Public Hearing

before

ASSEMBLY SELECT COMMITTEE ON CIVIL SERVICE AND EMPLOYEE BENEFITS

"Representatives of the New Jersey State League of Municipalities, the New Jersey Association of Counties and the New Jersey School Boards Association have been invited to appear and provide basic information."

LOCATION: Committee Room 10
Legislative Office Building
Trenton, New Jersey

DATE: April 9, 1992
1:55 p.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman David C. Russo, Chairman
Assemblyman Alex DeCroce
Assemblyman George F. Geist
Assemblywoman Harriet Derman
Assemblywoman Stephanie R. Bush
Assemblyman Louis A. Romano

ALSO PRESENT:

Pamela H. Espenshade
Office of Legislative Services
Aide, Assembly Select Committee on Civil Service and Employee Benefits

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, 162 W. State St., CN 068, Trenton, New Jersey 08625-0068

New Jersey State Legislature
ASSEMBLY SELECT COMMITTEE ON CIVIL SERVICE
AND EMPLOYEE BENEFITS
Legislative Office Building, CN 068
TRENTON, NEW JERSEY [illegible]
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David C. Russo
Chairman

Richard H. Bagger
Vice - Chairman

Alex DeCroce
Harriet Derman
George F. Geist
Stephanie R. Bush
Louis A. Romano

COMMITTEE NOTICE

TO: MEMBERS OF THE ASSEMBLY SELECT COMMITTEE ON CIVIL SERVICE AND EMPLOYEE BENEFITS

FROM: ASSEMBLYMAN DAVID C. RUSSO, CHAIRMAN

SUBJECT: **COMMITTEE MEETING - APRIL 9, 1992**

The public may address comments and questions to Pamela H. Espenshade, Committee Aide, or make scheduling inquiries to Kathleen Lieblang, Secretary, at (609) 292-9106.

The Assembly Select Committee on Civil Service and Employee Benefits will meet on **Thursday, April 9, 1992 at 1:30 P.M. in Committee Room 10 of the Legislative Office Building, Trenton, New Jersey.**

Representatives of the New Jersey State League of Municipalities, the New Jersey Association of Counties and the New Jersey School Boards Association have been invited to appear and provide basic information.

The committee will meet again on ~~Wednesday~~ Tues, April ~~15~~ 14, 1992 at ~~1:30~~ 2:30 P.M. in Committee Room 10 of the Legislative Office Building, Trenton, New Jersey. Further details of the meeting will appear in a future notice.

Issued 4/2/92

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ASSEMBLYMAN DAVID C. RUSSO (Chairman): Maybe we can start right now. This is the third meeting of the hearings of the Assembly Select Committee on Civil Service and Employee Benefits. Today what we're going to eventually focus on are local public employers. We have a number of witnesses today. Just preliminarily I want to go over some future dates very quickly. The next full meeting will be next Tuesday, the 14th at 2:30, here. These are all here obviously -- 2:30, the 14th.

ASSEMBLYMAN ROMANO: Two-thirty?

ASSEMBLYMAN RUSSO: Yes. Two-thirty, April 14, a Tuesday. Okay? The one after that is Tuesday the 21st at 2:30, and the one after that is Thursday the 23rd at 2:00. Tentatively, tentatively, workshops for us on Tuesday, April 28 at 2:30 and Friday, May 1 at 2:30. The Friday, May 1 may change. Okay?

ASSEMBLYMAN DeCROCE: Two-thirty for each of those?

ASSEMBLYMAN RUSSO: Yes, 2:30 on those. Those are tentative, especially the one on May 1, and that will take us through May.

I'd first like to call, today, Commissioner Skip Cimino, Department of Personnel.

C O M M I S S I O N E R A N T H O N Y J. C I M I N O: Mr. Chairman, thank you very much. It's nice to see the Committee once again. Nice to see Assemblywoman Bush and Assemblyman Romano whom I've had a great deal of pleasure serving with in the Assembly.

ASSEMBLYMAN DeCROCE: Don't you want to see us?

COMMISSIONER CIMINO: I said that to you last time, Assemblyman, if you remember, and they were not here last time. I did not forget that, Alex. (laughter) It's always nice to see you, Assemblyman.

Mr. Chairman, members of the Committee, thank you once again for the opportunity to help you in your analysis of the Civil Service system and the Department of Personnel in our constitutional mandate to maintain a merit system free from political coercion, for public employees and public managers. As you will see, the Department of Personnel has taken dramatic and substantial cuts over the last few years. We've done this at a time when the Department is most needed to help manage Governor Florio's efforts to downsize State government and the State workforce. I believe we had some discussion of that issue when I was here previously.

I believe your review of the Department of Personnel will show that the Department has done a good job as the State's principal human resource agency. As the national recession drags on and the State continues to face fiscal difficulty, we must persist in the prudent management and control of our resources -- particularly our human resources. The Department of Personnel is best suited to provide that professional human resource management.

Let me take this opportunity to give you a brief overview of the Department's budget over the last few years and -- in relationship to the Department's budget as well -- how it has juxtaposed to handling the 74,000 people in the State workforce and the 135,000 people that we are responsible for in county and municipal -- and indeed, even in some of the school boards. Our expenditures have been cut 20 percent between Fiscal Year 1989 and Fiscal Year 1991. In point of fact, that's a complete cut of $5 million. Our staff has been cut by 28 percent from Fiscal Year 1989 to Fiscal Year 1991. That's 170 people. We operate this Department today, in the traditional aspects of the Department at 1975 manning levels with in excess of 20,000 people more at the State level to deal with, and I don't know how many more, quite frankly, at the county and municipal level that we have to deal with.

The current staff levels for the traditional functions of the Department, as I said, are at 1975 manning levels. Training positions in State government were reduced by 20 percent in the consolidation of training at the Human Resource Development Institute, which is a $5 million savings. That was Governor Florio's Executive Order No. 12, which, in fact, consolidated 63 training programs. We have consolidated that and, in point of fact, we cut one-third of the workforce in the consolidation as well as saving $5 million in the aggregate. And approximately 40 percent of the Department's resources are devoted to serving county and municipal governments. Sixty percent of our recruitment and selection activity is devoted specifically to local government; for example, in the area of police and fire. We do police and fire testing. That is a system that has for a long time -- almost 100 years now -- been based on some kind of merit, some kind of promotion for that.

I have to tell you, though, I'm a little disappointed, Mr. Chairman. I volunteered to be here at the last Committee meeting, and I will be here each and every time that it is the desire of the Committee, or at the point where we think it is important, but I was told that my presence wasn't really needed through your staff, which is fine. Yet, I've come to find out that the Department itself was extensively examined. I think that's patently unfair. We're happy to sit here. We're happy to sit here next to whomever wants to talk about us or to us in each and every occurrence, and we will do that. To have the Department, in fact, be criticized in any way without the appropriate agency head or their designee being in the room, I think is unfair to the Department.

I'll tell you what it does: It's particularly disturbing to me in that a great deal of misinformation was given to this Committee; information that has now been allowed to sit for, I guess, in excess of a week which could have been correctable at that point of time without any further discussion, or us having to go back. But, more importantly than that, those so-called facts have had a deleterious impact. It has exacerbated the morale problems that already exist in a Department that is understaffed and overworked. I am particularly offended that that has, in fact, happened to our people. We are dealing with the Department so that I may express this to people. We are dealing with the only Department in government that took single day layoffs. These people literally took a pay cut because of the egregious situation that is out there. We are dealing with a Department that is experiencing an explosion in the number of applications for examination because the State of New Jersey has no jobs in the private sector, so people are appealing to government to do that. We are dealing with a Department that is dealing with an explosion of appeals because everybody is concerned that if they don't appeal their par, or their performance evaluation, they will be downgraded and, subsequently, they will lose money. So, we are dealing in some very, very extenuating circumstances.

I'm happy to answer any questions for this Committee. I think I've always been one -- whether I've been a legislator or a member of the cabinet -- who has been open and willing to discuss things with people. We've never hidden from the facts. We've always spoken the facts. And I would only hope that if you were going to have people come before your Committee -- as you have the rightful purpose to do -- to talk about the Department, to talk about the Civil Service system, then the Department is here, and, in fact, here when I am here, to listen to the discussion.

I'll be happy to entertain any questions, Mr. Chairman.

ASSEMBLYMAN RUSSO: The only thing I would say to you in response to that is that most-- Of course, you or your staff or members of your staff, or a particular member, was here last time and of course, you're welcome to be here each time. That's why at the beginning of each meeting I've been announcing all the meetings far in advance, or as far in advance as possible. Ironically, as you probably will agree, we on the Committee do not know what testimony we will elicit until the person who is giving the testimony states that. So, we have no control over that.

COMMISSIONER CIMINO: Mr. Chairman, I understand, and I understand the difficult position you are in. I have sat in that chair and I've done that -- I know Assemblywoman Bush has done that previously -- and I understand. However, I must tell you that -- and I understand the atmosphere that exists in the State, and I understand the cacophony of noise that is out there currently about government -- but I must be unequivocal and clear that when people wave papers and say, "This is what we're talking about," you need to get through the facts. You need to understand what those facts are. And people say that we haven't taken project specialists off the payroll? That is patently, unequivocally incorrect. When we hear that the SES hasn't been downgraded; it has been downgraded. When we hear that the SES is inappropriate the way it was structured, no question. But Governor Florio didn't structure it. It has been arbitrary; it has been capricious; it has had a ceiling effect. There aren't sufficient number of minorities. The Governor, to his credit, is trying to straighten that out.

So, all I want to make sure-- Your job is a difficult mission, particularly in light of the fact that you are dealing with a management personnel system whose structure does not solely affect the State of New Jersey, but it affects local government, county government, and school boards to some degree, and when we've got those situations going, we've got to be very, very conscious of what it is that we allow to be fact versus fiction. That's all we want to do -- is to make sure that the playing field is a level playing field when we're dealing with things.

ASSEMBLYMAN RUSSO: The only thing I would say, obviously, in response, I believe for all the Committee, is that when any witness testifies we will consider each testimony on whatever merit we give it.

COMMISSIONER CIMINO: Okay.

ASSEMBLYMAN RUSSO: On the other hand, you know what the schedule is. If your staff calls and asks if we plan on having Commissioner Cimino testify, the answer would be no, in deference to you. On the other hand, as I recall, Ms. McMahon happened to be here during a portion, and it was constructive. We did not plan to call her again, but on certain questions with regard to the Pension system, it was quite helpful that she was here. We're not asking or requiring you on particular issues, although there were some particular issues which I might want to note, and I know Assemblywoman Bush had asked a question which might have gotten back to you with regard to just the Civil Service system, in general. The other question -- and this doesn't have to be today -- that had come up several times from whatever sources, was when you had testified originally with regard to the approximately 5000 people that have left since '88 to the present. The question was, obviously, number one: Who left -- and I know you didn't have all the figures at that time -- women, minorities, last in, first out, and also how many people of those 5000 may have been by attrition, how many of those people may have been affected by bumping? Those kinds of questions. I don't think you have that information today, but that's something we are going to ask you back for.

COMMISSIONER CIMINO: Sure, happy to provide that information. We can run that on the PMIS.

ASSEMBLYMAN RUSSO: We would welcome you having a staff member here; absolutely no problem.

COMMISSIONER CIMINO: Okay.

ASSEMBLYMAN RUSSO: Okay. Questions?

ASSEMBLYMAN DeCROCE: Well, if I may? Just let me say this to you, Commissioner, with all due respect. I know you're fair and honest and you tried to do as much as you could for the Committee -- no doubt in my mind about that -- but how do we, as a Committee, curtail somebody from the audience if they want to speak before this board? Whatever subject, they may come up before us-- We had a young lady -- I don't think we ever got her name, frankly -- who refused to give her name and was a member of the workforce who had some concerns, frankly, did mention the term "project specialist" as well as other positions. I don't know how you stop them, I mean--

COMMISSIONER CIMINO: I'm not asking you to take away somebody's First Amendment rights, believe me. It would be the last thing in the world I would do. I've always been an advocate of that. As a matter of fact, I look back on my youth and maybe -- as a big advocate of that in the '60s and will always be-- What I'm simply saying, Assemblyman, is that when somebody suggests that the management structure of the State government is bloated because there are 12,000 unclassified employees, we have got to-- Granted, there may be 10,000 people out there, but we've got to make a quality of life decision. Do you eliminate marine police who patrol our shores for a very valuable purpose? Do you eliminate the investigators who go out? Do we eliminate the 425 unclassified who work for the New Jersey Legislature? Should we start there?

So, it's easy enough to put out there a statement that, in point of fact, you know, we've got all of these things that are going on. It's much more difficult to walk through that statement. That's all we're asking for -- an opportunity. We had done that earlier in the morning and, we had gone through that with the Assembly Appropriations Committee in large measure and had explained what those numbers were about in large measure, as to where in fact that population was. We can give the Committee that breakdown. We're not looking to prevent that information because, quite frankly, we're kind of proud of what we have done to eliminate many of the problems that are out there. This Department, I will tell you, does a substantial job. I mean your concern is: How is the budget driven? Well, in Deputy Commissioner Kassekert's area in the Office of Personnel Management, we are-- You're going to hear people come before you and tell you, "That DOP's no good," and the reason we're no good is because we are the "Doctor No" of government. We don't allow reclassifications from 19 other departments to go willy-nilly, because you know what happens when we reclass people? It drives the budget up. You've been a Freeholder. You know what I'm talking about. It drives the monetary aspect of the budget up.

Now your responsibility, and ours, is to try and deliver a cost-effective, lean government. So, you will hear people complain about us for that purpose. No question about it. Because we do that kind of job. That's what we are supposed to do, and in doing that, I just want to make sure that there's a balanced, level playing field for the people in the Department. Because back here, where I've got women taking work home at night and on weekends to do the job that they're doing, can you imagine what it feels like when they hear constantly how bad they are? I mean, that's not helping worker productivity, and it's certainly not helping sick leave, and they are two major issues that have got to be dealt with by this government if we want to trim its sails. That's all I'm simply saying. I don't expect you to try and control what's out there.

ASSEMBLYMAN RUSSO: Assemblywoman?

ASSEMBLYWOMAN BUSH: Thank you. It's a pleasure seeing you, too, Commissioner. I'm sorry I missed you the first week.

Last week when some of the presentations were given -- and I think you are making reference to a very thick packet that was provided to the Appropriations Committee -- I had questions for the person that testified as to the substance of some of those allegations that were being made which, I think-- I don't know if was my reference or his about a hit list, that these were people that could go because you could see it was Judiciary, etc., etc. One of the things I did have a question about was there was a listing of contracts, I think, like carpet-cleaning, everything, full gamut-- I don't know if that would be within your-- And it said it was-- Okay, that wouldn't be within your thing.

COMMISSIONER CIMINO: No. No, Assemblywoman.

ASSEMBLYWOMAN BUSH: Okay, because that was some of the concern that I had. This was being shown that here is a big ticket item multiyear contract, but no indication as to how many years and such. So questions were answered. But I do understand your concern as to things that go on, and as the Chairman was saying, it probably would be good to be here at all of these meetings because you never know who's coming up with what, you know. A lot of questions do come forward, because I am one of the people that was requesting a basic, I guess, almost course: What is Civil Service?

COMMISSIONER CIMINO: Well, I'm glad you asked that question, Assemblywoman, because Civil Service is not what it appears. It's not an obfuscation. It's not a way of preventing people from getting jobs. It's a system that's inherently built into New Jersey's Constitution, a Constitution I might add, that I have viewed from a historical perspective -- as a history major -- as one of the finest state constitutions in the United States of America. I think a lot of other states refer to our Constitution as being that. It is built into the Constitution based on merit, based on examination, and based on veterans' preference; that veterans have a right to jobs, in that regard. And it is a system that is really a management system. There are a lot of management prerogatives within the Civil Service system. It is a guide by which management can work in doing things.

Now there were problems with it, as I've testified before. But much to its credit -- and I'm happy to give them the credit -- Governor Kean, as one of the priorities of his administration, made Civil Service a movement towards reform. He reformed the system in 1986. The first opportunity to utilize the reform came last year. Prior to last year, the bumping provisions were such that you could bump anywhere in the government. Those bumping provisions have been narrowed substantially. Our track record of last year shows that we go anywhere from 2.5 to 2.75 bumps per move, so we did roughly around 1200 moves last year. Out of the classified service, out of the Civil Service, we ended up with 237 people being laid off. We actually effectively terminated more people for cause, and that's one of the other myths versus realities in this government; that we don't fire people. We do fire people. They were fired outright or they leave in one way or the other, but we do have people who don't make it. So, that is really basically what it does. It kind of provides a management system.

It's a system that provides for people to be moved based on merit. That all grew out of the latter part of the 19th century. It was really a progressive era reform and not unlike giving women the right to vote and the direct election of U.S. Senators, all of it coming at the same aggregate period of time. It affects not only the workforce of the State, but it impacts on the colleges, it impacts on county government, it impacts on municipal government, and it impacts on school boards. In effect, it says simply this: that you will be promoted based on merit. You will take an exam to find out whether, in fact, you are qualified. We do provide a proviso that says that if you serve the country in time of war and you are a veteran, and indeed we have a new class of veteran today that we will deal with in the next rounds-- We have -- for the first time in the history of the United States -- female combatants who were, literally, in the combat zone in the Persian Gulf, who will be able to move to the top of the list.

Some of the other things that we need to deal with in large measure that were not dealt with, and we are moving forward with, is-- For some reason, under the statute as it was passed in 1986, we did not create an Affirmative Action Advisory Board to the Commissioner. We are creating that and there are a couple of reasons for that, Assemblywoman. First off, I'm very, very much concerned about the ceiling effect that occurs in government, not only for minorities but for women. I'm equally concerned that my analysis of the data of the 1980 census figures shows that we have been disproportionately unfair to Hispanics in this government, and that we have not measured up to the goals of the 1980s. If you understand the census data of the 1990s as it's about to be projected, we are even more behind. So we need to look at that information to be able to arrive at the goals that we need to set, and in large measure, we need to be able to move towards establishing that. The workforce of New Jersey needs to be a composite of the population of New Jersey, and we've got to move in an affirmative way because if we fail to do that, quite frankly, the level of adverse impact that can occur is going to bring the Federal government in here, and there will be substantial cost to the State for its failure.

ASSEMBLYWOMAN BUSH: Two more questions if I may, Mr. Chairman?

ASSEMBLYMAN RUSSO: Real brief. Real brief.

ASSEMBLYWOMAN BUSH: Very briefly.

I'm assuming that your Affirmative Action Advisory Committee then, will hopefully, address a concern that I expressed at the last meeting. That was, in looking at the charts that had been provided as to when minorities and women began to have somewhat of an effective number within the workforce, and if we're looking at the last hired, first fired, that that brings it down. So, can I somewhat assume that this advisory council will look towards that even in the issue of bumping?

COMMISSIONER CIMINO: We're going to look at those issues. We're going to look at, essentially, the issues that affect this, again, because this system just doesn't affect State government. One of the fallacies that I have found in coming here is that most people think Civil Service, think State. I'm happy to see that Mr. Dressel and Mr. Dorf are here because they know about local governments. But it does not affect this. I will also tell you that governments need to elect to become members of the Civil Service system. They do not do that. It's not a mandate. It's not a State mandate. They need to vote by referendum whether they want to-- And the people vote to come into the system.

ASSEMBLYWOMAN BUSH: Just one other thing. You said that Civil Service is a management system. By that, do you mean that it's a system by which we manage, or what do you mean it's a management system?

COMMISSIONER CIMINO: It's, in my opinion, a management tool. It is a tool that effectively, in large measure, actually protects management because most of the things that are in there are nonnegotiable items, and gives management a great deal of prerogative in what it can do as opposed to being at the bargaining table, not unlike the benefits that you're going to talk about. Most of the benefits that go to the workforce of the State of New Jersey do not come from negotiation; most of them are done by statute. They are not negotiable. Very little that comes through the contract in that area -- with all due respect to the labor unions and what have you -- in point of fact is done by statute.

ASSEMBLYWOMAN BUSH: Thank you.

Thank you, Mr. Chairman.

ASSEMBLYMAN RUSSO: Thank you.

ASSEMBLYMAN ROMANO: I'll be brief.

ASSEMBLYMAN RUSSO: Real quick. Last question.

ASSEMBLYMAN ROMANO: I guess you noticed that because Assemblywoman Bush and I are together on many committees our minds run the same way -- so your comments were mine.

I would just like to say this, Commissioner. There were some numbers explored representing different things. I would ask of you, because no one is about to start calling you on the telephone and say, "Guess who's here and what they said about you? Come right down," -- your staff can then, how should I say, address themselves to those particular issues, and we'd be only too happy to receive some written communication regarding someone's testimony.

That's all I have, Mr. Chairman.

ASSEMBLYMAN RUSSO: Thank you.

Commissioner, thank you very much.

COMMISSIONER CIMINO: Thank you very much, Mr. Chairman. Thank you, everyone.

ASSEMBLYMAN RUSSO: Mr. Dressel. Mr. Dorf. Thank you for coming today.

W I L L I A M G. D R E S S E L, JR.: Thank you very much, Mr. Chairman, and members of the Committee. My name is Bill Dressel. I'm Assistant Executive Director of the State League of Municipalities. I'm joined with Gerald Dorf of the League's Labor Relations Counsel.

Before I start, Mr. Chairman, with my prepared comments, I would like to compliment you for convening a forum -- or series of forums -- for employee groups and management organizations to come before you and to express our concerns on these very important subjects. I think that it's time that they be reviewed, and I think that the information that you're going to hear from the League today, and from the county organization, and the School Boards Association, who I understand is here, is going to assist you in your deliberations.

I think all of you have my statement that I would like to read into the record and then I would like to have Mr. Dorf speak. Earlier this year, Governor Florio signed into law Chapter 382, which created a permanent Pension and Health Benefits Review Commission. The League of Municipalities applauded this action as it represented the culmination of many years of steadfast lobbying efforts.

We have always believed that the continual introduction of pension and health benefits legislation does not address the problem at its root; but instead is an attempt to offer solutions to highly complex and technical issues in a piecemeal fashion. This results in the passage of an inordinate amount of bills without benefit of knowing the long-term fiscal impact.

A Pension and Health Benefit Commission would provide the proper scrutiny accompanied with full actuarial data to accurately determine the tremendous implication of such legislation. The Pension and Health Benefits Review Commission should be viewed by the Legislature as a useful tool or resource at its disposal to get at the facts and determine whether or not a given pension or health enhancement is in the best interest of the employee -- employer of the State.

We ask your help in urging the Governor and the legislative leaders to make the necessary appointments to get the Commission started on its charge. We are very much concerned that-- We learned very recently that the legislative leadership and the Governor have not made these appointments. This legislation, as I indicated, did clear both Houses of the Legislature. It was signed, and I think it's about time that this Commission start off.

The second item concerns binding arbitration legislation. It is no secret to anyone familiar with local government operations that the binding arbitration system in this State is one of the most costly and unfair laws with which State government has burdened municipalities. Of particular concern to municipal government is the role of the arbitrator and the need to give greater consideration to the municipalities' ability to pay.

Moreover, municipalities are faced with the reality of operating under the State-imposed budgetary cap. Thus, it is extremely difficult to meet the demands of service contracts which award increased salaries for police and fire personnel. The results of the League's salary survey, which is presently underway, will illustrate that these contract obligations far exceed the 4.5 percent cap municipalities must operate within.

Currently, there are three bills pending on the subject -- Assembly 836 sponsored by Assemblyman Bill Pascrell and Dick Kamin, A-336 sponsored by Assemblywoman Ogden, and A-1059 sponsored by Assemblyman Frank Catania. The League fully supports these common sense measures as they attempt to bring some modification to the Interest Arbitration Law. As a side note, our Labor Relations Counsel, Gerry Dorf, who will be speaking shortly, has prepared an analysis of this legislation, and I will make that a part of the official record.

Now, I would like to introduce Mr. Dorf who will amplify further on aspects of the Civil Service Regulations and Health Benefit Provisions that we believe require your consideration.

Mr. Chairman, at this time, Mr. Dorf.

GERALD L. DORF, ESQ.: Mr. Chairman and members of the Committee, I start off with one slight correction. We left out an "and" sign in your Committee name. It's obviously the "Assembly Select Committee on Civil Service and Employee Benefits," with all apologies in our haste to get this typed up this morning and have it available for you.

I don't propose to read our statement but I would like to make it part of the record. As Mr. Dressel has mentioned, when we get to interest arbitration, which we'll touch on briefly at the end, we prepared a much longer analysis of the three bills that are pending in the Legislature -- three Assembly bills -- and that's available for your review as well as about a 26-page analysis of the three bills. I'll touch on that briefly because that's not really within, probably, the purview of your Committee.

ASSEMBLYMAN RUSSO: I was going to say to you, I don't mean to interrupt you, and I never say this: If you want to go through this in some detail, which is usually opposite of what I say, feel free.

MR. DORF: Okay, thank you.

ASSEMBLYMAN RUSSO: I think it's time well-spent on that written statement, and I just skimmed it.

MR. DORF: Okay. I appreciate that very much.

In terms of my own background, I am President of a law firm in Rahway, and our firm has represented both private and public sector employers on labor and employment matters now for more than 20 years. Since 1973, I have been Labor Counsel to the State League of Municipalities. In addition, there's a tripartite commission, which I'm sure this Committee's aware of, the Public Employment Relations Commission Appeal Board -- as apart from the Commission itself -- which handles matters involving agency, shop, and dues deduction matters. I am the Management member of that Commission and have been for about the last six or seven years.

As probably you all know, the Public Employee Relations Act -- the official name is New Jersey Employer-Employee Relations Act -- was passed by the Legislature and signed by the then Governor Hughes, in September of 1968. The law has been amended several times, including in 1974 when it was amended to give the Commission unfair labor practice authority and in 1977 when it was amended to give interest arbitration powers to the Commission. What interest arbitration is -- and the term is kind of a misnomer-- But what interest arbitration really is, as you all know, is it provides for compulsory arbitration in police and fire disputes in the event the parties are unable to reach settlement on the terms of their negotiations.

Prior to the adoption of the PERC Law in 1968, there was, of course, some collective bargaining that existed in the State. However, the passage of the law in 1968 really was the impetus for unions to begin to organize public employees and now -- and I just checked this figure out with members of PERC, recently -- there are more than 3500 bargaining units in the State of New Jersey. This includes State unions, local unions, county unions -- the number that peripherates is almost mind-boggling -- of which about 900 are police and fire bargaining units.

What has been of great concern to the League of Municipalities is the spiraling -- what I call labor and labor-related costs. By labor-related costs, I mean there are fringe benefit costs that have just been growing astronomically. For example -- and this is not part of our paper -- a recent study by the United States Chamber of Commerce has shown that in the private sector, fringe benefits -- as an add-on factor to labor costs -- constitutes, in 1990, over 37 percent. So you take the employee, whatever that employee makes, and add another 37 percent on, you get fringe benefits cost. In the public sector, that figure is well over 40 percent and if you get into the public safety area -- that is police and fire -- it's probably over 50 percent as an add-on cost. I just point these out as facts. They can certainly be verified so that when we think in terms of employee costs and salary costs, there are the additional costs of fringe benefits. As we point out, they are what I call roll-up costs. And I'm familiar with the term roll-up because among the other things I do is some teaching for Cornell on collective cost bargaining agreements.

Think about this. There are certain items that automatically go up as salaries go up. For example, if salaries go up, overtime costs goes up. If salaries go up, the cost of pensions go up because pensions spin off salaries. If salaries go up, the cost of a holiday goes up, the cost of vacations goes up. Anything that's related to salaries go up as salaries go up. These are what I call roll-up costs which we just kind of ignore, but they're really there. And obviously, if you have a step guide-- Be it in a teacher area or be it in the area of other public employees, you have a step guide.

Employees are getting really what I call both a horizontal raise; that is an across-the-board raise, and they're getting a vertical raise, that is, they're going from like two years of service to three years of service, and you have that built-in implemental factor which can be, in some areas 2 percent, 3 percent. We seem to kind of ignore that, but those are added costs. These are the kind of spiraling costs that have been increasing in the public sector for years. We see in the private sector, for example, wage increases in the area of perhaps 3 percent, maybe even less than 3 percent, and we're asking these same individuals, these taxpayers, who are getting a 2 or 3 percent raise to now fund increases for public sector employees that are running 7 percent, 8 percent, 9 percent. It's coming down. I'm seeing the figures. We're not seeing 9s anymore. It's coming down, but it's still well in excess of the private sector. And by the way, despite the fact that I had this statement, I'm not reading it, because I think I know it well. If you'd like to interrupt to ask questions as I go through the presentation, please do.

ASSEMBLYMAN RUSSO: In those figures you gave, what would you consider fringe benefits?

MR. DORF: In terms of--

ASSEMBLYMAN RUSSO: As opposed to-- You've got roll-up costs here, and I see that. You say, for example, certain roll-up costs continue to escalate as these costs are based on wages, and they rise. Do they include, but are not limited to, costs of vacations; meaning, when the salary goes up the cost of missing time goes up?

MR. DORF: That's correct.

ASSEMBLYMAN RUSSO: Now, when you use the figures 37 percent, roughly, in 1990, when you're getting paid a salary in the private sector, about a third of that, in essence, would be also in fringes. What would you consider fringes? And then you said in the public sector it could be more than that, and in police and fire it might be as much as 50 percent. Now, what would you define as a fringe? I mean, I know what I might do, but I'm just wondering where that comes from?

MR. DORF: Well, let me give you a whole bunch of examples of fringes. Any unpaid -- sorry -- any paid unwork time is a fringe benefit. So you can think of all the paid unwork times, that would be vacations, holidays, personal days, bereavement days. Bereavement is a cost time. Frankly, I've never been able to figure out what the cost is. I mean, we just simply say it's a cost. You can presumably do it, but what you have to do is have an actuary take all the potential relatives that might become deceased in a year and figure out how many of them might die and what the cost might be, and if you spent probably $15,000 to find it cost you $5000, you wasted your money. So, it's a cost time. Everybody acknowledges it as a cost time, but it's one of those cost times that you can't really do anything about. Overtime, clearly, is a cost time. It is a fringe benefit item. Add that one.

ASSEMBLYMAN RUSSO: Not health benefits, for example?

MR. DORF: Of course. That's a big piece I'm going to get to shortly.

ASSEMBLYMAN RUSSO: Okay.

MR. DORF: In my judgment, the cost of health benefits is the issue of this decade. This is the issue that public employers as well as private employers are just going to either get over and deal with and handle, or they're going to choke on it, because it is so costly. It's just an astronomical cost. Health benefits are a tremendous cost, life insurance, pension costs-- And by the way, when I say fringe benefits I mean not only those fringe benefits that are in a negotiative or collective bargaining agreement, but those that are imposed legislatively. For example, temporary disability, unemployment comp, worker's comp, those are all fringe benefit costs. Those are all things that an employer, be he or she in the public or private sector, has to pay. And these are the kinds of additional costs. Take, for example, uniform allowance, gun allowance. We have some police contracts, for example, that require a certain amount of money to give to the employee to qualify in a rifle range, or to qualify in a pistol range, or to clean his or her weapon, or things of that nature -- cleaning of uniforms in addition to buying uniforms. The list is almost endless in terms of the kind of benefits that we're talking about.

I'll give you a recent one which has come into police and fire negotiations, for example: A request that certain items be rolled into salary; that is, for example, policemen and firemen work, irrespective of the fact that it's a holiday, and in many contracts you get a lump sum payment in lieu of holidays. That lump sum payment often comes in December. It's kind of like a Christmas Club item, but it's a cash payment, and in some contracts they've asked that after a certain number of years of service that that be rolled into the base pay.

There's only one reason they're asking that to be rolled into the base pay. That's to kick up the base pay item before retirement so the pension will be higher and instead of doing it as you retire, you do it after a certain number of years of service so that the folks that administer the pension fund won't get suspect about it and say, "Wow, this is wrong. It may be violate of the statute." So you get around it by instead, proposing that it come in, say after 22 years of service, roll that kind of thing in. So, those, again, add on costs and since the employer pays the bulk or a substantial part of the pension costs, that's an additional kind of cost that we see and we'll have to face.

ASSEMBLYMAN RUSSO: Assemblywoman?

ASSEMBLYWOMAN BUSH: Thank you, Mr. Chairman.

If the benefits of vacation and sick leave were not established by statute, in your opinion, what effect, if any, would this have on local government?

MR. DORF: Okay.

ASSEMBLYWOMAN BUSH: If it had to be negotiated?

MR. DORF: Yes, you've been reading ahead. (laughter) But let me comment on that.

There are, in municipal government area, only two benefits that are legislatively minimum mandated. There are far more, by the way, in State government, and it's not my role to get into that. I'm sure you'll have someone who will testify on that, if you like. The two that are mandated by statute, and I've listed them, are sick leave, which is -- and I list the statutes under B) on page 2 of my statement -- and on page 3, on vacations. Now let's take the easier one first; the vacations.

You look at that vacation establishment and you say well, if this were negotiated would the employer have agreed to more than that, or not more than that? I would presume that the upper end of the scale, for example, 20 working days of vacation after 20 years probably is a little bit higher than maybe in the private sector. The lower end probably is fairly much in keeping with the private sector. So, as it's been established by statute, vacation is probably not much of an add on cost item. I imagine that if the pendulum were to swing freely in the public sector, that the benefits and vacation would probably be in that area or maybe more or maybe less, but not significantly.

A big item, however, is sick leave: fifteen days, one per month the first calendar year of service, then 15 days as of January 1, beginning the second year of service. So, theoretically, if I were to be employed in the month of December, I'd have one day for December and then by January, having been on the job one month, I've got 15 sick days in the bank. Not bad. The private sector doesn't come anywhere close to that. In the private sector you look at maybe five days of sick leave for most employers. And by the way, as I point out here, the average number of sick days taken in the private sector is about five or six, just about equal to the number of days. I don't know what the figures are in the public sector. I know they are higher based upon the clients that I've spoken to. In fact, I had a judge ask me at a court proceeding one time where we were seeking to discipline an employee for taking an excessive number of sick days and this judge asked me -- not too rhetorically -- "Well, don't all public employees take all their sick days every year?" That's the perception out there. The perception is if you have 15 sick days you take them, and it's far, far more than the number of days that's granted in the private sector. I believe that if you would have negotiations on it and it wasn't mandated by statute, that you'd probably have a lot less.

ASSEMBLYWOMAN BUSH: Thank you.

Thank you, Mr. Chairman.

ASSEMBLYMAN RUSSO: Thank you.

MR. DORF: Now, the health benefits area is another interesting and critical area and this is the area I think, as I said earlier, is going to be the major battleground, if I could use that, or major field of negotiations, in this decade and the coming years. Why?

The costs of health care are just spiraling. I won't get into why, whose fault it is, whether it's the medical profession's fault, a fellow profession, or what. Irrespective of what is, it is. We all know health care costs are going up astronomically. I have one municipality we represent that pays on the average for its employees, $8000 a year in health care costs, $8000. There are employees I know that work, for example, in some municipalities either on a part-time basis or rather short hours, or working for school districts, where their health care costs to the employer is close to what their actually salary is. They would almost work for free to get the health care costs, because the health care costs are so significant.

Now, what does this all mean? To many unions, and by the way, I am very pro-management -- I'm not antilabor; I come from a working class background; my father was a teamster -- the bottom line, however, is we have to look at what is fair and what is reasonable. And the fact of the matter is, that it is not fair to expect the employer to continue to pay these escalating costs. And what's happened? The employers have over the years agreed that we will provide the employee with "X" insurance, parenthetically, irrespective of cost. And when that cost was a couple of thousand dollars six or seven years ago and it's now $6000 or $7000 or $8000, you get no credit for it at the bargaining table. If it were capped, if the employer had agreed, "we'll give you "X" thousands of dollars for health insurance," and then the insurance costs went up, then you make it part of the bargaining package and you settle it as part of the bargaining package.

I know it's anathema to many, many unions and when you talk to them and say, "There's got to be a cost sharing formula," they don't want to hear about it because some of the members don't want to hear about it. They want to have this as a totally free benefit and I submit to you that it can't be a free benefit. The State's Health Benefits Plan, unfortunately, helps to perpetuate that because the State Health Benefits Plan number one, if you read it carefully, has got a very low, for example, major medical deductible. It's absurdly low in this time of rising costs.

For instance, digressing from that for a moment, I've seen prescription plans that when they first came in had a $1 copay feature. That was when prescriptions cost maybe $8 or $10. Now prescriptions, on the average, costs probably $28 or $30. Shouldn't the copay have at least gone up to $3 to match that? Shouldn't we consider, for example, having generic benefits; that is, generic prescription items be at one factor and name brands another factor to encourage people to use generic brands instead of name brands?

Those are ways in which you might save money, but the State health benefits program provides: 1) among other things, a very low deductible on major medical, and: 2) it provides the employer pays it all and the employer must treat all of its employees the same. Bottom line: "I'm municipality 'X'. I want to put in for some of my employees but not all." I can't do it. It's either all or nothing. You either have to cover the entire workforce or nobody; you have to treat them all the same. Also, you have to pay it all. The employee doesn't pay any of it.

Now, if you take that proviso out of the statute and again, let the bargaining table operate, then perhaps you'll have some municipalities who might come under the State Health Benefits Plan who either won't now, or have been in and opted out because they would then have the ability to negotiate this, negotiate as to whether or not there should be some kind of a copay feature -- negotiate as to whether they want to have all or some of their employees involved in it. What would take place at the bargaining table, I think, would make a lot more sense instead of foisting all the costs on the employer.

ASSEMBLYMAN RUSSO: For example, what you would do-- That was one sentence, I think. Anyway, for example--

MR. DORF: That probably was. Probably run a whole page, too. Sorry about that. I write better than I speak, in terms of syntax.

ASSEMBLYMAN RUSSO: No, no. It's good. If you, for example, had a situation where what you're saying is, let's say the employer would have a cap of so many thousands of dollars of health benefits toward a policy; above that it would either be a shared-- It would be negotiable whether the employer paid a portion, the employer paid any, the employee paid some? Agreed?

MR. DORF: Yes.

ASSEMBLYMAN RUSSO: It would mean some kind of cap--

MR. DORF: Correct.

ASSEMBLYMAN RUSSO: --as opposed to what it is now where the employer pays, in essence, the whole thing.

MR. DORF: Yes, let me give you another example. I just negotiated this in a county, and we hope it's going to work. Let me tell you what I'm talking about. We have situations not only where we have in government, where spouses worked and are covered by the same health insurance costs -- and you can't collect twice -- we also have situations where you might have a spouse that works for another employer and is covered under a health benefit insurance plan, and we say to ourselves, "Why should we be paying double, or why should we, literally, be throwing this money away?"

What we did in this county -- and this county, by the way, is not under the State Health Benefits Plan so we were able to do that-- What we did, was we provided that for those employees who opted out, would not want to be covered under the health benefits plan, we would give them a certain amount of the dollars savings. It turned out to be about half and we spelled it out by contract. If you don't take this insurance plan, we give you this amount of dollars in cash in your pocket. Now the county saves half because they don't have to pay for that insurance benefit cost, and the employee gets that half in cash. Now the union was so concerned that there might be some employees that would just leap to get this cash and give up coverage when they could ill afford it, as part of the arrangement -- we agreed to do this -- the individual opting out of insurance coverage must show satisfactory evidence to the employer and to the union, that he or she is covered elsewhere, that they have spousal coverage elsewhere. And if your spouse ever stops being covered, or they have this other coverage, they can opt back into the plan. That saves everybody money.

ASSEMBLYWOMAN BUSH: Opting back, could they do it quickly without a waiting period, without being uncovered, or would there be a gap period?

MR. DORF: Well, you have-- Under COBRA legislation there's not going to be a gap because if the spouse loses coverage you could have COBRA coverage for that period of time so there would not be a gap. I appreciate your concern and the union was concerned, and rightly so. Frankly, we, as the employer, were concerned because remember, these union members are our employees and we're as concerned about them as employees as union may be for them as members. So, we made sure that there would not be a gap.

ASSEMBLYMAN DeCROCE: Is it mandatory for an employee to be a member of, or to use that benefit if they don't really want to? In other words, if I work for the State of New Jersey, do I have to take that program?

MR. DORF: No. But everybody does. You know, it's free. Why not?

ASSEMBLYMAN RUSSO: Assemblyman?

ASSEMBLYMAN ROMANO: Mr. Chairman, I think that Mr. Dorf can explain it better than I. Maybe you want to spend a few moments explaining why man and wife type of situations, both have to be offered, there could be no attempt to indicate to one, "Well, we only pay for one plan"? Do you want to explain to them what law comes into effect?

MR. DORF: Well, I'm not sure, you know, and you can't cite chapter versus the statute, but, for example, suppose you had a husband and wife both working for the State of New Jersey, let's say in separate departments. We can't simply say, "Well, we'll cover the husband, not the wife," or, "We'll cover the wife and not the husband," but I'm certain -- and there's certainly enough brain power both in this room and elsewhere in the Legislature -- that an appropriate bill could be written to amend the State Health Benefits Plan whereby either spouse could opt out of the plan. And I have no problem with giving the spouse that opts out of the plan a portion of that savings. Now it may well be that by having this double payment we're sort of bloating what the income is of the plan and that may very well change what some of the rates may be, but I still have got to believe that we're paying more money, both under the State health benefit plan and under private plans where there's double coverage, because you can't collect twice.

