Gov. Christie calls pension overhaul his 'biggest governmental victory' in exclusive interview

Ginger Gibson/Statehouse Bureau By Ginger Gibson/Statehouse Bureau

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on June 26, 2011 at 6:00 AM, updated June 26, 2011 at 12:48 PM

TRENTON — With his “biggest governmental victory” in the books, Gov. Chris Christie plans to fight the Democrats on their call for a millionaires tax, yet the budget passed this week with no major disruptions, then turn to overhauling the education system.

In an exclusive interview yesterday with The Star-Ledger, Christie was still savoring the passage Thursday night of a bipartisan bill that forces state workers to pay more for their pension benefits, an accomplishment that won him more national attention from conservative Republicans and talk shows.

"It's my biggest governmental victory because of what it means, because of how much it's going to save," Christie said. "I think it's really a big deal."

And even though the Democrats crossed the aisle to join him on the pension bill, the governor is waving no olive branches on the budget that must be completed by Friday.

"I don't think there is going to be a big fight over the budget," Christie said.

He still plans to give no ground when Democrats try to push a millionaires tax through the Legislature before the summer recess.

"I'm simply not going to put New Jersey in that kind of anti-competitive position," Christie said, adding that New York is lowering its income tax rates as lawmakers here talk about raising them.

But Christie doesn't see the state following New York's vote on Friday night to legalize gay marriage, despite some supporters who argue it makes states more competitive in the business climate.
Gov. Christie calls pension overhaul his 'biggest governmental victory' in exclusive interv... Page 2 of 4

"I support civil unions," Christie said. "I don't think gay marriage is an economic competition issue."

(New Jersey allows civil unions for gay couples, and has recognized same sex marriages performed in other states or foreign countries as civil unions since 2007.)

Recap of Trenton's breakthrough bipartisan health benefits and pension system reform

The Star-Ledger Trenton bureau holds a roundtable discussion of yesterday's huge defeat for state and public worker unions as both sides of the Legislature voted to overhaul New Jersey's health benefits and pension system. (Video by Megan DeMarco / The Star-Ledger)

Democratic lawmakers over the budget.

The Democrats' millionaires tax, he said, is simply politics.

"They know it's bad economics," Christie said. "The only explanation of them doing it is politics and the politics of their caucus."

The Democrats are also using a larger prediction than Christie about how much money the state will collect in taxes next year.

"They're using numbers that are unconstitutional," he said. "The budget is unconstitutional, and I won't sign an unconstitutional budget."

State law gives the governor the power to decide how much money the state will collect next year, and Christie said lawmakers should resign themselves to the fact he gets to pick the number.

"I'm complying with Abbott even thought I don't like it, and they should comply too," he said, referring to the Supreme Court ruling ordering him to spend an additional $500 million for poor school districts. "We don't want them acting in a lawless manner."

Christie has "line-item veto" authority, meaning he can cherry pick the budget sent to him by the Legislature and remove just the items he doesn't like. To override the governor's veto, the Legislature would need a super-majority, which would require votes of some Republicans.

Christie is unlikely to let a tax increase go through on his watch and has taken his message nationwide, appearing on the "Today" show on Friday and "Meet the Press" today.

His says his national push, which has included sharp criticism of President Obama, shouldn't be read as a sign he's changing his mind about running for president.
Gov. Christie calls pension overhaul his 'biggest governmental victory' in exclusive interv...

"No," he said.

Gov. Chris Christie on pension reform
Just a day before the Assembly is set to vote on a pension reform bill, Gov. Chris Christie spoke of the reform and the compromise between Democrats and Republicans to reach the edict. The governor's 20th town hall meeting was held on Wednesday in Fair Lawn. (Video by Michael Monday/The Star-Ledger)

Christie said it took months of work to get the benefits bill done, starting when he rolled out the proposals in September.

He said he had a "willing partner" in Senate President Stephen Sweeney (D-Gloucester). Along with Assembly Speaker Sheila Oliver (D-Essex), the three spent hours meeting to work out a compromise.

Christie said his town hall meetings — he's held 20 this year — also helped to get public support behind the proposal.

"Laying out a plan and going out there and really selling it to the public," Christie said.

Now that he has convinced the Legislature to approve a property tax cap and the pension and benefits bill, the governor is looking ahead to the next thing on his agenda: upending the education status quo.

He is pushing to radically change teacher tenure and create more charter schools, vouchers and merit pay for teachers.

And despite the sharp division in the Democratic legislative caucus over the pension and health care bill, Christie doesn't expect the party to remain fractured.

"People who share common goals and principals tend to reunite," he said. "They'll resolve that, I'm confident. They'll work their problems out and will be back to battle with me."

Related Coverage:

• Gov. Christie praises Sweeney, Oliver for work on health, benefits bill

• N.J. Assembly passes landmark employee benefits overhaul

• N.J. Democrats announce new budget, including millionaires' tax, increased aid for schools, seniors

• N.J. Assembly rejects plan to transfer NJN management to N.Y.-based WNET

• Protesters create spectacle at N.J. Statehouse throughout pension, benefits overhaul vote
Gov. Christie calls pension overhaul his 'biggest governmental victory' in exclusive interv...

- NJ unions rally in Trenton, Assembly votes on pension and health benefit overhaul - live coverage

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The 80-percent threshold: Its source as a healthy or minimum funding level for public pension plans

Prepared by Keith Brainard and Paul Zorn
January 2012

Recently, some have challenged the idea that an 80 percent funding level is a healthy level for public pension plans and have asked about the origins of such statements. Based on our research, the use of 80 percent as a healthy or minimum public pension funding level seems to have its genesis in corporate plans, for which it was a statutory threshold. This standard was also applied to private sector multiemployer plans.

However, there may be some confusion about the context in which the funding ratio is being used, since it could be considered in two different contexts. The first is the context of the funding ratio as the funding target, or the ultimate funding goal. Public pension plans generally have a funding policy targeting full funding, i.e., a 100 percent funding level. This is recommended by the Government Finance Officers Association (GFOA) in their Best Practice, “Sustainable Funding Practices of Defined Benefit Pension Plans.”

The second context is the funding ratio as a general indicator of a pension plan’s health at a specific point in time, possibly pointing to the need for corrective action. This is the context in which the 80-percent threshold is used by the federal government for private sector pension plans. For example, as explained in a 2008 U.S. Government Accountability Office report:

The Pension Protection Act of 2006 provided that large private sector pension plans will be considered at risk of defaulting on their liabilities if they have less than 80 percent funded ratios under standard actuarial assumptions and less than 70 percent funded ratios under certain additional ‘worst-case’ actuarial assumptions. When private sector plans default on their liabilities, the Pension Benefit Guaranty Corporation becomes liable for benefits. These funding standards will be phased in, becoming fully effective in 2011, and at-risk plans are required to use stricter actuarial assumptions that will result in them having to make larger plan contributions.
In addition, the 80-percent threshold is used by credit rating agencies as a general indicator of a public plan's financial health. For example, in their 2011 report “Enhancing the Analysis of U.S. State and Local Government Pension Obligations,” Fitch Ratings says it “generally considers a funded ratio of 70% or above to be adequate and less than 60% to be weak,” but also goes on to say that the funded ratio is “only one of many factors” used in the analysis of a government’s pension obligations.  

