

**Pension and Health Benefits Review Commission  
Vote Results  
July 16, 2010**

**S-1897 (Cunningham)**

Provides one-time reduction of pension contribution of local public employer of employee who retires with pension reduced for dishonorable service in amount equivalent to certain previous contributions by that employer.

**Motion:** Recommend against enactment since the State-administered defined benefit retirement plans are pooled risk in nature and there is no separate accounting of assets and liabilities of the plan for each employer.

**Discussion:** This bill pertains only to local employers that participate in the State-administered retirement plans. In multi-employer defined benefit plans such as the PERS and the PFRS, the assets and liabilities of these plans are pooled and annual employer contributions to the fund are apportioned proportionately among the individual participating employers based upon the size of each employer's payroll. There is no separate accounting of assets and liabilities of the plan for each employer, as positives and negatives are contractually shared equally. Additionally, pension funding is predicated on the assumption that all employers share equally in the experience of the plan, i.e. the rates of retirement, withdrawal, death etc. apply to all employers uniformly. One employer's deviation from these assumptions warrants neither an increase nor a decrease in that employer's future pension contribution requirement, but is shared by all employers in the plan.

**S-1875 (Oroho/O'Toole)/A-2614 (DiMaio/McHose)**

Repeals law allowing PERS member to retire with PERS pension and continue to receive salary for current PERS-covered elective office.

**Motion:** Recommend to support with amendments that all retired members of all public retirement systems shall not be permitted to collect a salary from a public employer including employment between and among the various retirement systems.

**Discussion:** The Commission supports the bill but recommends that the bill be expanded to eliminate all retired members from receiving a pension and collect a salary while in public employment. For instance, key exemptions exist for retirees of state funded retirement systems pursuant to P.L. 1997, c. 23. This bill only impacts PERS members that retire with a PERS pension and continue to receive salary while in a current PERS-covered elective office. State law has required that all public employment covered by the same retirement system be terminated in order to be eligible to retire. However, an exception exists for elected officials who are members of the Public Employees' Retirement System, i.e., N.J.S.A. 43:15A-47.2 allows elected officials who are members of the PERS to retire from PERS, collect their pension and remain in the office to which they are elected and continue to receive a public salary so long as the PERS retirement allowance is not based solely

on service in that elected office. A similar exemption exists, too, for those in the Police Fire Retirement System (PFRS) prior to P.L. 2007, c. 92 that created a defined contribution retirement plan. Also, in a related matter, the Commission supports the repeal of N.J.S.A. 43:15A-47.2 because its provisions may be in violation of Internal Revenue Code regulations. Treasury regulation §1.401(a)-1(b)(1)(i) disallows in-service distributions (pension distributions prior to termination of service) before attaining "normal retirement age", generally defined as age 62. PERS law allows Tier 1 members to retire upon attaining age 60, or at any age after 25 years of service. Violation of these Treasury regulations may jeopardize the tax-qualified status of the PERS (qualified status allows employee contributions to the plan to be tax-deferred).

**A-2666 (Vainieri Huttel/Greenstein)/S-1834(Weinberg)**

Requires health insurers to cover oral cancer drugs and related support drugs on same basis as intravenous cancer medications and related support drugs.

**Motion:** Recommend against enactment

**Discussion:** The Commission does not support legislatively mandating health benefit coverage since mandates generally tend to place the health insurance industry outside of the "free enterprise" system and drive up the cost of health insurance for both the employer provided coverage and individual policies.

**A-2620 (O'Scanlon)**

Calculates future service of active members at 1/60 of final compensation for TPAF and PERS pensions.

**Motion:** Recommend to support with a note that there may be a legal challenge reflecting the August 2006 opinions of the Attorney General and the Office of Legislative Services.

**Discussion:** The Commission supports the intent of the bill but the change to 1/60 for current members may be cited as a violation of contractual law. The Attorney General and the Office of Legislative Services advised that any legislation that detrimentally alters the pensions of active members in the State-administered retirement systems with at least five years of service, or of retired members "would be unconstitutional as violative of the federal and State constitutional proscription against impairment of the obligations of contracts." The focus of their opinion was N.J.S.A. 43:3C-9.5, a State law that provides members a "non-forfeitable right" to receive upon retirement the level of pension benefits that was in place at the time five years of pension service was attained; P.L. 2010, c. 1 repealed it as to new members and those who reenroll. Legal counsel advice should be sought prior to this bill's enactment.

**A-2613 (Chiusano/Burzichelli)**

Eliminates certificated superintendent and administrator exceptions to TPAF retiree reenrollment requirement.

**Motion:** Recommend enactment and also include the PERS provision instituted by P.L. 2001 c. 355 that is not repealed by this bill.

**Discussion:** The Commission supports this bill since it will repeal the provisions of P.L. 2001, c. 355, which deviated from otherwise uniform State public pension policy regarding returning to public employment after retirement. State pension laws applicable to the State-administered retirement systems, in general, uniformly require re-enrollment and suspension of pension benefits if a retiree is re-employed in a position covered by the pension system from which he/she was retired. In addition, this bill does not repeal PERS law, which was also amended by Chapter 355. Similar to the TPAF change, it provided an exemption from the return to employment rule to a PERS retiree who becomes employed by the New Jersey Department of Education in a position of critical need as determined by the commissioner, or becomes employed by a board of education in a position of critical need as determined by the superintendent of the district on a contractual basis for a term of not more than one year. Further, Treasury regulation §1.401(a)-1(b)(1)(i) disallows in-service distributions (pension distributions prior to termination of service) before attaining "normal retirement age", generally defined as age 62. PERS law allows Tier 1 members to retire upon attaining age 60, or at any age after 25 years of service. Violation of these Treasury regulations may jeopardize the tax-qualified status of the PERS (qualified status allows employee contributions to the plan to be tax-deferred).

**A-2951 (Dicicco/Munoz)/S-2174 (Doherty)**

Bars certain employees of certain public agencies from participating in PERS; repeals law permitting PERS and TPAF members on leave who work for labor organization to purchase pension credit.

**Motion:** Recommends support with a note to seek legal guidance of tax counsel since this bill as written may jeopardize the tax qualified status of the retirement plans.

**Discussion:** The Commission supports the bill but is concerned with maintaining the tax qualified status of the retirement plans, if the plans were to allow termination of pension membership for employees with less than ten years of service. Current State law provides members of any of the State-administered pension plans hired prior to enactment of P.L. 2010, c. 1 with a non-forfeitable right to receive benefits upon the attainment of five years of service credit in the retirement system. In contrast, this bill would allow only employees of these entities with ten or more years of pension system credit to continue their membership in PERS. Consequently, individuals employed by these entities for less than ten years will be treated differently from a pension perspective, and that raises the tax question. Advice of tax counsel should be sought prior to this bill's enactment regarding the applicability of federal rules that could result in jeopardizing the continued qualification of the pension system.