ASSEMBLYMAN DeCROCE: Are you going to give them that benefit annually, or are you going to give it to them once?

MR. DORF: I would love to do the latter, but negotiations being what they are, the odds are it would probably be the former. Because the saving is presumably on an annual basis, the employee would want it. But, again, it's a bargainable item. It's an item that the parties can negotiate over. I think they should have the freedom to negotiate it, and the way the State health benefit plan was written out, you can't.

ASSEMBLYMAN GEIST: Mr. Dorf, first of all, I'm a freshman Assemblyman, so I haven't been around here all that long. Some of these things you're talking about just seem like simple common sense to me, relative to State plans. I have a question for you. If it's so common sensible, why hasn't it occurred previously?

MR. DORF: Well, I could always say this: People are very comfortable with what they have and what they know and they get to be uncomfortable with the unknown. I had a situation last year, some of you may know. I did some negotiations for the State last year in an attempt to try and convince unions to make some of these changes. Now, this was in mid contract and we got shut down and we got accused of all kinds of heinous things which weren't accurate. But the bottom line was, they didn't want to do it. They didn't want to make changes in plans and programs which they knew and were comfortable with to buy something which they didn't know and might be uncomfortable with.

Now that doesn't mean we should stop. I think that it's our obligation-- I heard Commissioner Cimino speak to it, and he's absolutely right. It's our obligation to manage lean and prudent government, and if we're going to do that, I think one of the things we can't do is to waste dollars; and I think we're wasting dollars in some of these areas.

By way, one of the things the Commissioner said was that there are a number of benefits that are already set up by statute, and he's right. It's more so in the State area than the municipal area, but you have to look at what the legislation says. If the legislation speaks to a minimum, that's all it is. It's a minimum which means you can give more. If the legislation says you can grant no more than, then you can't. In most cases, unfortunately -- unfortunately, I say again as a management advocate -- that the legislation usually speaks to a minimum rather than a maximum. So, it's what the employer already has before he even starts bargaining.

ASSEMBLYMAN GEIST: One other quick question. The husband and wife are both employees. What is the benefit to the couple in maintaining coverage for both? Is there any advantage whatsoever having dual coverage?

MR. DORF: The limited benefit will be in terms of deductibles. If you have some deductibles, for example, let's say you have $100 deductible, well now you have a bridge factor by having the second person covered. Also, if you have any copay feature, you'll have a bridge factor. But if you give the employees a portion of the saving, in my judgment, unless you get somebody that gets a really horrendous experience that savings ought to more than offset what kind of additional coverage they're getting now by the double coverage.

ASSEMBLYMAN GEIST: Mr. Chairman, I'm sorry. I'm not clear on the deductible aspect. If husband and wife both have coverage, does that mean because they have dual coverage they have a reduction in the deductible?

MR. DORF: No.

ASSEMBLYMAN GEIST: For a catastrophic type of illness situation, is there a benefit because of limitations on coverage, of having dual coverage so that there's supplementation when the one spouse's amount of coverage is insufficient?

MR. DORF: In most cases the limitation is so high, we're talking probably like $1 million, that it is almost inconceivable to imagine the coverage running out.

ASSEMBLYMAN ROMANO: Mr. Dorf, what Assemblyman Geist hit with his finger right on it, that's where the benefit is.

ASSEMBLYMAN GEIST: So there is still some incentive to couples to maintain coupling insurance because of this type of situation.

ASSEMBLYMAN ROMANO: One further thing, if you'll allow me. What you have in that situation where they must be offered under the State health benefits system, because they're complying with Federal law, you cannot discriminate against a man or a woman because they're married, both must be offered it. If, on their own, one rejects it, it cannot be done with any coercion, if you will. What one finds then, here, is one takes the traditional plan and the other one takes an HMO.

ASSEMBLYMAN DeCROCE: But there is some supplementation of an individual's coverage when there is a couple present.

MR. DORF: There is some limited supplementation, and certainly there is also the doomsday catastrophic situation, which probably could be covered by some kind of umbrella. What I'm really suggesting is that for the limited amount of additional bridge coverage, we're paying far more than we should and that we could save the dollars and the employee could save the dollars by doing it. I don't want to seem simplistic. You're absolutely right. If it's so easy, why hasn't it been done before? Well, because people don't change too easily.

It's worthy of some additional study and I'm certainly not a pension expert per se-- I do a lot of work in the area in negotiations, and I think you ought to get-- I don't mean pension insurance expert. You ought to get some people in here who really know the subject very well and spell it out in detail and if there are some shortfalls in the suggestions I've made, let's bring them out. But I think by and large, what I'm suggesting can be done and can save money.

ASSEMBLYMAN GEIST: Thank you, Mr. Chairman.

Thank you, Mr. Dorf.

ASSEMBLYMAN RUSSO: Before you go on, could you talk about-- I don't see it outlined here, and I know it's part of the health benefits package-- I think most of us are familiar with the employee prescription plan and the copay; you touched on that a little bit, the $1 and, I think, the $3.50, copay. Do you know how long that's been in effect and if it's been revised; that kind of thing? I know the cost of the medications obviously has risen.

MR. DORF: Yes, I saw some data last year when I was preparing to have meetings with some of the unions, and the data that I had seen was, I think -- I'm doing this from memory -- in about the last five or six or seven years, the cost of the average prescription plan had gone up from something like $10 to about $26 or $28; it almost tripled. So, even if you were going to have the same ratio of copay feature, you ought to be able to have at least raised that. Another thing, also, is this: If it's important -- and I think it is -- that we have things like prescription plans and if the plan is going to pay for the lion's share, I don't think it's so outrageous to expect an employee to pay a few dollars toward that. I think if we do that, we can be in a position again of saving some money.

So, I believe that something has to be done to look at that and there should be a disparity and a difference between what the copay will be for a generic drug and what will it be for a name brand. You want that name brand? Your doctor prescribes it in most cases. I don't know as they necessarily will, but if you insist upon the name brand, you'll pay a couple of dollars more. If you're willing to take the generic brand which probably has all the same ingredients in it in most cases, then you'll pay less in terms of copay feature. And it's got to be at least a spread of about, I think, $3 or $4 to make it meaningful. If it was just $1 or so apart between the generic and the name brand, it wouldn't be worthwhile and it would not be a sufficient inducement to get people to take one over the other.

ASSEMBLYWOMAN BUSH: One question: In testimony that we heard at the last meeting, it was indicated that oftentimes people will seek public employment because although the salaries are lower, the benefits are good. Now, I'm hearing you say that with some of the benefits, however, there should be, you know, more payment from the employee. Do you have any research or anything by which you can give us an opinion as to looking at the private sectors salaries for positions versus possibly something that would be in correlation to it in public when you add the benefits? How the people are getting-- Is it equal? Is one getting much more, less, or--

MR. DORF: I don't have any data on that, and I'm not going to be presumptuous enough to come up, you know -- to try and wing it. But let me just say this: There's little doubt in my mind that say, 15 or 20 years ago, that public sector employees were probably, at least from their view and probably from an objective view, underpaid. The salaries have gone up very significantly over the last 15 or 20 years. Whether it's a direct correlation of the fact that we've had the negotiations law in New Jersey -- the PERC Law -- since 1968 or not, I don't know. I presume it certainly has had an important effect on it, whether salaries were raised or might have gone up otherwise. We now don't see public employees-- One's not going to become wealthy being a public employee; let's make that clear. But, on the other hand, we don't see in the main, with, obviously some exceptions, public employees making significantly less than what their counterparts would be making in the private sector -- in some cases, even more. But I don't have any data that I can give you and substantiate all this.

ASSEMBLYWOMAN BUSH: Okay.

Mr. Chairman, if there is some way to get this data, because I think that is directly-- We're hearing-- I'm hearing two different testimonies from last week and this week. One side is saying it's significantly less; the other one's saying, "No, it's the same."

ASSEMBLYMAN RUSSO: Assemblyman Romano.

ASSEMBLYMAN ROMANO: Since I came early I did my reading.

ASSEMBLYWOMAN BUSH: You read your stuff?

ASSEMBLYMAN ROMANO: "Public Affairs Focus" has quite a bit of that information in there.

ASSEMBLYWOMAN BUSH: Okay.

ASSEMBLYMAN RUSSO: Yes, and I think Mr. Keller's going to testify today.

MR. DORF: I might point out one thing, as well. One of the things you have to look at as well -- and you put your finger on it, Assemblywoman Bush -- is, you have to look at the total situation, what the benefit package is, what the salaries are, look at the working hours, look at how many hours we're talking about as well. Are we talking about a 32-hour week, a 35-hour week? I mean, the length of some of the workweeks in the public sector -- with some public sector agencies -- is, in my judgment, inordinately low. A six or six-and-a-half hour day is probably a pretty short workday, and it does exist in some public employment.

ASSEMBLYWOMAN BUSH: Then you're saying-- Through the Chair. Are you saying, then, to compare a particular job in the public sector and its hours versus that job -- like, say if it's a hospital worker in a private hospital versus an employee in a public hospital?

MR. DORF: And secretaries and clerks and you know, all positions like that. You know, if you want we can do a direct comparison.

ASSEMBLYWOMAN BUSH: Okay. And then I guess, also, we'd have to look if there's any way to measure when people do take work home, if you can, and how you can measure that if it's not on the clock.

MR. DORF: Well, interestingly enough, as some of you may know, since 1986 virtually the entire public sector's covered under the Fair Labor Standards Act. I'm not suggesting that there may be some law violations by some of this overtime work being done off the clock, but someone may have to look at that.

ASSEMBLYWOMAN BUSH: When you say overtime work, what do you mean, for pay or just that you're not allowed to take work home and read it and do it? What are you saying?

MR. DORF: Well, under the Fair Labor Standards Act it clearly says that if people work or are permitted to -- I think the language is: "suffered to do or permitted" -- work, they've got to be paid for it. So, whether or not there are some people taking work home on an occasional basis is one thing; I don't know if this is very widespread or not.

ASSEMBLYWOMAN BUSH: I guess I'd have to, through the Chair, look at that a little more because, see, if you're looking at someone that has a responsibility to review files, you're saying they're supposed to be putting it on the clock every time, or if they're reading publications that are, you know, like-- I guess I'm getting confused. You're saying anything they're doing at home they're supposed to be putting on the clock or it's illegal?

MR. DORF: Well, not quite. There are -- and I give a four-day course at Cornell on this -- I can't do it in four minutes.

ASSEMBLYWOMAN BUSH: Glad to hear that, I graduated from Cornell.

MR. DORF: Oh. Hear, hear. I did, too.

But let me just say this, there are positions that are exempt from the Fair Labor Standards Act; there's managerial positions, executive positions, supervisory positions. So, I'm not saying that any manager or supervisor, or whatever, takes work home needs to be paid for it, but the people that are covered under the statute is a different story, and that's a whole other bag or can of worms to deal with. But if you ever want to discuss that at length, I'd be happy to do it.

ASSEMBLYWOMAN BUSH: Very good. I may take you up on that.

MR. DORF: Here, Ithaca, wherever you like.

ASSEMBLYWOMAN BUSH: Going to the reunion, yeah.

MR. DORF: This year? I will see you there.

ASSEMBLYWOMAN BUSH: June.

Sorry.

MR. DORF: We're about to start singing the alma mater, if you don't mind, for a moment.

ASSEMBLYMAN DeCROCE: What happened to that word dedication? Is it out the window in the statutes?

MR. DORF: I'm sorry?

ASSEMBLYMAN DeCROCE: What happened to the word dedication? It's out the window in the statutes?

MR. DORF: In terms of what? Oh, dedication. You mean as far as the Fair Labor Standards Act? Well, interesting enough, in 1974, the Supreme Court by a 5 to 4 vote -- that's the Usery case -- stated that public employees, generally, were not covered under the Fair Labor Standards Act unless they were doing nontraditional work, such as you ran a package store in, whatever, or sold maple syrup in Vermont. Then by a 5 to 4 vote in 1986 in the Garcia case, the Court flipped and said just the reverse. Interesting enough, Justice Blackman who was one of the five originally, flipped the other way and wrote the majority opinion and said, in effect it's too difficult to sort out traditional from nontraditional work, so therefore, essentially all public sector employees are covered under the Fair Labor Standards Act, for good or bad. And the League, by the way, did lobby in Washington and got some very significant -- although not major -- amendments that were passed right after that act was in effect which have saved public sector employers a significant amount of money.

If you'd like, any of the questions I'd be happy to answer, and then I just have two other areas to cover. I appreciate all your time.

ASSEMBLYMAN RUSSO: Before you do though, maybe we'll do it in order.

On the vacations you were talking about -- I'm just looking at your outline under "C." It says: provides for municipal employees. So that would be State and municipal employees?

MR. DORF: That section--

ASSEMBLYMAN RUSSO: I just noticed you say that. I'm just asking. I don't know.

MR. DORF: Well, just so I wouldn't have to do it from memory I did bring that statute with me.

This particular section in Title 11, refers to counties, municipalities, and school districts. There was a separate section for State and I don't have the details in front of me. Although-- In State service the statutory reference is 11A:6-2.

ASSEMBLYMAN RUSSO: Okay. 11A:6-2, okay.

MR. DORF: Right, and it's different. It's higher.

ASSEMBLYMAN RUSSO: Meaning it's more vacation than we have said--

MR. DORF: Yes. Hold on a second. I will bow to Ms. Kassekert.

DEPUTY COMM. LINDA KASSEKERT: (speaking from audience) It may go up after a certain amount of years, but the basic--

ASSEMBLYMAN RUSSO: The basic concept is the same?

DEPUTY COMMISSIONER KASSEKERT: Yes.

ASSEMBLYMAN RUSSO: And would that-- And I did have the same question with regard to sick leave because in here you talk about municipal and other employees; that means municipal and State. That would cover everyone, then?

MR. DORF: Yes. That's clear.

ASSEMBLYMAN RUSSO: Okay. I'm not going to be too technical, but there are differences.

Here's the State service proviso. In 11A:6-2 which is slightly different: Up to one year of service, it's the same; one working day per month. From one to five, it's 12 working days.

ASSEMBLYMAN RUSSO: Here it's one to ten.

MR. DORF: That's correct. From five to twelve, it's 15, from 12 to 20 it's 20, and over 20 it's 25.

ASSEMBLYMAN RUSSO: So, it's more favorable, to an extent.

MR. DORF: That's 11A:6-2.

ASSEMBLYMAN RUSSO: How about on sick leave where you note--

MR. DORF: That was amended in 1986, by the way.

ASSEMBLYMAN RUSSO: That was amended in 1986?

MR. DORF: Yes. It's in the pocket part of the binder.

ASSEMBLYMAN ROMANO: What's that citation again, please?

MR. DORF: 11A:6-2 for State employees.

ASSEMBLYMAN RUSSO: Now, on the sick leave you note again, municipal and other employees there. Now does that cover everyone else?

MR. DORF: The State is the same. On sick leave the State is the same.

ASSEMBLYMAN RUSSO: The State is the same. Okay.

On health benefits, you note in your report that some local governments have withdrawn from the State's health benefit plan -- and if you have figures, fine; if you don't, it's okay. But what rate are they withdrawing, and is that because of the cost, and how does that affect-- Or if you have, for example, from clients or whatever, where you can give an example of one town that stays in and one town that doesn't? You know, a concrete example of why they would or-- This is for Bill, also.

MR. DORF: I can't give you any data. I'm sure that if you contacted the administers of the plan they could tell you. I'm sure they have to have records of this. It's not going to be droves. We're not dealing with dozens that are withdrawing, but I know from my own personal experience -- as limited as that may be -- of several clients that have withdrawn from the State's health benefits plan for two reasons: One is because they felt that they had absolutely no control over what the cost might be, and they were looking to be able to either put in HMOs, other kinds of plans, and be able to, perhaps, locally administer it and keep the costs down. Also, they would be in a position of being able to bargain with the union or unions, potentially to get the union or unions to pick up some of the costs, whereas under the State's health benefits plan you can't. It is all paid for by the employer. So, if you're in that plan, you don't have that option.

ASSEMBLYMAN RUSSO: Okay, so by dropping out, in essence, you put it on the table.

MR. DORF: Yes. Now, again, one has to be awfully careful as to what the contract language of the labor agreement says because, for example, if your labor agreement says flat out that you're going to be covered by the State Health Benefits Plan -- period -- you can't just unilaterally, as an employer, withdraw; you've got to bargain that issue with the union. If you have other language which gives you the right to change plans under certain circumstances, then you could drop out, but it would be a bargainable issue depending on the contract language. There are cases at the Public Employees Relations Commission specifically on point.

ASSEMBLYMAN RUSSO: So, it depends on the labor contract whether you can even opt out at all?

MR. DORF: That's correct.

ASSEMBLYMAN RUSSO: Okay. If towns are opting out -- and we agree, let's say it's not a mass exodus -- does that have any kind of effect on the system itself, if enough opted out?

MR. DORF: I would say, right now, that the numbers that have opted out compared to the number of employees, or just take the State employees that are in, I'd imagine if dozens of municipalities opted out, unless they were the very largest it would not have a significant impact on the State plan, because the core are State employees of which you know there are tens of thousands.

ASSEMBLYMAN RUSSO: Assemblyman?

ASSEMBLYMAN ROMANO: The way something came through here before, I just wanted to correct it as you're trying to find out about health benefits.

ASSEMBLYMAN RUSSO: Sure.

ASSEMBLYMAN ROMANO: What Mr. Dorf is saying is that the employer is the payer, but this is not to suggest that in a local school board or municipality that you can't have a contract where, let's say for example, the employer is paying for the employees' coverage and then coming out of their pay is the balance required for family. It doesn't have to be the way it came through here, that the employer pays for all benefits and the employee cannot contribute to it. See, that's the impression I got as it passed over to our Chairman before.

MR. DORF: But you must treat all the employees the same. In other words--

ASSEMBLYMAN ROMANO: Oh yes, yes, but what I'm saying is if you had a contract, however, which gave an employee coverage and gave them the option should they want to carry their family, they would pay the difference of premium between single, parent and child, husband and wife, and family.

MR. DORF: That would be under a private plan. Yes.

ASSEMBLYMAN ROMANO: No, no, even under the State health plan, because all this deduction takes place in the payroll office. As far as the State is concerned, they just want their check for the coverage. How you develop it, that's your business.

MR. DORF: But, in fact, as far as State employees, as I understand it--

ASSEMBLYMAN ROMANO: I'm sorry. State employees is one thing. I'm talking about the subpolitical bodies--

MR. DORF: Understood.

ASSEMBLYMAN ROMANO: --who belong to the State health benefit system.

ASSEMBLYMAN RUSSO: Harriet?

ASSEMBLYWOMAN DERMAN: Mr. Dorf, is there any movement for municipalities that have opted out of the health benefit plan to only provide coverage for the employee, and not for any family member, at all?

MR. DORF: There is some move in that area. In fact, Mr. Dressel suggested to me that perhaps the League could do a brief survey of municipalities that have dropped out and find out why they've dropped out and what their experience has been. There is some move -- very limited -- to try and have different coverage for new employees as opposed to existing employees. That is, an employee is hired, you have a certain benefit package. Now, to change that benefit package, even if it's done by negotiations while the employee is there, to some people smacks of being unfair. There's a significant argument that could be made for that. Well, what about new employees that would know that as the price, or what they would get when they came into this job that this would be what the plan would be? There is some of that going on.

There's some of that going on in other benefit areas, as well, including vacations, and so forth, where employers are negotiating two-tier systems for new employees, as opposed to existing employees, as a way of not taking away benefits from people who are already there, but reducing the benefits to some degree for new hires.

ASSEMBLYWOMAN DERMAN: Mr. Chairman, I hope you will indulge me; I've been waiting to tell this story. But in my law practice -- and we're talking about health benefits, I think it's relevant now -- I do some prenuptial agreement work. Usually you don't find people doing prenuptial agreements unless they have assets that they want to protect, usually for second marriages. We actually had to write into one prenuptial agreement that the wife who was actually a teacher, in this case, had such a wonderful health benefit plan that her husband-to-be who was extremely affluent be guaranteed the right to be part of her health plan. Now, that's interesting in and of itself, but what it really also means is that he's not supplying health care coverage for his employees because he doesn't have to have a group health plan that includes himself. So, it's interesting.

MR. DORF: Well, thank you. I hadn't heard one like that.

ASSEMBLYWOMAN DERMAN: You may use that story. It's true.

MR. DORF: The only one's that I've heard is about where prenuptial or other agreements decide who gets the Giants' tickets, but I haven't heard anything other than that.

ASSEMBLYMAN RUSSO: Anybody else? Yes, George.

ASSEMBLYMAN GEIST: Quick question about municipalities opting out. Have you seen any determinations by PERC that once a contract expires if there was a previous provision of coverage under the State health plan that that's considered a retention of benefits that would carry over?

MR. DORF: This is a subject I'm reasonably comfortable with because I just had a case before the Commission about two weeks ago, so we've sort of brought all the cases down to date. Let me give it to you in a nutshell.

If a labor contract says flat out that the coverage for health insurance is plan "X" then the employer cannot -- and should not -- be able to change plan "X" unless the union agrees, because the contract says plan "X." But on the other hand--

ASSEMBLYMAN GEIST: Even after the contract expires?

MR. DORF: That's correct, because a labor contract unlike any other, continues on after its life while the parties are negotiating a new contract, and by law, and usually by contract language, the terms and conditions of employment remain in existence while the parties are negotiating. So, you can't unilaterally change it.

That's one aspect. The second one would be if you had clause in the contract that said the employer may change plans, for example, if the employer provides equal benefits -- equal benefits. Now, I've seen a lot of insurance plans. I've never seen two plans that are exactly alike. Never. And PERC has gone this far: that if you have plan A and plan B, and you put plan B into effect, and plan B is in all aspects except one better than A, you can't change to plan B because you're diminishing a benefit that affects somebody.

So, unless there's language in a contract that says something like this that the employer can change plans or carriers so long as the benefits on balance are substantially the same or similar-- Then a third party can say, well this market basket is about the same as that one and although there are some minor changes between the two, on balance they're the same. They need language like that to be able to unilaterally make the change. That would be subject to the grievance procedure and should be. Most employers, if they do it right, would agree to let the union grieve it before they made the change so they'd have it litigated and settled rather than make the change, then grieve it, and then if you lose you're going to undo the whole thing and if anybody falls between the cracks you may have significant liability.

ASSEMBLYMAN GEIST: Thank you.

ASSEMBLYMAN RUSSO: On the sick days and vacation days, we talked about the statute being sort of the same, to an extent. But with regard to the towns, do those apply only if they're Civil Service, or not? Do they have to be Civil Service for it to apply?

MR. DORF: Yes. This language, by the way, that I was quoting -- the minimum benefit on vacation and sick -- is right out of Title 11 which is for Civil Service communities. If you're non Civil Service there is no statutory minimum.

ASSEMBLYMAN RUSSO: Okay. Thanks. Okay, if you could continue?

MR. DORF: Sure.

Okay, I think this probably brings us to page four which is "E" on Discipline, and then talk a little bit about interest arbitration.

As far as this one is concerned, this is a revised section of the law and it's one that personally, as a litigant, I found to be very difficult to live with. This 11A:2-20, likewise, that was amended in 1986 although it's substantially the same as the previous one with some modifications. The bottom line is: If an employer, again, Civil Service communities, seeks to discipline an employee and that discipline is in excess of five days, that discipline is reviewable through administrative law proceeding, ultimately the courts, and so forth.

Now, suppose you get to a situation where the employer decides for, presumably, justifiable cause to terminate an employee, and now you go through litigation and it's determined that the termination of the employee was excessive. It was too harsh, draconian. It should be less than that. So, instead, you impose a layoff -- that is a suspension, not a layoff, a suspension without pay as the penalty. The maximum that can be imposed under the statute is six months. Now, six months sounds like an awfully long time, except here's the problem -- and the lawyers in the room would know -- the process takes an awfully long time. By the time you get through the hearings, by the time you go through the ALJ proceedings, by the time you go through all the other proceedings, you may be two years down the road. Now you find that you're advised, as the employer, that discharge was too severe, reinstate the person and give them full back pay except for the six months which is a maximum that the suspension could be.

I contrast that with arbitration whereby the arbitrator has got the authority to reinstate an employee irrespective of how long an employee has been gone, with or without back pay. I'll give you an example: I had a case some time ago of a juvenile detention officer who, it was alleged, had committed a battery assault on one of the inmates. The case went to arbitration and took a long time. We got all done and the arbitrator said, "I'm not sure, precisely what happened here. I think that this charge is too severe. Reinstate the employee without back pay." So, in effect it conferred the discharge into a disciplinary layoff. Now the employee came back with no back pay after a year. The employer had to pay nothing because the arbitrator said reinstate, no back pay. If that case had gone through the Civil Service process, the employer would have had to pay six months of back pay, because the longest suspension without pay you can have, under statute, is six months. I think that that should just simply be eliminated. Take that lid out and let justice prevail and let the judge and the Merit System Board and the ALJ determine what is appropriate.

And the last piece that I have -- and Bill Dressler has already alluded to that -- is three bills by your fellow Assemblypersons: A-836 by Assemblyman Pascrell and Assemblyman Kamin. That bill is very similar to A-5274 that was in the last Legislature. It did pass the Assembly by 48 to 8 and then never did reach action by the Senate, and of course died when the Legislature expired. That bill is almost identical to the previous bill. Then there's A-1059 by Assemblyman Catania and A-336 by Assemblywoman Ogden and Assemblyman Bagger.

Each of these bills -- and I have done a piece which Mr. Dressler has and if you'd like we can make copies available. As I said, it's about 25 pages. And the League will be doing a seminar on May 13 and have each of these Assemblyman and Assemblywoman present to speak on the bill.

Each of these bills essentially, in our view, would take into consideration much more than the present statute -- interest arbitration statute -- the interest of the public. There are eight factors that are listed in the interest arbitration law that an arbitrator is to take into consideration in rendering his or her decision. Among those factors are the interests of the public, an ability to pay, and so forth. It's just one of seven or eight factors. It's our view, at the League, that ability to pay and the interests of the public, i.e. the taxpayer, should be a much more significant factor than merely one of eight. It should be first among the equals with all apologies to Jeffrey Archer and his book. We think it should be the prime factor, or a prime factor, and each of those bills seeks to do that.

So, we certainly commend to the Legislature and to the municipalities serious consideration of these three bills. The more comprehensive ones are Assemblymen Pascrell's and Catania's bill. Mrs. Ogden's bill is somewhat briefer, but they all cover the same area.

ASSEMBLYMAN RUSSO: Meaning police and fire?

MR. DORF: Yes.

ASSEMBLYMAN RUSSO: Assemblyman Pascrell's bill passed the Assembly.

MR. DORF: Yes, it did.

ASSEMBLYMAN RUSSO: Lately?

MR. DORF: January 10.

ASSEMBLYMAN RUSSO: Yes.

MR. DORF: Obviously there wasn't much time before one Legislature expired four or five days later -- one of those stop the clock, eleventh hour, whatever may be. But that doesn't take away from the fact that he has a good bill.

ASSEMBLYWOMAN DERMAN: Mr. Chairman?

ASSEMBLYMAN RUSSO: Sure.

ASSEMBLYWOMAN DERMAN: You went very quickly into interest arbitration from discipline, so I have a question on discipline, if I may?

MR. DORF: Surely.

ASSEMBLYWOMAN DERMAN: Does it sometimes happen that an employee is awarded six months loss of pay and all during that time period he or she had been gainfully employed elsewhere?

MR. DORF: That's a deduct factor. What has been earned by an employee elsewhere that is part of what is a deduct factor, but if the -- in candor, and people are only human -- if you know for a fact that you can get that, there may be little or no incentive to seek employment. Obviously you may lose and wind up with zero. But yes, if you are gainfully employed, that would be a modification factor.

ASSEMBLYWOMAN DERMAN: Thank you.

ASSEMBLYMAN RUSSO: Do you deal with-- I know, for example, the Pascrell and Ogden bills deal with police and fire and interest arbitration, and of course the system is different with regard to the teachers. Do you deal with that in your practice?

MR. DORF: Yes.

ASSEMBLYMAN RUSSO: You do.

MR. DORF: Yes.

ASSEMBLYMAN RUSSO: Okay. Do you have any opinions there?

MR. DORF: Do I have anything to say about teacher negotiations?

ASSEMBLYMAN RUSSO: Well, meaning the negotiations there. I wasn't aware if you did that or not.

MR. DORF: Yes, I do.

ASSEMBLYMAN RUSSO: I know Katherine McMichael is here and she may have some opinions on that, I would think, but as long as you're here--

MR. DORF: I wouldn't want to steal the thunder of the School Boards Association, but yes I do.

ASSEMBLYMAN RUSSO: If you have a minute. I don't think she'll have a problem.

MR. DORF: We could do it in a moment. Our office does public sector in orders, counties, municipalities, agencies, as well as school boards. The school negotiations are different, considerably different; probably among the highest wage increases that we've seen have been in schools, as I think most of us know, and it's not just been confined, as some people may have thought, to Bergen County with the influence of New York City. I live in Monmouth County and the raises in that county have been significantly high as well. I see them coming down. I'm in the process of negotiating some contracts now and I see those benefits coming down. I would defer to the folks from the School Boards Association in terms of what they would care to comment on with respect to school negotiations.

ASSEMBLYMAN RUSSO: Okay.

MR. DORF: But there's less statutory language dealing with minimum benefits for example, in a school area, than there is in State and municipal areas, as I know it.

ASSEMBLYMAN DeCROCE: Tell me something. How can a faculty member being in the State system-- I'm just trying to-- Many of them serve on school boards--

MR. DORF: Yes.

ASSEMBLYMAN RUSSO: --in management capacities.

MR. DORF: That's correct.

ASSEMBLYMAN DeCROCE: That's not a conflict, I guess.

MR. DORF: Well, legally, apparently not. Whether it is in any other aspect -- and I won't wave the flag of morality there -- that's subject to question. But for example, suppose you had someone who's a teacher in a district in Bergen County and lives in Union County and has been elected to that school district. The person is certainly entitled to run as a citizen for that office whether that individual's thinking will be colored by the fact that he-- We each bring our own baggage in our background to whatever we do, and obviously a person coming from the background that he or she has, will have that kind of a concern.

I had one situation with a school district where we had a board member who was a school teacher in another district. She happened to be one of the vociferous members of our negotiating committee, and there were some not-too-subtle pressures for her to back off.

ASSEMBLYMAN DeCROCE: It just seems to me I recall--

MR. DORF: Which is the reverse of what you're indicating.

ASSEMBLYMAN RUSSO: --years ago-- I recall years ago, frankly, there was, I believe in the City of Paterson, a police officer was elected to the local council, the City Council of Paterson, I assume, and because he was a member of the police force, he was not allowed to vote on any monetary aspect of the budget in any way whatsoever or be involved in any negotiations or -- one other area-- There were two or three different areas.

MR. DORF: Most often if that happens, I think the individual involved will take a leave of absence from whatever position he or she may have. I think if a person were to stay in that position, you're right, there are obvious conflicts. You have other situations: For example, I've seen board members who have a spouse who is a teacher in the school district, and most often those board members will recuse themselves and not vote on anything relating to salary or benefits, or whatever, for that individual because they think that even if there isn't a conflict, there's the appearance of it and that's as bad as the actual conflict.

ASSEMBLYMAN ROMANO: I just offer this, Alex. Under the new ethics law that's kicking in on school boards, exactly what Mr. Dorf is saying is the case. You can't be part of that vote.

ASSEMBLYMAN DeCROCE: But you can sit on the school board?

ASSEMBLYMAN ROMANO: You can sit on the school board and abstain from any vote that influences -- let's say that connects with your spouse or whatever the case may be.

MR. DORF: Remembering too, that, and I don't know if you're familiar with this figure, but in the public sector, take municipalities: Roughly anywhere from 65% to 75% of a municipal budget is made up of labor costs. We are a labor -- and I don't know what it is on a State level, I assume it's fairly similar and probably school boards as well, maybe more so -- a labor intensive industry; that is, in the public sector so the bulk of your costs are labor costs.

ASSEMBLYMAN RUSSO: Are you familiar with the situation in Clifton that was in the Bergen Record with regard to layoffs? Were you involved in that at all?

MR. DORF: No.

ASSEMBLYMAN RUSSO: Do you deal with bumping rights with regard to Civil Service, you know, in the State government? Do you deal with that, or you don't deal with-- We discussed that in previous meetings when you weren't here; the amount of layoff notices, even at a municipal level that might have to be sent out to move "X" amount of employees. Are you familiar with that?

MR. DORF: Yes.

ASSEMBLYMAN RUSSO: Any recommendations or opinions on that?

MR. DORF: Well, I think Commissioner Cimino has spoken to that. There has been, in the past -- and you'd have to resurrect them because they go back probably three, four, five years ago -- proposals made to modify by statute bumping rights, and limit them. I believe, and I think I'm correct, the Department of Personnel has administratively by rules and regulations made the bumping somewhat less than they were before. There are those who think that there's still too many bumps, and that it ought to be somewhat more restricted by legislation. That's a relevant view and there are even some who have said that the reason why it's difficult to have significant layoffs because you have gridlock in terms of all these bumps. I'm not sure it's quite as bad as the proponents would say, but I certainly think it's worth looking at. I think you can do so much administratively and then you need to take a look at, "Do you want to do it anymore?" It is something which generally will be strongly opposed by unions who want to have, generally, unfettered bumping rights.

ASSEMBLYMAN RUSSO: I know the Commissioner had testified, and several other people had, that the notices, for example, at one time were approximately ten to one at this level, the State level. Now, it seems it may well be about three to one.

MR. DORF: That's a tremendous improvement.

ASSEMBLYMAN RUSSO: Yes, and I would think that would be rule-- Wasn't it basically done by rule?

MS. KASSEKERT: It was done through administrative--

ASSEMBLYMAN RUSSO: Yes, through administration.

T H O M A S G A L L A G H E R: The same rules apply to the local towns, also.

ASSEMBLYMAN RUSSO: Okay, the same rules for them, too. I want to thank you very much. Is Mr. Neely going to testify?

MR. DRESSEL: Yes, Mr. Chairman.

ASSEMBLYMAN RUSSO: Thank you very much.

MR. DORF: Thank you very much.

MR. DRESSEL: Mr. Chairman, we have a lot of material here. Mr. Neely's got a brief presentation, and I think the background material that you have before you--

ASSEMBLYMAN RUSSO: Bill, Mr. Dorf mentioned before-- I'm sorry, I should ask questions. He had, was it this handout or was it something else that Mr. Dorf had?

MR. DRESSEL: He has some testimony.

ASSEMBLYMAN RUSSO: Because if you only have one, we'll make copies of it. Okay?

MR. DRESSEL: Mr. Chairman, as a footnote to the presentation I will do a sampling of the municipalities that we're aware of that dropped out from the State Health Benefits System. I'll work with your Committee Aides on the kinds of questions that you're looking for.

ASSEMBLYMAN RUSSO: Exactly. Thanks.

MR. DRESSEL: Mr. Chairman, for the record, our next speaker is Lou Neely. Lou is Finance Director for East Brunswick, and he's also Chairman of the League's Pension Review Study Committee.

L. MASON NEELY: Thank you. I have basically three things I want to say quickly to you, because you have dealt extensively with some things that Gerry Dorf has said.

The concepts of roll-up costs are illustrated in these first few pages. If you would turn to the first page, I reference a chart that was recently in The Home News, the newspaper of New Brunswick. It indicates what has happened as a result of interest arbitration. Those newspaper stories are in the back for you to review, if you want to. It simply says that a rookie cop hired in 1986-- This was the salary for those communities, and today, which means April 1992, those are the salary changes that have happened. Those are the result of interest arbitration, and you heard some of the problems that were delineated by Mr. Dorf.

What I want to let you know is the ultimate impact of roll-up costs. If you turn to the next page, you will see a table at the top of it. It takes three people who are police officers who are retiring this year. One is a police officer; two are superior officers. One is age 53, one is 47, and one is 46. Based upon the pension benefit they have, they are retiring as a millionaire, simply an annuity-- They have an annuity, those people who are retiring, because they are going to have an average life to 74. The mortality tables of '89 show that the average police officer lives until he is 74. The difference between 53 and 74 is 21 years, 27 years, and 28 years. When you take their guaranteed pension out, they are guaranteed with an annuity of a million dollars, plus they are guaranteed Social Security after age 65, which is another $100,000, so that rolls all of them into a million dollars.

That is the current aspect, but if you take that table -- those rookies who are referred to on the first page -- and continue that, look at the following page, which shows tables 2 and 3-- The rookie cop hired in 1986, who will retire, on average, at age 45, will have 29 years of a guaranteed retirement, without Social Security. When Social Security is added on to that, they are $1.5 million. The ones who are hired today, the rookie cops who are retiring at age 45, who were hired in April 1992-- They are retiring with a $2.5 million guaranteed benefit.

So, the roll-up costs for these benefits are $2.5 million for a cop hired today. A guaranteed retirement, if he is retiring at 43, or 45-- We are going to have two generations of people retired, and we are funding those. Those costs are significant as a benefit.

The League opposed the bill in 1989 which granted additional benefits at a $2.7 billion cost. The Office of Legislative Services said, "You miscalculated." We proved we were right; we were under. It is more than $2.7 billion. This cost is going through the ceiling. It is hitting taxpayers. We need to have a two-tier system. It is a State law that was foisted on us. We had no choice in it. To compound that, the Governor's current proposal is to take the incremental piece that they agreed to pay for when they foisted this on us in '89, and shift that back on to the local taxpayers. So it even makes it a worse situation for the local taxpayers. I think this is demonstrative.

Now, you have this group of millionaires, every police officer out there who is now retiring with 25 years of service, at 65 percent of pay. On basic, they are millionaires, and many of them are $2 million and $3 million guaranteed annuities. You then take a piece of legislation that went through. It was introduced on April 9 (sic); on April 13 (sic) it was passed and the Governor sent it back. It was passed again to guarantee a below-interest rate mortgage to police officers. That's Chapter 414.

Now, that below-interest rate bill says that you are giving below-interest cost mortgages to millionaires, at the expense of the local property taxpayer, because if the pension fund doesn't earn, as of soon the 8.75 percent which is in the current bill for the revaluation of the pension system-- It is not, because these rates are going to be 7, or just a little bit above 7. We are now saying that the property taxpayer has to pick up that difference to give below-interest rate mortgages to millionaires. And, if there is a problem in that, who picks it up? It is picked up by the fund, which means that you have shifted onto the property taxpayers.

So now we take a bill which was approved in 1969 -- I mean 1989 -- that says we are going to make all these people millionaires. Now we are going to reach into the property taxpayers' purse again and give them a below-interest rate mortgage. What happens is, you are not dealing with a first-time homeowner on this. The rules and regulations say that only 25 percent of them are going to go to first-time homeowners. Seventy-five percent of that money is going to go to people to refinance to buy two-family houses or to upgrade their houses.

Do we want to give below-interest cost rates -- lower mortgage rates-- First of all, the mortgage rates we have today are the lowest they have been in years, and yet we are offering, through the pension benefit system -- police and fire -- even below rates, and we are offering that to people who are guaranteed a million dollars, or more. Is that the type of legislation we want? I think you have problems with it.

One of the questions I believe you have problems with is the qualified system under the Internal Revenue. They say you can only have-- On a qualified system, a party of interest can only have 1/2 of 1 percent -- 1/2 of the present value of their accrued benefit, or up to $50,000 maximum. The regulations which Treasury is producing give away a $202,000 mortgage for a single-family house, or $258,000 for a two-family house, as investment income, and we are subsidizing that at a below-market rate. Those are the types of problems when a simple bill goes through. That bill went through in three or four days. It comes back to us-- We get that bill and we have roll-up costs that fall on property taxpayers year after year after year.

How many people, when they voted for that, thought, "Well, we are giving millionaires a below-market rate"? How many people thought, when they--

ASSEMBLYMAN DeCROCE: No one.

MR. NEELY: Pardon?

ASSEMBLYMAN DeCROCE: No one.

MR. NEELY: How many people thought about it when they gave the enhanced benefit of the additional 5 percent for the highest year pay to these police officers, regardless of their age -- and they are going out at 43 and 45 with a million dollars guaranteed to them, plus Social Security, plus health benefits-- I have to tell you, I know some people who are over 43. They are not fully depreciated. There are some good years left after 43, even after 45. I know a guy who is even over 50, and he thinks he has a couple of good years in him.

So, they are not fully depreciated, and yet we are giving $1 million, $2 million away to these people as a guaranteed benefit. That is spelled out for you here.

ASSEMBLYMAN DeCROCE: Mr. Neely, did you testify before the Committee that heard this bill?

MR. NEELY: No. The bill came in late at night. It was put in. It never had hearings. It was brought right to the floor in both the Senate and the Assembly -- the 414. On the other bill-- I spent two years trying to fight that bill.

ASSEMBLYMAN DeCROCE: I'm not talking about that. I am talking about 414.

MR. NEELY: The 414 had no hearings.

ASSEMBLYMAN DeCROCE: I didn't know that.

MR. NEELY: It had no legislative hearings. There was no opportunity for us. We had no advanced notice. That bill came in-- As a matter of fact, I have the schedule in here. If you look at the appendix in the back, you'll see-- I think it is appendix number--

ASSEMBLYMAN DeCROCE: Was the League well aware of that bill and what it--

MR. NEELY: No, the League was not aware of the bill. The League had no opportunity to deal with that bill.