Also, in Standard & Poor’s report, “U.S. State Ratings Methodology,” the funding ratio is one of four factors used to evaluate pension liabilities. The other factors are pension funding levels (pertaining to the plan sponsor’s history of paying the Annual Required Contribution); unfunded pension liabilities per capita; and unfunded pension liabilities relative to personal income. S&P assigns a “strong” rating for funding levels above 90 percent; a rating of “above average” for levels between 80 percent and 90 percent; “below average” for funded levels 60 percent to 80 percent; and “weak” below 60 percent.  

As explained in the Public Fund Survey Summary of Findings for FY 2010, by Keith Brainard:

Funded status is a single-point measure of the degree to which a plan is on course to meet a distant goal. … The fact that a plan is underfunded is not necessarily a sign of fiscal or actuarial distress; many pension plans remain underfunded for decades without causing fiscal stress for the plan sponsor or requiring benefits to be reduced.

The critical factor in assessing the current and future health of a pension plan is whether or not funding its liabilities creates fiscal stress for the pension plan sponsor. Although a pension plan that is fully funded is preferable to one that is underfunded, other factors held equal, a plan’s funded status is simply a snapshot in a long-term, continuous financial and actuarial process, akin to a single frame of a movie that spans decades.  

Keith Brainard is research director at the National Association of State Retirement Administrators. Paul Zorn is director of governmental research at Gabriel, Roeder, Smith & Company.

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1 For example see Girard Miller, “Pension Polity,” Governing Magazine, January 2012.
2 Government Finance Officers Association, Best Practice, Sustainable Funding Practices of Defined Benefit.


4 Fitch Ratings, "Enhancing the Analysis of U.S. State and Local Government Pension Obligations," 2011. (Note: Fitch would base its measure of funded ratio on a 7% discount rate, so their 70% funded ratio would be higher using a higher discount rate.)

5 Standard & Poor's, "U.S. State Ratings Methodology, January 3, 2011.

NEW JERSEY STATE LEGISLATURE
BUDGET AND APPROPRIATIONS COMMITTEES
SESSION OF 2013

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David J. Rosen, Legislative Budget and Finance Officer, Office of Legislative Services
Frank W. Haines III, Assistant Legislative Budget and Finance Officer, Office of Legislative Services
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Transmittals of funds deposited by each State agency shall be forwarded to the Division of Budget and Accounting in accordance with existing regulations. Each State agencies' deposits will be credited to the appropriate account. Receipts which may be appropriated to any State agency may be expended only in accordance with the provisions of the Act.

State agencies shall forward bills for payment as soon as practicable. Every effort will be made by the Department of the Treasury to facilitate payment, particularly those bills subject to discount.
### 34. EDUCATION

#### 34. EDUCATIONAL, CULTURAL, AND INTELLECTUAL DEVELOPMENT

**34. EDUCATIONAL SUPPORT SERVICES**

#### 37. SCHOOL IMPROVEMENT

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<tr>
<th>NICES Account No.</th>
<th>IPR Account No.</th>
<th>Direct State Services</th>
<th>(thousands of dollars)</th>
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<td>14-100-034-5059-015</td>
<td>5069-100-371303-12</td>
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<td>14-100-034-5059-016</td>
<td>5069-100-371309-2</td>
<td>Materials and Supplies</td>
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<td>14-100-034-5059-017</td>
<td>5069-100-371303-3</td>
<td>Services Other Than Personal</td>
<td>365</td>
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<td>14-100-034-5059-018</td>
<td>5069-100-371300-4</td>
<td>Maintenance and Fixed Charges</td>
<td>7</td>
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**Total Appropriation, School Improvement**

| 4,115 |

**Total Appropriation, School District Improvement**

| 5,822 |

#### 39. TEACHERS' PENSION AND ANNUITY ASSISTANCE

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<tr>
<th>NICES Account No.</th>
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<td>Teachers' Pension and Annuity Fund - Non-contributory Insurance (PTRF)</td>
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<td>Post Retirement Medical Other Than TRSP (PTRF)</td>
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<td>14-105-034-5055-003</td>
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<td>Debt Service on Pension Obligation Bonds (PTRF)</td>
<td>167,213</td>
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**Total Appropriation, Division of Administration**

| 2,916,982 |

#### 5120. DIVISION OF SCHOOL FINANCE AND REGULATORY SERVICES

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<th>NICES Account No.</th>
<th>IPR Account No.</th>
<th>Direct State Services</th>
<th>(thousands of dollars)</th>
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<td>Maintenance and Fixed Charges</td>
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**Subtotal Appropriation, Direct State Services**

| 424 |

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<td>186,859</td>
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**Subtotal Appropriation, State Aid**

| 186,859 |

**Total Appropriation, Student Transportation**

| 187,283 |

#### 38. FACILITIES PLANNING AND SCHOOL BUILDING AID

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**Subtotal Appropriation, Direct State Services**

| 1,662 |
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<tr>
<th>NICES Account No.</th>
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<th>State Aid</th>
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<td>Police and Fireman's Retirement System - Post Retiree Medical (PTEP)</td>
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<td>14-100-083-2078-023</td>
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<tr>
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<td>2078-150-358510-00</td>
<td>Police and Fireman's Retirement System (P.L. 1978, c. 109)</td>
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**Total Appropriation, Police and Fireman's Retirement System**

<p>| | |</p>
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<tbody>
<tr>
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**Language -- Grants-In-Aid -- Property Tax Relief Fund**

14-495-083-2078-017 | 2078-495-333200-01

The amount hereabove appropriated for the Homestead Benefit Program shall be available to provide homestead benefits only to eligible homeowners pursuant to the provisions of section 3 of P.L. 1993, c. 81 (C.54:4-8.59) as amended by P.L. 2004, c. 40 and by P.L. 2007, c. 62, as may be amended from time to time except that, notwithstanding the provisions of such laws to the contrary: (a) residents who are 65 years of age or older at the close of the tax year, or residents who are allowed to claim a personal deduction as a blind or disabled taxpayer pursuant to subsection b of N.J.S. 54A:3-1, with (g) gross income in excess of $100,000 for tax year 2011 are excluded from the program; (b) gross income in excess of $100,000 but not in excess of $150,000 for tax year 2011 are eligible for a benefit in the amount of 5% of the first $100,000 of property taxes paid; (c) gross income in excess of $100,000 for tax year 2011 are eligible for a benefit in the amount of 10% of the first $100,000 of property taxes paid; (d) residents who are 65 years of age or older at the close of the tax year, or residents who are allowed to claim a personal deduction as a blind or disabled taxpayer pursuant to subsection b of N.J.S. 54A:3-1, with (g) gross income in excess of $100,000 for tax year 2011 are excluded from the program; (b) gross income in excess of $100,000 but not in excess of $150,000 for tax year 2011 are eligible for a benefit in the amount of 5% of the first $100,000 of property taxes paid; and (e) gross income in excess of $150,000 for tax year 2011 are eligible for a benefit in the amount of 10% of the first $100,000 of property taxes paid. These benefits listed pursuant to this paragraph will be calculated based on the 2006 property tax amount assessed or as would have been assessed on the October 1, 2011, principal residence of eligible applicants. The total homestead benefit provided to an eligible applicant in a given State fiscal year shall not exceed the homestead rebate amount paid to such eligible applicants as a result of an applicant's filing characteristics. The homestead benefit shall be made in one or more installments after the application for the benefit has been approved, at the dates and in the form as the Director of the Division of Taxation shall determine. If the amount hereabove appropriated for the Homestead Benefit Program is not sufficient, there is appropriated from the Property Tax Relief Fund such additional amounts as may be required to provide such homestead benefits, subject to the approval of the Director of the Division of Budget and Accounting.

