benefit plans;
- The implications of switching employees with less than five years of service credit and new employees into a defined contribution plan;
- Employer contributions to a defined contribution plan;
- The increase in benefits costs;
- Examples of what an employee who entered the workforce would achieve after 25 years under PERS and ABP; and
- Potential cost savings that may result from shifting from a defined benefit plan to a defined contribution plan.

The Joint Committee then invited Mr. William A. Reimert, Actuary, Milliman Global, to deliver a PowerPoint presentation. Mr. Reimert introduced himself as an actuary with the firm of Milliman, which is retained by the Division of Pensions and Benefits as actuaries to the Teachers' Pension and Annuity Fund (TPAF). Mr. Reimert began by giving background information on PERS and TPAF, the two largest systems, based on the last valuations done for both systems in July 2005. Mr. Reimert then discussed some underlying issues involved with his analysis. He noted that if PERS and/or TPAF were closed to new members, the amortization of the unfunded accrued liabilities will need to be accelerated in order to accumulate sufficient assets to pay benefits when they are due. He also stated that establishing a new defined contribution plan may increase the required employer contributions over the near term (a decade or more) relative to the current defined benefit plans, even though it may reduce employer contributions over the longer term. Mr. Reimert then discussed some of the options for changing the pension systems that were before the Joint Committee. He stated that some of the options available to the Joint Committee include: modifying the current features in the defined benefit plans for new hires, closing the current defined benefit plans and creating a defined contribution plan for new hires, and offering current members the option of moving to a new plan. Mr. Reimert then described the major differences between defined benefit and defined

contribution plans to the Joint Committee. Joint Committee members asked several questions of Mr. Reimert. Topics that were discussed included:

- Other systems that New Jersey could compare itself to;
- Cost savings if the State shifted to a defined contribution plan;
- Potential changes to the defined benefit plans;
- The possibility of creating different plans based on levels of compensation;
- Differences between private and public sector plans;
- How pension funds are being invested;
- Whether the State would have to accelerate payments to the defined benefit plans if the plans were closed;
- Whether the “n/55” calculation for retirement benefits is appropriate;
- The calculation of service credit for part-time employees; and
- The accuracy of the data presented.

Following Mr. Reimert’s presentation, the Joint Committee invited H. Charles Wedel, Chief Financial Officer and Treasurer, New Jersey Transit Corporation, to deliver a PowerPoint presentation to the Joint Committee. Mr. Wedel explained that, historically, New Jersey Transit’s non-agreement employees and bus union employees had been in defined benefit pension plans that are similar to PERS. Beginning in fiscal year 2007, New Jersey Transit implemented a new defined contribution plan, a 401(a), for new non-agreement employees. This plan, with a fixed company contribution, is in lieu of the traditional defined benefit pension plan. Current non-agreement employees will also be offered the option of switching from the current defined benefit plan to the new 401(a) plan. In addition to the 401(a) plan, new non-agreement employees will still have the option of contributing to a traditional 401(k) plan, which would supplement their primary 401(a) plan. Mr. Wedel explained that the benefit of the new plan was not cost-savings but the predictability of pension cost. The members of the Joint Committee asked Mr. Wedel several questions on topics including:

- The employer contribution to the plan;
- Benefits enhancements in the defined benefit plan;
- The unfunded liability in the defined benefit plan;

- Current employees opting into the 401(a) plan; and
- Risks in defined contribution plans.

## The State Health Benefits Program

September 13, 2006 Meeting of the  
Joint Legislative Committee on Public Employee Benefits Reform

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The September 13 meeting of the Joint Committee took place in Committee Room 11 of the State House Annex. The purpose of the meeting was to provide Joint Committee members with an overview of the State Health Benefits Program (SHBP).

Frederick J. Beaver, Director of the Division of Pensions and Benefits, accompanied by Deputy Director of Finance, John D. Megariotis, and Deputy Director for Benefit Operations, Florence Sheppard, presented the Joint Committee with a PowerPoint presentation on the SHBP. Mr. Beaver began by describing the structure and membership of the SHBP. He then discussed the increase in participation over time and the costs for active and retired employees. He noted that coverage for retirees now costs more than coverage for active employees, and discussed who pays for retiree coverage. He gave an example of the rate structure for NJ PLUS. He then spoke about what is driving the cost of health care, and the ways SHBP manages health care costs. Mr. Beaver discussed several plan modification proposals, and then described the recommendations in the 2005 Task Force Report. Joint Committee members then asked Mr. Beaver questions regarding:

- The prescription drug program;
- The Chapter 330 program;
- The differences in retiree health coverage between teachers and State employees;
- What parts of health benefits coverage are governed by statute, the State Health Benefits Commission, or contract negotiations;
- Costs of the SHBP;
- How the rates are structured for different groups of employees;
- Potential areas for cost savings;
- Offering an incentive to opt out of dual health benefits coverage;

- Replacing the Traditional Plan and NJ PLUS with a preferred provider organization (PPO);
- Post-retirement medical benefits liability;
- The expected rate of retirements over time;
- Increased in health care costs;
- Ways to structure a health benefits plan;
- The premiums paid by employees;
- Local employers who leave SHBP;
- Termination of coverage;
- Coverage for dependents under age 30;
- Administrative fees; and
- Out of state retirees.

## Testimony from the Public on Pensions and Health Benefits

September 19, 2006 Meeting of the  
Joint Legislative Committee on Public Employee Benefits Reform

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The September 19 Joint Committee meeting was held in the Clifton High School Auditorium, Clifton, Passaic County. Co-Chair Pou opened the meeting by describing the work of the Joint Committee thus far, and then testimony from members of the public was taken. Forty individuals testified and written comments were also accepted. Some of the individuals who testified represented local governments, school boards, education associations, public employee unions, law enforcement, State colleges and universities, and various interest groups. Several private citizens also testified.

The Joint Committee heard testimony on a variety of issues. The concerns most often mentioned were: opposition to a two-tiered benefits system; reasons why a defined benefit plan should be maintained; decreased participation by school districts in the State Health Benefits Program (SHBP); adding incentives for school employees to waive coverage under SHBP; the importance of health benefits to retired public employees; how part-time employees should receive service credit; and the importance of pension and health benefits in retaining employees in the public sector. The overall theme was that the State should not join the private sector in a “race to the bottom” in offering benefits.

Another prevalent concern was the belief that the “pension holiday” and system abusers were to blame for the current funding situation, not rank and file workers.

Other topics mentioned included: the mandating of local enhanced benefits, professional service contractors’ eligibility for pensions, early retirement initiatives, the uniqueness of the Police and Firemen’s Retirement System (PFRS), the changes in pension and health benefits coverage over time, New Jersey residents who are uninsured, differences between private and public sector benefits, projected costs for SHBP over the next few years, municipalities’ skipped pension payments, allowing local governments and school

boards to pool employees for increased bargaining power when purchasing benefits, whether benefits should be provided to elected officials, and suggestions for cutting costs in health benefits.

## **Reducing and Containing Costs Related to Pension, Health, and Other Employee Benefits**

October 12, 2006 Meeting of the  
Joint Legislative Committee on Public Employee Benefits Reform

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The Joint Committee met on October 12 in Committee Room 11 of the State House Annex. The purpose of the meeting was to hear testimony from invited constituency groups on measures to reduce and contain costs related to State and local pension, health, and other employee benefits. The Joint Committee received testimony from representatives of twelve organizations.

The Joint Committee first heard from representatives of different public employee unions, beginning with Richard R. Dorow, Executive Director, New Jersey Association of School Business Officials. Mr. Dorow presented six areas of concern to the Joint Committee: TPAF employee contributions, alternative investments of the pension fund, the inflexibility of SHBP, the \$1,500 threshold for enrollment in the pension fund, pension abuse, and certain professionals who are enrolled in pension plans and receive health benefits.

Following Mr. Dorow, the second speaker was Joyce Powell, President, New Jersey Education Association. Ms. Powell stated NJEA's position that pension and medical benefits should not be tiered or reduced. Ms. Powell then offered several suggestions for the Joint Committee to consider: bulk purchasing of drugs, ending abuses to the pension system, implementing positive incentives for people to stay on the job longer, and maintaining the integrity of the SHBP.

The third speaker was Robert Master, Legislative and Political Director, District 1, Communications Workers of America. Mr. Master spoke about the history of the collective bargaining process. He discussed the genesis of the NJ PLUS plan, and stated that it costs the State 25% less than the average cost of health plans in the private sector.

He also noted that the contract that was negotiated in 2003 saved the State an estimated \$400 million. Mr. Master concluded by saying that collective bargaining has worked before, both for State workers and for the citizens of New Jersey, and it can work again.

Following Mr. Master was Rob Nixon, speaking on behalf of the New Jersey State Policemen's Benevolent Association and the New Jersey State Firemen's Mutual Benevolent Association. Mr. Nixon began by discussing the pension and benefits offered to police and firefighters. He then discussed several areas in which the Joint Committee could focus, including the inflexibility of SHBP, the lack of choice in SHBP, and dual health benefits coverage. He ended by emphasizing that police officers and firefighters are public employees who are compensated and provided benefits not necessarily for what they do, but for what they may be asked to do.

The fifth speaker was Peter Guzzo, representing the American Association of University Professors, the New Jersey American Federation of Teachers, Health Professionals and Allied Employees, the New Jersey State Fraternal Order of Police, and the Professional Firefighters Association. Mr. Guzzo began by reminding the Joint Committee that public employees have continued to pay their fair share into the pension systems. He asked that if a system is devised to address the holding of multiple jobs that the Joint Committee consider that part time and adjunct faculty at State colleges and universities teach classes at four or five different colleges and universities, and that their needs should be considered.

Joint Committee members then asked questions of the speakers on topics including contributions into the pension system from police and firefighters; reasons why police and firefighters' benefits are not suited to a tiered system; qualifications for being part of PFRS; distinctions between college faculty who are in PERS and ABP; school related staff who are in PERS; contracting out of school services; and the Prosecutors Part in PERS.

Co-Chair Scutari then asked Frederick J. Beaver, Director of the Division of Pensions and Benefits, to further discuss the Prosecutors Part in PERS. Mr. Beaver stated that the benefits under the Prosecutors Part are similar to those under PFRS. Co-Chair Pou asked Mr. Beaver which individuals in the Attorney General's office are covered under the Prosecutors Part. Mr. Beaver described the distinctions between which individuals are in the Prosecutors Part and which are not.

Senator Gormley asked questions regarding the capping of sick leave payouts at \$15,000. Mr. Nixon, Ms. Powell, and Mr. Dorow stated that the issue should be dealt with in the collective bargaining process.

Following the testimony from the labor organizations, the Joint Committee invited individuals representing the business community to testify. Kathleen A. Davis, Executive Vice President and Chief Operating Officer, Chamber of Commerce, Southern New Jersey, discussed a survey that provided a comparative analysis of private and public employee benefits. The survey found that State government employees are paid comparable or greater salaries than their counterparts in the private sector; have more paid time off; pay less for their health benefits; have better benefits plans; and that most private sector companies are moving toward 401(k) retirement plans and away from defined benefit pension plans.

Following Ms. Davis was Christine Stearns, Esq., Vice President Health, Legal Affairs, and Small Business Issues, New Jersey Business and Industry Association. Ms. Stearns began by stating that escalating government spending is bankrupting businesses and putting them in a very difficult position. She noted that compensation for public employees, in wages and benefits, exceed those being offered in the private sector. She stated that the health benefits package offered in the public sector should reflect those being offered in the private sector, and cost sharing should be instituted. She recommended looking at the deductibles and co-pays under SHBP, and considering moving to a PPO plan. She stated that management of SHBP should be given the ability to respond quickly to changes in the health care environment, and that a higher quality of

care should be encouraged. With respect to pensions, she recommended that the State move all employees with less than five years of service credit, and all new employees, into a defined contribution plan.

Lynne Strickland, Executive Director, Garden State Coalition of Schools spoke next. Ms. Strickland spoke about the high costs and inflexibility in the SHBP. She suggested implementing opt-out provisions for employees that already have coverage via a spouse's policy, and instituting a waiver incentive. Other options she provided include allowing districts to negotiate with individual bargaining units regarding their plan options, and allowing districts to offer a variety of health insurance options. She then gave several examples of how much money individual districts have saved after leaving the SHBP.

Next to testify was Barbara Horl who is a lobbyist for the New Jersey School Boards Association. Ms. Horl advocated making the SHBP more flexible, specifically highlighting the uniformity rule as too restrictive on local governments. Additionally, she noted that levels of deductibles and co-pays are set by statute and therefore not negotiable, and incentives for non-enrollment may not be negotiated. She advocated giving school districts the ability to negotiate tiered benefits and the right to offer waivers for duplicate coverage.

John G. Donnadio, Esq., Legislative Director, New Jersey Association of Counties, testified next. He provided the Joint Committee with specific examples of how counties have taken the initiative to save taxpayer dollars and still provide comprehensive health care coverage for public employees. Mr. Donnadio gave examples of cost savings in Sussex, Somerset, and Monmouth counties. He also stated that, as far as he knew, every county has a cap on sick leave payouts.

Following Mr. Donnadio was L. Mason Neely, Co-Chair, Pension and Health Study Committee, New Jersey State League of Municipalities. Mr. Neely raised several issues, including the cost to municipalities for PFRS pensions, State mandates, arbitration,

pension maximization, pension loans, thresholds for enrollment, early retirement incentives, disability retirement, and opt-out provisions.

The Joint Committee members then discussed several topics with the speakers, including increased flexibility in SHBP, and school districts that have left SHBP reentering the plan.

## Testimony from the Public on Pensions and Health Benefits

October 18, 2006 Meeting of the  
Joint Legislative Committee on Public Employee Benefits Reform

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On October 18, the Joint Committee met at Gloucester County College in Sewell, Gloucester County. The Joint Committee received testimony from eighteen members of the public, and written testimony was also accepted. Those testifying represented various interests including local governments, public employee unions, advocacy groups, and education associations. Several private citizens also testified.

The Joint Committee heard testimony on a variety of issues, including: the importance of public employee pensions and benefits; legislative mandates; putting property tax relief from the State into a dedicated account; pensions for part-time municipal attorneys and other part-time employees; wages paid to public sector employees compared to the private sector; the collective bargaining process; giving employees a choice between defined benefit and defined contribution plans; ethics in State government; the cost of health insurance; benefits as a recruitment and retention tool; and the effects of the uninsured population on society.

During the meeting, the Communications Workers of America (CWA) Local 1033 delivered a PowerPoint presentation entitled "Comparative Benefits for Public Workers: Unlocking the Truth through Indexing," in which the CWA stated that it sought to do the following: index the benefits provided to New Jersey State workers with public worker benefits in other states; present data to show that the State of New Jersey does not have a "Cadillac" plan; refute the anti-state worker "bashing" program that is "generated by members of this Legislature and funneled through the media;" provide facts to the members of this Joint Committee to establish a basis to objectively evaluate the true worth of the benefits received by public workers; and establish the basis for enhancing public worker benefits through the collective bargaining process.

## **Governor's Benefits Review Task Force Recommendations**

October 25, 2006 Meeting of the  
Joint Legislative Committee on Public Employee Benefits Reform

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The Joint Committee's October 25 meeting was held in Committee Room 4 of the State House Annex. Co-Chair Scutari opened the meeting and then invited Philip D. Murphy, Chair of the Governor's Benefits Review Task Force, and Principal, Murphy Endeavors, LLC, to testify before the Joint Committee. Mr. Murphy began by giving the Joint Committee background information on the Governor's Benefits Review Task Force and the pension and health benefits issue in the State. Mr. Murphy then outlined the Task Force's recommendations, including the State's obligation in financing pensions; addressing pension abuses; keeping a defined benefit plan; raising the retirement age to 60; basing the calculation of a pension on a broader number of years; changing the threshold to enter the pension system to \$5,000; and imposing a moratorium on early retirement programs and benefit enhancements. With regard to the one-job, one-pension issue, Mr. Murphy stated "I think the spirit of our recommendation is, the pension ought to be for a legitimate, single, full-time occupation." He also stated that while he was generally not in favor of a two-tier pension system, given the current situation, the worst possible option would be to do nothing. Mr. Murphy also suggested the sale of a State asset to cover part of the unfunded liability.

On the issue of health care, he stated that all public employees should contribute something to their premium; NJ PLUS and the Traditional Plan should be merged into a new PPO; health care benefits negotiated on the State level should be applied to the local governments; greater health care options should be provided; and changes should be made to the prescription drug program. He also suggested that there be independent experts to inform the Legislature and Executive branch about costs related to changes in benefits.

The Joint Committee asked several questions of Mr. Murphy, including topics such as: whether the Task Force considered who its solutions could constitutionally apply to; why the Task Force was not in favor of a two-tier system; the threshold for enrollment in the pension systems; the amount of years to vest in the pension system; cost-sharing of health benefits costs; health care premiums; sick-leave payouts; phasing in certain reforms; the unfunded accrued liability in the pension systems; changing the retirement age; having a separate plan for elected and appointed officials; the number of years' salary a pension should be based on; individuals holding multiple public jobs; costs for the prescription drug program; providing a basic health care program; and other recommendations Mr. Murphy had made.

## V. Overview

### Pension Benefits

#### *Unfunded Liability At \$18 Billion*

Early in the history of New Jersey's State-administered retirement systems, the State Legislature recognized the need to place these systems' plans on a sound financial footing by requiring the application of generally accepted actuarial principles to pre-fund public employee pensions. Through adherence to sound pension funding principles, in accordance with the Governmental Accounting Standards Board (GASB), New Jersey's retirement plans became one of the top retirement systems in the nation. From fiscal year 1995 through fiscal year 2000, valuation assets rose from \$42.3 billion to \$74 billion while the systems' accrued liability rose at a slower pace, from \$45.2 billion to \$66.5 billion. By fiscal year 2000, valuation assets had exceeded the accrued liability by \$7.6 billion and the GASB funded ratio (Valuation Assets divided by Accrued Liability) peaked at 111.4%.

In fiscal year 2001, valuation assets rose by approximately \$9.4 billion, to \$83.4 billion, but during this same fiscal year, accrued liability jumped nearly \$10 billion, to \$76.4 billion. Since that date, valuation assets have stagnated in the \$83 billion range, but the accrued liability has continued to rise steadily, to \$101.5 billion in fiscal year 2005. According to reports filed in accordance with GASB 25 and 27 regarding the Schedule of Funding Progress by the actuaries of the various State-administered retirement systems, the unfunded liability of these systems totaled nearly \$18 billion as of June 30, 2005 with a GASB funded ratio of 82.3%. The unfunded liability represents the excess of the actuarial accrued liability over the actuarial value of assets.

The four main factors contributing to the unfunded liability are: State and local government employer pension "holidays" in which governments neglected to contribute substantially or in some cases at all to the pension systems; negative investment returns resulting in a loss of \$20 billion in plan assets; pension benefit enhancements and early retirement incentive programs; and increases in both active and retiree membership.

## 1. Pension Holidays

The State and local government employers pay annually a normal contribution to the retirement system. This contribution is determined each year on the basis of the annual valuation and represents the value of the benefits to be earned in the year following the valuation date. However, due to the enactment of a law in 1997, from fiscal year 1997 to fiscal year 2003, employers did not have to make contributions to the pension funds. A subsequent law has led to resumption of contributions, but on a phased-in approach.

The fiscal year 2007 Appropriations Act made an important first step toward stabilizing the pension system and having the State meet its financial obligations when the Legislature appropriated more than \$1.1 billion to fund the various systems.

P.L.1997, c.115 changed the manner by which the State financed its pension obligations. This law allowed the issuance of \$2.75 billion in pension obligation bonds to finance the plans' unfunded liability. Additionally, the law allowed the use of excess valuation assets of the retirement system to offset employers' annual normal contributions to the pension system. This change in funding policy resulted in either full or partial reductions in the State's and local government employers' otherwise required normal contributions to the retirement plan for fiscal year 1997 through fiscal year 2003.

With excess valuation assets no longer available for use by the State and local government employers to eliminate or reduce their normal contribution and the unfunded liability amortized over a 30-year period now part of the annual required contribution, the State changed funding policy under the provisions of P.L.2003, c.108. This law enabled local government employers to "phase-in" as of fiscal year 2004 their total contributions due in increments of 20% a year. They will reach 100% in 2008 for the Police and Firemen's Retirement System (PFRS) and in 2009 for the Public Employees' Retirement System (PERS). The phase-in further increases the unfunded liability of the systems.

Frederick J. Beaver, Director of the Division of Pensions and Benefits, estimated that pension contributions that were avoided, or were not made to the system during this period of time, totaled approximately \$8 billion.

## 2. Negative Investment Returns

From the end of fiscal year 1995 through fiscal year 2000, the market value of the plans' assets rose from \$40.6 billion to a peak of \$85.9 billion. Since that date, the market value declined to a low of \$64.2 billion in fiscal year 2003, before beginning to rise. Because these losses are being phased-in to the systems over a period of five years, the actuarial valuation of assets have not fully recorded these investment losses. These lower rates of return are a major contributor to the development of the now \$18 billion unfunded liability.

## 3. Benefit Enhancements and Early Retirement Incentive Programs

Enactment of legislation that provided pension benefit enhancements increased pension liabilities considerably. The most costly enhancement to the pension system was provided by P.L.2001, c.133 which increased the Public Employees' Retirement System (PERS) and the Teachers' Pension and Annuity Fund (TPAF) pensions by 9.09%. Known as n/55, this law increased pension liabilities by over \$4.2 billion, a portion of which represent the cost of providing the n/55 benefit to retirees, to past service for current employees, and to the cost for future service for current employees.

P.L.2001, c.366 created the Prosecutors Part in PERS to provide enhanced pension benefits for county prosecutors and certain other criminal justice personnel. The State is liable for the cost of this legislation, which for fiscal year 2007 amounted to more than \$2.7 million. P.L.2001, c.259 created a special Workers Compensation Judges Part in PERS and will cost the State nearly \$500,000 this year alone.

P.L.1999, c.428 enhanced the retirement and survivor's benefits of the Police and Firemen's Retirement System (PFRS) by providing a "20 and out" and "50% surviving spouse pension" similar to that provided to the State Police for members of the PFRS.

This law increased pension liabilities by over \$500 million. P.L.2001, c.4 increased the special retirement pension from 60% to 65% of final salary for certain retired public safety officers. Since fiscal year 2000, the total liabilities of the PFRS – Local have risen from \$14.9 billion to nearly \$21.4 billion in fiscal year 2005, in part due to benefit enhancements.

The Division of Pensions and Benefits also found that P.L.2002, c.23, which provided retirement incentives (ERIs) to State employees and State college and university employees increased pension system liabilities by \$645.4 million. Cumulative savings to the State for the four years since the ERI program total approximately \$314 million, the Department of Personnel reported.

Cumulatively, since 1999, these enhancements increased State and local pension liabilities by over \$6.8 billion.

#### 4. Membership

Active membership in the retirement systems totaled 543,400 in fiscal year 2005, up 10,935 members from the number of active members in fiscal year 2004. The number of retirees and their beneficiaries totaled 219,860 in fiscal year 2005, an increase of 7,840 from the prior year. These retirees and beneficiaries received monthly pensions cumulatively in excess of \$5.7 billion annually. They are living longer and collecting pensions for a longer period of time compared to retirees from a generation past. For example, the State Police Retirement System now has eight retirees for every ten people working. In several years, there will be one retiree for every active member.

#### *The State-Administered Retirement Systems*

New Jersey has six major State-administered retirement systems. Along with the required contributions of the public employees, these systems are funded by contributions from the State and more than 1,500 other public employers, which include all New Jersey counties, municipalities and boards of education. Five of those systems, the Public Employees' Retirement System (PERS), the Teachers' Pension and Annuity Fund

(TPAF), the Police and Firemen's Retirement System (PFRS), the State Police Retirement System (SPRS) and the Judicial Retirement System (JRS), are defined benefit pension plans. The Alternate Benefit Program (ABP) for faculty at New Jersey public institutions of higher education is a defined contribution pension plan.

A defined benefit pension plan is a pension plan which provides a certain benefit determined by a stated formula for the life of the beneficiary, often with cost-of-living increases. The formula is usually related to an employee's length of service and salary. Public employee defined benefit plans usually require an employee contribution of a certain percentage of compensation through payroll deduction. The employee contribution rates in New Jersey's defined benefit plans range from 3% to 8½%. The actuarial valuation, together with the plan's benefit provisions and the investment performance of plan funds, determines the employer's periodic contribution. Defined contribution plans look like bank accounts because the contributions from the employee and the employer are deposited in the employee's individual account, which then accumulates interest and investment earnings. In the case of ABP, employees contribute 5% of compensation; the employer contributes 8%. Unlike a defined benefit plan, a defined contribution plan does not guarantee a stated retirement allowance regardless of the employee's salary or years of service. The benefit is a function of the amounts of employee and employer contributions, wage history, and investment earnings. The participant usually is responsible for the investment choices.

Of the five defined benefit plans, PERS and TPAF share a common benefit structure. A PERS member is a person employed in a PERS-covered position with a public employer; a TPAF member is a teacher in a TPAF-covered position. The 322,000 active PERS members and 154,000 active TPAF members make an employee contribution of 5% of compensation. PERS and TPAF members accrue service credit for the time during which the member works. A PERS member may be employed in two or more PERS-covered positions in a calendar year, but no more than one year is credited for all the employment in a year and the compensation for that period is the sum of the compensation from all positions. A PERS or TPAF member becomes "vested" upon accruing 10 years of

service credit. Once vested, a PERS or TPAF member is eligible for a pension funded by both the employee's contributions and employer contributions. The State pays the TPAF employer contributions for boards of education.

Currently, there are 121,000 retired PERS members and 65,400 retired TPAF members. A PERS or TPAF member with 25 or more years of creditable service before reaching the normal retirement age of 60 may elect "early retirement" and receive 1/55 of final compensation for each year of service credited, reduced, however, by 1/4 of 1% for each month that the member lacks of being age 55. A PERS or TPAF member with any number of years of service who has attained 60 years of age may retire on a service pension and receive 1/55 of final compensation for each year of service credited. Final compensation means the average of the three years of highest compensation. The PERS and TPAF systems also provide veterans retirement benefits, ordinary and accidental disability retirement benefits, death benefits for survivors of an active or retired member, and optional life insurance. PERS provides special benefits to legislators, workers compensation judges and prosecutors, which along with veterans benefits, are calculated based on a single year of compensation.

PFRS, SPRS and JRS differ from PERS and TPAF, in part, because the members are subject to a mandatory retirement age. PFRS and SPRS have similar structures and benefits. The 45,000 active PFRS members are employed full-time as a police officer or firefighter; the 2,950 active SPRS members are officers or troopers of the State Police. A PFRS member contributes 8½% of compensation; a SPRS member contributes 7½%. Members of PFRS may retire at any age but may not continue employment beyond age 65. Members of SPRS may retire at any age but may not continue employment beyond age 55. Basic PFRS and SPRS retirement benefits are 50% of final compensation with 20 or more years of service, 65% of final compensation with 25 years of service plus 1% for each year beyond 25 but not to exceed 30 years. For PFRS and SPRS, final compensation means the compensation received in the 12 months preceding retirement. Currently, there are about 29,000 PFRS retirees and 2,300 SPRS retirees. The PFRS and

SPRS systems provide ordinary and accidental disability retirement benefits, pension and death benefits for survivors of an active or retired member, and optional life insurance.

The smallest State-administered retirement system is JRS, whose members are judges in the Judicial Branch upon whom the New Jersey Constitution imposes a mandatory retirement age of 70 years. JRS benefits vary among members depending upon years of service as a judge and other service as a public employee. Its members contribute 3% of compensation. The basic benefit for judicial service alone is 75% of annual salary received at time of retirement, if the JRS member has served at least 10 years as a judge and attained the age of 70, served at least 15 years as a judge and attained the age of 65, or served at least 20 years as a judge and attained the age of 60. The JRS provides disability retirement benefits, pension and death benefits for survivors of an active or retired member, and optional life insurance.

The initial provisions of the five State-administered defined benefits retirement systems were established in statute in 1944, 1954, 1965, 1967 and 1973 for PFRS, PERS, SPRS, TPAF, and JRS, respectively. Any changes to these systems over time were made by law. In the last decade, for example, some basic benefit enhancements were made to three of the systems. P.L.1999, c.428 provided that the calculation of benefits for PFRS members would be based upon the final year of compensation as opposed to the average of compensation for the three final years. It also added the retirement benefit of 50% of final compensation with 20 years of service and the survivors' pension upon the death of an active PFRS member in ordinary circumstances. P.L.2001, c.133 and P.L.2001, c.353 changed from 1/60 to 1/55 the fraction used in the calculation of PERS and TPAF retirement allowances for both active and retired members, a 9% increase in benefits.

### *Legal Issues*

For additional guidance in its deliberations, the Joint Committee received two letters on the legal issues related to changes to pension benefits. In a legal opinion, Peter J. Kelly, Principal Counsel of the Office of Legislative Services (OLS) opined that "legislation that has the effect of detrimentally altering the retirement benefits of active members of

State-administered retirement systems who have accrued at least five years of service credit, or of retired members, would be unconstitutional as violative of the federal and State constitutional proscription against impairment of the obligation of contract.” The OLS opinion reviewed pertinent case law and the New Jersey statute, N.J.S.A. 43:C-9.5, which provides that a retirement system member with five years of service credit has “a non-forfeitable right to benefits based on the laws governing the retirement system on the date the member completes five years of service.” The opinion advised that “a substitution of one benefit for another may be permissible without impairing the obligation of contract as long as the change is reasonable and any disadvantage to the member is accompanied by offsetting and counterbalancing advantages, apparently under the theory that when there is no net loss in overall benefits the contractual relationship is not substantially impaired.” In a legal opinion for New Jersey’s Treasurer, Bradley Abelow, the Office of the Attorney General advised that “N.J.S.A.43:3C-9.5 created legally enforceable rights in vested members of the state pension systems to the benefits programs of those systems” and subsequently under “the State and Federal Constitutions, the Legislature may not enact laws which substantially impair those rights, except in the narrow circumstances recognized by state and federal courts.”

*Report of Benefits Review Task Force*

The Joint Committee was charged to examine the recommendations for change to the public employee benefits contained in the December 1, 2005 report of Governor Codey’s Benefits Review Task Force. These recommendations were discussed also by the chairman of that body, Philip D. Murphy, during his testimony before the Joint Committee on October 25, 2006. Relating to the fiscal health of the retirement systems, the Task Force recommended full payment of annual pension obligations by the State and local government employers, the use of generally accepted actuarial standards, abstention from pension bonds, and reduction of the current funding deficiency across the pension systems. With regard to the overall structure of the systems, the Task Force recommended maintaining the current defined contribution structure, increasing the compensation enrollment threshold for PERS to \$5,000, an extension of salary history used in pension calculation from the current three years to five years and from a single

year to the average of three years, and an extension of the age at which a PERS or TPAF member could retire without any reduction in benefit from the current age of 55 years, with 25 years of service, to age 60.

In addition, the Task Force examined the phenomenon known as “abuses” of PERS, some of whose members may be employed in multiple part-time positions (tacking) or may over time have a service history of modest compensation followed by a dramatic increase in compensation resulting in a significant increase in ultimate pension benefit (boosting). The Task Force report recommended a restriction on end-of-career salary hikes, requiring PERS members to designate a single position for establishing pension credit, a ban on PERS membership for persons who are employees as well as contractors for professional services, a defined contribution plan for elected officials and appointees, forfeiture of pensions by convicted officials, and a limit on the amount employers other than the State may pay for unused sick leave (currently a calculation often set by collective negotiations and for which there is no established prefunding).

Frederick J. Beaver, Director of the Division of Pensions and Benefits, reviewed the Task Force’s proposals for the Joint Committee at its August 24, 2006 meeting. He pointed out that some of the changes recommended have a low value fiscally but may be important to the integrity of the system; other changes would have a fiscal impact on the system. On the integrity side, the director highlighted the Task Force recommendation to make full actuarially sound pension payments as being a step toward alleviating the current \$18 billion deficit, as well as the need to maintain good actuarial assumptions and not change them to achieve some budgetary objectives. He also supported efforts to end boosting and tacking, making persons with services contracts ineligible for pension system membership, a defined contribution system for elected and appointed officials and restricting manipulation of end-of-career salary. On the broader side, the director suggested either stopping the practice of pension loans or raising the interest rate, having a pension credit purchase include the attendant cost of post-retirement health benefits, and a moratorium on early retirement incentives and benefits enhancements. He thought that the Joint Committee could consider a two-tier system and an alternative pension plan

for part-time employees. He urged examination of the normal retirement age of 60 which gives a benefit with any number of years of service, in contrast to the early retirement provision which assures that the employee has at least 25 years of service at age 55. He suggested that the optional life insurance benefit be offered separately from the pension systems, with more flexibility to meet needs of employees as they evolve over time. The director also pointed to the generous disability benefits in PERS and TPAF and said that there would be savings if there was a separate long-term disability program for the non-uniform services.

### State Health Benefits Program

The New Jersey State Health Benefits Program (SHBP) covers about 804,000 lives (employees, retirees and dependents) at a cost of \$3.6 billion. Groups that participate in the SHBP include the State (including colleges and universities), local boards of education and local governmental units. The State SHBP has 115,000 active participants and 34,000 retirees. The local employer group has 127,000 active group members and 88,000 retirees.

The cost to the State of providing these health benefits has been rising over time. For example, in fiscal year 2004, the cost of providing health benefits to active State (including college and university) employees totaled \$912 million. This amount rose to over \$1 billion in fiscal year 2006. State funded retiree costs have risen from \$742 million in fiscal year 2004 to \$961 million in fiscal year 2006. For fiscal year 2007, retiree health care costs are projected at \$1.1 billion. The vast majority of retiree health care costs is attributable to P.L.1987, c.384, which granted fully paid health benefits coverage to eligible retired school board employees. For fiscal year 2007, Teachers' Pension and Annuity Fund (TPAF) and other board of education retirees will cost the State nearly \$735 million, up from \$490 million in fiscal year 2004. Major cost drivers include the utilization and improvements in technology, along with more expensive prescription drugs and a growing retiree population.

#### *Unfunded Retiree Health Care Liability* · --

The effect of rising health care costs on state budgets has been a challenge for the better part of the last two decades. The Government Accounting Standards Board (GASB), concerned about health care inflation and the degree to which states' financial statements do not capture its long-term implications, issued GASB Statement 45 to require that government financial statements treat these post-retirement medical benefits in the same way pension obligations are presented. New Jersey's unfunded liability to provide these medical benefits for retirees is estimated to exceed \$20 billion. However, it should be noted that that unofficial estimate was written five years ago and may be dated. Mercer

Consulting estimates that governments that have not set aside money for these obligations could face liabilities 40 – 60 times the current annual cost of retirees' health care, suggesting a potential \$40 billion to \$60 billion unfunded liability for New Jersey.

### *SHBP Plans*

In 1961, the New Jersey Legislature passed the State Employees Health Benefits Act, N.J.S.A.52:14-17.25 et seq., to provide health insurance coverage for full-time State employees and appointed or elected officers. In 1964, the program was expanded to allow other public employers (counties, municipalities, school districts and authorities) to participate. The act was renamed the New Jersey State Health Benefits Program Act in 1972.

Administered by the Division of Pensions and Benefits in the Department of the Treasury, the State Health Benefits Program (SHBP) is a multiple option program offering health benefits coverage through the indemnity Traditional Plan or one of the managed care options, which include NJ PLUS and several health maintenance organizations (HMOs). SHBP also offers dental coverage and prescription drug benefits. Currently, 934 public employers participate in the SHBP and the program covers about 804,000 individuals, almost 10% of the population of New Jersey. SHBP is an employer health benefits program, not a health benefits program for the public. As is the case with health insurance programs of private sector employers with a large number of employees, the SHBP health plans are self-insured. The State and participating public employers other than the State pay the actual expenses of those plans plus administrative fees, and they assume the ultimate financial risk. "Premium" rates are established annually by the State Health Benefits Commission in order to fund the program's projected expenditures through appropriation for the State's expenses as an employer and through assessment of the participating employers other than the State.

The Traditional Plan, a fee-for-service or indemnity plan, administered by Horizon Blue Cross Blue Shield of New Jersey, reimburses an enrollee for the cost of hospitalization, doctor bills, surgery and other medical services and supplies in the amounts of reasonable

and customary allowances. It does not cover preventive or well care and there are no restrictions in choosing a physician. The enrollee is required to satisfy certain deductible and coinsurance requirements. NJ PLUS, a point-of-service plan (POS) administered by Horizon Blue Cross Blue Shield of New Jersey, provides coverage which includes well care and preventive services and requires that the enrollee choose a Personal Care Physician (PCP) within a network of participating doctors. PCP and in-network specialist services are covered after a \$10 copayment. Unauthorized out-of-network services are reimbursed at 70% after satisfaction of a \$100 deductible. The SHBP's participating HMOs for 2006 are Aetna Health, CIGNA HealthCare, Health Net, Oxford Health Plan, and AmeriHealth. An HMO provides complete coverage, including well and preventive care for medical services provided by affiliated physicians and hospitals. Employees who enroll in an HMO pay a minimum copayment of \$10 for a routine office visit and must use the doctors and hospitals that are part of the particular HMO for all services except emergencies. If an employee uses a doctor or hospital outside the HMO without a referral or under emergency conditions, the HMO does not pay for the services.

Current law provides that State employees and the employees of an independent State authority, board, commission, corporation, agency or organization may be required to contribute toward the cost of SHBP health benefits coverage according to the terms of a binding collective negotiations agreement. The amount of an employee's premium sharing depends upon union affiliation and plan option. In 2006, for example, some union-affiliated State employees, required by contract to contribute toward the cost of their SHBP benefits, pay 25% of coverage cost if electing the Traditional Plan or pay 5% of coverage cost if electing an HMO. The State pays the remaining cost. The State pays the entire cost of coverage for the employees electing NJ PLUS. Non-aligned State employees (those whose positions are not eligible for union representation) contribute in the same manner, consistent with the terms of one of the union contracts binding on the State, as designated by the State Health Benefits Commission pursuant to the law.

Under current law, public employers other than the State participating in SHBP pay the cost of an employee's coverage and have the option of assuming the cost of dependent

coverage. Most of these public employers, however, have agreed to assume the cost of SHBP coverage for their employees' dependents. A local employer must offer all SHBP plan options to its employees and any premium sharing must be uniform across all employee groups. Municipalities, municipal authorities and county colleges are allowed to offer up to 50% of the premium amount to an employee who has other health care coverage in exchange for that employee waiving SHBP coverage (opting out). Counties, municipalities, school districts and independent authorities that choose not to participate in SHBP may contract independently with one or more health insurance providers, self-insure or participate in a joint health insurance fund. These employers, pursuant to relevant union contracts, may or may not offer more than one plan option, and may or may not require employee premium sharing.

The State is responsible for payment of the full or partial cost of post-retirement medical benefits under SHBP for certain retirees and their dependents, but not their survivors. State employees who do not choose deferred retirement and employees of boards of education and of county colleges, even if their employer does not participate in SHBP, are eligible for fully or partially State-paid SHBP coverage if they retire with an allowance based upon 25 or more years of service or retire on a disability pension. These retirees and their spouses are required to enroll in Medicare Part A (hospital) and Medicare Part B (medical) when they are eligible therefor. The Traditional Plan, NJ PLUS and the participating HMOs automatically coordinate benefits with Medicare, which becomes the primary insurer for retirees after age 65. Retirees covered by SHBP do not participate in Medicare Part D. State-paid SHBP coverage in retirement ceases upon the death of a retiree. Surviving spouses, however, as well as employees covered by the SHBP at the time of retirement with fewer than 25 years of service, may choose to continue SHBP coverage for themselves and their dependents at their own expense.

State employees who accrued 25 years of service on or before July 1, 1997, and all eligible school board and county college employees, receive fully paid SHBP coverage in the Traditional Plan as well as in all the SHBP managed care plans and full reimbursement of the prevailing cost of Medicare Part B. State employees who attain 25

years of service credit or retire on disability after July 1, 1997, may be required to share in paying the cost of SHBP coverage and Medicare Part B according to the terms specified in the union contract applicable to them at the time they attain 25 years of service credit, or retire for disability. For certain police officers and firefighters and their dependents, but not survivors, who retire with 25 or more years of service credit, or on disability, and who do not receive any employer payment toward post-retirement health benefits, regardless of whether their former employers make any payment toward such benefits for other retirees, the State pays 80% of the least expensive cost of coverage among the SHBP plans. The retiree pays the remainder of the cost of whatever plan is chosen and pays for Medicare Part B.

Under current law, participating public employers other than the State may choose to offer SHBP benefits in retirement to employees not electing deferred retirement, and their dependents as well as survivors. The local public employer may choose to cover employees who (1) retire on a disability pension; or (2) retire with 25 or more years of service credit in a retirement system which includes a period of service of up to 25 years with and determined by that employer; or (3) retire at age 65 or older with 25 or more years of service credit which includes a period of service of up to 25 years with and determined by that employer; or (4) retire at age 62 years or older with at least 15 years of service with that employer. The employer payment obligations for such benefits may be determined by a binding collective negotiations agreement with respect to aligned employees and in the sole discretion of the employer with respect to non-aligned employees. Employers other than the State may also choose to reimburse retirees for the cost of Medicare Part B. SHBP coverage for its retirees ceases if an employer withdraws from SHBP.

The Employee Prescription Drug Plan is administered by Horizon Blue Cross Blue Shield through Caremark, which is a pharmacy benefits management company. After a copayment of \$10 for name brand drugs or \$3 for generic drugs, the State Prescription Drug Program for active State employees covers the cost of a 30-day supply at a retail pharmacy. A 90-day supply for any drug obtained through mail order requires a

copayment of \$15 for name brand drugs or \$5 for generic drugs. Three copayments may be paid for a 90-day supply at a retail pharmacy. SHBP participating employers other than the State may offer prescription drug benefits at an additional cost in the SHBP plan options or through a free-standing prescription card. HMOs provide prescription drug coverage to their enrollees.

Caremark also administers the separate SHBP Retiree Prescription Drug Plan for retirees under the Traditional Plan and NJ PLUS. It requires a certain copayment for up to a 30-day supply at a retail pharmacy or up to a 90-day supply through mail order (a 90-day supply at a retail pharmacy requires three copayments). The amount of a copayment varies depending upon which of three prescription drug categories applies and the method of purchase. Generic drugs (FDA approved equivalents to brand name drugs) have a copayment of \$8 for either up to a 30-day supply at a retail pharmacy or up to a 90-day supply via mail order. Preferred brand drugs (more cost effective alternatives within a therapeutic class of brand name drugs with comparable therapeutic efficacy - includes over 80% of all brand name drugs) copayments are \$16 for retail pharmacy and \$25 for mail order. All other brand name drugs are in the third category that requires a copayment of \$33 at a retail pharmacy and \$41 through mail order. Out-of-pocket prescription drug copayments per person are capped at a maximum of \$1,000 annually.

*Report of Benefits Review Task Force*

The report of Governor Codey's Benefits Review Task Force recommended that all employees and retirees in SHBP contribute toward the cost of their health care benefits. It suggested that cost sharing could be based on personal need and cost, with the State and other employers contributing a fixed dollar amount toward the employee's choice of plan. Development of a safety-net base plan and the creation of a Preferred Provider Organization (PPO) to replace the Traditional Plan would be part of that arrangement. To reduce the cost of prescription drugs, the Task Force suggested that SHBP contract directly with a Pharmacy Benefit Manager, increase the copayment differential between generic and brand name drugs to increase greater utilization of generics, and require mandatory mail-order for maintenance prescriptions.

For local participating employers, the Task Force recommended that the SHBP become more flexible, that it allow an employer to offer some but not all SHBP plans and eliminate the requirement for uniform benefits for all employees. Local employers could then negotiate different agreements with their employee groups to increase cost savings. The Task Force also urged that SHBP apply changes in benefits resulting from the State's collective bargaining agreements to participating local employers, which include increasing managed care office visit and prescription co-pays and eliminating SHBP coverage as both employee and dependent. The State Health Benefits Commission has moved to implement those changes.

Frederick J. Beaver, Director of the Division of Pensions and Benefits, discussed the Task Force's proposals at the August 24, 2006 meeting of the Joint Committee. He spoke of the possibility of replacing the Traditional Plan and NJ PLUS with a PPO to increase competition in the bidding process for the SHBP administration contract to help control future costs. The director acknowledged that local employers leave SHBP seeking more flexibility and that their ability to reenter SHBP without any limitation is problematic.

## Other Benefits

### *Local Government and School District Payments for Accumulated Unused Sick Leave*

The International Foundation of Employee Benefit Plans (IFEBC), which is the largest educational association serving the employee benefits and compensation industry, defines “sick leave” to mean “plans that provide employees protection against short-term disability and typically specify a maximum number of benefit days per year or per disability that an employee may take at full pay before insured short-term or long-term disability benefits are initiated.” The purpose of sick leave is to protect employees from loss of income during short periods of temporary illness or disability. Sick leave is not part of a general compensation plan. Many school districts and municipal governments throughout the State grant and allow employees to accumulate significant amounts of sick, vacation, and other forms of paid leave and receive cash compensation for unused leave annually during employment and retirement. There have been recent reports in the media indicating that one municipality in 2004 gave the prior outgoing police chief a severance package that was valued at nearly \$153,300, including more than \$56,600 for unused sick leave and \$62,000 for unused vacation time. In another town, the board of education bought out the last year of its long-serving superintendent’s contract for more than \$500,000, paying for 511 and a half accumulated sick and vacation days.

Recently, the State Commission of Investigation (SCI) issued a report on questionable and hidden pay and perks for top school officials entitled “Taxpayers Beware: What You Don’t Know Can Cost You. An Inquiry Into Questionable and Hidden Compensation for Public School Administrators.” The SCI found “significant weaknesses in the statutory and regulatory structure governing public employee benefits in New Jersey that enables public employees below the State level of government to obtain lucrative packages involving sick and vacation leave.” This investigation revealed the widespread practice of allowing administrators to receive cash payment for substantial amounts of accumulated sick and vacation leave at retirement or upon departure. A previous SCI report issued in 1998 found similar situations with regard to local government employees. That report examined certain aspects of public employee pension and benefit programs

and found abuse, manipulation and excessive expenditures that cost New Jersey taxpayers substantial sums of money every year. Questionable practices were detected in every region of the State, among municipalities, school districts, community colleges and independent authorities. The SCI found that it is common at various levels of government in New Jersey to provide public employees, both before and after retirement, with certain fringe benefits at taxpayer expense that can only be characterized as unreasonably generous. Much of the excess revolves around excessive allowances for sick leave and vacation time.

A cap of \$15,000 is currently applicable to the unused sick leave of State employees who retire from a State-administered retirement system. Pursuant to N.J.S.A.11A:6-19, this supplemental compensation is paid at a rate of one-half of the eligible employee's daily rate of pay for each day of accumulated sick leave based upon the compensation received during the last year of employment prior to the effective date of retirement. This cap has been in effect since 1986. Unlike many municipal, school board and college employees, no State employee can collect more than \$15,000 for unused sick leave, regardless of how much he or she has accumulated during the employee's career, and such lump-sum payments can be collected only at retirement.

Although numerous bills have been introduced over the years to impose a cap on payments for accumulated unused sick leave for local government and school district employees, none have been enacted.

This issue was raised at the meetings of the Joint Committee. Persons testifying affiliated with public employee unions were generally opposed to a State mandated limit on sick leave benefit payouts at \$15,000, arguing that such fringe benefits should be negotiated between the employer and employee.

#### *State Sick Leave Injury Program*

New Jersey is one of only five states that provide a sick leave benefit at full wages in addition to workers' compensation to State employees injured at the workplace.

N.J.S.A.11A:6-8 provides for the program, which has been in effect since 1986. Regulations promulgated by the Merit System Board in the Department of Personnel regulate the use of the program by providing full wages for up to one year.

As opposed to workers' compensation, which pays injured employees a temporary benefit not to exceed 70% of the Statewide average weekly wage, the sick leave injury program is a salary continuation program that provides full pay to employees, although sick leave injury program payments are reduced by amounts received by the employee for workers' compensation.

The purpose of the sick leave injury program, defined in N.J.A.C. 4A:6-1.6 et seq., is to provide a continuation of pay for up to one year for State employees who are injured or become ill from work-related causes. Employees continue to pay income taxes and both employee and employer continue to pay Social Security and other payroll taxes. After a year on sick leave injury, employees are moved to the State's workers' compensation program until final disposition of their case.

Governor Corzine proposed in his fiscal year 2007 budget to eliminate the sick leave injury program for State employees. Elimination of this program would save an estimated \$3 million annually. This estimate was prepared by the State Auditor who found in a March 2003 report that elimination of the sick leave injury program and utilizing, in lieu thereof, the workers' compensation program would save the State money and that injured State employees making \$50,000 or less would take home about the same amount because taxes and deductions are not be taken from the workers' compensation benefit.

*Report of Benefits Review Task Force*

The Benefits Review Task Force recommended that State law limit unused sick day payouts at all levels of government, not just for State employees.

## **VI. Recommendations**

With this final report, the Joint Legislative Committee on Public Employee Benefits Reform has attempted to identify methods of reforming the State-administered pension systems and the public employee benefits system. The recommendations put forth by this Joint Committee are in part the product of State and local governments' failure and neglect over a ten year period to meet their pension obligations as employers. They are also the result of legislative actions over the same period that enhanced employee benefits in ways that added billions in future unfunded liabilities to the pension systems. They are the product of a stock market plunge that exposed the weaknesses in the State's investment policies and that further increased the gap between pension assets and liabilities.

Newspaper articles have highlighted high-profile abuses of the public pension systems. There have been accounts of end-of-career salary boosts resulting in overly generous and largely unearned pensions. There have been numerous examples of individuals holding multiple jobs, allowing these individuals to "tack" together a hefty salary base on which to collect an equally hefty pension. Many of these multiple job holders are not public employees but rather under contract with a municipality, undermining the integrity of a pension system designed specifically for career public employees.

Many of the recommendations included in the Benefits Review Task Force's report called for significant modifications to the benefits package of public employees. A number of the reforms should apply immediately. Reforms that would result in an unconstitutional reduction in benefits to existing employees should be applied prospectively.

The Joint Committee considered the establishment of a defined contribution plan for all new employees but learned that such a plan would cost the State more in the short term. Ultimately, the Joint Committee concluded that the full-time, career employees of the

future are entitled to a defined benefit plan but that significant reforms are necessary to ensure the continued health of the pension systems.

To address the abuses of the systems, and as a corollary to the principle that pensions are meant to be replacement income for full-time career employees, the Joint Committee concluded that future part-time employees would not be eligible for a defined benefit pension. Instead, the committee determined that such employees should participate in a defined contribution plan. The Joint Committee reached the same conclusion with regard to elected and appointed officials who also would be eligible to participate in a defined contribution plan. These proposed reforms would go a long way toward addressing the above-noted pension system abuses. For example, the assignment of all part-time employees to a defined contribution plan would eliminate the opportunity for “tacking.” Also, the inability to string together consecutive years at \$1,500 per year would remove the opportunity for boosting.