MR. DRESSEL: That bill was also tie-barred, too, which I think was somewhat ironic. The bill was tie-barred; it was linked to the Pension Review Health Benefits Study

Commission bill, which was signed into law. In other words, in order to achieve meaningful reform of how we look at pension bills, it was linked to the mortgage bill.

ASSEMBLYMAN RUSSO: That was Senator Lynch's bill at that time? Is that the one it was tie-barred to?

MR. NEELY: Lynch and Haytaian. They put together a joint bill. You know, that bill--

ASSEMBLYMAN DeCROCE: Recently? When did this bill pass?

MR. NEELY: That bill was introduced on January 9. It passed on January 10. It was sent to the Governor on January 13. He sent it back on January 13 with suggestions. It was passed again in both Houses on January 13, and he signed it on January 17.

ASSEMBLYMAN ROMANO: Fifty-three to eight, by the way.

MR. NEELY: It's in there?

ASSEMBLYMAN ROMANO: Yes.

MR. NEELY: Right. I have highlighted it in there. It shows you the date it was passed and how it was passed. That type of legislation simply says, "Do you want to take 10 percent of the assets for 35,000 employees -- take it and give it below-market rates, at the same time you are talking about doing major reform on a pension bill saying we are going to have an assumed interest rate of 8 3/4 percent?" You are simply tying the hands of the Division of Investment, which means that you are going to fall short of the goal, which means that local property taxpayers are going to be subsidizing. I refer to these people as millionaires, because they are -- every one of those.

It shows you on those illustrated samples-- I could take towns all over the State, which I have done, and the newspaper articles have done, and show that these people are retiring at well over a million dollars of guaranteed income, plus the ability to work anyplace they want to work.

Now, I will answer questions on this.

ASSEMBLYWOMAN BUSH: May I speak, please? (no response) Thank you, Mr. Chairman. I have been told I am too polite. You are going too fast, and I am forgetting my questions.

MR. NEELY: Sure.

ASSEMBLYWOMAN BUSH: When you say "a millionaire," are you defining a person as a millionaire based upon the amount of money they may have between now and before they die? Or, are you saying that this amount of money has accumulated and they can put their hands in it and it is theirs?

MR. NEELY: If you will turn to the tables, which I referred to for the two rookie cops-- I will walk you through and tell you exactly--

ASSEMBLYWOMAN BUSH: No. Would you answer that?

MR. NEELY: Well, all right, yes. The answer is, on average, the mortality of 1979 -- '89 -- says a person is going to live to 74.

ASSEMBLYWOMAN BUSH: So you are saying that the amount of money that a person will accumulate over a lifetime--

MR. NEELY: From retirement, from--

ASSEMBLYWOMAN BUSH: --if it equals a million dollars or more, they are millionaires?

MR. NEELY: Yes.

ASSEMBLYWOMAN BUSH: Then I hope to God I am a millionaire, too, then. That should be a little easier to do than the people I define as a millionaire.

MR. NEELY: Okay.

ASSEMBLYWOMAN BUSH: Going to your chart here, on the fourth page--

MR. NEELY: Okay.

ASSEMBLYWOMAN BUSH: --the one rookie cop in '86, rookie cop in '92--

MR. NEELY: Right.

ASSEMBLYWOMAN BUSH: When you are saying the rookie cop in '92, at $43,507-- You're saying the rookie cop is beginning at that in Cranbury?

MR. NEELY: That is the entry level salary in the negotiated contract. A guy who is 18 who passes the police test and they decide to hire him-- He is hired at $43,507 the first year as he goes to the Police Institute.

ASSEMBLYWOMAN BUSH: So in East Brunswick, your 18-year-old police officers are making $47,583?

MR. NEELY: That is what The Home News article says, and that is the contract price. That comes right out of The Home News article.

ASSEMBLYWOMAN BUSH: No, no. Okay, I am not going by the article. I am asking you, do you have firsthand knowledge that this is--

MR. NEELY: That is correct. I have firsthand knowledge of that. They negotiated that salary. That is the package they have. When you extend that over 25 years, assuming--

ASSEMBLYWOMAN BUSH: Okay, now wait. I am one of those-- You are going a little too fast for me.

MR. NEELY: Okay.

ASSEMBLYWOMAN BUSH: I want to take it at my pace.

MR. NEELY: Okay, sure.

ASSEMBLYWOMAN BUSH: So, in New Brunswick-- You're saying in your town that a rookie 18 years old makes $45,578 to begin with?

MR. NEELY: That's correct.

ASSEMBLYWOMAN BUSH: Okay. That is your testimony, right?

MR. NEELY: I am simply repeating this, yes.

ASSEMBLYWOMAN BUSH: You're repeating it from what?

MR. NEELY: From the article in The Home News, which came--

ASSEMBLYWOMAN BUSH: No, I am not going by a newspaper article. I am talking-- Aren't you the Finance Officer--

MR. NEELY: Yes, I am.

ASSEMBLYWOMAN BUSH: --or something, from New Brunswick?

MR. NEELY: East Brunswick.

ASSEMBLYWOMAN BUSH: Okay, East Brunswick.

MR. NEELY: I have given you the number for East Brunswick there.

ASSEMBLYWOMAN BUSH: Okay. So, not basing it upon a newspaper article, but basing it upon your firsthand knowledge as the Finance Director of East Brunswick, you're saying that an 18-year-old beginning police officer makes $47,583 in East Brunswick?

MR. NEELY: That is correct.

ASSEMBLYWOMAN BUSH: Next question: With these benefits you're saying the people are getting, approximately how much-- Just looking at this table, how much per year would a particular, say, police officer from East Brunswick, be getting on this? You know, don't give me, like, your $2.5 million. What is the annual--

MR. NEELY: His annual would be his first year, $70,000 of pension. He would earn $70,000 as a pension in his first year of retirement.

ASSEMBLYWOMAN BUSH: Okay. That retirement could be at age?

MR. NEELY: At age 43. If he were an 18-year-old cop who came on, he could retire at age 43 with 65 percent of his full pay.

ASSEMBLYWOMAN BUSH: Okay. So we're talking about 1992.

ASSEMBLYMAN DeCROCE: That's better than being a lawyer.

ASSEMBLYWOMAN BUSH: Well, wait a minute. Hopefully not. How many years from now is that? If he is 18 now and we are talking about when he is 43--

ASSEMBLYMAN DeCROCE: Twenty-five years.

ASSEMBLYWOMAN BUSH: What?

ASSEMBLYMAN DeCROCE: Twenty-five years.

ASSEMBLYWOMAN BUSH: Twenty-five years, yes. That is quite a while from now, you know, if you are looking at--

ASSEMBLYMAN DeCROCE: A lot of lawyers don't do $43,000 a year.

ASSEMBLYWOMAN BUSH: Well, we are talking about the year 2000 and what? I mean, let's be real.

MR. NEELY: But, step back one page. Step back one page to three actual situations, where we have three people who are retiring, with current salaries of $62,000, $65,000, and $74,000.

ASSEMBLYWOMAN BUSH: Where are they retiring from?

MR. NEELY: They are retiring from the Township of East Brunswick.

ASSEMBLYWOMAN BUSH: They are from East Brunswick.

MR. NEELY: They are entitled to 65 percent of their pay, and that is their first year amount. When you take that, assuming a 3.35 percent cost-of-living increase-- Actually, for them, there is no further salary increase. It is just simply a 1.5 percent inflation factor. A 1.5 percent inflation factor means that that is what they are going to have guaranteed to them if they live to be normal.

ASSEMBLYWOMAN BUSH: Okay. So we're saying--

MR. NEELY: Now, there are some who are going to go beyond that, but this is the mid point, the medium-- It is the statistical norm based upon the mortality tables. So to that extent, that rule allows one to extrapolate.

ASSEMBLYWOMAN BUSH: So we're saying that the person who is 53 years old will be getting $40,366 a year?

MR. NEELY: That is correct.

ASSEMBLYWOMAN BUSH: Okay. That is his benefit, and he worked--

MR. NEELY: That benefit will escalate with the COLA factor over time. At 65 he is eligible for Social Security. When you add that into--

ASSEMBLYWOMAN BUSH: What were some of the reasons, do you know, that went into doing this? What, this is just for policemen and firemen?

MR. NEELY: No. The illustration I am trying to point out here is--

ASSEMBLYWOMAN BUSH: Yes, but my question is, is this just policemen and firemen?

MR. NEELY: This is members of the police and fire retirement system.

ASSEMBLYWOMAN BUSH: Okay. Was there any underlying reason as to why this was being done particularly for policemen and firemen?

MR. NEELY: Yes.

ASSEMBLYWOMAN BUSH: What was that?

MR. NEELY: We have endorsed the concept of the Health Benefit Study Commission, so that whenever benefits -- or legislation goes through--

ASSEMBLYWOMAN BUSH: I am talking about the legislation that provides that they will get this type of retirement, or this pension, that has already been passed.

MR. NEELY: Right.

ASSEMBLYWOMAN BUSH: Was there some underlying reason as to why it was felt -- if you know -- that policemen and firemen would get this type of benefit?

MR. NEELY: Why the enhanced benefits were given?

ASSEMBLYWOMAN BUSH: Yes.

MR. NEELY: We have no statistical-- Bill, do you want to respond to that?

ASSEMBLYWOMAN BUSH: You have no idea as to what the underlying reasons are? Let's be real. Please, don't lose your credibility. Let's not lose your credibility. You have no idea?

MR. NEELY: Politically-- I know it was a political move, but it was not-- Statistically I think we demonstrated, through a volume of papers--

ASSEMBLYWOMAN BUSH: Okay, never mind. Thank you. Thank you. I have lost--

Thank you, Mr. Chairman.

MR. NEELY: The concept I wanted to deal with is roll-up costs. When something happens and you make a decision legislatively--

ASSEMBLYMAN RUSSO: May I say-- I don't mean to-- You know, I was reading this as I was listening to Assemblywoman Bush. You put in here-- My understanding is that that bill passed January 9 or 10, that one particular example you used.

MR. NEELY: January 17 it was signed, right.

ASSEMBLYMAN RUSSO: Okay, during lame duck, so let's say that bill did pass and it is law. I saw in here, which I don't really want to get into-- You talk about the Pension Reval, which I assume, from the League's perspective, you are endorsing, and then in the same paragraph you say, "But if they are going to have this kind of tying of the hands of the Division of Investment, that is not acceptable."

Well, I am only asking the question because that is a law. I mean, we may not all agree with it, and some of us may have voted against it, but that is a law right now, and it doesn't look like it is going to be repealed real quickly.

MR. NEELY: We would like to see it repealed. That would be the first step.

ASSEMBLYMAN RUSSO: It just sounds to me as if you are lobbying against a proposal -- as Assemblyman DeCroce said -- where it is law.

MR. NEELY: No.

ASSEMBLYMAN RUSSO: Do you know what I am saying? I am not arguing with you. I am just saying, is your position that since that is a law-- Are you still supporting the Pension Reval?

MR. NEELY: The League's position on the Pension Revaluation is that going from book value to market value is a solid concept, and we endorse that.

ASSEMBLYMAN RUSSO: Right.

MR. NEELY: That under normal circumstances, assuming a return on investment of 8 3/4-- That is a reasonable review, based upon the 10-year analysis we have done.

ASSEMBLYMAN RUSSO: Right.

MR. NEELY: The idea that the refund that is entitled, as of July 1, 1991, should not be kept by the State-- It was an overpayment made by the towns. That refund should come back, that $200 million. The State should not keep the towns' refund, or overpayment.

Number two, the deletion of the State's obligation to pay the incremental costs which tie right into these two bills, should not be reversed. That bill, unilaterally, takes that provision out and shifts that cost back on to local government. We said that that is a wrong provision.

Finally, we said that to have that be an administrative determination as to what the assumed interest rate would be--

ASSEMBLYMAN RUSSO: Right.

MR. NEELY: That should not be correct unless there are standards built into the law, because it can be played with in any given year to up, or increase, or to lower the factors. We said that the only way you can have it, is to have integrity over time on that. So we think there should be standards.

Absent those three provisions--

ASSEMBLYMAN RUSSO: Do you mean standards for the assumption rate?

MR. NEELY: The assumption rate. But, absent those three provisions, we have endorsed the concept in general. We have said that it is a healthy concept. It is something we had put forth a number of years ago. We believe that towns have, in fact, been overpaying, overfunding. Because towns have been doing that, you have had these types of bills that are going through, saying, "Look how healthy the fund is. They can afford it. What are you complaining about?" What we are complaining about is, the reason that fund is as healthy as it is, the reason that the relationship between us as to ratio is what it is, is because towns have been overpaying. We would like to get it into a more balanced book. We don't want to see these types of roll-up costs continue.

So, the only way we can say to look into the future, is to examine where we have been in the past. We want you to see exactly what past actions have caused. When you look at the past results, then you look prospectively, and that is the purpose of this illustration.

ASSEMBLYMAN DeCROCE: When you talk about the past, are you talking about the bill that allowed the police and fire to go to 25 years and receive those benefits?

MR. NEELY: That bill the League opposed. That was in 1979.

ASSEMBLYMAN DeCROCE: Yes.

MR. NEELY: That bill-- We are not referring to that. What we are referring to is, it used to be 65 and 60 percent. That was with the incremental costs paid for by the State. The bill came out and said that it would be 65 percent at 25, and the town would pay all of the costs. We lobbied extensively against that. The bill finally came through and said it would be 65, with 25 years of service--

ASSEMBLYMAN DeCROCE: I can't believe that you lobbied extensively against that. I can't believe that any legislator who truly understood that bill -- truly understood that bill -- would have supported it.

MR. NEELY: I've got to tell you, I spent two years doing editorials and testifying before committees, and there was no question. I did charts. I had blown up charts showing what the impact of that was. I spent two years delineating, as clearly as I could, both verbally and on paper, showing what the costs were. It finally came down and said, "But the fund is so healthy, it can afford it."

Now we are finding that that same deal came through with 414 and said that the fund was so healthy, let's give them mortgages. I want you to understand the impact of what happens--

ASSEMBLYMAN DeCROCE: Frankly, that is the one-- I have only been in the Legislature for three years; I am in my fourth year. I want to tell you, that is the one the State League blew it on, in my opinion.

MR. NEELY: Okay.

ASSEMBLYMAN DeCROCE: And I'll tell you, you blew it because you didn't lobby your local municipalities to lobby your local legislators. That's why you blew it.

MR. DRESSEL: On the mortgage bill? On the mortgage bill, we knew nothing about it. We have resolutions from every community in your district. If you didn't get it, I don't know why.

ASSEMBLYMAN DeCROCE: Don't worry about my district. I voted for it, mainly because of what you guys were telling me, and you didn't know what the hell you were talking about at the time.

MR. DRESSEL: Well, obviously, you didn't read our statistics.

MR. NEELY: We published articles for every mayor and every-- We had resolutions from a majority of the communities, and we gave those to the Legislature. I still voted against that bill -- voted for that bill to give that benefit away. I don't know what else I could have done. But, that is past, and that is the roll-up costs we have.

ASSEMBLYMAN DeCROCE: That is why you have this thing today coming back before you -- this 414 -- because now there is so damned much money in that fund, everyone wants to get a piece of the action and use it.

MR. NEELY: And I am trying to suggest that if that is the attitude, then these things are only going to be exacerbated, and the roll-up costs are going to fall on the property taxpayers. But if we say, "This is what we have done. This is what has happened already, let's not further compound the problem--"

The second illustration I have used in there is the fact that every municipality now has to have an elevator subcode official. A subcode official is a person who has protection under the Uniform Construction Code. That person has to now, because he has to be licensed by the State-- He is entitled to additional pay. That person is going to do what has worked very well for the last 10 years. I know of no instances where someone has been killed, hurt, or had a problem with an elevator. As far as I know, there was no study done for the need for it. There was no support for it. We opposed it on the Administrative Procedures Act, and it has come through that now we have to have an elevator subcode official.

That elevator subcode official is now going to require us to have all those roll-up costs associated with it. It is a different pension fund. It is a different issue. That is the second illustration I brought with me today.

ASSEMBLYWOMAN BUSH: I am aware of someone dying in an elevator -- I think within the last two years -- in East Orange.

ASSEMBLYMAN RUSSO: I thought you were going to say during these hearings. (laughter)

ASSEMBLYWOMAN BUSH: Maybe, they are not over yet.

ASSEMBLYMAN RUSSO: They're not over yet.

MR. NEELY: I think playing on top of the elevator.

ASSEMBLYWOMAN BUSH: Pardon?

MR. NEELY: Playing on top of the elevator when they were killed.

ASSEMBLYWOMAN BUSH: You said, "Die by elevator."

MR. NEELY: Okay, within--

ASSEMBLYMAN ROMANO: I stand to be corrected-- In your attachments here, you are talking about the fees and the training that are required for an elevator -- what is the term, safety code official?

MR. NEELY: Right, subcode official.

ASSEMBLYMAN ROMANO: I am under the impression that each community is not obligated to hire, in fact, that title, but can make use of-- For example, Middle States, Middle Atlantic-- They come in and hire an outside outfit-- They hire an outside outfit to come in and do all of their inspections.

MR. NEELY: You have the right to contract the service out.

ASSEMBLYMAN ROMANO: Oh, yes.

MR. NEELY: Or to contract with the State.

ASSEMBLYMAN ROMANO: Right, right.

MR. NEELY: But the illustrated point is--

ASSEMBLYMAN ROMANO: That has even been for several years.

MR. NEELY: That is correct.

ASSEMBLYMAN ROMANO: The way you are presenting it is as if, all of a sudden, everyone has to hire this man.

MR. NEELY: Every town has to have a person--

ASSEMBLYWOMAN BUSH: Lou, or a woman.

MR. NEELY: Yes. Every town has to have a person who has that certification available.

ASSEMBLYMAN ROMANO: Or woman, right. I stand corrected again.

MR. NEELY: Assemblyman, every town has to have a person with those criteria available.

ASSEMBLYMAN ROMANO: Under contract or employed by the board?

MR. NEELY: Right.

ASSEMBLYMAN ROMANO: Okay.

MR. NEELY: Now, if you are a class one community-- That means that you would then lose a larger portion of your fees to the State. So, on a total economic balance, the communities -- and there are many of them which are class one communities -- would then hire the person, rather than have to share a larger portion of the fees with the State Department of Community Affairs.

So when this happens, you now have another subcode official you have to have, either through contract or employ with someone else, and you have to do that to protect your fee base. Otherwise, you have diminishing revenues. All that is pointed out to say that that type of administrative procedure has with it ongoing escalating costs, which we are not able to negotiate for; which we are not able to use in the collective bargaining system. We're saying that those types of decisions have long-term implications.

I am not here to argue the merits of the elevator--

ASSEMBLYMAN ROMANO: No, I don't mean it as an argument.

MR. NEELY: --because I would argue against it. But, you are correct.

ASSEMBLYMAN ROMANO: I just can't believe that picking out that item of an elevator inspection person -- that that is going to change the entire economy. You know, it is just one job.

ASSEMBLYMAN DeCROCE: Let me ask you this on that one: Could the chief--

ASSEMBLYMAN ROMANO: The uniform construction code official?

ASSEMBLYMAN DeCROCE: The uniform construction code official of the town-- Couldn't he also have that job?

MR. NEELY: If he becomes certified and goes through the same training programs and goes through the State process, and has the criteria to do that. It is a limited criteria. It is very well spelled out, so there is going to be a limited number of people who can obtain that. Primarily, it is going to be engineers or architects who pick that up, and we are going to end up hiring somebody, either on a part-time or a full-time basis, because of that. That is where the criteria comes in.

The illustration is not to argue that point, because you are correct, you can contract it out. But what happens is, that becomes part of, as I understand it, an ongoing health benefit roll-up cost. We are here saying that those roll-up costs are determined beyond where we are.

East Brunswick is a community that pulled out of the State health benefits system. You asked earlier, "Why does someone pull out of the system?" Well, first of all, when we pulled out, the State health benefits system was not functioning as efficiently. People were waiting an extensive time for processing that was very slow in paying, and our employees were very much up in arms.

Secondly, we were able to get better coverage at less cost, and we have continued to do that.

Thirdly, we have made it a negotiating item as to what level of benefit; as to what level of payment is made; as to who is in it, if it is spousal coverage, who is primary coverage. We have also been able to -- with a variable -- or a Section 125 provision -- allow people to be paid not to be in it, because we are experience rated, just as the State is experience rated. And, yes, there are a number of municipalities that have pulled out. But the State's pool is so large, that the experience rating-- You can lose two or three towns, or 10 towns, and not necessarily lose, because you have such large numbers. But the State system is experience rated. We found that we could have a better experience to provide better coverage, and to make it a negotiable item, and to have that available at least cost. So, that is the type of thing we would like to see.

Now, there are some problems with that, and that is why we endorse the concept, and encourage you to move forward with the State Health Benefit Review Commission, because there are inequities that exist, and they can help to balance the overall system.

With that I will close, unless you have questions.

ASSEMBLYMAN RUSSO: Harriet?

ASSEMBLYWOMAN DERMAN: I just want to say that Mr. Neely is a Finance Director in East Brunswick, which is in my district. I wasn't here when he commenced, and I do want to say that East Brunswick is noted for being very well run, and for being fiscally sound.

MR. NEELY: Thank you.

ASSEMBLYWOMAN DERMAN: You're welcome.

MR. NEELY: Thank you very much, Mr. Chairman, for all your courtesy.

ASSEMBLYMAN RUSSO: I want to thank you very much. Bill, thank you very much. If we need you back for information, we will get in touch with you.

MR. DRESSEL: Very good. Thank you very much. We appreciate it.

ASSEMBLYMAN RUSSO: Thank you. We appreciate it, too.

ASSEMBLYMAN DeCROCE: You and I may differ, disagree on partisan matters, but I agree with you today. Right on.

ASSEMBLYWOMAN BUSH: Then you are right today. (laughter)

ASSEMBLYMAN RUSSO: Kathy McMichael?

K A T H E R I N E M c M I C H A E L: Thank you, Mr. Chairman, and members of the Committee. It is a pleasure to be here. With me is Esther Strassman, our Associate Director of Labor Relations. I am Assistant Director of Governmental Relations for the New Jersey School Boards Association.

We have prepared remarks, and I am going to deliver them briefly. We have divided into four major areas, and I will go into those briefly, and then go into a lot of detail on one area that is a concern of school boards -- the health insurance area. We will be giving you final remarks in a couple of weeks. They will be all typed up and everything for you at the end, okay? So we will have those for you.

ASSEMBLYMAN RUSSO: Kathy, they won't be any different, probably, than what you will say today? If we take notes--

MS. McMICHAEL: Probably not. It will just be in more formal language for you, okay? What we are going to do-- I understand from John that we can also comment on some of the things we have heard at previous times--

ASSEMBLYMAN RUSSO: Please.

MS. McMICHAEL: --and I would like to do that. We would like to comment on some of the things the League has said, also, and we are going to add that at the end of our testimony.

The New Jersey School Boards Association welcomes the Committee's interest in school employee benefits, and appreciates the opportunity to express the Boards perspective on the issue.

The first area I will be talking about will be negotiations. Boards of education are not opposed to providing their employees with benefits. In fact, local negotiations have resulted in a wide array of contractual benefits, which include medical, surgical, dental, and prescription insurances, generous extended and temporary leaves of absences, and tuition reimbursement plans. Boards do not object to the negotiated grant of benefits, but they do have deep concerns about aspects of the process of negotiations.

Unlike the private sector negotiations -- and this was mentioned earlier by the League -- the terms of a negotiated agreement do not end with the contract's expiration. The PERC bargaining law requires boards to honor all prior agreements reached through negotiations, unless a change can be negotiated. Thus, once given in negotiations, a benefit is seen to belong to the employees, and is extremely difficult to reduce or to eliminate through successor negotiations.

The requirement to maintain the negotiated status quo, which includes the obligation to pay increments on an expired guide before a new agreement is reached, creates an uneven playing field in negotiations that guarantees the continuation of expensive benefits, an outdated approach to employee compensation. This prevents our boards of education from responding to changing economic circumstances.

Boards are also concerned that employee benefits that cannot be obtained through negotiations are achievable through legislation. Statutory provisions grant a variety of benefits to school employees, but impose the burden of providing the benefit on local school districts, and, of course, that is the taxpayer. Statutory tenure and mandated binding arbitration of school employees' grievances over discipline, including the nonrenewability of a fixed term employment contract -- this was just reached recently with new legislation -- complicate and increase the costs of schools' personnel administration. Statutory benefits, such as an individual employee's rights to be absent without loss of pay on legal holidays, supersede, or preempt locally negotiated agreements. Boards have no control over benefits established by law, but are required to comply with their mandate, and to cover their costs, even if the benefits interfere with their ability to manage their schools as efficiently as possible.

The next area will be the mandated area. For years, boards of education have been attempting to deliver their mandated services in the most cost-effective manner. This search to control the costs of providing thorough and efficient local public schools has been intensified by the shrinking economic resources we are facing at this time. However, under current laws and regulations governing school operations, boards cannot unilaterally contain the costs of maintaining their local education programs. Rather, decisions involving the largest item in a school's budget -- which is employee compensation -- require the joint decision making of collective negotiations. Decisions involving employee salary and benefits must receive the approval of both the board and the union. In 1991, boards' resolve and negotiations resulted in prolonged bargaining that was ultimately successful in persuading their local unions to agree to the lowest teacher increases in 10 years. The League of Municipalities mentioned that also.

The 1991-1992 settlements reflect the current economic downturn, with salary increases dropping steadily in relation to the date of the settlement. Unencumbered by interest arbitration, school negotiations have been, and will continue to be, responsive to their communities' desire to contain increases in teachers' and other employees' salaries.

The third area we are going to talk about will be the health benefit area. This is the area we have a major concern in. Mr. Dorf spoke about it briefly, and we want to get into more detail on it.

Boards have had increasing difficulties in containing the skyrocketing costs of maintaining their employees' negotiated health insurance benefits. The difficulties in containing these costs, which have been rising at nearly nine times the cost of living, are due to many factors, including the national crisis in providing health insurance; the need to negotiate insurance cost containment; and the complex requirement of the State Health Benefits Plan.

Now, we have some statistics for you on the State Health Benefits Plan, which we are very active in. In 1990-1991, 427 boards of education, which is 72 percent of all the school districts, were covered by the State Plan. Therefore, the Plan's structure and its effect on the local cost of health insurance has a persuasive, but locally uncontrollable, influence on school districts' budgets. Yet, the State Plan's requirements preclude its participating public employers, including the State -- as you heard earlier -- municipalities, and local boards of education, from pursuing cost containment in health insurance coverage. Indeed, for boards of education, many requirements of the Plan result in inflated insurance costs for the local employer.

We welcome the Committee's interest in the costs of providing employee benefits, and the opportunity to discuss several aspects of the State Plan that increase our local districts' operational costs. We have divided these into four areas -- excuse me, five areas:

The first one is the part-time employees; the second one is uniformity of coverage -- and I will go through each one of these; the third one is the prohibition against incentives to avoid duplicative coverage; and the fourth area is the designated level of benefits, which precludes containment of employers' costs.

Part-time employees is our first area. In the State Health Benefits Plan, it requires the participating employers to provide full coverage to all employees who work on the average of 20 hours per week. Boards of education employ far more part-time staff than any other public employers.

According to the New Jersey Department of Education's 1990 statistics, school districts employed almost 4000 part-time teaching staff members, and almost 12,000 part-time noncertified staff. In other words, almost 10 percent of the State schools' employees work on a part-time basis.

Under the Plan's rules -- the State Health Benefits Plan -- boards must offer all of their part-time employees who work 20 or more hours per week the same insurance coverage as full-time employees. This means that the boards must pay the full premium for part-time employees, and for the employees' dependents. This leads to the expensive anomaly where districts' costs of providing health insurance can exceed the part-time employee's salary.

For example, in 1990-1991, a cafeteria worker who received a salary of $3100 for working four hours on each school day, would also have been required to receive mandated family health insurance coverage at a cost of $4486 for the year. In 1991-1992, the health insurance premium for that employee would cost the district $5675, or a 26.5 percent increase, which would far exceed any negotiated increase in salary.

ASSEMBLYMAN RUSSO: Kathy, excuse me. Was that always the case? Is that something new, or was that always the case?

MS. McMICHAEL: This has been a regulation of the State Health Benefits Plan -- part of the coverage that we are not able to change.

ASSEMBLYMAN RUSSO: It has always been like that.

MS. McMICHAEL: And we are asking--

ASSEMBLYMAN RUSSO: But what has happened is, from your testimony, it has exacerbated now because -- not so much the salaries have increased, because they have, but the health benefits--

MS. McMICHAEL: But the health costs-- Exactly.

ASSEMBLYMAN RUSSO: --are now outstripping even the part-time salaries. The proposal on that-- Is there a proposal on that from the School Boards, or not?

MS. McMICHAEL: Oh, we have--

ASSEMBLYMAN RUSSO: I mean, I can guess, but, you know--

MS. McMICHAEL: --spoken with the Division of Pensions. We would appreciate any change in this. We have asked, year after year after year, for some flexibility in the State Health Benefits Plan. That is what we are asking all of you to do now. We are asking for some kind of legislation, some kind of help in getting this changed. This is one of the problems, Chairman Russo. We have three other areas, too, where we have major problems because of what is happening to the costs to the employers.

ASSEMBLYMAN DeCROCE: Do you have a suggestion, Kathy?

MS. McMICHAEL: Yes, to allow the boards of education not--

ASSEMBLYMAN RUSSO: To bargain that?

MS. McMICHAEL: Yes, to put it into the collective bargaining area.

E S T H E R S T R A S S M A N: That is certainly one option. The other option is for the rules of the Plan to change to avoid this kind of anomaly.

ASSEMBLYMAN RUSSO: So you're saying that it should either be on the table as a negotiable item -- statutorily it should be on the table as a negotiable item, or statutorily it should not even be-- It should be private pay. If they are going to work--

MS. McMICHAEL: Or it should be taken out.

MS. STRASSMAN: As Kathy has mentioned, there are many aspects of the Plan that create what we consider inflated costs to the local employer. In the totality of the Plan, it may be that a total revision is necessary. What must happen, however, is that whatever is decided does not become stale in the statutes books, but is continuously reviewed to determine whether it still makes sense. That is something the School Boards would really like to see; whatever it is, whether it is to allow negotiations to local school boards, or changes through statutes, that there is a continuous review of the provisions, their relationships, to be able to provide employee benefits and their impact on taxpayers' costs.

MS. McMICHAEL: This is also damaging to the employee, as well as to the employer, because the boards which are in the Plan that cannot afford to incur these additional costs, only have the option not to employ part-time workers -- because they cannot afford it -- or to hire them for less than 20 hours. So the employees, in this case, are going to be more damaged because of this problem, because the employers cannot afford to pay this.

ASSEMBLYMAN RUSSO: Ten percent of the work force--

MS. McMICHAEL: Yes, 10 percent of--

ASSEMBLYMAN RUSSO: --is on a part-time basis?

MS. STRASSMAN: The figures available from the Department of Education and from the NJEA simply list the number of employees. They do not list the average number of hours worked. It ranges from 7 hours to 34 hours. Not all of those people are 20 hours or more employees, but they are called part-time.

ASSEMBLYMAN RUSSO: Oh, okay. This only pertains to 20 hours or more, or anybody who is part-time -- 20 hours or less, I mean?

MS. McMICHAEL: Twenty hours or more.

ASSEMBLYMAN RUSSO: Twenty hours or more. Nineteen hours or less, they do not get health benefits, or they do?

MS. STRASSMAN: Under the State Health Benefits Plan, an employee who works less than 20 hours is entitled to absolutely no coverage. Once you cross the threshold of an average of 20 hours per week, then you receive full, total--

ASSEMBLYMAN RUSSO: So, from 20 to 39 then, I would assume, is what you are talking about -- that notch?

MS. STRASSMAN: Yes.

ASSEMBLYMAN RUSSO: Okay.

MS. McMICHAEL: And as you can see, there are quite a few employees who fall in that category.

ASSEMBLYMAN RUSSO: Okay.

MS. McMICHAEL: The second area is uniformity of coverage. The State Health Benefits Plan requires all participating employers to provide all of their eligible employees with access to equal, identical, and uniform coverage. This means that the boards must pay the full premium for all eligible employees, and must extend their obligation towards dependents' coverage to all employees who quality for that type of enrollment. Ninety-six percent of the boards participating in the State Health Benefits Plan have agreed, through negotiations, to fully pay the dependents' costs of coverage. Most of these negotiated agreements date back to the boards' entry into the State Health Benefits Plan, which permitted, at that time, excellent employee benefits at an affordable price.

As an example, in the 1981-1982 school year, the annual cost of employee-only coverage was $373, and family coverage was less than $1000 a year. In 1991-1992, individual rates had increased to $2214, or a 493 percent increase, and family rates have risen to $5675, a 512 percent increase in 10 years. These increases have been paid by boards of education, as the Plan requires the employer to fully pay the employees' premiums, regardless of the increase in costs. Boards have been largely unsuccessful in obtaining union concessions to reduce the boards' obligation to fully fund the increases in dependents' coverage.

As we mentioned before, once given away, it is hard to take it back. The combination of the Plan's rules and laws governing negotiations result in boards facing large and locally uncontrollable increases. Increases in premiums must be fully paid for eligible part-time employees and their dependents, as well as for all full-time employees.

Under the requirement to provide uniform benefits, boards cannot, even through negotiations, seek to change their obligations to future employees' dependents. The uniformity rule also requires that boards offer all their current employees access to equal coverage. Thus, the selection of the type of coverage available is left to the employee, but the full cost of the selection must be borne by the board, even if the employee's enrollment results in duplicative insurance coverage. Duplicative coverage means that the board is paying for a full family premium for individuals who are already covered by another policy either in the same group plan or in another plan. Under insurance plans, coordination of benefits, duplicative payment, or reimbursement of medical expenses do not occur. Thus, individual employees with duplicative coverage receive identical benefits available to individually covered members, but the employer pays twice as much for their coverage.

The best illustration of this situation is found when a married couple with children is employed by the same district. Typically, both employees opt for family coverage, and the board pays two family plan premiums; $5675, as I said, for 1991, or $3460 for the individual coverage. However, the children's coverage is paid through the primary policy coverage, in the same way that would have been reimbursed if the board only paid the family premium for one employee. As in 1992-1993, family coverage will cost in excess of $4000 more than individual coverage. These costs continue to increase. Thus, this rule increases local costs, without providing a concurrent benefit to the employees.

This same rule applies to married employees whose spouse is also enrolled in the State Health Benefits Plan by virtue of employment with another public employer. It also applies to employees who have duplicative coverage under their spouse's insurance group with a private carrier. Thus, the cost of duplicating coverage increases the board's insurance obligations.

Prohibition against incentives is another problem the State Health Benefits Plan has. They adopted a rule, in 1989, that prohibits boards of education and other participating employers from offering a cash incentive to employees who choose not to enroll in the State Plan. This rule has been interpreted to prevent boards from offering incentives to employees to select individual coverage, rather than duplicative family or dependent coverage.

So, before the adoption of this rule, the boards were trying to save costs. They said a number of boards had negotiated incentives for nonenrollment for unnecessary coverage. It makes sense. Employees not enrolling, or enrolling for minimal individual coverage, would receive another desired benefit, or a cash stipend. This mutual agreement worked to both parties' advantage. The employee would receive the desired benefit, and the board reduced its insurance costs.

The implementation of the rule in 1989 invalidated these local agreements, denying employees their choice of benefits and increasing district costs. One district has reported to us that the rule increased its insurance costs by 5 percent. Another district reported that its ability to offer incentives for nonenrollment with a private carrier led to a 30 percent savings in its cost of premiums paid in the State Plan. We will talk in a minute about people leaving the State Plan. You asked for statistics, and I will get into that in a minute.

The last area is the defined area of benefits which we have in the State Health Benefits Plan. It provides all of its participating employers with an established level of benefits that cannot be adjusted to meet local needs. The Plan's major deductible is set at $100 per person, with a maximum of $200 per family. Its reimbursement is based on 80 percent of the first $2000, and on 100 percent thereafter. This level of benefit is a result of continuous legislative improvements, which have increased major medical benefits, upgraded the surgical payment schedule, and involved a general improvement in the Plan's insurance coverage.

As an aside, in the early 1980s, the State's negotiations with its employees led to the purchase of the 1420 C program. This benefit improvement, and its 30 percent increase in cost, was automatically imposed on all local boards of education. It is important to note that none of the amendments to the Plan have ever involved increased employee contributions or higher deductibles. The onchanging level of employee contributions to their medical costs, in years marked by escalating costs of medical services, is an unquestionable factor in the increasing costs of the State Plan's premiums.

Private insurance plans' options of inceasing deductibles and copays have resulted in the employers' ability to contain and to reduce their costs of providing health insurance. One board reported an estimated savings of $70,000, or 10 percent of its State health benefit premium, by increasing deductibles with a private insurance carrier after they left the system.

If boards can save money by purchasing health insurance through private carriers, why do so many boards continue to participate in the State Plan? Board participation is voluntary, and thus boards would appear to be free to drop out of the Plan to achieve cost savings. Once again, however, this decision may require negotiations and the agreement of the union. Decisions by PERC hold that employers cannot unilaterally change insurance carriers if the change reduces, in any way, the level of existing benefits. Thus, reductions in part-time eligibility -- which we talked about before -- tiered coverage, incentives for nonenrollment for duplicative coverage, and increased deductibles and copays must receive union approval. Maintenance of existing levels of benefits is, understandably, a high priority of unions in negotiations. However, boards' desires to achieve cost containment in an environment that offers employer options is also understandable. Boards have been successful in negotiating changes when they moved to private carriers.

We will do a survey of our boards, as well as the League, to let you know how many boards have left the system and are contemplating leaving the system this year. The State Health Benefits Plan stopped this exodus. They offered what is called a "premium drag" this year, where they allowed boards not to pay for one month's coverage -- the month of July -- to save that whole month. They are free from payment. It is like a grace period. If they leave the system, however, they will have to pay for it -- if they ever leave the system down the line. But this is an incentive to try to keep boards in.

We have talked to the Division of Pensions about our concern with this, but we do need some legislative help on it.

The other problem is that many boards do not have the option to change carriers because they are so small. We have many boards with only 50 or less employees. In an insurance group, they have great difficulty in obtaining coverage from private carriers because they shy away from going to a group of 50 or less. It has been estimated that approximately 200 boards employ less than 50 people, so that is quite a large number. These boards are likely to have great difficulty in obtaining alternate carriers.

Also, somewhat larger districts, which could obtain coverage, run into difficulty because they are not able to obtain their employees' utilization rate from the State Plan. Therefore, the option to switch to private carriers is realistically open to larger districts which can insure a group of more than 100 employees.

ASSEMBLYMAN RUSSO: Kathy, on that issue of the smaller districts-- That is 200 out of how many districts?

MS. McMICHAEL: Six-hundred-and-eleven.

ASSEMBLYMAN RUSSO: So that is nearly a third. Right now they can't, or it is financially impossible?

MS. STRASSMAN: It is very difficult. Up until very recently, boards were advised by Blue Cross/Blue Shield -- boards with less than 50 employees -- to go to the State Health Benefits Plan. Until very recently, no private carrier would extend their services to those small boards. Now, however, there seems to be a private firm that is competing very heavily with the State Health Benefits Plan. I am told they do not turn away small employers.

ASSEMBLYMAN RUSSO: Is that something you can opt for right now, or you cannot if you are a small board?

MS. STRASSMAN: The only way you could opt for it would be if the level of benefits--

ASSEMBLYMAN RUSSO: Is not decreased.

MS. STRASSMAN: --is not decreased, or--

ASSEMBLYMAN RUSSO: But if you have part-timers, then they are going to be decreased, in essence, as you said before?

MS. STRASSMAN: Not necessarily. You could agree to continue your part-timers, but if you would choose to save money by not covering your part-timers, or increase in coverage to 30 hours, or provide partial prorated coverage, that would require negotiations. As Kathy indicated -- and as Gerry Dorf indicated -- unions are not likely to agree to cut benefits of their current membership. It is hard to do.

MS. McMICHAEL: Just one other thing to add to this: The other problem is, if you leave the Plan to search for a private carrier, you cannot get back into the Plan for five years. So this is a very--

ASSEMBLYMAN RUSSO: And you can only come back once, right? You can only leave once and come back once?

MS. STRASSMAN: At this point, yes. This is another concern of little boards, because if their premiums escalate tremendously because of the serious illness of one group member, and it is experience rated, their premiums can soar completely out of line. So there is a strong, long-range fear factor, which is quite understandable.

ASSEMBLYMAN GEIST: Mr. Chairman?

ASSEMBLYMAN RUSSO: Yes, Mr. Geist.

ASSEMBLYMAN GEIST: In the municipal arena there is a source of savings to taxpayers called "Joint Insurance Funds." Is there such a forum through which school boards of a small nature -- less than 50 employees -- can join together to secure, through private coverage arrangements, such private coverage?

MS. McMICHAEL: It is prohibited now in health areas. It is allowed in the other areas. Assemblyman Kamin has a bill to allow us to do that, and we are supporting it very, very strongly.