14-495-083-2078-017 | 2078-495-333200-01

From the amount hereabove appropriated for the Homestead Benefit Program, there are appropriated such amounts as may be necessary for the administration of the program, subject to the approval of the Director of the Division of Budget and Accounting.

14-495-083-2078-017 | 2078-495-333200-01

From the amount hereabove appropriated for the Homestead Benefit Program, there are appropriated such amounts as may be required for payments of homestead benefits that have been approved but not paid pursuant to the annual appropriations act for the fiscal year the claimant applied for such homestead benefits, subject to the approval of the Director of the Division of Budget and Accounting.

14-495-083-2078-017 | 2078-495-333200-01

From the amount hereabove appropriated for the Homestead Benefit Program, there are appropriated from the Property Tax Relief Fund such amounts as may be required for payment of property tax credits to homeowners and tenants pursuant to the "Property Tax Deduction Act," P.L. 1976, c. 60 (C.54:3A-15 et seq.).

14-495-083-2078-007 | 2078-495-333600-01

Notwithstanding the provisions of P.L. 1997, c. 234 (C.54:4-8.67), the amount hereabove appropriated for Senior and Disabled Citizens' Property Tax Freeze, and any additional amounts which may be required for this purpose, is appropriated from the Property Tax Relief Fund.

14-495-083-2078-007 | 2078-495-333600-01

Notwithstanding the provisions of any law or regulation to the contrary, the amount hereabove appropriated for Senior and Disabled Citizens' Property Tax Freeze is subject to the following conditions: eligibility for the property tax reimbursement program shall be determined pursuant to section 1 of P.L. 1997, c. 234 (C.54:4-8.67), except that any citizen with an annual income of more than $37,000 shall not be eligible to receive a property tax reimbursement benefit payment in the current fiscal year.
There are appropriated such additional amounts as may be certified to the Governor by the South Jersey Port Corporation as necessary to meet the requirements of the South Jersey Port Corporation Debt Service Reserve Fund under section 14 of P.L. 1968, c.60 (C.12:11A-14) and the South Jersey Port Corporation Property Tax Reserve Fund under section 20 of P.L. 1968, c.60 (C.12:11A-20), subject to the approval of the Director of the Division of Budget and Accounting.

The amounts hereabove appropriated for the Highlands Protection Fund are payable from the receipts of the portion of the realty transfer fee directed to be credited to the Highlands Protection Fund and the unexpended balance at the end of the preceding fiscal year in the Highlands Protection Fund accounts are appropriated, subject to the approval of the Director of the Division of Budget and Accounting. Further, the Department of the Treasury may transfer funds as necessary between the Highlands Protection Fund - Incentive Planning Aid account and the Highlands Protection Fund - Planning Grants account, subject to the approval of the Director of the Division of Budget and Accounting.

The amount hereabove appropriated for Solid Waste Management - County Environmental Investment Aid is appropriated to subsidize county and county authority debt service payments for environmental investments incurred and other repayment obligations owed pursuant to the "Solid Waste Management Act," P.L. 1970, c.39 (C.13:18A-1 et seq.) and the "Solid Waste Utility Control Act," P.L. 1970, c.40 (C.13:18A-1 et seq.) as determined by the State Treasurer based upon the need for such financial assistance after taking into account all financial resources available or attributable to pay such debt service and such other repayment obligations. Such additional funds as may be necessary shall be appropriated subject to the approval of the Director of the Division of Budget and Accounting and shall be provided upon such terms and conditions as the State Treasurer may determine. The unexpended balance at the end of the preceding fiscal year is appropriated, subject to the approval of the Director of the Division of Budget and Accounting.

Notwithstanding the provisions of the "Corporation Business Tax Act (1945)," P.L. 1945, c.162 (C.54:10A-1 et seq.), the amount appropriated to the several counties of the State shall not be distributed and shall be anticipated as revenue for general State purposes.

Notwithstanding the provisions of the "Corporation Business Tax Act (1945)," P.L. 1945, c.162 (C.54:10A-1 et seq.), the amounts collected from banking corporations pursuant to the "Corporation Business Tax Act (1945)" shall not be distributed to the counties and municipalities and shall be anticipated as revenue for general State purposes.

There is appropriated from the Energy Tax Receipts Property Tax Relief Fund the amount of $788,492,000 and an amount not to exceed $319,632,000 from Consolidated Municipal Property Tax Relief Aid is appropriated and shall be allocated to municipalities in accordance with the provisions of subsection b. of section 2 of P.L. 1997, c.167 (C.32:27D-43), provided further, however, that from the amounts hereabove appropriated, each municipality shall also receive such additional amounts from the Energy Tax Receipts Property Tax Relief Fund as provided in the previous fiscal year. Each municipality that receives an allocation from the amount so transferred from the Consolidated Municipal Property Tax Relief Aid program shall have its allocation from the Consolidated Municipal Property Tax Relief Aid program reduced by the same amount.

Notwithstanding the provisions of paragraph (1) of subsection c. of section 2 of P.L. 1997, c.167 (C.32:27D-45) or any other law or regulation to the contrary, the amount hereabove appropriated for Energy Tax Receipts Property Tax Relief Fund payments shall be distributed on the following schedule: on or before August 1, 45% of the total amount due; September 1, 20% of the total amount due; October 1, 15% of the total amount due; November 1, 5% of the total amount due; December 1 for municipalities operating under a calendar fiscal year, 5% of the total amount due; and June 1 for municipalities operating under the State fiscal year, 5% of the total amount due.

Notwithstanding the provisions of any law or regulation to the contrary, the release of the final 5% or $500, whichever is greater, of the total annual amount due for the current fiscal year from the Energy Tax Receipts Property Tax Relief Fund to municipalities is subject to the following condition: the municipality shall submit to the Director of the Division of Local Government Services a report describing the municipality's compliance with the "Best Practices Inventory" established by the Director of the Division of Local Government Services and shall receive at least a minimum score on such inventory as determined by the Director of the Division of Local Government Services; provided, however, that the Director may take into account the particular circumstances of a municipality in computing such score. In preparing the Best Practices Inventory, the Director shall identify best municipal practices in the areas of general administration, financial management, and operational activities, as well as the particular circumstances of a municipality, in determining the minimum score acceptable for the release of the final 5% or $500, whichever is greater, of the total annual amount due for the current fiscal year, but in no event shall amounts be withheld with respect to municipal practices occurring prior to the issuance of the Best Practices Inventory unless related to a municipal practice identified in the Best Practices Inventory established in the previous fiscal year.

There is appropriated from taxes collected from certain insurance companies, pursuant to the insurance tax act, so much as may be required for payments to counties pursuant to P.L. 1940, c.5 (C.54:30-69 et seq.) shall expire.