The Joint Committee’s investigation of health benefits issues revealed a system plagued by the skyrocketing costs of health care that have dramatically increased the cost of health benefits for both current and retired public employees. The investigation also found that New Jersey public employees contribute less toward their health benefit costs than public employees in other states. The Joint Committee recommends that all employees share in the cost of their health benefits at some level and that local governments be accorded increased flexibility when negotiating cost sharing with local employees.

The reforms recommended by this Joint Committee are overdue. Whether some of these reforms are achieved through collective bargaining rather than through legislation is less significant than ensuring that they are, in fact, achieved. Collective bargaining notwithstanding, it is clear that the Legislature needs to attach permanency to a number of the recommended reforms.

The following section provides detailed descriptions of the Joint Committee's recommendations.

## Pension Benefits

### **RECOMMENDATION 1: LIMIT DEFINED BENEFIT PENSION PLANS TO FULL-TIME CAREER EMPLOYEES AND ESTABLISH NEW DEFINED CONTRIBUTION PROGRAM FOR ALL NEW PART-TIME EMPLOYEES, ELECTED OFFICIALS AND FULL-TIME APPOINTED OFFICIALS**

- **DISCUSSION**

In defined contribution pension plans, the employer's benefit promise is in the form of an actual periodic contribution placed into an employee's individual account. The contribution can be based upon various factors such as a percentage of an employee's pay or the employee's age and service, or it can be an amount designed to accumulate to a targeted benefit. Defined contribution plans look like bank accounts because the contribution from the employer is deposited in the employee's account, which then accumulates interest and investment earnings. A defined contribution plan may allow or require employees to make additional contributions of their own to their accounts. Some initial waiting period for the vesting of employer contributions may exist at the beginning of employment.

A defined contribution plan does not guarantee a stated retirement allowance regardless of the employee's salary or years of service, unlike a defined benefit plan. The benefit is a function of the amounts of employer and employee contributions, wage history, and investment earnings. The participant usually is responsible for the investment choices.

A defined contribution pension plan has a stable and predictable employer contribution rate; actuarial estimates and investment income are not a budgetary concern. A defined contribution plan shifts the investment risk from the employer to the employee. Defined contribution plans, however, could impose fiscal discipline on employers because employer contributions must be made according to a strict payment schedule and contributions for new benefits cannot be postponed through amortization.

The State Division of Pensions and Benefits currently administers one defined contribution program for public employees. Established in 1969 to provide for the uniform administration of several alternate benefit programs for certain members of the faculty and staff of State institutions of higher education, the Alternate Benefit Program (ABP) is a tax-sheltered, defined contribution program for faculty and certain administrators of New Jersey public institutions of higher education. As of 2005, there were 16,920 program participants.

Pursuant to N.J.S.A.18A:66-169 et seq., the ABP provides retirement benefits, group life insurance and disability benefits. Full-time faculty, officers, visiting professors and certain professional administrative staff required to possess a college degree or its equivalent participate in the ABP. ABP members contribute 5% of base salary. This contribution is tax deferred under the 414(h) provisions of the Internal Revenue Code. Members are also permitted to make voluntary federal-tax deferred contributions under the Internal Revenue Code section 403(b). The State pays an employer contribution of 8% of base salary.

The following are examples of some of the key differences between the ABP, a defined contribution program, and the Public Employees' Retirement System (PERS), N.J.S.A.43:15A-1 et seq., a defined benefit plan.

The PERS employee contribution is set by law at 5% of base salary; a public employee with a base annual salary of \$1,500 or more is required to become a member of the PERS. Enrollment in the PERS is mandatory for elected officials who are veterans and for members of the Legislature and is optional for other elected officials. The PERS employer contributions are actuarially determined each year to ensure adequate funding of the future liability of the system. In ABP, the employee contributes 5% of actual base contractual salary paid as long as the employee earns 50% or more of the base salary each year. The ABP employer contributes a fixed 8% of base salary as set by statute.

Vesting in PERS is set at 10 years of service credit, making the employee eligible for a retirement benefit, if certain requirements are met. In ABP, a member is vested after one year of participation, and under certain circumstances is vested immediately.

In PERS, retirement is permitted at age 60 with any number of years of service credit or after the completion of 25 or more years of service credit. There is no minimum age or service requirement in ABP, except what is provided in federal tax laws; benefits are determined by the retirement age of the annuitant in relation to the funds accumulated and the distribution option selected.

As provided by law, PERS retirees are eligible for an annual cost of living adjustment beginning in the 25th month of retirement. Under ABP, there are no specific cost of living provisions.

The Benefits Review Task Force found that elected officials and political appointees should be eligible for a defined contribution program similar to the ABP. Those who had previously vested in a defined benefit plan would not be prohibited from continuing to participate in such a plan. The report stated that the defined contribution plan is a more portable benefit and more appropriate for individuals such as appointees and elected officials who may remain in public employment for a short period. The report went on to state that the recommendation would reduce if not eliminate “the opportunity for political games with individual pensions.”

The Joint Committee received testimony on August 31, 2006 on the Alternate Benefit Program from Frederick J. Beaver, Director of the Division of Pensions and Benefits, and from William A. Reimert, a consulting actuary, on the differences between defined benefit and defined contribution plans.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to limit eligibility for defined benefit pension plans to full-time career employees. The Joint Committee also recommends the establishment of a new defined contribution program for all new part-time employees, new elected officials and new full-time appointed officials.

This legislation should apply to persons who are, after the effective date of the new law, elected to public office, appointed to certain full-time State or local public positions, or retained as part-time State or local public employees. The Joint Committee recommends that:

- only persons earning \$5,000 in base annual salary be permitted to participate in the defined contribution program;
- each employer and employee be required to contribute a percentage of the employee's base salary to the program, to be determined pursuant to an analysis by the Division of Pensions and Benefits but ensuring that the employer's cost not exceed what the employee would have cost the employer under the defined benefit program;
- non-vested members of any other State-administered retirement system be permitted to transfer to this new defined contribution program;
- strict oversight of defined contribution program managers be provided; and
- a review panel be created to make decisions on a person's eligibility to enroll in the program.

The Joint Committee finds that the defined benefits program is the most appropriate one for full-time career employees. Therefore, it is reasonable to enroll, on a prospective basis, part-time employees in a new defined contribution program. It will need a strong oversight board with fiduciary responsibilities to protect the investments of employees and retirees in the program. The Joint Committee recommends that such a board be comprised of appointed experts in the fields of finance and accounting, investment advisors and representatives of all levels of government in the State. It could offer

financial security for employees and the program's assets by insuring that all investment decisions are made transparently and that managers of the fund do not invest too heavily in one stock or one type of security. Also, the Joint Committee recommends that an appeals process be established to determine eligibility for the defined contribution program versus eligibility for the defined benefit program. Inevitably, questions will arise as to whether a particular position with particular conditions of employment and duties should be covered by an existent defined benefit program or by the defined contribution program recommended by this section. Such an appeals process would give a public employee ample opportunity to appeal his or her placement in a defined contribution program, while simultaneously maintaining the integrity of the defined benefit programs.

This recommendation will reduce abuses related to pension tacking and boosting and increase the money saved by all units of government. Furthermore, the recommendation is consistent with the Report of the Benefits Review Task Force regarding enrolling elected and appointed public officials in a defined contribution program.

Assemblyman O'Toole and Senator Gormley believe the Joint Committee should have recommended a higher compensation threshold for membership in a public retirement system, not less than \$10,000.

**RECOMMENDATION 2: INCREASE RETIREMENT AGE TO 62**

•<sup>2</sup> **DISCUSSION**

Members of the Public Employees’ Retirement System (PERS) and the Teachers’ Pension and Annuity Fund (TPAF) have three retirement options. First, employees in these systems may retire when they reach the service retirement age or they can take early retirement after 25 years of service. Service retirement age for members of these two systems is 60 (N.J.S.A.43:15A-47 for PERS; N.J.S.A.18A:66-43 for TPAF). An employee may retire at age 60 regardless of the number of years of service. The service retirement formula used to calculate the member’s annual retirement allowance is the same as the standard formula.

$$(\text{Years of Service}/55) \times \text{Final Average Salary} = \text{Retirement Allowance}$$

The second option is early retirement. Early retirement is available to members of the PERS and TPAF who have attained 25 years of service (N.J.S.A.43:15A-41 for PERS; N.J.S.A.18A:66-37 for TPAF). Under early retirement, a member with 25 years of service may retire without a pension reduction or penalty as early as age 55. The annual retirement allowance is calculated using the same formula used to calculate service retirement. When a member with 25 years of service retires before reaching age 55, a penalty in the form of a reduction of ¼ of 1% per each month below age 55 – or 3% per each year – is applied to the member’s retirement allowance. For example,

If the retirement age below 55 is...	The retirement penalty equals...	And the pension reduction factor would be...
54	.03	.97
53	.06	.94
52	.09	.91
51	.12	.88
50	.15	.85

Lastly, members in both PERS and TPAF may also retire under deferred retirement. Pursuant to N.J.S.A.43:15A-38 for PERS and N.J.S.A.18A:66-36 for TPAF, a member of

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to limit eligibility for defined benefit pension plans to full-time career employees. The Joint Committee also recommends the establishment of a new defined contribution program for all new part-time employees, new elected officials and new full-time appointed officials.

This legislation should apply to persons who are, after the effective date of the new law, elected to public office, appointed to certain full-time State or local public positions, or retained as part-time State or local public employees. The Joint Committee recommends that:

- only persons earning \$5,000 in base annual salary be permitted to participate in the defined contribution program;
- each employer and employee be required to contribute a percentage of the employee's base salary to the program, to be determined pursuant to an analysis by the Division of Pensions and Benefits but ensuring that the employer's cost not exceed what the employee would have cost the employer under the defined benefit program;
- non-vested members of any other State-administered retirement system be permitted to transfer to this new defined contribution program;
- strict oversight of defined contribution program managers be provided; and
- a review panel be created to make decisions on a person's eligibility to enroll in the program.

The Joint Committee finds that the defined benefits program is the most appropriate one for full-time career employees. Therefore, it is reasonable to enroll, on a prospective basis, part-time employees in a new defined contribution program. It will need a strong oversight board with fiduciary responsibilities to protect the investments of employees and retirees in the program. The Joint Committee recommends that such a board be comprised of appointed experts in the fields of finance and accounting, investment advisors and representatives of all levels of government in the State. It could offer

financial security for employees and the program's assets by insuring that all investment decisions are made transparently and that managers of the fund do not invest too heavily in one stock or one type of security. Also, the Joint Committee recommends that an appeals process be established to determine eligibility for the defined contribution program versus eligibility for the defined benefit program. Inevitably, questions will arise as to whether a particular position with particular conditions of employment and duties should be covered by an existent defined benefit program or by the defined contribution program recommended by this section. Such an appeals process would give a public employee ample opportunity to appeal his or her placement in a defined contribution program, while simultaneously maintaining the integrity of the defined benefit programs.

This recommendation will reduce abuses related to pension tacking and boosting and increase the money saved by all units of government. Furthermore, the recommendation is consistent with the Report of the Benefits Review Task Force regarding enrolling elected and appointed public officials in a defined contribution program.

Assemblyman O'Toole and Senator Gormley believe the Joint Committee should have recommended a higher compensation threshold for membership in a public retirement system, not less than \$10,000.

**RECOMMENDATION 2: INCREASE RETIREMENT AGE TO 62**

• **DISCUSSION**

Members of the Public Employees' Retirement System (PERS) and the Teachers' Pension and Annuity Fund (TPAF) have three retirement options. First, employees in these systems may retire when they reach the service retirement age or they can take early retirement after 25 years of service. Service retirement age for members of these two systems is 60 (N.J.S.A.43:15A-47 for PERS; N.J.S.A.18A:66-43 for TPAF). An employee may retire at age 60 regardless of the number of years of service. The service retirement formula used to calculate the member's annual retirement allowance is the same as the standard formula.

$$(\text{Years of Service}/55) \times \text{Final Average Salary} = \text{Retirement Allowance}$$

The second option is early retirement. Early retirement is available to members of the PERS and TPAF who have attained 25 years of service (N.J.S.A.43:15A-41 for PERS; N.J.S.A.18A:66-37 for TPAF). Under early retirement, a member with 25 years of service may retire without a pension reduction or penalty as early as age 55. The annual retirement allowance is calculated using the same formula used to calculate service retirement. When a member with 25 years of service retires before reaching age 55, a penalty in the form of a reduction of ¼ of 1% per each month below age 55 – or 3% per each year – is applied to the member's retirement allowance. For example,

If the retirement age below 55 is...	The retirement penalty equals...	And the pension reduction factor would be...
54	.03	.97
53	.06	.94
52	.09	.91
51	.12	.88
50	.15	.85

Lastly, members in both PERS and TPAF may also retire under deferred retirement. Pursuant to N.J.S.A.43:15A-38 for PERS and N.J.S.A.18A:66-36 for TPAF, a member of

the retirement system is vested in the system upon completion of 10 years of service in the covered employment. Vested status means that a member is guaranteed a pension benefit when the member reaches age 60. If a member decides to leave the covered employment and therefore leave the system after having attained vested status but before having 25 years of service, the member may retire when reaching age 60. The formula for calculating the annual retirement allowance for a deferred retirement is the service retirement formula above.

In its 2005 report, the Benefits Review Task Force recommended an increase in the early retirement age from 55 to 60 years of age. The Task Force noted that most private employers use age 65 for normal retirement eligibility, and that thirteen states have adopted a retirement age that is greater than 55 for full retirement benefits. Under the Task Force's recommendation, the 3% pension reduction penalty currently applicable for each year the retiring member is below age 55 would apply for each year below age 60.

- **RECOMMENDED ACTION**

The Joint Committee recommends increasing the retirement age from 60 to 62 in the PERS and TPAF for new members. The Joint Committee also recommends increasing the early retirement age from 55 to 62 so that age 62 will become the standard unreduced retirement age. These changes should be accomplished through legislation, and would only apply to employees hired after the date of enactment. The revised early retirement adjustments are recommended to be made as follows:

If the retirement age below 62 is...	The retirement penalty equals...	And the pension reduction factor would be...
61	.03	.97
60	.06	.94
59	.09	.91
58	.12	.88
57	.15	.85

The Joint Committee determined that setting retirement age at 62 is appropriate for several reasons. First, the Joint Committee notes that age 62 is the earliest age that a member can begin to collect federal Social Security retirement benefits; following the increase, the State retirement age will be consistent with the federal retirement age. Second, increasing the retirement age to 62 is more reflective of current life expectancy patterns and actual average retirement age than the current retirement age. Finally, raising the retirement age to 62 brings State practice closer in line with the private sector.

**RECOMMENDATION 3: REDUCE BENEFIT FORMULA FOR NEW MEMBERS FROM N/55 TO N/60**

• **DISCUSSION**

Under the provisions of P.L.2001, c.133 et seq. and P.L.2001, c.353 et seq., the formula for service, deferred and early retirement under the Teachers' Pension and Annuity Fund (TPAF) and the Public Employees' Retirement System (PERS) was changed to a method of calculating the final pension benefit using n/55 of final compensation for each year of service. Known as n/55, this law increased pension liabilities by over \$4.2 billion, a portion of which represents the cost of providing the n/55 benefit to retirees, to past service for current employees, and to future service for current employees.

The Benefits Review Task Force debated the issue and recommended adhering to the n/55 retirement calculation. There were concerns about whether there could be a change in law because of State and federal laws regarding retiree and vested employee rights. The report concluded that the 2001 change in the law was not appropriate and that there are better ways to preserve and strengthen the pension funds.

In his testimony before the Joint Committee on October 25, Philip D. Murphy, Chairman of the Benefits Review Task Force, stated that:

The one area that we said if we had a "do-over" it would be the "n/55" from "n/60." And people disagree with that, and they certainly have a right to disagree with that. But I would argue, the process failed us. Whether we disagree on the substance is separate from whether or not the process was a good process. And that is a multibillion dollar tail that will live with us as long as that's in place. And we accept, in this report -- that we believe, based on the advice we got -- is that it will stay in place. But it's a good example -- it's probably the best example I can think -- of where the process failed us . . . . We have to have a much more professional, systematic, clear, open-daylight, fully transparent process; and one that we're not sort of nickel and dimed to death without, in some cases, knowing what we're doing, collectively.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to reduce the TPAF and PERS benefit formula for new members from n/55 to n/60. The legislation should apply prospectively to new employees who become members of the retirement systems after the enactment of the legislation. It should be noted that the n/55 benefit enhancement applied only to PERS and TPAF; therefore, the recommendation to return to n/60 would only apply to those retirement systems. The other public retirement systems use other methodologies to calculate retirement benefits.

The Joint Committee notes that its recommendation is consistent with other recommendations aimed at reducing the long-term costs of the defined benefit retirement systems to ensure their fiscal stability and the fiscal stability of the State and local public employers funding those costs. The reduction from n/55 to n/60 would result in prospective, full-time employees receiving a retirement allowance that is 8% less than the retirement allowance accorded to existing full-time employees.

**RECOMMENDATION 4: CAP PENSIONABLE SALARY, WHICH IS NOW UNLIMITED, TO SOCIAL SECURITY WAGE CONTRIBUTION LIMIT - \$97,500 FOR 2007**

- **DISCUSSION**

Currently, the five State-administered defined benefit pension plans have no restriction on the amount of compensation that is subject to pension contributions and creditable for retirement benefits other than a definition of base salary which excludes salary items that are defined as extra compensation and which is contained in the regulations for each plan.

The State's defined benefit pension plans provide a certain benefit determined by a stated formula applied to an employee's length of service and salary. A benefit is calculated by multiplying a compensation amount by a percentage figure, which product is multiplied by the numbers of years of service. The underlying assumption is that over time the employee and employers have been contributing to the pension system appropriately and based upon the employee's amount of compensation each year.

If an employee experiences a significant increase in compensation toward the end of a career of public service, the compensation amount used to calculate the benefit will not be reflected in the employee and employer contribution history over the entire length of that public service. The boost in compensation creates an unfunded liability in the pension system.

The Public Employees' Retirement System (PERS) is most vulnerable to this type of unfunded liability because its members may have a varied service history. A cap on the maximum compensation base for calculation of contributions and benefits could control the relationship between employee and employer contributions and pension system obligations.

- **RECOMMENDED ACTION**

The Joint Committee recommends a cap on pensionable salary at the Social Security maximum wage contribution limit under the Federal Insurance Contributions Act (FICA).

The Social Security maximum wage contribution limit is \$94,200 for 2006 and \$97,500 for 2007. This cap would adjust as the federal cap is adjusted. Employees with annual compensation in excess of the Social Security maximum would be eligible for membership in the defined contribution program in Recommendation I of this report with regard to only that excess compensation. However, the employer match rate for the amount earned in excess of the cap would be less than the rate provided for salary earned below the cap.

The legislation should apply prospectively to all new employees who become members of the State-administered retirement systems, except the Judicial Retirement System (JRS), after the enactment of legislation. This recommendation should also apply to members of the new defined contribution pension program in recommendation I of this report.

The Joint Committee notes that, at present, approximately 97% of the current members of the PERS, TPAF, PFRS and SPRS have salaries below the \$97,500 FICA threshold. Therefore, the vast majority of full-time, career public employees would be unaffected by this proposal. Employees earning in excess of the Social Security wage contribution limit would continue to earn pensionable credit up to the cap in a defined benefit plan and would earn pension credit in a defined contribution program on amounts above the cap. Furthermore, the cap would apply cumulatively to persons holding multiple jobs, such that a person holding multiple part-time jobs would only be eligible to earn a defined contribution match up to the cap. The Joint Committee believes that this proposal should help control escalating retirement system costs, will put an end to excessive “tacking,” and will ensure the integrity of the pension systems while affecting a relatively small number of employees.

The Joint Committee concluded that there are valid reasons not to make changes in the pension coverage provided to members of the JRS. Unlike the members of the other retirement systems, judges usually become members of the JRS later in life, often after a career as an attorney in private practice. Their time in public service tends to be shorter

than most public employees. In private practice, their salaries tend to be higher than when they are judges. As a judge, however, their salaries and pensions tend to be higher than the average public employee. This differential is essential to enable the State to stay competitive with the private sector when recruiting outstanding jurists. It should also be noted that the JRS is the smallest State-administered retirement system. As of June 30, 2005, active membership in the system totaled 427, with 432 retirees and beneficiaries. Thus, changing the pension benefits of JRS members would affect the ability of the State to attract and retain excellent jurists, and the amount of money the State may save would be small compared with the potential negative impact such reforms might have on the quality of New Jersey's judicial system.

**RECOMMENDATION 5: BASE "HIGH SALARY" PENSION BENEFIT CALCULATIONS FOR NEW MEMBERS ON HIGHER NUMBER OF YEARS**

• **DISCUSSION**

Many of the benefits received by public employees in this State are based on a formula that takes into account the compensation received by a member for one year, or for an established number of years. This formula is used to calculate both retirement benefits for the member and, in some cases, pension benefits for surviving family members and death benefit payments to beneficiaries. Under the Public Employees' Retirement System (PERS), N.J.S.A.43:15A-1 et seq., and the Teachers' Pension and Annuity Fund (TPAF), N.J.S.A.18A:66-1 et seq., the annual retirement benefit for members is calculated using the average of the three years of highest compensation, times the fraction represented by a numerator that is the number of years of service of the individual over a denominator of 55. For veteran members in those two systems and members of the Police and Firemen's Retirement System (PFRS), N.J.S.A.43:16A-1 et seq., and the State Police Retirement System (SPRS), N.J.S.A.53:5A-3 et seq., the annual pension benefit is based on the single highest year of compensation.

Changing the year or number of years of compensation as part of the retirement and benefit formula was discussed in the Report of the Benefits Review Task Force, issued on December 1, 2005. The report noted that "basing the annual pension on the highest three years and especially the highest year of salary is inconsistent with national trends among state plans." The Task Force found that the practice "encourages 'boosting' and other manipulation at the end of a public employee's career by requiring a minimal time commitment and does not reflect a replacement level of the salary a worker received throughout their time in government."

Several members of the public suggested that the retirement and benefits formula should be based on a greater number of years than three, and also strongly denounced "boosting" or serving just three years in a position to increase a final pension benefit.

The Task Force recommended increasing the number of years used to calculate retirement and other benefits for members of PERS and TPAF from the average of the three years of highest compensation to the average of the five years of highest compensation. For veteran members of those two systems and individuals in PFRS and SPRS, the Task Force recommended changing the formula from the single year of highest compensation to an average of the three years of highest compensation. The impact on members of such a change would vary, depending on the member's compensation history. But the fiscal impact on the State and its localities would be significant because it would enable each to realize significant savings from the benefits paid to public employees.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to change the pension benefit calculation from the three highest paid years to the five highest paid years or from the single highest paid year to the three highest paid years, as appropriate. The legislation should apply to new employees who become members of the State-administered retirement systems, except the Judicial Retirement System (JRS), after the enactment of legislation.

The Joint Committee notes that its recommendation is consistent with other recommendations aimed at reducing the long-term costs of the defined benefit retirement systems to ensure their fiscal stability and the fiscal stability of the State and local public employers funding those costs. This recommendation essentially implements the Benefits Review Task Force recommendation prospectively, to apply to new employees who become members of the retirement systems after the enactment of legislation.

As noted earlier, the Joint Committee concluded that there are valid reasons not to make changes in the pension coverage provided to members of the JRS. Unlike the members of the other retirement systems, judges usually become members of the JRS later in life, often after a career as an attorney in private practice. Their time in public service tends to be shorter than most public employees. In private practice, their salaries tend to be

higher than when they are judges. As a judge, however, their salaries and pensions tend to be higher than the average public employee. This differential is essential to enable the State to stay competitive with the private sector when recruiting outstanding jurists. It should also be noted that the JRS is the smallest State-administered retirement system. As of June 30, 2005, active membership in the system totaled 427, with 432 retirees and beneficiaries. Thus, changing the pension benefits of JRS members would affect the ability of the State to attract and retain excellent jurists, and the amount of money the State may save would be small compared with the potential negative impact such reforms might have on the quality of New Jersey's judicial system.

**RECOMMENDATION 6: DESIGNATE ONE JOB FOR ONE PENSION**

• **DISCUSSION**

Under N.J.S.A.43:15A-1 et seq., enrollment in the Public Employees' Retirement System (PERS) is mandatory for the majority of public employees. Nothing in the PERS statutes limits the number of PERS covered positions that an individual may hold. In fact, a number of factors, including the low enrollment threshold and the requirement for mandatory enrollment, make it possible for an individual to be employed in more than one PERS eligible position. Under N.J.S.A.18A:66-1 et seq., enrollment in the Teachers' Pension and Annuity Fund (TPAF) is mandatory for teachers, and the same situation exists concerning covered positions.

Employees holding more than one PERS covered employment position, or more than one TPAF position, are required to make employee contributions based on each of the salaries the employee earns in those positions. Those contributions are deposited into a single retirement system account created for the member regardless of the number of positions a member might hold or the number of employers as he might have. Generally, each PERS and TPAF member contributes 5% of base salary into the retirement system. For the purpose of calculating pension benefits, all of the base salaries earned by a member holding multiple positions are consolidated for each year and used as a total in the calculation of final average salary.

The Benefits Review Task Force recommended in its 2005 report that multiple memberships in PERS be eliminated, and that employees be required to select only one eligible position for pension credit. It was determined by that Task Force that the aggregation of salaries currently allowed for members holding multiple covered positions results in high costs to the retirement system.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to require the designation of one position per employee for both the PERS or TPAF. The legislation should apply to new full-time employees who become members of PERS or TPAF after the bill's enactment and who must select one job for defined benefit credit.

The Joint Committee notes that, although a person holding multiple positions does contribute to the retirement system for each position, the potential for abuse and the difficulty in preventing it make the one-position requirement a necessary reform. This proposal will supplement the proposals to enroll new part-time public employees in a new defined contribution program and to restrict PERS and TPAF membership to full-time public employees to ensure the elimination of future abuse of the pension systems.

Senator Gormley and Assemblyman O'Toole believe the Joint Committee should have recommended that this principle be applied more strongly, by adopting it not only for future employees but also with regard to current employees in defined benefit retirement systems.

**RECOMMENDATION 7 REPEAL NON-FORFEITABLE RIGHT TO PENSION BENEFITS  
AFTER FIVE YEARS OF PENSION SERVICE**

• **DISCUSSION**

In 1997, the New Jersey Legislature enacted N.J.S.A.43:3C-9.5 which established, for members of State-administered retirement systems, a non-forfeitable right to receive benefits, as follows:

- a. For purposes of this section, a “non-forfeitable right to receive benefits” means that the benefits program, for any employee for whom the right has attached, cannot be reduced. The provisions of this section shall not apply to post-retirement medical benefits which are provided pursuant to law.
- b. Vested members of the Teachers’ Pension and Annuity Fund, the Judicial Retirement System, the Prison Officers’ Pension Fund, the Public Employees’ Retirement System, the Consolidated Police and Firemen’s Pension Fund, the Police and Firemen’s Retirement System, and the State Police Retirement System, upon the attainment of five years of service credit in the retirement system or fund or on the date of enactment of this bill, whichever is later, shall have a non-forfeitable right to receive benefits as provided under the laws governing the retirement system or fund upon the attainment of five years of service credit in the retirement system or fund or on the effective date of this act, whichever is later.
- c. ....
- d. This act shall not be construed to preclude forfeiture, suspension or reduction in benefits for dishonorable service.
- e. Except as expressly provided herein and only to the extent so expressly provided, nothing in this act shall be deemed to (1) limit the right of the State to alter, modify or amend such retirement systems and funds, or (2) create in any member a right in the corpus or management of a retirement system or pension fund.

In a legal opinion to the Joint Committee, Peter J. Kelly, Principal Counsel, the Office of Legislative Services (OLS), explained that “legislation that has the effect of detrimentally altering the retirement benefits of active members of State-administered retirement systems who have accrued at least five years of service credit, or of retired members, would be unconstitutional as violative of the federal and State constitutional proscription against impairment of the obligation of contract.” He advised that “a substitution of one benefit for another may be permissible without impairing the obligation of contract as

long as the change is reasonable and any disadvantage to the member is accompanied by offsetting and counterbalancing advantages, apparently under the theory that when there is no net loss in overall benefits the contractual relationship is not substantially impaired.” Similarly, in a legal opinion for New Jersey’s Treasurer, Bradley Abelow, the Office of the Attorney General advised that “N.J.S.A.43:3C-9.5 created legally enforceable rights in vested members of the state pension systems to the benefits programs of those systems” and consequently under “the State and Federal Constitutions, the Legislature may not enact laws which substantially impair those rights, except in the narrow circumstances recognized by state and federal courts.”

Mr. Kelly’s opinion explained, “The enactment of N.J.S.A.43:3C-9.5 also served to provide notice to persons beginning public employment after the law’s effective date that their pension rights will not become unalterable until they accrue five years of service. Although it appears that the retirement benefits for members with fewer than five years of service could be detrimentally altered, implementation of any change may have to be limited to prospective application, the rescission of any credit earned for the period prior to completing five years of service being problematic.”

Repeal of N.J.S.A.43:3C-9.5 should be prospective only, that is, it should apply to those employed after the repeal. The OLS legal opinion pointed out that because the statute “created a contractual right for the members to whom it is applicable, any subsequent amendment or repeal thereof would not extinguish the rights conferred on those members.”

- **RECOMMENDED ACTION**

The Joint Committee recommends the repeal on a prospective basis for new employees of N.J.S.A.43:3C-9.5, which provides members of the State-administered retirement systems with a non-forfeitable right to receive in retirement the benefits provided by statute at the time a member of a retirement system attains five years of service credit.

The Joint Committee supports the repeal of the statute providing a non-forfeitable right to certain pension benefits after just five years of public service so that such a right would not attach for new public employees because the Legislature should not be permanently and inextricably bound by an action of a prior session of the Legislature.

**RECOMMENDATION 8:    LIMIT PENSION ENROLLMENT ELIGIBILITY TO \$5,000  
MINIMUM SALARY**

- **DISCUSSION**

The enrollment compensation threshold for the Public Employees' Retirement System (PERS), N.J.S.A.43:15A-1 et seq., is \$1,500. Membership in the retirement system is generally required as a condition of employment for most employees of the State, or any county or municipality, school district or public agency. The threshold for the Teachers' Pension and Annuity Fund (TPAF), N.J.S.A.18A:66-1 et seq., is \$500. Persons appointed to positions requiring certification by the Department of Education as members of a regular teaching or professional staff of a public school system in New Jersey are required to enroll as a condition of employment. Department of Education employees holding unclassified professional and certificated titles are also eligible for membership.

The PERS amount was last increased from \$500 in 1986, and the TPAF amount has not been increased since the fund's inception in the 1950's.

The Report of the Benefits Review Task Force recommended increasing this threshold to \$5,000. The report states that the pension systems are meant for individuals who are career employees of the State or local governments. The threshold has enabled many individuals who do not meet this criteria to earn years of credit in the pension system "that they do not deserve." This has facilitated, according to the report, pension abuses that occur when a member participates at a minimum level for many years and obtains a high paying position only as the member nears retirement, or when the member who had a full career takes in a low paying job prior to retirement in order to extend years of service that are used to calculate the pension.

The report indicated that there are 8,500 public employees in the retirement system earning under \$5,000, most of whom work at the local level.

The committee received testimony from speakers who urged that part-time employees should receive pension credit on an hourly basis if performing services for less than 1,000 hours per year. Another speaker suggested 1,820 hours per year as the threshold over which an employee would receive credit for a full year of service, and under which the employee would receive pro-rated service credit. It was noted during various meetings that this low salary enrollment threshold in PERS provides opportunity for abuse.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to limit eligibility for membership to \$5,000 minimum salary. The legislation should apply to new employees who become members of the PERS and TPAF retirement systems after the enactment of legislation. This proposal should be enacted only in the event that the proposal to enroll new part-time public employees in a new defined contribution program, and to restrict PERS and TPAF membership to full-time public employees, is not enacted.

The Joint Committee supports raising the compensation threshold for PERS and TPAF membership as a means to ensure a pension benefit to public employees with some significant compensation and to eliminate pension costs to local employers for employees earning small amounts annually.

Assemblyman O'Toole and Senator Gormley believe the Joint Committee should have recommended a higher compensation threshold for membership in a public retirement system, not less than \$10,000.

**RECOMMENDATION 9: ALLOW ALL NON-VESTED EMPLOYEES TO OPT INTO DEFINED CONTRIBUTION PROGRAM**

- **DISCUSSION**

At present, public employees earning more than a minimal threshold amount are required to be enrolled in a retirement system. Membership in the Public Employees Retirement System (PERS), however, is optional for elected officials, other than veterans and legislators. N.J.S.A.43:15A-7; 43:15A-75; 43:15A-135. Allowing all members of defined benefit State-administered retirement systems who have not yet vested to choose a new defined contribution plan in lieu of membership in the retirement system may be more appropriate for certain public employees and elected officials given the nature and length of their public service and their personal circumstances.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to give all non-vested employees the option of entering into the defined contribution program. This legislation should apply to all current and future public employees.

The Joint Committee recommends that members of all retirement systems be permitted to transfer to a defined contribution program if such a program better serves their retirement goals. Such a program would reduce public employee costs while giving these employees the flexibility to choose a plan that is most consistent with their personal situation and financial goals. It would also help to reduce the burden on taxpayers of providing public employee retirement benefits.

**RECOMMENDATION 10: EXCLUDE ALL PROFESSIONAL SERVICE CONTRACTORS FROM MEMBERSHIP IN PERS**

- **DISCUSSION**

There is no provision in State law that expressly prevents a person from being both an employee of, and a contractor for, a unit of local government or a board of education.

The Benefits Review Task Force recommended that “professional services vendors, such as municipal attorneys, tax assessors, etc., who are retained under public contracts approved by an appointing agency should not be eligible for a pension. In our opinion, these employees simply do not meet the original purpose of the public retirement plan and should not be eligible to participate in any pension plan.”

In testimony before the Joint Committee on August 24, 2006, Mr. Frederick Beaver, Director of the Division of Pensions and Benefits, testified that situations where, for instance, an attorney is employed by a municipality and earning pension credit while having the municipality’s work performed by his law firm was “somewhat abusive of the system.”

It should be noted that both the Internal Revenue Service and the New Jersey Department of Labor have rules that govern the distinction between an employee and an independent contractor. The purpose of this recommendation is to ensure that all public employers adhere to these rules.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to exclude all professional service contractors from membership in PERS. This legislation should terminate immediately the membership of all existing contractors and prohibit future contractors from enrolling in PERS.

This recommendation of the Joint Committee is consistent with the principle that only employees of a public entity, be it State or local, are entitled to a pension benefit. The Benefits Review Task Force found this as a major abuse of the system.

**RECOMMENDATION 11: REQUIRE DIVISION OF PENSIONS AND BENEFITS TO INVESTIGATE COMPENSATION INCREASES THAT EXCEED REASONABLY ANTICIPATED ANNUAL COMPENSATION INCREASES**

- **DISCUSSION**

Currently, the Division of Pensions and Benefits reviews increases when the salary of a member of a State-administered retirement system is increased by more than the actuarially assumed average plan experience. The average is currently on 5.95% for Police and Firemen's Retirement System (PFRS) and 5.45% for all other systems, and is adjusted periodically based on system experience.

The systems' boards of trustees may question compensation whenever there is evidence that there may be extra compensation included in the base salary. Under the current law and regulation, base salary can not include extra compensation. Certain items have been identified as extra compensation including, but not limited to, overtime, lump-sum payments for longevity, and clothing allowances. Essentially, creditable compensation includes pay for performance of duties; pay received in a regular paycheck (not lump-sum); pay not specifically listed as extra compensation or as not being creditable; pay received in a similar manner as everyone else in a similar situation; and pay included in base salary from the first day it is paid. If the board determines that a violation occurred, it will take action to remedy the situation, including refunding the employee's extra contribution and recalculating the retirement benefit.

In addition, the Benefits Review Task Force recommended ending pension boosting by restricting end of career salary hikes. The report stated that the ability to dramatically increase salaries, particularly at the end of a career, must be restricted. Restrictions are a matter of fairness to all employers and taxpayers who pay the cost for the pension system deficits caused by the boosting of salaries. While long-term employees should be fairly compensated for their expertise and experience, excessive increases should not be permitted to have an adverse impact on the retirement systems.

The concern is that the funding generated by the employer and employee contributions over the course of the employee's career is insufficient to cover the costs associated with the retirement benefit. The insufficient contributions result in an underfunding of the pension system.

The Task Force gave examples of boosting and suggested actions to limit boosting. The suggestions included: examining at least 5 years of salary history; if a member's salary is increased by more than the average plan experience, the increase will be reviewed; during the review process, the employer is required to provide documentation justifying the salary increase(s), including whether given on an individual basis or to other employees as well; and the higher pension will be permitted only if the employer pays any unfunded liability that results from the higher salary, if not paid, the amount of the pension will be based upon the lower salary.

Frederick J. Beaver, Director of the Division of Pensions and Benefits, reviewed the Task Force's proposals for the Joint Committee at its August 24, 2006 meeting. He also supported efforts to end boosting.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to require the Division of Pensions and Benefits to curtail boosting abuses by investigating compensation increases that exceed reasonably anticipated annual compensation increases to curb boosting. Boosting (or padding) occurs when an employee obtains a salary that is much higher in their final year(s) of service in order to increase their pension benefit. This includes when someone who works part-time for much of their career moves to a full-time position for the necessary period of time to increase their benefit. This legislation would apply to all employees of State and local employers who seek to retire after the enactment of the legislation.

The Joint Committee supports the current regulation of the Division of Pensions and Benefits and recommends that it be enacted into law to aid in enforcement and ensure

that unreasonable end-of-career compensation increases, which drive up retirement system costs, are stopped.

Assemblyman O'Toole and Senator Gormley believe that merely codifying the current procedures designed to discourage "boosting" would not make any substantive change in policy, as these are the same provisions that have become recognized as ineffective. They believe that the Joint Committee should have recommended some means of strengthening these provisions, perhaps by requiring the employer to pay for any unfunded liability created by a late-career salary boost. This would serve as a disincentive for employers to engage in the practice.

**RECOMMENDATION 12: CLOSE PROSECUTORS PART OF PERS**

•' **DISCUSSION**

N.J.S.A.43:15A-155 et seq., established a special Prosecutors Part within the Public Employees' Retirement System (PERS) effective January 7, 2002. The Prosecutors Part provides enhanced pension benefits for county prosecutors, first assistant prosecutors and assistant prosecutors; the Director of the Division of Criminal Justice in the Department of Law and Public Safety; assistant directors, deputy directors, assistant attorney generals and deputy attorney generals in that department and assigned to that division; and criminal investigators in the Division of Criminal Justice in the Department of Law and Public Safety who are not eligible for enrollment in the Police and Firemen's Retirement System (PFRS).

Prosecutors Part members contribute 7.5% of their salary as their pension contribution. A Prosecutors Part account will vest when the prosecutor has 10 years of creditable Prosecutors Part service. If the prosecutor also has regular PERS service, the right to receive a regular PERS benefit will vest when the prosecutor has 10 years of regular PERS service. Prosecutors Part and regular PERS service vest separately unless all of the service will be used to qualify for a regular PERS retirement benefit.

Final compensation under the Prosecutors Part is based on the last 12 months of salary as a prosecutor. The benefits available under the Prosecutors Part are generally similar to those offered under PFRS. The types of retirements available under the Prosecutors Part include:

- Service Retirement - available at age 55 (except that members in a Prosecutors Part position on January 7, 2002 are exempted from the age 55 requirement if they have 20 or more years of service) with any number of years of Prosecutors Part service. A Prosecutors Part Service Retirement is calculated using the highest of:

- 50% of Final Compensation if the prosecutor has 20 or more years of service;
  - 2% x Final Compensation for each year of service credit plus 1% for each year over 30; or
  - $1/60 \times \text{years of service} \times \text{Final Compensation}$ .
- Special Retirement - available at any age with 25 or more years of Prosecutors Part service. A Prosecutors Part Special Retirement is calculated using 65% of Final Compensation plus 1% of Final Compensation for each additional year over 25 years up to 30 years of service.
  - Deferred Retirement - available at age 55 with ten or more years of Prosecutors Part service. A Prosecutors Part Deferred Retirement is calculated using 2% of Final Compensation for each year of service credit up to 25 years of service.

The Prosecutors Part is one of four special benefit parts under the PERS; the other three are Law Enforcement Officers (LEOs), Legislative Retirement System and Workers Compensation Judges Part.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to close the PERS Prosecutors Part. This legislation should apply prospectively to new members.

The Joint Committee recommends an end to special benefits within the Public Employees' Retirement System for selected groups of public employees and officials. This proposal, coupled with the one to close the Workers Compensation Judges Part and the one to require members of the Legislature to enroll in a new defined contribution program, would eliminate prospectively special benefit categories in the PERS (except for a very few remaining law enforcement officers). After the enactment of the recommended legislation, prosecutors, who would have enrolled in the Prosecutors Part,

will be members of the PERS and will receive the same benefits that all other PERS members receive. This recommendation would standardize pension benefits for public employees with similar job functions.

**RECOMMENDATION 13: CLOSE WORKERS COMPENSATION JUDGES PART OF PERS**

• **DISCUSSION**

N.J.S.A.43:15A-142 et seq. established special retirement benefits for members of the Public Employees' Retirement System (PERS) employed by the Division of Workers' Compensation of the Department of Labor as judges of compensation. Eligible titles for membership include Chief Judge, Administrative Supervisory Judge, Supervisory Judge, and Judge of Compensation. Other benefits have been added that are similar to those of the Judicial Retirement System.

Workers' Compensation Judges contribute 5% of their base salary as their pension contribution. Members retain many regular PERS benefits, including those in the areas of retirement options, disability retirement, and contributory life insurance coverage. Other benefits have been added that are similar to those of the Judicial Retirement System.

The main types of retirement available under the Workers Compensation Judges Part are as follows:

*Mandatory Retirement*

Retirement is mandatory for a Workers' Compensation Judge on the first of the calendar month after the age of 70. However, an individual who was a Workers' Compensation Judge on December 6, 2001 and has not attained 10 years of service as a Workers' Compensation Judge by the time he or she reaches the age of 70 may continue to work until 10 years of service has been earned in the Workers Compensation Judges Part.

*Service Retirement*

Eligibility for a Service Retirement is based on age and years of service as a Workers' Compensation Judge, as well as total years of regular PERS service. A Workers' Compensation Judge is eligible for a service retirement upon turning age 60.

The annual retirement benefit is calculated using 75% of final salary if the individual is:

- Age 60 or older with 20 or more years of Workers' Compensation Judge service.
- Age 65 or older with 15 or more years of Workers' Compensation Judge service.
- Age 70 or older with 10 or more years of Workers' Compensation Judge service.

The annual retirement benefit is calculated using 50% of final salary if the individual is:

- Age 60 or older with five or more consecutive years of service as a Workers' Compensation Judge, and 20 or more years in the aggregate of public service.
- Age 65 or older with five or more consecutive years of service as a Workers' Compensation Judge, and 15 or more years in the aggregate of public service.

#### *Early Retirement*

An individual is eligible for early retirement if he or she is under age 60 with five or more successive years as a Workers' Compensation Judge, with a combined total of 25 or more years in the aggregate of public service. Early retirement is calculated at two percent of final salary for each year of service up to 25 years, plus one percent of final salary for each year of service over 25 years, with an actuarial reduction for every month under the age of 60.

#### *Deferred Retirement*

If an individual leaves the Workers Compensation Judges Part and PERS employment before he or she becomes eligible for a service or early retirement, and was not removed for cause on charges of misconduct or delinquency, he or she may be eligible for deferred retirement.

An individual is eligible for a Workers Compensation Judges Part deferred retirement if he or she leaves after completing:

- Five or more consecutive years of Workers' Compensation Judge service with an aggregate service credit of 10 years or more.

Deferred retirement is payable at age 60. The annual retirement benefit is calculated at two percent of final salary for each year of service up to 25 years, plus one percent of final salary for each year of service over 25 years.

The Workers Compensation Judges Part is one of four special benefit parts under the PERS; the other three are Law Enforcement Officers (LEOs), Legislative Retirement System and the Prosecutors Part.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to close the Workers Compensation Judges Part of PERS. This legislation should apply prospectively to new members.

The Joint Committee recommends an end to special benefits within the Public Employees' Retirement System for selected groups of public employees and officials. These types of benefit enhancements have elevated retirement system costs. This proposal, coupled with the one to close the Prosecutors Part and the one to require members of the Legislature to enroll in a new defined contribution program, would eliminate prospectively special benefit categories in the PERS (except for a very few remaining law enforcement officers). After the enactment of the recommended legislation, workers' compensation judges, who would have enrolled in the Workers Compensation Judges Part, will be members of the PERS and will receive the same benefits that all other PERS members receive.

**RECOMMENDATION 14: REPEAL SPECIAL RETIREMENT BENEFIT ENHANCEMENT IN PFRS**

- **DISCUSSION**

Current law enacted in 2003 provides for a prospective increase special retirement benefit in the Police and Firemen's Retirement System (PFRS) upon the attainment of a system funded level of 104%. PFRS members who have 25 or more years of service are currently eligible for a pension of 65% of final compensation, plus 1% of final compensation multiplied by the number of years of creditable service over 25 but not over 30 (70% maximum). This law will increase that benefit to a pension of 70% of final compensation plus 1% of final compensation multiplied by the number of years of creditable service over 25, but not over 30 (75% maximum) once the funded level exceeds 104%.

Upon attainment of this funded level, a benefit enhancement fund would be created in the system from the use of excess valuation assets to support this benefit enhancement. Excess assets equal to the present value of the future normal contributions for the enhanced benefits would be deposited into the benefit enhancement fund. Both the normal and accrued liability contributions for the increased benefits for active employees would be paid from the benefit enhancement fund. However, if assets in this benefit enhancement fund are insufficient to pay the normal and accrued liability contributions, the State is required to pay the contributions not covered by the assets.

At the time the legislation was being considered, the Division of Pensions and Benefits informally estimated the present value of the additional unfunded accrued liability for PFRS from the special retirement enhancement provision at approximately \$500 million. The normal cost, to ensure that the future liability for this enhancement is funded, was informally estimated at \$36 million per year. These payments would not begin until two years after the fiscal year immediately following the adoption of the valuation report by the PFRS board of trustees in which the funded level is in excess of 104%. At that time, excess assets will be transferred to the new benefit enhancement fund.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to repeal this prospective benefit enhancement, and the corresponding benefit enhancement fund, effective immediately. This recommendation would result in significant cost savings for the State and local public employers.

**RECOMMENDATION 15: PROHIBIT NON-UNIFORM PUBLIC EMPLOYEES FROM ENROLLING IN PFRS**

• **DISCUSSION**

Enrollment in the Police and Firemen's Retirement System (PFRS), N.J.S.A.43:16A-1 et seq., is required for permanent, full-time employees appointed to an eligible PFRS title in law enforcement or fire fighting in the State who also meet the age and medical criteria for membership. The retirement system has developed a list of those titles that are eligible for enrollment. If an employee not currently included as a member of the system believes that he or she performs duties that meet the definition of "policeman" or "fireman" as set forth in the law, the employee may file an application for membership in the system with the Director of the Division of Pensions and Benefits stating in detail the basis for the employee's belief that the employee is a policeman or fireman.

Current PFRS law defines "policeman" to mean a permanent, full-time employee of a law enforcement unit as defined in N.J.S.A.52:17B-67 or the State, other than an officer or trooper of the Division of State Police whose position is covered by the State Police Retirement System, whose primary duties include the investigation, apprehension or detention of persons suspected or convicted of violating the criminal laws of the State and who:

- i. is authorized to carry a firearm while engaged in the actual performance of his official duties;
- ii. has police powers;
- iii. is required to complete successfully the training requirements prescribed by N.J.S.A.52:17B-66 et seq. or comparable training requirements as determined by the board of trustees; and
- iv. is subject to the physical and mental fitness requirements applicable to the position of municipal police officer established by an agency authorized to establish these requirements on a Statewide basis, or comparable physical and mental fitness requirements as determined by the board of trustees.

The term also includes an administrative or supervisory employee of a law enforcement unit or the State whose duties include general or direct supervision of employees engaged in investigation, apprehension or detention activities or training responsibility for these employees and a requirement for engagement in investigation, apprehension or detention activities if necessary, and who is authorized to carry a firearm while in the actual performance of his official duties and has police powers.

“Fireman” is defined to mean a permanent, full-time employee of a firefighting unit whose primary duties include the control and extinguishment of fires and who is subject to the training and physical and mental fitness requirements applicable to the position of municipal firefighter established by an agency authorized to establish these requirements on a Statewide basis, or comparable training and physical and mental fitness requirements as determined by the board of trustees.

The term also includes an administrative or supervisory employee of a firefighting unit whose duties include general or direct supervision of employees engaged in fire control and extinguishment activities or training responsibility for these employees and a requirement for engagement in fire control and extinguishment activities if necessary. A “firefighting unit” means a municipal fire department, a fire district, or an agency of a county or the State which is responsible for control and extinguishment of fires.

The division reviews the application for membership and determines whether the employee meets the definition, and then makes a recommendation to the PFRS board of trustees as to whether the employee should be included in the system. If after considering the recommendation, the board determines that the employee meets the definition the board will publish a notice in the New Jersey Register proposing to include the employee’s position in the retirement system. Interested parties will are given 30 days to comment on the proposal. If the board determines that the employee does not meet the definition, the employee will be offered an opportunity for a hearing.

As of July 2005, there were 44,211 active members of this retirement system, and 29,257 retired members and beneficiaries. The July 1, 2005 valuation of PFRS calculated a required contribution by all employers of \$893.4 million (\$253.7 million by the State and \$639.8 million by municipalities and local groups).

- **RECOMMENDED ACTION**

The Joint Committee recommends strict adherence to the legal definition of “policeman” and “fireman.”

The Joint Committee offers this recommendation to control costs in the Police and Firemen’s Retirement System and to ensure the integrity of that system in providing benefits only to those public employees who serve as law enforcement officers and firefighters.

**RECOMMENDATION 16: REQUIRE FORFEITURE OF RETIREMENT SYSTEM BENEFITS FOR PUBLIC OFFICIALS CONVICTED OF CRIMES INVOLVING ABUSE OF OFFICE**

- **DISCUSSION**

New Jersey courts have uniformly held that the receipt of a public pension or retirement benefit is conditioned upon the rendering of honorable service by the officer or employee. In the Uricoli case, the New Jersey Supreme Court indicated that: “honorable service is an implicit requirement of every public pension statute, whether or not this conditional term appears in the particular statute . . . Courts in this State have consistently imputed to the Legislature the intent that a public employee’s right to pension benefits be conditioned upon honorable service.” In analyzing what conduct constitutes dishonorable service that warrants forfeiture of all or part of a public pension, the court in Uricoli called for “flexibility and the application of equitable considerations,” and established an 11 point balancing test to determine whether complete or partial pension forfeiture is justified in view of all of the circumstances. Under the Uricoli test, forfeiture may result from conviction of a crime (whether touching upon, or unrelated to, public employment) or other misconduct.