ASSEMBLYMAN GEIST: There is a Kamin bill to enable--

MS. McMICHAEL: It's Assembly Bill No. 251. It will enable boards to jointly -- JIF funds that they have from municipalities-- Boards will be able to do that.

ASSEMBLYMAN GEIST: Joint health insurance funds will be available after the Kamin bill.

MS. McMICHAEL: They are prohibited now. Boards are not allowed-- Municipalities are, boards are not.

ASSEMBLYMAN GEIST: Do you know the bill number, by any chance?

MS. McMICHAEL: It's A-251.

ASSEMBLYMAN RUSSO: Whose bill is that?

MS. McMICHAEL: Assemblyman Kamin's. I testified in support of that bill before the Insurance Committee. We are very supportive of that bill.

ASSEMBLYMAN GEIST: Thank you.

MS. McMICHAEL: You're welcome.

ASSEMBLYMAN RUSSO: Harriet?

ASSEMBLYWOMAN DERMAN: Kathy, the inequities to which you refer-- Are they attributable to, or are they a function of statute or regulation?

MS. McMICHAEL: Both.

ASSEMBLYWOMAN DERMAN: Both.

MS. STRASSMAN: Much of the plan is controlled by regulations, but the regulations stem from statute. The regulations are designed to carry out the goal of the Plan.

ASSEMBLYWOMAN DERMAN: Well, Kathy used the word "regulation" before with regard to part-time employees. I don't know if she did that deliberately, or--

MS. McMICHAEL: That is in the regulations of the State Health Benefits Plan. Now, if the Division of Pensions wants to lift that regulation and change it in the regs, that is perfectly acceptable to us, but many times they need a push from the Legislature to do that. That is what we are looking for. We are looking for relief in any way, either from this Committee, to help us with legislation, or from the Division of Pensions.

We have had ongoing talks with the Division of Pensions. Also, we have asked to sit on the State Health Benefits Plan Commission, the actual Commission. We do not have representation on that Commission. We have asked for that. I believe it was Assemblyman Franks who sponsored that bill for us last term -- to get us into that. It has not been prefiled again, but we would like to be on that Commission, so that we would have more input into the rules and regs.

Our board members are very frustrated, Assemblywoman Derman, extremely frustrated, because they do not have a say in any of these. Like this rule from 1989-- It came down on us absolutely out of the blue. Where we were able to offer the cash incentives previously, now we are not able to do that. That was to help boards a lot, because it is silly to be paying duplicative coverage for families when you are getting it already.

MS. STRASSMAN: Just one word: I am not sure at this moment-- I was two hours ago, but I am not sure now whether the part-time requirement comes from regulation or whether it is a direct, specific statutory provision. We will include that in our written testimony, including a cite so you can find it readily.

ASSEMBLYMAN DeCROCE: Mr. Chairman?

ASSEMBLYMAN RUSSO: Alex?

ASSEMBLYMAN DeCROCE: I don't know how it works here, but I know that when I was in county government, if we worked-- If we hired people to work up to 19 1/2 hours, there was no obligation to pay them a benefit.

ASSEMBLYMAN ROMANO: Say that again, Alex. I didn't hear you.

ASSEMBLYMAN DeCROCE: When I was in county government, we used to hire a lot of people at 19 1/2 hours. That way we didn't have to get into the benefits.

ASSEMBLYMAN ROMANO: That's right.

MS. McMICHAEL: And that is what we have said. It is discriminatory against the employee, because the poor employee has to go for less than 20 hours because the employer can't afford it. If this restriction were lifted, we wouldn't have that problem at all about hiring them for more hours.

ASSEMBLYMAN DeCROCE: Thank you, Mr. Chairman.

ASSEMBLYMAN GEIST: A curiosity question: A proposal for statutory elimination of the prohibition of cash incentives for nonenrollees-- Did the NJEA join the School Boards Association on this legislation, since it would be a benefit to individual members, who then would be allowed the freedom to go out, if they so desired?

MS. STRASSMAN: At this point, I don't think legislation has been considered to lift that rule. That was definitely regulatory. But you raise a very interesting point, because the NJEA, which is normally very supportive of the State Health Benefits Plan and the rules of the Plan, offered testimony against the rule prohibiting incentives, precisely because it would negatively affect their members.

ASSEMBLYMAN GEIST: So you have a common cause together?

MS. STRASSMAN: We have many common causes together.

ASSEMBLYMAN GEIST: I am happy to hear that.

Okay, thank you.

ASSEMBLYMAN RUSSO: Assemblywoman Bush?

ASSEMBLYWOMAN BUSH: With the cafeteria workers you indicate work about four hours a day, 20 hours a week-- You indicated that it is getting to a point where there health benefits may exceed their salaries. What other benefits are they entitled to?

MS. STRASSMAN: It would depend on their contractual provisions. They may be entitled to prorated dental coverage and prescription coverage, which boards of education cannot purchase through the State Health Benefits Plan. Interestingly enough, it is one area where boards have been very successful in negotiating cost containments. We get reports from boards of education, reporting that they have obtained increases in the copay of prescription drugs from $1 to $7, which is the highest one I remember offhand. Also, a different level of copay for generic, as opposed to brand names. And also, they have been able to negotiate increased copays in dental plans, because all of them are obtained through private carriers.

ASSEMBLYWOMAN BUSH: I guess what I am looking for is, do they get any type-- They are getting an hourly salary?

MS. STRASSMAN: Yes.

ASSEMBLYWOMAN BUSH: Okay. And they are guaranteed the minimum wage?

MS. STRASSMAN: Oh, absolutely.

ASSEMBLYWOMAN BUSH: Okay. Do they get any paid vacations, as other school workers do?

MS. STRASSMAN: Most school employees work a 10-month school year, and work the same calendar as the students. So there are no vacations. That, by the way, is a very strong benefit, an unwritten and somewhat unpaid for benefit, but a very valuable benefit, because many mothers of school-age children find part-time employment that is tied completely to their children's education.

ASSEMBLYWOMAN BUSH: Right. What I am asking, though, is this: Even though it may be a 10-month employment period, if there is a holiday during that 10-month working period, are they getting paid for that day off, or are they not getting paid?

MS. STRASSMAN: It would depend on the negotiated agreement. Mostly, generally, not. It is hourly for hours worked.

ASSEMBLYWOMAN BUSH: Okay. Do you have any information you could provide to this Committee-- I am looking at the little person, okay? What do they get paid? What do they get paid for? You know, in addition to just-- We're talking about the health benefits and that there are some copayments where they have to pay-- You are saying a $7 copay for things. But, what are they getting, you know, as opposed to what is being negotiated out from the--

MS. STRASSMAN: We will do our best to provide that. It will be difficult, because it will vary from district to district based on the negotiated agreement, but we will try our best.

ASSEMBLYWOMAN BUSH: Okay. I would assume that much of what you are discussing is based upon district to district, in some instances.

MS. STRASSMAN: When you are talking about negotiated agreements, the answer is yes. When you are talking about the 420 boards that belong to the State Health Benefits Plan, that is uniform for every board, for every municipality that belongs to the State Health Benefits Plan.

ASSEMBLYWOMAN BUSH: Well, I would like to see something, if possible, that will let me know -- now that I know they get health benefits-- I am hearing that their benefits may exceed their salaries, and I want to know what else do they or do they not get, so I will have a full picture as to what this person is--

MS. STRASSMAN: Very fine. They do get sick leave days -- paid sick leave days -- and probably personal leave days. If they are members of a collective bargaining unit, they also have grievance procedures and job security.

ASSEMBLYWOMAN BUSH: How many of them are members? Are they required to be--

MS. STRASSMAN: No.

ASSEMBLYWOMAN BUSH: --or is it an option?

MS. STRASSMAN: Being a union member is an option. The issue of whether or not there is a bargaining unit that includes cafeteria workers is a matter of negotiations or PERC involvement in the history of the labor relations. Increasingly, cafeteria workers, bus drivers, and custodians are finding themselves in bargaining units.

ASSEMBLYWOMAN BUSH: Do you know percentages?

MS. STRASSMAN: No, I do not.

ASSEMBLYWOMAN BUSH: Okay, thank you.

ASSEMBLYMAN DeCROCE: I have a question on that: Isn't it true, though, that a lot of districts will honor those people the same way they do with the unions; they will give them the same benefits?

MS. STRASSMAN: It is a matter of negotiation. The answer to that is that most districts will have the same level of benefits for all members of the bargaining unit.

ASSEMBLYMAN ROMANO: What the Assemblyman is referring to is, in districts where these people are noncontractual--

ASSEMBLYMAN DeCROCE: Right.

ASSEMBLYMAN ROMANO: --they usually receive the same benefits as people who are contractual. I have found that to be the case.

MS. STRASSMAN: So have we, yes.

ASSEMBLYMAN RUSSO: Before you continue, one point, because Mr. Kingston (Assembly Majority staff) and I were talking about something. Before, you mentioned that approximately one-third, about 200, of the school boards have 50 members or less. The point you were making before was that it is difficult with regard to opting out, or is it impossible? I just want you to go over that again real quickly for Mr. Kingston. That is what we were talking about.

MS. STRASSMAN: Are we talking theoretically or practically?

ASSEMBLYMAN RUSSO: Well first, statutorily can you opt out?

MS. STRASSMAN: Statutorily, yes, you can opt out.

ASSEMBLYMAN RUSSO: From the health benefits, yes.

MS. STRASSMAN: From the Health Benefits Plan.

ASSEMBLYMAN RUSSO: But practically, you said, except for this one new private source, it is just about impossible--

MS. STRASSMAN: Very--

ASSEMBLYMAN RUSSO: --because it isn't competitive.

MS. STRASSMAN: Exactly. Also, it would require, not simply obtaining a private carrier, but it would also require the agreement of the union.

ASSEMBLYMAN RUSSO: And the only way, statutorily, that that could be aided, would be what -- making that a negotiable issue?

MS. STRASSMAN: It would involve changing the bargaining law, I suspect, to permit the change of the carrier, regardless of the change of levels of benefit, to be a totally managerial prerogative.

ASSEMBLYMAN RUSSO: You said, I believe, before, that when you switched -- if you opted out, you had to show that you were not lessening the health benefits.

MS. STRASSMAN: Right.

ASSEMBLYMAN RUSSO: And by opting out, you would be lessening health benefits, possibly. Is that right?

MS. STRASSMAN: Possibly.

ASSEMBLYMAN RUSSO: I saw you shaking your head there before, and I thought--

S U S A N S C A V O N E: (speaking from audience) It is true that if you decide to opt out-- (remainder of sentence indiscernible; no microphone)

ASSEMBLYMAN RUSSO: Do me one favor. Could you give us your name and your title? Come on up. Just say that again. Sorry, I didn't mean to be rude.

MS. SCAVONE: My name is Susan Scavone. I am from the Division of Pensions.

You can opt out of the State Health Benefits Plan, but you do have to provide the State Health Benefits Commission--

ASSEMBLYMAN RUSSO: Right.

MS. SCAVONE: --with a copy of your contract to show that the level of benefits is the same.

ASSEMBLYMAN RUSSO: And if it is not the same, you cannot opt-- Any lessening, and you cannot opt out?

MS. SCAVONE: That is the regulation under the State Health Benefits Commission, yes.

ASSEMBLYMAN RUSSO: Okay.

ASSEMBLYMAN ROMANO: The key words are "on balance," as Mr. Dorf used. It is not identical from paragraph to paragraph. It is on-balance with the other program.

ASSEMBLYMAN RUSSO: On balance.

MS. STRASSMAN: Under the PERC law, you cannot opt out unless you have the union's agreement. According to PERC's decision, it is the union that determines whether or not the benefits are substantially equal, or better.

There is an interesting case involving a municipality that did drop out, and in many instances did offer better -- higher benefits than the State Health Benefits Plan. The one area that was very different was the reimbursement and the paperwork. The union challenged the fact that that was not an equal benefit, and PERC supported the union and found that the employer had violated the law.

An alternative to seeking modifications of this rule is, again, to look at the bargaining law, and to make a determination as to whether private -- public sector contracts are so different from private sector contracts, that one would need to guarantee that everything continues, unless it is changed by negotiations. In other words, if a board and a union had agreed to provide State Health Benefits coverage at "X" number of dollars for the 1992-1993 school year, and the contract expired in 1993, the level of benefit would then be, again, a matter of negotiations at the table. That is what we call "evening out the playing field." That clearly would change boards' responsibilities to maintain coverage. They may not be successful in negotiations, but at least you would be starting at ground one.

MS. McMICHAEL: The last area-- Is there anything more on health? (no response) Okay, the last area is the pension area. The New Jersey School Boards Association has convened an Ad Hoc Pension Committee. Our report will be issued, unfortunately, a little late for your Committee. It is going to be issued in June 1992, but I do have the charges we have on it. They are: to study and publicize the procedures of school employees' pension systems, and their actual and projected costs; to identify effective management controls and means for containing the costs of pension systems; to examine, and if indicated, to recommend new approaches; and to provide fiscally sound pension systems for school employees.

Because the ultimate obligation falls on the taxpayers -- the pension costs, the ever-escalating costs of pensions -- the pension enhancing bills that have come through have been a very, very sore point with us, and we are extremely concerned about that.

There is one position statement that I would like to pass around. This is a bill that we have been fighting for the past three years. We have been able to stop it in Committee, but it looks like it is moving out very quickly right now. It is the old Assemblyman Charles' bill, paid State health benefits for nonprofessional support staff personnel. This bill was just released this morning from the Senate State Government Committee, without benefit of review from the Pension and Health Benefits Review Commission which has been established. That is a Commission that we fought very hard for, as did the League of Municipalities, to stop these kinds of bills. There are so many of these bills coming down the pike, and the costs are-- Anyone who heard me during the last session before the Local Government Committee and State Government Committee-- I was there every time taking the management point of view on this, but we were not able to win very often.

Ladies and gentlemen, the problem is the taxpayers who are paying for this. That is the ultimate problem. I will conclude on that.

We are concerned with the education of our kids. We don't want to be overburdened by all of these excessive health and benefit costs.

One other thing: Ms. Strassman would like to add one thing about what Mr. Dorf said. Go ahead.

MS. STRASSMAN: A question had been asked of the League of Municipalities, and Gerry Dorf in particular, whether there had been any conversation or any information as to why municipalities were leaving the State Plan. We have had recent conversations, a lot of discussion, and a lot of history in talking to boards of education, and I think we understand why some of them are leaving the Plan; and many of them would like to, and are investigating their options to do so.

First of all is the incredible lack of control and lack of flexibility, which Kathy spoke about, that is imposed by the rules. Boards feel that their hands are tied; that they cannot negotiate limitations on the costs of insurance under the State Plan. They feel totally frustrated in terms of information and input into the operations of the State Plan.

Further, there is a sense that the benefit level offered by the Plan is totally outmoded. You are looking at -- and I will repeat this -- a $100 deductible, with a maximum of a $200 deductible per family per year, with an 80 percent copay of the employer. Those figures, ladies and gentlemen, are almost unheard of in private sector plans -- under private carrier plans.

Years ago -- and I think the question was raised a little earlier -- public sector salaries were very low, and it was a given that the job security and the good benefit package that one could get from public employment was an evening factor. Well, I think statistics show that public sector salaries have increased enormously, far faster than private sector salaries; at the same time, so have fully paid benefits. The time has come to reexamine the entire picture of compensation. Boards which are leaving have done so. They do not leave on a whim. They employ insurance consultants, and they very carefully study the costs and the benefits.

What we are asking, is that perhaps the State Health Benefits Plan should look at becoming more competitive in the 1990s and in the 21st century.

ASSEMBLYMAN RUSSO: Kathy mentioned before about the salary increases, and this is a different system, as we know, from police and fire, which was discussed -- a different system. A comment she made before in her testimony was that the increases are less.

MS. STRASSMAN: Yes.

ASSEMBLYMAN RUSSO: And that is probably true. I don't have the figures. They are not the 9 percent and 12 percent.

MS. STRASSMAN: They are below 8, and we will furnish them to you.

ASSEMBLYMAN RUSSO: But again, there is a feeling, to an extent, that many people are out of work, much less are not getting the same salary they were getting two years ago, whereas the system in many counties -- whether it is Bergen or Monmouth, as was discussed before -- is really-- Some people don't feel that the system is actually working in an equitable benefit for the taxpayer.

Do you have any suggestions on that system? It is not the system that is used by police and fire. I understand that.

MS. STRASSMAN: It certainly is not, because we have read in the newspapers that interest arbitration awards are remaining in the 9s and 9 1/2s, and that does not include, as Gerry Dorf said, the cost of the increment, which, in that sector, is seen to be a rollover cost.

When you hear of an 8 percent teacher salary settlement, or a 6 percent teacher salary settlement, which are coming in, that does include the cost of the increment. There are no rollover salary costs in teachers' settlements. So we may be comparing apples and oranges. Okay?

One of the problems in looking at where teachers' negotiated increases have resulted -- have fallen-- It is a twofold problem: 1) Negotiations do not occur in a vacuum. In 1985, t.e State Legislature and the State Governor decided that it was the best public policy of the State to increase the teachers' minimum salary to $18,500. That represented a $4000 -- close to a $4000 increase in the statewide average minimum teacher's salary. Very significant.

At that time, we questioned the ripple effect of increasing a compensation system that is linked to the first salary -- to the first step on the guide. The 10 percent salary increases, the 9 percent salary increases that followed that were reflective of the influence of the $18,500.

ASSEMBLYMAN RUSSO: When you talked about increments being included in the 4 percent or the 6 percent or the 3 percent or the 5 percent, just for the Committee, just briefly, can you explain that?

MS. STRASSMAN: What the increment is and how it is--

ASSEMBLYMAN RUSSO: Yes. When you say "increment"--

MS. STRASSMAN: Right. Teachers are paid, generally, on a salary guide, which is a grid which lists salaries in columns. Up until the $18,500 law, each step on the guide represented a year of experience, and each -- moving this way on the guide (demonstrates) -- represented additional years of education in obtaining a master's or 15 additional credits. In between each step there is an increase which is called an "increment." When boards of education-- Teachers automatically receive that increase for one additional year of service, whether or not a new negotiated agreement is in place. So if within 1991-1992 you were on step 7, making $31,000, the next school year, as of September, even if the agreement had expired, you would move to step 8, and possibly get a $2000 increase, without the benefit of additional negotiations.

That $2000 differential, or $3000 differential, between the steps on the guide is what we call an "increment." When a board of education reports its new costs of providing salaries for the new year, it includes the cost of the increment. So you are paying for an additional 3 percent, which is typically contained on the guide, which the union used to call "old money," and the "new money." And that's it.

ASSEMBLYMAN RUSSO: The increment has been in the system for how long?

MS. STRASSMAN: Well, as long as I can remember. I know that in the 1920s, which is before my memory, it was there. It is a very universal way of paying teachers.

ASSEMBLYMAN RUSSO: But you're saying that a 4 percent or a 5 percent increase, in essence, is really technically sort of less than that, because a chunk of that would-- If it includes the increment, that is part of the increase anyway, so a 5 might be a 3.

MS. STRASSMAN: I would say that when we start comparing increases among groups of employees. I would not say that when we are talking about what it costs the public to fund the new settlement.

ASSEMBLYMAN RUSSO: Yeah, okay, 5 is 5. Dollars are dollars, that's right.

MS. STRASSMAN: That increment is still new money that belongs to the 1992-1993 budget, not the 1991-1992 budget.

ASSEMBLYMAN RUSSO: When those figures are being given out with an increase of 6 percent, that is including the increment. Is that what you're saying?

MS. STRASSMAN: When we poll boards of education we send questionnaires, and we always underline boldly, "including the cost of the increment." To the best of my knowledge, that is the way they are reporting their settlements.

ASSEMBLYMAN RUSSO: Okay.

MS. STRASSMAN: So that is definitely a factor.

ASSEMBLYMAN RUSSO: But, in essence, you don't have any real recommendations with regard to the bargaining system on salaries?

MS. STRASSMAN: Oh, yes, I do. Do you have another four hours? New Jersey School Boards has quite a few policies that have been adopted by the delegate assembly to try to make negotiations a fairer process, in the sense that boards of education have more bargaining power at the table. We would like to see -- and this is a word you have heard several times this afternoon -- the playing field leveled and evened out. We believe there are many factors in the collective bargaining process, as it exists in New Jersey, which work against the public's interest.

ASSEMBLYMAN DeCROCE: It could never happen, not as long as you have NJEA members on the boards of education.

MS. STRASSMAN: It is still what we would like to see happen, okay?

MS. McMICHAEL: We would like to see it.

MS. STRASSMAN: Let me underscore, however, that we believe-- We support collective negotiations as a valuable decision-making process, when the decisions that are made through collective negotiations do not interfere and do not impede the development of educational policies, which we believe is a decision that belongs to the public and its elected representatives.

Would you like to hear the concerns we have?

ASSEMBLYMAN RUSSO: Sure, real quick.

MS. STRASSMAN: Okay. First off the bat is one I have mentioned already: The automatic payment of an increment when a contract has not been settled -- the new contract has not been settled at the start of the new year. That immediately gives employees an increase, which is very difficult to recoup; not impossible, but very difficult to recoup in negotiations. For example, if the increment that you have just gone through is $8000, and there are increments that size, and bigger, your first paycheck in September will be a proration of that $8000. How are you going to feel when that is reduced and you owe the board money? So it is very difficult to get it.

It also reduces the pressure on local associations to reach a settlement before school reopens, because increases are obtained by all their unit members, except those who have moved to the top of the salary guide. So there is no need to reach a settlement, as far as the union is concerned.

On the other hand, boards would love to have that process finished and in place when school opened. The rules--

ASSEMBLYMAN RUSSO: Has that been in place for a long time?

MS. STRASSMAN: Since 1974 in the Galloway decision.

ASSEMBLYMAN ROMANO: That's a PERC decision.

MS. STRASSMAN: And a court decision.

ASSEMBLYMAN ROMANO: May I play the devil's advocate?

ASSEMBLYMAN RUSSO: Sure.

ASSEMBLYMAN ROMANO: Understandably why that decision was made that way, was because there is a tendency on the part of some employers not to put them up on the next step, but to save that money. When they finally have the execution of a contract, they have passed that year, if you will, and they have used that money. They have invested that money. They are working with someone else's money. I just say that on the other side.

ASSEMBLYMAN RUSSO: No, no, that's fine, because I know you have expertise in the area, too. I know that.

ASSEMBLYMAN ROMANO: I totally agree with what you are saying in terms of for the boards what it means, because once you give them the increase, then they say, "Well, we had that before. What is the new money increase?" I am well aware of that argument.

But on the other hand, you will recall those certain school districts that were holding the money -- okay? -- and they were investing the money and hoping for a delay in the negotiations with the court, only too happy to make back a few hundred thousand dollars in order to keep them all employed.

MS. STRASSMAN: I'm sure that that could happen, but it does--

ASSEMBLYMAN ROMANO: That is the other side of the coin. Go right ahead.

MS. STRASSMAN: Another factor that reduces the pressure on unions to settle early is the vagaries, if you will, of our court system in dealing with strikes. We all know that public employee strikes are illegal, and that boards of education will immediately try to bring teachers back to the classroom if they stage a strike, because even though strikes are illegal, they do occur; rarely, the system works on its own, but strikes will occur as a show of power.

When a board seeks to get the teachers back to work to provide a continuous education program, they must go to court. They seek an injunction, and then the entire issue falls into the hands of a judge -- of a local judge to decide how to proceed. Judges react very, very differently. Therefore, there is no consistency of penalty, if there is ever any penalty. When a judge makes a harsh decision, that decision-- Our history shows us that it will be reversed, either by a higher court or by a Governor. So there is a sense out there that teachers have the authority to strike, and that strikes can be used without consistent, expected, and assured penalties.

Boards of education find it very difficult to resist that kind of pressure, that kind of blackmail, at the bargaining table. Therefore, the threat of a strike -- and I have seen it happen as I assist boards of education-- The threat of a strike becomes a very powerful union strategy to get the board to reach into its pocket and agree to another percentage, a new benefit, just to get the kids into school, and just to get peace in the district, because boards are convinced that a strike is a very likely occurrence.

There, we would like to see the law changed, where penalties for strikes are consistent, even, predictable, and there to be counted upon.

ASSEMBLYMAN DeCROCE: You can't do it. Judges will always be flexible.

MS. STRASSMAN: Well, not if legislation prohibits that, as does New York's Taylor law.

ASSEMBLYMAN DeCROCE: We have legislation on our board which says that you can't strike, and they strike.

MS. STRASSMAN: We do not have legislation that says you cannot strike. It is common law; it is interpretation. What we believe is needed in New Jersey is a law not unlike New York's Taylor law, which charges every striking employee twice the daily salary for the time he or she is on strike, and imposes penalties on unions. Since New York State enacted that law, public sector strikes have been practically unknown in that State.

ASSEMBLYWOMAN BUSH: At one of our previous meetings, it was asked of someone who was testifying, "If you are asking on behalf of the school boards that more items be negotiable" -- which I believe you are-- Are you -- that more items are not established by State law or regulation, but may become negotiable?

MS. STRASSMAN: Items that relate directly to employees' terms and conditions of employment. We would firmly oppose any item that touches upon the determination of educational or operational policies which are currently illegal. Those should remain illegal.

ASSEMBLYWOMAN BUSH: Okay. If what you want is placed on the table, do you feel, then, that the teachers should also be given the right to strike?

MS. STRASSMAN: I don't see the connection in the two.

ASSEMBLYWOMAN BUSH: Well, I guess from sitting here I am seeing the connection that one side is saying they want more things to be negotiated, and from what I heard from the other side at the last meeting, they said, "Well, fine, if we do that, then we should also-- Everything should be up. If more things are going on the table to negotiate, there should also be the right to strike." That is what I heard as an argument before.

ASSEMBLYMAN RUSSO: That's right. The AFL-CIO said that -- the CWA said that. Excuse me -- well sort of both.

MS. STRASSMAN: I think this becomes the right to strike of public employees, as a real matter of public policy. Let's not connect it with money. Let's not connect it with scope of negotiations or with unfair practices. As legislators, I think it behooves you to ask yourselves: "Should public employees, who are charged to deliver a public service that the Legislature has mandated-- Should those employees have the power and the authority to interrupt this service?"

ASSEMBLYWOMAN BUSH: What you are asking, then, is for the Legislature, at the same time, not to mandate certain benefits that they should have, which also seems to become somewhat public policy by the fact that it is mandated. So you're saying to not mandate that, but to mandate the other.

MS. STRASSMAN: I would love for benefits not to be mandated. I recognize, however, the dichotomy that you see. Perhaps, then, what should happen if you decide there is a relationship and they should be mandated, is that the mandate should be reexamined every two years, every three years, rather than letting outdated laws, meaningless laws, stay in place.

But there is no relationship between benefits being mandated and the public policy.

ASSEMBLYWOMAN BUSH: Well, see, I would--

MS. STRASSMAN: Benefits can be negotiable. If they are negotiable, then they are left to the local parties.

ASSEMBLYWOMAN BUSH: Right. I am sure it would have to be by virtue of where you are sitting and who you are representing. It would have to somewhat color your views. But from where I am sitting trying to listen and absorb it all, and seeing the other people sitting here, I would tend to disagree with your argument.

MS. STRASSMAN: My only personal request, and I think my request as a member of the staff of the Association, is that you just consider all aspects.

ASSEMBLYWOMAN BUSH: Oh, I am. That is what I am saying that I am considering it all, which is why I am asking you the question and why I am being quite frank that I understand where you must represent--

MS. STRASSMAN: I think it is still a very basic issue as to whether you believe that services that are there to serve the public can be interrupted by employee -- by a private organization seeking only to improve money benefits, not the level of services.

ASSEMBLYWOMAN BUSH: Money benefits, employment, quality of life, people. I mean, that is what--

MS. STRASSMAN: What about the students?

ASSEMBLYWOMAN BUSH: Right, but I am saying that if we are going to take away from one-- You know, I can see the argument that if we are going to take away from one side, then there must also be a taking away from the other side -- a balance. What I am hearing is, "Well, give us the opportunity to negotiate all of this, but keep them there," you know. You are dealing with people and the quality of their lives, as you are also dealing with that education.

These are just questions that are coming into my mind, that probably you would not be able to answer now. But this is what is coming into my ear and into my thought processes.

ASSEMBLYMAN RUSSO: It's a good argument. What we are going to do is this--

ASSEMBLYWOMAN BUSH: Can we go home? (laughter)

ASSEMBLYMAN RUSSO: We would appreciate it if you would come back next time, because the NJEA will be here next time. I just imagine that they are going to have a different viewpoint on those issues. And we are going to have the Director of the Division of Pensions again. I would appreciate it if you could be here again, both of you, in the audience. Okay? It will be Tuesday at-- Also, Commissioner Cimino will be here.

MS. McMICHAEL: I thought you were doing (indiscernible) and the GMRC. That's out now?

ASSEMBLYMAN RUSSO: That is going to be changed because of the differences that happened today. Okay?

MS. McMICHAEL: All right, so it is Tuesday--

ASSEMBLYMAN RUSSO: So if you could just come back, only because of that. If you want to maybe sum up-- (no response)

It will be at 2:30 on Tuesday. Thank you.

(MEETING CONCLUDED)

APPENDIX

Legislative Viewpoint

NEW JERSEY STATE LEAGUE OF MUNICIPALITIES
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STATEMENT BY WILLIAM G. DRESSEL, JR.
ASSISTANT EXECUTIVE DIRECTOR
BEFORE THE ASSEMBLY SELECT COMMITTEE ON
CIVIL SERVICE AND EMPLOYEE BENEFITS
THURSDAY, APRIL 9, 1992

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU THIS MORNING TO SPEAK ON TWO ISSUES OF GREAT IMPORTANCE TO THE LEAGUE AND THE RESIDENTS OF OUR GARDEN STATE. SEATED BESIDE ME IS GERALD DORF, THE LEAGUE'S LABOR RELATIONS COUNSEL.

EARLIER THIS YEAR, GOVERNOR FLORIO SIGNED INTO LAW CHAPTER 382, WHICH CREATED A PERMANENT PENSION AND HEALTH BENEFITS REVIEW COMMISSION. THE LEAGUE OF MUNICIPALITIES APPLAUDED THIS ACTION AS IT REPRESENTED THE CULMINATION OF MANY YEARS OF STEADFAST LOBBYING EFFORTS.

WE HAVE ALWAYS BELIEVED THAT THE CONTINUAL INTRODUCTION OF PENSION AND HEALTH BENEFITS LEGISLATION DOES NOT ADDRESS THE PROBLEM AT ITS ROOT; BUT INSTEAD IS AN ATTEMPT TO OFFER SOLUTIONS TO HIGHLY COMPLEX AND TECHNICAL ISSUES IN A "PIECEMEAL FASHION." THIS RESULTS IN THE PASSAGE OF AN INORDINATE AMOUNT OF BILLS WITHOUT BENEFIT OF KNOWING THE LONG TERM FISCAL IMPACT.

A PENSION AND HEALTH COMMISSION WOULD PROVIDE THE PROPER SCRUTINY ACCOMPANIED WITH FULL ACTUARIAL DATA TO ACCURATELY DETERMINE THE TREMENDOUS IMPLICATION OF SUCH LEGISLATION. THE PENSION AND HEALTH BENEFITS REVIEW COMMISSION SHOULD BE VIEWED BY THE LEGISLATURE AS A

USEFUL "TOOL" OR RESOURCE AT ITS DISPOSAL TO GET AT THE FACTS AND DETERMINE WHETHER OR NOT A GIVEN PENSION OR HEALTH ENHANCEMENT IS IN THE BEST INTEREST OF THE EMPLOYEE, EMPLOYER AND THE TAXPAYER.

WE ASK YOUR HELP IN URGING THE GOVERNOR TO MAKE THE NECESSARY APPOINTMENTS TO GET THE COMMISSION STARTED ON ITS CHARGE.

THE SECOND ITEM CONCERNS BINDING ARBITRATION LEGISLATION. IT IS NO SECRET TO ANYONE FAMILIAR WITH LOCAL GOVERNMENT OPERATIONS THAT THE BINDING ARBITRATION SYSTEM IN THIS STATE IS ONE OF THE MOST COSTLY AND UNFAIR LAWS WITH WHICH STATE GOVERNMENT HAS BURDENED MUNICIPALITIES. OF PARTICULAR CONCERN TO MUNICIPAL GOVERNMENT IS THE ROLE OF THE ARBITRATOR AND THE NEED TO GIVE GREATER CONSIDERATION TO THE MUNICIPALITY'S ABILITY TO PAY.

MOREOVER, MUNICIPALITIES ARE FACED WITH THE REALITY OF OPERATING UNDER THE STATE IMPOSED BUDGETARY CAP. THUS, IT IS EXTREMELY DIFFICULT TO MEET THE DEMANDS OF SERVICE CONTRACTS WHICH AWARD INCREASED SALARIES FOR POLICE AND FIRE PERSONNEL. THE RESULTS OF THE LEAGUE'S SALARY SURVEY WILL ILLUSTRATE THAT THESE CONTRACT OBLIGATIONS FAR EXCEED THE 4.5% CAP MUNICIPALITIES MUST OPERATE WITHIN.

CURRENTLY, THERE ARE THREE (3) BILLS PENDING ON THE SUBJECT -- ASSEMBLY 836 SPONSORED BY ASSEMBLYMEN BILL PASCRELL AND DICK KAMIN, A-336 SPONSORED BY ASSEMBLYWOMAN MAUREEN OGDEN, AND A-1059 SPONSORED BY ASSEMBLYMAN FRANK CATANIA. THE LEAGUE FULLY SUPPORTS THESE COMMON SENSE MEASURES AS THEY ATTEMPT TO BRING SOME MODIFICATION TO THE INTEREST ARBITRATION LAW.

NOW, I WOULD LIKE TO INTRODUCE GERALD DORF WHO WILL AMPLIFY FURTHER ON ASPECTS OF CIVIL SERVICE REGULATIONS AND HEALTH BENEFIT PROVISIONS THAT WE BELIEVE REQUIRES YOUR CONSIDERATION. MR. DORF...

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M E M O R A N D U M

TO: ASSEMBLYMAN DAVID C. RUSSO, CHAIRMAN and MEMBERS OF THE ASSEMBLY SELECT COMMITTEE ON CIVIL SERVICE EMPLOYEE BENEFITS

FROM: GERALD L. DORF, ESQ., LABOR RELATIONS COUNSEL NEW JERSEY STATE LEAGUE OF MUNICIPALITIES

DATE: APRIL 9, 1992

RE: COMMITTEE MEETING - APRIL 9, 1992

My name is Gerald L. Dorf and I am the President of a law firm located in Rahway, New Jersey, which represents private and public sector employers in labor and employment matters. Since 1973, I have been Labor Relations Counsel to the New Jersey State League of Municipalities and in addition I am the the Management Member of the Public Employment Relations Commission Appeal Board.

In the interests of time and your full agenda, I am outlining below five (5) areas of concern for your review and consideration.

A. BACKGROUND

The New Jersey Employer-Employee Relations Act (PERC Law) was adopted by the Legislature in 1968 and augmented by the Interest Arbitration Law in 1977 which provides for compulsory arbitration of labor disputes in public fire and police departments. Prior to the adoption of the PERC Law, some public sector collective bargaining existed in the State. However, the adoption of the legislation energized public employees into expanded organization efforts so that now there are more than 3,500 bargaining units in New Jersey with approximately 900 police and fire negotiating units.

Of major concern to the League and the municipalities of this State is the spiraling labor and labor-related costs which continue to escalate at two and three times the rate of the private sector with no apparent diminution in sight. For example, while private sector wage increases in New Jersey and elsewhere are at or below an average of 3%, we are all aware that public sector increases far exceed that figure by at least double. Furthermore, certain "roll up" costs continue to escalate as these costs are based upon wage rates and rise as wage rates rise. These include, but are not limited to, costs of vacations, holidays, other days off, sick leave, overtime, pensions, etc.

Finally, as will be detailed below, there are a number of "mandated" minimum benefits provided by statute which do not give the employer the opportunity to negotiate below that level and which become a base for further union demands and gains. These include for municipalities, vacations and sick leave as well as uniform employer payments of health benefits in the New Jersey State Health Benefits Program.

B. SICK LEAVE

N.J.S.A. 11:24A-3 provides for municipal and other employees sick leave of not less than 1 workday for every month of service during the remainder of the first calendar year of service following permanent employment and 15 working days in every calendar year thereafter. The average number of sick days granted in the private sector is approximately five or six and that is about the number of days which are actually taken on average by private sector employees. It would therefore appear that the minimum mandated number of sick days by statute is excessive at worst and at best should be amended to give the public employer the opportunity to negotiate a lesser benefit by perhaps setting a minimum significantly lower, if indeed there should be any minimum.

C. VACATIONS

N.J.S.A. 11:24A-1 provides for municipal employees among others for annual vacation as follows: up to 1 year of service, 1 working day's vacation for each month of service; after 1 year and up to 10 years of service, 12 working days vacation; after 10 years and up to 20 years of service, 15 working days vacation; and after 20 years of service, 20 working days vacation.

A statutory amendment here eliminating the minimum proviso would again enable the public employer to negotiate on the subject and not be bound to any minimum standard set forth by statute.

D. HEALTH BENEFITS

N.J.S.A. 52:14-17.25 *et seq.* is the New Jersey State Health Benefits Program Act. Many municipalities have opted to provide health benefits for their employees through this Program while some, after having joined, have later elected to leave the Program.

The concerns which municipalities have regarding the Program include the fact that the Major Medical deductible is extremely modest and indeed in this year of rising medical costs, probably totally unrealistic, and the fact that employers must cover all of their municipal employees under the Plan (or none) and pay the total cost. Without a doubt, negotiations over cost containment due to the rising costs of medical care is one of the most important and controversial collective bargaining issues of this decade. By amending the Act to permit municipal and other local employers to negotiate with their employees regarding cost sharing and to include some but not necessarily all employees in the Program (depending on what is negotiated with employee unions) would provide for greater flexibility and perhaps enable some municipalities to join the Program which are now hesitant to do so.

E. DISCIPLINE

N.J.S.A. 11A:2-20 provides that except in certain circumstances the appointing authority may not impose a suspension or fine greater than six months. While on its face this would appear to be a reasonable provision, in practical operation it has proven to be cumbersome and unrealistic. Problems have arisen over the years in circumstances where, for example, an employer has terminated an employee and the matter has been adjudicated. In some instances, for example, an administrative law judge (or the courts) has ordered the employee reinstated after having determined that the termination was excessive discipline.

Unlike a decision by an arbitrator where the arbitrator may reinstate with no back pay, the administrative law judge and the courts have been limited by the fact that the employee is to be reinstated and can suffer no more than a six months loss of pay by virtue of the statutory language. Since in many cases even with the most expeditious handling of the matter, a discipline case is likely not be resolved for one or two years, the employer may be required to pay a significant amount of back pay. By removing the six month limitation, the administrative law judge or the courts can fashion whatever remedy they deem appropriate.

F. <u>INTEREST ARBITRATION</u>

There are presently three (3) bills pending in the New Jersey State Assembly to amend the Interest Arbitration for public fire and police departments as follows:

1. Assembly Bill No. A-836 sponsored by Assemblymen William J. Pascrell and C. Richard Kamin.

2. Assembly Bill No. A-1059 sponsored by Assemblyman Frank Catania.

3. Assembly Bill No. A-336 sponsored by Assemblywoman Maureen B. Ogden and Assemblyman Richard H. Bagger.

On January 10, 1992, the New Jersey State Assembly by 41 to 8 passed 1991 Assembly Bill No. A-5274 sponsored by Assemblyman Pascrell with co-sponsors Zangari and Kalik. This Assembly Bill was not acted upon by the Senate before the expiration of the term of the Legislature in mid-January 1992. The 1992

Assembly Bill No. 836 is substantively the same as the previous bill.

All of the pending Bills are concerned with financial impact on municipalities and impose certain restrictions upon the arbitrator in rendering his award.

4. The Pascrell and Ogden Bills would specifically prohibit or limit an arbitrator from making an award which exceeds the percentage increase permitted by the local budget cap established pursuant to Public Law 1976 (Chapter 68) N.J.S.A. 40A:4-45.1 *et seq.*

5. The Catania Bill refers to the budget cap more tangentially and requires arbitrators to place greater weight upon financial impact on a municipality if tax ratables and outside financial assistance have substantially changed or if the municipality has had to substantially reduce other expenses in order to maintain police and firefighter salaries and comply with the budget cap requirements.

6. Taken together the Pascrell, Ogden and Catania Bills merit the support of municipalities and the Legislature since they address the proper role of the interest arbitrator, provide for perhaps a more neutral selection process and take into considerably greater account the interests of the taxpayer.

NEW JERSEY STATE LEAGUE OF MUNICIPALITIES

407 WEST STATE STREET, TRENTON, N.J. 08618 :: (609) 695-3481

JOHN E. TRAFFORD, *Executive Director* WILLIAM G. DRESSEL, JR., *Asst. Executive Director*

Testimony League Pension Committee

ABUSE, MISUSE OR MISUNDERSTANDING

Presented to:

Assembly Select Committee

Civil Service Committee

Health Benefits Committee

April 9, 1992

Submitted by:

William G. Dressel

L. Mason Neely

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April 9, 1992

It is my pleasure to spend this time with you. I want to use two factual matters to illustrate points which this Committee and the Legislature at a whole will be able to address.