The unexpended balance at the end of the preceding fiscal year from the taxes collected pursuant to P.L. 1940, c.5 (C.54:30-69 et seq.) shall expire.
### 74. GOVERNMENT DIRECTION, MANAGEMENT, AND CONTROL
#### 74. GENERAL GOVERNMENT SERVICES

#### 9410. EMPLOYEE BENEFITS

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<tr>
<th>NICES Account No.</th>
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Subtotal Appropriation, Grants-in-AID: 955,658

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Subtotal Appropriation, Direct State Services: 2,480,397

### Subtotal Appropriation, Grants-in-AID: 955,658

### Total Appropriation, Employee Benefits: 3,435,015
EXHIBIT "S"
EXECUTIVE ORDER NO. 156

WHEREAS, the State of New Jersey ("State") is confronting a significant, unanticipated revenue shortfall for the fiscal year ending on June 30, 2014, less than six weeks from the date of this Order; and

WHEREAS, based on the most current projections developed by the Department of the Treasury ("Treasury"), actual and anticipated revenue collections by the State for the current fiscal year are expected to be substantially below the amounts estimated in connection with the Fiscal Year 2014 Appropriations Act, P.L. 2013, c.77; and

WHEREAS, the State Treasurer, in coordination with the Department’s Chief Economist and the Office of Revenue and Economic Analysis, now estimates that the State expects to realize a revenue shortfall in the gross income tax of approximately $875 million, which Treasury largely attributes to unanticipated taxpayer behavior in advance of federal tax changes associated with the 2012 fiscal cliff negotiations; and

WHEREAS, this newly identified shortfall creates a projected revenue shortfall of approximately $1 billion for Fiscal Year 2014 when other appropriate revenue adjustments are taken into account; and

WHEREAS, the State further anticipates additional essential spending needs during Fiscal Year 2014 of approximately $260 million, including support for individuals enrolled in programs administered by the Department of Human Services and winter operations of the Department of Transportation; and
WHEREAS, the combined total estimated revenue shortfall and additional essential spending needs for Fiscal Year 2014 is projected to be nearly $1.3 billion; and

WHEREAS, the administration has identified Fiscal Year 2014 underfunding and lapses totaling more than $900 million, which is more than sufficient to cover all of the aforementioned supplemental Fiscal Year 2014 essential spending needs, but is not of such a magnitude as to overcome the totality of the unanticipated revenue shortfall; and

WHEREAS, the New Jersey State Constitution requires the Governor to take care that the laws of this State be faithfully executed, N.J. Const. (1947) Article V, Section 1, Paragraph 11, including ensuring compliance with the constitutional mandate that the State not end the fiscal year with a deficit in accordance with N.J. Const. (1947) Article VIII, Section 2, Paragraph 2; and

WHEREAS, the Governor is entrusted with the responsibility to protect the health, safety, and welfare of the people of this State, as well as the responsibility to aid in the prevention of damage, loss, or destruction of property in the event of emergency affecting the State pursuant to the Disaster Control Act, N.J.S.A. App.A:9-30 et seq.; and

WHEREAS, during the course of a fiscal year, the Governor may take steps to limit State spending if it appears that revenues have fallen below those originally anticipated in the Appropriations Act by ordering the Director of the Division of Budget and Accounting ("Director") to freeze spending and place items into reserve pursuant to N.J.S.A. 52:27B-26; and
WHEREAS, failure to exercise these powers would result in the State lacking sufficient resources to provide essential State services and basic operations of State government for the balance of Fiscal Year 2014, potentially causing immediate, devastating impacts on the residents of the State; and

WHEREAS, in order to determine which items of spending should be reserved, the State Treasurer and the Director have conferred with the various departments of State government to identify items that can be reserved in Fiscal Year 2014 without imperiling the health, safety, and welfare of the people of the New Jersey; and

WHEREAS, because of the magnitude of the current fiscal situation and the fact that less than six weeks are left in the fiscal year to address it, it is imperative that all unexpended items of appropriation be closely scrutinized and, if appropriate, frozen in order to address the situation; and

WHEREAS, at this late point in the fiscal year, the list of potential options for placement into reserve is short and unappealing, consisting of items of appropriation such as payments to satisfy the State's debt service obligations and payments to institutions of higher education, hospitals, nursing homes, school districts, municipalities in fiscal distress in the Transitional Aid program, and the State's pension systems; and

WHEREAS, making severe cuts to some of these programs at this point in the fiscal year would result in unacceptable risks and adverse consequences to the public health, safety, and welfare, including but not limited to lack of access to emergency healthcare;
NOW, THEREFORE, I, CHRIS CHRISTIE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. In light of the facts and circumstances set forth in brief above, the Director is hereby ordered to identify and place into reserve items of appropriation pursuant to N.J.S.A. 52:27B-26 in an amount sufficient to ensure that the State does not end the fiscal year with a deficit. The Director shall notify the State Treasurer and the Governor's Office immediately of the list of items placed into reserve. In the event that during the remainder of Fiscal Year 2014, actual revenues collected are less than the revenues presently anticipated for collection, the Director shall take such further actions pursuant to N.J.S.A. 52:27B-26 to place into reserve additional amounts or items of appropriation so as to ensure that the State does not end the fiscal year with a deficit. The Director shall report to the Treasurer and the Governor's Office any additional amounts or items of appropriation that are placed into reserve as well as any actions to release reserved funds for expenditure.

2. In executing the directive described in the preceding paragraph, the Director shall not place into reserve or otherwise prevent the timely disbursement of the following categories of appropriations, which have been determined to be essential at this time to the maintenance of the health, safety, and welfare of the residents of the State of New Jersey, despite the severity of the current fiscal situation: debt service payments and final payments to institutions of higher education, hospitals, nursing homes, school districts,
and Transitional Aid to municipalities determined to be in fiscal distress.

3. If, and only if, necessary to achieve a budget for Fiscal Year 2014 with an undesignated ending fund balance of $300 million, the Director is authorized to place into reserve such amounts of payments to the State's pension systems as may be necessary to ensure that the State does not end the fiscal year with a deficit, but only after all other measures authorized in this Order are accomplished and only if those other authorized measures are insufficient; provided, however, that the Director shall not place into reserve the actuarially required annual normal contribution for all active employees calculated in a manner consistent with the provisions of P.L.2010, c.1.

4. The State Treasurer, in consultation with the Director, is directed to monitor the collection of revenues and State expenditures and to report to the Governor's Office on an ongoing basis so that appropriate adjustments, if any, can be made, including by placing into reserve items of appropriation in order to meet changing fiscal conditions.

5. All State officials and agencies shall cooperate fully in the implementation of this Order.

6. I reserve the right to take such actions and issue such orders or directives as may be necessary to meet the various problems presented by this situation, to protect the health, safety, and welfare of the people of this State, and to ensure the continued provision of essential State services.

7. This Order shall take effect immediately and shall remain in full force and effect until rescinded, modified, or supplemented by me.
GIVEN, under my hand and seal this 20th day of May,
Two Thousand and Fourteen, and of the Independence of
the United States, the Two Hundred and Thirty-Eighth.

[seal]

/s/ Chris Christie
Governor

Attest:

/s/ Christopher S. Porrino
Chief Counsel to the Governor
EXHIBIT "T"
Chris Christie to reduce pension payments to balance NJ budget

Loading Photo Gallery

Salvador Rizzo/The Star-Ledger By Salvador Rizzo/The Star-Ledger
Email the author | Follow on Twitter
on May 20, 2014 at 2:21 PM, updated May 20, 2014 at 10:52 PM

TRENTON — In a stunning reversal, Gov. Chris Christie today announced plans to grab, over two years, $2.43 billion meant for public workers’ pensions to balance New Jersey’s ailing state budget.