In 1995, the Legislature enacted N.J.S.A.43:1-3 which expressly conditions the receipt of a public pension or retirement benefit “upon the rendering of honorable service by a public officer or employee.” That statute also codified the 11-point balancing test established by the Supreme Court in Uricoli and directs the board of trustees of any State or locally-administered pension fund or retirement system to “consider and balance” the 11 factors in determining whether forfeiture or partial forfeiture is appropriate. The factors are: (1) the member’s length of service; (2) the basis for retirement; (3) the extent to which the member’s pension has vested; (4) the duties of the particular member; (5) the member’s public employment history and record covered under the retirement system; (6) any other public employment or service; (7) the nature of the misconduct or crime, including the gravity or substantiality of the offense, whether it was a single or multiple offense and whether it was continuing or isolated; (8) the relationship between the misconduct and the member’s public duties; (9) the quality of moral turpitude or the

degree of guilt or culpability, including the member's motives and reasons, personal gain and similar considerations; (10) the availability and adequacy of other penal sanctions; and (11) other personal circumstances relating to the member which bear upon the justness of forfeiture.

N.J.S.A.43:3C-9.5, which confers a non-forfeitable right to receive benefits on vested members of public employee pension systems after five years of service, specifically provides that its provisions do not "preclude forfeiture, suspension or reduction of its benefits for dishonorable service." In addition, specific forfeiture provisions applicable to Public Employees' Retirement System deferred retirement, N.J.S.A.43:15A-38, and to ordinary retirement under the Police and Firemen's Retirement System, N.J.S.A.43:16A-11.2, have been found by the courts to coexist with the general forfeiture provisions of N.J.S.A.43:1-3.

The Benefits Review Task Force stated in its 2005 report that "public monies should not be used to provide retirement benefits to individuals at any level, whether elected, appointed or hired, who have been convicted of violating the public trust." The Task Force noted that the forfeiture of pension benefits for convicted employees is not automatic under existing statute, and that of the 50 cases considered for possible pension benefit forfeiture in fiscal year 2005, 34 cases resulted from criminal activity and four were total forfeiture.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to require the forfeiture of retirement benefits for public officials convicted of crimes involving abuse of office. Such legislation should apply to all members and retirees of the State-administered retirement systems.

The Joint Committee supports the forfeiture of pension allowances of individuals who have been convicted of criminal offenses touching upon their office. Such convicted

individuals violate the public trust and, therefore, do not deserve a pension supported by public funds.

**RECOMMENDATION 17: REPLACE ACCIDENTAL AND ORDINARY DISABILITY BENEFITS WITH PRIVATE DISABILITY INSURANCE COVERAGE**

• **DISCUSSION**

Each of the public employee retirement systems contains provisions for disability retirement. The two largest programs, which are identical, are for members of the Teachers' Pension and Annuity Fund (TPAF), N.J.S.A.18A:66-39 et seq., and the Public Employees' Retirement System (PERS), N.J.S.A.43:15A-42 et seq.. Members of the Alternative Benefits Program (ABP) are covered by employer-paid long-term disability insurance, N.J.S.A.18A:66-176.

TPAF and PERS members are covered by two types of disability retirement: ordinary and accidental. To retire under ordinary disability, a member must have an active pension account, have at least ten years of New Jersey service credit, and be considered totally and permanently disabled (i.e., be physically or mentally unable to perform normal or assigned duties, with no possibility of significant improvement). The annual benefit is equal to 43.6% of the member's final average salary (i.e., the last three years before retirement or the highest three fiscal years of salary, whichever is greatest). The benefit is not reduced by any Social Security, Worker's Compensation, or private insurance benefits the member may receive, though a Worker's Compensation award may be reduced. The benefit is subject to federal tax to the same extent as other pensions, but it is not subject to State income tax until the member reaches age 65.

To retire under accidental disability, a member must have an active pension account, be an active member of the retirement system on the date of the traumatic event, file an application within five years of the event, and be examined by physicians selected by the retirement system. A "traumatic event" is one in which the worker is involuntarily exposed to a violent level of force or impact which is not brought into motion by the worker. To receive the benefit, the worker must demonstrate that the injury was not induced by normal work effort, he or she met involuntarily with the object that was the source of the harm, and the source of the injury was a violent or uncontrollable power. Once qualified, the member receives 72.7% of the member's base salary at the time of

the traumatic event. If the member receives Worker's Compensation benefits, the retirement benefit will be reduced dollar for dollar by the benefits paid after the member's retirement date. The benefit is not reduced by any Social Security or private insurance benefits the member may receive. The benefit is also not subject to federal income tax and is not subject to State income tax until the member reaches age 65. A member found by the Division of Pensions and Benefits to be totally and permanently disabled, not due to a traumatic event, would receive an ordinary disability retirement benefit.

According to Frederick Beaver, Director of the Division of Pensions and Benefits, in testimony before the Joint Committee on August 24, 2006, under the current system, any member who is out of work for an extended time is forced to apply for either ordinary or accidental disability, because "there is no middle ground" between being temporarily disabled and retired. There is no long term disability program for such members to provide salary replacement while the member is disabled and allow more time to determine if the employee could return to work. Mr. Beaver suggested that changing the disability retirement system to a disability insurance program, which would provide a long-term insurance benefit and permit a worker to return to work, could save the State approximately \$28 million per year and save local employers approximately \$53 million per year. In testimony before the Joint Committee on August 31, 2006, Mr. Beaver suggested that the State's ABP offered a model on which to base a long-term disability insurance program. Testimony from retirement system members and the public at subsequent meetings of the committee did-not address such an alternative, but did note that there were occasions when disability retirement was abused by retirees.

Mr. Beaver's testimony on disability pensions closely echoed the findings and recommendations in the Report of the Benefits Review Task Force, issued on December 1, 2005. The report called for all disability retirement benefits to be changed to a privately insured long term disability insurance program, one that would "save money and provide greater flexibility for employees" and be similar to the one provided under the ABP. Like Mr. Beaver, the Task Force estimated that adopting such a program would save the State and local governments a total of approximately \$86.7 million per year.

As an example, under the ABP, a member is eligible for such coverage after one year. If a member is totally disabled due to an occupational or non-occupational condition, the member can receive a regular monthly income benefit of 60% of the base salary earned during the 12 months preceding the onset of the disability. The benefit is offset by any other periodic benefit the member receives. In addition, the member's and the employer's mandatory contributions are automatically credited to the member's retirement account while the member is disabled. The benefits are paid as long as the member remains disabled or until the member reaches age 70, but they terminate if the member begins receiving payments under a retirement annuity. To be considered disabled, the member must be unable to perform any and every duty pertaining to his or her occupation. A disability is not considered to exist if the member is gainfully employed, incarcerated, or if the disability resulted from an act of war or was intentionally self-inflicted.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to replace accidental and ordinary disability benefits for new TPAF and PERS members with private disability insurance coverage. This legislation should apply to new employees who become members of the TPAF and PERS after enactment of the legislation.

This Joint Committee agrees with the Director of the Division of Pensions and Benefits that the implementation of this recommendation would be beneficial to public employees who become disabled and would result in savings to both the State and local public employers.

**RECOMMENDATION 18: CONTINUE MORATORIUM ON BENEFIT ENHANCEMENTS IN STATE-ADMINISTERED RETIREMENT SYSTEMS**

• **DISCUSSION**

The Benefits Review Task Force found that the “current process for reviewing benefits is haphazard at best and excessively influenced by political instead of fiscal motivations. The non-stop requests (and too often action) for legislative action have eroded the State’s fiscal health and created a benefit structure that the State cannot currently afford.” The Task Force noted that at the time it was organized, there were 466 pension and health-related bills pending in the Legislature. Additionally, the Task Force found that on average, since the year 2000, benefit enhancement bills have passed the Legislature with an average plurality of 89%, and benefits enhancements enacted since 1999 will cost State and local employers well over \$6.8 billion. The Task Force concluded, “The benefit enhancement process far too frequently happens in the complete absence of an informed debate on the actual costs of the change, yet alone how it will be paid for over the long term. And far too often, the taxpayer’s interests are absent.”

One change in the benefits structure that is illustrative of this issue was the enactment of P.L.2001, c.133, which changed the pension calculation formula to “n/55.” The Task Force found in its report, however, that the enhancement increased pension liabilities considerably; PERS and TPAF pensions were increased by 9.09%, while over the same time period pension liabilities increased by over \$4.2 billion, a portion of which represents the cost of providing the n/55 benefit to retirees, the cost of past service for current employees, and the cost for future service for current employees.

In his testimony before the Joint Committee on October 25, Philip D. Murphy, Chairman of the Benefits Review Task Force, stated that:

The one area that we said if we had a “do-over” it would be the “n/55” from “n/60.” And people disagree with that, and they certainly have a right to disagree with that. But I would argue, the process failed us. Whether we disagree on the substance is separate from whether or not the process was a good process. And that is a multibillion dollar tail that will

live with us as long as that's in place. And we accept, in this report -- that we believe, based on the advice we got -- is that it will stay in place. But it's a good example -- it's probably the best example I can think -- of where the process failed us . . . . We have to have a much more professional, systematic, clear, open-daylight, fully transparent process; and one that we're not sort of nickel and dimed to death without, in some cases, knowing what we're doing, collectively.

To address these issues, the Task Force supported a continued moratorium on benefit enhancement legislation, citing Governor Richard J. Codey's pledge not to sign any benefit legislation that does not provide for a source of funding. Additionally, they recommended that any proposed benefits legislation must include certain elements that should be part of the Pension and Health Benefits Review Commission's analysis of legislation.

- **RECOMMENDED ACTION**

The Joint Committee recommends a continued moratorium on benefit enhancement legislation.

The Joint Committee's recommendation is consistent with that of the Benefits Review Task Force and the Joint Committee supports a continued moratorium on benefit enhancement legislation.

**RECOMMENDATION 19: CONTINUE MORATORIUM ON EARLY RETIREMENT INCENTIVES, EXCEPT IN CASES OF REGIONALIZATION AND CONSOLIDATION INITIATIVES RESULTING IN COST SAVINGS**

- **DISCUSSION**

Generally, New Jersey's public employee early retirement incentive (ERI) programs have provided limited, short-term savings in exchange for large, long-term retirement system liabilities. Several times over the past decade, State laws have been enacted that have permitted either general or very restrictive retirement incentive programs. Most recently, P.L.2002, c.23 provided retirement incentives to State and State college and university employees. This law increased pension system liabilities by \$645.4 million. Cumulative savings to the State for the four years since the early retirement incentive program total approximately \$314 million. Thus, the net liability from the ERI is \$331.4 million.

P.L. 2003, c.127, P.L.2003, c.128 and P.L.2003, c.129 extended an ERI program similar to that offered under the provisions of P.L.2002, c.23 to members of local government units and school district locations who adopted one of the programs.

Local government and school district employers are not permitted to offer their employees incentives to retire unless specifically authorized by law. Currently, the only two laws that authorize retirement incentive programs are N.J.S.A.43:8C-2 and N.J.S.A.43:8C-2.1. These laws are applicable only to local government units. Any retirement incentive program offered under the provisions of these laws must be approved by the Department of Community Affairs, Division of Local Government Services and must contain cost savings through a permanent reduction in staff.

The cost to an employer for providing a retirement incentive program can be significant. The exact cost must be determined by way of an actuarial analysis of the program and is dependent upon the nature of the incentive provided and the profile of the employees eligible for the program. The cost of the retirement incentive program will include two components:

1. The cost of the incentive itself (e.g., cash payment, post-retirement medical premiums, additional pension credit, etc.); and
2. The pension cost of inducing an employee to retire sooner than actuarially anticipated. Each retirement system operates under a set of assumptions, based on experience, as to when members will retire. If an employer offers its employees an incentive to retire, members retire earlier than would otherwise be the case, thereby increasing costs to the retirement system.

- **RECOMMENDED ACTION**

The Joint Committee recommends a continued moratorium on early retirement incentive programs because such programs have proven costly to the State and to local public employers.

Assemblyman O'Toole and Senator Gormley believe that no moratorium will be effective unless it is established in the Constitution, since the traditional ERI programs have been enacted by legislation. Any lesser moratorium, statutory or otherwise, can simply be overridden by such legislation in the future. They believe the Joint Committee should have recommended that a moratorium be proposed as a constitutional amendment banning any such program that will have a negative impact on a public pension system.

**RECOMMENDATION 20: ELIMINATE USE OF EXCESS VALUATION ASSETS TO REDUCE EMPLOYERS' NORMAL CONTRIBUTIONS IN STATE-ADMINISTERED RETIREMENT SYSTEMS**

- **DISCUSSION**

Existing law permits the State Treasurer to reduce the amount of normal contributions needed to fund the various State-administered retirement systems by the amount of excess valuation assets. State and local government employers pay annually a normal contribution to the retirement system. This contribution is determined each year on the basis of the annual valuation prepared by the system's actuary and represents the value of the benefits to be earned in the year following the valuation date.

P.L.1997, c.115, however, changed the manner by which the State financed its pension obligations. This law allowed the issuance of \$2.75 billion in pension obligation bonds to finance the plans' unfunded liability. Additionally, this law allowed the use of excess valuation assets of the retirement system to offset employers' annual normal contributions to the pension system. This change in funding policy resulted in either full or partial reductions in the State's and local government employers' otherwise required normal contributions to the retirement plan for fiscal year 1997 through fiscal year 2003.

P.L.2003, c.108 has led to a resumption of contributions, but on a phased-in approach. Under the provisions of this 2003 law, local employers' payments to the Public Employees' Retirement System (PERS) and the Police and Firemen's Retirement System (PFRS) are phased-in over five years. The phase-in further increases the unfunded liability of the systems.

State and local government employer pension holidays are one of four main reasons that the unfunded liability of the pension plans total \$18 billion. Frederick J. Beaver, Director of the Division of Pensions and Benefits, estimated that State and local employer contributions that were avoided over this time period total approximately \$8 billion.

The Benefits Review Task Force recommended that the State and local government employers participating in the retirement systems make the full employer contribution each year as determined by plan actuaries. The full contribution includes: (a) annual payments of the actuarially determined normal pension contribution ? defined as costs associated with service accrual between the past year and the current year; and (b) payments of a portion of any unfunded accrued liability ? the difference between assets and liabilities amortized over a 30-year period. The Task Force stated that the State and local employers must be required, by explicit legislation, to make the full employer contribution each year. It noted that offsetting normal employer contributions with surplus pension assets is not a prudent practice and that unsound funding techniques should not be part of the State's future fiscal practices.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to eliminate the use of excess valuation assets to reduce employers' normal contributions in the State-administered retirement systems.

The Joint Committee recommends that State and local government employers meet their full obligation to make the annual contributions to the State-administered retirement system as determined by the systems' actuaries. The avoidance of contributions has led to the current unfunded liabilities of the retirement systems.

**RECOMMENDATION 21: USE CONSISTENT AND GENERALLY ACCEPTED ACTUARIAL STANDARDS FOR PENSION VALUATIONS**

• **DISCUSSION**

In recent years, the State has not used consistent actuarial methods to determine pension fund assets, obligations and annual contributions. An actuarial method is a procedure for determining the present value of pension benefits that will be paid in the future, and allocating that value and the cost of the benefits to specific time periods. There are a number of accepted actuarial methods that fulfill the goal of fully funding all pension obligations as they become due, but they allocate costs in different ways during the period of employment of members in the plan.

Beginning in the early 1990s, a number of pension changes were implemented that, in hindsight, have led to an erosion in the financial health of the retirement systems. P.L.1992, c.41, changed the methodology by which plan assets were measured, basing these assets on actual market-related value of assets rather than book value. The calculation that yielded the higher market value of assets and an increase in the projected rate of investment return from 7% to 8.75% resulted in a \$733.4 million and \$785.7 million reduction in State and local employer pension contributions for fiscal years 1992 and 1993, respectively. The act used a five-year averaging of the market value of plan assets to help protect against sudden market shifts in plan assets, thus maintaining actuarially sound accounting principles. Notwithstanding these principles, the Legislature enacted several laws with the sole intention of reducing employer contributions to the pension funds by the use of excess valuation assets.

Pension funding policy was revised again under the P.L.1994, c.62. It changed the actuarial funding methodology for the State plans from the entry age normal method to the projected unit credit method. Although still an actuarially accepted method of pension funding, the shift from the entry age normal method to the projected unit credit method reduced State and local employer contributions in the short-term. Furthermore, under this funding methodology, the "normal cost" to the employer has a propensity to

increase over time. The “normal cost” represents the portion of the cost of projected benefits allocated to the current year.

The most prevalent actuarial method used by various state retirement plans is the entry age normal method. Of 85 plans surveyed by the Wisconsin Legislature in 2004, 66, or 78%, use the entry age actuarial method and only 13, or 15%, of the 85 plans use the unit credit method.

- **RECOMMENDED ACTION**

The Joint Committee recommends that the State maintain consistent and accepted actuarial standards to determine pension fund asset values, obligations and annual contributions. Any modifications to assumptions or actuarial methodology at the direction of the State that change asset values, obligations or annual contributions, should require public disclosure prior to adoption including a financial impact analysis.

The Benefits Review Task Force stated that methodologies for determining pension fund values and contribution requirements should not be changed again in order to mask the true cost of benefit enhancements.

## Health Benefits

### RECOMMENDATION 22: REQUIRE ALL ACTIVE PUBLIC EMPLOYEES TO PAY SOME PORTION OF COST OF HEALTH CARE INSURANCE PREMIUMS

- **DISCUSSION**

The State Health Benefits Program (SHBP) was established under the provisions of the "New Jersey State Health Benefits Program Act," N.J.S.A.52:14-17.25 et seq., to provide traditional indemnity benefits for State employees and their dependents. The SHBP was extended to include other public and school employees, through voluntary participation by counties, municipalities, school districts, public agencies and certain other authorities and commissions under the provisions of N.J.S.A.52:14-17.34.

Administered by the Division of Pensions and Benefits in the Department of the Treasury, the SHBP is a multiple option program offering health benefits coverage through the indemnity Traditional Plan or one of the managed care options, which include NJ PLUS and several health maintenance organizations (HMOs). SHBP also offers dental coverage and prescription drug benefits. Currently, 934 public employers participate in the SHBP and the program covers about 804,000 individuals, almost 10% of the population of New Jersey. SHBP is an employer health benefits program, not a health benefits program for the public. As is the case with health insurance programs of private sector employers with a large number of employees, the SHBP health plans are self-insured. The State and participating public employers other than the State pay the actual expenses of those plans plus administrative fees, and they assume the ultimate financial risk. "Premium" rates are established annually by the State Health Benefits Commission in order to fund the program's projected expenditures through appropriation for the State's expenses as an employer and through assessment of the participating employers other than the State.

N.J.S.A.54:17.28b provides that State employees and the employees of an independent State authority, board, commission, corporation, agency or organization may be required to contribute toward the cost of SHBP health benefits coverage according to the terms of

a binding collective negotiations agreement. The amount of an employee's premium sharing depends upon union affiliation and plan option. In 2006, for example, some union-affiliated State employees, required by contract to contribute toward the cost of their SHBP benefits, pay 25% of coverage cost if electing the Traditional Plan or pay 5% of coverage cost if electing an HMO. The State pays the remaining cost. The State pays the entire cost of coverage for the employees electing NJ PLUS. Non-aligned State employees (those whose positions are not eligible for union representation) contribute in the same manner, consistent with the terms of one of the union contracts binding on the State, as designated by the State Health Benefits Commission pursuant to the law.

Under current law, public employers other than the State participating in SHBP pay the cost of an employee's coverage and have the option of assuming the cost of dependent coverage. Most of these public employers, however, have agreed to assume the cost of SHBP coverage for their employees' dependents. A local employer must offer all SHBP plan options to its employees and any premium sharing must be uniform across all employee groups. Counties, municipalities, school districts and independent authorities that choose not to participate in SHBP may contract independently with one or more health insurance providers, self-insure or participate in a joint health insurance fund. These employers, pursuant to relevant union contracts, may or may not offer more than one plan option, and may or may not require employee premium sharing.

Frederick J. Beaver, Director of the Division of Pensions and Benefits stated that the State and SHBP participating local government units spend a total of \$3.6 billion annually on health care benefits. The State alone spends approximately \$2 billion per year on active State and higher education employee and State and local retiree health care benefits. Mr. Beaver testified that "cost drivers" include an increase in utilization, a greater and older population, medical price inflation, malpractice costs and the availability and use of more expensive drug therapy and changes in the mix of medical services. He noted that costs have risen by 150% over the past five years and will double by 2010. By 2010, the State cost for active employee benefits is projected to total \$1.5

billion and State-paid post retirement medical benefits would total \$2.1 billion, for a total State cost of \$3.6 billion.

The Benefits Review Task Force recommended that all active and retired State and local government employees contribute some portion of the cost of the health care benefits. The Task Force believes that all active and retired employees should share in the cost of health care. The current cost sharing method should also be revised so that the employee selects a plan based on personal need and cost. The Task Force recommended that the State contribute a fixed dollar amount toward each employee's choice, based upon an established percentage of one of the plans. The employee's cost would be higher or lower depending on the plan they select.

- **RECOMMENDED ACTION**

The Joint Committee recommends that some level of premium sharing be established for all active employees through the collective bargaining process.

The Joint Committee believes that all public employees should be required to pay some portion of the employer-provided health care insurance. The Joint Committee defers to the various public employers and employee representatives to determine the appropriate level of premium sharing through collective bargaining.

Senator Gormley and Assemblyman O'Toole believe the Joint Committee's recommendation appears in reality to be no stronger than the status quo. They believe the Joint Committee should have recommended that a specific level of minimum cost sharing be statutorily required. The Benefits Review Task Force suggested that employees carry a share of 5% to 10%. In order to recognize differences in ability to pay and to provide appropriate flexibility in negotiations, this could be achieved by mandating a certain overall percentage employee share, with the distribution of that share among income groups to be subject to collective bargaining.

**RECOMMENDATION 3: REQUIRE FUTURE RETIREES TO PAY SOME PORTION OF COST OF HEALTH CARE INSURANCE PREMIUMS**

- **DISCUSSION**

Currently, most retirees who are eligible for employer-paid post-retirement health care benefits under the State Health Benefits Program (SHBP) do not contribute any amount toward the cost of that coverage beyond payment of their particular plan's deductible or copayment requirements. Eligibility for such benefits is tied to receipt of a pension based upon 25 or more years of public service. For those retirees, the statutes at the time of their retirement provided for full payment by a public employer. Teachers and employees of boards of education and county colleges, for example, receive free SHBP coverage in retirement, including full reimbursement of the prevailing cost of Medicare Part B, if they have 25 or more years of service (N.J.S.A.52:14-17.32f and 52:14-17.32f1). The State pays the cost of this coverage. State employees who accrued 25 years of service on or before July 1, 1997 also receive fully paid SHBP coverage (N.J.S.A.52:14-17.32).

State employees who attain 25 years of service credit or retire on disability after July 1, 1997, may be required to share in paying the cost of SHBP coverage and Medicare Part B according to the terms specified in the union contract applicable to them at the time they attain 25 years of service credit, or retire for disability (N.J.S.A.52:14-17.28b). In 1996, the statutes were amended to provide that State employees and the employees of an independent State authority, board, commission, corporation, agency or organization may be required to contribute toward the cost of SHBP health benefits coverage while active employees according to the terms of a binding collective negotiations agreement. The amount of an employee's premium sharing depends upon union affiliation and plan option.

For certain police officers and firefighters and their dependents, but not survivors, who retire with 25 or more years of service credit, or on disability, and who do not receive any employer payment toward post-retirement health benefits, regardless of whether their former employers make any payment toward such benefits for other retirees, the State

pays 80 percent of the least expensive cost of coverage among the SHBP plans (N.J.S.A.52:14-17.32i). The retiree pays the remainder of the cost of whatever plan is chosen and pays for Medicare Part B.

Public employers other than the State participating in SHBP may choose to offer SHBP benefits in retirement to employees not electing deferred retirement, and their dependents as well as survivors. Before 1999, local government employers offering paid post-retirement SHBP benefits were responsible for the full cost. For more recent retirees, the employer payment obligations for such benefits may be determined by a binding collective negotiations agreement with respect to aligned employees and in the sole discretion of the employer with respect to non-aligned employees (N.J.S.A.52:14-17.38). Employers other than the State may also choose to reimburse retirees for the cost of Medicare Part B.

At the time the State and other public employers agreed to fully support the cost of SHBP coverage during retirement, the costs of doing so were significant but acceptable. Over the past decade, however, that cost has increased exponentially. Frederick J. Beaver, Director of the Division of Pensions and Benefits, explained to the Joint Committee that SHBP costs in general have risen by 150% over the past five years and will double by the year 2010. The statutory modifications to public employers' obligation to pay the full cost of post-retirement SHBP benefits with the development of premium sharing through collective negotiations are part of efforts to control the cost of providing health care benefits in retirement to retirees and their dependents in order to lighten the burden ultimately borne by the taxpayers.

- **RECOMMENDED ACTION**

The Joint Committee recommends that all future retirees receiving employer-paid SHBP benefits pay some amount of health care premiums. The amount should be linked to a retiree's ability to contribute by application of a sliding scale of payments to the range of the amounts of pensions. For those retirees with limited pension resources, the payment

would be minimal. Institution of this type of payment would need to be integrated statutorily with current laws already providing for some negotiated premium sharing.

The Joint Committee finds that payment of SHBP coverage for retirees is becoming a significant proportion of budgetary expenses. While public employers should continue to support post-retirement SHBP coverage, some needs-tested cost sharing is appropriate.

**RECOMMENDATION 24: PROVIDE FLEXIBILITY TO LOCAL GOVERNMENT EMPLOYERS PARTICIPATING IN SHBP TO NEGOTIATE DIFFERENT LEVELS OF COST SHARING AND PLAN SELECTION WITH THEIR CURRENT EMPLOYEES**

- **DISCUSSION**

Currently, local government and school district employers do not have the ability to negotiate the amount of State Health Benefits Program (SHBP) premium or periodic charges to be paid by the employer. This collective negotiation process is available to the State, pursuant to N.J.S.A.52:14-17.28b, which allows active employee and retiree premium sharing resulting from labor contract agreements, effective July 1, 1997. Local governments may negotiate premium sharing with regard to their retirees since 1999, N.J.S.A.53:14-17.38.

The Benefits Review Task Force recommended that the State provide greater health care options for local negotiations. The Task Force stated that local employers should be given the flexibility to negotiate terms and conditions of coverage under the SHBP. This would include premium sharing arrangements for both employees and dependents on a bargaining unit level, as well as the ability to negotiate what plans are to be included for offering to their bargaining units.

Many of the invited constituency groups who testified before the Joint Committee advocated making the SHBP more flexible and specifically mentioned the uniformity rule as an area to be addressed. Lynne Strickland, Executive Director, Garden State Coalition of Schools, testified in favor of allowing school districts to negotiate with individual bargaining units on health benefits. Barbara Horl, Lobbyist, Government Relations, New Jersey School Boards Association, said school districts should be given the ability to negotiate tiered benefits.

Frederick J. Beaver, Director of the Division of Pensions and Benefits, acknowledged that local employers leave SHBP seeking more flexibility.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation that would allow local public employers to negotiate collectively both premium sharing arrangements, as well as offering different plan coverage within the SHBP. A local employer, for example, would be permitted to negotiate SHBP coverage through a health maintenance organization only as opposed to the wide array of options currently mandated to be available. In addition, a local employer would be permitted to negotiate some level of premium cost sharing with their employees.

The Joint Committee recommends that local public employers should be empowered to negotiate collectively with their employees the details of SHBP coverage to be available in order to maximize savings and control costs for the taxpaying public.

**RECOMMENDATION 25: REQUIRE THAT SHBP BENEFITS CHANGES NEGOTIATED BY STATE BE APPLIED TO LOCAL GOVERNMENTS**

• **DISCUSSION**

The State Health Benefits Program (SHBP) is a multiple option program offering health benefits coverage through the indemnity Traditional Plan or one of the managed care options, which include NJ PLUS and five health maintenance organizations (HMOs). Copayments in the managed care plans, determined in collective negotiations with State employees, are \$10. Elimination of dual coverage within SHBP for State employees was also negotiated.

The Benefits Review Task Force suggested that the State Health Benefits Commission apply changes in benefits resulting from the State's collective bargaining agreements to participating local employers. Application of office visit and prescription copayment amounts to local participants of such changes were made from 1996 until 2003. The changes at issue include increasing managed care office visit and prescription copayments as well as eliminating dual coverage, that is, coverage of a person under one or more SHBP plans as both employee and dependent. The State Health Benefits Commission has taken action to apply the copayment increases for office visits and prescriptions. The commission has proposed rules for 2007 prohibiting multiple coverage in SHBP as an employee, retired employee or dependent.

• **RECOMMENDED ACTION**

The Joint Committee recommends that legislation be enacted to ensure that basic changes made in the provision of SHBP benefits to State employees, such as the amount of copayments for office visits and prescription drugs, be applicable at the same time to all individuals covered by SHBP.

The Joint Committee believes that it is important that SHBP benefits changes negotiated by the State with its employees be applicable to employees of local employers not only to reduce administrative expenses for all through conformity but also to extend to those

local employers the same cost savings enjoyed by the State. The Joint Committee believes that it is important to ensure consistency in health benefit coverage and cost for all public employees.

**RECOMMENDATION 26: LIMIT SHBP PARTICIPATION TO THOSE WHO WORK AT LEAST 35 HOURS PER WEEK**

- **DISCUSSION**

N.J.S.A.52:14-17.26 defines an employee who is eligible to participate in the State Health Benefits Program (SHBP) as “an appointive or elective officer or full-time employee of the State of New Jersey.” This definition is extended to local government employees by N.J.S.A.52:14-17.36, which states “The commission. . . is hereby authorized to prescribe rules and regulations satisfactory to the carrier or carriers under which employers may participate in the health benefits program provided by that act. All provisions of that act will, except as expressly stated herein, be construed as to participating employers and to their employees and to dependents of such employees the same as for the State, employees of the State and dependents of such employees.” This section was added to the law in 1964, three years after the creation of the SHBP, and has never been amended.

However, the law does not establish a minimum number of hours that employees must work to be considered “full-time.” The commission has, by regulation, promulgated different definitions for “full-time” as it applies to State and local employees.

For State employees, the commission defines “full-time” at N.J.A.C.17:9-4.2. The definition states, in part, that for State employees full-time means “the normal full-time weekly schedule for the particular class title, and in any case not less than 35 hours per week.” For local employees, the commission defines “full-time” at N.J.A.C.17:9-4.6. The definition states, in part, that for the purpose of local coverage, “full-time” means:

Employment of any eligible employees who appear on a regular payroll and who receive a salary or wages for an average of the number of hours per week as prescribed by the governing body of the participating employer. Each participating employer shall, by resolution, determine the number of hours worked which shall be considered to be “full-time.” In no case shall the number of hours for “full-time” be less than 20. The employer, at its option, may grandfather all employees who were eligible for coverage under the location’s previous definition of full-time.

The result is that while a State employee generally must work at least 35 hours per week to be enrolled in the SHBP, a local employee need only work a minimum of 20 hours per week to be eligible for enrollment. Additionally, a local employer may have grandfathered in any employees who were eligible for coverage under the location's definition of "full-time" prior to the enactment of the 20 hour requirement.

- **RECOMMENDED ACTION**

The Joint Committee recommends enactment of legislation to clarify that only full-time employees are eligible for SHBP coverage by defining a full-time employee as an employee who works 35 or more hours each week. This proposal should apply only to new employees enrolling in SHBP after the enactment of legislation.

The Joint Committee believes that significant savings to local public employers and their taxpayers are possible by bringing them into conformity with State practice and ensuring that only genuinely full-time employees and their dependents are eligible for the desirable and costly benefits of SHBP coverage. The implementation of this proposal should not impair the obligation in any collective negotiations agreement or contract of employment in effect when the legislation is enacted.

**RECOMMENDATION 27: ALLOW LOCAL EMPLOYERS PARTICIPATING IN SHBP TO PROVIDE MONETARY INCENTIVES TO PUBLIC EMPLOYEES WHO ELECT TO WAIVE SHBP COVERAGE**

- **DISCUSSION**

Under the provisions of N.J.S.A.52:14-17.31a, municipalities (since 1995), municipal authorities (since 2001), and county colleges (since 2003) have had the option to provide financial incentives to employees who waive coverage under the State Health Benefits Program (SHBP) if the employee is eligible for other health care coverage. The incentive amount is currently, by law, no more than 50% of the amount saved by the employer through the employee's waiver of coverage. It is up to the employer to determine how much of an incentive to offer up to the statutory limit and the SHBP does not track the amount each employer offers or the total amount of premiums waived. The State, State colleges and universities and boards of education are not permitted to offer monetary incentives for waiving SHBP coverage.

The Benefits Review Task Force found that the SHBP eligibility and participation rules should be revised and structured to not encourage employees to enroll spouses and dependents where other employer based coverage is available. One of the Task Force recommendations included an option to provide cash incentives to not enroll in the SHBP when other employer coverage is available, as is currently used by some municipalities.

According to Frederick J. Beaver, Director of the Division of Pensions and Benefits, currently 1,291 local government and county college employees waive SHBP coverage in return for a monetary incentive and 1,000 local government and county college employees voluntarily waive SHBP coverage. In addition, currently 3,580 State, State college, and education employees voluntarily waive SHBP coverage.

At the October 12, 2006 Joint Committee meeting, Lynne Strickland, Executive Director, Garden State Coalition of Schools, spoke about the high costs and inflexibility in the SHBP. She suggested implementing opt-out provisions for employees who already have coverage via a spouse's policy, and instituting a waiver incentive. In addition, Barbara

Horl, a lobbyist for the New Jersey School Boards Association, also advocated for the right to offer waivers for employees with duplicate coverage.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to permit waiver incentives to all local public employers. Such legislation, for example, would allow boards of education to offer monetary incentives to waive SHBP coverage, which they are unable to do currently. The Joint Committee recommends that the maximum amount of the waiver be 25% of the amount saved by the employer through the employee's waiver of coverage but only for employees who waive after the enactment of the legislation.

The Joint Committee believes that permitting all local public employers to offer monetary incentives to waive SHBP coverage to employees with other such coverage will give those employers another tool to use in their efforts to control the costs of providing health benefits, to save taxpayer dollars, and offer property tax relief.

**RECOMMENDATION 28: PROHIBIT OUT-OF-STATE PURCHASED PENSION SERVICE FROM BEING CREDITABLE TOWARDS POST-RETIREMENT HEALTH CARE BENEFITS**

• **DISCUSSION**

At present, the law allows PERS and TPAF members to purchase credit in their retirement system for temporary, provisional, certain intermittent and substitute employment if the employment was continuous and immediately preceded a permanent or regular appointment, N.J.S.A.43:15A-11; N.J.S.A.18A:66-13 et seq. PFRS members are eligible to purchase credit for temporary service rendered in a title eligible for participation in PFRS that was continuous and immediately preceded a permanent or regular appointment. Members of PERS, TPAF and PFRS may purchase credit for leave of absence without pay, former membership, out-of-State service, federal service, and military service, N.J.S.A.43:15A-73.1; 43:15A-73.4; 18A:66-13 et seq; 43:16A-11.9 et seq.

A member may purchase all or a part of eligible service. A cost estimate is prepared based upon the member's age, current salary, amount of service to be purchased, and whether the purchase is a cost-shared purchase, member pays employee contribution only (most purchases) or a full-cost purchase, employee pays both employee and employer contribution (e.g., local, federal and military service). Credit may be purchased through a lump sum payment or a payroll deduction with interest.

The purchase of credit enables a member to accrue additional time in a retirement system which increases the member's retirement benefit, may enable the member to retire sooner, and may enable the member to qualify for employer-paid post-retirement medical benefits, based upon length of service (currently 25 years for PERS and TPAF retirees).

• **RECOMMENDED ACTION**

The Joint Committee recommends enactment of legislation to provide that purchases, made after its effective date, of service credit in the State-administered retirement systems for service with the federal government or another state, be creditable for

purposes of pension benefit calculations but not be creditable in determining eligibility for post-retirement health care benefits. Purchases of credit for in-State service or service with the military should continue to be creditable in determining eligibility for post-retirement health care benefits. This legislation should apply to purchases made by current and future system members.

The Joint Committee, aware of the increasing cost of providing health care benefits to retired public employees and sensitive to property tax burdens, believes that post-retirement benefits should be linked to long-term service within the State.

**RECOMMENDATION 29: PROHIBIT MULTIPLE HEALTH CARE COVERAGE IN SHBP**

• **DISCUSSION**

N.J.S.A.52:14-17.29 provides the State Health Benefits Commission with the authority to limit benefits to “avoid inequity, unnecessary utilization, duplication of services or benefits otherwise available.” The commission proposes to amend current regulation N.J.A.C. 17:9-3.5, “Multiple coverage; employee and spouse,” by clarifying in both the heading and rule that multiple coverage in the State Health Benefits Program (SHBP) as an employee, retired employee or dependent is prohibited after the effective date of the adoption of these proposed amendments. This amendment clarifies that all multiple coverage in the SHBP is prohibited.

The proposed prohibition of multiple coverage in the SHBP is consistent with the provisions found in all negotiated State employee contracts; however, since many State employees are married to employees of local public employers, the SHBP is unable to implement these provisions unless they are applied uniformly across all SHBP contracts. In addition, local government law already prohibits duplicate coverage under N.J.S.A.40A:10-18 and 40A:10-19, which specifically exclude employees of municipalities from coverage if they have coverage elsewhere. N.J.S.A.18A:16-14 has a similar provision for boards of education. Finally, N.J.S.A.52:14-17.28 and 29 mandate a uniform level of basic benefits for all members of the SHBP. Comments on these proposed regulations should be submitted by January 5, 2007.

The Benefits Review Task Force recommended an end to dual health coverage. The report stated that this change will have a positive economic impact on participating SHBP local employers by no longer requiring a local employer to make premium payments for coverage if an employee or dependent of an employee is already covered in the SHBP.

The commission self-funds all SHBP health plans. The commission said that the elimination of multiple coverage does not eliminate coverage of the member’s health

claims. The elimination of multiple coverage will, however, achieve some savings through reduction in administrative costs associated with multiple coverage.

In the discussion of the proposed change to regulation, the commission states that health benefits costs represent a significant portion of a public employer's annual budget. With health care costs rising much faster than general inflation, tremendous pressure is being placed on employer-sponsored health plans to better manage the limited funds available for providing employee/retiree health benefits coverage. With ever increasing costs to taxpayers to pay for health care coverage for public employees, the commission believes it is no longer reasonable to provide additional coverage to public employees, or their dependents, who may qualify for enrollment more than once through multiple SHBP contracts. Every SHBP participant should only be entitled to coverage under one SHBP contract at a time. Each dollar spent to provide this redundant coverage is a dollar lost to other public programs. The State Auditor has twice cited the unnecessary expense associated with dual coverage in its audits of the SHBP.

The commission's actuary has estimated \$15 million in coordination of benefits savings as a result of the elimination of multiple coverage. Additionally, the commission's actuary has estimated that the SHBP should save \$3 million annually by eliminating or reducing administrative expenses associated with providing coverage under multiple contracts.

- **RECOMMENDED ACTION**

The Joint Committee recommends enactment of legislation to ensure that no SHBP duplicate coverage is available to an enrolled individual as an active employee, retiree or dependent.

The Joint Committee recommends that applicable regulations prohibiting multiple coverage within SHBP be codified in law to abolish any current inequities and unnecessary utilization or duplication of services and benefits, and thereby to achieve savings for public employers and the taxpayers.

**RECOMMENDATION 30: OFFER SHBP BASIC HEALTH CARE PLAN AT LOW COST TO PUBLIC EMPLOYEES AND DETERMINE COST TO EMPLOYEE OF SHBP PLAN ACCORDING TO SLIDING SCALE WITH REGARD TO EMPLOYEE'S COMPENSATION**

- **DISCUSSION**

The State Health Benefits Program (SHBP) is a multiple option program offering health benefits coverage through the indemnity Traditional Plan or one of the managed care options, which include NJ PLUS and five health maintenance organizations (HMOs). Copayments in these managed care plans are now \$10. SHBP also offers dental coverage and prescription drug benefits. The SHBP health plans are self-insured. "Premium" rates are established annually by the State Health Benefits Commission in order to fund the program's projected expenditures through appropriation for the State's expenses as an employer and through assessment of the participating employers other than the State.

Current law provides that State employees and the employees of an independent State authority, board, commission, corporation, agency or organization may be required to contribute toward the cost of SHBP health benefits coverage according to the terms of a binding collective negotiations agreement. The amount of an employee's premium sharing depends upon union affiliation and plan option. In 2006, for example, some union-affiliated State employees, required by contract to contribute toward the cost of their SHBP benefits, pay 25% of coverage cost if electing the Traditional Plan or pay 5% of coverage cost if electing an HMO. The State pays the remaining cost. The State pays the entire cost of coverage for the employees electing NJ PLUS. Non-aligned State employees (those whose positions are not eligible for union representation) contribute in the same manner, consistent with the terms of one of the union contracts binding on the State, as designated by the State Health Benefits Commission pursuant to the law. Public employers other than the State participating in SHBP pay the cost of an employee's coverage and have the option of assuming the cost of dependent coverage. Most of these public employers, however, have agreed to assume the cost of SHBP coverage for their employees' dependents.

The Benefits Review Task Force report recommended that all employees and retirees in the State Health Benefits Program (SHBP) contribute toward the cost of their health care benefits. The cost of premiums as well as the cost of sharing any portion of premiums, however, is an objective amount unrelated to an employee's level of compensation. As a percentage of income, premium sharing can create a financial burden on lower-paid employees. The Task Force suggested the establishment of a base plan, a safety net plan, that would require little or no employee contribution and would provide adequate health care benefits. The cost of such a plan could be equivalent or close to the amount the public employer pays toward the cost of any other SHBP plans. Alternatively, the cost to an employee of any SHBP plan could be determined according to a sliding scale based on an employee's compensation.

- **RECOMMENDED ACTION**

The Joint Committee recommends that the Division of Pensions and Benefits develop a basic benefits health plan as part of the options available to public employers participating in the SHBP, in order to ensure that any negotiated premium sharing does not impose a financial burden on employees with lower compensation. The Joint Committee also recommends that the cost to an employee of any SHBP plan should be determined according to a sliding scale with regard to the employee's compensation.

The Joint Committee is committed to the goal of having all public employees share in the cost of health care coverage, as a way of controlling expenses ultimately supported by property taxes, but does not want that sharing to impose a disproportionate burden on employees with limited income.

Senator Gormley and Assemblyman O'Toole believe the Joint Committee's recommendation in this area falls short of the recommendation of the Benefits Review Task Force, which they endorse. They believe the Joint Committee should have recommended accelerating the phase-out of the traditional indemnity plan, and replacing NJ PLUS with a preferred provider organization (PPO) plan as recommended by the task force. The PPO would offer an essential benefits plan, with the option of purchasing

riders for additional coverages to suit the needs of covered members. Employee cost sharing would be subject to negotiations. Senator Gormley and Assemblyman O'Toole recognize that the recommendation is not inconsistent with the Task Force's goal, but believe it should have been more specific.

**RECOMMENDATION 31: MANDATE USE OF MAIL ORDER FOR MAINTENANCE PRESCRIPTIONS AND ENCOURAGE GENERIC DRUG UTILIZATION FOR SHBP PARTICIPANTS**

- **DISCUSSION**

The State Health Benefits Program (SHBP) has two prescription drug plans, one for active employees and one for retirees. The Employee Prescription Drug Plan is administered by Horizon Blue Cross Blue Shield through Caremark, which is a pharmacy benefits management company. After a copayment of \$10 for name brand drugs or \$3 for generic drugs, the State Prescription Drug Program for active State employees covers the cost of a 30-day supply at a retail pharmacy. A 90-day supply for any drug obtained through mail order requires a copayment of \$15 for name brand drugs or \$5 for generic drugs. Three copayments may be paid for a 90-day supply at a retail pharmacy. SHBP participating employers other than the State may offer prescription drug benefits at an additional cost in the SHBP plan options or through a free-standing prescription card. HMOs provide prescription drug coverage to their enrollees.

Caremark also administers the separate SHBP Retiree Prescription Drug Plan for retirees under the Traditional Plan and NJ PLUS. It requires a certain copayment for up to a 30-day supply at a retail pharmacy or up to a 90-day supply through mail order (a 90-day supply at a retail pharmacy requires three copayments). The amount of a copayment varies depending upon which of three prescription drug categories applies and the method of purchase. Generic drugs (FDA approved equivalents to brand name drugs) have a copayment of \$8 for either up to a 30-day supply at a retail pharmacy or up to a 90-day supply via mail order. Preferred brand drugs (more cost effective alternatives within a therapeutic class of brand name drugs with comparable therapeutic efficacy - includes over 80% of all brand name drugs) copayments are \$16 for retail pharmacy and \$25 for mail order. All other brand name drugs are in the third category that requires a copayment of \$33 at a retail pharmacy and \$41 through mail order. Out-of-pocket prescription drug copayments per person are capped at a maximum of \$1,000 annually.

Providing prescription drug benefits through mail order is less expensive to the SHBP prescription drug plans for active employees and retirees. Once a medication becomes part of a person's routine, prescribed for more than 90 days, it no longer needs to be dispensed on short notice by a local pharmacy. The State Health Benefits Commission, on September 5, 2006, tabled the issue of mandatory utilization of mail order until January 2007.

The Benefits Review Task Force has stated that New Jersey is one of the lowest "generic fill" states in the nation. Savings opportunities are sometimes lost through the selection of expensive brand name drugs when equally effective, lower-cost generics are available. There are ways to encourage generic utilization such as creating cost sharing models that compel users to consider alternatives to brand name drugs and increasing the copayment differential between generic and brand name drugs.

The Benefits Review Task Force supports both the use of mail order for maintenance prescriptions for SHBP participants and encourages the greater generic drug utilization.

- **RECOMMENDED ACTION**

The Joint Committee recommends that the State Health Benefits Commission, as part of the administration of the SHBP prescription plans for active employees and retirees, implement educational initiatives and copayment incentives to increase the use of mail order of maintenance prescriptions for brand name and generic drugs.

The Joint Committee also recommends that the SHBP employ programs designed to encourage the use of generic drugs.

The Joint Committee recognizes the medically essential and fiscally significant role of the prescription plans in SHBP coverage and believes that every effort needs to be made to maintain that coverage while controlling its cost to employees and retirees through favorable copayments as well as to taxpayers.

**RECOMMENDATION 32: REQUIRE SHBP BULK PURCHASING OF PHARMACEUTICALS**

• **DISCUSSION**

The New Jersey Education Association, in testimony before the Joint Committee, suggested the practice of bulk purchasing of prescription drugs to control the cost of health care benefits. Director of the Division of Pensions and Benefits Frederick Beaver explained that the SHBP has “a large-group purchasing power,” which allows it to negotiate contracts effectively.

• **RECOMMENDED ACTION**

The Joint Committee recommends that the State Health Benefits Commission ensure maximum cost savings within its two prescription drug plans by requiring bulk purchasing of pharmaceutical drugs whenever possible.

To reduce direct costs and achieve savings through efficiency, the Joint Committee urges the State Health Benefits Commission, when it contracts to provide prescription drug benefits with a pharmacy benefits manager, or authorizes a health care benefits administrator to contract with a pharmacy benefits manager, to require utilization of bulk purchasing of pharmaceutical drugs to the extent appropriate and feasible.

**RECOMMENDATION 33: STUDY USE OF PHARMACY BENEFITS MANAGER**

• **DISCUSSION**

The State Health Benefits Program (SHBP) has two prescription drug plans, one for active employees and one for retirees. The Employee Prescription Drug Plan is administered by Horizon Blue Cross Blue Shield through Caremark, which is a pharmacy benefits management (PBM) company. SHBP participating employers other than the State may offer prescription drug benefits at an additional cost in the SHBP plan options or through a free-standing prescription card. HMOs provide prescription drug coverage to their enrollees. Caremark also administers the separate SHBP Retiree Prescription Drug Plan for retirees under the Traditional Plan and NJ PLUS.

The Benefits Review Task Force stated that prescription drug costs in the SHBP have doubled in the last 5 years (2001-2005) and are projected to be over \$900 million in plan year 2006. It further stated that cost trends suggest continued double digit annual growth in prescription drug expenses, which currently comprise more than 20% of total SHBP expenditures. These expenses will continue to be a significant cost driver in the years ahead.

The Benefits Review Task Force recommended that the State should contract directly with a pharmacy benefits manager through a competitive bid process to provide prescription drug coverage for all employees and retirees. The transfer to a PBM will establish a master contract with greater volume, ensure the State receives the best deal available, eliminate the current subcontracting arrangements that exist with many of the SHBP health plans, streamline administration and the rate-setting processes, standardize coverage and provide greater transparency and audit capabilities.

The State's health care consultant has estimated the potential savings to be approximately 3% to 5% of prescription costs, or \$27 million to \$45 million, from directly contracting with a PBM.

- **RECOMMENDED ACTION**

The Joint Committee recommends the creation of a commission to study potential savings from contracting directly with a PBM.

The Joint Committee recognizes the fiscally significant role of prescription drug plans in the SHBP and believes that every effort needs to be made to reduce and control their costs to employees and retirees as well as to taxpayers.

**RECOMMENDATION 34: REQUIRE DIVISION OF PENSIONS AND BENEFITS SCREENING OF SHBP FOR INELIGIBLE PARTICIPANTS**

• **DISCUSSION**

In his presentation on September 13, 2006, the Director of the Division of Pensions and Benefits, Frederick Beaver, stated that the division audits the SHBP plans through both an internal group and external auditors. A report of the State Auditor covering the period July 1, 1997 to November 25, 1998, suggested that the division work to improve the accuracy of employee enrollments, ensuring that terminations and retirements are properly handled by the data system, which was in the process of being improved. The auditor suggested that the division needed to work with employers on proper reporting of employee status. In its report for the period of July 1, 2000 to May 31, 2002, the State Auditor found that the division had resolved issues related to effectively eliminating persons no longer eligible for coverage. At its meeting on September 19, 2006, the Joint Committee received comments from the New Jersey Education Association and a private citizen urging that SHBP be audited to ensure that no ineligible individuals receive benefits.

• **RECOMMENDED ACTION**

The Joint Committee recommends continuing and increasing efforts by the Division of Pensions and Benefits to assure that individuals enrolled in the SHBP are eligible for that coverage and to educate local public employers on the importance of maintaining accurate and up-to-date records of the eligibility of their employees.

The Joint Committee believes that utilizing information available in the administration of the pension systems as well as the Wage Reporting System of the Department of Labor, the Division of Pensions and Benefits can continue to confirm the eligibility of employees covered by the State Health Benefits Program to prevent fiscal waste by saving taxpayer dollars for both the State as an employer and local employers.

**RECOMMENDATION 35: ESTABLISH DISEASE AND CHRONIC CARE MANAGEMENT PROGRAM FOR ALL SHBP PARTICIPANTS**

- **DISCUSSION**

As part of the Division of Pensions and Benefits efforts to manage the cost of providing health care benefits, Mr. Frederick Beaver mentioned the development of disease management programs. The division reviews utilization of services within SHBP and works with plan administrators to develop programs such as management of diabetes or obesity.

- **RECOMMENDED ACTION**

The Joint Committee recommends that the Division of Pensions and Benefits increase efforts to implement effective management programs for appropriate diseases and chronic conditions whenever possible.

The Joint Committee believes that innovative, but proven, disease and chronic care management plans for specified conditions should be considered for contracts purchased by the State Health Benefits Commission as a way of improving health care and yielding cost savings in the longer term.