The examples have recently been reported by both the Trenton Times on Monday, February 24, 1992 and most recently by the Home News on Sunday, April 5th. You will find copies of both articles attached for your reference. The articles basically deal with the question of police salaries and binding arbitration. Municipal officials are held hostage by legislation and as a result significant salary increases have resulted. This testimony is not to repeat the newspaper, but to build from their data. The following table was reported in the Home News on April 5, 1992 and demonstrated the entry level salaries for a police officer in 1986 and in 1992. I want to take the results of those salaries and demonstrate the pension impact that will result.

How much does a police officer make?

Town	A rookie in '86	Their salary today	% of municipal budget for public safety wages
CRANBURY	$22,000	$43,507	12%
EAST BRUNSWICK	$27,710	$47,583	19%
EDISON	$21,295	$52,251*	19%
FRANKLIN	$20,000	$42,128	18%
HIGHLAND PARK	$17,500	$42,682	28%
JAMESBURG	$20,000**	$37,269	28%
METUCHEN	$20,000	$40,388*	18%
MILLTOWN	$14,469	$34,996*	15%
MONROE	$17,000	$39,019	29%
NEW BRUNSWICK	$18,074	$45,578	15%
NORTH BRUNSWICK	$19,138	$45,800	24%
OLD BRIDGE	$20,066	$45,900	22%
PISCATAWAY	$26,000	$45,000	17%
SAYREVILLE	$25,137	$46,073	19%
SOUTH AMBOY	$20,335	$43,004	20%
SOUTH BRUNSWICK	$20,751	$44,123	18%
SOUTH RIVER	$16,130	$37,800	18%
SPOTSWOOD	$20,539	$38,203*	26%

Salaries listed are for patrolmen & patrolwomen and do not include rates for higher-ranking officers
**1987 figure

Source: municipal records & budgets

The Home News

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The next table delineates individuals retiring this year. One is a patrolman and two are superior officers. These individuals are members of the Police and Fire Retirement System (PFRS) and in 1989, against the League of Municipalities strong objections enhanced benefits were provided to members of the PFRS at the cost to local property tax dollars. The League testified the cost would be $2.7 billion dollars and the Office of Legislative Services discounted the League's position. Subsequent, empirical research demonstrated that the League was correct.

1992 Actual

	Current Age	Current Salary	65% Pension	Total Pension
KT - PBA	53	$62,102	$40,366	$ 973,783
CL - SOA	47	$65,932	$42,856	$1,292,412
GM - SOA	46	$74,262	$48,270	$1,640,547

Note Table I lists three examples, their current salary, the pension entitlement annuitized and their age. The current mortality tables used for determining pension liability are the 1989 Mortality Tables and the average life expectancy of police officer retiring is 74 years of age. The individuals shown below will in fact receive a pension subject to cost of living adjustments. As one can see, each individual is retiring with a guaranteed annuity greater than one million dollars. These individuals also are entitled to Social Security payments from age 65 until age 74 which is an additional nine years at a minimum of $12,000 when accumulated over nine years adds an additional $108,000 to their pension guarantee. It can be stated almost unequivocally that every member of the Police and Fire Retirement System actively working today will retire as guaranteed millionaires.

Tables 2 and 3 build upon the information contained in the Home News article comparing the salaries of 1986 and one who would join in 1992. The average individual joining the police force throughout the State today is between 18 and 21 which means that they will be able to retire with a full pension at age 45. This means on average they will receive a pension payment for additional 29 years after retirement. Pension payments are subject to cost of living adjustments and for the inflation factor, I assumed 2.5% which means that after the third year of annuity they would receive an adjustment 1.5% to their base pension. The numbers speak for themself and demonstrate that all of these officers are no longer simply millionaires but in fact are going to retire at guarantees greater than two million. This assumption is a very simply assumption because I have assumed that none of these rookies will be promoted to sergeant or superior officer. I have simply kept them at a minimal 3.5% increase over their 25 years of active service. The fact is that many of them will in fact be promoted and they will retire will pension guarantees of greater than two million and closer to three million when Social Security is considered with arbitration.

ROOKIE COP IN 1986

Town	1986 Salary	25 Year Salary	65% Pension	Pension 29 Yrs. Later	Total Pension Benefit
Cranbury	22,000	50,233	32,652	48,808	1,158,527
East Brunswick	27,710	63,271	41,126	61,475	1,459,217
Edison	21,295	48,623	31,605	47,244	1,121,401
Franklin	20,000	45,667	29,683	44,371	1,053,206
Highland Park	17,500	39,958	25,973	38,824	921,556
Jamesburg	20,000	45,667	29,683	44,371	1,053,206
Metuchen	20,000	45,667	29,683	44,371	1,053,206
Milltown	14,469	33,037	21,474	32,100	761,942
Monroe	17,000	38,817	25,231	37,715	895,225
New Brunswick	18,074	41,269	26,825	40,098	951,783
North Brunswick	19,138	43,698	28,404	42,458	1,007,813
Old Bridge	20,066	45,817	29,781	44,517	1,056,682
Piscataway	26,000	59,367	38,588	57,682	1,369,168
Sayreville	25,137	57,396	37,307	55,767	1,323,722
South Amboy	20,335	46,431	30,180	45,114	1,070,848
South Brunswick	20,751	47,381	30,798	46,037	1,092,754
South River	16,130	36,830	23,940	35,785	849,411
Spotswood	20,539	46,897	30,483	45,566	1,081,590

ROOKIE COP IN 1992

Town	1992 Salary	25 Years Salary	65% Pension	Pension 29 Yrs. Later	Total Pension Benefit
Cranbury	43,507	99,341	64,572	96,521	2,291,092
East Brunswick	47,583	108,648	70,621	105,564	2,505,736
Edison	52,251	119,306	77,549	115,920	2,751,554
Franklin	42,128	96,192	62,525	93,462	2,218,474
Highland Park	42,682	97,457	63,347	94,691	2,247,648
Jamesburg	37,269	85,097	55,313	82,682	1,962,597
Metuchen	40,388	92,219	59,942	89,602	2,126,845
Milltown	34,996	79,907	51,940	77,640	1,842,900
Monroe	39,019	89,093	57,911	86,565	2,054,753
New Brunswick	45,578	104,070	67,645	101,116	2,400,152
North Brunswick	45,800	104,576	67,975	101,609	2,411,842
Old Bridge	45,900	104,805	68,123	101,830	2,417,109
Piscataway	45,000	102,750	66,787	99,834	2,369,714
Sayreville	46,073	105,200	68,380	102,214	2,426,219
South Amboy	43,004	98,192	63,825	95,406	2,264,604
South Brunswick	44,123	100,747	65,486	97,888	2,323,531
South River	37,800	86,310	56,101	83,860	1,990,560
Spotswood	38,203	87,230	56,699	84,754	2,011,782

Reported by the most recent pension valuation conducted for the Division of Pensions, there were 35,653 active members in the Police and Fire Retirement System as of June 30, 1991. Another way of stating is that we have driving around in our police cars 35,000 millionaires who may or may not realize how wealthy they are. The point is local property taxpayers are going to have to fund these retirement benefits. In January of 1992, Senate bill No. 3771 was introduced on January 9th. It was passed both the Senate and the Assembly and sent to the Governor by January 13th and he returned it on the 13th with suggested recommended language. It was again passed by both houses on the 13th and sent to the Governor. The Governor signed the legislation on the January 17, 1992 creating Chapter 414 Public Laws of 1991. This new law takes 10% of the assets of the Police and Fire Pension System and provides below market mortgage rates to a select group of millionaires. The below rate of interest provided for mortgages to these millionaires will be subsidized. Local property taxpayers will have to make up the difference between the assumed rate of earnings on the pension funds and that actually paid by the mortgage.

This issue is further exacerbated by the current proposal submitted by Governor Florio when he suggests changing the method of valuing pension assets. The proposal is to value pension assets based upon market value rather than book value. This concept the League endorses. As part of that proposal, the State Treasurer would change the assumed earning rates to be realized from the current 7% to 8.75%. The concept is acceptable, but not if one is going to tie the hands of the Division of Investments which Chapter 414 Public Laws of 1991 does. Taking 10% of the Police and Fire assets and issuing them in below market rates to a select group of millionaires is poor public policy.

The proposed rules and regulations drafted by the Department of Treasury for implementation of Chapter 414 are silent as to the IRS tax implication for a qualified pension plan. If my understanding is correct a qualified pension plan can not permit a party of interest receive more than 1/2 of their present value vested accrued benefit or not to exceed $50,000 limit as a special benefit. Yet, the proposed regulations would permit mortgages to be issued up to an amount of $202,300 for a single family home or condo and for a two family home up to $258,800. Has the IRS issue been addressed?

The proposed rules and regulations also state that 25% of the mortgages will go to first time homeowners but the balance 75% can be used for refinancing, upgrading or buying investment income such as two family homes at below market rates ie. further subsidy through the pension system for a select group.

The public policy questions should be addressed:

1. Does 414 meet the Internal Revenue requirements for a qualified pension plan?

2. Is it good public policy to use taxpayer assets to provide below market interest rates to some of the highest paid public servants in the State?

3. Is it reasonable to be considering a proposal to revalue pension systems utilizing a 8.75% assumed earning rate when one has taken 10% of the assets and locked them into long term mortgages at below market rates?

Indirect Costs:

A second illustration comes from page K-1 of the Governor's budget. In 1979, the Uniform Construction Code was adopted to provide uniform standards Statewide so developers would have no problem moving from one community to the next and understanding the standards. To provide training, the State adopted a surcharge of .0006 to provide training for local subcode officials and permit uniform enforcement. Instead of providing training, those funds have been used for employees and transfer money to areas of the Department of Community Affairs. The fee as reported in the budget of .0006, is in fact .0016 which represents a 166.6 percent increase. Training fund provided new regulations which now require every municipality to have an elevator subcode official. As of July 1, 1992, every community must have a certified elevator and escalator subcode official. Along with the new requirement for additional personnel is a $50.00 registration fee. This registration fee, new requirements for personnel and fees for inspecting have now been added to the Uniform Construction Process. The costs are simply piled on to local governments to fund the additional State operations. To the best of my knowledge, there have been no deaths resulted from collapsed or failed elevators in the State in the last year. The system used prior to the new elevator subcode requirement was in existence for the last ten years. Twice a year elevator devices and escalators were certified to the local community as being safe and complying with requirements. Those certifications for some reason are no longer adequate and we now have a new criteria. In November of 1991, I asked the Bureau of Code Services for justification and a copy of the feasibility study demonstrating the need for the elevator fee. I received a response on November 18th, the elevator subcode rules were promulgated to insure public safety through a comprehensive elevator safety inspection program. There appears to have been no feasibility, no further justification and simply new fees established. Elevator safety may well be a real issue and one that goes beyond my current understanding. The purpose of my testimony today is not necessarily to criticize the elevator fee or the surcharge. The real issue is that everytime local government is mandated to employ new people. We are obligated to provide them with employment, pension benefits and medical benefits. There are indirect costs which will have long term implications.

In closing, we want to reiterate the importance of the newly created Pension and Health Benefit Review Commission. Since 1982 the League of Municipalities has recommended this concept recognizing that inequities exist and at the same time realizing abuse is taking place. On behalf of the League of Municipalities, we thank you for the opportunity to present our concern simply as illustrative points of a broader concern. To that extent, we look forward to working with the Governor and the Legislature through full implementation of the Pension and Health Benefits Review Commission and the legislative process.

ATTACHMENT I

IRS QUALIFIED PENSION PLAN,
LAW, RULES AND REGULATION

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

RIN 1210-AA09

Loans to Plan Participants and Beneficiaries Who Are Parties in Interest With Respect to the Plan

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation under the Employee Retirement Income Security Act of 1974 (the Act or ERISA) relating to loans from employee benefit plans to plan participants and beneficiaries who are parties in interest with respect to the plan. The regulation is intended to clarify the scope of section 408(b)(1) of the Act, and to define certain terms used therein. Section 408(b)(1) provides an exemption from certain prohibitions of section 406 of the Act for loans to plan participants and beneficiaries. The regulation will affect employee benefit plans, their sponsors and fiduciaries, and participants and beneficiaries engaging in such loan transactions.

EFFECTIVE DATE: The regulation will be effective for all participant loans granted or renewed after October 18, 1989, except that § 2550.408b-1(d)(2), which relates to the specific plan provisions requirement of section 408(b)(1)(C) of the Act, is effective for participant loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-9141; or Deborah S. Hobbs, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523-8671. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On January 22, 1988, the Department of Labor published a proposed regulation at 53 FR 1798 which is intended to provide guidance on the scope of the statutory exemption under section 408(b)(1) of the Act, relating to loans from ERISA-covered employee benefit plans to plan participants and beneficiaries. The Department received over 200 comments in response to the proposal, and conducted a public hearing on the proposed regulation on April 25, 1988. The following discussion summarizes the proposed regulation and the major issues raised by the commentators and explains the Department's reasons for adopting the final regulation.

Background

Section 408(b)(1) of the Act provides a statutory exemption which permits a plan fiduciary within the meaning of 3(21)(A) of the Act to make loans from the plan to plan participants and beneficiaries. In the absence of an exemption, such transactions would be prohibited under section 406 of the Act. Specifically, section 406(a)(1)(B) prohibits a plan fiduciary from engaging in the direct or indirect lending of money to parties in interest to the plan such as themselves or other fiduciaries, plan participants, or employers whose employees are covered by the plan; section 406(b) also prohibits a plan fiduciary from engaging in transactions on behalf of the plan in which he has a conflict of interest. The final regulation 29 CFR 2550.408b-1 defines the scope of the exemption and the specific conditions contained therein.

Under section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), the Secretary of Labor has the authority to promulgate regulations for section 4975(d)(1) of the Internal Revenue Code (the Code), a parallel provision to section 408(b)(1) of ERISA. Therefore, unless otherwise specified, all references herein to section 408(b)(1) of the Act apply also to section 4975(d)(1) of the Code.

Discussion

A. Scope of the Regulation

Proposed regulation paragraph 2550.408b-1(a)(1) set out the terms of section 408(b)(1) of the Act under which participant loans are permitted. Specifically, the proposed regulation stated that the relief provided under section 408(b)(1) is available if loans made by a plan to participants and beneficiaries who are parties in interest with respect to the plan (A) are available to all such participants and beneficiaries on a reasonably equivalent basis; (B) are not made available to highly compensated employees, officers, or shareholders [1] in an amount greater than the amount made available to other employees; (C) are made in accordance with specific provisions regarding such loans set forth in the plan; (D) bear a reasonable rate of interest; and (E) are adequately secured. The proposal made it clear that participant loan transactions that meet these criteria will not violate section 406(a) of the Act (which prohibits fiduciaries from engaging in certain transactions with parties in interest), section 406(b)(1) of the Act (which prohibits a fiduciary from dealing with plan assets in his own interest or for his own account) or section 406(b)(2) of the Act (which prohibits fiduciaries in their individual or in any other capacity from acting in any transaction involving the plan on behalf of, or representing a party whose interests are adverse to those of the plan, its participants, or its beneficiaries).

Proposed § 2550.408b-1(a) clarified that fiduciaries who are plan participants are permitted to receive loans under a participant loan program. Because the Department received no unfavorable comments on this paragraph, it has been adopted as proposed.

The Department notes, however, that the exemption encompasses certain transactions in which the potential for self-dealing by fiduciaries exists and in which the interests of fiduciaries may conflict with the interests of participants. To guard against potential abuses, the Department will subject loans to fiduciaries to special scrutiny to assure that the conditions of the regulation are met. In this regard, the regulation is designed to assure that participant loan programs are operated under strict objective criteria. Accordingly, the regulation specifically requires that a fiduciary may only receive a loan from a plan if: (1) The program is administered under strict objective criteria which assure the equitable availability of the assets committed to the program among qualified participants, and (2) the borrowing fiduciary does not receive more favorable consideration or terms than other plan participants requesting a loan. As did the proposal, the final regulation also states that section 408(b)(1) of the Act will not exempt transactions violating the provisions of section 406(b)(3) of the Act. Such a transaction is a separate transaction not covered by section 408(b)(1).

Proposed § 2550.408b-1(a)(3) made clear that a loan will not be exempt under section 408(b)(1) unless it is arranged and approved by the fiduciary administering the loan program

[1] Section 1114(b)(15)(B) of the Tax Reform Act of 1986 (Pub. L. 99-514) amended section 408(b)(1)(B) by deleting the phrase "highly compensated employees, officers, or shareholders" and substituting the phrase "highly compensated employees (within the meaning of section 414(q) of the Internal Revenue Code of 1986)." Thus, § 2550.408b-1(a)(1) contains a provision reflecting the statutory amendment.

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primarily in the interest of the participants and such loan otherwise satisfies the conditions set forth in section 408(b)(1) of the Act. For example, the section 408(b)(1) exemption does not provide relief for loan programs which grant loans only to employees who agree to apply the loan proceeds for the benefit of some other party in interest, such as the employer. [2] However, in the absence of any inappropriate precondition or other facts and circumstances indicating that the loan program is not administered primarily for the benefit of the participants, the proposal contained no restrictions on the uses that plan participants may make of the loan proceeds. In this regard, one commentator urged that the regulation specifically prohibit participant loan proceeds being reloaned to the employer because of the great potential for coercion of employees without such a limitation.

While the Department acknowledges that a potential for employer coercion may exist under the proposed regulatory scheme, it believes that any benefit which might be gained by imposing a strict prohibition against the subsequent use by or transfer to a party in interest of a participant loan would be far outweighed by the practical problems such a prohibition would create for the fiduciary administering the loan program, *e.g.*, the monitoring by the administering fiduciary of the actual subsequent use of the proceeds of each loan by each participant.

As explained by Example (3) of § 2550.408b-1(a)(4), a loan program may meet all the conditions of section 408(b)(1) so that the loans will be exempt under that section, and yet if the employer exerts pressure on participants to borrow funds and reloan the proceeds to him, that coercion will be viewed by the Department as a separate transaction violative of Code section 4975(c)(1)(D) that is not exempt under ERISA section 408(b)(1) or Code section 4975(d)(1). As illustrated by that example, the employer would be liable for the excise taxes under Code section 4975. In this regard, the Department also notes that section 511 of ERISA makes it unlawful for a person to coerce a participant for the purpose of interfering with a right he has under a plan. In contrast, where a participant has taken out a plan loan and by exercising his unfettered discretion has transferred the proceeds to a party in interest, the final regulation, as did the proposal, contains no restrictions on the use of the loan proceeds.

In the event of a default on a participant loan, the preamble to the proposed regulation stated that the relief provided by section 408(b)(1) necessarily includes the foreclosure on, or sale or disposal of, a plan's security interest by a fiduciary. The Department stressed, however, that the section 408(b)(1) exemption does not extend to the sale or disposal of the security interest to a party in interest and further cautioned that, in circumstances other than default, the transfer of property by a party in interest in repayment of a participant loan will be viewed as a prohibited sale or exchange of property between a plan and a party in interest under section 406 of the Act.

One commentator queried why a sale of collateral on default to a party in interest must be prohibited. In response, the Department notes that Congress strictly delimited the exemptive relief provided by section 408(b)(1) to the otherwise prohibited transaction of a loan of plan assets from a plan to a party in interest who is either a participant or beneficiary of that plan. There is no evidence in either the statute or legislative history of a Congressional intent to exempt any other prohibited transaction—such as a sale of the plan security upon participant default to a party in interest—which may flow from, but is not a necessary result of, the loan transaction. It is the position of the Department that the sale of collateral upon default to a party in interest would constitute a separate prohibited transaction not described in section 408(b)(1).

As explained in the proposal, it is the Department's position that the exemption under section 408(b)(1) applies only to *bona fide* loans. If a loan is made with the understanding that the borrower has no intention to repay, the transaction would not be considered a participant loan for purposes of the relief provided by section 408(b)(1), but would merely constitute a transfer of plan assets to or for the benefit of a party in interest in violation of section 406(a)(1)(D) of the Act and section 4975(c)(1)(D) of the Code. Whether any particular loan satisfies the requirements of section 408(b)(1) will be determined based on all the facts and circumstances of the transaction. [3] The Department received no substantive comments in this area, and, accordingly, the Department has retained its position as proposed.

Commentators also sought clarification as to the extent of fiduciary liability in administering a loan program with respect to both the general statutory requirement of diversification and the specific requirement of section 408(b)(1) that loans be made available on a reasonably equivalent basis. It was requested that the final regulation specifically limit the liability of all plan fiduciaries other than the fiduciary responsible for administering the loan program. In this regard, one commentator suggested that the regulation should be amended to clarify that the administration of a loan program is not a trustee responsibility under section 405(c)(3) of ERISA for the following reasons: (1) Participant loan programs are usually administered by a loan committee and not by the plan trustee(s), and (2) participant loans are regarded as an incidental plan benefit, and as such should not be considered as involving management of plan assets.

The Department notes that the exemption provided by 408(b)(1) provides relief from the prohibited transaction rule of section 406 of the Act but not the fiduciary responsibility rules set out in sections 404 and 405. In this regard, Congress stated that all statutory exemptions from the prohibited transaction rules are:

> To have no effect with respect to the basic fiduciary responsibility rules requiring prudent action, diversification of investments, and actions exclusively for the benefit of participants and beneficiaries, etc. [4]

Because the administration of a participant loan program is the management of plan assets, fiduciary conduct with respect to administration of a loan program must conform to the rules governing all other transactions involving plan assets, although plans are free to allocate fiduciary responsibility in this regard to the extent permitted by section 405(c) of the Act.

Lastly, the Tax Reform Act of 1986 amended section 408(d) of the Act to give the Department the authority to

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[2] Example (6) of § 2550.408b-1(a)(4) of the final regulation indicates, however, that a loan program will not fall outside the scope of the regulation merely because the program, by its express terms, limits loans to certain stated purposes, *e.g.*, hardship, medical or college education, which are not inconsistent with the interests of plan participants and beneficiaries. Any such limitation, however, must also meet the requirement of § 2550.408b-1(b)(1) that loans under the program be available to participants and beneficiaries on a reasonably equivalent basis.

[3] The Department does wish to note that, in its opinion, the fact of a subsequent default will not, in itself, cause the Department to treat the loan as one which was entered into with no intention to repay.

[4] H.R. Rep. No. 1280, 93rd Cong., 2d Sess. at 310-11 (1974) [hereinafter Conf. Rpt.], *reprinted in* Subcomm. on Labor, Senate Comm. on Labor and Pub. Welfare, Legislative History of the Employee Retirement Income Security Act of 1974, 4577-78 (Comm. Print 1976) [hereinafter Legis. Hist.].

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grant administrative exemptions under section 408(a) to permit owner-employees to participate in participant loan programs. In this regard, several commentators suggested that the Department utilize its authority and grant a blanket exemption in this regulation from the prohibited transaction rules for owner-employees. The Department has determined that such an exemption is beyond the scope of this regulation, which relates solely to the statutory relief provided by section 408(b)(1). [5] However, consideration will be given to individual requests for relief in this area in accordance with established procedures. (See ERISA Proc. 75-1, 40 FR 18471, April 28, 1975). [6]

B. Reasonably Equivalent Basis

Under section 408(b)(1)(A) of the Act, the 408(b)(1) exemption applies only if the loans are available on a reasonably equivalent basis to all participants and beneficiaries of the plan. Consistent with the legislative history of this provision, proposed § 2550.408b-1(b) required that such loans be made available to all plan participants and beneficiaries without regard to an individual's race, color, religion, age, sex or national origin, while permitting a plan to consider factors which would be considered in a normal commercial setting by an entity in the business of making similar loans, *e.g.*, the applicant's creditworthiness.[7] Also consistent with the legislative history, the Department indicated that a plan could consider financial need in determining loan availability.[8]

Finally, the proposal stated that both the form and operation of the participant loan program will determine whether, in actual practice, loans are unreasonably withheld from any applicant. As the proposed examples (1) and (2) at § 2550.408b-1(b)(2) illustrated, the proposed regulation would prohibit the practice of applying different terms to different loan applicants, *e.g.*, offering lower interest rates to certain applicants without a commercial justification or informally restricting access to loans to certain participants. The proposal also indicated that under particular facts and circumstances, loan programs which have uniformly applied loan requirements but which in operation exclude large numbers of plan participants from receiving loans under the program may be found to have failed to make loans available to all participants on a reasonable equivalent basis. *See, e.g.*, § 2550.408b-1(a)(4), Example (8), and § 2550.408b-1(b)(2), Example (3).

The Department received a number of comments asking whether loan programs that exclude all but active employees from participation would be considered to be providing loans on a reasonably equivalent basis. In this regard, it is the position of the Department that such an exclusion is not justifiable because the statute provides, without condition, that section 408(b)(1) applies to loans that, *inter alia*, are available to *all* participants and beneficiaries on a reasonably equivalent basis. It should be noted, however, that these regulations are intended to be sufficiently flexible to accommodate differing treatment of loan applicants based on valid economic differences which may exist between active employees and other participants and beneficiaries and which commercial lenders in the business of making similar types of loans legally recognize for purposes of loan availability. Thus, participants and beneficiaries other than active employees may be offered loans on different terms and conditions where such terms and conditions are based solely on factors that are legally considered by commercial entities in the business of making similar loans.

Several commentators requested clarification concerning the reference in the proposed regulation to creditworthiness as the type of commercial factor that plans could consider in granting loans. These commentators expressed concern that § 2550.408b-1(b)(1)(ii) might be read as requiring plans to consider each applicant's creditworthiness in order to meet the requirements of the regulation. As a point of clarification, consideration may be given to individual creditworthiness if the plan is so designed; however, the final regulation does not require that a program be so designed. In this regard, the Department reiterates that the fiduciary administering the loan program must do so in such a way as to comport with the general fiduciary responsibilities of ERISA, *e.g.*, the provisions of section 404. Therefore, based on the facts and circumstances of any particular loan program, the administering fiduciary must decide what factors need to be taken into consideration in order to administer that particular program prudently.

Other commentators questioned whether minimum or maximum loan amounts, or required minimum account balances were permissible under this section. Commentators suggested that minimum loan amounts were necessary because of the administrative cost of processing loans, and many asked that the regulation provide a "safe harbor" minimum loan amount. One commentator questioned whether a plan could, consistent with the requirement that loans be available on a reasonably equivalent basis, charge fees for processing, and contract out and charge borrowers for loan administration. Several commentators queried whether loans are available on a reasonably equivalent basis where the loan program restricts accounts from which loans can be made.

None of these limitations and conditions necessarily contravene the conditions of section 408(b)(1) of the Act or the provisions of this regulation. Such limitations, however, would have to be examined to determine whether in practice (1) the limitation is the basis for loans being unreasonably withheld from any applicant, and (2) the loan program, through such limitation, excludes large numbers of plan participants from receiving loans under the program, thereby raising the issue of whether the program meets the requirement of section 408(b)(1)(B) of the Act and § 2550.408b-1(c) of the regulation.

In general, the Department does not believe that it is feasible to set a "safe harbor" with regard to permissible limitations in the areas mentioned above. However, based on the comments received and the testimony given concerning the proposal, it appears that many participant loan programs currently require a minimum loan amount due to administrative cost. Thus, in this regard, the Department has amended the regulation by adding § 2550.408b-1(b)(2) which provides that a participant loan program will not fail the requirements of §§ 2550.408b-1 (b)(1) or (c) if the program establishes a minimum loan amount of up to $1000, provided that the loans granted by the program meet the requirements of § 2550.408b-1(f) concerning adequate security.

C. Highly Compensated Employees

Section 408(b)(1)(B) states that the relief provided in section 408(b)(1) is available only if participant loans are not made available to highly compensated employees, officers, or

[5] The Department notes that section 408(d), while amended to permit exemptions under section 408(a), specifically provides that the statutory relief under 408(b)(1) is not available to owner-employees.

[6] On June 28, 1988, the Department proposed a new prohibited transaction exemption procedure which the Department intends to finalize in the immediate future. (53 FR 24422).

[7] Conf. Rpt., *supra* at 311, *reprinted in* Legis. Hist., *supra*, at 4578.

[8] *Id.*

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shareholders [9] in an amount greater than the amount made available to other employees. With regard to this provision, the legislative history indicates a Congressional intent to allow plans to lend the same percentage of a person's vested benefits to participants with both large and small amounts of accrued vested benefits, or to lend the same dollar amounts if security other than the vested benefit is provided. *See* Conf. Rpt., *supra*, at 312; Legis. Hist., *supra*, at 4579. In light of the expressed Congressional intent, proposed § 2550.408b–1(c)(2) stated that a participant loan program would not fail to meet this requirement merely because the plan documents specifically governing the participant loan program set forth either (i) a maximum dollar limitation, or (ii) a maximum percentage of vested accrued benefit which no loan may exceed. If the second alternative (maximum percentage of vested accrued benefit) is chosen, the proposal explained that a loan program would not fail to meet this requirement solely because maximum loan amounts varied directly with the size of the participant's vested accrued benefit.[10] Section 2550.408b–1(c)(1) of the proposed regulation made it clear, however, that a loan program will satisfy the requirements of this paragraph if the program does not operate to exclude large numbers of plan participants from receiving loans.

The Department received no substantive comment on this paragraph, and thus, this paragraph is published in final as proposed. Numerous commentators did, however, request a Departmental view as to fiduciary liability, if any, in those cases where in order to comply with the Department's articulated requirements of adequate security and reasonable rate of interest, a loan program, in operation, excludes a large number of plan participants from receiving loans. In part, the Department believes that the concern of these commentators may be answered by the clarifications contained in this final regulation concerning the adequate security and reasonable rate of interest requirements. In addition, as evidenced by the legislative history, Congress clearly believed that loan programs could be conducted under the rules specified within section 408(b)(1), as well as the general ERISA fiduciary rules which govern other plan investments, and still operate in a non-discriminatory manner. Thus, by definition, loan programs which meet the requirements concerning reasonable rate of interest and adequate security will not be deemed discriminatory for purposes of the provisions of either section 408(b)(1) (A) or (B) of the Act solely by reason of compliance with the requirements of section 408(b)(1) (D) and (E) of the Act and the corresponding provisions of this regulation.

D. Specific Plan Provisions

Section 408(b)(1)(C) of the Act requires that participant loans be made in accordance with specific provisions regarding such loans set forth in the plan. Under the proposed regulation at § 2550.408b–1(d), all participant loan programs must be established pursuant to specific authority provided in a plan document. Additionally, a participant loan program which is contained in the plan or in a written document forming part of the plan must include, but need not be limited to, the following: (1) The identity of the person or positions authorized to administer the participant loan program; (2) a procedure for applying for loans; (3) the basis on which loans will be approved or denied; (4) limitations (if any) on the types and amounts of loans offered; (5) the procedure under the program for determining a reasonable rate of interest; (6) the types of collateral which may secure a participant loan; and (7) the events constituting default and the steps that will be taken to preserve plan assets in the event of such default. The proposal further specified that if a plan fails either to contain such specific provisions or to administer participant loans in accordance with a written program, loans made under such a program will fail to qualify for the relief extended in section 408(b)(1).

Under the proposed regulation, the specific terms enumerated above would apply to loans granted or renewed at any time on or after the last day of the first plan year beginning on or after January 1, 1989. Until that date, the Department will consider loans to satisfy the requirement of section 408(b)(1)(C) if the plan contains an explicit authorization for the establishment of a participant loan program. Example (1) of this paragraph also stated that the specific provisions describing the loan program, whether contained in the plan or in a written document forming part of the plan, affect the rights and obligations of the participants and beneficiaries under the plan and therefore must, in accordance with section 102(a)(1), be disclosed in the plan's summary plan description (SPD).

The Department received numerous comments seeking clarification as to what types of documents would satisfy the requirements of this subsection. Several commentators asked whether the SPD itself would be considered "a written document forming part of the plan" and, thus, satisfy the requirements of § 2550.408b–1(d) of this regulation. Others asked whether the regulation would require that the summary plan description disclose all specific plan loan provisions.

As indicated in Example (1) of § 2550.408b–1(d), the Department anticipates that the specific loan provisions under which the loan program is operated in many cases will not be contained in the plan itself but rather in a separate document forming part of the plan. The Department can find no reason to limit descriptively the range of documents which may form part of the plan. Thus, the Department sees no reason why an SPD could not satisfy the conditions of § 2550.408b–1(d) if it contains the required loan program provisions and is a document forming part of the plan. With regard to the extent to which loan program provisions must be disclosed in the SPD, the Department notes that section 102 of ERISA requires that the SPD be sufficiently accurate and comprehensive to reasonably apprise participants and beneficiaries of their rights and obligations under the plan. In this regard, it is the opinion of the Department that satisfaction of the requirements of section 102 would, at a minimum, require summary disclosures with respect to those items listed in § 2550.408b–1(d)(2).[11]

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[9] See footnote 1 *infra*.

[10] The Department notes that the Internal Revenue Code (the Code) places a number of restrictions on participant loans for tax purposes. Under section 72(p) of the Code, a participant loan will be treated as a taxable distribution from the plan unless such loan does not exceed the lesser of: (i) $50,000 (which amount must be reduced by the outstanding balances for any previous participant loans from the plan in accordance with section 72(p)(2)(A)(i)); or (ii) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan (but not less than $10,000). It is the view of the Department that a participant loan program administered pursuant to plan provisions which have been amended to preclude the making of loans which would be considered distributions under section 72(p) of the Code will not fail, by virtue of these provisions, to satisfy the condition in section 408(b)(1)(B) of the Act and § 2550.408b–1(c) of this regulation.

The Department also notes that a determination that a particular plan loan program meets the requirements of § 2550.408b–1(c) will not determine the status of that plan's loan program under Code section 401(a)(4).

[11] Depending on the facts and circumstances of any particular loan program, the list of items required by § 2550.408b–1(d) may not, alone, adequately describe the rights and obligations of participants of that plan, and, hence, additional information may be required.

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The Department also received many comments arguing that the Department should require less detail in the plan documents because of the changing nature of loan programs and the expense of plan amendments. Several commentators opined that section 408(b)(1)(C) of the Act should not be read to require that such things as loan application procedures, interest rates and types of security be included.

In this regard, the Department reiterates that the specific terms enumerated in § 2550.408b–1(d)(2) may be included in a separate written document forming part of the plan. Also, it is the view of the Department that the requirements of this paragraph of the regulation are sufficiently general to permit plan provisions to be framed in a manner which would limit the number of plan amendments. For example, § 2550.408b–1(d)(2) does not require the inclusion in the plan of the actual rate of interest or the actual loan application form, but merely the general procedures for determining the interest rate and for applying for a loan.

A number of commentators indicated that sponsors of master and prototype plans would have difficulty complying with the requirements of § 2550.408b–1(d) of the regulation because these types of plans have no effective mechanism for setting forth the specific provisions required in the regulation. It was suggested that special guidance be developed for these plans and that, if necessary, a later effective date should be provided for amendments to such plans.

The Department believes that there is no basis in the statute to conclude that participants and beneficiaries of master or prototype plans are entitled to less specific disclosure of their rights and benefits under their plan than participants of other types of plans. Thus, the final regulation contains no special rules for these plans. Lastly, the Department believes that the grace period for compliance with this paragraph should be sufficient to accommodate the adoption of any necessary changes to master and prototype plans, as well as other types of plans.

E. Reasonable Rate of Interest

Section 408(b)(1)(D) of the Act states that, in order for a loan to be covered by the relief provided by section 408(b)(1), such loan must bear a reasonable rate of interest. In line with the Department's view that a participant loan is a plan investment, § 2550.408b–1(e) of the proposed regulation provided that a reasonable rate of interest is one which provides the plan with a return commensurate with the prevailing interest rate charged on similar commercial loans by persons in the business of lending money. This standard was first described in Advisory Opinion 81–12A[12] and reflects the relevant legislative history and the practice under the Internal Revenue Code prior to the enactment of ERISA.

In A.O. 81–12A, the Department expressed its view that Congress intended to incorporate into 408(b)(1) the objective prevailing rate standard under existing IRS regulations. The Department described the prevailing rate standard as a composite of what persons and institutions in the business of lending money would obtain as compensation for the use of money which they lend under similar circumstances. The Department noted that the prevailing rate standard permits a fiduciary to consider those factors pertaining to the opportunity for gain and the risk of loss that professional lenders would consider in setting the rate of interest on a similar arm's-length loan, and emphasized that a participant loan as a plan investment would not be prudent if it provided a plan with less return, relative to risk, than comparable investments available to the plan, or if it involved a greater risk to the security of plan assets than other investments offering a similar return.

The Department's approach was not followed in *Brock* v. *Walton* 794 F.2d 586 (11th Cir. 1986), where the Court of Appeals held that a rate 2½ percent lower than the prevailing rate in the community was neither imprudent under section 404(a)(1) of the Act nor unreasonable for purposes of 408(b)(1). After a careful review of the court's opinion, the Department issued the proposed regulation which adhered to the position that Congress intended participant loans to be treated as any other plan investment and, thus, governed by the objective prevailing rate standard.

Although several commentators agreed with the Department's position with respect to defined benefit plans, the Department received many comments arguing that less than commercial rates should be permitted for participant loan programs in individual account-type plans. In general, commentators disagreed both with the concept that participant loans are solely plan investments and with the position that for investment purposes prevailing commercial rates are the appropriate points of comparison. Many commentators argued that Congress did not intend that plans be required to charge the prevailing market rates of interest. Most in this group contended that the DOL should follow the *Brock* v. *Walton* rule that "reasonable rate" doesn't have to be prevailing market rate of interest.[13]

After due consideration of these comments, the Department continues to believe that the law of trusts establishes an objective standard of fiduciary conduct which has been incorporated by Congress in ERISA and applied in numerous cases thereunder. *See, e.g., Donovan* v. *Cunningham*, 716 F.2d 1455, 1467–68 (5th Cir. 1983), *cert. denied*, 467 U.S. 1251 (1984); *Donovan* v. *Mazzola*, 716 F.2d 1226, 1231–32 (9th Cir. 1983), *cert. denied*, 464 U.S. 1040 (1984); *Freund* v. *Marshall & Ilsley Bank*, 485 F. Supp. 629, 635 (W.D. Wisc. 1979). In addition, as noted in the preamble to the proposed regulation, the legislative history clearly indicates that in section 408(b)(1) Congress provided an exemption from the prohibited transaction rules for participant loans "following current practice." Conf. Rpt., *supra* at 310–11. In discussing the state of the law prior to the passage of ERISA, Congress noted:

> Under the Internal Revenue Code, qualified retirement plans must be for the exclusive benefit of the employees and their beneficiaries. Following this requirement, the Internal Revenue Service has developed general rules that govern the investment of plan assets including a requirement that cost must not exceed fair market value at the time of the purchase, *there must be a fair return commensurate with the prevailing rate*, sufficient liquidity must be maintained to permit distributions, and the safeguards and diversity that a prudent investor would adhere to must be present.

Id. at 302 (Emphasis added.) See 26 U.S.C. 503(b)(1) (1970), Treas. Reg. 26 CFR 1.503(b)–1(c) (1960). Further, although Congress clearly intended, through the enactment of section 408(b)(1) to permit certain parties in interest, *i.e.*, plan participants, to engage in what would otherwise be prohibited

[12] Advisory Opinion 81–12A (letter to Robert Georgine, January 15, 1981) (A.O. 81–12A).

[13] In this regard, some commentators argued that the Department is required to follow *Brock* v. *Walton*, in part, because the Department did not seek review by the Supreme Court. To the contrary, the government is not bound to alter its national policy based on an adverse Court of Appeals decision. Such a rule would serve to prevent the development of important questions of law by giving the first decision preclusive effect on a particular issue. *United States* v. *Mendoza*, 464 U.S. 154, 160 (1984). In addition, the government is not required to seek Supreme Court review in order to preserve its position, particularly on the first adverse decision, in part because the Court's general practice is to review cases only after a conflict among the Circuits has developed. *See* S.Ct Rule 17.1(a).

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transactions involving plan assets, it is the opinion of the Department that Congress also clearly intended that the exemption would have no effect with respect to the requirements of the basic fiduciary responsibility rules. Conf. Rpt., *supra*, at 310–11; Legis. Hist., *supra*, at 4577–78. Based on the above, the Department issued A.O. 81–12A in which it concluded that both sections 404 and 408(b)(1) require participant loans to be treated as other plan investments, and that prevailing commercial loan rates are to be the appropriate benchmarks for determining a reasonable rate of interest. After careful review of the comments, the Department has determined to adhere to this longstanding interpretation.[14]

Other commentators stated that requiring the use of commercial rates is particularly inappropriate where a loan is in effect a self-directed investment, the investment experience of which is attributable only to the participant. In the Department's view, there is no basis in the statute for departing from the position that participant loans should function as plan investments, whether the investment return is used to provide benefits to one participant or to all covered participants. Moreover, it is the opinion of the Department that the primary purpose of a pension plan is to provide the benefit of retirement income not to make participant loans.[15]

Many commentators sought clarification on how to determine the rate of interest, and how often it should be adjusted. A majority of the commentators argued that ascertaining the prevailing market rate would be administratively infeasible, and that the Department should adopt a standard rate such as the applicable federal rate, a GIC rate, prime or prime plus rate, rates comparable to other plan returns, or state usury law rates. Other commentators argued that plans administered on a nationwide basis should not be required to charge different rates of interest in different locales.