The plan threatens to derail one of Christie’s signature accomplishments in Trenton: a major revision to replenish New Jersey’s strained pension fund over the long term.

But it would solve an immediate crisis for the governor, who has to find more than $2 billion somewhere to cover budget shortfalls for the current and incoming fiscal years.

At a Statehouse news conference, the Republican governor said he plans to take $2.43 billion budgeted for the pension fund during this fiscal year and the next one to balance his budgets. He ruled out alternatives such as raising the state income tax or cutting funds for schools and Medicaid.

VIDEO RECAP: Christie’s news conference

A payment to the pension fund scheduled to be made before June 30 will be reduced — from $1.6 billion to $696 million — via executive order, Christie said.

The governor also intends to shrink a $2.25 billion payment that was set for the next fiscal year to $681 million, but said he will seek the Democratic-controlled Legislature’s approval for that move.

The new, lower payments he has proposed will cover the cost of employees currently active in the pension system, the governor said, but will not chip away at the total unfunded liability in the pension fund accrued before he was governor.

"I'm going to pledge to make the payments that we need to make to not dig the hole any deeper, but in a time when we're confronted with this type of challenge, I cannot also pay the sins of my predecessors," Christie said.

Christie said previous governors and lawmakers slashed several pension payments — or skipped them altogether — over the past 17 years, digging a hole Christie said was too deep to fix. Now that hole, under Christie’s plan, would become the next governor’s burden.

"We're still digging out of problems two decades in the making," Christie said, conceding that his moves so far to repair the pension fund have not made "much of a dent."

Reducing the pension payments is a high-stakes maneuver that could trigger lawsuits from public worker unions and credit-rating downgrades from Wall Street, but it would solve an immediate concern by plugging what is now estimated as a $1 billion shortfall in the $33 billion state budget. And it gives Christie considerable breathing room for the following fiscal year, which begins July 1.

Democrats and public worker unions lashed out at the governor, saying the state would not be in the throes of crisis had Christie been a better steward of the state budget. They blamed Christie for overestimating his revenue projections by billions of dollars over the last three years, a trend also cited by the three major Wall Street credit-rating agencies this year as they downgraded New Jersey’s debt.

The New Jersey Education Association, the largest public-worker union in the state, said it will seek to block Christie’s proposal in court. Under the terms of Christie’s 2011 pension overhaul, unions can legally challenge any delays or reductions in the pension payments.

"Governor Christie’s illegal, irresponsible and reckless proposal to further delay a return to sound pension funding practices will irreparably harm New Jersey and cannot be allowed," said NJEA President Wendell Steinhauer. "In addition to the damage this will do to the pension system and to the employees and retirees who rely on it, this will further damage New Jersey’s fiscal reputation, to the detriment of every taxpayer."

Assembly Speaker Vincent Prieto (D-Hudson) said that "abandoning pension payments only make things worse down the road, and that’s unfair to taxpayers who rightly deserve and expect better from someone who vowed to fix the state."

In a statement. The speaker had proposed a higher tax rate on New Jersey’s wealthiest earners as a way to bridge the budget shortfall, but Christie ruled that out again today and took a shot at Democrats for promoting "class warfare" against the rich.

Hetty Rosenstein, the state director for the Communications Workers of America union, called on Democratic leaders in the Legislature to fight back and "be the adult in the room."

"It’s time Christie realizes what everyone else knows: cutting taxes for the super-wealthy, while stealing money from pensions hasn’t worked yet. And it won’t work this time," she said in a statement. "At every

turn, Governor Christie has chosen the path of economic instability, due to his wrong priorities and callous actions towards New Jersey’s working families."

Senate President Stephen Sweeney (D-Gloucester), who earlier this year threatened to shut down the government if Christie reneged on his pension commitments, did not go that far today.

"This administration has overestimated revenues for years. And while they have asked the middle class and the working poor to suffer, they have rewarded the state’s wealthiest," he said in a statement. "As we have done in the past, Democrats in the Legislature will work to resolve this issue in a manner that is fair to the hard working, middle class people of this state."

The Republican governor devoted much of his first term to a major overhaul of state workers’ health and retirement benefits. The pension system alone, under his plan, would have taken approximately 30 years to get back to financial stability.

The overhaul shifted more costs to public workers, raised their retirement age to 65, and froze yearly cost-of-living adjustments. In exchange, Christie and lawmakers agreed to make bigger payments each year to the pension fund to repair the financial damage after years of governors paying nothing at all.

Now, reducing the payments would increase the financial pressure on the pension system, which already faces $52 billion in unfunded liabilities, and would erase some of the progress Christie and Democratic lawmakers made after they overhauled the pension system in 2011.

"I made the decision that we were not going to blindside our students, we were not going to blindside our seniors," Christie said, noting he was unwilling to make cuts to schools or Medicaid to plug the budget gap.

Asked whether he had any other plans to reform the pension system before he leaves office, Christie said he did, but that he would not be ready to announce those until next month.

State Treasurer Andrew Sidamon-Eristoff is expected to provide details of Christie’s plan Wednesday before the Assembly budget committee.

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State of New Jersey
Department of the Treasury

May 21, 2014

Opening Statement of State Treasurer Andrew P. Sidamon-Eristoff
Before the Assembly Budget Committee

Chatham Schaefer, Budget Officer O’Scanlon and distinguished members of the committee, I am pleased to appear before you this afternoon. I am joined by Charlene Holbauer, Director of the Office of Management and Budget, Robert Peden, Deputy Director, and Dr. Charles Steinbock, Treasury’s Chief Economist.

On Monday, April 28, we announced that, based on available information to date, gross income, sales and corporate tax revenues for April would fall short of budgeted projections. We further announced a reduction in projected net revenue for the current fiscal year. At that time, and again during my last appearance before this committee, I committed to returning today to update our revenue projections and to outline the adjustments we are making and propose to make to the Fiscal Year 2014 budget and the Governor’s Fiscal Year 2015 Budget. We are all keenly aware that just five weeks remain in the current fiscal year, and I want to thank you for your understanding and patience as we have undertaken extensive due diligence to identify and evaluate options for both Fiscal 2014 and 2015.

In view of April’s extremely disappointing results, we are now obliged to project approximately $31.5 billion in total revenue for Fiscal 2014, a reduction of just over $1 billion or 3.2 percent from our projection as of the Governor’s Budget Message in February. The Gross Income Tax accounts for almost 85 percent of this reduction, mostly due to an unexpected shortfall in April final payments.

Carrying this reduction forward, we are now projecting $32.7 billion in total revenue for Fiscal Year 2015, a reduction of $1.7 billion or almost 5 percent from the Governor’s Budget Message. In addition to the lower base coming out of Fiscal 2014, this reduction reflects our decision to reduce the projected Fiscal Year 2015 growth rate for total revenue from 5.8 percent to just under 3.9 percent.

We believe these adjustments are reasonable, based on our understanding of current economic conditions and trends. In this context, I would be remiss if I did not point out that our colleagues at the Office of Legislative Services have made similar adjustments, with the result that we are now in virtual alignment.

To recap, we have reduced our revenue expectations by $2.75 billion across the two fiscal years. This, in turn, defines the very serious two-year challenge we now face.

Meeting this challenge will require a range of adjustments to the current fiscal year’s budget as well as the proposed budget for Fiscal 2015. You have before you several tables that summarize changes since the Governor’s Budget Message in February.