## Other Benefits

### **RECOMMENDATION 36: LIMIT SICK LEAVE COMPENSATION PAYABLE UPON RETIREMENT TO \$15,000 FOR ALL LOCAL GOVERNMENT AND BOARD OF EDUCATION EMPLOYEES**

- **DISCUSSION**

At present, the law does not limit the amount of supplemental compensation for accumulated sick leave that may be paid to a local government or school board employee upon retirement. However, this benefit is limited by N.J.S.A.11A:6-19 to \$15,000 for State employees.

State employees in the career service, and those in the senior executive and unclassified services who have been granted sick leave under terms and conditions similar to career service employees, are entitled to supplemental compensation for sick leave upon retirement, N.J.S.A.11A:6-16. Similar provisions apply to employees of Rutgers, the New Jersey Institute of Technology, and the University of Medicine and Dentistry of New Jersey who perform services similar to those performed by career service employees of State colleges, N.J.S.A.11A:6-17. Supplemental compensation is computed at the same rate of one-half of the employee's rate of pay for each day of accumulated sick leave based upon compensation during the last year of employment, but may not exceed \$15,000. The Merit System Board has adopted regulations establishing procedures for the payment of supplemental compensation, N.J.A.C.4A:6-3.1 et seq.

The provisions of law governing State employee supplemental compensation for accumulated sick leave were enacted as part of Title 11A of the New Jersey Statutes in 1986. The prior law, enacted in 1973, capped supplemental compensation at \$12,000. This was increased to \$15,000 by the 1986 enactment.

The Report of the Benefits Review Task Force recommended, "The State's cap on sick leave payouts of \$15,000 must be implemented at all government levels." The Task Force noted that the 1998 State Commission of Investigation (SCI) Report on Pension

and Benefits Abuses indicated that the 11 highest payouts for accumulated sick leave in one year totaled approximately \$1 million, with an average per person payout of nearly \$100,000.

Recently, the SCI issued a report on questionable and hidden pay and perks for top school officials entitled Taxpayers Beware: What You Don't Know Can Cost You. An Inquiry Into Questionable and Hidden Compensation for Public School Administrators. The SCI found "significant weaknesses in the statutory and regulatory structure governing public employee benefits in New Jersey that enable public employees below the State level of government to obtain lucrative packages involving sick and vacation leave." This investigation revealed the widespread practice of allowing administrators to cash-in substantial amounts of accumulated sick and vacation leave at retirement or upon departure.

This issue was discussed at meetings of the Joint Committee. Persons testifying before the committee were generally opposed to a State-mandated limit of \$15,000 on sick leave payouts for local government and school district employees, arguing that this should be the subject of contract negotiations between employers and employees. One witness noted that most counties already cap this benefit.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to limit sick leave compensation payable upon retirement to \$15,000 for local government and education employees. The legislation should apply to sick leave granted after enactment. Local government and school board employees who, as of the law's effective date, have accrued supplemental compensation based upon accumulated sick leave in an amount in excess of \$15,000 should remain eligible to receive the full accumulated amount as of the conclusion of an existing contract or \$15,000, whichever is greater. The legislation should take effect after the expiration of any collective bargaining agreement or individual contract of employment in effect at the time of enactment so that no obligation in a contract is impaired.

The Joint Committee has concluded that this recommendation will bring supplemental compensation for accumulated unused sick leave in line with the current law and practice for State employees, thus standardizing this benefit for public employees serving at different levels of government in the State. In addition, this recommendation will enable local governments to control public employee benefit costs which, in turn, will reduce property tax revenue needs.

**RECOMMENDATION 37: LIMIT ACCUMULATION OF VACATION LEAVE TO ONE YEAR FOR ALL LOCAL GOVERNMENT AND BOARD OF EDUCATION EMPLOYEES**

- **DISCUSSION**

At present, the law does not limit the amount of unused vacation leave that may be accumulated by employees of boards of education or local governments that have not adopted Title 11A (Civil Service) of the New Jersey Statutes. Employees of local governments that have adopted the Civil Service law are limited by N.J.S.A.11A:6-3 as follows. Vacation not taken in a given year because of business demands accumulates and can be granted during the next succeeding year only; except that vacation leave not taken in a given year because of duties directly related to a state of emergency declared by the Governor may accumulate at the discretion of the appointing authority until, pursuant to a plan established by the employee's appointing authority and approved by the Commissioner of Personnel, the leave is used or the employee is compensated for that leave, which shall not be subject to collective negotiation or collective bargaining.

The recent SCI report on questionable and hidden pay and perks for top school officials revealed the widespread practice of allowing administrators to cash-in substantial amounts of accumulated sick and vacation leave at retirement or upon departure.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to limit the indefinite accumulation of vacation leave accruing after the legislation's enactment. The legislation should take effect after the expiration of any collective bargaining agreement or individual contract of employment in effect at the time of enactment so that no obligation in a contract is impaired. The indefinite accumulation of vacation leave by those employees should cease for vacation leave accruing after the legislation's effective date.

The Joint Committee has concluded that this recommendation will bring the carry forward of unused vacation time in line with the current law and practice for State employees, thus standardizing these benefits for public employees serving at different

levels of government in the State. In addition, this recommendation will enable local governments to control public employee benefit costs which, in turn, will reduce property tax revenue needs.

**RECOMMENDATION 38: ELIMINATE STATE'S SICK LEAVE INJURY PROGRAM**

•' **DISCUSSION**

New Jersey is one of only five states that provide a sick leave benefit at full wages in addition to workers' compensation to State employees injured at the workplace. N.J.S.A.11A:6-8 provides for the program that has been in effect since 1986. Regulations promulgated by the Merit System Board in the Department of Personnel regulate the use of the program by providing full wages for up to one year.

As opposed to workers' compensation, which pays injured employees a temporary benefit not to exceed 70% of the Statewide average weekly wage, the sick leave injury program is a salary continuation program that provides full pay to employees, although sick leave injury program payments are reduced by amounts received by the employee for workers' compensation.

The purpose of the sick leave injury program, defined in N.J.A.C. 4A:6-1.6 et seq., is to provide a continuation of pay for up to one year for State employees who are injured or become ill from work-related causes. Employees continue to pay income taxes and both employee and employer continue to pay social security and other payroll taxes. After a year on sick leave injury, employees are moved to the State's workers' compensation program until final disposition of their case.

Governor Corzine proposed in his fiscal year 2007 budget to eliminate the sick leave injury program for State employees. Elimination of this program would save an estimated \$3 million annually. This estimate was prepared by the State Auditor who found in a March 2003 report that elimination of the sick leave injury program and utilizing, in lieu thereof, the workers' compensation program would save the State money and that injured State employees making \$50,000 or less would take home about the same amount because taxes and deductions are not to be taken from the workers' compensation benefit.

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to eliminate the State's sick leave injury program. The legislation should close the program to all current and future State employees. The legislation should take effect after the expiration of any collective bargaining agreement in effect at the time of enactment so that no obligation in a contract is impaired.

The Joint Committee concludes that the proposals to end the sick leave injury program are sound and that employees will generally not be disadvantaged by this change because workers' compensation benefits will continue to be available. In addition, the State will realize savings in the form of reduced employee benefit costs.

**RECOMMENDATION 39: INCREASE INTEREST RATE CHARGED FOR PENSION LOANS IN STATE-ADMINISTERED RETIREMENT SYSTEMS**

- **DISCUSSION**

Public employees are permitted to borrow from the funds they have contributed to their pensions. The same requirements and limitations apply to members of the Public Employees' Retirement System (PERS), N.J.S.A.43:15A-34 et seq., the Teachers' Pension and Annuity Fund (TPAF), N.J.S.A.18A:66-35 et seq., the Police and Firemen's Retirement System (PFRS), N.J.S.A.43:16A-16.1 et seq., the Judicial Retirement System (JRS), N.J.S.A.43:6A-34.3 et seq., and the State Police Retirement System (SPRS) N.J.S.A.53:5A-29. The program began with members of PERS in 1954 and was extended gradually to the members of other retirement systems.

Under the program any member who is actively working and making pension contributions and has at least three years of service credit and contributions posted to his or her pension account may borrow up to one-half of the posted contributions. Loans are made in multiples of \$10, with \$50 the minimum amount of a loan and \$50,000 the maximum amount. A member may borrow twice in any calendar year, as determined by the date of the check, not the date of the request. Loans are usually repaid through payroll deductions, with the minimum amount equal to the normal pension contribution rate of a member's salary at the time the member applies for the loan (5% for PERS and TPAF, 8.5% for PFRS, 7.5% for SPRS and 3% for JRS). The maximum deduction toward repayment is 25% of base salary. Loans have a maximum repayment schedule of five years, but may be repaid in full at anytime. The interest rate is set by law at 4%.

According to Frederick Beaver, Director of the Division of Pensions and Benefits, in testimony before the Joint Committee on August 9, 2006 and August 24, 2006, although this program is very popular with public employees and there are hundreds of thousands of loans taken every year, it is costly for the State. This is because the pension system assumes an annual rate of return on investments of 8.25%. Since the interest rate for these loans is set by law at 4%, the pension system loses 4.25% on the money lent to members. Mr. Beaver estimates this amount equates to \$11 million for each 1% of

interest, so that the lost earnings potential exceeds \$45 million per year. He also notes that only New York and West Virginia also offer pension loans, but these programs differ significantly from New Jersey's.

Prior to Mr. Beaver's testimony, the cost of the pension loan program was discussed in the Report of the Benefits Review Task Force. The report called for the end of the program. It noted that the program "is outdated, not only in that employees are charged an insufficient rate of interest...but also because other resources are available for whatever need the loan is addressing. Most states do not have such programs, which are not commonly available to private sector employees."

- **RECOMMENDED ACTION**

The Joint Committee recommends the enactment of legislation to increase the interest rate charged for pension loans in the State-administered retirement systems. The interest rate should be increased to the prime rate minus 1%, and the Division of Pensions and Benefits should be authorized to charge an administrative fee for such loans. The legislation should be applicable to all current and future members of the State-administered retirement systems.

The Joint Committee recommends that the loan program should be retained, but that the interest rate should be increased to more closely reflect market rates of interest. These loans deprive the State-administered retirement systems of funds that would otherwise be available for investment for the benefit of the systems. This recommendation would ensure that the loss to the retirement systems is reduced while access to borrowing against employee contributions is continued.

**RECOMMENDATION 40: REVIEW NUMBER OF STATE HOLIDAYS FOR PUBLIC EMPLOYEES**

- **DISCUSSION**

New Jersey public holidays are designated by statute under N.J.S.A.36:1-1, and on each of those days the offices of State and local government are closed for the transaction of business. Currently, the law designates 13 public holidays, and permits the Governor of this State and the President of the United States to order or recommend any other additional holidays. In practice, the day after Thanksgiving is usually granted as a holiday by the Governor, increasing to 14 days per year the number of paid holidays for State and local government employees.

The statutorily designated holiday schedule for New Jersey government employees includes 3 more days than the 10 designated by the federal government for federal employees, or 4 when adding the day after Thanksgiving. The following is a list of the New Jersey public holidays designated by statute, not including the day after Thanksgiving usually granted by the Governor as a holiday. Ten out of the 13 holidays listed below are also federal holidays, except for the ones shown in bold.

<b>New Jersey State Holidays*</b>	
(1) New Year's Day	(8) Labor Day
(2) Martin Luther King Jr. Day	(9) Columbus Day
<b>(3) Lincoln's Birthday</b>	<b>(10) Election Day</b>
(4) Washington's Birthday	(11) Veteran's Day
<b>(5) Good Friday</b>	(12) Thanksgiving Day
(6) Memorial Day	(13) Christmas Day
(7) Independence Day	
* Ten of these 13 holidays are also federal holidays, Except for the ones shown in bold	

The paid public holidays for government employees in this State are not only authorized by statute, but are also part of existing contracts between public employee unions and the State. For example, Article 17 of the current contract between the State of New Jersey and the Communications Workers of America recognizes, and binds the State to granting

those employees, the statutorily designated holidays and any additional holidays that may be designated by the Governor.

- **RECOMMENDED ACTION**

This Joint Committee recommends that the number of State holidays be reviewed with the goal of bringing the number of State holidays more in line with federal holidays.

The Joint Committee concludes that paid time off provided to public employees exceeds that provided to private sector employees and imposes costs upon the State and local governments at all levels. This recommendation would serve to reduce State and local government costs for public employee benefits.

**RECOMMENDATION 41: BAN DUAL ELECTIVE OFFICE HOLDING**

•' **DISCUSSION**

The issue of whether or not it is appropriate to hold more than one elective public office is a complex one. Current law allows elected officials to hold multiple elective offices, with some exceptions. Nineteen other states allow dual office holding unconditionally and a number of others permit it with certain conditions. Many states do not ban dual-office holding, but rather place restrictions on the practice, such as requiring an individual only to accept the salary of one position (Massachusetts, Illinois, Virginia, and Pennsylvania) or only allowing an individual to hold multiple part-time positions (North Dakota).

The committee reviewed arguments both in favor of, and opposed to, the current system that allows multiple office holding. Proponents believe that it enables a very effective leader to serve more people and achieve public policy goals in various levels of government. It is also argued that holding multiple offices gives a legislator greater perspective on the consequences of certain legislative actions. Finally, proponents argue that voters already have the ability to turn aside those seeking multiple offices on election day.

Critics of multiple office holding say that it is problematic and that it presents conflicts for the individuals serving. There are issues of dual responsibilities, time management, and a perception that an individual might be holding two offices for the purposes of collecting two public paychecks and a larger pension benefit. There are also the questions of whether it gives one person too much power and whether it diminishes the opportunities for other citizens to serve.

- **RECOMMENDED ACTION**

The Joint Committee recommends that an elected public official be prohibited from holding another elective office, but that the action to effectuate this recommendation use a method and timeline that will not disrupt the governance of any existing office.

The Joint Committee studied and carefully weighed the arguments both for and against multiple elective office holding and concluded that it is time for New Jersey to prohibit future elected officials from holding multiple elective offices. The implementation of this prohibition must be done thoughtfully so as to acknowledge the many outstanding leaders currently holding multiple elective offices and to avoid disrupting the governance of any existing elective office.

Senator Gormley and Assemblyman O'Toole believe the Joint Committee should have eschewed a grandfathering provision and recommended that those presently holding more than one elective office be required to resign from all but one such office.

**Appendix 1**

**Assembly Concurrent Resolution No. 3 of 2006**

A **CONCURRENT RESOLUTION** supplementing the Joint Rules of the Senate and the General Assembly to establish four joint legislative committees to make recommendations to both Houses of the Legislature regarding proposals to bring about property tax reform and to provide for the jurisdiction and procedures thereof.

**WHEREAS**, The most fundamental obligation of a government is to protect the welfare and well-being of its citizens; and

**WHEREAS**, Under the New Jersey Constitution, this responsibility is vested in the Legislature and the Governor; and

**WHEREAS**, This State's high property taxes are a matter of great concern to the people of New Jersey who view the current system as regressive, inequitable, burdensome, and a threat to the financial security of individuals and communities; and

**WHEREAS**, There is a need for the Legislature to address this situation by devising, and acting upon, means to bring about property tax reform based upon a fairer distribution of tax burdens and the adoption of efficiencies; and

**WHEREAS**, This process should be initiated by the creation of joint legislative committees that review and formulate proposals concerning school funding, government consolidation and shared services, public employee benefits, and constitutional reform and property tax constitutional convention; now, therefore

**BE IT RESOLVED** *by the General Assembly of the State of New Jersey (the Senate concurring):*

The following Joint Rules are adopted:--

1. There are created four joint legislative committees. Each committee shall consist of six members, three of whom shall be members of the Senate appointed by the President, and three of whom shall be members of the General Assembly appointed by the Speaker. No more than two members of a committee appointed by the President of the Senate or the Speaker of the General Assembly shall be members of the same political party. A member may be removed from a committee for cause by the appointing officer, except that if any member is so removed, the appointing officer shall forthwith appoint another member in the same manner that the original appointment was made. The President and the Speaker shall each designate one appointee to a committee as co-chairperson of that committee.

2. Each committee shall meet at the call of its Co-Chairpersons. The committees may review the functions, duties, operations and programs of agencies of the State and its political subdivisions relevant to the areas of review as set forth herein, as well as the relevant governing statutes, regulations, ordinances, resolutions, opinions, and orders. As part of that review, the committees may consider pending and proposed bills and resolutions, as well as relevant reports and testimony. The deliberations of the committees shall conclude with a report, that shall be transmitted to the Senate and the General Assembly, which shall include proposals for constitutional amendments and legislation to bring about property tax reform. The report shall be transmitted no later than November 15, 2006 unless an extension is approved jointly by the President of the Senate and the Speaker of the General Assembly.

3. a. There is created the Joint Legislative Committee on Public School Funding Reform. It shall be the duty of the committee to review and formulate proposals that address the manner in which government provides for the maintenance and support of a system of free public schools for the instruction of the children of this State. The committee may consider proposals to: provide State support based on student needs rather than geographic location; eliminate disincentives to the regionalization of school districts; control school district spending, particularly administrative spending; and improve the effectiveness of the current law limiting increases in school district spending; as well as such other proposals as the committee deems appropriate.

b. There is created the Joint Legislative Committee on Government Consolidation and Shared Services. It shall be the duty of the committee to review and formulate proposals that address the sharing of services and regionalization of functions at all levels of government, as well as such other proposals as the committee deems appropriate. As a basis for these deliberations, the committee shall use the CORE agenda proposed by the Speaker of the General Assembly. In addition, the committee shall consider proposals to consolidate or eliminate State agency functions and State agencies or commissions.

c. There is created the Joint Legislative Committee on Public Employee Benefits Reform. It shall be the duty of the committee to review and formulate proposals that address abuses of the system of benefits provided to public employees, including all branches of State government and all local government entities, and to control the costs of the State and its political subdivisions for public employee retirement, health care and other benefits, as well as such other proposals as the committee deems appropriate. As a basis for its deliberations, the committee shall use the recommendations of the Benefits Review Task Force contained in its December 1, 2005 report, as well as other relevant reports.

d. There is created the Joint Legislative Committee on Constitutional Reform and Citizens Property Tax Constitutional Convention. It shall be the duty of the committee to review and formulate proposals that address property tax reform through amendments to the Constitution of the State of New Jersey, as well as such other proposals as the committee deems appropriate. The committee shall also determine whether amendments to the State Constitution should be recommended to the Legislature for submission directly to the voters or whether such amendments should be referred to a citizens property tax constitutional convention to be convened for the purpose of reforming the system of property taxation.

4. Each joint legislative committee shall organize as soon as possible after the appointment of its members.

5. Four members of a joint legislative committee shall constitute a quorum for the transaction of any business. Official committee action shall be by a majority vote of the members serving on the committee.

6. The joint legislative committees shall be entitled to call to their assistance and avail themselves of the services of such employees of any State, county or municipal department, board, bureau, commission, agency or authority as they may deem necessary or desirable, and as may be available for their purposes.

7. Any member or members of a joint legislative committee who do not concur with the report of the committee may issue a minority statement, that shall be included in the transmitted report of the committee.

8. All public meetings shall be recorded and transcribed, and, when feasible, audio and video of public meetings shall be broadcast on the State Legislature's website. All meetings at which official committee action is taken shall be open to the public. The chairpersons of a joint legislative committee shall notify the Office of Legislative Services, for posting and distribution to the public, of the time, place and agenda of each meeting of the committee. The notice shall be distributed to the public at least five days prior to the meeting, except in the case of an emergency, or except when the presiding officers, acting jointly, waive the notice requirement.

9. To the extent that the jurisdiction or recommendations of Joint Committees may overlap or conflict, the Co-Chairpersons of those committees shall consult with each other to coordinate and resolve differences.

10. This concurrent resolution shall take effect immediately.

#### STATEMENT

This concurrent resolution would establish four joint legislative committees to review and formulate proposals that address property tax reform for the people of this State. The committees are the Joint Legislative Committee on Public School Funding Reform, the Joint Legislative Committee on Government Consolidation and Shared Services, the Joint Legislative Committee on Public Employee Benefits Reform, and the Joint Legislative Committee on Constitutional Reform and Citizens Property Tax Constitutional Convention. The committees will review and formulate proposals within their respective subject areas as set forth in this resolution, and make recommendations to both Houses of the Legislature.

Appendix 2

Individuals and Organizations Speaking Before Joint Committee

August 9, 2006

FREDERICK J. BEAVER, Director  
Division of Pensions and Benefits  
New Jersey Department of the Treasury

JOHN D. MEGARIOTIS, Deputy Director  
Finance  
Division of Pensions and Benefits  
New Jersey Department of the Treasury

August 23, 2006

PETER J. KELLY  
Principal Counsel  
State Government Section  
Office of Legislative Services

PAMELA H. ESPENSHADE  
Principal Counsel  
State Government Section  
Office of Legislative Services

August 24, 2006

FREDERICK J. BEAVER, Director  
Division of Pensions and Benefits  
New Jersey Department of the Treasury

August 31, 2006

FREDERICK J. BEAVER, Director  
Division of Pensions and Benefits  
New Jersey Department of the Treasury

JOHN D. MEGARIOTIS, Deputy Director  
Finance  
Division of Pensions and Benefits  
New Jersey Department of the Treasury

WILLIAM A. REIMERT, Actuary  
Milliman Global

H. CHARLES WEDEL, Chief Financial Officer and Treasurer  
New Jersey Transit Corporation

September 13, 2006

FREDERICK J. BEAVER, Director  
Division of Pensions and Benefits  
New Jersey Department of the Treasury

FLORENCE SHEPPARD, Deputy Director  
Division of Pension and Benefits  
New Jersey Department of the Treasury

JOHN D. MEGARIOTIS, Deputy Director  
Finance  
Division of Pensions and Benefits  
New Jersey Department of the Treasury

September 19, 2006

JAMES ANZALDI, Mayor  
City of Clifton, and  
Member Executive Board  
New Jersey League of Municipalities

MARIE HAKIM, President  
Clifton Board of Education, and  
President  
Passaic City School Boards Association

ANTHONY WIENERS, Executive Vice President  
New Jersey State PBA

DEBRA J. BRADLEY, Esq.  
Director  
Government Relations  
New Jersey Principals and Supervisors Association

RICHARD DOROW, Executive Director  
School Business Administrators of New Jersey

LYNNE STRICKLAND, Executive Director  
Garden State Coalition of Schools

DANIEL FISHBEIN, ED, D.  
Superintendent of Schools  
Glen Ridge

RICHARD SNYDER, Executive Director  
Dollar\$ & Sense, and  
Member  
Board of Directors  
New Jersey School Boards Association

ALAN KAUFMAN, Legislative Political Coordinator  
Communications Workers of America

VIKKI THURSTON, Executive Vice President  
Communications Workers of America

JOSEPH COPPOLA JR., President  
Bergen County Education Association

JACQUI GREADINGTON, President  
East Orange Education Association

JOE CHEFF, President  
Passaic City Education Associations

JOYCE POWELL, President  
New Jersey Education Association

FRED AUG, President  
New Jersey Retirees Education Association

DUDLEY BURDGE, Senior Staff Representative  
Local 1032  
Communications Workers of America

DANIEL M. BERGIN, President  
Passaic County Probation Officers' Association

MAUREEN TAFFE, Director  
Johnson Public Library  
City of Hackensack

JOHN GROSS, Administrator and Chief Financial Officer  
City of South Orange

JOHN MCCONNELL, Operating Engineer  
Montclair State University

RALPH E. BLAKESLEE, Administrator  
Mendham Borough, and  
Adjunct Professor  
Political Science and Law  
Montclair State University

HELEN BERKENBUSH, Private Citizen

ELLEN BROCKMAN, Private Citizen

JEAN PIERCE  
Representing  
Health Professionals and Allied Employees

GEORGE DIKDAN, Ph.D.  
Representing  
Health Professionals and Allied Employees  
Local 5094, and  
Research Teaching Specialist  
University of Medicine and Dentistry of New Jersey, Newark

DIANA L. TAYLOR, Health Service Representative  
Union County

VIRGINIA OSBORNE, Private Citizen

MICHAEL KISTNER, Private Citizen

T. DONALD CAIRNS, Private Citizen

DAVID MONTRONI, Private Citizen

GERRY DRUMMOND, President  
Local 755  
USWU/IUJAT

PATRICK RUSSO, Private Citizen

WILLIAM J. BROWN, Member  
Legislative Committee

Division of Senior Services  
Bergen County, and  
New Jersey Coalition for Property Tax Reform

RAE ROEDER, President  
Local 1033  
Communication Workers of America

JOSEPH GOLOWSKI, Member  
Local 1033  
Communications Workers of America

FRAN EHRET, President  
Local 194  
New Jersey Turnpike Employees Union

ELIZABETH DAVIES, Private Citizen

JAY WEBBER, Esq.  
Private Citizen

DAVID HEEREMA, Construction Official  
Borough of Prospect Park

CLAYTON MULL, Private Citizen

October 12, 2006

RICHARD R. DOROW, Executive Director  
New Jersey Association of School Business Officials

JOYCE POWELL, President  
New Jersey Education Association

ROBERT MASTER, Legislative and Political Director  
District 1  
Communications Workers of America

ROB NIXON, Lobbyist  
Legislative Committee  
New Jersey State Policemen's Benevolent Association, Inc., and  
Representing  
New Jersey State Firemen's Mutual Benevolent Association

PETER GUZZO  
Representing  
American Association of University Professors,  
New Jersey American Federation of Teachers,  
Health Professionals and Allied Employees,  
New Jersey State Fraternal Order of Police, and  
Professional Firefighters Association

FREDERICK J. BEAVER, Director  
Division of Pensions and Benefits  
New Jersey Department of the Treasury

KATHLEEN A. DAVIS, Executive Vice President and Chief Operating Officer  
Chamber of Commerce  
Southern New Jersey

CHRISTINE STEARNS, Esq.  
Vice President  
Health, Legal Affairs, and Small Business Issues  
New Jersey Business and Industry Association

LYNE STRICKLAND, Executive Director  
Garden State Coalition of Schools

BARBARA HORL, Lobbyist  
Government Relations  
New Jersey School Boards Association

JOHN G. DONNADIO, Esq.  
Legislative Director  
New Jersey Association of Counties

L. MASON NEELY, Co-Chair  
Pension and Health Study Committee  
New Jersey State League of Municipalities

October 18, 2006

LOUIS N. MAGAZZU, Freeholder  
Cumberland County

RICHARD P. CUSHING, Esq.  
Member  
Board of Trustees  
New Jersey Institute of Local Government Attorneys

PETER R. THORNDIKE, Esq.  
Member  
Board of Trustees  
New Jersey Institute of Local Government Attorneys

FRANCIS A. FORST  
Representing  
International Federation of Professional Technical Engineers  
Local 194

FRANCELINE EHERT, President  
International Federation of Professional Technical Engineers  
Local 194

JOEL L. FRANK, Private Citizen

CHRISTOPHER EGAN, Private Citizen

RAE ROEDER, President  
Communication Workers of America  
Local 1033

TONY MISKOWSKI, Secretary  
Communication Workers of America  
Local 1033

GULAB GIDWANI, Private Citizen

GIUSEPPE 'JOE' CHILA, Mayor  
Woolwich Township, and  
Executive Board Member  
New Jersey State League of Municipalities\_

VINCENT J. FRANTANTONI, Trustee  
United Taxpayers of New Jersey

JEROME JACKSON, Member  
Communication Workers of America  
Local 1034

LEE LUCAS, Private Citizen

ERIC STINSON, President  
Educational Assistants  
Cherry Hill

SANDRA HASSLER, President  
Salem City Education Association

BILL FALLON, President  
Washington Township Education Association

BETSY RUSNAK, Private Citizen

October 25, 2006

PHILIP D. MURPHY, Chairman  
Governor's Benefits Review Task Force, and  
Principal  
Murphy Endeavors, LLC

FREDERICK J. BEAVER, Director  
Division of Pensions and Benefits  
New Jersey Department of the Treasury

Appendix 3

Legal Opinions of the Office of Legislative Services and Attorney General

2004-2005

LEGISLATIVE SERVICES COMMISSION

ASSEMBLYMAN  
ALBIO SIREA  
*Chairman*

SENATOR  
BERNARD F. KENNY, JR.  
*Vice-Chairman*

SENATE

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RICHARD J. CODEY  
NIA H. GILL  
LEONARD LANCE  
ROBERT E. LITTELL  
ROBERT W. SINGER

GENERAL ASSEMBLY

CHRISTOPHER "KIP" BATEMAN  
FRANCIS J. BLEE  
JOHN J. BURZICHELLI  
ALEX DECROCE  
GUY R. GREGG  
JOSEPH J. ROBERTS, JR.



New Jersey State Legislature

OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE ANNEX  
PO BOX 068  
TRENTON NJ 08625-0068

ALBERT PORRONI  
*Executive Director*  
(609) 292-4625

LEGISLATIVE COUNSEL

ALBERT PORRONI  
*Legislative Counsel*

LEONARD J. LAWSON  
*First Assistant Legislative Counsel*

MARCI LEVIN HOCHMAN  
*Assistant Legislative Counsel*

JAMES G. WILLSON  
*Assistant Legislative Counsel*

August 21, 2006

Honorable Members of the Joint Legislative Committee  
on Public Employee Benefits Reform  
State House Annex  
PO Box 068  
Trenton, New Jersey 08625

Dear Members of the Committee:

You have asked for a legal opinion as to whether the Legislature, by law, may reduce the retirement benefits that have been provided for public employees in the statutes establishing the various State-administered retirement systems.

For the reasons set forth below, it is our opinion that legislation that has the effect of detrimentally altering the retirement benefits of active members of State-administered retirement systems who have accrued at least five years of service credit, or of retired members, would be unconstitutional as violative of the federal and State constitutional proscription against impairment of the obligation of contracts.

"Pensions for public employees serve a public purpose. A primary objective in establishing them is to induce able persons to enter and remain in public employment, and to render faithful and efficient service while so employed." Public pensions "act as an inducement to continued and faithful service." Geller v. Dept. of the Treasury of

New Jersey, 53 N.J. 591, 597 (1969) (citation omitted). “It is common knowledge that a pension is an element in encouraging qualified individuals to enter and remain in public service.” Masse v. Public Employees’ Retirem. Sys., 87 N.J. 252, 261 (1981). Similarly, “one of the ‘fundamental purposes’ underlying the pensioning of civil servants is to ‘secure good behavior and the maintenance of reasonable standards of discipline during service.’” Uricoli v. Police & Fire. Retirem. Sys., 91 N.J. 62, 70 (1982) (citation omitted).

In Uricoli, the New Jersey Supreme Court acknowledged the evolution of the philosophy underlying public employee pensions from the early view that they were mere gratuities bestowed by a grateful sovereign to the more modern concept that a public pension is a form of deferred compensation to which an employee has a contractual right. In addressing the issue before it, specifically pension forfeiture for dishonorable service, the court found it unnecessary to embrace either view as to the nature of a public pension. Nevertheless, the court recognized the trend toward the acceptance of a contractual right to promised benefits:

This view of a pension as deferred compensation, designed to induce individuals to enter public service through its guarantee of payment for services and retirement security, has led some courts to regard pensions as a vested contractual right, with such benefits to be subject to forfeiture only where the Legislature clearly provided for that result. [Uricoli, 91 N.J. at 71]

More recently, in a case involving pension forfeiture for misconduct in office, the Appellate Division of the Superior Court stated: “Deferred compensation benefits have been earned by an employee and are no longer considered a gratuity.” Charles C. Widdis v. Retirement System, 238 N.J. Super. 70, 77 (App. Div. 1990). On this point, the Appellate Division also quoted from its prior decision in Fiola v. N.J. Treas. Dept., 193 N.J. Super. 340, 347 (App. Div. 1984):

It is virtually axiomatic that statutory pension provisions are to be liberally construed in favor of public employees and that pensions represent not merely the gratuity of a benevolent governmental employer but rather that they constitute deferred compensation earned by the employee during his years of service. [Widdis, 238 N.J. Super. at 78]

While the New Jersey courts have not had occasion to recognize a contractual right to a public pension, a majority of jurisdictions now “take the view that public employees have certain contractual rights in a public pension where a pension is part of the terms of employment.” 60A Am. Jur. 2d, Pensions, §1175 (2003). The modern trend has “been to protect pension rights on the theory that a state’s promise of pension benefits represents an offer that can be accepted by the employee’s performance.”

Transport Workers v. SEPTA 145 F.3d 619, 623 (3rd Cir. 1998). However, states differ “regarding the point at which rights under public pension programs become protected from change where no right to modify is expressly reserved by the employer.” Id.

In 1997, the New Jersey Legislature addressed this issue through the enactment of N.J.S.A.43:3C-9.5 which established, for members of State-administered retirement systems, a non-forfeitable right to receive benefits, as follows:

a. For purposes of this section, a “non-forfeitable right to receive benefits” means that the benefits program, for any employee for whom the right has attached, cannot be reduced. The provisions of this section shall not apply to post-retirement medical benefits which are provided pursuant to law.

b. Vested members of the Teachers’ Pension and Annuity Fund, the Judicial Retirement System, the Prison Officers’ Pension Fund, the Public Employees’ Retirement System, the Consolidated Police and Firemen’s Pension Fund, the Police and Firemen’s Retirement System, and the State Police Retirement System, upon the attainment of five years of service credit in the retirement system or fund or on the date of enactment of this bill, whichever is later, shall have a non-forfeitable right to receive benefits as provided under the laws governing the retirement system or fund upon the attainment of five years of service credit in the retirement system or fund or on the effective date of this act, whichever is later.

d. This act shall not be construed to preclude forfeiture, suspension or reduction in benefits for dishonorable service.

e. Except as expressly provided herein and only to the extent so expressly provided, nothing in this act shall be deemed to (1) limit the right of the State to alter, modify or amend such retirement systems and funds, or (2) create in any member a right in the corpus or management of a retirement system or pension fund.

Thus, the law provides that a member of a retirement system with five years of service on the act’s effective date, June 5, 1997, has a non-forfeitable right to receive benefits under the laws governing the retirement system on that date.<sup>1</sup> A member

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<sup>1</sup> Use of the term “vested members” in N.J.S.A. 43:3C-9.5 is apparently intended to mean that a member’s non-forfeitable right to receive benefits as provided

accruing five years of service credit after the law's effective date has a non-forfeitable right to benefits based on the laws governing the retirement system on the date the member completes five years of service.<sup>2</sup> In either case, the non-forfeitable right to receive benefits means that the benefits program for that member "cannot be reduced." The enactment of N.J.S.A.43:3C-9.5 also served to provide notice to persons beginning public employment after the law's effective date that their pension rights will not become unalterable until they accrue five years of service. Although it appears that the retirement benefits for members with fewer than five years of service could be detrimentally altered, implementation of any change may have to be limited to prospective application, the rescission of any credit earned for the period prior to completing five years of service being problematic.<sup>3</sup>

"In general, a statute is itself treated as a contract when the language and circumstances evince a legislative intent to create private rights of a contractual nature enforceable against the State." United States Trust Co. v. New Jersey, 431 U.S. 1 (1977).

The United States Constitution provides that:

No State shall...pass any...Law impairing the Obligation of Contracts... . [U.S. Const. Art.I, Sec.X, cl.1]

Similarly, the New Jersey Constitution states that:

The Legislature shall not pass any...law impairing the obligation of contracts, or depriving a party of any

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by law after five years of service is contingent upon the member vesting (that is, eligible for deferred retirement) in the retirement system after ten years of service. See, for example, N.J.S.A. 18A:66-36 for Teachers' Pension and Annuity Fund (TPAF) and 43:15A-38 for Public Employees' Retirement System (PERS).

<sup>2</sup> When a member has served and retired, all of the conditions precedent to the receipt of a pension have been fulfilled and the member's benefits may not be changed to his or her detriment. 60A Am. Jur. 2d, Pensions, §1175 (2003). In addition, we believe that, because N.J.S.A.43:3C-9.5 created a contractual right for the members to whom it is applicable, any subsequent amendment or repeal thereof would not extinguish the rights conferred on those members.

<sup>3</sup> For example, this may mean that if legislation were to be enacted that changes the formula for calculating benefits to reduce the benefit payable upon retirement for employees having fewer than five years of service on the bill's effective date, the benefit should be calculated by applying the prior formula to service accrued before that effective date and the revised formula to the service accruing thereafter.

remedy for enforcing a contract which existed when the contract was made. [N.J. Const. Art.IV, Sec.VII, par.3]

It has been held that these two constitutional provisions provide “parallel guarantees” and are to be construed in the same way to provide the same protection. Fidelity Union Trust Co. v. N.J. Highway Auth., 85 N.J. 277, 299 (1981). In general, “Our federal and state courts apply a three-prong test to determine whether legislation has unconstitutionally impaired a contract: they ask (1) has it substantially impaired a contractual relationship? (2) if so, does it have a significant and legitimate public purpose? and (3) is it based on reasonable conditions and reasonably related to appropriate governmental objectives?” In re PSE&G Co.’s Rate Unbundling, 330 N.J. Super. 65, 93 (2000); aff’d 167 N.J. 377.

In United States Trust Co., the United States Supreme Court established the standard of review to be applied when a state impairs a contract to which it is a party. The Port Authority of New York and New Jersey had issued bonds containing a statutory covenant restricting the extent to which revenues could be applied to deficits created by mass transit operations. Both states subsequently repealed the covenants. A trustee and holder of Port Authority bonds challenged the constitutionality of New Jersey’s legislation repealing the covenant. The court held that repeal of the covenant violated the Contract Clause by impairing the obligation of the State’s contract with the bondholders. In reaching this conclusion, the court said that a state statute which impairs a financial obligation of the state, like laws impairing private contracts, may be constitutional if it is reasonable and necessary to serve an important public purpose. The extent of the impairment is a relevant factor in determining its reasonableness. However, because the state’s self interest is at stake, complete deference to a legislative assessment of reasonableness and necessity is not appropriate. “A governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all.” United States Trust Co., 431 U.S. at 26.

The standard of review established in United States Trust Co. was applied by the New Jersey Supreme Court in Fidelity Union Trust Co. v. N.J. Highway Auth., 85 N.J. 277 (1981). Bondholders brought a challenge under the Contract Clause to an amendment to the New Jersey Highway Authority Act which provided that toll increases could not become effective without the prior approval of the Governor and the Treasurer or Comptroller of the Treasury. The court summarized the appropriate standard of review as follows:

When a state’s contract is involved, the initial inquiry is whether the state had the power to create an irrevocable contract right in the first place, since a state cannot surrender “an essential attribute of its sovereignty”. ...

The next step in the analysis is whether the impairment is reasonable and necessary to serve an important public

purpose. Necessity is met if the objectives could not have been achieved by a less drastic alternative. Reasonableness depends upon the extent of the impairment and upon whether the circumstances giving rise to the impairment were foreseeable when the contract was made. [85 N.J. at 287, 288 (citations to United States Trust Co., omitted)]

When these standards are applied to legislation having the effect of reducing pension benefits to which, by law, non-forfeitable rights have attached, it is apparent that the State would be impermissibly impairing the obligation of a contract to which it is a party.<sup>4</sup> There can be no doubt that the State has the authority to contractually obligate itself to the payment of public employee pensions as a means of attracting and retaining qualified employees and has not thereby relinquished an essential aspect of its sovereignty. In addition, public employees who rely upon an offer of deferred benefits to their detriment and to the benefit of the employer, who gains the employee's services and loyalty, have expectations which are protected by the law of contract. Thus, any impairment of these rights would not be reasonable given the expectations of the parties and the employees' detrimental reliance on the employer's representations. Nor would it appear that a reduction in benefits is necessary to prevent the financial collapse of the State. More modest means of saving or raising money are available to the State that do not affect contractual obligations. A reduction of promised benefits would effectuate an impairment of the State's responsibility under a unilateral contract that it created. In addition, the circumstance giving rise to the need for a proposed benefit reduction, that the State at a future time may wish to reduce its financial obligations, was foreseeable at the inception of the contractual relationship and the State, nevertheless, committed itself and did not reserve the right to unilaterally adopt substantial modifications of the pension program.

"In many states recognizing contractual or vested rights of a public employee in a state or local pension system, those rights are subject to a reserved legislative power to make reasonable modifications in the plan, or to modify benefits, if there is a simultaneous offsetting new benefit of equal or greater value." 60A Am Jur. 2d, Pensions, §1178 (2003). Thus, such a substitution of one benefit for another may be

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<sup>4</sup> Benefit increases do not appear to raise the same problem. P.L.2001, c.133 increased the retirement allowance of members of PERS and TPAF by changing the benefit formula for members of PERS and TPAF. It would seem that this increase represented a modification of the contract which, having been accepted by the members, cannot be detrimentally altered.

permissible without impairing the obligation of contract as long as the change is reasonable and any disadvantage to the members is accompanied by offsetting and counterbalancing advantages, apparently under the theory that when there is no net loss in overall benefits the contractual relationship is not substantially impaired.<sup>5</sup>

In conclusion, it is our opinion that a law that has the effect of detrimentally altering the retirement benefit of an active member of a State-administered retirement system who has accrued at least five years of service credit, or of a retired member, would be unconstitutional as violative of the federal and State constitutional proscription against impairment of the obligation of contracts.

Very truly yours,

Albert Porroni  
Legislative Counsel

By: \_\_\_\_\_  
Peter J. Kelly  
Principal Counsel

AP:K/sl

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<sup>5</sup> Examples of reasonable modifications in other jurisdictions include raising the retirement age but increasing benefits and reducing the pension benefit but providing death benefits and payments to a surviving spouse. 60A Am. Jur. 2d, Pensions, §1178 (2003).



JON S. CORZINE  
Governor

*State of New Jersey*  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
25 MARKET STREET  
PO BOX 112  
TRENTON, NJ 08625-0112

ZULIMA  
Attorney

August 24, 2006

ATTORNEY CLIENT PRIVILEGED AND CONFIDENTIAL

Hon. Bradley Abelow, Treasurer  
Department of Treasury  
State House  
PO BOX 002  
Trenton, NJ 08625-0002

Re: Limitations on the Ability of the  
Legislature to Reduce Retirement  
Benefits Provided to Public Employees  
Under Certain Pension Systems

Dear Treasurer Abelow:

You have asked whether the Legislature may reduce the retirement benefits that have been provided by law for public employees in several state retirement systems.<sup>1</sup> This question arises in the

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<sup>1</sup> This opinion addresses the pension systems referred to in N.J.S.A. 43:3C-9.5, namely the Teachers' Pension and Annuity Fund, the Judicial Retirement System, the Prison Officers' Pension Fund, the Public Employees' Retirement System, the Consolidated Police and Firemen's Retirement System, the Police and Firemen's Retirement System and the State Police Retirement System. These systems shall

context of the ongoing deliberations of the Joint Legislative Committee on Public Employee Benefits Reform. For the reasons set forth below you are advised that N.J.S.A. 43:3C-9.5 created legally enforceable rights in vested members of the state pension systems to the benefits programs of those systems. The extent of those rights is described in more detail herein. Under the State and Federal Constitutions, the Legislature may not enact laws which substantially impair those rights, except in the narrow circumstances recognized by state and federal courts. You are further advised that even where the federal and State constitutions do not bar changes to the pension systems, there may be federal tax consequences to any legislative action.

The Contract Clauses of State and Federal Constitutions

The federal Constitution limits the authority of a state to impair the obligations of contract. It provides that "No State shall...pass any...law impairing the obligation of contracts." U.S. Const. art. I, §10, cl.1. Our State Constitution has long contained a similar prohibition. N.J. Const. art. IV, §7, ¶3 provides:<sup>2</sup>

The Legislature shall not pass any...law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

Although the language of these provisions (hereafter "the Contract Clauses") is not identical, our Supreme Court has found that "the provisions of the federal and state constitutions provide parallel guarantees." Fidelity Union Trust Co. v. New Jersey Highway Authority, 85 N.J. 277, 299 (1981) (internal

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be referred to, hereafter, as the "state pension systems."

<sup>2</sup> The 1844 Constitution contained a similar prohibition. See N.J. Const. (1844) art. IV, §7, ¶3.

quotations omitted). These two provisions are applied in the same way to provide the same protection. IMO Allegations of Violations of Law and the New Jersey Administrative Code by Recycling & Salvage Corp., 246 N.J. Super. 79, 100 (App. Div. 1991).

The limitations found in the Contract Clauses are not as broad as the language would suggest and the prohibitions set forth therein are not absolute. IMO Public Service Electric and Gas Company's Rate Unbundling, Stranded Costs and Restructuring Filings, 330 N.J. Super. 65, 93 (App. Div. 2000) aff'd. 167 N.J. 377 (2001). These clauses do not deprive the States of their broad powers to adopt general regulatory measures. United States Trust Co. v. New Jersey, 431 U.S. 1, 22, 97 S. Ct. 1505, 1517, 52 L. Ed. 2d 92 (1977). Instead, the courts have recognized that the Contract Clauses accommodate "the inherent police power of the State to safeguard the vital interests of its people." Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 410, 103 S. Ct. 697, 704, 74 L. Ed. 2d 569 (1983) (citing Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 434, 54 S. Ct. 231, 239, 78 L. Ed. 413 (1934)); In re PSE&G, supra, 330 N.J. Super. at 93.

The United States Supreme Court has fashioned, and our Supreme Court has adopted and applied, a three part test for determining whether legislation impermissibly impairs a contract. They ask

(1) has it substantially impaired a contract? (2) if so, does it have a significant and legitimate public purpose? and (3) is it based on reasonable conditions and reasonably related to appropriate governmental objections? [In re PSE&G, supra, 330 N.J. Super. at 92 citing State Farm Mutual Automobile Ins. Co. v. State, 124 N.J. 32, 64 (1991).]

See also Energy Reserves Group, supra, 103 S. Ct. at 704-705.

In determining whether the impairment of contractual rights is substantial the courts have considered several factors such as whether a particular industry has been regulated in the past and whether one of the parties reasonably relied on the contractual terms and whether the legislative action constitutes an unexpected modification of those terms. Energy Reserve Group, supra, 459 U.S. at 416, 103 S. Ct. at 707, In re PSE&G, supra, 330 N.J. Super. at 93. The more substantial the impairment, the greater the level of scrutiny to which the law will be subjected. Energy Reserve Group, supra, 459 U.S. at 411, 103 S. Ct. at 704.

The court next looks at whether the impairment is reasonable and necessary to serve an important public purpose. Fidelity Union Trust Co., supra, 85 N.J. at 288. In determining reasonableness, the foreseeability of the circumstances giving rise to and the extent of the impairment are important considerations. Ibid. As for necessity, a court will look to whether the legislative objectives could have been achieved by a less drastic alternative, including one that does not impair contractual rights. Ibid.<sup>3</sup>

As to the second and third prongs, courts generally defer to the legislative judgment as to the reasonableness and legitimacy of the law. Energy Reserve at 413, PSE&G at 94. However, where a State is itself a party to the contract, the courts will not simply allow the State to walk away from its financial obligations. Instead, the courts have applied a "stricter standard" and said that "complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake." Energy Reserves, supra, citing United States Trust Co., supra, 431 U.S. at 26, 97 S.

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<sup>3</sup> Chief Justice Burger in a concurring opinion in United States Trust emphasized that the State must demonstrate that the impairment was essential to the achievement of an important state purpose and that the state would have to show it was unaware of the state interest at the time the agreement was made. Ibid.

Ct. at 1519; In re PSE&G, supra, 330 N.J. Super. at 94.

The Legislature Created Contractual Rights in Chapter 113

To determine whether the Contract Clauses limit legislative action, we must first determine whether L. 1997, c. 113 created contractual rights.<sup>4</sup> Fidelity Union Trust Co., supra, 85 N.J. at 287. We recognize that as a general matter statutes do not create private contractual or vested rights, absent "clear statutory language indicating that the Legislature intended to bind itself contractually...." New Jersey Ass'n of Health Plans v. Farmer, 342 N.J. Super. 536, 575 (Chan. Div. 2001). Indeed, many early cases said clearly that the incidents of the pension funds did not constitute a contractual right with the employees. Rather, the employees had no rights except those based on the pertinent statute. See McFeely v.

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<sup>4</sup> The constitutions of five states, Alaska, Hawaii, Illinois, Michigan and New York confer contractual status on public pension membership. The proposed constitution of 1942 would have accorded contractual status to the benefits payable by virtue of membership in any State pension or retirement system. It said "benefits payable by virtue of membership in any State pension system shall constitute a contractual relationship and shall not be diminished or impaired." Proposed Constitution (1942) art. VI, §1, ¶6. Reported in Record of Proceedings before the Joint Committee of the New Jersey Legislature Constituted under SCR No. 19 at 1032. A similar proposal was debated in a Committee of the 1947 Constitutional Convention, see 3 Proceedings of the Constitutional Convention of 1947 at 192. While not ultimately enshrined in the Constitution, it is evident that the framers in 1947 intended to leave to the Legislature the determination whether to accord contractual status to state pension rights. See 1 Proceedings at 475, 501 (regarding judicial pensions). See also Spina, supra, 41 N.J. at 400 n3. (discussing legislative attempts to accord contractual status).

Pension Com'n of Hoboken, 8 N.J. Super. 575, 577 (Law Div. 1950); Sganga v. Police and Firemen's Pension Fund Com'n of Teaneck, 2 N.J. Super. 575, 579 (Law Div. 1949); Laden v. Daly, 132 N.J.L. 440, 443 (Sup. Ct. 1945) aff'd o.b. 133 N.J.L. 314 (E. & A. 1945); cf. Spina v. Consolidated Police and Firemen's Pension Fund Com'n, 41 N.J. 391, 400 (1964) (1920 pension statute did not create contractual rights). Here, however, we must look to the provisions of N.J.S.A. 43:3C-9.5 to determine whether the Legislature intended to and did create private contractual rights in enacting this law. See Spina, supra, (in deciding whether statute creates a contract or merely declares state policy it is of first importance to examine language of act).

The primary goal when interpreting statutes is to ascertain the Legislature's intent. Higgins v. Pascack Valley Hospital, 158 N.J. 404, 418 (1999). In that regard we are counseled to look first to the language employed as the surest indicator of the legislative design. McCann v. Clerk of the City of Jersey City, 167 N.J. 311, 320 (2001). Where that language is clear, the sole task is to enforce the statute in accordance with its terms. New Jersey Dep't of Law and Public Safety v. Bigham, 119 N.J. 646, 651 (1990). In ascertaining the legislative plan we may consider as well pertinent legislative history as a valuable aid in determining the legislative intent. State v. McQuaid, 147 N.J. 464, 480 (1997); Chasin v. Montclair State University, 159 N.J. 418, 427 (1999).

N.J.S.A. 43:3C-9.5 speaks of a "non-forfeitable right to receive benefits." The term "non-forfeitable" means "not subject to forfeiture." Black's Law Dictionary, 1076 (7<sup>th</sup> ed. 1999). See also Columbian National Life Ins. Co. v. Griffith, 73 F.2d 244, 246 (8<sup>th</sup> Cir. 1934). It implies that the right is legally enforceable, one which can be protected by resort to legal means.<sup>5</sup> The legislative history

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<sup>5</sup> The scope of the right to a private pension protected under ERISA is more circumscribed than the

supports this understanding that the Legislature intended to create a legally enforceable right under this act. Because Chapter 113 creates a contractual right for certain members of the pension system, any subsequent amendment or repeal of Chapter 113 would not extinguish the rights conferred on those members.