Providing a standard "safe harbor" interest rate would not be compatible with the Department's view that a "reasonable rate of interest" is one which provides the plan with a return commensurate with the prevailing interest rate charged by persons in the business of lending money for loans which would be made under similar circumstances. A Departmentally-established standard rate would also run counter to the Department's view of a participant loan as an investment subject to the same standards of ERISA as any other investment, *e.g.*, the prudence and exclusive benefit rules. Such a standard rate would also ignore the fact that the commercially prevailing rate may vary based on certain factors, *e.g.*, creditworthiness of the borrower and the security given for the loan. Indeed, the Department believes that no one particular standard rate will consistently reflect the appropriate risk relative to return ratio for all plans and all participant loans. Thus, with respect to setting loan rates, the Department suggests that plan administrators conduct the same type of inquiry that would be prudent prior to making any other type of investment.

With respect to geographical differences in the market rates, the Department believes that administrative costs may justify the adoption of a national rate of interest by a plan which is administered on a nationwide basis. Such a plan may also grant loans on a regional basis at rates which reflect appropriate regional factors. In the case of a plan which is not a plan administered on a nationwide basis, the Department believes that an appropriate determination of the "reasonable rate of interest" must be based on appropriate regional factors.

A number of commentators questioned Example (3) of proposed § 2550.408b–1(e) which states that a plan may not limit the rate of interest to the state usury limit if commercial institutions not subject to the usury laws are charging higher rates. According to these commentators, this places a plan sponsor in the untenable position of being forced to choose between complying with state usury laws or with the Department's regulation. In this regard, the Department notes that ERISA contains no mandate requiring ERISA-covered plans to provide loan programs for their participants; thus, there is no absolute conflict between state usury laws and ERISA. The Department continues to adhere to its position that a "reasonable rate of interest" is one which provides the plan with a return commensurate with the prevailing interest rate charged by persons in the business of lending money for loans which would be made under similar circumstances. Also, because participant loans are plan investments, a participant loan program which limits its interest rate to a maximum state usury ceiling when higher yielding comparable investment opportunities exist may not meet the requirements of ERISA section 403(c) and 404(a).

G. Adequate Security

Section 408(b)(1)(E) of the Act states that the relief provided by paragraph 408(b)(1) will apply only to loans that are adequately secured. Based on similar IRS regulations, the Department proposed § 2550.408b–1(f) which provided a test for the adequacy of the security similar to that which would be required by a commercial lender. The proposed regulation made it clear that in the participant loan context, the security must be such that, in the event of default, the participant's retirement income is preserved and loss to the plan is prevented. The proposal indicated that at least a portion of a participant's vested accrued benefit under the plan may be used as security to the extent that it meets this test. Citing to the spousal consent requirements of ERISA and the Code, the Department also suggested in the preamble to the proposed regulation that restrictions on distributions in qualified plans could affect the adequacy of vested accrued benefits as security.

Virtually all commentators on this paragraph of the regulation requested clarification that vested accrued benefits could serve as adequate security for participant loans. Most of these commentators made their arguments with respect to loan programs administered by individual account plans under which principal and interest payments made on any particular participant's loan would be allocated

[14] Many commentators also argued that under the "facts and circumstances" prudent person test of A.O. 81–12A, a below-prevailing rate of interest is permissible for participant loans which are both secured by participants' vested accrued benefits and repaid through payroll deduction. It is the Department's view that these factors may not be relied upon to justify the granting of loans at less than the prevailing rate. The Department does, however, wish to clarify that plan fiduciaries may choose a loan rate which reflects these factors, to the same extent that commercial loan rates would, and fall within the narrow range of the prevailing rate.

[15] In this regard, a number of commentators urged that all types of plans be permitted to use less than prevailing rates in recognition of the plan loan as an incidental benefit of, and in the case of some plans, incentive for, plan participation. In the Department's view, this suggestion is not compatible with the express intent of Congress that participant loans be governed by the general rules of fiduciary responsibility, which require that participant loans function as other plan investments. In addition, adopting the view that a participant loan is an incidental benefit would constitute a major departure from the purpose of pension plans—to provide retirement income. Also, in the case of plans in which individual benefits are based on the investment experience of the general pool of plan assets, such an approach may be unfair to those participants who do not take out loans. Lastly, the Department does not believe that the purpose of the exemption is to encourage borrowing from retirement plans but rather to permit it in circumstances that are not likely to either diminish the borrower's retirement income or cause loss to the plan.

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totally to that same participant's account. Since in such plans any loss would be suffered only by the participant borrower, it was argued that the restrictions on timing of foreclosure due to the Code restrictions on in-service distributions should not affect the adequacy of accrued benefits as security. If such plans also require repayment by payroll deduction, it was argued that an account balance should be considered adequate security, at least in these types of plans, even though default could not occur until a distributable event, *i.e.*, termination of service. Other commentators suggested that vested accrued benefits in either a defined benefit or defined contribution plan could be considered adequate as security if its value was discounted to take into account any time lag between a default and actual enforcement of the security interest. Another commentator suggested that an employer's guarantee of participant loans should provide the Department a basis for determining that vested accrued benefits are adequate security.

In contrast, a number of commentators agreed that loans from defined benefit plans or other plans in which each participant's benefit is based on a share of the plan's pooled asset investment experience might require collateral beyond that required for loans from individual account plans in order to assure that the plan suffer no loss in the event of default.

In light of the comments, the Department has made the following amendments and clarifications to § 2550.408b-1(f). In the Department's view, Congress clearly intended that at least a portion of a participant's vested accrued benefit be a permissible form of security, *see, e.g.*, Conf. Rpt., *supra*, at 312; *reprinted in* Legis. Hist., *supra*, at 4579. But in that regard, Congress also clearly intended that the security given must be adequate in commercial terms. *Id.* Because of the overriding concern for protecting the plan from loss and thus preserving the participant's retirement income, the Department has determined to retain the general requirement that the security for all participant loans be such that the plan will suffer no loss of principal or income if a default occurs. However, with regard to plan loan programs which intend to accept a participant's vested accrued benefit as security, the Department has also established a cap which places an upper limit on the amount of the vested accrued benefit which the plan administrator may consider for purposes of determining adequate security for participant loans made pursuant to section 408(b)(1). Specifically, the final regulation permits up to fifty percent of the present value of a participant's vested accrued benefit to be used as security for participant loans and taken into account in determining whether the security is adequate, leaving the remaining account balance unencumbered.[16] Thus, immediately after the origination of any participant loan to be secured in whole or in part by the vested accrued benefit, the amount of the participant's vested accrued benefit actually being considered as security for the outstanding balance of that participant's loans may not exceed the 50% cap. A participant loan program may, however, grant participant loans which require aggregate security in excess of the fifty percent cap provided that the plan receives additional collateral the value of which equals or exceeds the amount required in excess of the cap. The Department believes this cap is necessary to assure that the primary purpose of a pension plan is achieved—to provide retirement income for plan participants.

Like the proposal, the final regulation does not require enforcement of the security interest held by a plan at any particular time after a default by a participant borrower. Section 2550.408b-1(f)(1), however, does require that in order for the security posted for the loan to be considered adequate, (1) the plan must have the ability to foreclose on, or sell, or otherwise dispose of it in the case of default; and (2) the value of the security must be such that it can be reasonably anticipated that the plan will not suffer a loss of principal or interest from the loan due to the actual date of enforcement of the security interest resulting from a default. The requirement that the plan have the ability to foreclose on the security interest in the case of default does not require that the plan have the ability to foreclose immediately upon default. For example, where a portion of the vested accrued benefit is used as security, the plan's ability to enforce the security interest immediately upon default is not required as long as no loss of principal or income will occur to the plan due to the delay of such enforcement. Similarly, in the case of collateral other than a participant's vested accrued benefit, the Department is of the opinion that it is within the plan fiduciary's discretion to determine whether it is prudent to extend the date of enforcement of the security interest, as long as no loss of principal or interest occurs.

For plans which accept a portion of the vested accrued benefit as security, the Department understands that the effect of the "no loss" requirement will vary depending upon the type of plan. With regard to plans in which the investment experience of the plan's assets is shared by all participants or used to fund the benefits of all plan participants, additional loan program requirements in conjunction with the pledging of a portion of the participant's vested accrued benefit may be necessary in order to assure "no loss" of principal and interest to the plan. For example, a loan program in a 401(k) plan in which the investment experience is shared might meet this "no loss" requirement by using a portion of a participant's account balance as security in conjunction with mandatory payroll deduction repayment which would stop only upon the happening of a distributable event, *i.e.*, retirement, separation from service or death. In addition, discounting the value of the vested accrued benefit to take into account the time delay between any possible default and the first distributable event for that participant's benefit may be another viable way of meeting the "no loss" adequate security requirement. ERISA's general fiduciary requirements may also require a plan administrator of a defined benefit plan who intends to use a portion of a participant's vested accrued benefit as security to consider additional factors such as the funding of the plan in determining the amount that may be borrowed based on the vested accrued benefit. However, where a plan provides an individual account for each participant and the investment experience of the assets contributed to that account is attributable solely to that plan participant's account, any participant who has a vested accrued benefit may borrow up to 50% of the present value of the vested accrued benefit secured by that 50% of the vested account balance. For example, a participant who has a vested accrued benefit the present value of which is $10,000 may borrow up to $5,000, secured by 50% of his vested account balance, *i.e.*, $5,000, and meet the terms of §§ 2550.408b-1(f) (1) and (2).

Finally, it was suggested that an employer guarantee of a participant loan might be a means of adequately securing the loan. In this regard, if requested, the Department will consider the issues surrounding this subject in the context

[16] The Department chose to correspond the cap to one of the upper limits imposed by section 72(p)(2)(A)(ii) of the Code, beyond which participant loans will be treated as taxable distributions. The Department wishes to note, however, that it is not adopting the provisions of section 72(p) as requirements of this regulatory exemption.

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of specific guarantee arrangements submitted for review.

H. Effective Date

Proposed § 2550.408b–1(g) of the regulation stated that, if adopted, the regulation would generally be effective January 1, 1975, except that § 2550.408b–1(d)(2) relating to specific plan provisions would be effective for loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989.

Many of the comments received by the Department urged that all provisions of the regulations be made prospective in effect, contending that it would be unfair to issue retroactive regulations which are inconsistent with current practice both as to rates of interest and the security required, and which may impose substantial liability on plan fiduciaries and cause possible disqualification of plans. Other commentators suggested that the effective date be extended to include the time which plans will need to comply with the Tax Reform Act of 1986. One commentator stated that the retroactive effective date was reasonable except as applied to existing loans designed to be reloaned to the plan sponsor since, in the commentator's view, the Department has not definitively called this practice a prohibited transaction. Another commentator opined that the regulations should be prospective because plans are complying with state usury laws.

In support, commentators noted that the 1974 legislative history of ERISA gave permission to continue current practice which various commentators believed to include use of lower than prevailing rates of interest and use of distribution-restricted vested accrued benefits as security for loans. With respect to the proposed definition of reasonable rate of interest, many commentators stated that the proposed regulation is inconsistent with A.O. 81–12A, which commentators contend led plans to believe that using less than prevailing rates was permissible. Commentators also asserted that many plans reasonably relied upon the 1986 *Brock* v. *Walton* decision where the Eleventh Circuit approved a participant loan rate less than the prevailing rate. Some commentators suggested that a grace period be given plans so that they would have the opportunity to come into compliance with the regulation. Others suggested that existing plan loans be "grandfathered," *i.e.*, not be required to change their terms.

In response, the Department believes that the clarifications contained in this final regulation may alleviate some of the commentators' concern about the effective date of the regulation. It also believes, however, that many plans have in good faith attempted to follow the terms of the exemption but may not meet the precise terms contained in this final regulation. Section 2550.408b–1(g) has therefore been amended to provide that with the exception of the provisions of § 2550.408b–1(d)(2), the regulation will be effective for all new or renewed loans 90 days from the publication date of this final regulation.[17]

Executive Order 12291 Statement

The final rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The action will impose some costs on employee benefit plans. These costs have been estimated to be one-time costs of just under $18 million and subsequent annual costs of less than $150,000.

Regulatory Flexibility Act Statement

The Department has determined that this final regulation would not have a significant economic impact on small entities. The purpose of this regulation is to provide guidance to employee benefit plans and their sponsors and administrators who wish to provide a participant loan program to their plan participants and beneficiaries. A number of commentators suggested that the Department had underestimated the cost of implementing a participant loan program under the regulation. In conducting the analysis required under the Regulatory Flexibility Act, it was determined that several aspects of the final regulation will serve to alleviate their concerns. First, many commentators projected higher costs based on misinterpretations of the proposed regulation's requirements under ERISA section 408(b)(1)(E), relating to adequate security.

Second, the Department anticipates that, given the nature of the requirements of ERISA section 408(b)(1) as clarified by the regulation, employee benefit service providers will be able to develop standardized language for inclusion in plan documents and summary plan descriptions, thereby reducing costs incurred by individual plan sponsors. Finally, it should be noted that no plan sponsor is required under section 408(b)(1) of ERISA, or the regulation, to provide for a loan program as part of a plan; thus, only those plan sponsors voluntarily adopting loan programs will be affected by the regulation.

Paperwork Reduction Act Statement

Section 2550.408b–1(d) of the final regulation contains a paperwork requirement which has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The final regulation is assigned control number 1210–0076.

Statutory Authority

The regulation set forth herein is issued pursuant to section 408(b)(1), 29 U.S.C. 1108(b)(1), and section 505, 29 U.S.C. 1135, of the Act. The regulation is also issued under section 102, Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR, 1978 Comp., 332, *reprinted in* 5 U.S.C. app. at 1163 (1982); and under Secretary of Labor Order No. 1–87.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefits Administration, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

In view of the foregoing, the Department amends Part 2550 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for Part 2550 is revised to read as set forth below and

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[17] The Department notes that making the regulation prospective in effect does not necessarily create an inference that all existing loan programs are *per se* acceptable. For instance, the Department may find that certain existing loan arrangements are non-exempt prohibited transactions, based not on the regulation, but on the Department's longstanding interpretation of the reasonable rate of interest requirement, as contained in A.O. 81–12A and as argued in *Brock* v. *Walton*, 794 F.2d 586 (11th Cir. 1986). Consequently, the Department will continue to bring enforcement actions aimed at participant loans made prior to the effective date of the regulation at below prevailing rates.

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the authority citations following all the sections in Part 2550 are removed.

Authority: 29 U.S.C. 1135.

Section 2550.407c–3 also issued under 29 U.S.C. 1107.

Section 2550.408b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., 332, *reprinted in* 5 U.S.C. app. at 1183 (1982), and under 29 U.S.C. 1108(b)(1).

Section 2550.412–1 also issued under 29 U.S.C. 1112.

Section 2550.414b–1 also issued under 29 U.S.C. 1114.

Secretary of Labor Order No. 1–87.

2. Part 2550 is amended by adding a new § 2550.408b–1, entitled *General statutory exemption for loans to plan participants and beneficiaries who are parties in interest with respect to the plan*, to read as follows:

§ 2550.408b–1 General statutory exemption for loans to plan participants and beneficiaries who are parties in interest with respect to the plan.

(a)(1) *In general.* Section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (the Act or ERISA) exempts from the prohibitions of section 406(a), 406(b)(1) and 406(b)(2) loans by a plan to parties in interest who are participants or beneficiaries of the plan, provided that such loans:

(i) Are available to all such participants and beneficiaries on a reasonably equivalent basis;

(ii) Are not made available to highly compensated employees, officers or shareholders in an amount greater than the amount made available to other employees;

(iii) Are made in accordance with specific provisions regarding such loans set forth in the plan;

(iv) Bear a reasonable rate of interest; and

(v) Are adequately secured.

The Internal Revenue Code (the Code) contains parallel provisions to section 408(b)(1) of the Act. Effective, December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to promulgate regulations of the type published herein to the Secretary of Labor. Therefore, all references herein to section 408(b)(1) of the Act should be read to include reference to the parallel provisions of section 4975 (d)(1) of the Code.

Section 1114(b)(15)(B) of the Tax Reform Act of 1986 amended section 408(b)(1)(B) of ERISA by deleting the phrase "highly compensated employees, officers or shareholders" and substituting the phrase "highly compensated employees (within the meaning of section 414(q) of the Internal Revenue Code of 1986)." Thus, for plans with participant loan programs which are subject to the amended section 408(b)(1)(B), the requirements of this regulation should be read to conform with the amendment.

(2) *Scope.* Section 408(b)(1) of the Act does not contain an exemption from acts described in section 406(b)(3) of the Act (prohibiting fiduciaries from receiving consideration for their own personal account from any party dealing with a plan in connection with a transaction involving plan assets). If a loan from a plan to a participant who is a party in interest with respect to that plan involves an act described in section 406(b)(3), such an act constitutes a separate transaction which is not exempt under section 408(b)(1) of the Act. The provisions of section 408(b)(1) are further limited by section 408(d) of the Act (relating to transactions with owner-employees and related persons).

(3) *Loans.* (i) Section 408(b)(1) of the Act provides relief from the prohibitions of section 406(a), 406(b)(1) and 406(b)(2) for the making of a participant loan. The term "participant loan" refers to a loan which is arranged and approved by the fiduciary administering the loan program primarily in the interest of the participant and which otherwise satisfies the criteria set forth in section 408(b)(1) of the Act. The existence of a participant loan or participant loan program will be determined upon consideration of all relevant facts and circumstances. Thus, for example, the mere presence of a loan document appearing to satisfy the requirements of section 408(b)(1) will not be dispositive of whether a participant loan exists where the subsequent administration of the loan indicates that the parties to the loan agreement did not intend the loan to be repaid. Moreover, a loan program containing a precondition designed to benefit a party in interest (other than the participant) is not afforded relief by section 408(b)(1) or this regulation. In this regard, section 408(b)(1) recognizes that a program of participant loans, like other plan investments, must be prudently established and administered for the exclusive purpose of providing benefits to participants and beneficiaries of the plan.

(ii) For the purpose of this regulation, the term "loan" will include any renewal or modification of an existing loan agreement, provided that, at the time of each such renewal or modification, the requirements of section 408(b)(1) and this regulation are met.

(4) *Examples.* The following examples illustrate the provisions of § 2550.408b–1(a).

Example (1): T, a trustee of plan P, has exclusive discretion over the management and disposition of plan assets. As a result, T is a fiduciary with respect to P under section 3(21)(A) of the Act and a party in interest with respect to P pursuant to section 3(14)(A) of the Act. T is also a participant in P. Among T's duties as fiduciary is the administration of a participant loan program which meets the requirements of section 408(b)(1) of the Act. Pursuant to strict objective criteria stated under the program, T, who participates in all loan decisions, receives a loan on the same terms as other participants. Although the exercise of T's discretion on behalf of himself may constitute an act of self-dealing described in section 406(b)(1), section 408(b)(1) provides an exemption from section 406(b)(1). As a result, the loan from P to T would be exempt under section 408(b)(1), provided the conditions of that section are otherwise satisfied.

Example (2): P is a plan covering all the employees of E, the employer who established and maintained P. F is a fiduciary with respect to P and an officer of E. The plan documents governing P give F the authority to establish a participant loan program in accordance with section 408(b)(1) of the Act. Pursuant to an arrangement with E, F establishes such a program but limits the use of loan funds to investments in a limited partnership which is established and maintained by E as general partner. Under these facts, the loan program and any loans made pursuant to this program are outside the scope of relief provided by section 408(b)(1) because the loan program is designed to operate for the benefit of E. Under the circumstances described, the diversion of plan assets for E's benefit would also violate sections 403(c)(1) and 404(a) of the Act.

Example (3): Assume the same facts as in Example 2, above, except that F does not limit the use of loan funds. However, E pressures his employees to borrow funds under P's participant loan program and then reloan the loan proceeds to E. P, unaware of E's activities, arranges and approves the loans. If the loans meet all the conditions of section 408(b)(1), such loans will be exempt under that section. However, E's activities would cause the entire transaction to be viewed as an indirect transfer of plan assets between P and E, who is a party in interest with respect to P, but not the participant borrowing from P. By coercing the employees to engage in loan transactions for its benefit, E has engaged in separate transactions that are not exempt under section 408(b)(1). Accordingly, E would be liable for the payment of excise taxes under section 4975 of the Code.

Example (4): Assume the same facts as in Example 2, above, except that, in return for structuring and administering the loan program as indicated, E agrees to pay F an amount equal to 10 percent of the funds loaned under the program. Such a payment would result in a separate transaction not covered by section 408(b)(1). This transaction would be prohibited under section 406(b)(3) since F would be receiving consideration from a party in connection with a transaction involving plan assets.

Example (5): F is a fiduciary with respect to plan P. D is a party in interest with respect to plan P. Section 406(a)(1)(B) of the Act would prohibit F from causing P to lend money to D. However, F enters into an agreement with Z, a plan participant, whereby F will cause P to make a participant loan to Z with the express understanding that Z will subsequently lend the loan proceeds to D. An examination of Z's credit standing indicates that he is not creditworthy and would not, under normal circumstances, receive a loan under the conditions established by the participant loan program. F's decision to approve the participant loan to Z on the basis of Z's prior agreement to lend the money to D violates the exclusive purpose requirements of sections 403(c) and 404(a). In effect, the entire transaction is viewed as an indirect transfer of plan assets between P and D, and not a loan to a participant exempt under section 408(b)(1). Z's lack of credit standing would also cause the transaction to fail under section 408(b)(1)(A) of the Act.

Example (6): F is a fiduciary with respect to Plan P. Z is a plan participant. Z and D are both parties in interest with respect to P. F approves a participant loan to Z in accordance with the conditions established under the participant loan program. Upon receipt of the loan, Z intends to lend the money to D. If F has approved this loan solely upon consideration of those factors which would be considered in a normal commercial setting by an entity in the business of making comparable loans, Z's subsequent use of the loan proceeds will not affect the determination of whether loans under F's program satisfy the conditions of section 408(b)(1).

Example (7): A is the trustee of a small individual account plan. D, the president of the plan sponsor, is also a participant in the plan. Pursuant to a participant loan program meeting the requirements of section 408(b)(1), D applies for a loan to be secured by a parcel of real property. D does not intend to repay the loan; rather, upon eventual default, he will permit the property to be foreclosed upon and transferred to the plan in discharge of his legal obligation to repay the loan. A, aware of D's intention, approves the loan. D fails to make two consecutive quarterly payments of principal and interest under the note evidencing the loan thereby placing the loan in default. The plan then acquires the real property upon foreclosure. Such facts and circumstances indicate that the payment of money from the plan to D was not a participant loan eligible for the relief afforded by section 408(b)(1). In effect, this transaction is a prohibited sale or exchange of property between a plan and a party in interest from the time D receives the money.

Example (8): Plan P establishes a participant loan program. All loans are subject to the condition that the borrowed funds must be used to finance home purchases. Interest rates on the loans are the same as those charged by a local savings and loan association under similar circumstances. A loan by P to a participant to finance a home purchase would be subject to the relief provided by section 408(b)(1) provided that the conditions of 408(b)(1) are met. A participant loan program which is established to make loans for certain stated purposes (e.g., hardship, college tuition, home purchases, etc.) but which is not otherwise designed to benefit parties in interest (other than plan participants) would not, in itself, cause such program to be ineligible for the relief provided by section 408(b)(1). However, fiduciaries are cautioned that operation of a loan program with limitations may result in loans not being made available to all participants and beneficiaries on a reasonably equivalent basis.

(b) *Reasonably Equivalent Basis.* (1) Loans will not be considered to have been made available to participants and beneficiaries on a reasonably equivalent basis unless:

(i) Such loans are available to all plan participants and beneficiaries without regard to any individual's race, color, religion, sex, age or national origin;

(ii) In making such loans, consideration has been given only to those factors which would be considered in a normal commercial setting by an entity in the business of making similar types of loans. Such factors may include the applicant's creditworthiness and financial need; and

(iii) An evaluation of all relevant facts and circumstances indicates that, in actual practice, loans are not unreasonably withheld from any applicant.

(2) A participant loan program will not fail the requirement of paragraph (b)(1) of this section or § 2550.408b–1(c) if the program establishes a minimum loan amount of up to $1,000, provided that the loans granted meet the requirements of § 2550.408b–1(f).

(3) *Examples.* The following examples illustrate the provisions of § 2550.408b–1(b)(1):

Example (1): T, a trustee of plan P, has exclusive discretion over the management and disposition of plan assets. T's duties include the administration of a participant loan program which meets the requirements of section 408(b)(1) of the Act. T receives a participant loan at a lower interest rate than the rate made available to other plan participants of similar financial condition or creditworthiness with similar security. The loan by P to T would not be covered by the relief provided by section 408(b)(1) because loans under P's program are not available to all plan participants on a reasonably equivalent basis.

Example (2): Same facts as in example 1, except that T is a member of a committee of trustees responsible for approving participant loans. T pressures the committee to refuse loans to other qualified participants in order to assure that the assets allocated to the participant loan program would be available for a loan by P to T. The loan by P to T would not be covered by the relief provided by section 408(b)(1) since participant loans have not been made available to all participants and beneficiaries on a reasonably equivalent basis.

Example (3): T is the trustee of plan P, which covers the employees of E. A, B and C are employees of E, participants in P, and friends of T. The documents governing P provide that T, in his discretion, may establish a participant loan program meeting certain specified criteria. T institutes such a program and tells A, B and C of his decision. Before T is able to notify P's other participants and beneficiaries of the loan program, A, B, and C file loan applications which, if approved, will use up substantially all of the funds set aside for the loan program. Approval of these applications by T would represent facts and circumstances showing that loans under P's program are not available to all participants and beneficiaries on a reasonably equivalent basis.

(c) *Highly Compensated Employees.* (1) Loans will not be considered to be made available to highly compensated employees, officers or shareholders in an amount greater than the amount made available to other employees if, upon consideration of all relevant facts and circumstances, the program does not operate to exclude large numbers of plan participants from receiving loans under the program.

(2) A participant loan program will not fail to meet the requirement in paragraph (c)(1), of this section, merely because the plan documents specifically governing such loans set forth either (i) a maximum dollar limitation, or (ii) a maximum percentage of vested accrued benefit which no loan may exceed.

(3) If the second alternative in paragraph (c)(2) of this section (maximum percentage of vested accrued benefit) is chosen, a loan program will not fail to meet this requirement solely because maximum loan amounts will vary directly with the size of the participant's accrued benefit.

(4) *Examples.* The following examples illustrate the provisions of § 2550.408b–1(c).

Example (1): The documents governing plan P provide for the establishment of a participant loan program in which the amount of any loan under the program (when added to the outstanding balances of any other loans under the program to the same participant) does not exceed the lesser of (i) $50,000, or (ii) one-half of the present value of that participant's vested accrued benefit under the plan (but not less than $10,000). P's participant loan program does not fail to meet the requirement in section 408(b)(1)(B) of the Act, and would be covered by the relief provided by section 408(b)(1) if the other conditions of that section are met.

Example (2): The documents governing plan T provide for the establishment of a participant loan program in which the minimum loan amount would be $25,000. The documents also require that the only security

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acceptable under the program would be the participant's vested accrued benefit. A, the plan fiduciary administering the loan program, finds that because of the restrictions in the plan documents only 20 percent of the plan participants, all of whom earn in excess of $75,000 a year, would meet the threshold qualifications for a loan. Most of these participants are high-level supervisors or corporate officers. Based on these facts, it appears that loans under the program would be made available to highly compensated employees in an amount greater than the amount made available to other employees. As a result, the loan program would fail to meet the requirement in section 408(b)(1)(B) of the Act and would not be covered by the relief provided in section 408(b)(1).

(d) *Specific Plan Provisions.* For the purpose of section 408(b)(1) and this regulation, the Department will consider that participant loans granted or renewed at any time prior to the last day of the first plan year beginning on or after January 1, 1989, are made in accordance with specific provisions regarding such loans set forth in the plan if:

(1) The plan provisions regarding such loans contain (at a minimum) an explicit authorization for the plan fiduciary responsible for investing plan assets to establish a participant loan program; and

(2) For participant loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989, the participant loan program which is contained in the plan or in a written document forming part of the plan includes, but need not be limited to, the following:

(i) The identity of the person or positions authorized to administer the participant loan program;

(ii) A procedure for applying for loans;

(iii) The basis on which loans will be approved or denied;

(iv) Limitations (if any) on the types and amount of loans offered;

(v) The procedure under the program for determining a reasonable rate of interest;

(vi) The types of collateral which may secure a participant loan; and

(vii) The events constituting default and the steps that will be taken to preserve plan assets in the event of such default.

Example (1): Plan P authorizes the trustee to establish a participant loan program in accordance with section 408(b)(1) of the Act. Pursuant to this explicit authority, the trustee establishes a written program which contains all of the information required by § 2550.408b–1(d)(2). Loans made pursuant to this authorization and the written loan program will not fail under section 408(b)(1)(C) of the Act merely because the specific provisions regarding such loans are contained in a separate document forming part of the plan. The specific provisions describing the loan program, whether contained in the plan or in a written document forming part of a plan, do affect the rights and obligations of the participants and beneficiaries under the plan and, therefore, must in accordance with section 102(a)(1) of the Act, be disclosed in the plan's summary plan description.

(e) *Reasonable Rate of Interest.* A loan will be considered to bear a reasonable rate of interest if such loan provides the plan with a return commensurate with the interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances.

Example (1): Plan P makes a participant loan to A at the fixed interest rate of 8% for 5 years. The trustees, prior to making the loan, contacted two local banks to determine under what terms the banks would make a similar loan taking into account A's creditworthiness and the collateral offered. One bank would charge a variable rate of 10% adjusted monthly for a similar loan. The other bank would charge a fixed rate of 12% under similar circumstances. Under these facts, the loan to A would not bear a reasonable rate of interest because the loan did not provide P with a return commensurate with interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances. As a result, the loan would fail to meet the requirements of section 408(b)(1)(D) and would not be covered by the relief provided by section 408(b)(1) of the Act.

Example (2): Pursuant to the provisions of plan P's participant loan program, T, the trustee of P, approves a loan to M, a participant and party in interest with respect to P. At the time of execution, the loan meets all of the requirements of section 408(b)(1) of the Act. The loan agreement provides that at the end of two years M must pay the remaining balance in full or the parties may renew for an additional two year period. At the end of the initial two year period, the parties agree to renew the loan for an additional two years. At the time of renewal, however, A fails to adjust the interest rate charged on the loan in order to reflect current economic conditions. As a result, the interest rate on the renewal fails to provide a "reasonable rate of interest" as required by section 408(b)(1)(D) of the Act. Under such circumstances, the loan would not be exempt under section 408(b)(1) of the Act from the time of renewal.

Example (3): The documents governing plan P's participant loan program provide that loans must bear an interest rate no higher than the maximum interest rate permitted under State X's usury law. Pursuant to the loan program, P makes a participant loan to A, a plan participant, at a time when the interest rates charged by financial institutions in the community (not subject to the usury limit) for similar loans are higher than the usury limit. Under these circumstances, the loan would not bear a reasonable rate of interest because the loan does not provide P with a return commensurate with the interest rates charged by persons in the business of lending money under similar circumstances. In addition, participant loans that are artificially limited to the maximum usury ceiling then prevailing call into question the status of such loans under sections 403(c) and 404(a) where higher yielding comparable investment opportunities are available to the plan.

(f) *Adequate Security.* (1) A loan will be considered to be adequately secured if the security posted for such loan is something in addition to and supporting a promise to pay, which is so pledged to the plan that it may be sold, foreclosed upon, or otherwise disposed of upon default of repayment of the loan, the value and liquidity of which security is such that it may reasonably be anticipated that loss of principal or interest will not result from the loan. The adequacy of such security will be determined in light of the type and amount of security which would be required in the case of an otherwise identical transaction in a normal commercial setting between unrelated parties on arm's-length terms. A participant's vested accrued benefit under a plan may be used as security for a participant loan to the extent of the plan's ability to satisfy the participant's outstanding obligation in the event of default.

(2) For purposes of this paragraph, (i) no more than 50% of the present value of a participant's vested accrued benefit may be considered by a plan as security for the outstanding balance of all plan loans made to that participant; (ii) a plan will be in compliance with paragraph (f)(2)(i) of this section if, with respect to any participant, it meets the provisions of paragraph (f)(2)(i) of this section immediately after the origination of each participant loan secured in whole or in part by that participant's vested accrued benefit; and (iii) any loan secured in whole or in part by a portion of a participant's vested accrued benefit must also meet the requirements of paragraph (f)(1) of this section.

(g) *Effective date.* This section is effective for all participant loans granted or renewed after October 18, 1989, except with respect to paragraph (d)(2) of this section relating to specific plan provisions. Paragraph (d)(2) of this section is effective for participant loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989.

(Approved by the Office of Management and Budget under control number 1210–0076)

Signed this 14th day of July, 1989.

Ann L. Combs,

Deputy Assistant Secretary for Policy Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87–16985 Filed 7–19–89; 8:45 am]

BILLING CODE 4510–29–M

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ATTACHMENT II

INDIRECT PENSION COST

28.X

22. DEPARTMENT OF COMMUNITY AFFAIRS
40. COMMUNITY DEVELOPMENT AND ENVIRONMENTAL MANAGEMENT
41. COMMUNITY DEVELOPMENT MANAGEMENT
UNIFORM CONSTRUCTION CODE—TRAINING

The Uniform Construction Code—Training Revolving Fund (C52:27D–119) was established to insure the proper licensing of all construction code enforcement officials in New Jersey. Training and licensing activities are supported by not less than $.0006 of the construction permit fee imposed on each cubic foot of new construction. The remainder of the fee may be used to offset other construction code enforcement costs as well as to support training functions. These fees are collected by localities and remitted to the State. The licensing and training activities funded include the development of new training courses at New Jersey colleges, the establishment of special courses to cover highly technical areas, tuition refunds to local officials who successfully complete the required college courses and the development of a reliable, job–related test to be used in determining license eligibility.

EVALUATION DATA

	Actual FY 1990	Actual FY 1991	Revised FY 1992	Budget Estimate FY 1993
PERSONNEL DATA				
Position Data				
Authorized Positions	17	18	17	17

APPROPRIATIONS DATA
(thousands of dollars)

Year Ending June 30, 1991: Orig. & (S)Supplemental	Reapp. & (R)Recpts.	Transfers & (E)Emergencies	Total Available	Expended		Prog. Class.	1992 Adjusted Approp.	Year Ending June 30, 1993: Requested	Recommended
					Distribution by Program				
—	3,273	-312	2,961	2,943	Uniform Construction Code	06	2,182	2,182	2,182
—	*3,273*	*-312*	*2,961*	*2,943*	*Total Appropriation*		*2,182*	*2,182*	*2,182*
					Distribution by Object				
					Personal Services:				
—	—	598	598	598	Salaries and Wages		597	645	645
—	—	160	160	160	Employee Benefits		171	185	185
—	—	*758*	*758*	*758*	*Total Personal Services*		*768*	*830*	*830*
—	—	14	14	14	Materials and Supplies		30	34	34
—	—	284	284	284	Services Other Than Personal		180	185	185
—	—	4	4	4	Maintenance and Fixed Charges		30	85	85
					Special Purpose:				
—	—	1,175	1,175	1,175	Uniform Construction Code	06	441	240	240
—	1,192 2,081 R	-3,255	18	—	Control–Uniform Construction Code	06	—	—	—
—	*3,273*	*-2,080*	*1,193*	*1,175*	*Total Special Purpose*		*441*	*240*	*240*
					Grants:				
—	—	708	708	708	Uniform Construction Code	06	733	808	808
—	—	*708*	*708*	*708*	*Total Grants*		*733*	*808*	*808*

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State of New Jersey

JAMES J. FLORIO
GOVERNOR

DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF HOUSING AND DEVELOPMENT
BUREAU OF REGULATORY AFFAIRS

MELVIN R. PRIMAS JR
COMMISSIONER

LOCATION:
3131 PRINCETON PIKE, BLDG. 3
LAWRENCEVILLE, NEW JERSEY

MAILING ADDRESS:
CN 816
TRENTON, N. J. 08625-0816

ADVISORY NOTICE 1991-2
March 20, 1991

Dear Construction Official:

BE ADVISED: Fees charged by the Department, including the State Training Fee, are being raised. Formal adoption of Uniform Construction Code fee increases will be published in the New Jersey Register on April 1, 1991. Most increased fees will therefore be effective on that date.

For your convenience, we are attaching to this Notice a copy of the rule adoption as it will appear in the April 1, 1991 New Jersey Register. That adoption lists the new fees. Please insure that all responsible staff are advised of these items.

Special note should also be taken of the following:

*State of New Jersey training fees on volume of new construction are being raised from $0.0014 to $0.0016 per cubic foot. But, the training fee increase has been given a delayed effective date and does not go into effect until the start of third quarter 1991. That is, the training fee surcharge is raised on July 1, 1991 for all permits issued on or after that date.

*Since private on-site inspection agencies are required to follow the Department's fee schedule, municipalities contracting with those agencies are advised that the agencies should be paid the increased fees itemized in the attached adoption for permits issued on or after April 1, 1991.

*N.J.A.C. 5:23-8.18(h)1 and 2, the proposed increases for asbestos safety control monitors, are not being raised. Although increases appeared in the original proposal on February 4, 1991, those increases are not being adopted.

Any questions on the above may be addressed to Regulatory Affairs (609-530-8838) or Technical Services (609-530-8797) in the Construction Code Element.

Sincerely,

Vivian Lopez

Vivian G. Lopez, Esq., Chief
Bureau of Regulatory Affairs and

William Hartz

William Hartz, Chief
Bureau of Technical Services

RECEIVED
MAR 22 1991
CONSTRUCTION INSPECTION DIVISION

30X

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF CODES AND STANDARDS
BUREAU OF CODE SERVICES

JIM FLORIO
GOVERNOR

MELVIN R. PRIMAS, JR.
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FAX # (609) 530-8858

November 18, 1991

L. Mason Neely
Township of East Brunswick
1 Jean Walling Civic Center
Post Office Box 218
East Brunswick, New Jersey

Dear Mr. Neely:

Thank you for writing to the Department of Community Affairs with your questions about the elevator subcode.

The elevator subcode was adopted on July 1, 1991 and becomes fully effective July 1, 1992. The elevator subcode was promulgated to ensure public safety through a comprehensive elevator safety inspection program. The first step in this program is to register all elevators used by the public in New Jersey. The Department is also establishing criteria for licensing qualified elevator subcode officials. The registration fee of $50.00 per elevator is to cover the initial costs of the program. In addition, although the Uniform Construction Code exempts minicipalities from the payment of permit fees (N.J.S.A. 52:27D-126c), there is no such exemption for registration fees.

Thank you for your inquiry about the elevator subcode.

Sincerely,

Charles F. Tarr, Jr.

Charles F. Tarr, Jr., Chief
Bureau of Code Services

c: P. Sachdeva

2637D/E

RECEIVED
NOV 21 1991
FINANCE OFFICE

Township of East Brunswick

Department of Finance
L. MASON NEELY
Director

November 25, 1991

Mr. Charles F. Tarr, Jr. Chief
Bureau of Code Services
Department of Community Affairs
CN 816
Trenton, New Jersey 08625-0816

Dear Mr. Tarr:

Thank you for your letter of November 18, 1991 (copy attached). I do not believe you fully responded to my request for information. I recognize an obligation that the Township has to pay 50.00 for the initial registration. My concern was broader then simply the $50.00. I obviously missed this whole matter as it was taking form and therefore, I requested a copy of the study which was produced to justify the fee and feasibility study demonstrating the need to register elevators. I was not aware that there was an ongoing safety problem with the current practice. Obviously, there must have been something which generated the need for further regulations. Therefore, that is the type of documentation I was seeking.

I look forward to receiving that information in the near future.

Respectfully,

L. Mason Neely
Chief Finance Officer

LMN/lk
workidlk/11
cc: file

1 Jean Walling Civic Center, P.O. Box 218, East Brunswick, New Jersey 08816-0218
(201) 390-6860

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF CODES AND STANDARDS
BUREAU OF CODE SERVICES

JIM FLORIO
GOVERNOR

MELVIN R. PRIMAS, JR
COMMISSIONER

LOCATION:
3131 PRINCETON PIKE, BLDG. 3
LAWRENCEVILLE, NEW JERSEY

MAILING ADDRESS:
CN 816
TRENTON, N. J. 08625-0816
FAX # (609) 530-8858

Elevator Safety Program
REGISTRATION

Dear Sir/Madam:

The Bureau has commenced the registration of all elevators in the State of New Jersey.

Regulations (N.J.A.C. 5:23) were adopted on July 1, 1991 pursuant to the authority of the Uniform Construction Code Act (N.J.S.A.52:27d-119 et seq.) which requires the registration, periodic inspection and maintenance of elevator devices.

Pursuant to N.J.A.C. 5:23-12.1, an elevator device is defined as a "hoisting and lowering device equipped with a car or platform which moves in guides for the transportation of individuals or freight in a substantially vertical direction through successive floors or levels of a building or structure; or, a power driven inclined, continuous stairway used for raising or lowering passengers; or, a type of passenger carrying device on which passengers stand or walk, and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted. This includes without limitation, elevators, escalators, moving walks, dumbwaiters, wheelchair lifts, manlifts, stairway chairlifts and any device within the scope of ASME A17.1 (Safety Code for Elevators and Escalators) or ASME A90.1 (Safety Standard for Belt Manlifts).