Turning first to the table entitled “Changes in FY 2014 Supplementals,” you will note that we are recognizing a modest net reduction in the need for supplemental appropriations of $39 million since the
Governor's Budget Message. This includes several increases offset by related revenues, an elimination of the need for supplemental funds in the Spill Compensation Fund/Hazardous Discharge Site Cleanup Fund, and an elimination of the supplemental need for Children and Families Grants because it will be accommodated through a transfer of funds.

Turning next to the table entitled "Changes in FY 2014 Lapses," we are increasing lapses by just over $1 billion. Across multiple departments and agencies we have identified underspending and savings that will reduce our projected spending by $118 million. With only a few weeks to go in the fiscal year, we had few practical options that would not involve extremely painful reductions to education, health care or our social safety net. The list before you is a catalog of newly identified savings opportunities and "least worst" reduction options. Last I stand accused of obscuring controversial items, I would draw your attention to our decisions to reduce this year's subsidy to New Jersey Transit by $14.8 million and to eliminate a $13.2 million one-time contract adjustment for community providers in good standing.

In addition, we are proposing a $687 million reduction in the budgeted pension contribution, from $1.58 billion, an amount equal to three sevenths of the actuarially recommended contribution (ARC) amount, to a lower amount equal to the full actuarial "employer normal cost" of $696 million.

What is the employer normal cost and why did we settle on this amount? As you will recall, the ARC calculation has two basic components. The first is the "normal cost," the present value of the additional benefits earned by active employees during the current year. The total normal cost is the sum of the employer's contribution in respect of all active employees (the "employer's normal cost") plus employee contributions made by each active employee.

The second component of the ARC is the amount necessary to amortize the unfunded accrued liability (UAL). As a result of many years of chronic underfunding, the enactment of unfunded benefit enhancements, and investment underperformance at the end of the last decade, the UAL portion of the full (and phased-in) annuas ARC payment has recently reached approximately 80 percent of the total contribution amount. In other words, roughly 80 percent of the payments this Administration and this Legislature have budgeted in recent years relate to decisions and forecasts of the past.

Given that we simply do not have the resources to make the full three sevenths contribution, and our determination not to skip making a payment in any fiscal year, we believe that our financial priority must be to fund current benefit accruals for our active employees who, after all, are continuing to contribute a portion of their salaries to their retirement. In this manner — with both the employer and employee contributing toward the normal cost — we will be keeping our commitment to fund currently accruing benefits for our employees while, regrettably, deferring our ability to pay down the UAL.

Please do not let the reduction in the pension contribution obscure the fact that we are also taking some very tough reductions in other areas.

Net of all these adjustments, we project an ending unrestricted fund balance of $300 million.

Moving to Fiscal Year 2015, we are proposing once again to fund only the active employee or "normal contribution" amount of $681 million, for a savings of $1.57 billion. With other savings of $128 million, including cuts to salary program by shifting responsibility for salary growth to the operating departments and agencies, a reduction in projected growth in Medicaid costs, and the utilization of
additional Clean Energy Fund resources to support utility costs at State correctional facilities and New Jersey Transit, we will reduce Fiscal Year 2015 expenses by $1.7 billion.

Once again, we project an ending fund balance of $500 million. Of course, $500 million is less than optimal but we feel the balance of priorities militates strongly in favor of funding the full employer normal pension cost while minimizing the collateral impact on important public programs and services. We will, of course, manage the adopted budget closely over the course of the fiscal year with a view toward increasing the margin.

Before taking your questions, I want to emphasize that we appreciate the Legislature’s important role in meeting the challenges before us over the next few weeks. To be frank, we cannot and should not do this alone. We will need the Legislature’s cooperation in making certain budgetary adjustments expeditiously and with minimum disruption to the programs and services our constituents rely on. With that acknowledgement, however, I am confident that, upon examination, you will agree that we have outlined a practical approach that respects our shared priorities in the face of extraordinary circumstances.

Ms. Holzbaur, Mr. Paden, Cr. Steindel and I will be pleased to answer your questions. Thank you.
FY 2015 Budget

May 21, 2014
## State Revenues
### Fiscal Years 2014 and 2015
(Thousands of Dollars)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
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<td>Sales Tax</td>
<td>45,580,000</td>
<td>44,977,000</td>
<td>(573,000)</td>
<td>23,700,000</td>
<td>28,480,000</td>
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<td>Sales Tax Dedication</td>
<td>(662,000)</td>
<td>(600,000)</td>
<td>(62,000)</td>
<td>(781,000)</td>
<td>(799,000)</td>
<td>(36,000)</td>
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<td>32,000</td>
<td>277,000</td>
<td>241,000</td>
<td>20,000</td>
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<td>Corporate Business</td>
<td>3,419,000</td>
<td>2,433,000</td>
<td>(986,000)</td>
<td>2,528,000</td>
<td>2,410,000</td>
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<td>Corporation Business-Energy</td>
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<td>10,000</td>
<td>(29,000)</td>
<td>39,000</td>
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<td>Motor Fuel</td>
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<td>Motor Vehicles Fees</td>
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<td>418,000</td>
<td>418,000</td>
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<td>Transfer Inheritance</td>
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<td>715,000</td>
<td>715,000</td>
<td>0</td>
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<tr>
<td>Insurance Premium</td>
<td>613,000</td>
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<td>(31,000)</td>
<td>613,000</td>
<td>570,000</td>
<td>(52,000)</td>
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<td>Cigarettes</td>
<td>201,400</td>
<td>204,000</td>
<td>2,600</td>
<td>201,400</td>
<td>204,000</td>
<td>2,600</td>
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<td>Petroleum Products Gross Receipts</td>
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<td>219,000</td>
<td>0</td>
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<td>219,000</td>
<td>0</td>
</tr>
<tr>
<td>Public Utility Buses (Rebate)</td>
<td>14,000</td>
<td>14,000</td>
<td>0</td>
<td>14,000</td>
<td>14,000</td>
<td>0</td>
</tr>
<tr>
<td>Corporation Banks and Financial Institutions</td>
<td>159,000</td>
<td>159,000</td>
<td>0</td>
<td>159,000</td>
<td>159,000</td>
<td>0</td>
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<tr>
<td>Alcohol Beverage Excise</td>
<td>158,000</td>
<td>158,000</td>
<td>0</td>
<td>158,000</td>
<td>158,000</td>
<td>0</td>
</tr>
<tr>
<td>Realty Transfer</td>
<td>297,000</td>
<td>277,000</td>
<td>(20,000)</td>
<td>297,000</td>
<td>277,000</td>
<td>(20,000)</td>
</tr>
<tr>
<td>Tobacco Products Wholesale Sales</td>
<td>73,700</td>
<td>73,700</td>
<td>0</td>
<td>73,700</td>
<td>73,700</td>
<td>0</td>
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<tr>
<td><strong>Total Major Taxes</strong></td>
<td>216,097,000</td>
<td>213,316,000</td>
<td>(3,781,000)</td>
<td>216,097,000</td>
<td>213,316,000</td>
<td>(3,781,000)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Miscellaneous Taxes, Fees, Revenues</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessment on Real Property (Greater Than $1 Million)</td>
<td>158,000</td>
<td>158,000</td>
<td>0</td>
<td>158,000</td>
<td>158,000</td>
<td>0</td>
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<tr>
<td>Medicaid Uncompensated Care</td>
<td>492,000</td>
<td>492,000</td>
<td>0</td>
<td>492,000</td>
<td>492,000</td>
<td>0</td>
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<tr>
<td>Good Health</td>
<td>76,000</td>
<td>76,000</td>
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<td>76,000</td>
<td>76,000</td>
<td>0</td>
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<tr>
<td>Hotel/Motel Occupancy Tax</td>
<td>14,000</td>
<td>14,000</td>
<td>0</td>
<td>14,000</td>
<td>14,000</td>
<td>0</td>
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<tr>
<td>Public Utility CFUT</td>
<td>115,000</td>
<td>115,000</td>
<td>0</td>
<td>115,000</td>
<td>115,000</td>
<td>0</td>
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<td>TPIA</td>
<td>5,000</td>
<td>5,000</td>
<td>0</td>
<td>5,000</td>
<td>5,000</td>
<td>0</td>
</tr>
<tr>
<td>Fringe Benefit Revenues</td>
<td>722,133</td>
<td>674,339</td>
<td>(47,794)</td>
<td>722,133</td>
<td>674,339</td>
<td>(47,794)</td>
</tr>
<tr>
<td>Other Miscellaneous Revenues</td>
<td>1,238,000</td>
<td>1,238,000</td>
<td>0</td>
<td>1,238,000</td>
<td>1,238,000</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Miscellaneous Taxes, Fees, Revenues</strong></td>
<td>2,750,963</td>
<td>2,512,795</td>
<td>(238,168)</td>
<td>2,750,963</td>
<td>2,512,795</td>
<td>(238,168)</td>
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</table>