N.J.S.A. 43:3C-9.5 traces its origin to L. 1997, c. 113. That section provides:

a. For purposes of this section, a "non-forfeitable right to receive benefits" means that the benefits program, for any employee for whom the right has attached, cannot be reduced. The provisions of this section shall not apply to post-retirement medical benefits which are provided pursuant to law.

b. Vested members of the Teachers' Pension and Annuity Fund, the Judicial Retirement System, the Prison Officers' Pension Fund, the Public Employees' Retirement System, the Consolidated Police and Firemen's Pensions Fund, the Police and Firemen's Retirement System, and the State Police Retirement System, upon the attainment of five years of service credit in the retirement system or fund or on the date of enactment of this bill, whichever is later, shall have a non-forfeitable right to receive benefits as provided under the laws governing the retirement system or fund upon the attainment of five years of

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rights accorded under c. 113. Federal case law has determined that the "non-forfeitable" provisions of ERISA assure that an employee's claim to the protected benefit is legally enforceable but not the particular amount or method of calculating the benefit. Bonovich v. Knights of Columbus, 963 F. Supp. 143, 146 (D. Conn. 1997) aff'd 146 F. 3d 57 (2d Cir. 1998). This ruling was rendered on March 21, 1997 at a time when the Legislature was actively considered c. 113 (Committee amendments adding the "non-forfeitable" language were added on April 17, 1997). Chapter 113, in contrast, specifies that the "benefits program" cannot be reduced and they have a right to receive those benefits.

service credit in the retirement system or fund or on the effective date of this act, whichever is later.

\* \* \* \*

d. This act shall not be construed to preclude forfeiture, suspension or reduction in benefits for dishonorable service.

e. Except as expressly provided herein and only to the extent so expressly provided, nothing in this act shall be deemed to (1) limit the right of the State to alter, modify or amend such retirement systems and funds, or (2) create in any member a right in the corpus or management of a retirement system or pension fund.

This section was added to the bill by the Senate Budget and Appropriations Committee. The purpose was to

provide[] that a vested member of a retirement system or fund listed in the bill will have non-forfeitable right [sic] to receive benefits as provided under the laws governing the retirement system or fund upon the attainment of five years of service credit in the system or fund or on the date of the enactment of the bill, whichever is later. However, this provision of the bill will not apply to post-retirement medical benefits which are provided pursuant to law. [Senate Budget and Appropriations Committee Statement to S1119, April 17, 1997]

The bill made clear that the granting of a non-forfeitable right did not limit suspension or reduction of benefits for dishonorable service nor did it limit the State's right to alter, modify or amend the retirement system. However, it made no such reservations with respect to those employees who have obtained non-forfeitable rights, Thus, it clearly recognized that the effect of the bill was to circumscribe the State's ability to reduce the benefits package for members who have accrued rights under the non-forfeiture provision.

The bill will not preclude the forfeiture, suspension or reduction of benefits for dishonorable service. In addition, the right to receive benefits will not be deemed to: (1) limit the right of the State to alter, modify or amend the retirement systems, other than the above-mentioned benefits for members who have attained 10 years of service, or (2) create in any member a right in the corpus or management of a retirement system. [Ibid.]

Finally, the Legislature fully anticipated that the non-forfeiture provision would have fiscal consequences for the State, particularly if further changes in pension benefits were made by future Legislatures. The Fiscal Note presented to the Committee and considered by the Legislature observed:

The fiscal impact of [the non-forfeiture] provision, if any, cannot be calculated because any impact would only occur as the result of future statutory changes in pension benefits....

[Ibid.]

While not totally free from doubt, the Legislature may also reasonably be taken to have intended that future increases in the benefits accorded to state employees covered by the state pension systems would increase the scope of the non-forfeitable benefits accorded to covered employees and would, thus, similarly constrain the ability of the Legislature to circumscribe those benefits in the future.

Because the length of service varies for each employee covered by a state pension system, this act has had the effect of creating different categories of employees. Chapter 113 granted non-forfeitable rights to all vested members of the state pension systems. However, vesting occurs, for most of the state pension systems, upon obtaining 10 years of creditable service. The extent of the non-forfeitable benefits for individual employees is determined not at the time of vesting but with reference to the benefits provided by law for that pension system when the employee accrued 5 years of service credit. In the

case of employees vested on the effective date of c. 113, the pertinent benefits were those existing by law as of that date. Employees who currently have at least 5 years of service credit, but have not yet vested, are not completely without rights under the act. A court may well find that Chapter 113, by setting the benchmark of protected rights at five years, has created an inchoate right in these employees, one which, upon vesting, matures into a fully protected, non-forfeitable right. Those employees with less than 5 years of service have neither vested nor attained the benchmark that fixes their protected benefits. It would appear, therefore, that the Legislature may, without offending the Contract Clauses, make substantial revisions to the benefits for these employees. However, as noted below, any change for these employees, and indeed all other employees, must be considered in light of the federal tax consequences of such a change.

We have not been provided with a description of the particular measures being considered by the Joint Committee, the rationale supporting those reforms or the groups of employees to which those acts would apply. We can, therefore, provide only general guidance. In weighing such measures under the Contract Clauses, a court will look at whether the changes are minimal or significant, the extent of any financial burden, what broad societal purpose the changes serve, whether the measures are temporary or permanent, whether the State was aware of its interest at the time the contract was made and the availability of alternative measures that do not impair contractual rights.

In certain instances, courts in other jurisdictions have upheld modifications to the contractual pension rights of public employees against contracts clause challenges where comparable benefits were substituted for each employee. A leading California case held:

An employee's vested contractual pension rights may be modified prior to retirement for the purpose of keeping a pension system flexible to permit

adjustments in accord with changing conditions and at the same time maintain the integrity of the system. Such modifications must be reasonable, and it is for the courts to determine on the facts of each case what constitutes a permissible change. To be sustained as reasonable, alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages.

City of Downey v. Board of Administration, 47 Cal. App. 3d 621, 631-32 (Cal. Court of Appeal 1975) (emphasis added) (upholding an increase in the employee contribution rate, because it was matched by an increase in the retirement allowance).

In City of Frederick v. Quinn, a Maryland appeals court stated: "The contractual or vested rights of the employee in Maryland are subject to a reserved legislative power to make reasonable modifications in the plan, or indeed to modify benefits if there is a simultaneous offsetting new benefit or liberalized qualifying condition." 371 A. 2d 724, 726 (Md. App. 1977) (bold emphasis in original other emphasis added); see also Wisconsin Professional Police Ass'n v. Lightbourn, 627 N.W. 2d 807, 841 (Wis. 2001), cert. den. 534 U.S. 1080, 122 L. Ed. 2d 696 (2002) (upholding numerous changes to the Wisconsin Retirement System). In Quinn, the City of Frederick adopted a non-contributory retirement plan for police officers in 1951, but later repealed the plan and substituted a private contributory plan. The trial court found for the plaintiff plan members, holding that, under the Contract Clauses, the plan could not be modified to the members' detriment. The court of appeals vacated the judgment and remanded for further fact-finding as to the overall benefits and detriments of the City's plan changes. Quinn, supra; see also 60 Am. Jur. 2d §1178.

The persuasive value of decisions such as those above, coming as they do from other jurisdictions, is difficult to gauge. The opinions

must also be read with a specific caveat: none of the decisions construed a statute comparable to Chapter 113 in its identification of particular plan provisions as non-forfeitable rights.

#### Tax Consequences

The potential exists that legislation modifying pension benefits, even if it passes constitutional muster under the Contract Clauses, could nevertheless create adverse tax consequences under the Internal Revenue Code ("IRC" or "Code"). The state pension systems currently enjoy two important tax benefits under the Code. First, the respective pension trusts are not liable for federal income tax on the earnings of the assets on deposit. 26 U.S.C. §501(a). Second, the members of the pension plans are taxed only at the time they actually receive benefit distributions from the respective pension trusts. 26 U.S.C. 402(a). To secure these two tax benefits, the trust fund for each State pension plan must be deemed a "qualified trust" under IRC §401(a). 26 U.S.C. 401(a).

We note in particular that any bill that would reduce the retirement benefits available to employees with less than five years service credit on the effective date of the bill's enactment should be examined in light of the detailed benefit accrual requirements specified by the Code. 26 U.S.C. §401(A)(7); 26 U.S.C. §411(b)(1). Failure to meet the benefit accrual standards - or any of the other qualification requirements under IRC §401(a) - could result in large tax liabilities for the trusts and the plan members. It may be advisable, therefore, to have specific proposed legislation reviewed by special tax counsel to ensure that any proposed legislation will not adversely affect the status of the State's pension trusts under the Code.

#### Conclusion

For the reasons set forth above you are advised that N.J.S.A. 43:3C-9.5 created legally enforceable rights in vested members of the State

pension systems to the benefits programs of those systems. Under the State and Federal Constitutions, the Legislature may not enact laws which substantially impair those rights, except in the narrow circumstances recognized by state and federal courts. You are further advised that even where the Contract Clauses do not bar changes to the pension systems, there may be federal tax consequences to any legislative action.

Our conclusion is rooted in the language, purpose and history of c. 113. It is also consonant with the well established treatment of pension laws by New Jersey courts. Pension laws are remedial in nature, and, as such, are to be construed liberally. Smith v. Consolidated Police and Firemen's Pension Fund Commission, 149 N.J. Super. 229, 232 (App. Div. 1977). Pension acts, in particular, are to be construed most favorably to the employee's interests. Mercer County v. State, 193 N.J. Super. 229, 233 (App. Div. 1984), cf. In re Smith, 57 N.J. 368, 380 (1971) (accidental disability pension law set forth in light most favorable to public employee); Greico v. Employee's Retirement System of Newark, 173 N.J. Super. 474, 478 (App. Div. 1980). Our conclusion reflects, as well, the majority view among the states that public employees have some contractual rights in their public pensions. See Darryl B. Simko, Of Public Pensions, State Constitutional Contract Protection, and Fiscal Constraint, 69 Temp. L. Rev. 1059, 1060 (1996), at 1061-62, 60A Am Jur. 2d Pensions §1175.<sup>6</sup>

Sincerely yours,

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW

JERSEY

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<sup>6</sup> Those states generally recognize that although these rights are vested, the Legislature may make reasonable modifications if there is a simultaneous offsetting by new benefits of equal or greater value. Id. at §1178 (and cases cited therein).

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By: \_\_\_\_\_

John P. Bender  
Assistant

Attorney General

/smb

## Appendix 4

### Glossary of Terms

**Accidental Disability Retirement** – A form of job-related disability retirement benefit available under the defined benefit plans.

**Alternate Benefit Program (ABP)** – A defined contribution plan for full-time faculty members of public institutions of higher education and certain administrative and professional titles. The employee contribution rate is 5 percent; the employer contribution rate is 8 percent. See N.J.S.A.18A:66-167 et seq.

**Defined Benefit Pension Plan** – A pension plan which provides a certain benefit determined by a stated formula for the life of the beneficiary, often with cost-of-living increases. The formula is usually related to an employee's length of service and salary. Public employee defined benefit plans usually require an employee contribution of a certain percentage of compensation through payroll deduction. The actuarial valuation, together with the plan's benefit provisions, determines the employer's periodic contribution. The employer's annual cost may fluctuate from year to year due to the investment performance of plan funds.

**Defined Contribution Pension Plan** – A plan that looks like a bank account because the contributions from the employer and employee are deposited into the employee's account, which then accumulates interest and investment earnings. A 401(k) plan is a defined contribution plan for private sector employees. Unlike a defined benefit plan, a defined contribution plan does not guarantee a stated retirement allowance regardless of the employee's salary or years of service. The benefit is a function of the amounts of employee and employer contributions, wage history, and investment earnings. The employee is usually responsible for the investment choices.

**Final Average Compensation, Final Average Salary, Final Salary, Highest Fiscal Years** – A collection of terms used in the various State administered defined benefit plans pertaining to the base salaries/compensation utilized in the various benefit calculations, specified by the statutes governing the various systems. The compensation used in the calculation may be based upon the average salary of the last three years, the highest fiscal years (July 1/June 30) the final 12 months (or highest 12-month period) or simply the last reported salary, depending upon the requirement of the governing statute.

**Government Accounting Standards Board (GASB)** – Establishes reporting standards applicable to public employee benefit plans.

**Judicial Retirement System (JRS)** – A defined benefit plan for members of the State judiciary. The employee contribution rate is 3 percent. See N.J.S.A.43:6A-1 et seq.

**Ordinary Disability Retirement** – A form of disability retirement for members of various defined benefit plans.

**Police and Firemen’s Retirement System (PFRS)** – A defined benefit plan for all municipal police and fire personnel, and certain State and county employees. The employee contribution rate is 8.5 percent. See N.J.S.A.43:16A-1 et seq.

**Post-Retirement Medical Benefits** – Refers to employer-sponsored health insurance coverage after the retirement of pension system members.

**Public Employees’ Retirement System (PERS)** – A defined benefit plan for State and local public employees not required to become members of another contributory retirement program. The employee contribution rate is 5 percent. See N.J.S.A.43:15A-1 et seq.

**State Health Benefits Program (SHBP)** – Program provides medical and prescription drug coverage to State employees and employees of local public employers who choose to participate, retirees, and their dependents. It includes a basic indemnity type plan (Traditional Plan), a point-of-service plan (NJ PLUS), and several HMOs. See N.J.S.A. 52:14-17.26 et seq.

**State Police Retirement System (SPRS)** – A defined benefit plan for all uniformed officers and troopers of the Division of State Police in the New Jersey Department of Law and Public Safety. The employee contribution rate is 7.5 percent. See N.J.S.A. 53:5A-1 et seq.

**Teachers’ Pension and Annuity Fund (TPAF)** – A defined benefit plan for all teachers or members of the professional staff certified by the State Board of Examiners and employees of the Department of Education who have titles that are unclassified, professional and certified. The employee contribution rate is 5 percent. See N.J.S.A.18A:66-1 et seq.

# EXHIBIT 9



# Gov. Chris Christie signs N.J. public worker pension overhaul bill

Ginger Gibson/Statehouse Bureau By Ginger Gibson/Statehouse Bureau

Follow on Twitter

on June 28, 2011 at 2:27 PM, updated June 28, 2011 at 6:53 PM

## Video: Gov Chris Christie signs landmark pension, health benefit overhaul bill

Surrounded by scores of mayors and a parade of elected officials, Gov. Chris Christie signed into law legislation that requires public workers to pay more to their health benefits and pensions at a bill signing ceremony at the war memorial in Trenton. Senate President Stephen Sweeney also attended. Christie called Sweeney a 'friend and partner.' (Video by Megan DeMarco/The Star-Ledger)

**TRENTON** — Gov. Chris Christie today signed into law controversial legislation that will force public employees to pay more for their pension and health insurance.

Christie, who signed the bill flanked by a bipartisan cast of mayors, said passage of the bill is his biggest legislative victory since taking office.

"It is important moment for the state of New Jersey, for its citizens, its taxpayers and New

Jersey has once again become a model for America," Christie said at the bill signing.

Starting on Friday, public employees across all levels of government will pay an additional percent of their pay into the pension system.

Employees will begin to pay more for their health insurance when their contracts expire. For those without contracts or with contracts that have already expired, the increased payments could begin as soon as January, when new health insurance plans are expected to be completed.

Loading Photo Gallery

The legislation took a bumpy road to passage.

Christie and Senate President Stephen Sweeney (D-Gloucester) began working on the proposal last fall. They faced strong pushback from the public employee unions, who argued that health benefits should be decided at the bargaining table, not through legislation. But the once-powerful unions were unable to stop the bill.

Assembly Speaker Shelia Oliver (D-Essex) got on board with the legislation earlier this month. Republican

lawmakers joined a coalition of Democrats, mostly those with ties to South Jersey political boss George Norcross and Essex County Executive Joe DiVincenzo, to provide enough support to pass the bill last week.

A last-minute change to remove the most controversial provision of the bill, which would have limited access to out-of-state hospitals, was done through a separate bill, which Christie also signed today.

### **Previous coverage:**

#### **Recap of Trenton's breakthrough bipartisan health benefits and pension system reform**

The Star-Ledger Trenton bureau holds a roundtable discussion of yesterday's huge defeat for state and public worker unions as both sides of the Legislature voted to overhaul New Jersey's health benefits and pension system. (Video by Megan DeMarco / The Star-Ledger)

- **Gov. Christie calls pension overhaul his 'biggest governmental victory' in exclusive interview**
- **Gov. Christie praises Sweeney, Oliver for work on health, benefits bill**
- **N.J. Assembly passes landmark employee benefits overhaul**

- **Protestors create spectacle at N.J. Statehouse throughout pension, benefits overhaul vote**

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# EXHIBIT 10



## N.J. Gov. Christie signs 2 percent property tax cap bill

Claire Heininger/Statehouse Bureau By Claire Heininger/Statehouse Bureau

on July 13, 2010 at 4:11 PM, updated July 13, 2010 at 7:14 PM



Amanda Brown/The Star-Ledger

NJ Gov. Chris Christie speaks after signing the law limiting annual property tax increases to 2 percent. The event was held in Hamilton Twp.

**HAMILTON TOWNSHIP** - Gov. Chris Christie screwed the state's property tax cap on tighter today, scoring a political triumph that could give voters greater control over how their towns and school districts raise and spend

money.

With his signature, Christie lowered the existing ceiling on annual increases from 4 to 2 percent, and closed most loopholes in the existing law. When towns and schools starved of revenue want to raise taxes higher, they will have to get permission from a majority of local voters — something foes warn will widen the chasm between rich and poor communities.

"They've got to come and get permission from the people who pay the bills," the Republican governor said, flanked by supporters at a signing ceremony in Hamilton Township. "This is the beginning of real property tax relief for New Jersey."

The signing ceremony, less than six months after Christie took office, was the product of steamroll political tactics and a last-minute legislative compromise with Senate President Stephen Sweeney (D-Gloucester). While it falls short of the hard constitutional cap the governor desired, critics and allies alike say the new law gives Christie a victory on voters' top priority and cushions him from the backlash of his draconian budget cuts.

Sweeney, who joined Christie at today's event, downplayed the political impact.

"The governor didn't score a victory. I didn't score a victory. Taxpayers scored a victory," the Senate president said.

Even before Christie signed the bill, Assembly Democrats who had reluctantly approved the compromise predicted it would cause a fundamental shift in how New Jersey pays for government. Assembly Speaker Sheila Oliver (D-Essex) said it could force the state to find additional ways to pay for its prized but pricey public education system. Assembly budget chairman Louis Greenwald (D-Camden) said the cap could lead to lower state sales and income taxes, while freeing up towns to raise revenue through their own local taxes.

Oliver said the legislation will at least bring "some predictability" to the annual increases in residents' tax bills.

"People in New Jersey are confronted with property taxes that are among the highest in the nation," she said. "If they could at least look forward to 2 percent growth, we're on our way."

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**More coverage:**

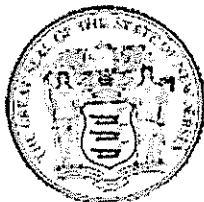
- **N.J. Assembly passes bill lowering property tax cap to 2 percent**
- **How N.J.'s 2 percent property tax cap plan will impact residents**
- **N.J. Assembly is expected to vote on 2 percent property tax cap**
- **After months of debate, N.J. Senate passes 2 percent property tax cap in less than an hour**
- **N.J. Senate approves Gov. Christie's 2 percent property tax cap**

**N.J. Gov. Christie signs 2 percent property tax cap bill****N.J. Gov. Christie signs 2 percent property tax cap bill**

After four months of debate, dozens of hours of testimony and a special legislative session, Gov. Chris Christie signed into law a bill capping the property tax increase at 2 percent, down from the current 4 percent. The governor has originally pushed for a constitutional cap of 2.5 percent, while the democrats countered with a reduction to 2.9 and several stipulations. Working with Senate President Steve Sweeney, the two eventually met somewhere in the middle. (Video by Michael Monday/The Star-Ledger)

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# EXHIBIT 11



March 06, 2001

To All Interested Parties:

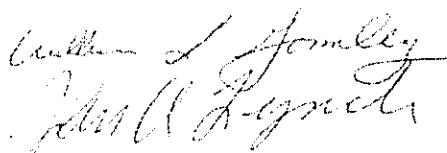
SENATE JUDICIARY COMMITTEE INVESTIGATION INTO RACIAL PROFILING William Gormley, Chairman of the Senate Judiciary Committee (the "Committee"), announced in September 2000, that the Committee would conduct a review of racial profiling, the New Jersey State Police, and the timing of the indictments in the Hogan and Kenna criminal matters. Michael Chertoff, a partner at Latham & Watkins and former U.S. Attorney, was appointed Special Counsel to the Committee. The Committee served the Office of Attorney General ("OAG") and Governor Whitman's office with several written requests for information and documentation. In response, OAG released over 90,000 pages of documentation and Governor Whitman's office released approximately 3,500 pages of documentation. OAG's production was supplemented several times in response to additional requests for information by the Committee. Custodians of the record were also identified by OAG and Governor Whitman. In total, approximately 100,000 pages of documentation were reviewed in connection with the Committee's investigation. Mr. Chertoff and his legal team of five lawyers, led by Scott Louis Weber, and two paralegals reviewed and coded every document over a two-month period. The results of the document review were made available to the Committee and counsel to the Senate minority. As a result of the document review, special counsel and counsel to the Senate minority identified 34 witnesses and determined that 28 of the witnesses would testify in depositions or before hearing officers. Special counsel and counsel to the Senate minority also determined that the remaining 6 witnesses were for historical purposes and would simply be interviewed. From January 30 through March 1, 2001, special counsel and counsel to the Senate minority conducted joint interviews and depositions of the witnesses. All interviews and depositions were open to members of the Committee. With the exception of one or two individuals all witnesses have now been interviewed or deposed. The interviews and depositions took approximately 150 hours and resulted in approximately 4,000 pages of transcript. Copies of 29 transcripts have been posted on the Legislature's Internet site and the remaining transcripts will be posted as soon as they become available. At the suggestion of special counsel, the inquiry into the Hogan and Kenna cases has been focused upon the timing and public release of the indictments so as to not interfere with the pending criminal cases. The Committee has not investigated the substance of the charges or sufficiency of the evidence in either criminal case. The timing and public release of the indictments will be addressed during the remainder of the inquiry. The Committee is currently working to determine the witness list and order of presentation. Public hearings are scheduled for March 19, 20, 27, and 28, 2001. All hearings will be conducted from 10 AM to 5 PM and may be extended to 8 PM to accommodate witness testimony.

March 8, 2001

The Special Inquiry currently undertaken by the Senate Judiciary Committee into the issue of racial profiling shall include the following:

- (1) an investigation into any organizational and cultural issues in the Department of Law and Public Safety and the Division of State Police that may have developed, ignored, concealed or fostered racial profiling;

- (2) a review of the accuracy and completeness of any evidence presented to the Senate Judiciary Committee in 1999 concerning racial profiling, and the truthfulness and completeness of any testimony presented to the Committee in 1999 concerning racial profiling;
- (3) a review of actions concerning racial profiling taken by the Division of State Police or the Office of the Attorney General following the ruling by Judge Francis in State v. Pedro Soto, including any statistical analyses and the dissemination or concealment of that statistical information;
- (4) an examination of the reasonableness of the State's actions in the appeal and subsequent withdrawal of the State's appeal in State v. Pedro Soto;
- (5) a review of the State's actions, following the Soto ruling, in discovery motions and evidence suppression motions brought by defendants alleging racial profiling, up to and including the State's decision to release 95,000 pages of documents, and including its compliance with disclosure and discovery requirements;
- (6) a review of activities within the Department of Law and Public Safety and the Division of State Police, and the actions by individual State officials, concerning the investigation into racial profiling that was started in late 1996 by the United States Department of Justice Civil Rights Division, including any statistical analyses undertaken by the Division of State Police or the Department of Law and Public Safety and the dissemination or concealment of such statistical information;
- (7) a review of any activities within the Department of Law and Public Safety and the Division of State Police concerning allegations of racial profiling or racial discrimination involving the State Police;
- (8) a review of the circumstances surrounding the timing and public release of the indictments of Troopers Hogan and Kenna;
- (9) a review of activities within the Division of State Police and the Department of Law and Public Safety concerning the State Police Review Team and the development of the Interim Report and the Final Report;
- (10) a review of circumstances surrounding the resignation of Col. Carl Williams; and
- (11) an examination of the circumstances surrounding the Consent Decree entered into with the United States Department of Justice on December 30, 1999, the content of the Consent Decree, and the status of those and other reforms.



Chairman, Senate Judiciary Committee

Senior

Democratic Member

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# EXHIBIT 12

**REPORT OF THE NEW JERSEY SENATE  
JUDICIARY COMMITTEE'S  
INVESTIGATION OF RACIAL PROFILING  
AND THE NEW JERSEY STATE POLICE**

**Senator William L. Gormley - Chair  
Senator James S. Cafiero - Vice-Chair  
Senator Garry J. Furnari  
Senator John A. Girgenti  
Senator Louis F. Kosco  
Senator John A. Lynch  
Senator Robert J. Martin  
Senator John J. Matheussen  
Senator Edward T. O'Connor, Jr.  
Senator Norman M. Robertson  
Senator Raymond J. Zane**

**June 11, 2001**

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## **FOREWORD**

In October 2000, the Department of Law and Public Safety released over 90,000 pages of documentation and Governor Whitman's office released approximately 3,500 pages of documentation concerning racial profiling. Copies of the documents are available to the public in a repository located at the Hughes Justice Complex. Each document was assigned a category and numbered within that category. The categories are as follows:

AL	Activity Logs
CO	Commercial Document
D	Troop D Audit
DOJ	Department of Justice
GC	Government Correspondence
IA	Internal Affairs
OAG	Office of the Attorney General
OR	Other Relevant Documents
OTG	Office of the Governor
SO	Standard Operating Procedure
ST	Statistics
T	Training

Thus, the first document produced in the Activity Logs category was marked AL 000001, the second document produced in the Activity Logs category was marked AL 000002, etc. Special counsel to the Senate Judiciary Committee and counsel to the Senate Minority reviewed these documents.

From January through March 2001, special counsel to the Senate Judiciary Committee and counsel to the Senate Minority conducted joint interviews and depositions of witnesses. Citations to transcripts of the interviews and depositions will be referred to herein by the witness' name and page number (e.g., "Rover at \_\_\_"). Documents were marked as exhibits at

the depositions and interviews of witnesses. Those documents were numbered according to the first letter of the deponent's last name and the exhibit number (i.e., G-1, G-2, etc.).

The Senate Judiciary Committee held hearings on March 19, 20, 27, and 28, and April 2, 3, 9, 10 and 18, 2001 (the "Hearings"). Citations to hearing transcripts will be referred to herein by the hearing date and page number (e.g., "March 19 at \_\_"). Additional documents were also marked during the hearings before the Senate Judiciary Committee. Those documents were marked SJC 1 – SJC 14.

Copies of all deposition transcripts and transcripts of the hearings are posted on the Legislature's Internet site (<http://www.njleg.state.nj.us>).

### **ACKNOWLEDGEMENTS**

The New Jersey Senate Judiciary Committee (the "Committee") gratefully acknowledges the Office of Legislative Services ("OLS"), which provided significant and invaluable assistance to special counsel and the Committee. Many individuals offered their assistance and are too numerous to mention. However, certain individuals played key roles in assisting the investigation.

Albert Porroni, Esq., Executive Director of OLS, wore many hats. He is a brilliant lawyer, scholar, and administrator. Mr. Porroni's exceptional insight, legal acumen, and dedication to the Committee's efforts catalyzed and indeed helped sustain the investigation.

Mr. Porroni's efforts were complimented by the efforts of James R. Adolf, Esq., Victoria P. Lawler, Esq., and John J. Tumulty, Esq. Messrs. Adolf and Tumulty and Ms. Lawler provided significant legal and administrative assistance to the Committee, special counsel and counsel to the Senate Minority. They were a pleasure to work with.

## INTRODUCTION

In October 2000, Senator William L. Gormley, Chairman of the Committee, announced that the Committee would conduct a review of racial profiling, the New Jersey State Police ("NJSP"), and the timing of the indictments in the Hogan and Kenna criminal matters.<sup>1</sup> Michael Chertoff, Esq., a partner at Latham & Watkins and former U.S. Attorney, was appointed Special Counsel to the Committee. In several criminal matters involving defense claims of selective prosecution, defense attorneys won discovery motions in 2000 requiring the State to release internal documents concerning racial profiling. In September 2000, Attorney General John Farmer announced that he would waive the attorney client and deliberative process privileges and would voluntarily make historical materials available to the general public through a central repository. The Committee served the Department of Law and Public Safety ("LPS"), Office of the Attorney General ("OAG") and Governor Whitman's office with several written requests for information and documentation.<sup>2</sup> In response, the LPS released over 90,000 pages of documentation and Governor Whitman's office released approximately 3,500 pages of documentation. The LPS' production was supplemented several times in response to additional requests for information by the Committee. The LPS and Governor Whitman also identified custodians of the record. In total, approximately 100,000 pages of documentation were reviewed in connection with the Committee's investigation. The initial document release by the OAG covered the period ending April 20, 1999, the date of the Interim Report of the State Police

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<sup>1</sup> On April 23, 1998, Troopers James Kenna and John Hogan fired on four men in a van they stopped on the New Jersey Turnpike. They were subsequently indicted by two separate State grand juries. One indictment related to the troopers' actions on April 23, the other indictment concerned charges that the troopers had filed a number of reports that inaccurately described the race of motorists they stopped on the New Jersey Turnpike.

<sup>2</sup> The LPS is comprised of numerous Divisions, including the NJSP and the Division of Criminal Justice ("CJ"). The Attorney General and his office, the OAG, oversees the operations of the LPS.

Review Team Regarding Allegations of Racial Profiling (the "Interim Report"). At the Committee's request, the document disclosure period was extended to May 15, 1999, the date of then Attorney General Peter G. Verniero's confirmation to the State Supreme Court.

Mr. Chertoff and his legal team of five lawyers, led by Scott Louis Weber, Esq., reviewed and coded every document over a two-month period.<sup>3</sup> The results of the document review were made available to the Committee and counsel to the Senate Minority, Jo Astrid Glading, Esq., Douglas A. Wheeler, Esq., Leon J. Sokol, Esq., and Stephen M. Holden, Esq. As a result of the document review, special counsel and counsel to the Senate Minority identified 35 witnesses. Further, counsel determined that 29 of the witnesses would testify in depositions and that the remaining six witnesses, significant for historical purposes, would simply be interviewed. The 35 witnesses were: W. Cary Edwards, Esq.; Hon. James J. Ciancia; First Assistant Prosecutor Terrence P. Farley; Chief Justice Deborah T. Poritz; Commissioner David C. Hespe; Director of the Division of Law, Jeffrey J. Miller; NJSP Lieutenant Colonel Valcocean Littles; NJSP Captain Ernest Volkman; Assistant Attorney General Alfred E. Ramey, Jr.; Hon. Frederick P. DeVesa; NJSP Sergeant First Class Thomas Gilbert; Associate Justice Jaynee LaVecchia; NJSP Major Vincent Modarelli; Assistant Attorney General Anne C. Paskow; NJSP Captain Richard Touw; NJSP Lieutenant Daniel J. Cosgrove; NJSP Captain David E. Blaker; NJSP Major Joseph Brennan; NJSP Lieutenant Colonel Michael Fedorko; NJSP Lieutenant Colonel Robert Dunlop; NJSP Lieutenant Colonel Lanny Roberson; NJSP Detective Sergeant Steven Serrao; Assistant Attorney General John Fahy; Assistant Attorney General George Rover; NJSP Colonel Carl Williams; NJSP Colonel Justin Dintino; Christine Boyle; Robert J. DelTufo, Esq.; NJSP

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<sup>3</sup> The Latham & Watkins team consisted of Mr. Chertoff, Mr. Weber, Eric Jaso, Esq., Mark H. Goldberg, Esq., Elisa Lee, Esq., Kalama M. Lui-Kwan, Esq., and Suzanne M. Slavin.

Lieutenant Albert Sacchetti; Hon. Alexander P. Waugh, Jr.; First Assistant Attorney General Paul Zoubek;<sup>4</sup> Assistant Attorney General Debra L. Stone; Assistant Attorney General Ronald Susswein; Senior Deputy Attorney General Sally Ann Fields; and Associate Justice Peter G. Verniero.<sup>4</sup>

From January 30 through March 1, 2001, special counsel and counsel to the Senate Minority conducted joint interviews and depositions of the witnesses. All interviews and depositions were open to members of the Committee. The interviews and depositions took approximately 150 hours and resulted in over 4,000 pages of transcript.

At the suggestion of special counsel, the inquiry into the Hogan and Kenna cases was focused upon the timing and public release of the indictments so as to not interfere with the pending criminal cases. The Committee did not investigate the substance of the charges or sufficiency of the evidence in either criminal case.

On March 8, 2001, the Committee announced that its investigation into the issue of racial profiling would include the following:

- (1) an investigation into any organizational and cultural issues in the LPS and the NJSP that may have developed, ignored, concealed or fostered racial profiling;
- (2) a review of the accuracy and completeness of any evidence presented to the Committee in 1999 concerning racial profiling, and the truthfulness and completeness of any testimony presented to the Committee in 1999 concerning racial profiling;
- (3) a review of actions concerning racial profiling taken by the NJSP and the LPS following the ruling by Judge Francis in State v. Soto, 324 N.J. Super. 66 (Law Div.

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<sup>4</sup> Associate Justice Peter G. Verneiro declined the Committee's request for a pre-hearing interview or deposition and responded that would make himself available to testify only during the Committee's hearings.

1996), including any statistical analyses and the dissemination or concealment of that statistical information;

(4) an examination of the reasonableness of the State's actions in the appeal and subsequent withdrawal of the State's appeal in Soto;

(5) a review of the State's actions, following the Soto ruling, in discovery motions and evidence suppression motions brought by defendants alleging racial profiling, up to and including the State's decision to release 95,000 pages of documents, and including its compliance with disclosure and discovery requirements;

(6) a review of activities within the LPS and the NJSP, and the actions by individual State officials, concerning the investigation into racial profiling that was initiated in late 1996 by the United States Department of Justice Civil Rights Division ("DOJ"), including any statistical analyses undertaken by the NJSP or the LPS and the dissemination or concealment of such statistical information;

(7) a review of any activities within the LPS and the NJSP concerning allegations of racial profiling or racial discrimination involving the NJSP;

(8) a review of the circumstances surrounding the timing and public release of the indictments of Troopers Hogan and Kenna;

(9) a review of activities within the NJSP and the LPS concerning the State Police Review Team and the development of the Interim Report and the Final Report of the State Police Review Team, dated July 2, 1999 (the "Final Report");

(10) a review of circumstances surrounding the resignation of Col. Carl Williams; and

(11) an examination of the circumstances surrounding the Consent Decree entered into with the DOJ on December 30, 1999, the content of the Consent Decree, and the status of those and other reforms.

The Committee held public hearings on March 19, 20, 27, and 28, and April 2, 3, 9, 10 and 18, 2001 (the "Hearings"). The Committee heard testimony from witnesses identified during the document review, depositions and interviews. In addition, the Committee announced publicly that it would entertain testimony from members of the public and other interested parties during the hearings and it did so. The following witnesses testified at the Hearings: NJSP Sergeant First Class Thomas Gilbert; NJSP Captain Richard Touw; NJSP Captain David E. Blaker; NJSP Major Joseph Brennan; NJSP Lieutenant Colonel Michael Fedorko; NJSP Lieutenant Colonel Robert Dunlop; Assistant Attorney General John Fahy; Assistant Attorney General George Rover; NJSP Colonel Carl Williams; NJSP Lieutenant Albert Sacchetti; William Buckman, Esq.; Hon. Alexander P. Waugh, Jr.; First Assistant Attorney General Paul Zoubek; David Hespe, Esq.; Assistant Attorney General Debra L. Stone; Assistant Attorney General Ronald Susswein; Associate Justice Peter G. Verniero; Attorney General John J. Farmer, Jr.; NJSP Colonel Carson Dunbar; NJSP Sergeant Vincent Bellaran; Ivan Foster; Laila Maher, Esq.; Felix Morka, Esq.; Ronald Thompson, Esq.; Regina Waynes Joseph, Esq.; Assemblyman Joseph Charles, Jr.; Senator Wayne Bryant; Assemblywoman Nia Gill; Assemblyman LeRoy Jones; Assemblywoman Nellie Pou; NJSP Trooper Emblez Longoria; NJSP Sergeant First Class Robert Watkins; NJSP Detective Sergeant First Class Joseph Soulias; Renee Steinhagen, Esq.; NJSP Sergeant Yusuf El-Amin; NJSP Trooper Gregory Sanders; NJSP Trooper Mark Stephens; Assistant Attorney General Martin Cronin; Police Chief George Pugh; NJSP Detective Andre

Lopez; NJSP Lieutenant Carmelo V. Huertas; NJSP Trooper Ed Lennon; Professor James Fyfe;  
NJSP Captain David Leonardis; and NJSP Sergeant James Fennessy.

## **FACTS**

The Committee's discovery process occurred in three phases. The first phase consisted of the document review, interviews and depositions, and testimony during the Hearings from individuals with relevant information revealed during the interviews and depositions.<sup>5</sup> The second phase consisted of testimony from individuals who requested to testify at the Hearings. The third phase consisted of testimony from individuals who testified at the Hearings about reforms and the NJSP's and the LPS' ongoing efforts to address racial profiling. Accordingly, the Committee's factual recitation is presented in three sections: (1) Evidence From The Document Release And Attendant Witness Testimony; (2) Evidence From Witnesses Who Requested To Testify At The Hearings; and (3) Evidence From Witnesses Concerning Reforms And The NJSP's And The OAG's Ongoing Efforts To Address Racial Profiling.

### **I. Evidence From The Document Release And Attendant Witness Testimony**

#### **A. Pre-Soto Developments**

In 1975, the NJSP had 2,400 employees, which included 23 African American officers, five Hispanic officers and one female officer among 1,765 sworn personnel, and 26 African American individuals and one Hispanic among 600 civilian employees. The DOJ brought a lawsuit against the NJSP pursuant to, among other things, Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Act of 1972, 42 U.S.C. 2000e et seq. The lawsuit alleged race and gender discrimination by the NJSP in its recruiting and hiring practices. The

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<sup>5</sup> Copies of the documents the Committee reviewed are available to the public in a repository at the LPS. However, the Committee determined that certain documents contained particularly relevant information; and, as such, those documents were marked as Exhibits at the Hearings. Copies of the Hearing Exhibits and other relevant documents are contained in chronological order in the Appendix to this Report. The Appendix is available for inspection by the public at the Office of Legislative Services Library.

State entered into a consent decree on October 7, 1975. That consent decree was ultimately dissolved on October 19, 1992, except that by agreement, the DOJ continued to monitor gender representation in the next three NJSP classes.

On April 23, 1987, the Comprehensive Drug Reform Act of 1987, N.J.S.A. 2C:35-1 et seq., was signed into law. The Act provides uniform sentencing guidelines for drug offenses and declares that, among other things, "New Jersey continues to experience an unacceptably high rate of drugrelated crime, and continues to serve as a conduit for the illegal trafficking of drugs to and from other jurisdictions. For this reason, enhanced and coordinated efforts designed specifically to curtail drugrelated offenses will lead inexorably to a reduction in the rate of crime generally, and is therefore decidedly in the public interest." See N.J.S.A. 2C:35-1.1. Thereafter, then Attorney General ("AG") W. Cary Edwards issued the "Statewide Action Plan for Narcotics Enforcement" ("Action Plan"), which directed "that the enforcement of our criminal drug laws shall be the highest priority law enforcement activity." This plan called for the development and use of "offender profiles" and for training of the "most efficient techniques for identifying drug couriers." (Action Plan Directives 6.4 and 6.5)

From February through September 1988, an internal debate occurred at the OAG regarding the use of "drug-courier profiles." Assistant Attorney General ("AAG") Debra Stone wrote that "a stop and/or search of a suspect based solely on that person fitting a 'drug courier profile' is unconstitutional," while Deputy Attorney General ("DAG") Meredith Cote noted that profile characteristics standing alone "provide only arbitrary, generalized and unsupportable suspicion and thus, are constitutionally impermissible as classifying factors." AAG Ronald Susswein disagreed, however, stating that "the limited use of drug courier profiles...does not

offend the Constitution, but is an extremely prudent and necessary use of available law enforcement resources.” To conclude otherwise, AAG Susswein opined, would result in a “fundamental reversal of our narcotics enforcement and patrol policy.” AAG Susswein warned, however, that a profile based solely on race was impermissible. Ultimately, the internal debate about the permissibility of drug courier profiles had little, if any, effect on the Action Plan’s call for the use of drug courier profiles. Indeed, Directives 6.4 and 6.5 were not implemented.

The current racial profiling controversy had its beginnings in 1989, when WWOR-TV aired a series of news reports that examined allegations by minorities that they were being targeted by the NJSP on the New Jersey Turnpike (“Turnpike”). This series, “Without Just Cause,” investigated complaints of profiling from the NAACP and ACLU. Then NJSP Col. Clinton Pagano was interviewed for the series and stated that, among other things, “[violating rights of motorists was] of serious concern [to him], but nowhere near the concern that I think we have got to look to in trying to correct some of the problems we find with the criminal element in this State” and “the bottom line is that those stops were not made on the basis of race *alone*.” (emphasis added)

In early 1990, then NJSP Col. Justin Dintino and then AG Robert DelTufo signaled plans to change NJSP policies in order to reinforce the protection of the Constitutional rights of motorists, even if it meant a drop in drug-related statistics. Shortly thereafter, on April 6, 1990, a consolidated motion to suppress evidence was filed by 19 defendants in the Soto case. The defendants in Soto claimed they were the victims of selective enforcement of traffic laws.

On May 31, 1990, the NJSP adopted a new Standard Operating Procedure, SOP F-55, which prohibited troopers from using personal characteristics such as race, age, sex, or style

of dress as facts relevant to establish reasonable suspicion, unless the trooper could identify how the characteristic was directly related to a criminal activity. SOP F-55 also required a review of all consent searches by field supervisors.

Soto was not the only racial profiling case in the early 1990s. In a Warren County case, State v. Kennedy, defendants won a victory in 1991 when the Appellate Division ruled that their statistical survey was adequate to establish a colorable basis for their claim that they were stopped under an officially sanctioned policy of targeting black motorists. But the Kennedy defendants ultimately lost in 1996, when the Appellate Division affirmed a ruling that they had failed to prove selective enforcement based on race.

In Middlesex County, Judge Figarotta ruled in 1991 that the defendants in State v. Durant made a colorable basis showing of selective enforcement based on statistics showing there were black occupants in the car in 87.7% of indictable arrests on the Turnpike during a two-year period. But in 1993, Judge Figarotta ruled that the defendants failed to prove a barracks-wide pattern of selective enforcement. The Court ruled, however, that for up to 20 officers, there was enough proof to warrant a review of the records of those officers. As a result, less than three months later, criminal charges were dismissed against 618 drivers stopped on the Turnpike. The cases were dismissed at the request of Middlesex County Prosecutor Robert Gluck, without input from the OAG. Of the cases dismissed, 308 were among those put on hold while the constitutional challenge in Durant was resolved.

By memo dated August 20, 1993, DAG John Fahy sounded one of the earliest warnings on the racial profiling issue. DAG Fahy, who later litigated the Soto case for the State, provided a briefing for then Executive Assistant Attorney General ("EAAG") Alexander Waugh,

Jr. on the racial profiling issue for EAAG Waugh's use at a meeting with Troop Commanders. DAG Fahy updated EAAG Waugh on the status of various cases around the State, discussed the legal standards in such cases, and critiqued the defense statistics that were presented in other cases. DAG Fahy warned:

In the future, some courts might rely more heavily on statistics and find a de facto pattern of discrimination resulting in selective prosecution based upon statistical evidence. The question is what percentage will be tolerated by the Court with regard to disparate figures for arrests of minorities and non-minorities. At this point no one knows the answer to that question. Our office continues to argue that statistics alone should not be used to determine whether the actions of a particular officer in a particular case are appropriate. The State Police must recognize, however, that some Troopers do have very high percentages of arrests of minorities. This is not to say that any particular Trooper has engaged in racial profiling, but it could result in court inquiries into the actions of the officer and someday lead to a finding of racial profiling by that Trooper.... In defending against racial profiling allegations, there appears to be a need to generate better stop statistics....

(F-3)

#### **B. The Soto Suppression Hearings And The Decision**

On November 28, 1994, suppression hearings commenced in Soto. Hearings were conducted on 72 days and ended on May 25, 1995. During the hearings, the defense presented testimony from two former troopers who testified about being coached on racial profiling practices. NJSP training materials that depicted minorities in a stereotypical fashion were introduced into evidence. During discovery, each side created a database of all stops and arrests by the NJSP between Turnpike Exits 1 and 7A out of the Moorestown Station for thirty-five randomly selected days between April 1988 and May 1991.

The defense also conducted traffic surveys to help make its case and it presented evidence that 13.5% of the vehicles traveling on the southern end of the Turnpike had a black

occupant, and 15% of those cars speeding on the Turnpike had a black occupant. The defense then presented evidence that of the stops in which race was identified, 46% of the stops between Exits 1 and 3 of the Turnpike involved blacks. The defense also presented evidence that 35.6% of the stops between Exits 1 and 7A of the Turnpike involved blacks.

On March 4, 1996, the Honorable Robert E. Francis, J.S.C., issued a decision in Soto. Judge Francis held that the defense's presentation of statistical evidence and testimony of NJSP officers and ex-troopers established that the NJSP engaged in "de facto" racial profiling by stopping black and Hispanic motorists along the Turnpike from 1988 to 1991. As a result, Judge Francis ordered the suppression of all contraband and evidence seized in those cases.

Judge Francis agreed with the defense expert, who concluded that it was highly unlikely that the wide disparity between the rates at which blacks and whites were being stopped on the Turnpike could have occurred randomly. Judge Francis stated that "[k]ey corroboration for finding the State Police hierarchy allowed and tolerated discrimination came from Colonel Pagano." Soto, 324 N.J. Super. at 81. Judge Francis was highly critical of Col. Pagano, and cited Pagano's remarks condemning critics of the NJSP, his firm adherence to drug interdiction practices in the face of claims of profiling, and his failure to investigate whether there were discriminatory practices by the NJSP. See Soto, 324 N.J. Super. at 81-83. Judge Francis held:

The statistical disparities and standard deviations revealed are indeed stark. The discretion devolved upon general road troopers to stop any car they want as long as Title 39 is used evinces a selection process that is susceptible to abuse. The utter failure of the State Police hierarchy to monitor and control a crackdown program like DITU or investigate the many claims of institutional discrimination manifests its indifference if not acceptance. Against all this, the State submits only denials and the conjecture and flawed studies of [its expert witness].

Soto, 324 N.J. Super. at 84-85. Thus DAG Fahy's earlier predictions in his memo to EAAG Waugh were borne out in Soto. More important, the Soto ruling forever changed the legal terrain of the racial profiling issue.

**C. The Response To Soto**

After losing the Soto case, DAG Fahy wrote a memo to EAAG Waugh on March 12, 1996 that analyzed the ruling and the viability of an appeal. DAG Fahy said that the case would be difficult to overturn on appeal because of the strong factual findings made against the NJSP. He criticized the Court for relying on the Public Defender's statistics regarding the population of the Turnpike, and for reaching its conclusions despite the fact that race was not recorded in two thirds of the stops examined. DAG Fahy also said it could be argued that the Court improperly shifted the burden to the State to explain the reason for the disparate rate at which blacks are stopped. This final argument later became central to the State's justification for maintaining the Soto appeal for three years.

Because it was an interlocutory order, the State had only 15 days from when Judge Francis signed the order on April 17, 1996 to decide whether to seek an appeal. In consultation with several staff members, then AG Deborah Poritz decided to appeal. AAG Deborah Stone testified in her deposition that she and DAG Ann Paskow had reservations about the appeal because the case "was a mess factually," particularly Col. Pagano's testimony. But she said they eventually agreed the case could be appealed on narrow legal issues. (Stone at 29-32) AAG Stone also testified that DAG Paskow asked whether they could be sure the NJSP were not profiling, and AG Poritz said she had asked the NJSP and they assured her they were not. (Stone

at 30) DAG Fahy said it was his understanding that the decision to appeal was firm. (Fahy at 129)<sup>6</sup> /

Within a few weeks of the Soto ruling, an ad hoc committee was established that consisted of representatives of the NJSP and OAG to develop responses to problems raised by the ruling. This committee was chaired by NJSP Lt. Col. Val Littles, and included Capt. Joseph Brennan, Capt. Richard Touw, Sgt. David Blaker, then Det. Reilly, Det. Thomas Gilbert,<sup>7</sup> DAG Fahy, and DAG Susswein (the "Littles Committee"). The work of this committee was memorialized in memos written by SFC Gilbert to then Col. Carl Williams. The memos indicate that there was a cooperative exchange of information regarding racial profiling between the NJSP and OAG following the Soto ruling. The Littles Committee met on March 25, April 12, May 16, and October 4, 1996.

During the March 25, 1996 meeting the participants discussed the high rate at which troopers were not following SOP F-3, a procedure that required troopers to call in a description of the race of the driver and occupants of all stopped vehicles. This failure meant that the statistical database in Soto excluded 62.6% of all stops for the survey period. The participants agreed that compliance with SOP F-3 needed to be emphasized. The participants also discussed a need for improved training, and plans were laid to initiate training on the Soto ruling, as well as other search and seizure issues.

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<sup>6</sup> In her interview, Chief Justice Poritz advised that during her transition from AG to Chief Justice she briefed then AG Peter Verniero about Soto and racial profiling and "flagged" these issues for him.

<sup>7</sup> While on the Littles Committee Thomas Gilbert was a Detective. However, he was subsequently promoted to Sergeant, then Sergeant First Class; and, as such, will be hereinafter referred to as "SFC Gilbert." While on the Littles Committee David Blaker was a Sergeant. However, he was subsequently promoted to Captain; and, as such, will be hereinafter referred to as "Capt. Blaker."

The meeting participants also discussed the need to improve the collection of raw data by adding information about race to the trooper's patrol chart, rather than relying upon radio logs, and extending the retention of records. Although there was general agreement on this point, this change was not adopted until more than two years later, in October 1998, after the Hogan and Kenna shooting.

The participants discussed Judge Francis' criticism of the NJSP's Internal Affairs Bureau ("IAB"), and that Capt. Touw had recently started inspection audits to "examine patrol/enforcement patterns at specific duty stations." (G-1) This is significant because it indicates early steps were taken to gather statistical data about the racial composition of traffic stops, and that there was early knowledge by the OAG of those steps. Indeed, DAG Fahy testified that he did not recall details about inspection audits, but he had told his superiors that he believed "further information need[ed] to be obtained regarding the racial makeup of State Police stops." (Fahy p. 131) In an April 19, 1996 memo to then CJ Director Terrence Farley, DAG Fahy reported that Capt. Touw had developed a monitoring program that was being experimented with. Moreover, in a December 5, 1996 memo to EAAG Waugh, DAG Fahy outlined the "proactive response" by the NJSP that followed Soto "with encouragement from our office." (F-13) He mentioned that the IAB had established an auditing procedure for dealing with selective enforcement complaints that allowed analysis of a pattern of discriminatory enforcement by an individual trooper or unit of troopers.