In accordance with N.J.A.C. 5:23-12.3, as owner of a building containing one or more elevator devices, you are required to complete this registration form. (Pursuant to N.J.A.C. 5:23-2, elevator devices in buildings classified as Use Group R-3 and R-4 shall be exempt from registration.)

The records of the Bureau indicate that the building listed on the upper right corner of this registration form is owned by you and subject to these registration requirements. If this information is erroneous in any way, please inform the Bureau immediately. However, if our records are correct, you are required to complete the enclosed Application for Registration within 30 days following receipt of this notice.

(OVER)

33X

ELEVATOR SAFETY REGISTRATION INSTRUCTIONS:

Complete the enclosed application and return within 30 days to:

Department of Community Affairs
Division of Codes and Standards
Bureau of Code Services
Elevator Safety Unit
CN 816
Trenton, NJ 08625-0816

You are required to pay a registration fee of $50 per device. You may enclose payment with your application. Make check or money order payable to *Treasurer, State of NJ*. **DO NOT MAIL CASH.** Please record on the front of the application form the *payment amount enclosed*. If payment is not enclosed you will be billed later.

Section I: Building Information - If the building name and address printed on the upper right corner of this application form are incorrect please correct in the spaces provided. **If the building referenced on this form is one of a project, a separate form must be filed for each building within the project.** The space entitled *building name* should be used to provide a reference. Even if the building has no official name, it may be commonly referred to in some fashion; please indicate either here. If the building is one in a project where individual buildings are identified by either letters or numbers, use this space to indicate that letter or number, i.e. Bldg. 1, Bldg. D. **In the space entitled *Building Street Number and Street Name* please do not fill in PO Box or RD numbers but rather the actual location of the building.** In addition, please fill in the municipality and county to which taxes are paid, the lot and block number and the use group classification of the structure for which this form is being submitted. A listing of all use group classifications is provided below for your convenience.

USE GROUP CLASSIFICATIONS:

A-1	Assembly- Theater with stage
A-2	Assembly- Theater without stage, Night Club, Dance Hall
A-3	Assembly- Museum, Library, Restaurant, Lecture Hall
A-4	Assembly- Religious, Church
A-5	Assembly- Outdoor, Grandstand, Tent Stadium, Coliseum
B	Business use
E	Educational/Day Care
F-1	Factory & Industrial- Moderate Hazard
F-2	Factory & Industrial- Low Hazard
H-1	High Hazard- Detonation
H-2	High Hazard- Deflagration
H-3	High Hazard- Combustion, Physical
H-4	High Hazard- Health
I-1	Institutional (Residential Care)- Supervised residential home for 6+
I-2	Institutional (Incapacitated)- Medical, Nursing Care
I-3	Institutional (Restrained)- Jail, Asylum, Reformatory
M	Mercantile building
R-1	Residential (less than 30 days)- Hotels, Motels, Boarding Houses
R-2	Residential (more than 29 days)- Multi Family Dwellings, Dormitories
R-3	Residential- 1 & 2 family units, 5 lodgers or less ea.
R-4	Residential- Detached 1 & 2 family units, up to 3 stories
S-1	Storage- Moderate Hazard
S-2	Storage- Low Hazard
U	Utility- Accessory buildings & miscellaneous structures

Section II: Owner Information - If the owner name, as defined in Section 4 of Subchapter 1 of the Uniform Construction Code, and owner address printed on the upper left corner of this application form are incorrect, please correct in the spaces provided. If the owner is a corporation, state the corporate name in the space provided for *Owner Name (1):* and the name of the person or department to which future correspondence should be directed in the space provided for *Owner Name (2):*. In addition, please complete the owner telephone number and indicate ownership type. If the ownership type is *Government*, please fill in the type of government (i.e. Local, County, State or Federal,) in the space provided.

Section III: Contact Information - Please enter the name, address and telephone number of the person or firm responsible for the maintenance of the building. Such person or firm should have access to the building for future scheduling of periodic inspections.

Section IV: Device Information - **Please complete a separate Section IV for each type of device in the building. At least one elevator or other device must be specified.** Be sure to fill in the *Manufacturer*. If the device type is an elevator, be sure to fill in the number of stories to which the elevator travels in the space entitled *Height in Stories*. If additional Section IVs are needed, please photocopy this portion of the form and attach. In accordance with section 1 of subchapter 12, all elevator devices within the structure for which this form is being submitted, must be registered. If the structure contains several devices that are identical, enter the total number of like devices within the structure in the space entitled *Number of Identical Devices in Building*. You do not have to fill out a separate Section IV for each like device.

If you should have any questions or need assistance in completing this application, please contact the Elevator Safety Unit at (609) 530-8833.

BCS/ESU-001I(0491)

34X

SUBCHAPTER 12. ELEVATOR SAFETY SUBCODE

Authority

N.J.S.A. 52:27D-124.

Source and Effective Date

R.1991 d.325, effective July 1, 1991.
See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

5:23-12.1 Title; scope; intent

(a) This subchapter of the rules adopted pursuant to the authority of the Uniform Construction Code Act, entitled "Elevator Safety Subcode," shall be known and cited throughout this chapter as subchapter 12 or N.J.A.C. 5:23-12, and when referred to in this subchapter may be cited as "this subchapter."

(b) Unless otherwise specifically provided, all references to paragraphs, sections, or to provisions not specifically identified, shall be construed to refer to such paragraph or section or provision of this subchapter.

(c) This subchapter shall control all matters relating to administration of tests and inspections of elevator devices as defined in (e) below.

(d) It is the purpose of this subchapter to enhance the public safety, health and welfare by ensuring that elevator devices as defined in this subchapter are periodically inspected and maintained in accordance with nationally recognized, referenced standards.

(e) For purposes of this subchapter, "elevator" or "elevator device" means a hoisting and lowering device equipped with a car or platform which moves in guides for the transportation of individuals or freight in a substantially vertical direction through successive floors or levels of a building or structure; or, a power driven, inclined, continuous stairway used for raising or lowering passengers; or, a type of passenger carrying device on which passengers stand or walk, and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted. This includes, without limitation, elevators, escalators, moving walks, dumbwaiters, wheelchair lifts, manlifts, stairway chairlifts and any device within the scope of ASME A17.1 (Safety Code for Elevators and Escalators) or ASME A90.1 (Safety Standard for Belt Manlifts).

1. This definition shall not apply to any conveyor devices that are process equipment.

5:23-12.2 Referenced standards

(a) Periodic, routine and acceptance tests and inspections, if applicable, shall be required on all new and existing power elevators, escalators, dumbwaiters, moving walks, wheelchair lifts, manlifts and stairway chairlifts

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in accordance with the most recent edition of ASME A17.1 referenced in the building subcode. This subsection shall not apply to elevators in structures in Use Group R-3 or R-4.

(b) All operating and electrical parts and accessory equipment or devices for elevator devices shall be maintained in safe operating condition. The maintenance of elevators, dumbwaiters and escalators shall conform to the most recent edition of ASME A17.1 referenced in the building subcode.

(c) (Reserved)

(d) If, upon inspection of any elevator device subject to the requirements of this subchapter, the equipment is found to be in a dangerous condition, or if there is an immediate hazard to persons riding on or using any such device, or if the design, or the method of operation in combination with the design, of the device is determined to be inherently dangerous by the elevator subcode official, the elevator subcode official shall so advise the construction official so that a notice of unsafe structure may be issued pursuant to N.J.A.C. 5:23-2.32.

(e) Inspection and testing procedures for equipment within the scope (section 1) of the ASME A17.1 Safety Code for Elevators and Escalators shall be performed in accordance with the latest edition of ASME A17.2.

(f) Any education, experience or training requirements included or cited in reference standards shall not be binding in this State.

5:23-12.3 Inspection and test schedule

(a) Routine, periodic and acceptance inspections and tests of elevators shall be conducted as follows:

1. Routine and periodic inspections shall be made at intervals of not more than six months for all manlifts, and at intervals not exceeding those set forth in ASME A17.1 referenced in the most recent edition of the building subcode for elevators, escalators and dumbwaiters and moving walks. Stairway chairlifts and wheelchair lifts shall be inspected at intervals not exceeding one year.

2. Routine tests shall be made and periodic tests shall be witnessed at intervals not exceeding those set forth in the most recent edition of ASME A17.1 referenced in the building subcode.

3. Routine and periodic inspections, including any applicable acceptance inspections, shall be made by the elevator subcode official or elevator inspector. Routine tests shall be made and periodic tests, including any applicable acceptance tests, shall be witnessed by the elevator subcode official or elevator inspector.

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5:23-12.4 Registration of elevator devices

(a) On or before July 1, 1992, and thereafter as required by (e) below, the owner of every existing structure containing one or more elevator devices, other than a structure in Use Group R-3 or R-4, shall register each elevator device with the Department on a form provided by the Commissioner.

(b) The owner of every new structure containing one or more elevator devices, other than a structure in Use Group R-3 or R-4, shall register each elevator device with the Department, on a form provided by the Commissioner, prior to the issuance of a certificate of occupancy.

(c) Each filed registration form shall contain the following information for each elevator device:

1. The identification or code number for each individual device;
2. The name of the device's owner or the owner's representative;
3. The mailing address and phone number of the person listed in (c)2 above;
4. The street address of the building or structure, including lot and block number, where the device is located;
5. The type of device;
6. The vertical travel of the device in number of feet and stories, or horizontal feet of travel of the walk or other device;
7. The rating load of the device in pounds;
8. The occupancy load in number of persons;
9. The speed of the elevator in feet per minute;
10. The manufacturer of the device;
11. The date of installation, if known, and date of last inspection performed; and
12. Special devices, such as, but not limited to, oil buffers, counterweights, governors and safeties, and auxiliary power generators.

(d) Each construction official shall provide the Department with the following information concerning each device within the municipality:

1. The name and mailing address of the owner or owner's representative of each device; and
2. The street address, including lot and block number, where the device is located.

(e) If the ownership of a structure containing one or more elevator devices, other than a structure in Use Group R-3 or R-4, is transferred, whether by sale, gift, assignment, intestate succession, testate devolution, reorganization, receivership, foreclosure or execution process, the new owner shall file a notice of change of ownership, with the appropriate re-registration fee, with the Department within 60 days of the date of transfer.

5:23-12.5 Registration fee

The initial registration fee for each elevator device in any structure that is not in Use Group R-3 or R-4 shall be $50.00. A re-registration fee of $50.00 shall be required for each structure containing one or more elevator devices, upon change of ownership.

5:23-12.6 Test and inspection fees

(a) The Department fees for witnessing acceptance tests and performing inspections shall be as follows:

1. The basic fees for elevator devices in structures not in Use Group R-3 or R-4 shall be as follows:

i. Traction and winding drum elevators:	
(1) One to 10 floors	$225.00;
(2) Over 10 floors	$375.00;
ii. Hydraulic elevators	$200.00;
iii. Roped hydraulic elevators	$225.00;
iv. Escalators, moving walks	$200.00;
v. Dumbwaiters	$ 50.00;
vi. Stairway chairlifts, inclined and vertical wheelchair lifts and manlifts	$ 50.00.

2. Additional charges for devices equipped with the following features shall be as follows:

i. Oil buffers (charge per oil buffer)	$ 40.00;
ii. Counterweight governor and safeties	$100.00;
iii. Auxiliary power generator	$ 75.00.

3. The Department fee for elevator devices in structures in Use Group R-3 or R-4 shall be $150.00. This fee shall be waived when signed statements and supporting inspection and acceptance test reports are filed by an approved qualified agent or agency in accordance with N.J.A.C. 5:23-2.19 and 2.20.

4. The fee for witnessing acceptance tests of, and performing inspections of, alterations shall be $50.00.

(b) The Department fees for routine and periodic tests and inspections for elevator devices in structures not in Use Group R-3 or R-4 shall be as follows:

1. The fee for the six month routine inspection of elevator devices shall be as follows:

i. Traction and winding drum elevators:	
(1) One to 10 floors	$140.00;
(2) Over 10 floors	$180.00;
ii. Hydraulic elevators	$100.00;
iii. Roped hydraulic elevators	$140.00;

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iv. Escalators, moving walks $140.00.

2. The fee for the one year periodic inspection and witnessing of tests of elevator devices, which shall include a six month routine inspection, shall be:

i. Traction and winding drum elevators:	
(1) One to 10 floors	$200.00;
(2) Over 10 floors	$240.00;
ii. Hydraulic elevators	$150.00;
iii. Roped hydraulic elevators	$200.00;
iv. Escalators, moving walks	$320.00;
v. Dumbwaiters	$ 80.00;
vi. Manlifts, stairway chairlifts, inclined and vertical wheelchair lifts	$120.00.

3. Additional yearly periodic inspection charges for elevator devices equipped with the following features shall be as follows:

i. Oil buffers (charge per oil buffer)	$ 40.00;
ii. Counterweight governor and safeties	$ 80.00;
iii. Auxiliary power generator	$ 50.00.

4. The fee for the three year or five year inspection of elevator devices shall be as follows:

i. Traction and winding drum elevators:	
(1) One to 10 floors (five year inspection)	$340.00;
(2) Over 10 floors (five year inspection)	$380.00;
ii. Hydraulic and roped hydraulic elevators:	
(1) Three-year inspection	$250.00;
(2) Five-year inspection	$150.00.

(c) When the Department is the enforcing agency, the fees set forth in (b) above shall be paid annually in accordance with the following schedule, which is based on the average of the fees to be collected over a five year period:

1. Basic annual fee as follows:

i. Traction and winding drum elevators:	
(1) One to 10 floors	$370.00;
(2) Over 10 floors	$450.00;
ii. Hydraulic elevators	$270.00;
iii. Roped hydraulic elevators	$300.00;
iv. Escalators, moving walks	$460.00;
v. Dumbwaiters	$ 80.00;
vi. Stairway chairlifts, inclined and vertical wheelchair lifts, manlifts	$120.00.

2. Additional charges for devices equipped with the following features as follows:

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i. Oil buffers (charge per oil buffer)	$ 40.00;
ii. Counterweight governor and safeties	$ 80.00;
iii. Auxiliary power generator	$ 50.00.

5:23-12.7 Licensing

(a) All elevator subcode officials and inspectors shall be licensed according to N.J.A.C. 5:23-5.5.

(b) Any person aggrieved by any decision of the Department under these rules shall be entitled to a hearing pursuant to N.J.A.C. 5:23-5.2.

(c) A licensed elevator subcode official or inspector shall be responsible for completing any continuing educational requirements imposed by the Department pursuant to this chapter prior to license renewal pursuant to N.J.A.C. 5:23-5.

5:23-12.8 Alterations, replacements, damages, increases in size, changes in use group, ordinary repairs

(a) In complying with this chapter, calculations concerning alterations, replacements, damages, increases in size and changes in use group, in N.J.A.C. 5:23-2, shall be performed using data for entire structures. The calculations in N.J.A.C. 5:23-2 shall not be applied to individual elevator devices.

(b) Alterations of elevator devices are those defined in the current ASME A17.1 standard or other applicable standard referenced in the State Uniform Construction Code. Alteration provisions applicable to whole structures in accordance with N.J.A.C. 5:23-2 shall not be applied to elevator devices.

(c) Alteration of elevator devices shall be deemed to be "minor work" within the meaning of N.J.A.C. 5:23-2.17A.

40 X

ATTACHMENT III

CHAPTER 414

41 X

S 3753 Orechio
Dec. 9—Provides county cap exception for certain insurance, county college and State inmate housing appropriations.
Dec. 9, 1991—County & Municipal Government Com.
Jan. 9, 1992—Reported, 2nd reading.

S 3754 Contillo
Dec. 9—Same as A5225 - 1991 (re: Watershed lands)
Dec. 9, 1991—Natural Resources & Agriculture Com.
Dec. 12, 1991—Land Use Management & Regional Affairs Com.
Dec. 12, 1991—Reported with com. amend., 2nd reading.

S 3755 Rand; Assemblyman Bryant
Dec. 9—Provides maximum pension to certain judges.
Jan. 13, 1992—Passed in Senate. (27-0)
Jan. 13, 1992—Substituted for A5299.
Jan. 13, 1992—Passed in Assembly. (43-6)
Jan. 18, 1992—Approved, Chapter 470, 1991.

S 3756 Lipman
Jan. 13, 1992—Substituted by A5293.

S 3757 Rand; Assemblymen Bryant, Roberts
Dec. 9—Provides for DRPA to take action to unify ports of the Delaware River.
Jan. 9, 1992—Passed in Senate. (23-13)
Jan. 10, 1992—Substituted for A5283.
Jan. 10, 1992—Passed in Assembly. (41-27)
Jan. 19, 1992—Approved, Chapter 515, 1991.

S 3758 Feldman, Rice; Assemblyman Mazur
Dec. 9—Prohibits discrimination based on affectional or sexual orientation.
Jan. 13, 1992—Passed in Senate, amended. (21-0)
Jan. 13, 1992—Substituted for A634.
Jan. 13, 1992—Passed in Assembly. (46-7)
Jan. 19, 1992—Approved, Chapter 519, 1991.

S 3759 Girgenti
Jan. 13, 1992—Substituted by A5310.

S 3760 Cowan
Dec. 9—Approp. $4,669,225 to DOC for renovation of fac. in Secaucus and Kearny.
Dec. 19, 1991—Passed in Senate. (35-1)
Jan. 13, 1992—Passed in Assembly. (49-0)
Jan. 18, 1992—Approved, Chapter 471, 1991.

S 3761 O'Connor
Jan. 9, 1992—Substituted by A4697.

S 3762 Orechio
Dec. 9—Same as A5222 - 1991 W/C. (re: Co. Mun. Study Comm.)
Dec. 9, 1991—Revenue, Finance & Appropriations Com.

S 3763 Codey
Dec. 9—Approp. $500,000 for grant to Council on Compulsive Gambling of NJ.
Dec. 9, 1991—Institutions, Health & Welfare Com.

S 3764 Lynch; Assemblyman R. Smith
Dec. 9—Provides for filing of certificates of limited partnership with Secretary of State.
Jan. 9, 1992—Passed in Senate, amended. (37-1)
Jan. 13, 1992—Substituted for A5324.
Jan. 13, 1992—Passed in Assembly. (68-0)
Jan. 18, 1992—Approved, Chapter 472, 1991.

S 3765 Lynch
Dec. 9—Establishes alternative procedure for mortgage foreclosure without public sale.
Dec. 9, 1991—Judiciary Com.

S 3766 Lynch
Dec. 9—Revises statutes establishing fees charged by county clerks and registers.
Dec. 9, 1991—County & Municipal Government Com.
Jan. 9, 1992—Reported, 2nd reading.

S 3767 Paterniti
Jan. 13, 1992—Substituted by A5238.

S 3768 Lynch
Jan. 13, 1992—Substituted by A5261.

S 3769 Dalton; Assemblymen Baer, Cantu
Dec. 9—Approp. Green Acres bond act moneys for recreation, conservation land.
Dec. 19, 1991—Passed in Senate. (35-0)
Jan. 9, 1992—Substituted for A5285.
Jan. 9, 1992—Passed in Assembly. (70-0)
Jan. 20, 1992—Approved, Chapter 522, 1991.

S 3770 Foy
Dec. 9—Provides terminal rental adjustment clause leases be considered true leases.
Dec. 9, 1991—Labor, Industry & Professions Com.
Jan. 9, 1992—Reported, 2nd reading.

S 3771 Lynch, Cowan; Assemblymen Doria, Haytaian
Dec. 9—Provides for certain mortgage loans to be made from PFRS to members thereof.
Jan. 9, 1992—Passed in Senate. (23-12)
Jan. 10, 1992—Substituted for A5325.
Jan. 10, 1992—Passed in Assembly. (62-7)
Jan. 13, 1992—Returned by Governor with recommended amendment.
Jan. 13, 1992—Amended as recommended.
Jan. 13, 1992—Re-enacted in Senate. (24-2)
Jan. 13, 1992—Re-enacted in Assembly. (53-8)
Jan. 17, 1992—Approved, Chapter 414, 1991.

S 3772 Girgenti
Dec. 9—Creates a State militia.
Dec. 9, 1991—Law, Public Safety & Defense Com.
Dec. 19, 1991—Reported with com. amend., 2nd reading.

S 3773 Gormley, Ambrosio, DiFrancesco, Lynch; Assemblymen Doria, Rocco
Dec. 9—Authorizes Sports Expo Auth. undertake projects relating to sports facilities at Rutgers and Atlantic City Convention Center.
Jan. 9, 1992—Passed in Senate, amended. (29-6)
Jan. 10, 1992—Substituted for A5317.
Jan. 10, 1992—Passed in Assembly. (58-12)
Jan. 13, 1992—Approved, Chapter 375, 1991.

S 3774 Gormley, Ambrosio, DiFrancesco, Lynch; Assemblymen Doria, Rocco
Dec. 9—Authorizes auth. operating convention center to impose hotel room user fee.
Jan. 9, 1992—Passed in Senate. (24-8)
Jan. 10, 1992—Substituted for A5318.
Jan. 10, 1992—Passed in Assembly. (50-14)
Jan. 13, 1992—Approved, Chapter 376, 1991.

S 3775 Withdrawn from the files.

S 3776 Rand
Dec. 12—Creates the N.J. Railroad and Transportation Museum Commission and Fund.
Dec. 12, 1991—Transportation & Public Utilities Com.

S 3777 Stockman
Dec. 12—Same as A4921 - 1991. (re: T.A. Edison St. College)
Dec. 12, 1991—Education Com.

S 3778 Stockman
Dec. 12—Mandates economic benefit to mun. that host publicly owned or operated recycling centers.
Dec. 12, 1991—Land Use Management & Regional Affairs Com.

S 3779 McManimon; Assemblymen Deverin, Hudak
Dec. 12—Provides that re-enrollment in PERS of certain retirants shall be on basis of consolidated membership account.
Jan. 6, 1992—Passed in Senate. (34-0)
Jan. 9, 1992—Substituted for A5289.
Jan. 9, 1992—Passed in Assembly. (54-10)
Jan. 18, 1992—Approved, Chapter 473, 1991.

S 3780 Phillips
Dec. 12—Same as A3560 - 1991. (re: Wastewater Warranty Corp.)
Dec. 12, 1991—Land Use Management & Regional Affairs Com.

S 3781 McManimon, Rand, Cowan, Phillips; Assemblymen Spadoro, Cantu
Dec. 12—Authorizes turnpike project addition and extension consisting of the proposed Route 92 freeway.
Jan. 6, 1992—Passed in Senate. (30-4)
Jan. 13, 1992—Substituted for A5248.
Jan. 13, 1992—Passed in Assembly. (41-24)
Jan. 18, 1992—Approved, Chapter 474, 1991.

S 3782 Rand
Dec. 12—Requires State to test language proficiency of applicants for endorsement to teach bilingual/bicultural programs or English as a second language classes.
Dec. 12, 1991—Education Com.

S 3783 Lipman, Orechio
Dec. 12—Reduces age for retirement benefits for certain city elected officials.
Dec. 12, 1991—St. Gov't & Federal & Interstate Relations Com.

S 3784 Lesniak, Zane, McManimon, Codey, Orechio, Dalton, Feldman, Paterniti, Girgenti, Contillo, O'Connor, Ambrosio, Cowan, Menendez, Weiss, Phillips, Lipman, Bassano, Bennett, Brown, Palaia, Rand
Dec. 16—Eliminates surcharges for certain insureds in the Market Transition Facility.
Dec. 16, 1991—Labor, Industry & Professions Com.
Dec. 16, 1991—Reported with com. amend., 2nd reading.
Jan. 6, 1992—Passed in Senate, amended. (36-3)

S 3785 Rand; Assemblymen Bryant, Roberts
Dec. 16—Provides for gubernatorial veto of actions of State commissioners to the DRPA.
Jan. 9, 1992—Passed in Senate. (32-0)
Jan. 10, 1992—Substituted for A5284.
Jan. 10, 1992—Passed in Assembly. (63-1)
Jan. 19, 1992—Approved, Chapter 516, 1991.

S 3786 Rand; Assemblyman Bryant
Dec. 16—Sets minimum distance for sirens from schools.
Jan. 13, 1992—Passed in Senate. (26-1)
Jan. 13, 1992—Substituted for A5298.
Jan. 13, 1992—Passed in Assembly. (41-22)
Jan. 18, 1992—Approved, Chapter 475, 1991.

S 3787 Ewing
Dec. 16—Authorizes Sports, Expo Auth. to enter into agreements with State regarding debt refinancing.
Dec. 16, 1991—St. Gov't & Federal & Interstate Relations Com.
Dec. 19, 1991—Revenue, Finance & Appropriations Com.

S 3788 Rand
Dec. 16—Same as A5226 - 1991. (re: Teacher certification)
Dec. 16, 1991—Education Com.

S 3789 Rand
Dec. 16—Same as A5227 - 1991. (re: Student, English limited)
Dec. 16, 1991—Education Com.

S 3790 Lynch
Dec. 19—Appropriates $14,400,000 to Medicaid for transportation services.
Dec. 19, 1991—Institutions, Health & Welfare Com.

S 3791 Lynch
Dec. 19—Same as A5240 - 1991. (re: Elderly long term care)
Dec. 19, 1991—Institutions, Health & Welfare Com.

S 3792 Ewing, Palaia, Feldman
Dec. 19—Provides for appt. of Comm. of Ed. by State Bd. of Ed. for five year term.
Dec. 19, 1991—Education Com.

S 3793 Laskin
Dec. 19—Increases fees for medical witnesses in workers' compensation cases.
Dec. 19, 1991—Labor, Industry & Professions Com.

S 3794 Menendez
Dec. 19—Modifies arbitration for public fire and police departments.
Dec. 19, 1991—Labor, Industry & Professions Com.

S 3795 Orechio, Phillips
Dec. 19—Provides for transfer of judicial employees and costs from county to State.
Dec. 19, 1991—Revenue, Finance & Appropriations Com.

S 3796 Orechio, Phillips
Dec. 19—Transfers pre-dispositional probation to Judiciary and post-disposition probation to counties.
Dec. 19, 1991—Revenue, Finance & Appropriations Com.

S 3797 Rice
Dec. 19—Changes amount State and counties pay for the various AFDC programs.
Dec. 19, 1991—Revenue, Finance & Appropriations Com.

S 3798 Russo
Dec. 19—Reduces sales tax to 6% on July 1, 1992 and to 5% on January 1, 1993.
Dec. 19, 1991—Revenue, Finance & Appropriations Com.

S 3799 Weiss; Assemblymen Villapiano, Deverin
Jan. 6—Appropriates funds for the support of State government.
Jan. 9, 1992—Passed in Senate. (33-2)
Jan. 10, 1992—Substituted for A5304.
Jan. 10, 1992—Passed in Assembly. (41-8)
Jan. 18, 1992—Approved, Chapter 476, 1992.

S 3800 Dalton; Assemblyman Romano
Jan. 6—Appropriates funds for the support of State government.
Jan. 9, 1992—Passed in Senate. (28-6)
Jan. 10, 1992—Substituted for A5309.
Jan. 10, 1992—Passed in Assembly. (42-4)
Jan. 19, 1992—Line item veto.
Jan. 19, 1992—Approved, Chapter 517, 1992.

S 3801 Stockman
Jan. 13, 1992—Substituted by A5276.

S 3802 Weiss
Dec. 19—Permits permanent appointment of R. Leonard to Perth Amboy fire dept.
Dec. 19, 1991—County & Municipal Government Com.
Jan. 9, 1992—Reported, 2nd reading.
Jan. 13, 1992—Passed in Senate. (33-0)

S 3803 Lynch
Dec. 16—Places cap on annual approp. for county court costs.
Dec. 16, 1991—Judiciary Com.
Jan. 9, 1992—Reported by com. sub., 2nd reading.

S 3804 Contillo
Jan. 6—Provides Highway Authority comply with certain requirements concerning agreements with private corporations.
Jan. 6, 1992—Transportation & Public Utilities Com.

S 3805 Lipman
Jan. 6—Same as A2543 - 1991. (re: Essex Co., Rt. 27)
Jan. 6, 1992—Transportation & Public Utilities Com.

S 3806 Ambrosio
Jan. 6—Same as A3712 - 1991. (re: Disorderly person offense)
Jan. 6, 1992—Judiciary Com.

S 3807 Dalton
Jan. 13, 1992—Substituted by A5307.

S 3808 Palaia
Jan. 6—Prohibits possession, production and distribution of certain video games.
Jan. 6, 1992—Judiciary Com.

S 3809 Lynch; Assemblywoman Bush
Jan. 6—Appropriates funds for the support of State government.
Jan. 9, 1992—Passed in Senate. (21-12)
Jan. 13, 1992—Substituted for A843.
Jan. 13, 1992—Passed in Assembly. (41-25)

S 3810 Lesniak
Jan. 13, 1992—Substituted by A5291.

S 3811 Foy
Jan. 13, 1992—Substituted by A5

S 3812 Foy
Jan. 9—Same as A4907 - 1991 (re: B
Jan. 9, 1992—Labor, Industry &

S 3813 Rand
Jan. 9—Same as A5298 - 1991 (re: S
Jan. 9, 1992—County & Municipa

S 3814 Feldman, Ewing
Jan. 9—Same as A5308 - 1991 (re: ve
Jan. 9, 1992—County & Municipa

S 3815 Orechio
Jan. 9—Provides that Columbus Day
as second Monday in October.
Jan. 9, 1992—Education Com.

S 3816 McManimon
Jan. 13—Same as A3901 - 1991 (re: B
Jan. 13, 1992—Land Use Manager

S 3817 Menendez
Jan. 9—Same as S3794 - 1991 (re: F
Jan. 9, 1992—No Ref., 2nd readir

S 3818 Orechio, Phillips
Jan. 9—Same as S3795 - 1991 (re: Ju
Jan. 9, 1992—No Ref., 2nd readir

S 3819 Orechio, Phillips
Jan. 9—Same as S3796 - 1991 (re: Pr
Jan. 9, 1992—No Ref., 2nd readi

S 3820 Rice
Jan. 9—Same as S3797 - 1991 (re: AF
Jan. 9, 1992—No Ref., 2nd read

S 3821 Russo
Jan. 9—Same as S3798 - 1991 (re: Sa
Jan. 9, 1992—No Ref., 2nd read

SENATE CONCU

SCR 1 Russo
Pre-filed—PCA to require that certain
Senate within 45 days of the creation of
Jan. 9, 1990—Judiciary Com.

SCR 2 Russo
Pre-filed—Memorializes Congress to en
Jan. 9, 1990—Natural Resources

SCR 3 Russo
Pre-filed—PCA to limit the annual increa
Jan. 9, 1990—Revenue, Finance

SCR 4 Russo
Pre-filed—PCA to require that appropria
items of appropriation and be passed b
of the Legislature.
Jan. 9, 1990—St. Gov't & Federal

SCR 5 Russo
Pre-filed—Amends Constitution to term
on second Monday in July in order to pr
Jan. 9, 1990—St. Gov't & Federal

SCR 6 Withdrawn from the files.

SCR 7 (SCR 3) Zimmer
Pre-filed—PCA to provide for the electio
State Auditor.
Jan. 9, 1990—St. Gov't & Federal &

SCR 8 (SCR 4) Bennett, Littell
Pre-filed—PCA to provide for Statewide i
Jan. 9, 1990—St. Gov't & Federal &
Oct. 11, 1990—Motion to relieve com
Apr. 25, 1991—Judiciary Com.

SCR 9 (SCR 6) Zimmer
Pre-filed—Limits authority of Legislature
except where authorized by law.
Jan. 9, 1990—St. Gov't & Federal &

SCR 10 (SCR 7) Zimmer
Pre-filed—PCA to provide for the New Jer
Jan. 9, 1990—St. Gov't & Federal &

SCR 11 Withdrawn from the files.

SCR 12 (SCR 114) Graves, Bubba.
Pre-filed—Increases allowable real prope
limit for certain elderly or totally disabled
Jan. 9, 1990—County & Municipal G

SCR 13 (SCR 21) Lynch, Cowan, Ca
Pre-filed—PCA to require the State to pro
are hereafter mandated by State law.
Jan. 9, 1990—St. Gov't & Federal &
June 10, 1991—County & Municipal G
June 17, 1991—Reported by com. sub
June 20, 1991—Copies placed on des

SCR 14 (SCR 69) Bassano
Pre-filed—PCA to allow a tax deduction fo
Jan. 9, 1990—St. Gov't & Federal &

SCR 15 (SCR 70) Bassano
Pre-filed—PCA to increase the veterans' ta
Jan. 9, 1990—County & Municipal G

SCR 16 (SCR 71) Bassano
Pre-filed—PCA to permit property tax
dedicated for conservation, recreation or o
Jan. 9, 1990—Land Use Managemen

SCR 17 (SCR 72) Bassano
Pre-filed—PCA to describe the manner
maintenance and support of a thorough an
Jan. 9, 1990—Education Com.

SCR 18 (SCR 73) Bassano
Pre-filed—Memorializes Congress to recog
Jan. 9, 1990—St. Gov't & Federal & I

SCR 19 (SCR 135) Russo, Palaia; As
Pre-filed—Expresses the sense of the Le
declare striped bass a game fish.
Mar. 8, 1990—Passed in Senate. (Vo
Apr. 26, 1990—Substituted for ACR86
Apr. 26, 1990—Passed in Assembly, a
May 24, 1990—Assembly amend. pass

SCR 20 (SCR 28) Brown
Pre-filed—Amends the Legislative Code of
Jan. 9, 1990—St. Gov't & Federal & In

SCR 21 (SCR 61) Stockman
Pre-filed—PCA to create the New Jersey R
Jan. 9, 1990—St. Gov't & Federal & In

SCR 22 (SCR 97) Ewing
Pre-filed—PCA to permit legislation denyin
Jan. 9, 1990—Judiciary Com.

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§§2-7
C.43:16A-16.3
to
C.43:16A-16.8
&
Note to
55:14K-4
§8
Note to §§1-7

P.L.1991, CHAPTER 414, *approved January 17, 1992*

1991 Senate No. 3771 *(First Reprint)*

AN ACT making certain mortgage loans from the Police and Firemen's Retirement System of New Jersey available to members of the retirement system and amending and supplementing P.L.1944, c.255.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of P.L.1944, c.255 (C.43:16A-1) is amended to read as follows:

1. As used in this act:

(1) "Retirement system" shall mean the Police and Firemen's Retirement System of New Jersey as defined in section 2 of this act.

(2) (a) "Policeman" shall mean a permanent, full-time employee of a law enforcement unit as defined in section 2 of P.L.1961, c.56 (C.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 P.L.1961, c.56 (C.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 shall also include 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

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Senate amendments adopted in accordance with Governor's recommendations January 13, 1992.

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.

(b) "Fireman" shall 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 shall also include 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. As used in this paragraph, "firefighting unit" shall mean 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.

(3) "Member" shall mean any policeman or fireman included in the membership of the retirement system pursuant to this amendatory and supplementary act, P.L.1989, c.204 (C.43:16A-15.6 et al.).

(4) "Board of trustees" or "board" shall mean the board provided for in section 13 of this act.

(5) "Medical board" shall mean the board of physicians provided for in section 13 of this act.

(6) "Employer" shall mean the State of New Jersey, the county, municipality or political subdivision thereof which pays the particular policeman or fireman.

(7) "Service" shall mean service as a policeman or fireman paid for by an employer.

(8) "Creditable service" shall mean service rendered for which credit is allowed as provided under section 4 of this act.

(9) "Regular interest" shall mean interest as determined annually by the State Treasurer after consultation with the Directors of the Divisions of Investment and Pensions and the actuary of the system. It shall bear a reasonable relationship to the percentage rate of earnings on investments but shall not exceed 105% of such percentage rate.

(10) "Aggregate contributions" shall mean the sum of all the amounts, deducted from the compensation of a member or contributed by him or on his behalf, standing to the credit of his individual account in the annuity savings fund.

(11) "Annuity" shall mean payments for life derived from the aggregate contributions of a member.

(12) "Pension" shall mean payments for life derived from contributions by the employer.

(13) "Retirement allowance" shall mean the pension plus the annuity.

(14) "Earnable compensation" shall mean the full rate of the salary that would be payable to an employee if he worked the full normal working time for his position. In cases where salary includes maintenance, the retirement system shall fix the value of that part of the salary not paid in money which shall be considered under this act.

(15) "Average final compensation" shall mean the average annual salary upon which contributions are made for the three years of creditable service immediately preceding his retirement or death, or it shall mean the average annual salary for which contributions are made during any three fiscal years of his or her membership providing the largest possible benefit to the member or his beneficiary.

(16) "Retirement" shall mean the termination of the member's active service with a retirement allowance granted and paid under the provisions of this act.

(17) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity computed upon the basis of such mortality tables recommended by the actuary as shall be adopted by the board of trustees, and regular interest.

(18) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables recommended by the actuary as shall be adopted by the board of trustees, and regular interest.

(19) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables recommended by the actuary as shall be adopted by the board of trustees, and regular interest.

(20) "Beneficiary" shall mean any person receiving a retirement allowance or other benefit as provided by this act.

(21) "Child" shall mean a deceased member's or retirant's unmarried child (a) under the age of 18, or (b) 18 years of age or older and enrolled in a secondary school, or (c) under the age of 24 and enrolled in a degree program in an institution of higher education for at least 12 credit hours in each semester, provided that the member died in active service as a result of an accident met in the actual performance of duty at some definite time and place, and the death was not the result of the member's willful misconduct, or (d) of any age who, at the time of the member's or retirant's death, is disabled because of mental retardation or physical incapacity, is unable to do any substantial, gainful work because of the impairment and his impairment has lasted or can

be expected to last for a continuous period of not less than 12 months, as affirmed by the medical board.

(22) "Parent" shall mean the parent of a member who was receiving at least one-half of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a parent will be considered terminated by marriage of the parent subsequent to the death of the member.

(23) "Widower" shall mean the man to whom a member or retirant was married at least two years before the date of her death and to whom she continued to be married until the date of her death and who was receiving at least one-half of his support from the member or retirant in the 12-month period immediately preceding the member's or retirant's death or the accident which was the direct cause of the member's death. The dependency of such a widower will be considered terminated by marriage of the widower subsequent to the death of the member or retirant. In the event of the payment of an accidental death benefit, the two-year qualification shall be waived.

(24) "Widow" shall mean the woman to whom a member or retirant was married at least two years before the date of his death and to whom he continued to be married until the date of his death and who has not remarried. In the event of the payment of an accidental death benefit, the two-year qualification shall be waived.

(25) "Fiscal year" shall mean any year commencing with July 1, and ending with June 30, next following.

(26) "Compensation" shall mean the base salary, for services as a member as defined in this act, which is in accordance with established salary policies of the member's employer for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary duties beyond the regular workday.

(27) "Department" shall mean any police or fire department of a municipality or a fire department of a fire district located in a township or a county police or park police department or the appropriate department of the State or instrumentality thereof.

(28) "Final compensation" means the compensation received by the member in the last 12 months of creditable service preceding his retirement.

<u>(29) "Mortgage loan" shall mean any indebtedness secured by a mortgage on a residential property, which mortgage shall constitute a first lien on that property.</u>

<u>(30) "Residential property" shall mean any real property including land or, in the case of condominiums, an interest in a lot of land, which real property shall consist of a single one- or two-family dwelling, including appropriate garages or other</u>

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outbuildings.
(cf: P.L.1989, c.204, s.1)

2. (New section) a. In addition to any loan for which he may be eligible pursuant to the provisions of section 18 of P.L.1964, c.241 (C.43:16A-16.1), and notwithstanding the provisions to the contrary of that or any other law, any member who, at the time of application, is employed by the State of New Jersey or a county, municipality or other political subdivision of this State and who has at least one year of creditable service is, for the purpose of securing for his own occupation as his principal residence a residential property located within this State, eligible to receive from the retirement system a mortgage loan. Such a mortgage loan shall be used only for the purpose of enabling a borrower to acquire or construct a residential property or refinance an existing residential property loan.

No member shall be eligible hereunder for more than one outstanding mortgage loan at any time, and no member shall be eligible to receive a second mortgage loan on a residential property already mortgaged by him. Preference shall be given in making loans to members who are applying to acquire or construct their first principal place of residence.

b. Any mortgage loan made pursuant to the provisions of this act, together with any interest and expenses to the retirement system associated with the making of that loan, shall be repaid to the retirement system in equal installments.

c. The amount of interest charged with respect to a mortgage loan made pursuant to the provisions of this act shall be fixed for the entire term of the loan [1][at an annual rate of 7.75%]. The New Jersey Housing and Mortgage Finance Agency, established under section 4 of P.L.1983, c.530 (C.55:14K-4), shall initially establish the rate within 120 days of the effective date of this act and semi-annually reset the rate thereafter. The rate shall be determined by the New Jersey Housing and Mortgage Finance Agency by adding 2% to the index. For the purposes of this act, the index shall be the weekly average yield at the time the rate is reset on one-year United States Treasury securities adjusted to a constant maturity as made available by the Federal Reserve Board[1]. The term of any mortgage loan so made shall not exceed 30 years.

d. No mortgage loan made pursuant to the provisions of this act shall be sold, transferred or assigned to any person, nor shall the payments with respect to any mortgage loan so made be assumed by any person other than the member to whom that loan was made, except that in the event of the death of a member, the mortgage may be assignable to a surviving spouse if the spouse is the sole heir to the property.

e. The instrument evidencing a mortgage loan under the provisions of this act may be in such form, and may contain such provisions, not inconsistent with law, as the retirement system may choose to insert for the protection of its lien and the preservation of its interest in the real property mortgaged to it.