<table>
<thead>
<tr>
<th>Interfund Transfers</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>State Lottery Fund</td>
<td>993,000</td>
<td>993,000</td>
<td>0</td>
<td>993,000</td>
<td>993,000</td>
<td>0</td>
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<tr>
<td>Other Funds</td>
<td>812,811</td>
<td>812,811</td>
<td>0</td>
<td>812,811</td>
<td>812,811</td>
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<tr>
<td><strong>Total Interfund Transfers</strong></td>
<td>5,805,811</td>
<td>5,805,811</td>
<td>0</td>
<td>5,805,811</td>
<td>5,805,811</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total State Revenue General Fund</strong></td>
<td>5,805,811</td>
<td>5,805,811</td>
<td>0</td>
<td>5,805,811</td>
<td>5,805,811</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Property Tax Relief Fund</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Taxes</td>
<td>13,971,000</td>
<td>13,971,000</td>
<td>0</td>
<td>13,971,000</td>
<td>13,971,000</td>
<td>0</td>
</tr>
<tr>
<td>Sales Tax Dedication</td>
<td>811,000</td>
<td>811,000</td>
<td>0</td>
<td>811,000</td>
<td>811,000</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Property Tax Relief Fund</strong></td>
<td>15,782,000</td>
<td>15,782,000</td>
<td>0</td>
<td>15,782,000</td>
<td>15,782,000</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total State</strong></td>
<td>5,805,811</td>
<td>5,805,811</td>
<td>0</td>
<td>5,805,811</td>
<td>5,805,811</td>
<td>0</td>
</tr>
</tbody>
</table>

| Casing Control Fund                       | 37,923 | 37,923 | 0 | 37,923 | 37,923 | 0 |
| Casing Revenue Fund                       | 37,923 | 37,923 | 0 | 37,923 | 37,923 | 0 |
| Governor/State Elections Fund             | 710 | 710 | 0 | 710 | 710 | 0 |
| **TOTAL STATE**                           | 513,971,000 | 513,971,000 | 0 | 513,971,000 | 513,971,000 | 0 |
## FY 2014 Fund Balance

(In Millions)

<table>
<thead>
<tr>
<th></th>
<th>Appropriations Act</th>
<th>Budget Revised</th>
<th>May Testimony</th>
<th>Change to Revised</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening Surplus</td>
<td>$ 467</td>
<td>$ 313</td>
<td>$ 313</td>
<td>$ -</td>
</tr>
<tr>
<td><strong>Revenues</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income</td>
<td>$ 13,039</td>
<td>$ 12,928</td>
<td>$ 12,050</td>
<td>$ (878)</td>
</tr>
<tr>
<td>Sales</td>
<td>8,680</td>
<td>8,680</td>
<td>8,597</td>
<td>(83)</td>
</tr>
<tr>
<td>Corporate</td>
<td>2,416</td>
<td>2,420</td>
<td>2,433</td>
<td>13</td>
</tr>
<tr>
<td>Other</td>
<td>8,678</td>
<td>8,535</td>
<td>8,438</td>
<td>(97)</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td>$ 32,813</td>
<td>$ 32,563</td>
<td>$ 31,518</td>
<td>$ (1,045)</td>
</tr>
<tr>
<td>Lapses</td>
<td></td>
<td>694</td>
<td>812</td>
<td>118</td>
</tr>
<tr>
<td>Pension</td>
<td></td>
<td>-</td>
<td>887 *</td>
<td>887</td>
</tr>
<tr>
<td><strong>Total Resources</strong></td>
<td>$ 33,280</td>
<td>$ 33,570</td>
<td>$ 33,530</td>
<td>$ (40)</td>
</tr>
<tr>
<td>Appropriations</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Original</td>
<td>$ 32,977</td>
<td>$ 32,977</td>
<td>$ 32,977</td>
<td>$ -</td>
</tr>
<tr>
<td>Supplemental</td>
<td></td>
<td>292</td>
<td>253</td>
<td>(39)</td>
</tr>
<tr>
<td><strong>Total Appropriations</strong></td>
<td>$ 32,977</td>
<td>$ 33,269</td>
<td>$ 33,230</td>
<td>$ (39)</td>
</tr>
<tr>
<td>Fund Balance</td>
<td>$ 303</td>
<td>$ 301</td>
<td>$ 300</td>
<td>$ (1)</td>
</tr>
</tbody>
</table>

* Pension Payment Active Employees $696 million; 3/7 would have been $1,582 billion.
Changes in FY 2014 Supplementals
(In Thousands)

<table>
<thead>
<tr>
<th></th>
<th>Feb 2014 Revised</th>
<th>May 2014 Testimony</th>
<th>Difference May vs. Feb</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supplementals</td>
<td>$ 291,918</td>
<td>$ 252,661</td>
<td>$ (39,257)</td>
</tr>
</tbody>
</table>

Significant Changes in Supplementals

- NJ SMART $8,863 *
- SEMI-MAC Administration Reimbursement $4,994 *
- Nonpublic Handicapped & Auxiliary Services $4,978 *
- Public Defender 2,684
- Winter Operations 2,200 **
- NJ Sports and Exposition Authority (5,730)
- Extended Polling Hours (9,240)
- Spill Compensation Fund/Hazardous Discharge Site Cleanup Fund (15,800)
- Children and Families Grants Offset by Transfer (30,574)
- Miscellaneous - None Greater than $2 million (net) (1,632)

Net Change in Supplementals $ (39,257)

* Offset by revenue increases
**Supplemented by transfer of $30 million
## Changes in FY 2014 Lapses

(In Thousands)

<table>
<thead>
<tr>
<th></th>
<th>Feb 2014 Revised</th>
<th>May 2014 Testimony</th>
<th>Difference May vs. Feb</th>
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<tr>
<td>Lapses</td>
<td>$694,008</td>
<td>$1,698,729</td>
<td>$1,004,721</td>
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</tbody>
</table>