The Littles Committee met again on April 12, 1996. Among the issues discussed at the meeting was the need to review the activities of each trooper involved in the Soto case to determine potential negative issues, and it was determined that if the review uncovered substantial

problems, the decision to appeal would be reevaluated. There also was a discussion about other profiling cases that appeared since the Soto ruling, the fact that it was unlikely that they would be dismissed on summary judgment, and the likelihood that there would be numerous attempts to secure NJSP records and statistics. DAG Susswein testified that at this meeting he noted that "the times had now changed" and that there was a "chink in the armor." (April 9 at 24–25) DAG Susswein suggested that the OAG and the NJSP should no longer seek to defend their old actions and statistics, but instead should operate on a forward looking basis to show that steps were being taken to address racial profiling. The group also discussed a Hunterdon County profiling case, and the fact that one of the troopers in that case had a lengthy IAB file.

After that meeting, DAG Fahy sent a memo to CJ Director Terrence Farley on April 19, 1996, that reported on the status of selective prosecution issues and the plan to "buy some time" in the Hunterdon case while "other efforts to resolve this matter which we discussed are pursued." (F-10) He also reported that the NJSP was independently looking at the records in the affected counties to assess whether any problem existed, and that he would be told of their findings so they could be considered in making tactical decisions regarding how to proceed in each county. In a May 17, 1996 memo to then First Assistant Attorney General ("FAAG") James Ciancia, DAG Fahy reported that he and Capt. Touw were going to meet with then Hunterdon Prosecutor Sharon Ransavage the following Monday to give her statistical information about the arresting officers in two Hunterdon cases. DAG Fahy noted that the Hunterdon Prosecutor was uncomfortable with pleading these cases to reduced charges because they were first degree drug charges. DAG Fahy testified that he had discussed with FAAG Ciancia the possible need to encourage prosecutors to downgrade cases, and that such a discussion took place with the

Hunterdon Prosecutor. (Fahy at 156-163) Ultimately, it was decided that instead of litigating those cases, they would be dismissed or downgraded from first-degree felony offenses.

In a June 11, 1996 memo, DAG Fahy asked Capt. Touw to conduct a review of Troopers Hogan and Goldberg to determine the validity of a suppression motion that was brought in Mercer County. DAG Fahy also advised Capt. Touw that the discovery order was only preliminary and was "part of a broader plan" in which the NJSP, the OAG, and the Public Defender were attempting to resolve alleged selective enforcement practices statewide. (Fahy at 170-172)

DAGs Fahy and Susswein attended another meeting of the Littles Committee on May 16, 1996. SFC Gilbert reported that at this meeting the participants again discussed improving compliance with SOP F-3. He also reported that despite grumbling among some personnel, the Division also had been given "clear notice from the courts" that the ability to collect stop data exists, and the Division had been "negligent in collecting and analyzing this data" and would be subject to additional court instructions to produce it. (G-6)

SFC Gilbert also reported that the NJSP Records and Identification Section prepared an analysis of State troopers involved in the Soto appeal. DAG Fahy testified that he did not recall this analysis being discussed at the May 16 meeting, or his ever being provided with the analysis. (Fahy at 168-169) SFC Gilbert, however, testified that he believed he shared the analysis with DAG Fahy at the May 16 meeting. (Gilbert day 1 at 139-145) The results of this analysis were later referenced in an undated memo from SFC Gilbert to then Col. Williams, which SFC Gilbert said he wrote in February 1997. Gilbert reported that in the three-year period from June 1988 through May 1991, the minority arrest rates for troopers involved in the Soto appeal

were: 63%, 80%, 79%, 84%, 100%, 90%, 84% and 92%. (G-13) The early knowledge of these high minority arrest rates raises questions about the wisdom of maintaining the Soto appeal for nearly another three years, when the individual cases may not have been defensible if the State won its appeal and the cases were remanded. As noted above, there was discussion at the April 12, 1996 meeting that if the review of the records of the troopers in Soto uncovered problems, the appeal would be reevaluated.

October 4, 1996 was apparently the last time the Littles Committee met and DAGs Fahy and Susswein did not participate in the meeting. By memo dated October 11, 1996 detailing the events of this meeting, SFC Gilbert updated Col. Williams on the development of a four-hour search and seizure training program, which ultimately never materialized. SFC Gilbert reported to Col. Williams that the documents show "the audit process has proven itself" and will help NJSP deflect future criticism. SFC Gilbert also reported a marked improvement in compliance with SOP F-3, which required calling in the race of motorists during traffic stops. SFC Gilbert also pointed out Capt. Touw's recommendation that the patrol log be changed to include race. (G-7b)

SFC Gilbert attached various documents to his October 11 memo. Included were: IAB documents concerning an investigation into complaints by minority troopers at Moorestown that white troopers were profiling; and a document indicating a 90.2% compliance rate with SOP F-3. Apparently also included was a memo from Capt. Touw that reported that the percentage of minorities stopped by both minority and non-minority troopers was "dramatically higher" than reported by the expert in Soto. A subsequent action memo by Col. Williams, however, rejected the proposal to purchase search and seizure materials for stations, and rejected Capt. Touw's proposal to record racial tabulations of trooper stops on periodic trooper evaluation reports.

**D. The DOJ Investigation**

On November 7, 1996, EAAG Waugh received a call from Steven Rosenbaum, Esq. at the DOJ. Rosenbaum informed EAAG Waugh that the DOJ was interested in looking into the allegations of Soto to determine if the complained-of behavior was still ongoing. EAAG Waugh informed then AG Peter Verniero about the DOJ investigation. AG Verniero asked EAAG Waugh to see if the DOJ would defer sending a letter about the investigation to allow for AG Verniero to meet with representatives of the DOJ. The DOJ agreed to defer sending the letter and a meeting was scheduled for December 12, 1996.

Before the December 12 meeting, DAG Fahy wrote a memo to EAAG Waugh summarizing the racial profiling litigation history, and detailing the "proactive response" by the NJSP, including the work he and DAG Susswein undertook with the Littles Committee, and the establishment of an auditing procedure for dealing with selective enforcement complaints. (F-13) Prior to the meeting AG Verniero advised EAAG Waugh that he had an interest in having the DOJ's activities called something other than an investigation.

DAG Fahy and EAAG Waugh accompanied AG Verniero to the December 12 meeting with DOJ officials in Washington. The DOJ provided a sample document request detailing the type of information the DOJ might ask the OAG to produce. AG Verniero made it clear that the State would cooperate with the DOJ review, and he was concerned that it not be called an "investigation." Indeed, AG Verniero requested that the DOJ refer to its activities as an "inquiry" and not an "investigation." AG Verniero advised the DOJ that he was not inclined to enter into a consent decree, there was discussion about the Soto ruling being defective because a question of the accuracy of the survey and the legal issue concerning the shifting of the burden,

and there was some discussion about how voluminous the DOJ sample document request was. A suggestion was made that the DOJ should limit its inquiry to the southern part of the Turnpike, at least initially. (Waugh at 97) When they returned from the meeting with the DOJ, EAAG Waugh asked DAG Fahy to review the document request. DAG Fahy reported back that most of the records could be provided, but that it was an extremely broad request that would require unreasonable amounts of documents.

Another meeting took place on December 24, 1996 that was attended by AG Verniero, EAAG Waugh, DAG Fahy, Col. Williams and SFC Gilbert. The DOJ investigation was discussed and a copy of the DOJ's sample document request was provided to Col. Williams and SFC Gilbert. Though not at the meeting, in early January DAG George Rover was identified as the person who would be the liaison between the DOJ and the OAG, as well as the liaison between the NJSP and the OAG. Following the meeting, EAAG Waugh asked DAG Fahy to draft a letter to respond to the DOJ.

In DAG Fahy's January 3, 1997 draft letter to the DOJ for AG Verniero's signature, Fahy criticized the traffic survey that was conducted in Soto and was the basis for the conclusion that minorities comprised 15% of speeders on the Turnpike. DAG Fahy then wrote:

I believe the time has come to spend sufficient resources to develop and conduct a trustworthy violator survey. **The State Police report to me that the number of stops involving black motorists on the southern portion of the Turnpike patrolled by troopers assigned to the Moorestown Station remains near the level reported in the Soto case. This figure is also higher than that reported at other State Police stations in this State, including those along the Turnpike.** It is difficult for me to believe that despite a clear official policy prohibiting racial profiling and repeated declarations requiring adherence to this policy, that troopers assigned to one station would continue to reject it. This is particularly true since troopers are routinely reassigned to a variety

of duties and the personnel stationed at Moorestown including supervisors is fluid. Perhaps the answer lies in factors which can be accounted for in a professional and unbiased violator survey. Therefore, I request your patience as New Jersey undertakes a costly and ambitious study of the traffic and violator patterns on the southern portion of the Turnpike. (Emphasis added)

(F-26) This passage is significant because it demonstrates early knowledge that there was ongoing statistical analysis being conducted by the NJSP, that the percentages of minorities being stopped had not changed in the years since the Soto analysis was conducted, and that the numbers suggested a problem and required further analysis. DAG Fahy testified that he based this representation on reports he had heard that the numbers were running about the same as in Soto. (Fahy at 290-293) This entire passage, however, was ultimately deleted from the letter in changes made by AG Verniero, and was replaced with the following sentence: "My office is in the process of developing a trustworthy violator survey." (March 27 at 130-131) Despite this representation in the letter to the DOJ, a violator survey was not conducted during AG Verniero's tenure.

In January 1997, DAG Rover began his work in response to the DOJ investigation. SFC Gilbert also began his inquiry into the racial profiling issue by gathering and analyzing NJSP documents that were also responsive to the DOJ inquiry. DAG Rover and SFC Gilbert had regular communications and they worked closely with each other in connection with the DOJ inquiry.

In February 1997, SFC Gilbert wrote a memo to Col. Williams (the "Gilbert Memo"). This undated memo played an important role in the Committee's investigation. In the Gilbert Memo, SFC Gilbert reported that he conducted some analysis "[i]n order to get a handle on what we are facing" and that "[t]he numbers are not good." (G-13) SFC Gilbert pointed out

that the percentage of consent searches<sup>8</sup> involving minorities was higher than that of Maryland, and that the consent numbers in Maryland recently forced the Maryland State Police to enter into a consent decree with the DOJ.

SFC Gilbert noted that the NJSP numbers indicated that 89% of consent searches by the Moorestown barracks and 94% of consent searches by the Cranbury barracks involved minorities. (G-13) By comparison, 80.3% of Maryland State Police searches were of minorities. SFC Gilbert also noted that because of Soto, an investigation of Illinois police, and the Maryland settlement, "[t]he Justice Department has a very good understanding of how we operate and what type of numbers they can get their hands on to prove their position." (G-13) He made recommendations for how to forestall an unfavorable settlement with DOJ by taking proactive steps. Ultimately, SFC Gilbert concluded that "we are in a very bad spot." (G-13)

The Gilbert Memo is the first specific mention of consent search data, and the first mention of the Maryland settlement agreement in the documents generated by the State and produced to the Committee. The consent search data became central to the racial profiling issue over the next two years, and was the central basis for the conclusions drawn in the Interim Report issued in April 1999.

SFC Gilbert and Col. Williams testified that after Col. Williams received the Gilbert Memo he instructed SFC Gilbert to immediately share the information contained in the Gilbert Memo with DAG Rover. SFC Gilbert testified on several occasions that he promptly gave DAG Rover an overview of the numbers and the information contained in the Gilbert Memo, that

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<sup>8</sup> Unlike probable cause searches, consent searches are conducted after a trooper has asked the motorist's permission, and obtained written consent. Consent search data was a central part of the Maryland court order that resulted from a lawsuit brought by the American Civil Liberties Union, and was part of the information that the DOJ requested in its investigation into the NJSP.

DAG Rover understood the gravity of the numbers, and that DAG Rover said he would report it up his "chain of command" (which would be Waugh and Verniero). (Gilbert 2/14 at 207-209; Gilbert 2/22 at 125-127)

DAG Rover, however, denied that SFC Gilbert told him about specific consent search data, and said that SFC Gilbert only told him the New Jersey numbers were in the "ball park" of Maryland and urged him to make sure EAAG Waugh knew this information (Rover at 40-43; March 20 at 92-95) DAG Rover testified that his understanding was that since the Soto case was based on motorist stop data, and not consent search data, only the stop data was relevant to his work on the DOJ investigation, and post-stop data was not relevant. (Rover at 76-79) This testimony was somewhat curious because DOJ had requested consent search data, the Maryland case turned heavily on consent search data, and SFC Gilbert and Capt. Touw were both conducting analyses of consent searches at this point. Furthermore, just a few weeks later, on March 18, 1997, DAG Rover wrote a strategies memo to EAAG Waugh and DAG Fahy (the "Rover Strategies Memo") discussing his expectation that the DOJ was more interested in consent search data than in traffic stop data. This memo was forwarded to AG Verniero.

Remarkably, the Rover Strategies Memo contained much of the same information presented in the Gilbert Memo. In his memo, DAG Rover wrote that he expected the DOJ would follow the same course of action that was followed by the plaintiffs in the Maryland case, and rely upon consent search statistics as evidence of selective prosecution. The Rover Strategies Memo suggested that the OAG take the position that consent search documents were not relevant to the DOJ's inquiry of whether minorities were being **stopped** based on their race and if the DOJ

insisted upon using this data, it should also be required to examine the factual circumstances that led to each individual request for consent to search a vehicle.

On May 20, 1997, AG Verniero met with EAAG Waugh, DAGs Rover and Fahy, Capt. Blaker, Col. Williams and SFC Gilbert. The agenda for this meeting indicated that the topics to be discussed included the status of the DOJ inquiry and document production, a strategy to conduct a violator survey, production of consent to search documents, the Maryland case and the "proper characterization" of consent to search documents, and future strategy (including providing documents concerning the DOJ's drug interdiction policies). A notation at the bottom of this agenda, written by Capt. Blaker, indicated that, "AG advised he would not consent to signing a consent decree, 'they'd have to tie me to a train and drag me along the track before I'd sign a decree.'" (G-19) EAAG Waugh testified that he also recalled AG Verniero making a statement to that effect. (Waugh at 170-171)<sup>9</sup>

The NJSP officials at the meeting said they understood AG Verniero's statement to mean that AG Verniero would allow the NJSP to investigate whether there was a problem and give New Jersey an opportunity to fix its own problems without federal intervention. Capt. Blaker said that by the time of the May 20 meeting, data were being collected to determine whether a racial profiling problem extended beyond a few troopers, the inspection audits were underway, and training was being improved. (Blaker at 125-26) Capt. Blaker also testified that the Maryland data and the NJSP data were discussed at this meeting. (Blaker at 127) It is

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<sup>9</sup> Judge Waugh testified that subsequent to the announcement of the Committee's investigation he had a conversation with Justice Verniero, who said he did not remember making such a statement. Judge Waugh said he told Justice Verniero that he remembered him saying something like that to which Justice Verniero responded he had not remembered saying that.

unclear what training he referred to because the search and seizure training recommended by the Littles Committee was never actually implemented.

SFC Gilbert testified that there was some discussion at the May 20 meeting about how the NJSP consent search numbers were roughly the same as Maryland, and that it was apparent to him that everyone at the meeting was informed about the NJSP statistics. (Gilbert at 288) SFC Gilbert also said that AG Verniero made a comment that he would reach out to then United States AG Janet Reno to discuss the conflicting messages being received from the DOJ concerning civil rights and drug interdiction. (Gilbert at 290-291)

The OAG representatives who attended this meeting had less clear recollections, and said that statistics were not discussed, except in general terms, concerning how the NJSP consent search numbers were comparable to Maryland's consent search numbers. There were a number of conflicting statements concerning this meeting. For example, SFC Gilbert and Capt. Blaker testified that DAG Rover did most of the talking at this meeting, while DAG Rover claimed he said very little. (Gilbert at 293; Blaker at 110; March 20 at 290)

By this point in time, the DOJ had reached an agreement with the LPS to focus its inquiry on 30 sample dates in 1995 and 1996, and to examine only the Moorestown and Cranbury barracks. SFC Gilbert proceeded to do his own analysis of the 30 sample dates and on July 10, 1997, he reported in a memo to Col. Williams and Capt. Blaker that the minority consent search rate for those dates was 82%. SFC Gilbert also reported that 89% of the negative probable cause searches during those days were of minorities.<sup>10</sup> (G-25)

DAG Rover testified that he did not receive this statistical analysis, and never received a statistical breakdown of the 30 sample dates. He also testified that he did not recall

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<sup>10</sup> A negative probable cause search is a probable cause search in which no contraband is found.

SFC Gilbert telling him about the analysis. (Rover at 168-70) DAG Rover also testified, however, that in early 1999 in conversations with SFC Gilbert about the DOJ's request for probable cause search information, SFC Gilbert told DAG Rover that he had already given the statistical breakdown of the 30 sample dates to him. DAG Rover said that when he saw the information in 1999, it was his view that they were clearly responsive to the DOJ's request for information. (Rover at 161-172)

Christine Boyle, the LPS staff person who analyzed the statistics contained in the Interim Report, testified that nearly all of the information she included in the Interim Report concerning consent searches and traffic stops came from a file of documents SFC Gilbert delivered to the OAG on March 15, 1999. (Boyle at 50-51) Boyle testified, however, that the information concerning the 30 sample dates came from information contained in boxes of DOJ materials that had been collected by DAG Rover, and which were given to her by DAG Michael LoGalbo. (Boyle at 124-125) Much of the statistical analyses Boyle relied upon were those developed by SFC Gilbert during the early months of the DOJ investigation and from monthly compilations collected from NJSP barracks and forwarded up the chain of command to the Superintendent from 1997 through 1999. SFC Gilbert testified that he had kept DAG Rover informed of these analyses on an ongoing basis, and that DAG Rover was taking this information to his superiors, EAAG Waugh and AG Verniero. (Gilbert at 211-213)

SFC Gilbert's file also contained comprehensive six-month analyses of minority stop and consent search rates for the Moorestown and Cranbury barracks covering the period beginning April 1997. SFC Gilbert testified that DAG Rover was fully aware that the NJSP were keeping these ongoing statistical analyses, and that DAG Rover's superiors also should have been

aware of them. In fact, SFC Gilbert testified that these analyses became a significant issue in November 1998, that was brought to the attention of the highest levels of the NJSP and the OAG, after Lt. Col. Dunlop mentioned to Steven Rosenbaum of the DOJ that the NJSP had been conducting ongoing analyses of the racial composition of stops and searches. SFC Gilbert testified that in November 1998, the DOJ contacted the OAG to obtain these statistics, and that DAG Rover contacted SFC Gilbert to tell him that the DOJ was now requesting information about the ongoing monitoring. SFC Gilbert testified that he arranged a meeting with Col. Williams, Lt. Cols. Fedorko and Dunlop, and DAG Rover to discuss the DOJ request, and Col. Williams took the position that absent a court order or subpoena, he did not want to release the ongoing monitoring information to the DOJ. SFC Gilbert testified that DAG Rover indicated he would convey the Colonel's position to his superiors. (Gilbert 2/22 at 119-128)

DAG Rover testified that he did not recall meeting with SFC Gilbert, Col. Williams and Lt. Cols. Fedorko and Dunlop, but that he did receive a call from the DOJ in December 1998 asking if the State had any audits or statistical analyses of the southern part of the Turnpike. DAG Rover testified that he met with then FAAG Hespe, DAG Fahy and AAG Ramey to discuss this new document request. DAG Rover testified that FAAG Hespe instructed him not to turn the statistics over and to "get back to Justice and say we're looking [sic] and let me know if they ask again." (March 20 at 142-144) Current FAAG Zoubek also verified that during his discussions with the DOJ in 1999, DOJ officials indicated that they had learned from Lt. Col. Dunlop that New Jersey was keeping ongoing monitoring statistics. (April 2 at 54-55)

FAAG Hespe's account of these events contradicted the accounts of SFC Gilbert and DAG Rover. FAAG Hespe testified that DAG Rover told him he had received a call from a

contact at the DOJ requesting information, and that he directed DAG Rover to call back the DOJ and find out what they wanted and why they wanted it. (April 2 at 245-262) Hesper claimed he never knew that the DOJ was conducting an investigation of the NJSP. (April 2 at 255-260) This was difficult to square with Justice Verniero's testimony that FAAG Hesper was responsible for supervising DAG Rover's work on the DOJ investigation after EAAG Waugh left the OAG at the end of 1997. (March 28 at 84-85 and 242-244)

This collection of testimony presented inconsistencies, but as a whole it suggested that once the DOJ learned in late 1998 that the State was maintaining ongoing statistics about the racial breakdown of stops and consent searches, and requested those statistics, an effort was made by high level officials within the OAG and NJSP to conceal these statistics from the DOJ.

Documents and testimony also suggested that on at least one earlier occasion, a decision may have been made by AG Verniero not to turn over information that was responsive to the DOJ's inquiry and document request. On July 29, 1997, EAAG Waugh sent a memo to AG Verniero (the "Waugh Memo") concerning a collection of documents recently received from the NJSP. EAAG Waugh raised the question that the collection "appears to be within the ambit of the documents requested by DOJ and may have to be produced for them." (G-27) The Waugh Memo also advised that DAG Rover was looking into the issue further.

The documents attached to the Waugh Memo included a copy of a document that was referred to in the Hearings as the "Smith Special." The Smith Special was an NJSP report dated January 10, 1996, prepared by then Sgt. J.E. Smith concerning allegations by minority troopers that non-minority troopers stationed at the Moorestown barracks were engaging in racial profiling. Also attached was a September 24, 1996 NJSP report prepared in response to the

Smith Special. That document contained an audit setting forth that a high rate of stops involved minority motorists (about 34% of stops by solo patrols and between 36.9% and 52% of stops by dual patrols), but concluded that there was no evidence that non-minority troopers were targeting minority drivers any more than minority troopers. The attached documents also included a May 15, 1996 NJSP report on this investigation, which documented that an audit found that minority drivers constituted 62% of all consent searches and 65% of all probable cause searches conducted by the Moorestown Station on the Turnpike.

EAAG Waugh testified that he did not recall specifically what happened as a result of this memo. (Waugh at 195; March 27 at 182-187) DAG Rover testified that EAAG Waugh instructed Rover not to turn the document over to the DOJ. (March 20 at 114-116) FAAG Paul Zoubek testified that Rover told him later that there had been a decision not to forward some of the documents to the DOJ, and that DAG Rover did not send any information without talking with EAAG Waugh. DAG Rover also told FAAG Zoubek that he had worked with EAAG Waugh and AG Verniero on the DOJ investigation and that the steps he took he did in consultation with EAAG Waugh and AG Verniero. (Zoubek at 137-149)

Once there was agreement on 30 randomly selected dates for which the DOJ would examine trooper activity in the Moorestown and Cranbury barracks, SFC Gilbert gathered up the relevant documents from the barracks and sent them to DAG Rover by mid-Fall 1997. Other documents indicated that DAG Rover proceeded to send the requested documents to the DOJ a few at a time, over many months, and did not finish sending the documents until May 1998. EAAG Waugh testified that DAG Rover apparently was under a mistaken impression, based on something EAAG Waugh had said to him, that DAG Rover should "stall" in responding

to the DOJ. EAAG Waugh said he had only meant to convey to DAG Rover that he should not "drop everything" to respond to each DOJ request. (Waugh at 220-221)

The DOJ investigation did not become public until February 17, 1999, and documents and testimony indicated that at this point, the DOJ increased its communications with the OAG. By early April 1999, there were discussions within the LPS about the possibility of a consent decree. AAG Susswein's early drafts of the Interim Report made reference to the analysis of 30 sample dates requested by the DOJ, but ultimately all references to the DOJ were edited out at the direction of AG Verniero. FAAG Zoubek testified that AG Verniero directed that this information be edited out of the Interim Report because he wanted to keep the scope of the DOJ investigation confidential. (Zoubek at 378-379; April 2 at 10)

DAG Rover wrote a memo to then Director Zoubek on February 26, 1999, shortly after Director Zoubek took over the response to the DOJ investigation, detailing what documents had been produced to the DOJ, and some of the "numerous documents" that he did not produce to the DOJ. (R-18) FAAG Zoubek said that as he came up to speed on how the DOJ investigation had been handled during the previous two years, he had concerns about DAG Rover's involvement and the level of production to date. (Zoubek at 151) DAG Rover's memo was noteworthy because of the documents that DAG Rover indicated had not been produced. According to this memo, among the documents not produced to the DOJ were a 1996 internal affairs document containing an audit of the Moorestown Station, a statistical breakdown of motor vehicle stops for the sample dates, negative probable cause searches, an audit of the Perryville/Washington Station and Hunterdon County statistics.

On February 28, 1999, Gov. Whitman dismissed Col. Williams for making racially insensitive comments reported in a Star-Ledger article, and named Lt. Col. Michael Fedorko to serve as interim superintendent.

On April 26, 1999, AG Verniero and FAAG Zoubek testified before the Senate Judiciary Committee about the Interim Report. Also, late on April 26, AG Verniero received a four-page letter from the DOJ announcing that it had concluded its investigation and determined that the NJSP “engaged in a pattern or practice of discriminatory law enforcement.” The DOJ letter detailed its statistical findings and assessments of the practices of the NJSP. (SJC-5)

On April 29, AG Verniero provided a letter to Chairman William L. Gormley in which he related that “[i]n furtherance of my testimony on the subject of racial profiling, I wanted to let you know, that since my appearance before the committee, I have learned that the Civil Rights Division of the United States Department of Justice has authorized the filing of a civil suit against [the NJSP] . . . alleging that [NJSP] officers have engaged in discriminatory law enforcement.” (A copy of the April 29, 1999 letter is contained in the Appendix) AG Verniero did not mention that the DOJ had actually concluded its investigation and had advised AG Verniero of its finding that the NJSP “engaged in a pattern or practice of discriminatory law enforcement.”<sup>11</sup>

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<sup>11</sup> It should be noted that the April 26, 1999 letter from the DOJ was not released to the Committee during the document release in November 2000, because the originally agreed-upon end date of the document production was April 20, 1999. However, the April 26, 1999 DOJ letter was not included in the supplemental document production that occurred after OAG agreed to extend the end date of the document production to May 15, 1999. The letter’s existence was discovered by minority counsel during a telephone conversation with the DOJ on March 27, 2001. By letter dated March 27, 2001, Special Counsel requested that the OAG provide the Committee with a copy of the April 26, 1999 DOJ letter. The OAG ultimately provided the Committee with a copy of the April 26 DOJ letter on March 28, 2001.

The manner in which State officials responded to the DOJ inquiry, and events surrounding the DOJ probe, have become centrally important to the Committee's inquiry. Some individuals from the OAG have suggested that the DOJ was not aggressive in the pursuit of its investigation. There is also considerable evidence that then AG Verniero and other top State officials took steps to slow down the DOJ investigation, limit it, impede DOJ's work, and hold back relevant documents.

The events surrounding this investigation became important in the Committee's inquiry because they indicated there was knowledge within the OAG that the NJSP were developing statistics concerning the racial breakdown of stops and searches on the Turnpike, and that those statistics were cause for concern.

**E. The Hogan And Kenna Shooting And The Sacchetti Audit**

On April 23, 1998, Troopers James Kenna and John Hogan fired on four men in a van they stopped on the Turnpike (the "Turnpike Shooting"). On May 4, 1998, AG Verniero announced that he referred the investigation into the Turnpike Shooting to a State grand jury, and that Burlington County Assistant Prosecutor James Gerrow, Jr. would be a special prosecutor ("SP") and would lead the review team.<sup>12</sup>

In the course of investigating the Turnpike Shooting, Lt. Sacchetti was directed to conduct a racial composition survey of stops conducted by Troopers Hogan and Kenna. On May 8, 1998, after Lt. Sacchetti presented his findings to then Lt. Col. Dunlop, he was advised that Troopers Hogan and Kenna may have falsified reports on the night of the shooting, possibly to conceal the race of motorists they were stopping. As a result, Lt. Sacchetti was told that his

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<sup>12</sup> SP Gerrow was chosen out of the Burlington County Prosecutor's Office because of a conflict within the Mercer County Prosecutor's Office.

survey might not be accurate. Lt. Sacchetti was sent back to the Cranbury barracks to conduct an audit of warnings issued by Troopers Hogan and Kenna to determine whether he could ascertain the extent of records falsification by the two troopers.

On June 11, 1998, Lt. Sacchetti met with Lt. Col. Dunlop and other NJSP officials, and a decision was made to begin an audit of troopers at the Cranbury barracks, in addition to Troopers Hogan and Kenna, to determine if other troopers were engaging in race-based records falsification. This ultimately came to be known as the "Troop D audit." The progress of this audit appeared to be important in relation to the prosecution of Hogan and Kenna.

The Troop D audit consisted of three phases: Phase I identified troopers who had a pattern of discrepancies; Phase II then investigated those troopers by calling motorists involved in traffic stops to determine discrepancies; and Phase III then consisted of a statistically valid random audit of all personnel within a barracks, and a sample of motorists stopped by those personnel, to attempt to identify troopers with discrepancies that may not have been identified in the first two phases. Lt. Sacchetti regularly briefed then Lt. Cols. Fedorko and Dunlop on the progress of the Troop D audit.

Lt. Sacchetti began his audit in Cranbury on July 3, 1998. The second phase began in Cranbury on August 20, 1998, and the third phase began on December 14, 1998. On September 10, 1998, Sacchetti attended a meeting at which the findings of his audit to date were discussed. Lt. Col. Fedorko indicated internal investigations would be initiated against all troopers identified with discrepancies, and Lt. Col. Fedorko said the audit would only cover Cranbury. This later changed, and the audit was expanded to cover Moorestown and Newark.

At a September 11, 1998 meeting between Lt. Sacchetti and Lt. Cols. Fedorko and Dunlop, Lt. Col. Dunlop expressed concern that the focus of the Troop D audit was beginning to shift from race-based wrongdoing to administrative issues.

On February 10, 1999, Lt. Sacchetti met with then Director Zoubek, AAG Stone, Col. Williams, Lt. Cols. Fedorko and Dunlop, and Det. Sgt. John Cazzupe, and presented a summary of the Troop D audit to date. Lt. Sacchetti testified that Director Zoubek seemed pleased with the progress of the Troop D audit. Director Zoubek, AAG Stone and Det. Sgt. Cazzupe were also directly involved in the Turnpike Shooting investigation.

On March 8, 1999, the NJSP began work on the Newark barracks as part of the Troop D audit. On March 10, 1999, AG Verniero met with Director Zoubek, AAG Stone and SP Gerrow, to discuss the status of the Turnpike Shooting investigation. AG Verniero expressed frustration with the pace of the grand jury investigation into the Turnpike Shooting, said he felt that the public wanted some action taken in the case, expressed concern about the upcoming one-year anniversary of the Turnpike Shooting, and proposed the idea of seeking an indictment on the less serious falsification charges first. Director Zoubek, AAG Stone and SP Gerrow advised AG Verniero that seeking an indictment on the falsification charges and announcing it publicly could taint the ongoing grand jury investigation into the more serious charges concerning the Turnpike Shooting.

Despite the advice of three experienced prosecutors, AG Verniero directed that the falsification case be presented to a separate grand jury as soon as possible. On April 19, 1999, one day before the release of the Interim Report, AG Verniero announced that a grand jury had indicted troopers Hogan and Kenna on falsification of records charges (the "Falsification

Indictment"). The Falsification Indictment was publicly released even though the grand jury convened to examine the more serious charges involved in the Turnpike Shooting had not yet concluded its consideration of the evidence. The grand jury that examined the Turnpike Shooting ultimately returned an indictment on September 7, 1999 (the "Shooting Indictment"). Also on April 19, Lt. Sacchetti met with Lt. Col. Fedorko and informed him that the return rate on the Phase III audit was slow in Cranbury because his people were not receiving responses from motorists that had been contacted by mail. Lt. Sacchetti also advised that at the current pace, it would take a year and a half to two years to complete the audit. Lt. Col. Fedorko testified that he thereafter advised the OAG that the audits of Moorestown and Newark were not revealing anything and that there was no point in continuing the investigation. (Fedorko at 59)

On May 14, 1999, Lt. Sacchetti met with Lt. Cols. Fedorko and Dunlop and other NJSP officials and asked what steps NJSP planned to take to discipline troopers for infractions discovered during the audit. Lt. Col. Fedorko said he would discuss it with Lt. Col. Dunlop after the meeting, and Lt. Col. Dunlop called Lt. Sacchetti later in the day and said the OAG would decide discipline in those matters. Of the 42 racial discrepancies uncovered (excluding troopers Hogan and Kenna), 29 troopers were involved, and ten cases were sent to the CJ. Those ten cases were eventually sent back to the NJSP for administrative discipline, and apparently had not been acted upon at the time of Judge Andrew J. Smithson's ruling dismissing the Hogan and Kenna indictments. In fact, the Committee learned that during the course of its investigation in February 2001 investigators were assigned to these cases in an effort to resolve them nearly two years after they were first identified by the Troop D audit, and after a long period of inactivity.

On May 20, 1999, Lt. Sacchetti talked with Lt. Col. Dunlop, and asked what direction to take regarding the audit. He was advised that the decision was not Lt. Col. Dunlop's, but was in the hands of the OAG. Lt. Sacchetti said that at this point, he had 30 troopers with very little to do, and needed authorization to move ahead to the next phase of the audit. He said he was told by Lt. Col. Fedorko to just stand by. Finally, on June 10, 1999, a decision was made to terminate the Troop D audit detail. Phase II was not completed in any barracks, and Phase III was never launched in Moorestown and Newark. There was conflicting testimony as to why the Troop D audit was terminated. Lt. Sacchetti said he was told the decision was made by the OAG and that he was never asked to file a final report. (March 27 at 20-31) Lt. Col. Dunlop said he did not recall why the audit was disbanded and Lt. Col. Fedorko said it was disbanded on the recommendation of Lt. Sacchetti because it was not uncovering much wrongdoing. (March 19 at 275-280; Fedorko at 60-62) It should be noted that this audit was heralded in the second paragraph of the Interim Report as a comprehensive examination of the activities of troopers on the Turnpike that was still pending. But in the weeks that followed the issuance of the Interim Report, the Troop D audit was effectively allowed to expire.

Lt. Col. Dunlop told Lt. Sacchetti on September 9, 1999 that there was no need to provide a final report. More than a year later, on October 10, 2000, Lt. Sacchetti was told at a meeting with Maj. Brennan and others to submit his rough copy of the report to date as a final report.

In October 2000, Judge Smithson dismissed the shooting indictment, and said the public release of the first indictment had tainted the second grand jury. Judge Smithson called the public release of the indictment "an act of political expediency" spurred by "powerful and

intimidating forces driving the decision making of the Office of the Attorney General." State v. Hogan, No. 99-09-00163S at 31 (Sup. Ct., Law Div., October 31, 2000). Judge Smithson's decision was later reversed by the Appellate Division, which held that Judge Smithson's criticism of the Attorney General was "unfair and unfounded." State v. Hogan, 336 N.J. Super. 319 (App. Div. 2001). On March 14, 2001, the Supreme Court announced that it was refusing to hear an appeal of the Appellate Division's decision. State v. Hogan, 2001 NJ Lexis 420 (March 14, 2001).

**F. The Interim Report And The Withdrawal Of The Soto Appeal**

On February 10, 1999, AG Verniero announced the formation of a State Police Review Team (the "Review Team") to examine issues surrounding the procedures for processing complaints from the public and internal complaints from troopers, training programs for supervisors, and the system of internal discipline. AG Verniero announced that the Review Team anticipated promulgating a report of its findings in June 1999. The formation of the Review Team was announced the same day that the Star-Ledger reported it had analyzed arrests on the Turnpike and that 75% of arrests during the first two months of 1997 were of minorities. FAAG Zoubek said he learned of the Review Team, and his assignment to head up the Review Team, on the day it was announced and he was not consulted prior to the decision. (Zoubek at 92-94) FAAG Zoubek also testified that the initial announcement did not mention that the Review Team would examine racial profiling, and he learned that racial profiling would be added to the Review Team's task only when AG Verniero made such a statement to a newspaper reporter during an interview shortly after the Review Team was announced. (Zoubek at 119-121)

On February 26, 1999, Governor Whitman nominated AG Verniero to the New Jersey Supreme Court, the day after Justice Pollock announced his retirement. On March 5,

1999, the OAG filed a motion seeking a 120-day delay of oral arguments scheduled for April 23 in the Soto appeal.

On March 8, 1999, the New Jersey Legislative Black and Latino Caucus (the "Caucus") requested information from AG Verniero concerning racial profiling for use in their April, 1999 hearings. The March 8 letter requested, among other things, stop data for a six-year period. (SJC-7)

On March 15, 1999, SFC Gilbert attended a meeting with OAG officials and provided a copy of a notebook containing documents and statistical information concerning racial profiling (the "Gilbert Notebook"). (G-33) The documents were received in response to then Director Zoubek's request that the NJSP provide all relevant documents concerning racial profiling. The Gilbert Notebook in part contained information previously provided to AG Verniero in July 1997 and copies of the same information reviewed by AAG Stone in June 1998.<sup>13</sup>

Also in the Gilbert Notebook were comparisons to the Maryland consent to search rates that were

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<sup>13</sup> According to AAG Stone, after reviewing the information obtained from Lt. Sacchetti, she had recommended in June 1998 that the OAG withdraw the Soto appeal because of statistical information that had been developed by the NJSP. That data revealed stop rates commensurate with the rates presented by the defense in Soto, and was the same stop data that was included in the information AG Verniero received on July 29, 1997. This information was not produced to the defense in Soto during the pendency of that case. Despite AAG Stone's recommendation to Director Zoubek that the OAG withdraw the Soto appeal, it was not withdrawn at that time.

Moreover, on March 16, 1999, a telephonic oral argument with the judges of the Appellate Division was conducted in connection with the State's motion to adjourn oral argument in the Soto matter. (March 27 at 73 – 84) One of the judges reminded the State of its continuing discovery obligations. Counsel for the defendants, William Buckman, Esq., advised that the State had not provided any discovery subsequent to Judge Francis' ruling in March, 1996. Indeed, since the close of witness testimony in May, 1995 the State had not provided any discovery to the defense.

Mr. Buckman also testified that he reviewed the OAG's production of over 90,000 pages of documentation in November 2000. (March 27 at 81 – 86) During his review he discovered categories of documents that had not been produced to the defense in Soto despite having been formally requested. Particularly troublesome to him was the State's failure to produce consent to search forms and data. When the defense requested those materials the State responded that such documentation and data did not exist or it could not be located.

shared with DAG Rover in February 1997 and discussed at the May 20, 1997 meeting. The Gilbert Notebook also contained the ongoing statistical analyses that the DOJ apparently had requested from DAG Rover in late November or early December 1998, after learning of them from Lt. Col. Dunlop. DAG Rover testified that FAAG Hesper instructed him not to produce the statistics for the DOJ.

FAAG Zoubek testified that after receiving the Gilbert Notebook he was angry about learning of some of the information contained therein for the first time. (Zoubek at 161) He said he was not aware that the NJSP was keeping regular, ongoing audit statistics. The receipt of the Gilbert Notebook prompted both AG Verniero and FAAG Zoubek to write memos to their files the following day, March 16, 1999, indicating that they had that day received statistical information from the NJSP that they had not seen before. Also on March 16, a three-judge panel of the Appellate Division rejected the OAG's request for a delay of the oral arguments in Soto. Within a few days, AG Verniero instructed the Review Team to accelerate its review of racial profiling, which resulted in the completion of the Interim Report a mere two months after announcing the NJSP review.

FAAG Zoubek also testified, however, that when he went through DAG Rover's files prior to the issuance of the Interim Report he found some statistical information that apparently the NJSP had sent the OAG much earlier in the course of the DOJ investigation. (Zoubek at 199-210) This prompted FAAG Zoubek to tone down considerably language in an early draft of the Interim Report that criticized the NJSP for only recently providing information that pointed to profiling. FAAG Zoubek testified that when he told AG Verniero about the documents he found in DAG Rover's files, AG Verniero's first concern was whether there was any

indication in the documents that AG Verniero had previously seen the documents. (Zoubek at 232-233)

Testimony by AAG Susswein, the author of the Interim Report, and Christine Boyle, an LPS statistician who prepared the analysis of all the empirical data in the Interim Report, indicated that the most important statistics contained in the Interim Report (stop and consent search statistics) came from the Gilbert Notebook. (April 9 at 26-27; Boyle at 64-68) SFC Gilbert testified that these statistics should not have been news to the OAG because he kept DAG Rover informed on an ongoing basis of the analyses he was conducting, and the audit activity within the NJSP that began after the Soto ruling. (Gilbert at 202-204) This raised the obvious and central question: If the OAG knew in 1997 about problematic statistics concerning consent searches, as many witnesses have testified, why did it wait until 1999 to take any action?

On March 29, 1999, AG Verniero responded to the Caucus' March 8 request. Despite having received the data contained in the Gilbert Notebook, AG Verniero advised that such information "would require a massive effort to produce as the State Police does not have this data in easily retrievable form." (SJC-8)

On April 20, 1999, the OAG released the Interim Report. That same day the OAG announced that it was withdrawing the Soto appeal. The Interim Report concluded that the problem of racial profiling is "real -- not imagined" and that minority motorists had been treated differently by the NJSP on the Turnpike. (Interim Report at 4 - 5) The Review Team defined the problem of "disparate treatment" as it relates to "racial profiling" to include situations in which a trooper relied on a person's race, ethnicity or national origin - in conjunction with other factors - to select vehicles to stop from among all of those being operated illegally. The definition

encompassed a trooper's making of any discretionary decision based on race or ethnicity during a traffic stop, such as ordering the driver or passengers to step out of the vehicle or conducting a consent search of the vehicle. (Interim Report at 45-56)

The Interim Report revealed two interrelated problems that may have been influenced by the goal of interdicting illicit drugs: willful misconduct by a small number of NJSP members, and more common instances of possible *de facto* discrimination by officers who may have been influenced by stereotypes and thus may have tended to treat minority motorists differently during the course of routine traffic stops. For the period between April 1997 and November 1998, for which statistics were compiled, the Cranbury and Moorestown stations on the Turnpike reported that four out of 10 stops (40.6 percent) involved black, Hispanic, Asian or other non-white people. (Interim Report at 25-26)

Even more disturbing were statistics demonstrating that minority motorists were disproportionately subject to consent searches. State Police procedures required that before a trooper could request permission from a driver or occupant to search a vehicle, the trooper must have had "reasonable suspicion" to believe that the search would reveal evidence of a crime. Although consent searches are rare, the data related to them are especially instructive because the decision by a trooper to ask for permission to conduct a search is purely discretionary. The aggregate data in the Interim Report, which span selected periods from 1994 to 1999 and include 1,193 consent searches, showed that more than three out of four consent searches (77.2%) involved black or Hispanic motorists. As a result of concerns raised by these statistics, the Review Team recommended that the NJSP conduct a case-by-case review of every consent search made on the Turnpike in 1997 and 1998 to determine whether reporting requirements and

procedures were complied with. Moreover, the Review Team discovered that most consent searches did not result in a "positive" finding. (Interim Report at 28) Specifically, 19.2% of the searches the Review Team considered resulted in an arrest or seizure of contraband. (Interim Report at 28) When the Review Team accounted for race and ethnicity it discovered that 10.5% of the searches that involved white motorists resulted in an arrest or seizure of contraband, that 13.5% of the searches involved black motorists resulted in an arrest or seizure, and 38.1% of the searches of Hispanic motorists resulted in an arrest or seizure of contraband. (Interim Report at 28)

The Interim Report also presented arrest data from the Computerized Criminal History ("CCH") database for 1996 through 1998 for Troop D, which patrols the Turnpike, which revealed that of a total of 2,871 arrests, 32.5% involved white persons, 61.7% involved black persons and 5.8% involved persons of other races. Despite these percentages, however, the Review Team concluded that, viewed in artificial isolation, arrest rates could not provide conclusive proof of racial profiling or discriminatory practices. Nor did they provide evidence that minority citizens are more likely than whites to be engaged in criminal activity, the Review Team noted. In fact, the Review Team concluded that police officers may have been subjecting minority citizens to heightened scrutiny and more probing investigative tactics that lead to more arrests, and then using those arrest statistics to justify those same improper tactics. (Interim Report at 70)

Ultimately, the Interim Report recommended a series of remedial steps to ensure that all routine traffic stops made by the NJSP would be conducted impartially. Among the major recommendations were:

- 1) Developing a comprehensive and automated "early warning system" to detect and deter the disparate treatment of minority motorists. By collecting all available sources of information about trooper performance, this system would allow supervisors to quickly monitor and remediate potential problems.
- 2) Establishing a new, comprehensive standard operating procedure for initiating and conducting traffic stops.
- 3) Developing comprehensive new standard operating procedures for requesting permission to search and for conducting consent searches.
- 4) Issuing an updated Attorney General's statewide drug enforcement strategy that will define the enforcement priorities and contributions of all law enforcement agencies in a coordinated and multi-disciplined response to New Jersey's drug problem.

(Interim Report 86-111) AG Verniero and FAAG Zoubek testified before the Committee on April 26, 1999 about the Interim Report and racial profiling.<sup>14</sup>

On May 5 and 6, 1999, AG Verniero testified before the Committee in connection with his nomination to the New Jersey Supreme Court. At his confirmation hearings AG Verniero testified about, among other things, racial profiling, the status of the DOJ investigation, the Review Team's work, and the Interim Report.<sup>15</sup>

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<sup>14</sup> The Caucus held regional public hearings on April 13, 20 and 27 concerning racial profiling. Prior to the first hearing the Caucus extended invitations to AG Verniero, Lt. Col. Fedorko, and Supt. Williams. Each declined the invitation. (See New Jersey Legislative Black and Latino Caucus "A Report on Discriminatory Practices Within the New Jersey State Police," dated August 1999)

<sup>15</sup> During the course of its investigation, the Committee concluded that AG Verniero engaged in a pattern and practice of withholding and concealing information from the DOJ, the Appellate Division of the New Jersey Superior Court, the litigants in Soto, and the Legislature. The Committee determined that in furtherance of that pattern and practice, AG Verniero made repeated false statements and offered misleading testimony to the Committee on April 26, May 5 and May 6, 1999.

By letter to the Honorable Donald T. DiFrancesco, Acting Governor, dated April 4, 2001, the Committee requested that the Acting Governor call for the immediate resignation of Peter G. Verniero. (A copy of the April 4, 2001 letter is contained within the Appendix). The Acting Governor subsequently called for the resignation of Peter G. Verniero and he refused. By letter to the Honorable Jack Collins, Speaker of the General Assembly, dated April 10, 2001, the Committee detailed its findings and respectfully requested that the General Assembly consider appropriate Articles of Impeachment to be presented to the Senate forthwith. (A copy of the April 10, 2001 letter is contained in the Appendix). By letter dated April 17, 2001, the Committee presented Speaker Collins with an additional basis for impeachment. (A copy of the April 17, 2001 letter is contained

On May 15, 1999, Verniero stepped down as AG and FAAG Zoubek was appointed Acting AG. On May 24, 1999, John Farmer was unanimously confirmed as AG and was sworn in on June 3, 1999.

**G. The Final Report And The Consent Decree**

On July 2, 1999, the Final Report was issued. While the Interim Report focused on the subject of racial profiling, the Final Report focused on recommendations concerning the issues of hiring, promotions, internal affairs and discipline. The Final Report's recommendations included the creation of an oversight unit within the the OAG headed by an Assistant Attorney General/Director in Charge ("AAG/Director"), who would report directly to the AG. The AAG/Director would be charged with assuring the implementation of all remedial actions approved by the Attorney General together with administering any necessary coordination and interaction with the DOJ on matters related to the NJSP. The recommendations also called for the restructuring of the NJSP equal employment opportunity/affirmative action ("EEO/AA") complaint investigation process with the assumption of direct supervision by the OAG. (Final Report at 4)

The Final Report called for the internal affairs process to be substantially reformed under the supervision of the OAG in a manner consistent with the Attorney General's Statewide Internal Affairs Policy. In reforming the internal affairs process, the Review Team recommended the creation of the Office of Professional Standards ("OPS"). One of the key recommendations in the Appendix.

On May 3, 2001, the Senate overwhelmingly passed a resolution that called for the resignation of Peter G. Verniero. (A copy of the May 3, 2001 Resolution is contained in the Appendix). On May 10, 2001, the Assembly fell three votes short of defeating a procedural motion that tabled a resolution that would have opened impeachment proceedings in the Assembly. (A copy of the tally sheet for the procedural motion is contained in the Appendix)

Despite the foregoing, Peter G. Verniero did not resign from the New Jersey Supreme Court.

the Interim Report was the development of a comprehensive and computerized early warning system designed to identify individual troopers whose performance suggested a need for further review by supervisory personnel. One of the functions of the OPS would be to take responsibility for analyzing the data constituting the early warning system, proposed in the Interim Report. Additional recommendations related to recruitment, selection, promotion, performance evaluation, facilities review, provision of additional legal support and assistance, and the discipline process were also provided in the Final Report.

Since becoming AG, AG Farmer has addressed racial profiling and reforms of the NJSP on several fronts. He has supervised the completion and promulgation of the Final Report, a comprehensive review of the NJSP management and structure. The EEO/AA function within the NJSP has been transferred to the OAG so that the NJSP is treated like all LPS divisions. The IAB has been reorganized and recruiting and training functions have been augmented.

On September 10, 1999, AG Farmer announced that AAG Cronin was hired to head the Office of State Police Affairs ("OSPA"). The OSPA was identified as being responsible for, among other things, implementing the recommendations of the Review Team's Interim Report and Final Report. On September 20, Col. Dunbar was nominated to replace interim Superintendent of the NJSP, Lt. Col. Fedorko.

With the assistance of FAAG Zoubek and AAG Cronin, AG Farmer concluded negotiations with the DOJ, which resulted in the entry of a Consent Decree on December 30, 1999. It was hoped that the reforms mandated by the Consent Decree coupled with other initiatives would finally provide a much-needed catalyst for change by significantly reducing the

incidents of racial profiling on the Turnpike. Introductory language of the Consent Decree provides<sup>1</sup> that it addresses the following matters:

[P]olicy requirements and limitations on the use of race in law enforcement activities and the procedures used for conducting motor vehicle searches; documentation of traffic stops including post-stop procedures and enforcement actions; supervisory measures to promote civil rights integrity; procedures for receiving, investigating, and resolving misconduct allegations; training; responsibilities of the OSG concerning the NJSP; public reporting by the NJSP about its law enforcement activities; and the establishment of an independent monitor to review and analyze implementation of the Consent Decree by the State.