3. (New section) The New Jersey Housing and Mortgage Finance Agency, established under section 4 of P.L.1983, c.530 (C.55:14K-4), shall administer the mortgage program for the board. The New Jersey Housing and Mortgage Finance Agency shall: a. originate loans on behalf of the board; b. appraise the value of any real property eligible to be mortgaged under this act; c. guarantee and insure title to the real property; and d. perform any other service necessary to accomplish the purposes of this act in a manner consistent with the protection of the rights of beneficiaries of the retirement system. The cost of the performance of these services in connection with the making of a mortgage loan shall be charged to the borrower and included in the amount of that mortgage loan.

4. (New section) The New Jersey Housing and Mortgage Finance Agency shall set mortgage loan standards and guidelines for loans made pursuant to this act, including mortgage loan maturity terms, participation fees, mortgage loan insurance requirements, lender compensation rates, servicing fees, loan-to-value ratios, minimum and maximum mortgage loan amounts, and eligibility standards consistent with section 2 of this act.

5. (New section) Any member receiving a mortgage loan pursuant to the provisions of this act shall, within 120 days of the date on which the retirement system made that loan, occupy the residence as his principal dwelling place. If any member receiving a mortgage loan pursuant to the provisions of this act sells, or ceases to occupy as his residence and principal dwelling place, that residential property, the entire amount of that mortgage loan, together with any accrued interest thereon, shall be due and payable on the 120th day following that action.

If any member receiving a mortgage loan pursuant to the provisions of this act terminates, for any reason other than death, retirement, or layoff, including deferred and disability retirement, his employment with State government or a county, municipality or other political subdivision, the entire amount of that mortgage loan, together with any accrued interest thereon, shall be due and payable 120 days following that action.

6. (New section) a. Notwithstanding any limitations, conditions, restrictions or authorizations regarding the investment or reinvestment of the moneys of the retirement system contained in section 11 of P.L..1950, c.270 (C.52:18A-89), in section 9 of P.L.1959, c.17 (C.52:18A-88.1) or in any other law, upon application of a member for a mortgage loan the retirement system shall, within 90 days, make available to the New Jersey Housing and Mortgage Finance Agency sufficient funds to provide

mortgage loans in accordance with the provisions of this act, except that the retirement system shall make no mortgage loan at any time when the total of all principal balances owing to the retirement systems on mortgage loans, less all write-offs and reserves with respect to these mortgage loans, together exceeds, or by the making of the loan would exceed, 10% of the total investment assets, including mortgage loans, of the retirement system. Every mortgage loan made hereunder shall be evidenced by a note or bond and shall be secured by a mortgage on the fee of real property located within this State. Every mortgage shall be certified to be a first lien by an attorney-at-law of this State or certified or guaranteed to be a first lien by a corporation authorized to guarantee titles to land in this State. For the purposes of this section, a mortgage shall be deemed to be a first lien, notwithstanding the existence of a lien for current taxes or assessments not due or payable at the time the loan is made, and notwithstanding the existence of leases, building restrictions, easements, encroachments, or covenants which, do not materially lessen the value of the real property to be mortgaged.

b. Pursuant to rules established by the New Jersey Housing and Mortgage Finance Agency, no mortgage loan shall be made under this act except upon a written certification signed by at least two persons appointed or retained by the appraisers. In the case of a mortgage loan secured by a mortgage upon real property, such certification shall state the opinion of such persons as to the value of the land and the improvements thereon or to be erected thereon and the character of such improvements. Such certification shall be filed with the records of the retirement system and shall be preserved until the retirement system has no interest, as mortgagee or otherwise, in the real property.

c. The retirement system shall make no mortgage loan secured by a mortgage on real property unless the property shall consist of improved real property, or unimproved real property if the proceeds of such loan shall be used for the purposes of erecting improvements thereon.

7. (New section) The State Treasurer shall, with the advice of the Commissioner of the Department of Banking, ~~the~~ Director of the Division of Pensions~~,~~ ~~and the~~ Executive Director of the New Jersey ~~Housing~~ and Mortgage Finance Agency and in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C52:14B-1 et seq.), promulgate any rules and regulations necessary to accomplish the purposes of this act in a manner consistent with the protection of the rights of members and beneficiaries of the retirement system.

8. This act shall take effect 90 days from enactment [1]and shall expire five years after the effective date[1].

PUBLIC EMPLOYEE BENEFITS

Provides for certain mortgage loans to be made from PFRS to members thereof.

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Memorandum of Understanding

Between

The Department of the Treasury of the
State of New Jersey

and

The New Jersey Housing and Mortgage Finance Agency

Whereas, with the enactment of Senate Bill No. 3771 (c. 414 P.L. 1991) amending and supplementing N.J.S.A.43:16A-1 et seq. (PFRS Act) a mortgage program was initated for members of the Police and Firemen's Retirement System of New Jersey (PFRS); and

Whereas, the New Jersey Housing and Mortgage Finance Agency (HMFA) is responsible under the PFRS Act for the administration of the PFRS mortgage program on behalf of the Board of Trustees of the PFRS; and

Whereas, the PFRS Act sets forth certain terms and conditions of the mortgage loans and requires the HMFA to establish certain other terms and conditions; and

Whereas, the State Treasurer is responsible to protect the rights of members and beneficiaries of the retirement system; and

Whereas, coordination and cooperation between the HMFA and the State Treasurer is essential to both carry out a reasonable mortgage program and exercise fiduciary responsibilities;

Now therefore, the State Treasurer and the HMFA hereby enter into this Memorandum of Understanding to define for their respective agencies the necessary aspects of the mortgage program authorized by c. 414 P.L. 1991.

I. The New Jersey [illegible] and Mortgage Finance Agency

A. The New Jers[illegible] and Mortgage Finance Agency (HMFA) will prepare a term sheet [illegible]ership Initiative for Police and Firemen mortgage program. [illegible] will contain all essential and material terms and conditi[illegible] a mortgage under this program, and also shall contain [illegible] to origination, purchase and servicing of loans.

B. Th[illegible] (attachment 1) has been reviewed and approved by the St[illegible] the HMFA. The initial term sheet and any revisions whi[illegible], are incorporated herein and made a part of this Agreement[illegible]

C. HMFA, or if authorized HMFA's Executive Director, may from time to time adjust the interest rate, fees, lender compensation, minimum/maximum loan amounts, loan underwriting criteria, administrative and servicing fees, within the term sheet as needed to reflect changing conditions in the mortgage markets in accordance with the PFRS Act.

The HMFA's Executive Director will inform the State Treasurer in writing of any adjustments.

D. Any other changes to the term sheet must be submitted in writing by the HMFA's Executive Director to the State Treasurer for review and approval.

E. The HMFA's Executive Director will quarterly provide to the State Treasurer a status report which will include but not be limited to the following -- number of mortgages outstanding, the dollar value of mortgages outstanding - the number of mortgages in default, and the dollar value of the mortgages in default.

F. HMFA in conjunction with the Divisions of Pensions and Investments, both of which are in the Department of the Treasury, will adopt procedures for the credit of principle and interest payments to the PFRS pension fund.

G. The HMFA shall administer the mortgage program for the PFRS Board which shall be the real party in interest in all transactions. The costs of administering the mortgage program and of any losses, such as those caused by loan defaults and foreclosures, shall be borne by the borrowers and secondarily by the PFRS and mortgage insurors if applicable, and shall not be charged to the HMFA or to the Department of the Treasury. The Department of the Treasury holds the HMFA harmless for any of the foregoing costs. ✓

H. The Agency shall direct the Servicer to take appropriate steps to detect loans which are out of compliance due to the Borrower's failure to occupy the mortgaged premises as a principal residence. The Servicer shall at least semi-annually monitor occupancy status of the property. The Servicer shall among other things review payments and correspondence from Borrowers to detect discrepancies between such items as mailing and check address and the address of the Mortgaged premises.

The Servicer shall notify the Agency in writing upon learning of, or if it has reason to believe that the property is not owner occupied. The Agency will instruct the Servicer regarding the procedure to take to verify the occupancy and accelerate the mortgage.

II. <u>Department of the Treasury</u>

A. The Division of Pensions will in consultation with HMFA establish procedures with employers to verify a PFRS member's eligibility for this mortgage program.

B. The Divis[illegible]ns will establish procedures with employers for the notification of t[illegible]ion of employment for PFRS members. This information will be [illegible]

C. The [illegible]ions through the Division of Investments will make suffic[illegible]e to provide for the mortgages under this program.

D. [illegible]tments will notify the Division of Pensions when the se[illegible] is reached. The Division of Pensions in turn will notify [illegible] mortgage program will be suspended until sufficient funds become availab[illegible] under the 10% provision.

IN WITNESS WHEREOF, the parties have hereunto executed this Memorandum of Understanding.

Date______________________ ______________________
Samuel Crane
State Treasurer

Date______________________ ______________________
Kevin Quince
Executive Director

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HOME OWNERSHIP INITIATIVE FOR POLICE AND FIREMEN

TERM SHEET

FUNDS:

Pension funds will be held in a separate Cash Management Account and wired into a separate Agency Cash Management Account as loans are approved for purchase. The Agency will give the Division of Pensions and the Division of Investments three working days notice in order to withdraw funds.

Once the funds are received into the Agency's Account, participating lenders will be reimbursed for all approved loans. (Seller's Guide details the full purchase process).

RATE:

Interest rate to be set every April 1st to become effective April 15th, and October 1st to become effective October 15th each year. The index used to set the rate will be the average weekly yield of 1 year T-Bills plus .2%. The weekly yield on one year treasuries will be taken from the Federal Reserve Statistical Release. A Bulletin will be issued to lenders at least one week in advance of a rate change. The Pension Board and the Division of Investments will receive copies of all such Bulletins.

The interest rate will be set at the time of loan registration. This rate will be in effect until the loan closes or the firm commitment expires whichever occurs first. Firm commitments will be for 45 days from the date of the commitment. If a loan has not closed within the specified period, the loan will be re-registered at the prevailing rate.

USE OF FUNDS

Funds may be used by eligible borrowers to acquire or construct a one or two family residential property or to refinance an existing residential property loan. why

ELIGIBLE BORROWERS:

Any currently employed member of the Police and Firemen's Retirement System with at least one year of creditable service. Employee eligibility will be documented with the Verification of Employment(VOE). Employers will be required to sign an eligibility certification on the VOE.

Any member receiving a mortgage loan must occupy the residence as their principal dwelling within 60 days of loan closing and occupy the dwelling for the life of the loan.

If any member terminates their employment for any reason other than death, retirement or layoff, including deferred and disability retirement, the entire amount of the mortgage loan, together with any accrued interest thereon, shall be due and payable 120 days following that action.

The pension system will be responsible for notifying the Agency when a member or their designee ceases employment.

FIRST TIME HOMEBUYER:

1. Homebuyers who have not had an ownership interest in a principal residence at anytime during the three years prior to which the Mortgage is executed.

2. In cases of divorce or separation, a spouse who does not retain title to the family's house (the non-occupant spouse) may be exempt from the first time homebuyer requirement. Title to the marital home must transfer to the occupant spouse and a release of liability obtained.

3. Inherited residential property, disposed of prior to closing does not constitute present homeownership.

FIRST TIME HOMEBUYER PREFERENCE:

Twenty-five percent of the available funds will be set-aside for first time homebuyers.

ELIGIBLE PROPERTIES:

1) Properties must be located in the State of New Jersey.

2) Condominiums are acceptable with a 10% downpayment.

3) One and two family structures on a single tax lot which are ready for occupancy.

Condominium projects must be FNMA approved if conventional insurance is utilized or if the down payment is 20% or greater. If FHA or VA insurance is utilized, project approval must be in place from the insurer.

LENDER COMPENSATION-ORIGINATION:

In addition to the standard application fee, lender will be paid a flat administrative fee of not more than $2,000. One-half of this fee is to paid at the time of loan application. The balance of the lenders administrative fee and the Agency's administrative fee, of not more than $625 will be collected at closing.

The portion of the administrative fee paid at the time of application is non-refundable unless the loan is denied for credit or property reasons. If the applicant cancels the lender may retain the administrative fee collected at the time of application. When lenders submit the Notice of Cancellation, a $250 fee must be paid to the Agency.

SERVICING:

The Agency will contract for servicing. The fee paid to the servicer will be at a flat monthly per loan rate. The Agency will also charge a monthly per loan fee. These costs will be passed on to the borrowers and will be paid monthly as part of the mortgage payment. A one time set-up fee will be charged at settlement.

Servicing will be contracted for by the HMFA on behalf of the PFRS Board. Enforcement of the mortgage loans shall be for the benefit of PFRS Board and any losses incurred in the course of servicing the mortgage portfolio which are not covered by mortgage insurance payments will be PFRS' responsibility. The real party in interest in any foreclosure or deficiency action shall be the PFRS Board.

ASSUMPTION:

Mortgage loans shall not be sold, transferred or assigned to any person except that in the event of death of a member, the mortgage may be assigned to the surviving spouse if the spouse is sole heir to the property.

NO BUYDOWNS PERMITTED, without prior written approval from the Agency.

NO SECONDARY FINANCING ALLOWED, without prior written approval from the Agency.

MORTGAGE INSURANCE:

Twenty-five percent MI coverage is required on all loans with a LTV of 80.1-90% of 30% MI coverage is required on all loans with a LTV of 90.1%-95%. Loans with a LTV of 80% or less are not required to have MI coverage. Mortgage insurance companies are listed on the last page of this fact sheet. FHA Insurance or a VA Guarantee or other Agency approved insurance is acceptable in lieu of private mortgage insurance.

APPROVED PRIVATE MORTGAGE INSURANCE COMPANIES:

You may use any one or combination of the MI companies approved by the bond insurer (MBIA) and the Agency as long as they maintain an 'AA' or better rating with Standard and Poors.

- Commonwealth Mortgage Assurance Company
- General Electric Mortgage Insurance Company
- Mortgage Guaranty Insurance Corporation
- PMI Company
- Republic Mortgage Insurance Company
- United Guaranty Residential Insurance Company

(Listing of these mortgage insurance companies does not reflect the existence of an 'AA' rating).

REPORTING:

The Agency will provide a quarterly report to the Pension Board which will include the number of loans registered, number loans purchased, value of loans registered, value of loans purchased. This information will be provided by interest rate. In addition, a report on defaults, delinquencies, bankruptcies and foreclosures will be generated. The pension fund will also be kept up to date on Real Estate Owned and profits and loses from Real Estate Owned. The Agency will provide other information deemed necessary by the Pension Board.

SELLER'S GUIDE:

Unless otherwise directed through this fact sheet or subsequent updates, notices or bulletins, loans will be originated in accordance with the Mortgage Program Seller's Guide dated 4/1/92.

MORTGAGE TERMS

LOAN TERM:

30 year maximum loan term.

LTV:

Maximum loan to value for a conventional loan on a one or two family dwellings is 95%.

Maximum loan to value for a conventional loan on a condominium unit is 90%. Maximum loan to value refinances - 80% of the appraised value, for cash out transactions. For no cash out transaction 95% loan to value. Loan to value on FHA and VA Loans will be consistent with the insurer's/guarantor's guidelines.

MORTGAGE INSURANCE:

Mortgage Insurance is required on all loans with a LTV of 80.1% or [illegible]. The cost of this insurance is borne by the borrower. Coverage will be as follows:

25% MI coverage required on all loans with a loan to value of 80.1% to 90%.

30% MI coverage required on all loans with a loan to value of 90.1% to 95%.

The use of other insurance may be approved by the Agency. This included FHA insurance and VA Guarantees.

MINIMUM/MAXIMUM LOAN AMOUNTS:

There will be no minimum loan amount.

The Maximum Mortgage Amount for conventional loans shall be consistent with the limits established by the Federal National Mortgage Association. Below are the applicable limits as of April 1, 1992:

1 family (incl. Condos)	$202,300
2 family	$258,800

The maximum mortgage amount for loans insured by other Agency approved insurers or guarantors will be consistent with applicable guidelines.

FEES:

Applicants will be required to pay a standard non-refundable application fee, an administrative fee of not more than $2,625. The application fee, plus $1,000 of the administrative fee must be paid at the time of application. The balance of the application fee is to be paid at closing. The fees paid at time of application are not refundable unless the loan is denied for credit or property standards.

INCOME LIMITS:

None.

PURCHASE PRICE LIMITS:

None.

RENTAL INCOME:

Income from the rented portion of a duplex will be considered when calculating eligibility for a loan. Anticipated rental income will be determined by the appraiser unless a lease has been executed.

LOAN UNDERWRITING:

See Attachment A

Attachment
March 13, 1992

DC/des

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Attachment A
Loan Underwriting

Credit and Property Underwriting Requirement - Summary

Cash Down Payment - Conventional Loans. The maximum loan-to-value ratio on all conventionally insured Mortgage Loans is ninety-five percent (95%). See applicable Term Sheet.

(a) The excess of the purchase price of the property over the original loan amount of the Mortgage Loan must be paid from Mortgagor's liquid assets or cash equity.

(b) Written verification of all deposit monies being held for the property purchase must be verified.

(c) Closing cost may be paid by either the Mortgagor or the seller of the property.

(d) Seller contributions can not exceed 3% of the sales price.

(e) Funds which the Mortgagor receives as a gift must be supported by a statement from the donor confirming the gift and stating that repayment is not expected.

(f) All escrow payments must be paid from Mortgagor's liquid assets.

Cash Down Payment - FHA Insured Loans. The maximum loan-to-value ratio on all FHA insured loans will be in accordance with those permissible for the 203(b) insurance program (97% of the first $25,000 and 95% on the balance).

(a) The source of the downpayment can be gifted or borrowed. The source of the down payment must be fully documented and supported by written verifications.

(b) Closing Costs may be amortized or gifted.

(c) All escrow payments must be made from borrower's liquid assets.

Cash Down Payments - VA Loans. The maximum loan-to-value ratio on all VA insured loans is 100% of the appraised value. The downpayment and closing costs may be gifted or borrowed in accordance with the rules governing the VA insurance program.

Secondary Financing. In cases where the Mortgagor has fulfilled the down payment requirement, the Mortgagor may request approval for financing from another source such as a Community Development Block Grant deferred payment loan. The secondary financing terms must be specified in the loan application and be approved by the Agency.

Mortgage Insurance.

MI Requirements	LTV
25%	80.1% - 90%
30%	90.1% - 95%

Mortgage Insurance issued by a Private MI is required on all loans where the loan-to-value ratio is greater than 80%. Premiums may be financed provided the final loan-to value does not exceed 95%. No insurance coverage may be cancelled without prior written consent from the Agency. FHA (203(b) insurance or VA eligibility certificate are acceptable in lieu of private mortgage insurance. ONLY participating lenders with Direct Endorsement Approval or a Supervised Lender may originate loans with FHA insurance or VA guaranteed.

Credit Underwriting Guidelines. Evaluation of each Mortgagor's creditworthiness must be done on a case-by-case basis. All standards for determining effective income must be applied to each Mortgagor in the same manner. The following are guidelines to indicate proper considerations in ascertaining that the Mortgagor's creditworthiness is sufficient.

(a) Monthly Housing Expense-to-Income Ratio. The Agency will normally require that monthly housing expense (first mortgage payment plus escrows) not exceed 28% for a conventional loan or 29% for a FHA insured loan of Mortgagor's stable monthly income. If Mortgagor is purchasing a condominium or PUD unit, the monthly condominium or PUD fee (homeowner's association dues) for common elements/property charges and maintenance, excluding unit utility charges, must be included in the monthly housing expense. Conventional ratio may be higher if there are adequate compensating factors or the Community Homebuyer's Program is utilized.

(b) Monthly Debt Payment-to Income Ratio. The Agency will normally require that the total amount of monthly housing expense, plus all other monthly payments on all installment debts having remaining terms of more than seven months do not exceed 36% for a conventional loan and 41% for an FHA insured loan of Mortgagor's stable monthly income. Alimony, child support, child care and maintenance payments are considered long term monthly obligations, unless such obligations terminate in less than seven (7) months. Conventional ratio may be higher if there are adequate compensating factors or the Community Homebuyers Program is utilized.

(c) Monthly Housing Expense-to-Income and Debt-to-Income Ratio for VA Loans. The maximum Debt-to-Income Ratio is 41% provided there is sufficient residual income to satisfy the VA regulations.

(d) Stable Monthly Income. Stable monthly income is Mortgagor's gross monthly income from primary employment base earnings plus recognizable secondary income. Secondary income includes bonuses, commissions, overtime, or part-time employment.

Mortgagor's Credit Reputation. In addition to the above guidelines Mortgagor's housing payments plus other obligations must not constitute an undue strain on Mortgagor's ability to make all such payments promptly and that a credit reputation is evidenced which would be commonly acceptable to private institutional mortgage investors. The following guidelines should be considered.

(a) Slow Payments Shown On Credit Report. If Mortgagor has a recent history of slow payments on a previous mortgage(s) the Agency will require a detailed, written explanation. Slow payment of other debts constituting a pattern of late payments, or a payment pattern which appears to indicate slow payments on debts related to basic needs which prompt payments were made on debts related to less important needs of the Mortgagor and Mortgagor's family, must also be satisfactorily explained.

(b) Bankruptcy. The bankruptcy must have occurred prior to two (2) years of applying for HMFA financing and the Mortgagor must have established a satisfactory credit record in this time period.

(c) Default on Loans. Any loan which is in default or with a collection agency must be paid in full. Payment plans on defaulted loans are unacceptable, unless the borrower has made 12 monthly payment on the payment plan in a timely fashion.

(d) Judgements. Must be paid in full.

(e) Job Tenure; Change of Residence. Three or more employment change by Mortgagor within the previous five years, or four or more changes of residence within the previous six years must be satisfactorily explained.

ALL LOANS WILL BE UNDERWRITTEN IN ACCORDANCE WITH THE AGENCY'S SELLER'S GUIDE. THE GUIDE CURRENTLY IN EFFECT IS DATE APRIL 1, 1992.

ATTACHMENT IV

NEWSPAPER ARTICLES
April 5, 1992
February 24, 1992

62X

Central New Jersey
Sunday Home News

BRUNSWICK, N.J. SINCE 1786 SUNDAY, APRIL 5, 1992

63 X

Raises for cops cuffing budgets

By JOHN McKEEGAN
Home News staff writer

Municipal officials, faced with stagnant revenue, say high salary awards to police unions have to stop or traditional municipal services such as parks and recreation will have to be cut.

Officials blame the soaring salary awards on interest arbitration, which allows police and municipalities to settle contracts with an arbitrator and avoid debilitating and illegal police strikes.

In recent years, police unions have won up to 70 percent of the interest arbitration awards, but last year that fell to 60 percent, and in the few awards settled this year, towns are winning a slight majority.

Municipal leaders and state lawmakers are joining behind bills that would amend the arbitration law to limit awards to the municipal budget caps, 4.5 percent.

Police salaries, which normally are settled first, usually become the bench mark by which other municipal unions negotiate. When police salaries go up 6 percent, which is above the inflation rate and the caps on municipal budgets, all other salaries go up accordingly, officials said.

Security costs rising

New Brunswick, for example, is losing the battle of the budget to fight the war on crime.

Before an arbitrator awarded the police 6 percent salary increases for 1991 and 1992, the city spent 15 percent of its budget on wages and salaries for public safety. Buying the equipment for that force raises the cost to fight crime to almost half of the city budget, officials said, and the costs just keep going up.

"It gets very difficult to afford them," said Mayor Jim Cahill, who now faces the difficult task of finding money in a tight, recession era budget. "The city will be facing layoffs as well as not filing a number of other positions with attrition."

"If the condition continues under interest arbitration, as it has for the past decade, this city will provide a water utility, which we charge for, a sewer utility and fire and police services," said New Brunswick Business Administrator Greg Fehrenbach.

How did communities get into this situation? According to interviews with police, local and state officials, salaries have gone up dramatically because arbitrators relied

See RAISES Page A8

RAISES

Continued from Page A1

more on the salaries in other communities than a particular municipality's ability to pay. In some cases, local officials bowed to police demands for political reasons.

A rookie hired in the early- to mid-1980s in Middlesex County probably has seen a doubling of salary.

Many municipalities in Central New Jersey pay police officers $45,000 or more when they reach the top of the scale after three to five years. Sergeants, lieutenants and captains earn more.

That is just base salary. Many communities add longevity pay to the salary, which can add 2 percent or more, guaranteed overtime, clothing allowances, good benefits and a pension that pays 65 percent of a policeman's salary after 20 years.

Unique job

"Yes, very comfortable salary," said Sayreville Councilman Edward J. Rappleyea, who served as a police officer in the borough for 30 years and is active in the state Policeman's Benevolent Association, the state's largest police union.

"The last 10 or 12 years the salaries went up real high," said Rappleyea. "I would say Middlesex County is one of the fairest in terms of salary."

But, Rappleyea said, police have a unique job that many people are not willing to do. "When you go out that door as a policeman, you're never sure you're coming back through that door," he said. "Accidents can happen at any time."

"Years ago we were quite behind, but now we're doing all right," said New Brunswick Patrolman John Romeo, the president of his PBA local.

Arbitration has made a difference, Romeo said. But, he said, before arbitration, in the mid-1970s, police were stuck because by law they couldn't strike and so had no bargaining leverage.

"When I came on they threw you $200, $300 a year and there was nothing you could do about it," Romeo said. "But we also have families to support like everyone else."

"Whatever complaints they had about being underpaid don't apply anymore," said Albert J. Wolfe, who heads the Bureau of Municipal Information for the state League of Municipalities.

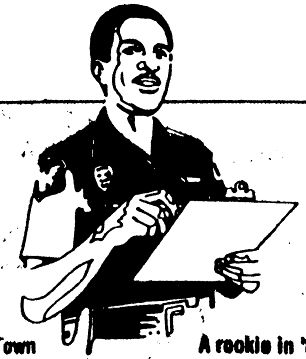
Wolfe's analysis of police salaries in Middlesex County indicates that a person hired as a rookie 10 years ago saw his or her salary go up, on average, 15 percent a year. That takes into account the person's movement up the salary scale each year and the annual increases in the salary scale.

Wolfe said the same pattern applies across the state. "The biggest thing that has been driving patrolman's salaries is binding arbitration," he said.

"Who do you know with a high school degree who has the ability to make $50,000 a year after five years?" Fehrenbach asked, adding that that is more than most college graduates can expect.

Local officials said that arbitration has been stacked in favor of the unions and that many police locals will not sit down to negotiate, knowing that when an impasse is declared they stand a good chance in binding arbitration.

In arbitration, both sides choose an arbiter from a list of available people compiled and approved by the state Public Employment Relations Commission. They can opt for different forms of arbitration in which the arbiter chooses the last



How much does a police officer make?

Town	A rookie in '86	Their salary today	% of municipal budget for public safety wages
CRANBURY	$22,000	$43,507	12%
EAST BRUNSWICK	$27,710	$47,583	19%
EDISON	$21,295	$52,251*	19%
FRANKLIN	$20,000	$42,128	18%
HIGHLAND PARK	$17,500	$42,682	28%
JAMESBURG	$20,000**	$37,269	28%
METUCHEN	$20,000	$40,388*	18%
MILLTOWN	$14,469	$34,996*	15%
MONROE	$17,000	$39,019	29%
NEW BRUNSWICK	$18,074	$45,578	15%
NORTH BRUNSWICK	$19,138	$45,800	24%
OLD BRIDGE	$20,066	$45,900	22%
PISCATAWAY	$26,000	$45,000	17%
SAYREVILLE	$25,137	$46,073	19%
SOUTH AMBOY	$20,335	$43,004	20%
SOUTH BRUNSWICK	$20,751	$44,123	18%
SOUTH RIVER	$16,130	$37,800	18%
SPOTSWOOD	$20,539	$38,203*	26%

Salaries listed are for patrolmen & patrolwomen and do not include rates for higher-ranking officers

***1987 figure*

Source: municipal records & budgets — The Home News

offer of either side or looks at economic packages separate from other contractural issues.

Both sides then argue the merits of their position based on the prevailing salary rates in surrounding communities, the municipality's ability to afford the offer, and many other factors. The arbiter listens to the arguments and then picks the most reasonable offer.

Local officials said too often the arbiter looks at the going rate for surrounding municipalities and ignores the impact on the local tax rates. Many communitiess, fearing a larger arbitration award, will settle for a higher rate, such as 6 percent, rather than fight it. The next community going into arbitration then must defend their lower offer, say 4 percent, against the rate approved by the neighbor.

"If you don't give the going rate, you're going to an arbitrator and he'll give the going rate," said East Brunswick Business Administrator John H. Coughlin. Those awards then lead to higher salaries for police superiors, other unions, and administrators, all of whom earn salaries that are higher than or comparable to the patrolman.

"Clearly the police settlements affect the entire salary structure of a community," Coughlin said.

But police and PERC officials said a lack of political backbone in some negotiations has driven up salaries, too.

Often enough, PERC officials said, local officials come into arbitration with "a nod and a wink" to the police union, knowing they will lose. It saves the officials' political face at home by sticking up to the union, but it also saves the officials from being alienated from the police.

"There are some cases where the award reflects parties' agreement," said James Mastriani, the chairman of PERC. But, he said, if the two sides don't own up to it, it's difficult to see by looking at the arbitration judgment.

In the New Brunswick case, Romeo said, both sides essentially had agreed that 6 percent raises for police were fair for 1991 and 1992. "If there was a complaint, we would have gone for more than 6 percent," he said. "I believe we would have gotten it."

Waiver didn't come

Fehrenbach and Cahill, however, said the city's agreement on raises was conditional on getting a waiver of the state-imposed 4.5 percent salary cap, which the arbiter did not take into account. The caps, which have in recent years became much tougher, limit how much a budget can grow each year without asking the voters for permission to go above the cap. The caps help hold down property taxes. The city didn't get the waiver, had to give other unions comparable raises, and now faces large cutbacks in staff and programs, Fehrenbach said.

"There's no question that there are a lot of agreed awards," Coughlin said. "The arbitrator is asked to gratify awards that are politically unpalatable."

The police can have a significant impact on local and state elections, said political observers. The PBA, like other unions, carries clout with its contributions of time and money to political campaigns. They also represent "law and order," something every politician wants to represent, the observers said.

Some PBA sources said communities didn't take arbitration as seriously as the police did.

"They (the police) are winning the arbitration awards because they're bringing out their case much stronger than the employer," Rappleyea said. Police hire sharp lawyers going into arbitration, sometimes much better and experienced lawyers than the communities hire, he said — "You better believe it helps."

Assemblywoman Maureen Ogden, R-Essex, who is the sponsor of one of the bills to limit the arbitration amounts to the amount of the caps, said, "At a time when people are worried about losing jobs and keeping jobs, I don't think this is unfair to the policemen."

"I think their compensation is at such a level now where people wouldn't say they are underpaid," Ogden said.

PBA officials, however, said such limits on arbitration awards are unnecessary and unjustified.

PERC's Mastriani said recent award settlements suggest that changes are not necessary. Communities are arguing better about their ability to pay, he said, and awards are dipping to 5 percent and less.

"The unions haven't adjusted their position to be more reasonable," Mastriani said.

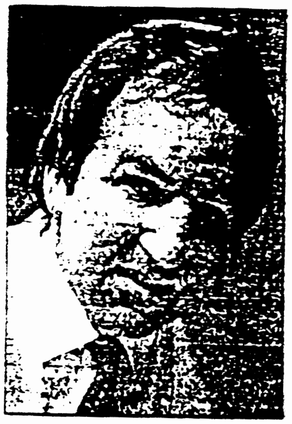
In recent awards, South River and Spotswood both won their arbitration over the PBA by arguing that they could not afford to pay the 6 percent increases the union wanted. Both boroughs offered 3 percent increases back to January 1991, another 1 percent raise back to July 1991, and an increase for this year of 5 percent.

Stanley Marcinczyk, the administrator of Spotswood, said extensive preparation made the difference. Arbitrators looked at the impact the increases would have on the 4.5 percent budget cap and the local tax rate, he said.

Marcinczyk said Spotswood also settled with its other unions first at a similar rate to what it offered police, which created a precedent for the police salaries.

Without the arbitration award in their favor, Marcinczyk said meeting the municipal cap would have been a "nightmare."

"It doesn't leave any room," Marcinczyk said. "We would have gotten into a layoff situation if they won."



William G. Dressel Jr.
. . . league assistant director

League targets police salaries

By CLYDE LEIB
Senior Writer

TRENTON — If present trends in collective bargaining continue, there will come a time in the not-too-distant future when the typical municipal police officer in New Jersey would receive annual earnings in six digits and enjoy a retirement nest egg of more than $2.2 million.

That's the message the New Jersey League of Municipalities has been sounding recently as it attempts to persuade the Legislature to put what it calls "some common sense" into police salary negotiations.

The league's newest initiative is bound to provoke a furious war of words with the New Jersey Policemen's Benevolent Association, the statewide police union. But so far, union officials are refusing comment.

For the past several years, according to the league, some local police unions have been winning annual pay increases approaching 10 percent a year.

• see SALARIES, A6

Salaries

• continued from A1

And many of those increases, declares William G. Dressel Jr., the league's assistant executive director, are the result of compulsory arbitration awards.

Under New Jersey law, police and firefighter negotiations are subject to mandatory arbitration because they are not permitted by law to strike.

But arbitration awards aren't the only factor contributing to the unprecedented spurt in police salaries over the past few years. Even when arbitration isn't a factor, municipalities are making handsome contract settlements for their police personnel, in many cases to stay abreast of neighboring communities.

A RECENT analysis of contract settlements in Mercer County conducted by the league's chief of municipal information, Albert J. Wolfe, shows that unionized police officers in Mercer have enjoyed average annual raises of 15.2 percent from 1989 through 1992 through a combination of negotiated annual salary increases and established steps up the union's salary scale.

And in some municipalities, such as Hamilton Township, Hightstown and Washington Township, officers received annual salary and step increases in the vicinity of 20 percent over the same period.

The recent increases in Hamilton have given its patrol officers the highest salaries in the county, according to the league's data. The lowest salaries in the county are paid by the City of Trenton.

Wolfe notes, however, that police salaries in Mercer, which currently average about $41,422 at the top of the scale, are not nearly as high as they are in North Jersey.

"What's driving these numbers," said Wolfe, is that besides negotiated salary raises, "each year the salary scales also go up." In Mercer County, police departments have as few as four and as many as six salary steps.

If the trend, which is statewide, continues unabated through the rest of this decade, he declared, the average patrolman in New Jersey will be earning $100,000 a year by the year 2001.

And because pension benefits for New Jersey police officers are the most lucrative of all public employee retirement packages, the average officer would be able to retire after 25 years of service with a payoff of $65,000 a year.

That means that over his actuarial lifetime of 35 years after retirement, a 43-year-old retiree would receive more than $2.27 million in benefits. In addition, he would be getting lifetime family health care benefits that his municipal government is required to pay for by state law.

THE COST of the double-digit percentage increases in police salaries is beginning to have a sharp impact on municipal budgets, especially in those communities with large police forces. Not only are the increases in steps in the salary scale and negotiated increases forcing an ever-larger burden on local taxpayers, said Dressel, but they have an effect on negotiations with other municipal employees.

"The other public employee unions look at the police as the pacesetters so there is a sort of ripple effect" that also costs municipal governments heavily, said Wolfe.

The cost to local governments already is beyond being devastating in the view of some municipal officials.

Louis Neely, finance director for East Brunswick Township, declares that police costs are higher than they appear on the surface because police receive a number of benefits that other typical municipal employees don't receive.

For each salary dollar, the municipality must pay 18.5 cents in pension costs and 7.65 cents for Social Security and Medicare benefits. Basic health insurance, dental insurance and major medical coverage cost an additional 17 percent, not counting the long-term cost of continuing those benefits after retirement.

In addition, police officers in New Jersey receive clothing allowances ranging from $700 to $1,000 a year and are entitled to receive 100 percent reimbursement for any college courses they take. The college benefit, says Neely, probably explains why so many police officers are becoming law school students.

A police officer with a law degree can retire with full benefits while still in his or her 40s and then enter the practice of law, he notes.

What can be done about this increasing cost to local taxpayers?

Dressel declares that the League of Municipalities will continue its so-far-unsuccessful push for legislation that will "put common sense into negotiations."

THE LEAGUE'S major emphasis is on a bill that would require arbitrators to put a municipality's ability to pay for large salary increases at the top of the list of elements that go into arbitration awards.

Recent arbitration awards between 7 and 9 percent are being made at a time when municipalities cannot increase their overall spending by more than 4.5 percent because of state-imposed budget caps. "We've got to send them (the arbitrators) a message," said Dressel.

Similar legislation, sponsored by Assemblyman William Pascrell, D-Paterson, was approved by the Assembly in the waning days of the last Legislature but it never made it to the floor of the Senate as a result of determined lobbying by the state Policemen's Benevolent Association.

The measure has been reintroduced in the current legislature by Pascrell and Assemblyman Richard Kamin, R-Flanders.

But a lot more will have to be done if the current salary spiral is to be slowed, Dressel declared. "We will have to start thinking about tying salary increases to the budget cap law," he said. This means actually putting a percentage cap on negotiated salary increases that is related to the rate of inflation. In that regard, Dressel notes that it was last year, when the U.S. rate of inflation was 3.1 percent, that the average salary increase for policemen in Mercer County was 15.2 percent.

A spokesman for the Policemen's Benevolent Association said the organization would not respond immediately to the league's legislative agenda.

According to the PBA's legislative representative, Bradley Brewster, the union will issue a written response later this week. But, he added, the PBA is "definitely opposed" to the league's proposals. He noted that "not too long ago" some police salaries were in the neighborhood of $10,000 to $12,000 a year.

According to Gerald Dorf, labor relations counsel for the league, "Police officers are no longer the second-class citizens they once were."

Since enactment of the arbitration statute 15 years ago, "There has been a 'race for the dollars,' with police and fire personnel receiving wage increases generally in excess of those received by other municipal employees since, in many cases, the police and fire increases were the result of arbitration awards which must be funded."

A cap limitation on salary increases, says Dorf, "would permit a municipality to treat equitably all of its employees . . . instead of, in effect, having to reduce or deplete one budgetary area for another."

Adds Dressel: "We can't continue to reach deeper and deeper into the public's pocketbook. There has to be a limit."

Police salaries in Mercer County

	Salary at top step in 1992	Average increase for 1992	Average annual increase from 1989 to 1992
East Windsor	$45,833	$5,240	13.0%
Ewing	$41,723	$2,646	16.4%
Hamilton	$46,384	$7,526	19.4%
Hightstown	$37,332	$3,357	20.8%
Hopewell Twp.	$41,756	$2,899	16.6%
Lawrence	$45,892	$2,049	15.9%
Princeton Boro	$41,749	$1,801	11.0%
Princeton Twp.	$44,569	$2,818	10.3%
Trenton	$36,462	$1,671	10.7%
Washington	$41,485	zero *	19.2%
West Windsor	$42,625	$3,052	13.8%

Source — New Jersey League of Municipalities

NOTE: Pennington Borough's police force is not unionized. Hopewell Borough shares its police force with Hopewell Township. * To be determined by 1992 contract negotiations

The recent increases in Hamilton have given its patrol officers the highest salaries in the county, according to the league's data. The lowest salaries in the county are paid by the City of Trenton. Wolfe notes, however, that police salaries in Mercer, which currently average about $41,422 at the top of the scale, are not nearly as high as they are in North Jersey.

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Legislative Viewpoint

NEW JERSEY STATE LEAGUE OF MUNICIPALITIES
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April 13, 1992

Hon. David C. Russo
Chairman, Assembly Select Committee on
Civil Service and Employee Benefits
Legislative Office Building
CN 068

Dear David:

I have enclosed herewith a statement which clarifies a comment L. Mason Neely, Chairman of our Pension Review Committee made last Thursday at your committee hearing on police salaries.

A copy of this is being forwarded to John Kingston for distribution.

If you require anything further please let me know.

Very truly yours,

Bill

William G. Dressel, Jr.
Assistant Executive Director

WGD:jg
Enc.

— SERVING MUNICIPAL GOVERNMENT IN NEW JERSEY FOR MORE THAN 75 YEARS —

R=95%

M E M O R A N D U M

April 10, 1992

TO: William Dressel, N.J. State League of Municipalities

FROM: L. Mason Neely, Chief Finance Officer LMN

RE: Assembly Committee on Civil Service and Health Benefits
Testimony of April 9, 1992

This is an addendum to the material provided to the Assembly Committee. The material was designed to demonstrate the roll up costs associated with benefits given during one annual period and the ultimate impact over time. The tables which are found on page 1 and 2 refer to an article from the Home News of April 5, 1992. I misspoke when I said the second table reflecting 1992 was the starting salary for a rookie cop. It was not, it was the continuation of the prior salary information as reported in the Home News article from the first table reflecting an 86 start.

A supplemental table resulting in the starting salaries adjusted for mean longevity for those communities will follow.

Would you please provide this corrective statement to the Committee so they can add it to the testimony.

Thank you.

LMN/
workid5/1
cc: File