Specifically, the Consent Decree includes the following provisions:

- 1) *Policy Requirements* (§§26-28): Troopers may not rely to any degree on the race or national or ethnic origin of motorists in selecting vehicles for traffic stops and in deciding upon the scope and substance of post-stop actions, except where state troopers are on the look-out for a specific suspect who has been identified in part by his or her race or national or ethnic origin. The NJSP shall continue to require that troopers make a request for consent to search only when they possess reasonable suspicion that a search will reveal evidence of a crime, and all consent searches must be based on the driver or passenger giving written consent prior to the initiation of the search.
- 2) *Traffic Stop Documentation* (§§29-34): Troopers engaged in patrol activities will document the race, ethnic origin, and gender of all motor vehicle drivers who are the subject of a traffic stop, and also will record information about the reason for each stop and any post-stop action that is taken (including the issuance of a ticket or warning, asking the vehicle occupants to exit the vehicle and frisking them, consensual and non-consensual vehicle searches, uses of force, and arrests).
- 3) *Supervisory Review of Individual Traffic Stops* (§§35-39): Supervisors regularly will review trooper reports concerning post-stop enforcement actions and procedures, and patrol car video tapes of traffic stops, to ensure that troopers are employing appropriate practices and procedures. Where concerns arise, supervisors may require that the trooper be counseled, receive additional training, or that some other non-disciplinary action be

taken. Supervisors also can refer specific incidents for further investigation, where appropriate.

4) *Supervisory Review of Patterns of Conduct* (§§40-56): The State will develop and implement an early warning system, called the "Management Awareness Program," that uses computerized information on traffic stops, misconduct investigations, and other matters to assist NJSP supervisors to identify and modify potentially problematic behavior. At least quarterly, NJSP supervisors will conduct reviews and analyses of computerized data and other information, including data on traffic stops and post-stop actions by race and ethnicity. These reviews and analyses, as appropriate, may result in supervisors implementing changes in traffic enforcement criteria, training, and practices, implementing non-disciplinary interventions for particular troopers (such as supervisory counseling or additional training), and/or requiring further assessment or investigation.

5) *Misconduct Allegations* (§§57-92): The NJSP will make complaint forms and informational materials available at a variety of locations, will institute a 24-hour toll-free telephone hotline, and will publicize the NJSP toll-free number at all State-operated rest stops located on limited access highways. The State also will institute procedures for ensuring that the NJSP is notified of criminal cases and civil lawsuits alleging trooper misconduct. Allegations of discriminatory traffic stops, improper post-stop actions, and other significant misconduct allegations will be investigated by the Professional Standards Bureau inside the NJSP or by the OAG. All investigations will be properly documented. Where a misconduct allegation is substantiated concerning prohibited discrimination or certain other serious misconduct, discipline shall be imposed. Where a misconduct allegation is not substantiated, the NJSP will consider whether non-disciplinary supervisory steps are appropriate.

6) *Training* (§§93-109): The NJSP will continue to implement measures to improve training for recruits and incumbent troopers. The training will address such matters as supervisory issues, communication skills, cultural diversity, and the nondiscrimination requirements of the Consent Decree. The NJSP also will take steps to continue to improve its trooper coach program for new troopers. The Independent Monitor selected by the parties will evaluate all training currently provided by the NJSP regarding traffic stops, and will make recommendations for improvements.

7) *Auditing by the OAG* (§§110-113): The OAG will have special responsibility for ensuring implementation of the Consent Decree. The OAG will conduct various audits of NJSP

performance, which will include contacting samples of persons who were the subject of a NJSP traffic stop to evaluate whether the stops were appropriately conducted and documented. The OAG also will audit NJSP implementation of the Management Awareness Program, and procedures used for receiving, investigating, and resolving misconduct allegations.

8) *NJSP Public Reports* (§114): The NJSP will issue semiannual public reports containing aggregate statistics on certain law enforcement activities, including traffic stop statistics.

9) *Independent Monitor* (§§115-121): An Independent Monitor, who will be an agent of the court, will be selected by the United States and the State of New Jersey to monitor and report on the State's implementation of the Consent Decree. The responsibilities of the Monitor will include evaluating samples of trooper incident reports, supervisory reviews of incidents, and misconduct investigations, supervisors' use of the Management Awareness Program, and the use of non-disciplinary procedures to address at-risk conduct.

10) *Consent Decree Term* (§131): The basic term of the Consent Decree will be five years, however, based on the State's record of compliance, the United States and the Independent Monitor may agree to a request by the State to shorten the term of the Consent Decree if the State has been in substantial compliance for at least two years.

Implementation of the Computer Aided Dispatch System ("CAD") was completed on February 19, 2001 when the Garden State Parkway went online. CAD requires a trooper to report the following information in connection with every motor vehicle stop: name and identification of troopers initiating the stop; names and badge numbers of troopers participating in the stop; gender, race and birthdate of driver; whether a summons or warning was issued; and the category of violation and the reason for the stop (*i.e.* moving violation, non-moving violation, probable cause, be on the lookout, etc.). New protocol was also adopted requiring troopers to complete a motor vehicle stop form when troopers call for a motorist to exit their vehicle, when motorists are frisked or searched, or when a consent search is requested. Implementation of the Management Awareness Personnel Performance System ("MAPPS") is ongoing and is the final

major element needed to achieve full compliance with the Consent Decree. MAPPS is a state-of-the-art computer data gathering system that will track individual trooper performance with an ability to identify and modify potentially problematic behavior, and promote best practices.

Also in February 2001, the State moved to dismiss 76 criminal cases and one case involving traffic violations only. Many of the cases involved multiple defendants. The total number of defendants affected by the dismissal was 128. The cases involved NJSP motor vehicle stops from as early as September 1988 and as late as March 1999. The cases were broken down by county as follows: Bergen, 30 cases; Burlington, seven cases; Camden, two cases; Essex, one case; Gloucester, 14 cases; Hunterdon, four cases; Mercer, three cases; Middlesex, 11 cases; Monmouth, one case; and Salem, three cases.

The Consent Decree required federally appointed monitors to issue quarterly reports assessing the State's compliance efforts. Two such reports have been issued to date. Although the State is not yet in full compliance with the dictates of the Consent Decree, the monitors' were impressed with the commitment, focus, energy and professionalism exhibited by members of the NJSP and OSPA in their efforts to implement the changes mandated by the Consent Decree. As of April 2001, the monitors found the State to be at level one of the policy compliance with 89 of 96 potential tasks or 92%. The State as of the date of this Report is at level two, or full compliance, with respect to 54 of the potential tasks.

The Final Report contained a detailed analysis of then existing NJSP procedures for processing citizen and internally generated complaints against NJSP members. The Final Report made several recommendations to improve the procedures for processing such complaints.

(Final Report at 123-160) Virtually all of those recommendations were ultimately implemented and many of them are reflected in the Consent Decree.

The Consent Decree also significantly changed the procedures involved in addressing complaints involving NJSP members. Essentially, the most significant changes affecting the receipt, investigation and disposition of complaints involving NJSP members were in the following areas: (1) public information and outreach; (2) complaint receipt procedures; (3) creation of the OPS, whose duties include those previously performed by the former IAB; (4) creation of the OSPA within the OAG; and (5) appointment of the Independent Monitoring Team ("IMT") under the Consent Decree.

In order to assure the public that complaints are welcome and that they will be fully and fairly investigated, the NJSP implemented a public information and outreach program.

To date, this program has consisted of initiatives, including the following:

- 1) Implementation of a multi-copy, easy to read and understand compliment/complaint form that is available at any NJSP station, NJSP Headquarters and other public locations. The form is available in English and Spanish;
- 2) Posting of "plain language" signs in every station that clearly explain the compliment/complaint procedure (English and Spanish);
- 3) Production of an easy to read information card (English and Spanish) that explains the compliment/complaint procedure, which is available at NJSP stations, from individual troopers patrolling the highways, and at other public locations;
- 4) Creation of a new compliment/complaint Web Page Site accessible via the NJSP Internet Home Page at [www.njsp.org](http://www.njsp.org);
- 5) Creation of a new, centrally located NJSP field office in Freehold, which allows NJSP investigators centralized access to respond to complaints and to conduct investigations anywhere in the State; and
- 6) Radio broadcast advertising the existence of the toll free compliment/complaint hotline.

The effectiveness of these public information and outreach efforts may be reflected, in part, through the increase in citizen complaints received and processed by the OPS.

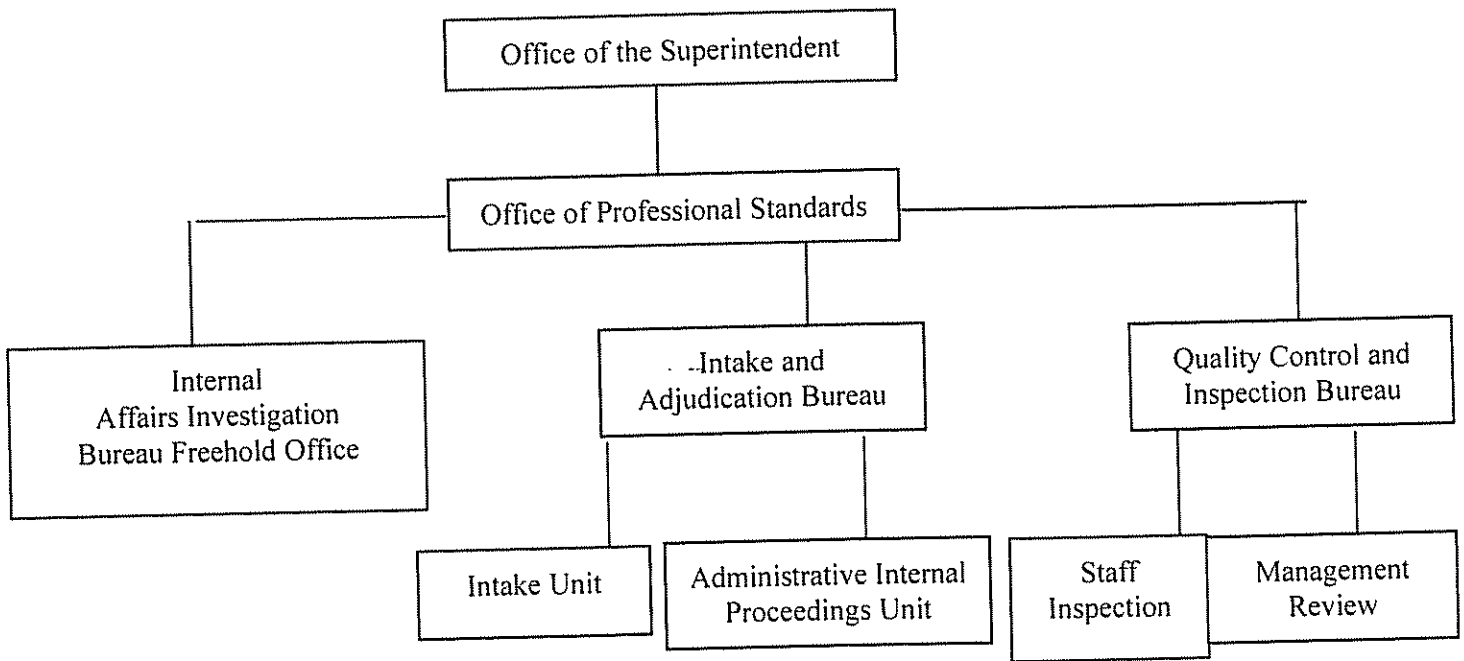
Seeking to make the complaint process more accessible to both members of the public and the NJSP, substantial revisions to the compliment/complaint receipt procedures have been implemented, including the following:

- 1) Compliments/complaints are now accepted 24 hours per day, 365 days a year;
- 2) Creation of a new compliment/complaint toll-free telephone number at: 1-877-253-4125;
- 3) Compliments/complaints are accepted in person, by mail, by telephone, or by facsimile;
- 4) Compliments/complaints may be submitted anonymously and by third parties (persons other than those who interacted with the NJSP member); and
- 5) Allegations of misconduct may be communicated by NJSP members directly to the OPS or the OAG, rather than exclusively through the chain of command.

In the Final Report, the organizational structure of the IAB was outlined. The Final Report recommended the creation of the "State Police Professional Standards Bureau," whose duties were to include those previously performed by the former IAB. (Final Report at 123-130) This recommendation was implemented through the creation of the OPS. The OPS is headed by a Major who reports directly to the Superintendent and consists of three bureaus -- the Internal Affairs Investigation Bureau ("Investigations"), the Intake and Adjudication Bureau ("Intake"), and the Quality Control and Inspection Bureau ("Inspection"). Essentially, Investigations conducts investigations pertaining to allegations of criminal and administrative misconduct. Additionally, this bureau monitors investigations that have been delegated to non-OPS investigators. Intake is responsible for the intake and documentation of all complaints made to or forwarded to the OPS. This bureau also performs the critical function of characterizing

complaints in order to ensure that they are properly assigned to OPS or OAG investigators, and not improperly delegated to non-OPS/OAG investigators. Also, Intake includes an Administrative Internal Proceedings Unit that prepares and serves formal charges for disciplinary hearings. Finally, Inspection consists of both the Staff Inspection Unit and the Management Review Unit. The Staff Inspection Unit conducts periodic inspections to ensure that the activities of the NJSP are conducted in accordance with the NJSP's policies, rules, regulations and orders. The Management Review Unit is responsible for the design, implementation, documentation, evaluation and improvement of the NJSP's internal controls. An organizational chart of OPS follows:

*OPS Organizational Chart*



Creation of the OPS has been accompanied by a significant increase in staffing responsible for the receipt, investigation and disposition of misconduct investigations. As

compared to the 1998 staffing levels analyzed in the Final Report, the number of detectives performing misconduct investigations and assigned to the OPS has increased from seven to 23. Moreover, the Superintendent has authorized an additional four detectives to be assigned to the OPS. It is anticipated that these detectives will commence this assignment in June, 2001. Furthermore, an additional 10 detectives have been temporarily detailed to the OPS. Finally, in a further effort to address the timeliness of "backlogged" misconduct investigations, the Superintendent has authorized the assignment of approximately 150 misconduct investigations to non-OPS investigators. These investigations are to be conducted under the supervision of the OPS and subject to the monitoring of both the OAG and the IMT.

In the Final Report, the Review Team recommended the creation of a "State Police Unit" within the OAG that would be responsible for, *inter alia*, oversight over the investigation of misconduct by members of the NJSP. (Final Report at 59-60) In response to this recommendation, the OSPA was created within the OAG. Certain duties of the OSPA are memorialized in the Consent Decree and include auditing the manner in which the State receives, investigates and adjudicates misconduct allegations. In performance of these responsibilities, the OSPA has performed functions including the review and approval of substantial revisions to NJSP procedures affecting the receipt, investigation and adjudication of misconduct allegations. Moreover, the OSPA reviews each completed misconduct investigation for thoroughness and completeness. Presently, the OSPA is staffed with five attorneys, four investigators, two detailed NJSP members, and three support personnel.

Pursuant to the Consent Decree, the IMT was selected to monitor and report upon the State's implementation of the Decree. (Consent Decree at ¶¶115-119) The IMT's jurisdiction extends to "review and evaluate" the "quality and timeliness" of misconduct

investigations and disciplinary actions. (Consent Decree at ¶119) The IMT is an agent of the United States District Court that files periodic reports detailing the State's compliance with and implementation of the Decree. In these reports, the IMT has consistently determined that misconduct investigations are conducted in a thorough and fair manner. Moreover, the IMT has consistently determined that misconduct investigations are conducted in accordance with the substantive requirements of the Consent Decree including:

- 1) prohibition of any member who has a conflict of interest from participating in a misconduct investigation (Consent Decree at ¶75);
- 2) written or recorded interviews are maintained as part of the investigative file (Consent Decree at ¶76);
- 3) no group interviews are conducted during misconduct investigations (Consent Decree at ¶76);
- 4) civilian interviews are conducted at a convenient time and place (Consent Decree at ¶77);
- 5) propriety of all trooper conduct, in addition to that specifically alleged, is assessed during a misconduct investigation (Consent Decree at ¶78);
- 6) findings are made based upon a preponderance of evidence standard (Consent Decree at ¶81);
- 7) Mobile Video Recorder ("MVR") tapes are reviewed as part of the misconduct investigation as appropriate (Consent Decree at ¶82);
- 8) circumstantial evidence is considered during misconduct investigations as appropriate (Consent Decree at ¶83);
- 9) no automatic preference is accorded to a trooper's statement over a civilian's statement (Consent Decree at ¶83); and
- 10) no automatic judgement is made that there is insufficient evidence to make a determination where the only or principal information of that incident is the conflicting statements of the accused trooper and civilian (Consent Decree at ¶83).

The IMT has repeatedly determined that the State has implemented the public information initiatives and the complaint receipt procedures. (Consent Decree at ¶¶58-62)

Although some of the most critical reforms remain incomplete, particularly the MAPPS system and the improved accountability and supervision that will rely upon MAPPS,

there has been significant progress during the first 15 months under the Consent Decree. Nevertheless, consent to search statistics for 2000 reveal that racial profiling persists. A traffic population study conducted pursuant to the Consent Decree concluded that white motorists comprised 60% to 65% of the drivers on the southern end of the Turnpike, while blacks comprised 32% and Hispanics comprised 8%. Troop D consent search numbers revealed that whites were subjected to consent searches 19% of the time, while blacks were 53%, Hispanics 24%, and Asians 3%. These numbers are lower than the numbers for 1994 – 1996, but on par with the numbers presented in the Interim Report. AG Farmer asked that each case be scrutinized to determine whether the report reflected the presence of probable cause as opposed to reasonable suspicion, with probable cause being defined for purposes of the analysis as only plain view contraband, plain smell of contraband, or admission that contraband was present. The results were that 54% of consent searches of whites reflected one of these three probable cause factors, but these factors were present in only 26% of consent searches of blacks and 8% of consent searches of Hispanics. (April 3 at 15–22)

These statistics demonstrate that consent searches of whites are based on probable cause at more than double the rate for blacks and more than six times the rate for Hispanics. Consent searches for black and Hispanic motorists are far more likely to be based upon the lower quantum of proof. This disparity is further reflected in the find rates, or seizures resulting from consent searches, which are: 25% for whites; 13% for blacks; and 5% for Hispanics. Thus, consent searches are twice as likely to yield seizures when conducted for whites as opposed to blacks, and five times as likely for whites as for Hispanics. Consent searches of Hispanics yield nothing 95% of the time. Finally, it was determined that among those troopers who had four or more consent searches in 2000, 80% of the motorists those troopers searched were black or

Hispanic, and those searches resulted in lower-than-average find rates. AG Farmer correctly noted that "the process has been slow and painful. It will continue to be. It's clear we have not solved the problem. We have taken steps to address it that are a model for the nation." (April 3 at 21-22)

Col. Dunbar testified that racial profiling is a decades old problem and that for some time there has been a "disconnect" between the leadership of the NJSP and the OAG. (April 3 at 141-142) However, there now exists a healthy give-and-take between the OSPA and the NJSP. Col. Dunbar acknowledged though that there exists a "very small, very vocal cell of individuals that believe there is no need for change. This small group will do whatever is possible to eliminate disappointment and return to the past. Frankly, they are bullies and enjoy being bullies. . . . I recognize what they are and know they have no place within the NJSP. They will certainly invoke the term 'morale' as their rallying call." (April 3 at 148) Col. Dunbar, however, stated that his "number one recommendation" to the Committee was to not allow morale or the issue of morale to cloud the Committee's inquiry. (April 3 at 201)

Col. Dunbar testified that discipline has been increased. Disciplinary actions were initiated in connection with the tampering with MVRs. Subsequently, compliance with SOPs concerning MVRs increased. There also has been a dramatic increase in the number of allegations warranting internal affairs investigations. (April 3 at 153-155) In 1998, there were 225 cases, in 2000, there were 584 cases and the projection for 2001 is 900 cases. (April 3 at 160-161) Four-fifths of the cases are from civilians, who can now lodge complaints, compliments or feedback using a 24-hour toll-free hotline. The hotline was mandated by the Consent Decree and is operated by the OPS.

Col. Dunbar was perplexed by the situation at the Moorestown and Cranbury stations.<sup>4</sup> Despite having changed the commanders and the road troopers assigned to those stations, they remain different than the other stations and racial profiling persists. (April 3 at 176-187) Finally, Col. Dunbar suggested that the NJSP should remain under the auspices of the OAG and that the Superintendent of the NJSP should not be elevated to a cabinet-level position.

*Table No. 1: Timeline Of The Release Of Data Describing The Racial Breakdown Of Stops And Searches On NJ Turnpike By The NJSP*

<b>Date Released</b>	<b>Description of Data</b>	<b>Dates Covered by Data</b>	<b>Compiled By</b>	<b>Reported In</b>
Mar.29, 1996	Racial breakdown of summonses issued by Perryville and Washington troopers	Selected dates in 1996: Jan.13, Jan.23, Feb.9, Feb.28, Mar.11, Mar.14.	Lt. F. Hinkle, NJSP	Memo to Capt. R.E. Touw, NJSP
Apr.15, 1996	Racial breakdown of stops and searches by Moorestown troopers	1995	Lt. B.M. Gilbert, NJSP	Memo to Capt. M.M. Silvert, NJSP
Feb.1997; Apr.20, 1999	Racial breakdown of consent searches and probable cause searches by Moorestown, Cranbury and Newark troopers	Consent: Jan.Apr.1994, Dec.1994, all but Feb. 1996 (Moorestown). Jan.Mar.1994, all but Feb.1996 (Cranbury). Jan.Jun.1994, Jan.Jun. 1996 (Newark). Prob. Cause: 19941996 (Cranbury).	Sgt. Thomas Gilbert, NJSP; included in State Police Review Team compilation	Memo to Colonel C.A. Williams, NJSP; Interim Report (pp.2627)
Jun.6, 1997	Racial breakdown of stops and consent and probable cause searches by Cranbury and Moorestown troopers	May 1997	Lt. Anthony Farinella, NJSP	Colonel Carl A. Williams, NJSP
Jul.10, 1997	Racial breakdown of consent and probable cause searches and arrests by Cranbury and Moorestown troopers	30 sample dates 19951996; Apr.May 1997	Sgt. Thomas Gilbert, NJSP	Colonel Carl A. Williams, Lt. D.E. Blaker, NJSP
Feb.20, 1998	Racial breakdown of stops and consent searches by Cranbury and Moorestown troopers	Apr. - Sept. 1997	Maj. A. Sparano, NJSP	Maj. R.D. Dunlop, Lt. Col. M.A. Fedorko, Col. C.A. Williams, NJSP

<b>Date Released</b>	<b>Description of Data</b>	<b>Dates Covered by Data</b>	<b>Compiled By</b>	<b>Reported In</b>
May 19, 1998	Summary of various NJSP audits with racial breakdowns of stops, searches and arrests by troopers at various stations	Audits completed on various dates in 1996 and 1997	Lt. A. Sacchetti, NJSP	Capt. R. Van Tassel, NJSP
Nov.25, 1998	Racial breakdown of stops and consent searches by Moorestown and Cranbury troopers	Apr.Sept.1998	Capt. Cartwright, NJSP	Maj. R.D. Dunlop, Lt. Col. M.A. Fedorko, Col. C.A. Williams, NJSP
Feb.9, 1999	Racial breakdown of Turnpike stops	Jan.Feb.1997	Office of Attorney General	StarLedger
Apr.8, 1999	Racial breakdown of Turnpike arrests	Two months of 1997	Office of Attorney General	StarLedger
Apr.16, 1999 and Apr.20, 1999	Racial breakdown of consent searches on Turnpike	1996, 1997, 1998, Jan.Mar.1999	NJSP	Power Point presentation including charts; footnoted in Interim Report (p.27)
Apr.20, 1999	Racial breakdown of stops by Moorestown and Cranbury troopers	Apr.1997Nov.1998 (excluding Feb.1998)	State Police Review Team	Interim Report (pp.2526)
Apr.20, 1999	Racial breakdown of searches by Moorestown and Cranbury troopers	Apr.1997Feb.1999	State Police Review Team	Interim Report (pp.2627)
Apr.20, 1999	Racial breakdown of arrests by Cranbury, Moorestown and Newark troopers	19961998	State Police Review Team	Interim Report (pp.2829)
Apr.30, 1999	Racial breakdown of arrests on Turnpike	Apr.1997Mar.1998	Office of Attorney General	StarLedger
Jun.27, 2000	Racial breakdown of stop, search and arrest data by all State Police; misconduct data	Jan.Apr.2000	Office of Attorney General	First Semiannual Report Pursuant to Consent Decree
Jan.10, 2001	Racial breakdown of stop, search and arrest data by all State Police; misconduct data	MayOct.2000	Office of Attorney General	Second Semiannual Report Pursuant to Consent Decree

Date Released	Description of Data	Dates Covered by Data	Compiled By	Reported In
Apr.3, 2001	Racial breakdown of traffic survey, stops and searches on Turnpike	2000	Office of Attorney General	Testimony of AG John Farmer to Senate Judiciary Committee

Table No. 2: OAG's Aggregate Statistics On Stops, Searches, And Arrests (1994-2000)

Data	Dates	Station	White%	Black%	Hispanic %	Asian %	Other %	Total
Stops	Apr.97 – Nov. 98	Cranbury	60.3	24.6	8.2	3.9	3.0	36,645
		Moorestown	58.8	28.7	5.9	3.9	2.7	50,844
		Total	59.4	27.0	6.9	3.9	2.8	87,489
	Jan. - Oct. 2000	Cranbury	58.0	23.4	10.9	6.8	0.9	14,760
		Moorestown	53.1	30.6	8.1	7.3	0.9	19,235
		Newark	63.4	16.4	13.2	6.2	0.7	14,198
		Other units	64.6	19.7	9.6	5.2	1.0	22,041
		Total	59.8	22.8	10.2	6.3	0.9	70,234
Searches	1994 – 1999 (various dates)	Cranbury	24.8	52.4	21.4	0.6	0.8	500
		Moorestown	18.9	53.7	26.1	0.7	0.6	693
		Total	21.4	53.1	24.1	0.7	0.7	1,193

Data	Dates	Station	White%	Black%	Hispanic %	Asian %	Other %	Total
	2000 (consent searches)	Cranbury	32	44	24	0	n/a	90
		Moorestown	19	53	25	3	n/a	147
		Newark	47	26	24	3	n/a	34
		Total	27	46	25	2	n/a	271
Criminal Evidence Found	2000	Total	17	8	10	n/a	n/a	172,900
Arrests	1996 – 1998	Cranbury	29.4	67.0	n/a	n/a	3.6	779
		Moorestown	34.1	61.4	n/a	n/a	4.5	883
		Newark	33.3	58.6	n/a	n/a	8.2	1,209
		Total	32.5	61.7	n/a	n/a	5.8	2,871
	May - Oct. 2000	Cranbury	31.2	30	38.8	0	0	80
		Moorestown	43	44.3	9.4	0.9	0.9	106
		Newark	48.8	32	17.9	1.2	0	84
		Other units	20	70	10	0	0	10
		Total	40.7	37.5	20.8	0.7	0.4	280

2. **Evidence From Witnesses Who Requested, Or Were Invited to Testify At The Hearings**

The Committee made numerous public announcements that it would entertain testimony from interested parties and members of the public who have relevant information pertaining to racial profiling by the NJSP. As a result, the following individuals testified at the hearings: Sgt. Vincent Bellaran; Ivan Foster; Laila Maher, Esq.; Felix Morka, Esq.; Ronald Thompson, Esq. and Regina Waynes Joseph, Esq. from the Garden State Bar Association; Assemblyman Joseph Charles, Jr., Senator Wayne Bryant, Assemblywoman Nia Gill, Assemblyman LeRoy Jones, and Assemblywoman Nellie Pou from the Caucus; Trooper Emblez Longoria; SFC Robert Watkins; Det. SFC Joseph Soulias; Renee Steinhagen, Esq.; Sgt. Yusuf El-Amin; Trooper Gregory Sanders; Trooper Mark Stephens; Chf. George Pugh; Det. Andre Lopez; Lt. Carmelo V. Huertas; Trooper Ed Lennon; Professor James Fyfe; and Sgt. James Fennessy.<sup>16</sup> Certain of these witnesses testified about the real-life impact of racial profiling. Their testimony shifted the focus from statistics and organizations responses to actual encounters with racial profiling and its effects on individuals.

Ms. Maher and Mr. Morka are attorneys who were stopped by two troopers on the Turnpike in the early morning of January 16, 1996, while travelling from Washington, DC to New York. (April 9 at 214–227) Mr. Morka said that as he was taking his credentials from his pocket, one of the troopers reached into the vehicle and violently pulled Mr. Morka from the vehicle. Ms. Maher exited the vehicle to view what was happening and she said the other trooper

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<sup>16</sup> Every individual that requested an opportunity to testify about racial profiling and the NJSP was allowed to do so. However, a few other individuals that contacted the Committee and/or special counsel were not given an opportunity to testify because they did not possess information about racial profiling and the NJSP. Their complaints involved issues other than racial profiling and agencies other than the NJSP. Each of these individuals was asked for permission to forward their complaints to the OAG for further investigation.

put a gun to her head, then threw her against the car and threatened to arrest her if she did not get back into the vehicle. As Ms. Maher attempted to find the vehicle registration, she was subjected to further abusive behavior. Ms. Maher and Mr. Morka testified that they repeatedly asked why they were pulled over and what had they done wrong and that the troopers refused to respond. Moreover, they said the troopers refused to give their names when requested and instead gave Mr. Morka a speeding ticket and laughed as they returned to their squad car.

Ms. Maher and Mr. Morka said that when they attempted to file a complaint they encountered significant resistance from an officer at the local station. They testified that the trooper refused to give them a complaint form, and reluctantly gave them a legal pad on which to write their story. They each received a call from an investigator and were later informed in writing that their complaint could not be substantiated.

Ms. Maher testified that ever since her experience she is fearful of law enforcement. Ms. Maher and Mr. Morka filed a civil class action lawsuit against the NJSP. The trial court denied class certification and that denial is currently being considered by the New Jersey Supreme Court.

The Committee heard a great deal of testimony from members of law enforcement. Sgt. Bellaran, a member of the NJSP for 24 years who is of Hispanic and Filipino descent, detailed his successful fight against the LPS in the discrimination lawsuit he filed against the NJSP in 1991. (April 9 at 143-199) Sgt. Bellaran testified that he was subjected to retaliation within the NJSP after he obtained a favorable ruling in 1998 concluding he had been subjected to discrimination as a result of a racially hostile work environment. He subsequently filed another EEO complaint in 1999 based on retaliation.

Sgt. Bellaran testified about certain disturbing techniques that he and other troopers have employed while on road patrol. Some of those techniques are: the use of coercion to obtain a motorist's "consent" to search a vehicle; "ghost stops," or the failure to call in a stop and the destruction of the corresponding consent search form to hide the occurrence of a stop and search; and the use of tools by one trooper to dismantle and search a vehicle without the driver's permission while another trooper distracts the driver and occupants, or even takes them away from the scene.

Trooper Longoria, a 13 year veteran of the NJSP, testified that while assigned to Troop D he was repeatedly pressured to make profile stops because the troopers at Troop D produced "big numbers" and he was expected to do the same. (April 10 at 68-74) While on patrol as a young trooper, he witnessed other troopers engaging in spotlighting<sup>17</sup> to determine the race of drivers during evening hours, ghost stops, searches of vehicles without probable cause or driver consent, and the use of racist remarks. Trooper Longoria detailed the pressure he felt to make arrests and the tension that existed at Troop D after Sgt. Bellaran obtained a favorable decision in his discrimination suit. Trooper Longoria testified that when he began speaking out against the "numbers game" he was labeled a complainer, transferred several times, and was subjected to other acts of retaliation. Ultimately, Trooper Longoria filed a discrimination complaint against the NJSP.

Trooper Mark Stephens offered similar testimony. (April 10 at 264-276) As a young road trooper stationed in Troop C and Troop D, he said senior troopers advised him to remove his nametag (to avoid identification) and then proceeded to stop and search black and

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<sup>17</sup> "Spotlighting" is patrol tactic used at night to ascertain the race of a vehicle's occupants. This tactic involves a trooper parking his patrol car on the side of the highway and shining the patrol car's spotlight across the highway to illuminate vehicles as they drive by the patrol car.

Hispanic drivers, without any observed motor vehicle infraction. Moreover, he testified that the senior troopers repeatedly failed to call in stops.

SFC Robert Watkins was involved in the implementation of CAD and the Records Management System ("RMS"). (April 10 at 83-103) He stated that delays and problems with the contractor led him to complain on several occasions to his supervisors and to Col. Dunbar's office. He said his complaints generated retaliation, and his office was searched and he was removed from his Project Manager position. According to SFC Watkins, almost three years have passed since the contracted 1998 completion date for CAD RMS, and the system is still not fully implemented. The Committee is concerned, to say the least, because CAD RMS is essential to the completion of MAPPS, and is an integral part of the plan to more effectively supervise road activity by the NJSP, improve accountability, and eliminate racial profiling.

Renee Steinhagen, Esq., Executive Director of the Public Interest Law Center of New Jersey, represented 14 black NJSP troopers in their challenge of several NJSP personnel practices, including promotions, specialist assignments, police training opportunities and discipline. Ms. Steinhagen and two of her clients, Sgt. El-Amin and Trooper Sanders, testified about the OAG's unwillingness to respond independently to claims of racial bias in the NJSP. (April 10 at 201–220) Ms. Steinhagen testified that all the black troopers appearing on the Smith Special were transferred from the Moorestown station. Ms. Steinhagen transmitted a copy of the Smith Special to the DOJ on March 25, 1999, which presumably was the first time the DOJ received the Smith Special as it was not produced by the OAG, despite its being relevant and responsive to the DOJ investigation.

Sgt. El-Amin read a letter that he wrote 13 years ago complaining about racial profiling and the disparate treatment of minorities by the NJSP. That letter was originally sent

anonymously to the press and the NAACP. (April 10 at 221–224) Sgt. El-Amin also presented the Committee with copies of racist and derogatory cartoons and signs that were posted at various NJSP stations.

Trooper Sanders detailed how as a young African-American trooper, the senior African-American troopers advised him that no matter what happened he needed to "keep [his] mouth shut" until he had five years on the job, because until then he could be terminated without cause. (April 10 at 231-243) After complaining about racial issues at the Newark station, he said a watermelon was placed in his locker and "rat" was written next to his name on personnel work schedules. Trooper Sanders also complained to his supervisors about racial profiling. He testified he was subjected to additional retaliation and was denied certain jobs that he applied for within the NJSP. Trooper Sanders also showed the Committee a T-shirt with a logo of the "ten-percenters." The T-shirts were apparently printed by a subgroup of troopers in response to Col. Dunbar's public statements that he believes only a small number of troopers, or 10 percent, are at the root of the racial profiling problem.

The Committee also heard testimony from Det. Lopez and Lt. Huertas, Hispanic members of the NJSP, who were accompanied by 15 minority and non-minority troopers in a show of support for their testimony. As a 14-year veteran, Det. Lopez was saddened by and took issue with certain testimony before the Committee that could lead people to conclude that the NJSP is a structured racist organization. (April 18 at 145–149) As a minority trooper, Lt. Huertas said he has felt the "sting of racism" both within the NJSP and from society. (April 18 at 149–154). Lt. Huertas was also distressed that the NJSP was being painted "as an organization fraught with racism . . . an organization whose motto, Honor, Duty, Fidelity, was corrupted." He did not deny that certain members of the NJSP engaged in racist behavior. However, to his

knowledge, he stated that there was no conspiracy to keep minorities out of specialist positions or from being promoted. He testified that the vast majority of promotions were based on performance. He also testified that the placement of racially insulting signs was not commonplace or condoned. He said most members of the NJSP "are honest, hardworking individuals. Dignity demands that they should be recognized. . . . Dignity demands that this Committee not characterize all troopers as being part of the problem. . . . A broad stroke of the brush has tainted both minority and nonminority members, and in doing so, it has also tainted me." Lt. Huertas suggested that mentoring programs should be put in place to help develop competent minority and non-minority troopers and that the NJSP should also reward troopers for service, not numbers. Finally, Lt. Huertas suggested that no one should profit from racism and that those who have taken legal action against the NJSP should donate whatever compensation they receive to non-profit organizations.

Sgt. Fennessy testified that he wrote a law review article about racial profiling and discriminatory law enforcement practices that was published in 1999. (April 18 at 139–144) To his knowledge, no one at the NJSP criticized him or retaliated against him. Rather, some time later AG Farmer contacted Sgt. Fennessy, arranged for him to interview with and ultimately work for the OSPA. Sgt. Fennessy discussed the commitment to reform shared by the NJSP and the OAG and his belief that the reforms are sound and are taking hold.

Trooper Lennon, President of the State Troopers Fraternal Association of New Jersey ("STFA"), testified that he was unaware of any trooper being disciplined as a result of the evidence that AG Farmer revealed during the Committee hearings that established that racial profiling continues to persist. (April 18 at 163–178) If such evidence exists, he represented that the STFA supported counseling, further training, or discipline. Trooper Lennon stated that

troopers "should not be assumed guilty, however, based upon accusations or statistics" and took issue with prior testimony from troopers and the public stating that, "much of what you heard was secondhand, innuendo, out of context, and ancient history."

Trooper Lennon urged the Committee not to "succumb to the pressure of drafting reams of regulations when we have the framework to do the job right now." Referring to the "United States and New Jersey constitutions," "Federal and State law," "civil rights statutes," the Consent Decree, "internal rules and regulations" and the NJSP "oath," Trooper Lennon recommended that the enactment of new laws is not the way to prevent racial profiling. Moreover, Trooper Lennon requested that the Committee not ban consent searches. He said troopers need to continue to use their own judgment and intuition, coupled with the mandates of relevant case law and internal regulations. Trooper Lennon also embraced the use of sting operations to ensure that troopers were not abusing their discretion to conduct consent searches. Finally, the Committee was advised that the STFA supports the passage of pending legislation requiring the NJSP to investigate and bring charges within 45 days of the receipt of a complaint against a trooper. Local police departments have a similar procedure in place.

The Committee heard testimony from five members of the Caucus: Assemblyman Charles, Senator Bryant, Assemblywoman Giff, Assemblyman Jones, and Assemblywoman Pou. (April 10 at 3-67) Assemblyman Charles recounted the Caucus' series of hearings on racial profiling in the Spring of 1999 that explored the issue, identified where there were institutional problems responsible for unconstitutional practices, and determined appropriate legislative responses. Assemblyman Charles said that those 1999 hearings led to inescapable findings, which are contained in the Caucus' report. The Caucus concluded in 1999 that racial profiling and employment discrimination were systemic, condoned and rewarded within the NJSP. He also

testified that the Caucus found that institutional policies and practices regarding assignments, tenure, and promotions had not materially improved since the 1975 federal Consent Decree, and that nepotism, favoritism and discrimination play too significant a role in those matters.

Assemblyman Charles also reported that the Caucus concluded that the failure of the AG to properly supervise the NJSP led to persistent violations of the civil rights of minority motorists, and fundamental internal structural reforms were needed. Assemblyman Charles testified that AG Verniero and Acting Supt. Fedorko declined to testify before the Caucus during the 1999 hearings. In addition, the Caucus requested data concerning NJSP stops for preceding years, and was told that that information did not exist. (SJC-7 and SJC-8) As a result of the Caucus' hearings in 1999, and the Committee's hearings in 2000, the Caucus requested that Justice Verniero resign.

Assemblyman Charles also testified that in 1999, the Caucus made recommendations and proposed legislation it believed was needed, including: recruiting the next Superintendent from outside the organization; establishing racial profiling as a third degree crime; establishing a civilian review board; establishing an Office of Independent Prosecutor; making it a crime to tamper with or disable road vehicle cameras; and establishing criminal penalties for civil rights violations. He urged the Committee to take corrective steps to end discriminatory practices by the NJSP. He said the 2000 consent search statistics clearly show that reforms to date, which have been largely administrative, have not been successful in changing behavior. He also testified that the Caucus was concerned that minority troopers were foreclosed from opportunities within the NJSP because promotions took place last year prior to the institution of needed reforms. Assemblyman Charles recommended permitting searches only when probable cause exists.

Senator Bryant testified that the Caucus decided to conduct its own hearings in 1999 after Senate President DiFrancesco and Assembly Speaker Collins denied requests by the Caucus to conduct bipartisan, bicameral hearings on racial profiling. He said none of the bills proposed by the Caucus have been acted upon. He testified that the Committee's hearings did not come until five years after the Soto ruling, three years after the Turnpike shooting, and 15 months after the Consent Decree. Senator Bryant was critical of AG Farmer for failing to publicly report consent search statistics every six months, as required under the Consent Decree, and said that repeated failures of leadership by State officials to address problems of racial profiling require fundamental institutional reforms, including creation of an independent prosecutor and giving citizens a role in monitoring NJSP activities. He expressed concern that minority troopers were being denied training and opportunities that lead to promotions, and that one recent graduating class of troopers had no minority members. Senator Bryant was also highly critical of AG Verniero's actions in response to the DOJ investigation and his failure to address discrimination issues after a federal court concluded in 1998 that Sgt. Bellaran had been the victim of a racially hostile and discriminatory work environment. Senator Bryant called on the Committee to approve the reforms proposed by the Caucus in 1999. He said that the Committee had clearly established that Justice Verniero did not take action in the face of clear evidence that racial profiling was a problem, the Legislature was obligated to right the wrong it committed when it confirmed him, and that if Justice Verniero refuses to resign he should be impeached.

Assemblywoman Gill testified that the evidence clearly demonstrated that the OAG is incapable of monitoring and supervising the NJSP on issues of racial profiling and discriminatory practices, and the NJSP has shown it is unwilling to supervise itself. Instead, she said, the supervisory role of the AG was inherently in conflict with the AG's constitutional

mandate to protect citizens' constitutional rights that have been violated by the NJSP. As a result, Assemblywoman Gill said the inherent conflict should be eliminated by establishing a special prosecutor to handle investigations into individual rights violations. Furthermore, she called for enactment of the Caucus' recommendations from 1999, and highlighted bills that would establish racial profiling as a crime and create a civilian review board.

Assemblyman Jones testified about the failure of the Legislature to act in 1998 on a resolution he sponsored, along with Senators Wynona Lipman and Shirley Turner, to create a bicameral, bipartisan legislative task force to investigate racial profiling and minority appointments within the NJSP. He testified that the Caucus' legislative proposals would foster accountability and restore confidence in the NJSP. Assemblyman Jones commended the minority troopers who testified before the Committee, and said that in many cases, minority troopers are frustrated, angry and dispirited by the hostile environment that exists within the NJSP, and said that the Caucus hearings made it clear that external problems of racial profiling could not be resolved until internal problems within the NJSP were addressed.

Chairman Gormley commented that he made efforts in 1999 to examine the issue of racial profiling, but when AG Farmer released the racial profiling documents in 2000, he took the opportunity to conduct an extensive Committee investigation that involved a review of the 100,000 pages of documents, 160 hours of sworn interviews, and 60 hours of public hearings. He also commented that he and Senator Bryant had been working together on civil rights legislation, but that he wanted to wait until after the hearings before moving forward on the bills.

Assemblywoman Pou testified that although AG Verniero testified in 1999 that the problem of racial profiling had not "crystallized" in his mind until after the Turnpike shooting in 1998, evidence now indicated that he chose to ignore facts brought to his attention at least a year

earlier. She said that had those facts been known in 1999, as well as the evidence that he withheld vital information from the DOJ, he probably would not have been confirmed. She called upon the Committee to act on the Caucus' legislative recommendations.

Mr. Thompson and Ms. Joseph, representatives of the Garden State Bar Association, testified about their personal encounters with racial profiling and the need for reforms. Mr. Thompson suggested that the lack of diversity in the NJSP and the OAG translated into a "lack of diverse ideas, viewpoints, and beliefs. . . . Diversity promotes the infusion of different experiences and the lessons learned from those experiences." (April 9 at 231) Mr. Thompson called upon the Committee to adopt the Caucus' legislative recommendations. Ms. Joseph joined Mr. Thompson's suggestion that there is a correlation between racial profiling and the lack of diversity in the NJSP and the OAG and called for diversity in the management levels of those organizations. (April 9 at 245 and 246)

The Committee heard testimony from AAG Cronin, who was appointed in September 1999 to head the OSPA. (April 18 at 1-93) AAG Cronin testified that under the Consent Decree, the OSPA is charged with ensuring implementation of the terms of the Consent Decree, auditing the manner in which the State receives, investigates and adjudicates misconduct investigations, auditing NJSP use of MAPPs, auditing trooper performance in motor vehicle stop requirements, providing technical assistance and training to the NJSP on these matters, conducting certain misconduct investigations, and providing legal advice to the superintendent and other NJSP members. He said his office also reviews lesson plans for new training requirements that are mandated under the Consent Decree. AAG Cronin testified that the Consent Decree is to remain in force for five years, providing that the court finds the State in

substantial compliance for two years, and that the State can petition to dissolve the Consent Decree sooner if it reaches compliance sooner.

AAG Cronin testified that under the Consent Decree, the OPS receives all misconduct complaints against NJSP members, conducts those investigations, and has the authority to investigate cases where there is a conflict of interest by NJSP officials, or where certain types of allegations have been made such as discriminatory motor vehicle stops or excessive use of force. Once charges against a trooper are reviewed by the OPSA for legal sufficiency, a deputy attorney general assigned to the OPSA prosecutes the case in an administrative hearing before the Superintendent. The OPSA also reviews all closed misconduct investigations.

AAG Cronin detailed the efforts to implement the MAPPS system, as required by the Consent Decree in ¶¶ 40-53, 108. As reported in the April 2001 Monitor's Report, the State has so far failed to comply with these 14 important provisions because the MAPPS system remains incomplete. The April report indicated that the expected delivery date of the system had been further delayed, and moved back, from May 2001 to November 2001. Under the Consent Decree, MAPPS was to have included all motor vehicle stop data as well as information about civilian compliments and complaints, misconduct investigations, criminal arrests and charges, civil lawsuits alleging misconduct while on duty, civil lawsuits alleging off-duty conduct involving racial bias, violence or threats, interventions by management, and information about a trooper's training. (Consent Decree at ¶ 41)

AAG Cronin said the data collection will allow NJSP managers to gather information and respond to it in a timelier manner. The Consent Decree required the State to publicly report comprehensive traffic stop data on a semi-annual basis. (Consent Decree at ¶ 114)

AAG Cronin said the State had not been reporting all the information required, including data about post-stop activity such as consent searches, because current technology did not allow the State to capture all of the data. He testified that as modifications to CAD are made, additional data, such as the reason for traffic stops, would be reported as required. AAG Cronin said that the consent search statistics detailed by AG Farmer before the Committee in April were compiled by hand, and that is why that data was not reported in June 2000 and January 2001, as required under the Consent Decree.

AAG Cronin testified that motor vehicle stop data would be gathered from CAD and from stop reports contained in RMS. The CAD system contains information communicated over the radio, and includes information such as the reason for the stop and the race or ethnicity of the occupants. A motor vehicle stop report is filed only if someone in the vehicle is asked to exit the vehicle. AAG Cronin also testified that the RMS system was not expected to be completed until late 2001 or early 2002, but the portions required for the implementation of MAPPS will be ready by Fall 2001.

Table No. 3: Electronic Monitoring Systems of NJSP

Program	Description	Initiated By	Deadlines Missed	Implementation Date
MAPPS(Management Awareness Personnel Performance System)	Electronic file on each individual trooper: stops, searches, misconduct complaints, training, etc., to enable monitoring, promotion and discipline	Interim Report; more detailed plan in Consent Decree ¶ 40 et al.	May 2001 (scheduled completion)	Nov. 2001 (projected)
CAD(Computer Aided Dispatch System)	Central file of information from all stops called in by troopers	January, 1995 State Request For Proposal issued. Contract awarded June, 1996. Later again called for in Interim Report.	June 1997 (per contract)	Feb. 19, 2001
RMS(Records Management System)	Unified report system and Central file of all complaints, compliments, etc. concerning troopers	January, 1995 State Request For Proposal issued. Contract awarded June, 1996. Later again called for in Interim Report.	June 1998 (per contract)	Late 2001/ early 2002 (projected)

Under the Consent Decree, supervisors must review motor vehicle stop reports within 14 days. (Consent Decree at ¶ 35) The State was not in compliance with this requirement in the Monitors' Third Report because reports were taking an average of 16 days, and as long as 51 days, to be reviewed. The Consent Decree also requires the NJSP to use MVRs to record all traffic stops, and requires supervisors to randomly review the tapes. (Consent Decree at ¶ 34) The State was not in compliance with this requirement because the monitors' review of 158 tapes found that 118 had one or more problems. Most of the failures involved video recorders being turned on too late, or failure to activate the audio recording equipment. The Consent Decree also

requires supervisors to review the video recordings on a random basis. (Consent Decree at ¶ 36) The State remained out of compliance with this requirement in the Monitors' Third Report because it did not yet have a formal policy in place and the monitors found the quality of supervisor reviews varied widely. The monitors reported that in their own review of five searches that raised concerns, at least one had been reviewed by the trooper's supervisor, who had failed to raise any concerns. AAG Cronin testified that the policy for supervisor review was under development, but that the State wanted to commence reviews without waiting to have a formal policy in place.

When questioned about why the minority stop rate remained disproportionately high, AAG Cronin testified that the State was conducting a speed survey (violation survey) on the southern end of the Turnpike to determine whether differing driving behaviors may explain disproportionate stop rates. In response to questioning by Senator Furnari, AAG Cronin testified that to date, there have not been any substantiated internal investigations regarding racial profiling. He testified that as a result of reviewing videotapes of motor vehicle stops, his office has recommended that discipline be pursued in some cases, but none of those investigations has been completed.

Senator Zane voiced doubts about the effectiveness of steps taken to eradicate racial profiling in light of statistics indicating that the rate at which minorities were searched remained disproportionately high in 2000. In response, Capt. Leonardis, Commandant of the NJSP Training Academy in Sea Girt (the "Academy"), listed steps aimed at making cultural changes within the NJSP through improved training: in-service training on search and seizure issues; training on ethics, constitutional issues and cultural awareness; supervisor training on the

MAPPS program; trooper coach training; and a shift in training to emphasize critical thinking skills and the utilization of smaller classes. (April 18 at 75-78)

AAG Cronin acknowledged that the State has failed to complete misconduct investigations within the 120 days as required under the Consent Decree. In addition to increasing the size of the OSPA, AAG Cronin said the State also was considering removing minor and routine administrative violations (e.g. failure to wear a hat) from the discipline system, and handling those matters as performance issues. He acknowledged that the number of IAB complaints is climbing dramatically, from 225 in 1998 to a projected 900 in 2001, and said it may be partly due to Consent Decree requirements making it easier for citizens to file complaints. AAG Cronin acknowledged that none of the troopers who were identified in 1999 during the Troop D audit as having significant record-keeping discrepancies has been disciplined. Other witnesses before the Committee indicated that in at least one case, the records discrepancies uncovered by the Troop D audit approached or exceeded the level identified in the Hogan and Kenna Falsification Indictment. AAG Cronin testified that internal investigations have been completed in three cases resulting from the Troop D audit, but none of those cases is among those most egregious.

While AAG Cronin cautioned against eliminating consent searches, contending the reforms should have an opportunity to work, he also acknowledged he was concerned that the 2000 consent search statistics indicate consent searches are not being used effectively. He said the statistics showing a disproportionately high minority search rate, and a disproportionately low contraband find rate from those searches, indicate that "there may still be continuations of old concepts linking minority status to criminality, which is troubling."

When asked whether serious misconduct investigations could be undertaken by an office of professional responsibility that is outside of the NJSP, AAG Cronin responded that, theoretically, such an approach would not present problems. He added, however, that his office's review of investigations conducted by the OPS has concluded that the investigations were thorough and fair. When asked whether the current system, under which the Superintendent makes final discipline decisions, is wise and whether such decisions should be made by an administrative law judge or official outside of the NJSP, AAG Cronin responded that the existing structure giving the Superintendent ultimate authority over discipline was essential, because the ability of the Superintendent to impose discipline was important to his ability to maintain order.

Dr. James Fyfe, a professor of criminal justice at Temple University and a former New York City police lieutenant, testified in support of making the AG a constitutionally elected office, as it is in 43 states, and making the NJSP Superintendent a cabinet level position that reports directly to the Governor. (April 18 at 94-138) Dr. Fyfe testified that an elected AG would promote independence from the governor, minimize conflicts of interest, and result in independent oversight over the NJSP by essentially serving as an independent prosecutor. Members of the Committee voiced concerns about the prospect of an elected AG engaging in partisan politics and fundraising.

Dr. Fyfe questioned the existing system under which an office in the OAG and one in the NJSP each bear responsibility for investigating serious misconduct allegations, and said it is difficult to fix responsibility when there are multiple offices responsible for such investigations. Regardless of how the AG is selected, Dr. Fyfe said the function of the Attorney General should be separate from that of the NJSP and the head of the NJSP should report directly to the Governor, which is the way it is structured in virtually every other state. Dr. Fyfe also was highly

critical of the conduct by the OAG in the Soto case, in which he was a defense witness, and said he believes the State was not forthcoming with data and information about training that was requested by the defense.

Dr. Fyfe also testified that to accomplish true reform, and to make changes in the culture of a police organization, the NJSP Superintendent must be a strong leader who is given broad authority to hire and fire individuals, enact changes, conduct internal investigations, and promptly administer corrective actions. He said that studies have shown that the best predictor of a police officer's conduct is the "philosophy and expectations of the boss." He stated that it is also advisable to require all officers to spend some time working in the IAB, so they bring that understanding with them when they move on to command positions.

Dr. Fyfe testified that consent searches should be ended, because they pose a real threat to Fourth Amendment rights and because they are not an efficient law enforcement tool. He said consent searches were always suspect, that uniformed police officers should rarely make arrests for possessory crimes that are not associated with arrests for other offenses, and that in many progressive police agencies, such arrests are regarded as a sign that an officer may be in trouble. He said waivers of the Fourth Amendment are valid only when they are made voluntarily and intelligently, and police managers should be skeptical of police officers who say they found drugs in a motorist's trunk after they were given consent to search. He believed far more credible are the accounts of individuals who were subject to consent searches and who said they did not know they could refuse the search and were told that if they did not consent, they would be detained while the trooper obtained a warrant:

I think the way to deal with it is just to say you can't do it. It's not a -- 271 consent searches have produced evidence in what, 12 to 15 percent of the cases. So you're talking about losing 30 arrests in a state this size. And we don't know how much drugs were seized in

those arrests, but it doesn't seem to me that it's making a difference in the quality of life for Jerseyans or the safety of the public. Instead, what it is doing is creating enormous tensions.

\* \* \*

I've worked on about 500 civil rights cases. Some of the most egregious civil rights violations with the most tragic consequences come about because a police officer attempts to get around the Fourth Amendment, with the encouragement of their bosses, who are not interested in how they do it, but are only interested in the results. So I think the way to deal with that is to say if you're a State Trooper in New Jersey, 'Your primary responsibility is to make sure that the highways are safe. We certainly want you to be a vigorous enforcer of the law. We want you to be properly aggressive. But we don't want you spending your time trying to figure out how to get your hands into people's pockets.'

(April 18 at 113, 115) When asked about alternative methods for independent oversight of the NJSP, Dr. Fyfe said appointment of a special monitor was one option, but it carried the risk that the monitor would become part of the system, and thus less independent. He discounted claims by Col. Dunbar that profiling activity was largely unwitting: "I don't know how it could be unwitting here in New Jersey after all we've been through over the last several years. But the job of training is to make sure that officers understand that that kind of unwitting racism is not tolerated." He said that if strong action were taken in a few cases involving troopers engaged in profiling, behavior would change very quickly. And, while counseling is appropriate earlier in a trooper's career, Dr. Fyfe said, "if you find someone who is acting out some racist beliefs on the highway, he has no place on the job." Dr. Fyfe also acknowledged that it was difficult to prove abuses of professional discretion in a criminal forum, and administrative action may be more appropriate.

Dr. Fyfe also recommended proactive testing to monitor police conduct on the road and identify misconduct, such as ghost stops or invalid consent searches. He suggested

placing young black men in older cars on the roadways, and measuring how police conduct themselves when those individuals are pulled over:

If you want to find bad cops, you're not going to do it by trying to reconstruct what happened later. You have to manufacture those incidents and see what happens. And that's been done in New York City and in other places. And it only has to be done a few times, and the culture changes because every trooper knows, 'I don't know who this guy is I'm pulling over. He may be reporting directly to the Attorney General. He may be reporting to a committee of the State Senate. And I better treat him right.' So that changes things very quickly.

The New York City Police Department does 700 stings a year on its officers. And that's one way to make sure that this kind of conduct doesn't occur.

(April 18 at 112)

## **RECOMMENDATIONS**

As a result of its investigation, the Committee believes that the Consent Decree is critical to the eradication of racial profiling. Additional steps are needed, however, to compliment the provisions of the Consent Decree and to ensure that reforms continue after the Consent Decree expires.

### **Suggested Reform No. 1: Prohibit Consent Searches By Executive Order**

Consent searches came to the forefront during this investigation. Indeed, consent search data was critical to the Interim Report's determination that racial profiling is "real -- not imagined."

Under the United States Constitution and decisions of federal courts, a law enforcement officer may search a vehicle, without probable cause to believe that the vehicle contains weapons or contraband, if the vehicle's owner waives the right to resist the search by giving consent. See Schneckloth v. Bustamonte, 412 U.S. 218, 229 (1973). The United States Supreme Court has determined, as a baseline, that a motorist's consent to search is valid if the consent is reasonable and voluntarily given. See Ohio v. Robinette, 519 U.S. 33, 3940 (1996). Further, the Supreme Court held that the Fourth Amendment does not require a law enforcement officer to inform a motorist of the right to refuse prior to asking for consent to search the motorist's vehicle. See Schneckloth, 412 U.S. at 227. As a result, where a motorist gives consent to search, a law enforcement officer enjoys wide discretion to search a vehicle despite a lack of probable cause.

In New Jersey, statistics from as early as 1994 reflect that minority motorists are subject to consent searches at inordinately high, indeed, disparate rates. According to SFC Gilbert's 1997 Memorandum to Col. Williams, minority motorists accounted for over 80% of

consent searches conducted on the Turnpike during periods documented between 1994 and 1996. Of motorists searched by troopers assigned to the Cranbury and Moorestown stations, nearly nine of ten were minorities.

The Interim Report concluded that consent searches were fraught with discriminatory enforcement. Based upon a review of data from 1994 through 1998, the Interim Report concluded, "We are thus presented with data that suggest that minority motorists are disproportionately subject to searches (eight out of every ten consent searches conducted by troopers assigned to the Moorestown and Cranbury stations involved minority motorists)." (Interim Report at 7)

In 2000, the Appellate Division held that "a law enforcement officer making a routine traffic stop cannot ask for a consent to search without at least an articulable suspicion." State v. Carty, 332 N.J. Super. 200, 205 (App. Div. 2000). This heightened standard was required by the State Constitution, the Court wrote, as well as by the reality of the dynamic between motorists and troopers: "Requests to consent to an automobile search are obviously, as a matter of common experience, likely to be complied with." Id. at 207. The Court also noted with approval that this "articulable suspicion" standard was already imposed upon troopers by the Consent Decree; by the OAG through the Interim Report; and by NJSP SOPs. See Carty, 332 N.J. Super. at 206.

These efforts to hold troopers to a higher standard for consent searches, however, have produced little positive results. While the courts and the Consent Decree have attempted to limit troopers' discretion to solicit consent, troopers continue to subject minority motorists to consent searches at far higher rates than whites. For the year 2000, AG Farmer reported that minority motorists accounted for 71% of consent searches conducted on the Turnpike, while

these minority motorists totaled no more than 33% of the turnpike travelers. In fact, minority motorists accounted for a staggering 78% of consent searches conducted by troopers from the Moorestown station in 2000, a number that has changed little over the six years that these statistics have been collected. (April 3 at 16-20)

Not only were minority motorists subject to a disproportionate number of consent searches, but those searches were far less likely to be based on probable cause, and far less likely to result in seizures of contraband. AG Farmer acknowledged that consent searches yield little in the way of contraband, thus essentially supporting the argument that are of little utility but present significant risks:

**Senator Lynch:** It seems to me the consent to search falls into the category of weighing this on a risk utility basis and I think you alluded to something similar to that earlier. And the risk here is trampling on people's rights. And the utility is what are you getting out of it. And forgetting the fact that you have all this compilation of stops and searches and so forth and so on, in the consent to search category, what are you retrieving in terms of contraband out of these consent to searches, and have you -- do you have any analysis of that?

**AG Farmer:** \* \* \* I don't have it with me, but I can provide it to you. The general answer is, is very little.

(April 3 at 79-80)

Prof. Fyfe also presented some sobering thoughts on the unchecked power of troopers in consent searches situations, and the resulting temptation to abuse the practice. Based upon his research and his personal experience as a police officer, Prof. Fyfe stated the following:

There is no Miranda warning equivalent for consent searches, and troopers who ask motorists for consent to search on the side of lonely roadways must meet no such requirement. Instead, there is only the trooper's claim that, in effect, people who know that their cars contain drugs have, in effect, voluntarily told troopers to, "Go ahead, and look all you want, Officer." I spent nine years patrolling

New York City streets and have been studying police all over this country for the last 38 years, and I find that scenario very unlikely.

Instead, I find much more credible the testimony of scores of people, innocent and otherwise, who have testified in New Jersey over at least the last 12 years about the circumstances in which they underwent consent searches on the side of the Turnpike.

These people generally indicate that they had no idea that they could refuse to undergo a search -- that they were told that if they did not consent to a search, they would be detained at the side of the road for hours while troopers went about the process of obtaining a warrant or even that they and their cars were searched without being asked anything.

\* \* \*

New Jersey should put an end to consent searches.

(April 18 at 107-108) It should be noted, however, that though there is no Miranda warning equivalent for consent searches, the NJSP requires troopers to advise motorists that they have a right to refuse, obtain written consent before commencing a consent search, and record the exchange on the MVR, which is available for later review to determine voluntariness.

Overwhelming evidence demonstrates that, despite some law enforcement officials' continued faith in consent searches, those searches produce negligible positive results, or "finds." Based upon a sample of searches conducted in 1995 through 1997, the Review Team found that consent searches resulted in an arrest (the "hit rate") no more than 32% of the time, and perhaps in as few as 19% of the consent searches conducted. A small sample for those years showed the hit rate to be 13.5% for black motorists and 38.1% for Hispanic motorists. (Interim Report at 28)

More troubling is the fact that, since release of the Interim Report in 1999, hit rates for minority motorists have declined while consent search rates remain virtually the same. AG Farmer reported that in 2000, consent searches of black motorists resulted in a seizure 13% of the time, less than half of the 25% hit rate for white motorists during that year. Consent searches of Hispanic motorists generated a seizure only 5% of the time. (April 3 at 17) In

essence, by extracting consent from minority motorists at higher rates than whites, troopers continue to make more searches of people less likely to be committing crimes. As AG Farmer explained, "Not only is the use of race or ethnicity as a factor in making a decision to ask for consent subject to abuse based on prejudice, it is also quite simply bad law enforcement." (April 3 at 17-18)

Finally, while consent search statistics are no less reflective of discriminatory enforcement in 2001 than they were in 1994, the overall number of consent searches has dropped precipitously in the last few years. The total number of consent searches dropped from 440 in 1999 to 271 in 2000. According to data recently released by the NJSP, these numbers will drop significantly in 2001 if Moorestown's early numbers are an indication: at that station, consent searches during the first quarter of the year dipped from 163 in 1999 to 150 in 2000, and then plummeted to eight in 2001. See "New Jersey Turnpike Data Show Decline in Searches," New York Times, April 23, 2001.

The reason for this decline is not clear. However, it is evident that effective law enforcement in New Jersey does not depend on consent searches, as the relatively small number of seizures derived from consent searches suggests: 37 seizures resulted from the 271 consent searches in the year 2000. (April 3 at 17-18) As Dr. Fyfe explained, "So you're talking about losing 30 arrests in a state this size. And we don't know how much drugs were seized in those arrests, but it doesn't seem to me that it's making a difference in the quality of life for Jerseyans or the safety of the public. Instead, what it's doing is creating enormous tensions." (April 18 at 113)

Some concern was expressed over the suggestion that consent searches should be eliminated. AG Farmer testified that consent searches are a useful tool and cited a case in which a terrorist on his way to New York was stopped and a consent search revealed explosives. AG

Farmer testified that "if you had a doctrine that prohibited consent searches, you might lose tens of thousands of people in a case like that." (April 3 at 33, 49, 80-81) The case AG Farmer was referring to was U.S. v. Kikumura, 706 F. Supp. 331 (1989). Kikumura, however, did not involve a consent search, it involved a probable cause search. The NJSP trooper who stopped Kikumura for a motor vehicle violation saw in plain view several cylinders of gunpowder and lead shot in the backseat of Kikumura's vehicle and the trooper subsequently conducted a probable cause search. Kikumura, 706 F. Supp. at 331. Though the Kikumura case is not directly on point, AG Farmer did present the view that banning consent searches could pose a limitation on law enforcement's ability to prevent the commission of crime.

Based upon the foregoing, as well as the review of other testimony and documents during the course of this investigation, the Committee finds that the possible utility of consent searches is outweighed by the violations of civil rights accompanying their abuse. The information gathered by the Committee suggests that consent searches produce marginal law enforcement gains, and that efforts to curb discriminatory use of these searches have produced little results. Therefore the Committee recommends the immediate prohibition of consent searches by Executive Order.

The Executive Order should mandate prohibition of consent searches for motor vehicle stops made in connection with N.J.S.A. Title 39 violations on all highways on which a 65 miles per hour speed limit has been imposed, to wit: NJ Route 18, NJ Route 55, Interstate 78, Interstate 80, Interstate 195, Interstate 287, Interstate 295, Atlantic City Expressway, Garden State Parkway, and the Turnpike. See N.J.S.A. 39:4-98.4. The Executive Order should also provide that, subsequent to the consent search ban, if the OAG or NJSP seek to reinstate the use of consent searches they shall provide information to the Committee demonstrating that sufficient

safeguards exist to monitor the use and prevent the abuse of consent searches. The Committee shall consider that information and make a recommendation to the Governor on whether the use of consent searches should be reinstated; and, if so, whether additional safeguards are necessary. If consent searches are reinstated, sting operations should be conducted to ensure that troopers are not abusing their discretion to conduct consent searches.

Part of this suggested reform is driven by the fact that the CAD RMS and MAPPS systems have not yet been fully implemented. These systems, when fully operable, will allow the NJSP and the OSPA to, among other things, comprehensively monitor all stops and all activity that occurs subsequent to stops. Almost three years have passed since the proposed completion date and the CAD RMS is still not fully implemented. The Committee is concerned, to say the least, because CAD RMS is an integral part of the plan to eliminate racial profiling.

**Suggested Reform No. 2: Independent Oversight Of The LPS**

1. **Learning From History: The Need For Structural Changes In NJSP Oversight**

The Committee recommends creation of an independent review system to handle misconduct investigations of law enforcement personnel within the LPS.

It became clear during the Committee's investigation that one of the central challenges to implementing meaningful and lasting reforms are the frequent disruptions in leadership, and the lack of continuity of oversight and accountability, within the NJSP and the OAG.

Throughout the 1990s, there was an exceptionally rapid turnover rate within the upper levels of NJSP management. For example, in a four-year period, from 1994 through 1998, five different individuals served as Lieutenant Colonel/Executive Officer. There were also frequent changes in the leadership of the IAB, another critically important position. These high level NJSP managers at times relied upon a working relationship with the FAAG, but there was little more stability to be found in that position. From 1994 through 1999, four different individuals served as FAAG. Some were involved in NJSP affairs, and some were not. In sum, during the critical years following the Soto decision, while the tenure of AG Verniero and Col. Carl Williams was unbroken, their top aides came and left.

Such frequent changes in leadership create the danger that leaders will not be invested in the long-term and systemic health of their organization because they will not be held accountable individually in the long-term. The Committee heard testimony from NJSP officials who repeatedly received clear evidence of potentially serious problems, including racial profiling, yet no action was taken to address these problems.

Frequent disruptions among top managers also creates the potential for difficult and controversial issues, such as racial profiling, to be ignored or concealed, or managed with only short-term goals in mind, rather than confronted and handled with openness and courage. In the extreme, it can cultivate a culture of denial, driven by political considerations and an unwillingness to tackle difficult issues in a serious manner. Finally, it can create a mind set among the rank and file that reforms are only temporary, and will not outlast those who put them in place.

Clearly, this potential for frequent disruptions in leadership makes it far more likely that once the scrutiny of the federal monitors ends, needed reforms may not be maintained and adjusted as needed.

Indeed, if there is any single lesson to learn from New Jersey's experience with racial profiling throughout the 1990s, it is this: We will fail at resolving difficult issues within the NJSP, such as addressing racial profiling, confronting cultural issues, implementing training, striving toward diversity, or ensuring effective internal affairs procedures, unless there is sustained attention dedicated to those issues.

There is vivid proof in the record before the Committee that the issue of racial profiling was mishandled throughout the 1990s. After the Soto decision, other defendants were bringing other suppression motions. The Littles Committee was formed to respond to the decision and the new litigation cropping up in other counties. The Littles Committee recommended and planned for enhanced search and seizure training. This committee also recommended new internal procedures to require troopers to record the race of motorists on their patrol charts in order to make badly needed improvements to record-keeping, and to give line supervisors the information they need to keep informed about the activities of road troopers and

to supervise them effectively. The Littles Committee believed the records of the troopers in the Soto case should be examined to better gauge the viability of the State's appeal and it endorsed a new inspection audit process that would provide a mechanism to examine trooper conduct for potential problems.

These were modest, but meaningful, reforms. The Littles Committee, however, was disbanded after only a few meetings, and its recommendations were for the most part forgotten: the search and seizure training was never implemented; the record-keeping reforms were not implemented for more than two years, and only after the Turnpike shooting; the examination of the arrest records of the troopers in the Soto case raised questions about the viability of the appeal, but OAG officials claimed ignorance about those findings; for a short period of time some inspection audits were undertaken, but when audits of the Moorestown barracks in 1996 revealed minorities were stopped and searched at disproportionately high rates, those findings were not acted upon.

Within the OAG and the NJSP, the widely held view was that the statistics in Soto were flawed and the ruling was dismissed as an aberration. Officials within the OAG and the NJSP, however, recognized the need for more reliable statistics, and the long overdue need to computerize traffic stop data. Indeed, the NJSP issued a request for proposals in January 1995. In June 1996 the State awarded a contract to a private vendor to develop CAD RMS. The contract deadline was June 1998. But CAD was implemented late and was plagued with problems and despite the terms of the contract, RMS was never implemented. As late as mid-1999, the State still did not have the ability to search CAD to retrieve statistical information.

At the time of the writing of this report, implementation of RMS remains incomplete. The State also remains out of compliance with the Consent Decree requirements to

institute MAPPS, an even more comprehensive computerized system to monitor trooper activity, although it has spent \$36 million on technology improvements since fiscal year 2000. The delivery date for MAPPS, initially promised for May 2001, has been moved back six months to November 2001. As a result, the OAG has not complied with the Consent Decree requirement that it report comprehensive traffic stop statistics, including consent search statistics, every six months. When AG Farmer reported to the Committee in April 2001 that minority consent search rates remained distressingly high in 2000, he was essentially reporting on statistics that were required to be made public on an ongoing basis, beginning eight months earlier.

In early 1999, the Troop D audit identified a number of troopers who had significant levels of discrepancies in their record keeping, and in at least one case, those discrepancies rose nearly to the level of records falsification. But at the time of this report, no disciplinary action had been taken against any trooper as a result of the Troop D audit. Indeed, the Committee learned that only when it conducted its own investigation, was there renewed activity by the NJSP to resolve those outstanding cases that had languished for two years, and subsequently investigators were added.

The pace of internal investigations has also troubled the independent monitors, and in this regard the State has consistently failed to fulfill all the requirements of the Consent Decree. The Consent Decree originally required the State to complete misconduct investigations within 45 days. After failing to meet that standard, the State renegotiated the requirement and it was changed to 120 days. In their April 2001 report, the independent monitors found that none of the 15 misconduct cases examined had been completed in 120 days. Instead, the cases had taken between six and 16 months to complete.

The evidence is compelling that there is a need for permanent independent oversight of law enforcement activities by State agencies. Throughout the 1990s, clear warning signs of problems within the NJSP were ignored. Reforms were delayed or abandoned midstream, or put off before they even began. When faced with significant statistical and anecdotal evidence of the racial profiling problem, the NJSP and the OAG failed to act until interceding outside events left them no choice but to act. Indeed, were it not for the likelihood of a lawsuit by the DOJ, the upcoming oral arguments in the Soto appeal, and the controversy surrounding the nomination of Peter G. Verniero to the Supreme Court, it appears unlikely that the Interim Report would have ever been written.

For these reasons, the Committee recommends that a new system be created to provide independent oversight of law enforcement activities by the LPS. This oversight should not be limited to the NJSP, but should include all divisions within the LPS, including the CJ. This oversight should be designed to ensure that citizen complaints of misconduct involving either statutory or constitutional violations be handled fairly, thoroughly and expeditiously.

The Committee recognizes that the Consent Decree provides a system for the NJSP to handle citizen complaints of trooper misconduct. This system includes the OPS within the NJSP, the OSPA within the OAG, and the independent monitors. It is the Committee's recommendation that this system be modified, expanded, and made permanent. This recommendation is based partly on the fact that with the expiration of the Consent Decree, the independent monitors and other important aspects of the current system established by the Consent Decree will also expire.

## 2. Oversight Of The NJSP Under The Consent Decree

The Consent Decree currently provides for a three-pronged system to handle complaints of misconduct by troopers, including claims of disparate treatment and excessive force. This “three-pronged” system consists of the OSPA within the OAG, the OPS within the NJSP, and the court-approved independent monitors. The NJSP also has the option of assigning less serious misconduct investigations to the chain-of-command supervisors or the IAB.

### A. Notification Of Misconduct

Under the Consent Decree, any citizen can file an oral or written complaint alleging trooper misconduct. The Consent Decree requires the NJSP to set up a 24-hour toll-free hotline, operated by the OPS, to ensure that complainants are not discouraged from making complaints and that all necessary information about each complaint is obtained. All misconduct complaints are handled by the OPS, although the OAG has access to all misconduct complaints.

The Consent Decree requires that the NJSP refer for investigation to the OAG and/or the OPS all incidents in which a civilian is charged by a state trooper with obstruction of official business, resisting arrest, assault on a state trooper or disorderly conduct, or where the prosecutor’s office dismisses the charges (aside from dismissals in connection with a plea agreement). (Consent Decree at ¶65) The NJSP is also required to notify the OAG of any claims against the NJSP alleging misconduct by a state trooper or other employee of the NJSP. The OAG is required to advise the OPS of such civil claims. (Consent Decree at ¶66)

The State also is required to implement a method by which it is notified of a finding in any criminal proceeding of a constitutional violation or misconduct by a state trooper. (Consent Decree at ¶67) The OPS is also to be notified if a trooper is arrested or criminally charged for any conduct, or if a trooper is named in a civil suit for any on-duty conduct (or acting

in his/her official capacity), or off-duty conduct where the suit alleges racial bias, physical violence or threats of physical violence. (Consent Decree at ¶68)

B. Professional Standards Bureau<sup>18</sup>

The OPS within the NJSP acts as the gatekeeper of misconduct complaints filed with the NJSP, and also implements the investigations component of the “three-pronged” system. All misconduct complaints filed with the NJSP go through the OPS. The OPS is composed of two sections: investigation and adjudication. The investigation section investigates the misconduct complaint and, if substantiated, the adjudication section adjudicates the complaint. The adjudication section is then responsible for drawing up the charges and specifications in order to place the trooper on notice that he or she has been charged with a substantiated allegation. The charges and specifications are then reviewed by the OSPA within the OAG for legal sufficiency. If approved by the OSPA, the trooper is then afforded a hearing before the Superintendent. A DAG assigned to the OSPA then prosecutes that allegation before the Superintendent.

The Consent Decree requires the OPS and the OAG to review all misconduct complaints as they are received to determine whether they should be investigated by the OPS or the OAG, or whether they should be delegated to a chain-of-command supervisor.

The Consent Decree tried to ensure that OPS staff were trained to handle trooper misconduct complaints. Under the Consent Decree, OPS staff are required to have prior investigative experience and training, analytic and writing skills, as well as cultural and community sensitivity. Moreover, OPS staff is required to undergo training in the following areas:

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<sup>18</sup> See Consent Decree at ¶¶70-92.

misconduct investigation techniques, interviewing skills, observation skills, report writing, and criminal law and procedures. (Consent Decree at ¶¶71-72)

There are also limitations placed on troopers assigned to the OPS. Troopers must recuse themselves from any investigation where there is a conflict of interest. Moreover, all written or recorded interviews are to be maintained as part of the investigative file. The investigating troopers are prohibited from conducting group interviews and from accepting a written statement from any state trooper in lieu of an interview. (Consent Decree at ¶¶75-76)

The Consent Decree also requires the NJSP to attempt to complete misconduct investigations within 45 days after assignment to an investigator. (Consent Decree at ¶87) This time period was later extended to 120 days. The Third Monitor's Report indicated that misconduct investigations are almost never resolved within 120 days, let alone 45 days. (Third Monitor's Report, April 12, 2001 at 86-87) The Monitor's Report also indicated that the average case is resolved in approximately 11 months and some have taken more than a year to resolve. (Third Monitor's Report, April 12, 2001 at 87) Despite provisions contained within the Consent Decree that provide for appropriate disciplinary procedures for troopers where misconduct charges have been substantiated, AAG Cronin indicated that no troopers have been disciplined for misconduct involving disparate treatment or excessive force since he became director of the OSPA in September 1999.

C. The OSPA<sup>19</sup>

The second component of the three-pronged system is the OSPA, which is not independent of the OAG. The OSPA's primary involvement in the misconduct review process is

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<sup>19</sup> See Consent Decree at ¶¶110-113.

to review whether a complaint is properly characterized and to review the findings following the conclusion of an investigation.

The OSPA has multiple sections. One section ensures that the State is in compliance with the Consent Decree, while the other provides legal advice to both the Superintendent and the trooper subject to the allegation. This apparent conflict of interest has not occurred yet (because no troopers have had misconduct allegations substantiated), but the Committee is concerned about the potential for a conflict of interest. This problem is discussed in greater detail in the next section.

Once the OSPA concludes its review, the independent monitors then review the file. The OSPA is also responsible for auditing the NJSP's use of MAPPS, which is not yet implemented. The OSPA is responsible for auditing motor vehicle stops to determine whether traffic stops are conducted and documented in compliance with NJSP rules, regulations, and the Consent Decree. Finally, the OSPA is responsible for auditing how the NJSP receives, investigates and adjudicates misconduct allegations, and for providing legal advice to the NJSP.

#### D. Independent Monitor<sup>20</sup>

The third prong of the three-pronged system to handle trooper misconduct complaints is the independent monitors, who were collectively selected by the LPS, the NJSP, and the DOJ and approved by the United States District Court. The independent monitors are responsible for overseeing and reporting on the State's implementation of the Consent Decree. The independent monitors are responsible for reviewing and evaluating:

- (1) the quality and timeliness of appropriate samples of misconduct investigations, disciplinary actions and interventions ordered as a result of a misconduct investigation;

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<sup>20</sup> See Consent Decree at ¶¶ 115-121.

- (2) the supervisory steps taken by the NJSP to review MVR tapes of motor vehicle stops on a random basis;
- (3) data contained in the MAPPS reports; and
- (4) appropriate samples of "consent to search" forms and reports, trooper MVR tapes, and stop reports and logs.

The monitors have the ability to require the NJSP to reopen a misconduct investigation if it is determined to be incomplete. As of this date, the independent monitors have not reopened any investigations, although they questioned the handling of two investigations. (Third Monitor's Report, April 12, 2001 at 122-123)

Although the Committee is generally pleased with the system for handling racial profiling complaints that was implemented through the Consent Decree, the Committee has concluded that this system needs some adjustments. The Consent Decree only provided a mechanism to handle complaints of serious trooper misconduct involving claims of disparate treatment and excessive force. A similar mechanism is needed to handle serious misconduct complaints lodged by citizens against officials with any law enforcement agency within the LPS.

The Consent Decree charged the OSPA with the primary responsibility of adjudicating substantiated allegations of trooper misconduct forwarded by the OPS. According to AAG Cronin, in the approximately 17 months of its existence, the OSPA has not prosecuted a single trooper for misconduct as provided in the Consent Decree. Moreover, during the first 18 months that the Consent Decree was in effect, there were no troopers disciplined for misconduct as a result of allegations of excessive force or disparate treatment.

The Committee's investigation also revealed a potential conflict of interest whereby the OSPA could provide legal advice to both the Superintendent of the NJSP (who presides over the trooper's internal misconduct hearing) and the trooper who is being investigated for misconduct. Under the current system, once a serious trooper misconduct claim is

substantiated, the trooper who is the subject of the claim is afforded an administrative hearing before the Superintendent of the NJSP. Attorneys with the OSPA serve as the prosecutor, but the trooper may also request and obtain advice from LPS. This apparent conflict of interest was highlighted in an exchange between Senator Zane and AAG Cronin at the April 18, 2001 public hearing:

**Senator Zane:** \* \* \* I think what you're telling me is that you could be providing legal advice to the party that is bringing the charges. At the same token, through some scheme or whatever, you also could be providing legal advice to the party who is charged.

**AAG Cronin:** That is theoretically possible, but there are avenues where such a conflict arises where that specific advice, if you had the confluence of both charges against a specific trooper and a request for legal advice concerning the subject matter of those charges, could be referred to another arm of the Office of Attorney General.

(April 18 at 13) The Committee recommends that until the OPR is created, troopers should be afforded legal counsel from outside the LPS.

The Committee has concluded that this presents yet another reason for the creation of an independent body that is separate from the OAG to ensure that trooper misconduct complaints are adjudicated fairly and expeditiously.

### 3. The Committee's Recommended Reform

While some of the witnesses who testified before the Committee called for the use of a civilian review board, the Committee is not aware of any federal or state agencies that utilize civilian review boards. There are, however, many communities that utilize various types of civilian review boards to oversee their local law enforcement agencies.<sup>21</sup> These review boards

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<sup>21</sup> Some communities that utilize a variation of a civilian review board are: Berkeley, California; Flint, Michigan; Minneapolis, Minnesota; Orange County, California; Portland, Oregon; Rochester,

vary in the level of oversight they provide. Some review boards investigate allegations of police misconduct and recommend actions to the chief or sheriff, while others review findings of internal police investigations and recommend to the chief or sheriff as to whether the findings should be approved or rejected. Moreover, there are other review boards that employ an independent auditor or monitor who is charged with ensuring the integrity of investigations undertaken by the chief or sheriff in response to civilian complaints lodged against law enforcement personnel.

While no state model exists for independent review of investigations into allegations of misconduct by law enforcement, such a model does exist on a federal level. Within the Department of Justice, misconduct investigations into DOJ attorneys and law enforcement personnel are conducted by the DOJ's Office of Professional Responsibility (which also monitors the Federal Bureau of Investigation's and the Drug Enforcement Administration's respective Offices of Professional Responsibility). The DOJ's Office of Professional Responsibility has the authority to investigate other matters as directed by the United States AG, and the head of the Office, the Counsel of Professional Responsibility, reports annually to the AG.

The Committee believes that the DOJ model, supplemented by an Independent Review Board comprised of a former judge, a former law enforcement official, and a citizen with expertise in civil rights, provides a better model for overseeing misconduct investigations stemming from citizen complaints. Furthermore, this model provides a uniform oversight mechanism for all law enforcement personnel within the OAG, and not just the NJSP.

The Committee, therefore, proposes adopting a permanent and independent review system to handle citizen complaints of misconduct and constitutional violations by law

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New York; New York, New York; St. Paul, Minnesota; San Francisco, California; Philadelphia, Pennsylvania; and Tucson, Arizona.

enforcement personnel within the LPS. This independent review system would have broad authority to review and evaluate the quality and timeliness of misconduct investigations, as well as the effectiveness of internal affairs procedures within State law enforcement agencies.

The Committee proposes the creation of an Office of Professional Responsibility ("OPR"), to be headed by a Director, and the creation of a three-member independent review board (the "Board"). The OPR would be housed in but not of the OAG, and would be headed by a Director who is appointed by the Governor, with the advice and consent of the Senate. The Director would report directly to the AG and the Board, and would also report semi-annually to the Senate and Assembly Judiciary Committees.

A. The OPR

The OPR would assume the disciplinary functions of the OSPA after the expiration of the Consent Decree, as well as some of the functions of the existing OPS within the NJSP. The OPR, however, would have more expansive powers than the OSPA. For example, unlike the OSPA, the OPR could exercise the authority to investigate misconduct complaints. Additionally, unlike the existing OSPA, OPR's jurisdiction would not be limited to investigating serious trooper misconduct complaints, but would also include investigating complaints filed against all personnel within the LPS.

The OPR would review all citizen complaints of misconduct and constitutional violations, and would make a determination as to whether it intends to investigate the complaint itself or refer the complaint to the respective Division for internal handling. It is anticipated that less serious complaints, or complaints involving administrative violations, would be referred to each respective Division for internal review. The OPR would only handle the more serious misconduct complaints that involve allegations of constitutional violations, such as illegal

searches, and statutory violations that rise to a serious level. The OPR would refer all criminal violations to the CJ.

The OPR would be allotted a staff of three to five investigators and other administrators. For complex cases that require the use of additional investigators, the OPR would have the ability to use investigators from the CJ and the NJSP to conduct investigations. However, a Division's investigators would not investigate their own. For example, a CJ investigator would not investigate a misconduct complaint leveled against a CJ employee. Likewise, an investigator from the NJSP would not investigate a state trooper. All personnel subject to a complaint limited to the OPR would be afforded a hearing before an Administrative Law Judge, in order to ensure that the individual receives adequate due process.

The Director of the OPR would be required to report his findings to the Legislature on a semi-annual basis. This report would be comprehensive and detail the OPR's activities.

#### B. Role Of The Independent Review Board

The Board would oversee the OPR and consist of three members: a former judge, a former law enforcement officer, and a citizen with knowledge of and experience with civil rights issues. These members would be appointed by the Governor, with the advice and consent of the Senate, and would serve seven-year terms. The initial appointments would be for staggered terms of five years, three years and one year. The Board would have the authority to direct the reopening of any investigation as it deemed appropriate.

### C. Role Of The Existing OPS

The OPS in the NJSP would retain most of its current responsibilities as set forth in the Consent Decree.<sup>22</sup> The only major change would be with respect to the role its investigators would play under this new system.

The OPS would continue to act as the “gatekeeper” for trooper misconduct complaints, and would maintain its investigatory arm, although the OPS would only investigate those complaints referred to it by the OPR. The OPR would be notified of each and every complaint filed.

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<sup>22</sup> The Committee notes that negotiations with the DOJ may be required to ensure the integrity of the Consent Decree in order to accommodate the implementation of the Committee's recommendations.

**Suggested Reform No. 3: Establish Deprivation Of Civil Rights As A Criminal Offense**

The Committee recommends establishing a new third degree crime of official deprivation of civil rights that would provide remedies under State law that are similar to federal law.

A public servant could be charged with this crime if, while acting in an official capacity or purporting to act in an official capacity, he acts with the purpose to intimidate or discriminate against an individual or group of individuals on the basis of race, religious principles, age, national origin, ancestry, marital status, affectional or sexual orientation, familial status, handicap, or sex. Such actions would be a crime if the public servant knowingly and willfully engages in conduct that: (1) subjects another to unlawful arrest, detention, search, seizure; or (2) denies or impedes another of any rights, privileges, or immunities secured or protected by the New Jersey Constitution, the U.S. Constitution, or the laws of the State of New Jersey.

Proof that a public servant made a false statement, prepared a false report, or failed to prepare a required report concerning the incident, would give rise to an inference that the public servant knew his conduct was unlawful. An act would be considered unlawful if it violated the New Jersey Constitution or the U.S. Constitution, or if it constituted a criminal offense under New Jersey law.

If the knowing and willful discriminatory action results in bodily injury it would constitute a second degree crime, and if the individual commits or attempts to commit murder, manslaughter, kidnapping or aggravated sexual assault in the course of the incident, it would constitute a crime of the first degree.

This reform would also create a new crime for a "pattern of official misconduct."  
A person commits the crime of a pattern of official misconduct if he commits two or more acts

that either violate the provisions of N.J.S.A. 2C:30-2 (Official Misconduct statute) or the provisions of this statute (Deprivation of Civil Rights). It would not be a defense that the violations were not part of a common plan or scheme, or did not have similar methods of commission.

The "pattern of official misconduct" crime would be a second degree crime if one of the underlying acts is a second degree crime; otherwise, it would be a third degree crime, provided, however, that the presumption of a non-custodial sentence for first time offenders pursuant to N.J.S.A. 2C:44-1 would not apply. In all cases, the offense could not be merged with another underlying offense, and would be subjected to a separate sentence.

This reform essentially incorporates the substance of S. 856 (Turner/Bryant) and S. 862 (Bryant/Turner). In addition to the provisions of those bills, however, this reform would also provide the creation of an inference in certain circumstances that the public servant knew his conduct was unlawful, and would create a separate crime for a pattern of official misconduct.

**Suggested Reform No. 4: Generation Of A Report For Every Stop**

Until CAD RMS and MAPPS are fully operative, the Committee recommends that in addition to calling in all stops, the NJSP require the generation of a report for all stops, regardless of what occurs after the stop. Currently, a stop report is generated only when a trooper requests either the driver or a passenger to exit the vehicle. A stop report is not generated if only a summons or warning is issued to the driver and there is no other post-stop activity. Adoption of this recommendation will create a written report that is computer searchable once CAD RMS is fully operative.

**Additional Suggested Reforms**

Numerous proposed bills are currently pending in the Legislature, almost all of which were proposed by members of the Caucus, concerning various aspects of racial profiling. Much of the proposed legislation contains provisions similar to mandates in the Consent Decree. The below chart sets forth coverage by the Consent Decree of proposed legislation currently pending before the Legislature.

*Table No. 4: Coverage By The Consent Decree Of Proposed Legislation To Address Discriminatory Practices Within The NJSP*

Bill Number	Sponsor	Synopsis	In Consent Decree	Consent Decree Notes
S328 A939	Rice/James co: Bryant Pou/Steele	Requires NJSP troopers to identify themselves, provide certain information.	No	
S329 A940	Rice/Turner/ co: Bryant/James WatsonColeman	Broadens affirmative action program in the NJSP.	No	Addressed in part through the NAACP Consent Decree
S650	Gormley/ Martin	Requires NJSP to file annual report concerning public complaints of misconduct.	¶ 49	Compiled by MAPPS.
S851 A931	James/Turner Steele/Pou	Requires NJSP to maintain certain records for 10 years.	¶¶ 4056	MAPPS data to be maintained indefinitely (not including videotapes).
S852 A947	James/Bryant Stanley	Establishes "Public Confidence Police Integrity" hotline.	¶¶ 62, 63, 65, 68, 69, 7387	Hotline and program similar to bill.
S853 A943	James/Bryant Stanley	Creates offense of tampering with electronic device in police patrol car.	No	

Bill Number	Sponsor	Synopsis	In Consent Decree	Consent Decree Notes
S854 A932	James/Bryant Jones	Requires NJSP applicants to undergo psychiatric testing for racial bias.	No	
S855 A932	James/Bryant Charles	Prohibits 4year college requirement for appointment to NJSP.	No	Currently covered by NAACP Consent Decree
S856 A942	Turner/Bryant co: James Jones	Creates offense of racial profiling.	No	
S857 A941	Turner/Bryant co: James Gill/Garcia	Requires NJSP to file reports on motor vehicle stops.	¶¶ 2933	
S858 A937	Turner/Bryant co: James Jones/Payne	Establishes civilian review board for NJSP misconduct.	No, but see ¶¶ 110113	OSPA given similar duties.
S859 A933	Turner/Bryant co: James Payne	Requires quarterly studies of NJSP motor vehicle stops.	¶¶ 48, 114	Requires semiannual reports.
S860 A945	Bryant/James Stanley	Requires NJSP superintendent to list and post certain employment titles.	No	
S861 A938	Bryant/James Jones/Payne	Creates independent prosecutor to investigate NJSP.	No, but see ¶¶ 7072	OPS given similar duties.
S862 A936	Bryant/Turner co: James Caraballo	Criminalizes deprivation of civil rights.	No	
S863 A934	Bryant/Turner co: James Gill	Requires NJSP to establish trooper performance database and early warning system	¶¶ 4056	Covered by MAPPS.
S864 A944	Bryant/Turner Tucker	Requires annual performance evaluations of NJSP.	No	
S865 A935	Bryant/Turner co: James CruzPerez	Makes NJSP employees subject to termination for unlawful conduct.	No	
SCR42 ACR54	Turner/Bryant Charles/Jones	Creates joint legislative committee for NJSP Oversight.	No	

The above chart demonstrates that a good deal of the proposed legislation is mooted by the mandates in the Consent Decree. However, the Committee is concerned that those mandates will expire upon dissolution of the Consent Decree. In addition, certain of the proposed bills would be mooted by some of the Committee's other recommendations. For example, the creation of the OPR and related reforms incorporate the principles and substance of S-858, A-937, S-859, A-933, S-861, and SJR-42. Therefore, as discussed below, the Committee recommends the passage of certain legislation that will assist the State in its efforts to eliminate racial profiling.

1. **NJSP Annual Reports Regarding Trooper Misconduct Complaints**

The Committee recommends final adoption of a reform that would direct the Superintendent of the NJSP to compile and submit to the Governor and the Legislature an annual report regarding complaints made by members of the public alleging misconduct by NJSP officers. Paragraph 43 of the Consent Decree requires the NJSP to comply with many of the requirements contained in this reform. This reform would make those terms of the Consent Decree permanent by codifying them into statutory law. This reform passed the Senate (38-0) on December 14, 2000, but has not been considered by the Assembly.

2. **Maintenance Of Certain NJSP Records For At Least 10 Years**

The Committee recommends requiring the NJSP to maintain for a minimum of 10 years after their creation all logs concerning activity of patrol units, all tape recordings of radio communications between dispatchers and patrol units, and all videotapes recorded by cameras mounted in patrol vehicles. This reform would expand current NJSP procedures, which requires that all videotapes recorded by patrol cameras must be held intact for not less than 28 months. It would not impact the maintenance of all tape recordings of communications between dispatchers and patrol units that presently are maintained indefinitely. This reform incorporates the substance of S-851 (James/Turner).

3. **Establish A "Public Confidence Police Integrity" Telephone Hotline**

The Committee recommends establishing the "Public Confidence-Police Integrity" telephone hotline to receive and respond to calls concerning allegations or complaints of police misconduct from the public and from police officers who, for reasons of confidentiality or anonymity, are unable to report such allegations of complaints openly or in person to the

appropriate law enforcement officials or agencies. The hotline would be operated by the OPS and would require the OPS to notify the newly created OPR of the filing of all misconduct complaints.

The Consent Decree already requires the OPS to operate a hotline to receive misconduct complaints. This reform would make that term of the Consent Decree permanent by codifying it into statutory law. This reform also incorporates the substance of S-852 (James/Bryant).

4. **Creation Of An Offense Of Tampering With Electronic Devices In Patrol Cars**

The Committee recommends making it a crime of the fourth degree for a law enforcement officer to alter, destroy, conceal, remove or disable a camera or other monitoring device installed in a patrol vehicle, including any videotape or film used in such a device. This reform passed the Senate (40-0) on December 18, 2000, but has not been considered by the Assembly. This reform incorporates the principles and substance of S-853 (James/Bryant).

5. **Psychological Testing For Racial Bias Of NJSP Applicants**

The Committee recommends requiring the Superintendent of the NJSP to require applicants for NJSP membership to complete a psychological evaluation designed to reveal racial bias or insensitivity. The reform would require that the evaluation be developed and administered by an individual or entity independent of the NJSP.

The current selection process consists of a written examination, physical fitness test, background investigation and an oral interview. Applicants chosen for conditional employment are then required to undergo a medical and psychological examination and are subject to four psychological tests of mental fitness. This reform incorporates the principles and substance of S-854 (James/Bryant).

6. **Motor Vehicle Stop Reports**

The Committee recommends requiring the NJSP to prepare and file reports on every motor vehicle stop they initiate, and to publicly report those aggregate statistics semi-annually. The reform would require the reports to contain detailed information about the stop, including among others, the grounds for the stop, the characteristics of the individuals stopped (utilizing at least the following categories: sex, race or ethnicity, and age), whether a search was undertaken and if so, the grounds for the search and the results of the search; and whether, as a result of the stop, a warning or summons was given. If anyone was taken into custody or arrested, the report must include the grounds for those actions. This reform would include any and all data collecting requirements set forth in the Consent Decree.

The Consent Decree already requires the NJSP to capture and report stop data. This reform would make those terms of the Consent Decree permanent by codifying them into statutory law and would broaden them to include more information. This reform incorporates the substance of S-857 (Turner/Bryant).

7. **Establish Trooper Performance Databases And Early Warning System**

The Committee recommends requiring the NJSP to establish a database of information on the performance of individual officers and troopers. The database would include information on motor vehicle stops, pursuits, searches, arrests, the use of force, citizen complaints, disciplinary actions and witnesses. The information would be used to develop a computerized "early warning system" to determine whether a pattern of unacceptable performance or behavior exists for individual officers and troopers. The reform also would require NJSP supervisors, at least quarterly, to conduct reviews and analyses of computerized

data and other information, including data on traffic stops and post-stop actions by race and ethnicity.<sup>4</sup>

This reform duplicates some of the provisions of the Consent Decree that establishes MAPPS. This reform would make those terms of the Consent Decree permanent by codifying them into statutory law. This reform incorporates the substance of S-863 (Bryant/Turner).

**8. Annual Performance Evaluations Of Members Of The NJSP**

The Committee recommends that the Superintendent of the NJSP or his designee annually evaluate each NJSP member's performance. Pursuant to ¶47 of the Consent Decree, the NJSP is required to develop a protocol specifying the manner in which supervisory and management reviews of individual state troopers are to be conducted and the frequency of such reviews. This reform would make that Consent Decree requirement permanent by codifying it into law. This reform incorporates the substance of S-864 (Bryant/Turner).

**9. Speedy Trial Act**

The Committee is concerned by the length of time that has passed since the indictment of Troopers Hogan and Kenna. The Turnpike Shooting occurred on April 23, 1998, the Falsification Indictment was released on April 19, 1999, and the Shooting Indictment was released on September 7, 1999. Three years have passed since the Turnpike Shooting and two years have passed since the release of the first indictment, the Falsification Indictment.

The ability of the State to convene grand juries began in 1970, however, no procedure was put in place to provide for the speedy resolution of criminal matters. The Committee recommends that the Legislature pass a Speedy Trial Act requiring that criminal cases

indicted by State grand juries be tried within 6 months of the indictment, unless good cause is shown. This Act will help promote swift justice.

**10. Justification Defense Jury Instruction**

The Committee recommends the adoption of a justification defense jury instruction for police officers that use deadly force to effect an arrest or prevent an escape. Such an instruction is used effectively in New York. The New York instruction provides a good example of a reasonable and fair instruction and a similar instruction should be read to grand and petit juries in New Jersey when appropriate. The Honorable Andrew J. Smithson, J.S.C., highlighted the need for such an instruction in his October 31, 2000 decision in State v. Hogan and Kenna, at 23-29.

**11. Funding For The OPR And OSPA**

Funding is needed to create the OPR. A Director, investigators, and support staff are needed, as well as facilities. Funding is also needed to provide additional support to the OSPA. The OSPA's inability to close investigations into complaints against the NJSP suggests that additional manpower is needed.

**12. Funding For Enhanced Training**

Central to the elimination of racial profiling is the training of new recruits and in-service training of members. Members of the Committee and counsel toured the NJSP's training facilities, the Academy. During the tour it became readily apparent that the current training facilities are not conducive to classroom training. Indeed, the Academy cannot conduct classroom training for groups larger than 50, which is necessary for training of the recruits and in-service training.

The State has committed itself to develop and provide an enormous amount of training to NJSP troopers and supervisors. Most of the elements to support this training effort, including policies, procedures, curricula, technology and staffing, have been developed. At this point, however, the NJSP appears to be lacking in its capacity to provide an educational setting in which to conduct this large and complex training program. The Academy is simply not adequate to support this effort.

Capt. Leonardis, the Commandant of the Academy, provided much insight into the operation of the Academy and its limitations. The training function at the Academy currently utilizes facilities shared with other agencies including the CJ, the Juvenile Justice Commission, the Department of Corrections, the Port Authority of NY/NJ, and the National Guard. Classroom, physical training, firearms, vehicle driving range, and dining facilities are at maximum usage and agency training needs often conflict. The NJSP training program has been significantly overhauled and has evolved into a progressive adult based learning system that emphasizes leadership and simulated problem solving paradigms. The Academy is severely lacking in classrooms and those that are available lack the enhanced technology necessary to meet current professional training needs. In addition, firearms, physical training, and vehicle driving facilities are either limited or not available at the Academy, and must be undertaken outside of this facility, which can be inefficient and cost prohibitive.

In recognizing this need, the Committee proposes expanding and updating the Academy. In order to develop a sound expansion plan for the Academy, the NJSP reviewed the Bergen County Police Academy because it exemplifies a modern state-of-the-art police academy with classrooms enhanced for advanced electronics and interactive distance learning communications in a fully functional and flexible building design.

Using Bergen County as a model, the NJSP estimated the construction costs to provide for an enhanced Academy to be \$11.2 million. This plan will include the construction of three separate buildings with eight classrooms and an amphitheater, an indoor 20-point firing range, a gymnasium and pool, and a vehicle driving range.

The NJSP has proposed construction of the three buildings at the Academy in a campus-like configuration. This plan consists of one 30,000 square foot building with classrooms, auditorium, firearms and other simulated situational training at \$4.8 million, one 15,000 square foot indoor 20-point firing range at \$3.0 million, one 15,000 square foot building with indoor pool, gymnasium and locker rooms at \$2.8 million, and a defensive driving track for \$600,000. Construction of the buildings could be phased and approached separately since each structure has a dedicated and distinct function.<sup>23</sup> The proposed additions to the Academy would be shared with the Department of Military and Veterans Affairs allowing for more efficient economies of the space. The Committee believes that the proposed enhancements will afford the State the means to establish a comprehensive and uniform training program and bring about a more organized, systematic and consistent methodology.

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<sup>23</sup> A schematic plan depicting the three building footprint of the proposed changes to the Academy is contained in the Appendix.