### Significant Changes in Lapses

- Pension at Normal Cost for Active Employees: $86,707
- BEIP: $47,000
- Teacher Post Retirement Medical and FICA: $41,400
- Higher Education Capital Improvement Fund - College Share: $15,314
- NJ Transit Subsidy: $14,800
- Community Provider Contract Adjustments: $13,200
- Brownfield Site Reimbursement Trend: $10,000
- Capital Project Balances: $9,076
- Health Surplus Balances: $6,500
- Dormkey Safety Trust Fund - College Share: $5,649
- Highlands Protection Fund: $4,000
- Employee Benefits Other Than Pensions Surplus Balances: $3,456
- Environmental Protection Surplus Balance: $3,000
- Senior Tax Freeze Trend: $2,700
- Part-time Tuition Aid Grant (TAG) Trend: $2,700
- Sandy Hook Marine Lab: $2,200
- CUGNET Central Ring Project: $2,183
- Children and Families Surplus Balances: $2,073
- Volunteer Emergency Service Organizations Loan Fund: $2,000
- Unknown District of Residence: $2,000
- Miscellaneous - None Greater than $2 million (net): $14,328
- School Construction Debt Service transferred to Winter Operations: $(30,000)

### Eliminated or Reduced February 25 Lapse

- General Assistance Caseload: $(2,284)
- Energy Costs Increase: $(2,500)
- Children and Families Grant Trend: $(5,771)
- Health Care Subsidy Fund Trend: $(6,653)
- Prior Year Updated: $(7,912)
- Realy Transfer Fee Trend: $(9,500)
- Medicaid, DDS, Aging Services Trend: $(10,915)
- TANF Trend: $(10,930)

### Net Change in Lapses

$1,004,721
## FY 2015 Revised Budget

(In Millions)

<table>
<thead>
<tr>
<th></th>
<th>FY 2014 May Testimony</th>
<th>FY 2014 Budget</th>
<th>FY 2015 May Testimony</th>
<th>FY 2015 Difference</th>
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<tbody>
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<td><strong>Opening Surplus</strong></td>
<td>$ 313</td>
<td>$ 301</td>
<td>$ 300</td>
<td>$ (1)</td>
</tr>
<tr>
<td><strong>Revenues</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income</td>
<td>$ 12,050</td>
<td>$ 13,988</td>
<td>$ 12,627</td>
<td>$ (1,361)</td>
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<tr>
<td>Sales</td>
<td>8,597</td>
<td>9,212</td>
<td>9,138</td>
<td>(74)</td>
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<tr>
<td>Corporate</td>
<td>2,433</td>
<td>2,583</td>
<td>2,590</td>
<td>7</td>
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<tr>
<td>Other</td>
<td>8,438</td>
<td>8,664</td>
<td>8,383</td>
<td>(281)</td>
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<tr>
<td><strong>Total Revenues</strong></td>
<td>$ 31,518</td>
<td>$ 34,447</td>
<td>$ 32,738</td>
<td>$ (1,709)</td>
</tr>
<tr>
<td><strong>Lapses</strong></td>
<td>1,699</td>
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<tr>
<td><strong>Total Resources</strong></td>
<td>$ 33,210</td>
<td>$ 34,447</td>
<td>$ 33,038</td>
<td>$ (1,710)</td>
</tr>
<tr>
<td><strong>Appropriations</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Original</td>
<td>$ 32,977</td>
<td>$ 34,435</td>
<td>$ 34,307</td>
<td>$ (126)</td>
</tr>
<tr>
<td>Supplemental</td>
<td>253</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pension</td>
<td></td>
<td></td>
<td>(1,569)*</td>
<td>(1,569)</td>
</tr>
<tr>
<td><strong>Total Appropriations</strong></td>
<td>$ 33,230</td>
<td>$ 34,435</td>
<td>$ 32,738</td>
<td>$ (1,697)</td>
</tr>
<tr>
<td><strong>Fund Balance</strong></td>
<td>$ 300</td>
<td>$ 313</td>
<td>$ 300</td>
<td>$ (13)</td>
</tr>
</tbody>
</table>

* Pension Payment Active Employees $681 million; 4/7 would have been $2.25 billion.
# FY 2015 Budget Changes

(In Thousands)

<table>
<thead>
<tr>
<th>FY 2015 Budget</th>
<th>May Testimony</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 34,435,311</td>
<td>$ 32,737,822</td>
<td>$(1,697,489)</td>
</tr>
</tbody>
</table>

## Significant Changes in Budget

- **Pension at Normal Cost for Active Employees**: $(1,559,250)
- **BPU Balances to Offset Utility Costs at Corrections/NJTransit**: $(30,000)
- **Medicaid Trend**: $(25,000)
- **Salary Program Trend**: $(21,200)
- **Homestead Benefit Program - Participation Trend**: $(21,000)
- **Higher Education Capital Improvement Program - Debt Service Savings on New Issuance**: $(10,509)
- **Brownfield Site Reimbursement Trend**: $(10,000)
- **Teachers' Social Security Trend**: $(7,700)
- **Choice Aid - Adjustment for Actual Enrollment**: $(4,300)
- **State and Higher Education Social Security Tax Trend**: $(4,407)
- **Senior Tax Freeze Trend**: $(3,500)
- **County Offices on Aging - Transfer of Cost to Managed Care (net savings)**: $(7,398)
- **Noncontributory Insurance Reduced Trend**: $(1,953)
- **Child Protective and Permanency Grant Trend**: $(1,843)
- **Alternate Benefits Program Trend**: $(1,743)
- **State Assessment - Reduced Costs of PARCC**: $(1,000)
- **Capital Project Balances**: 9,076
- **Extended Polling Place Hours**: 9,240

## Net Change in FY 2015 Budget

$(1,697,489)$
June 5, 2014

Honorable Paul A. Sado
496 Columbia Boulevard, 1st Floor
Wood-Ridge, New Jersey 07075

Dear Senator Sado:

You have asked for a legal opinion as to whether the Governor has the authority to withhold payment to the State's pension funds that is described by the administration as necessary to ensure that the State does not end Fiscal Year 2014 with a deficit; and whether the recently announced revisions to the Governor's budget recommendations for the Fiscal Year 2015 annual appropriations act, if enacted, would violate the State's contractual obligation to make the annual required contributions to its pension funds as provided by N.J.S.A. 43:3C-9.5.

For the reasons set forth below, it is our opinion that, in view of the fact that only a few weeks remain in Fiscal Year 2014, the Governor's action in withholding payment to the State's pension funds in order to avoid ending Fiscal Year 2014 with a deficit, while an impairment of the State's contractual obligation under N.J.S.A. 43:3C-9.5 to make annual required contributions to its pension funds, nevertheless, may be warranted by necessity, although it would be more defensible, if still an impairment, to delay payment until the beginning of Fiscal Year 2015 in order to substantially comply with the statute's requirements. It is also our opinion that if the proposed revisions to the Governor's recommendations for the Fiscal Year 2015 are enacted into law, the failure to make the annual required contributions to the State's pension funds pursuant to N.J.S.A. 43:3C-9.5 would be found to violate the constitutional proscription against impairment of the obligation of contracts.
I. Fiscal Year 2014 Executive Action: Authority To Withhold Payment Of Appropriations To Ensure That The State Does Not End Fiscal Year 2014 With A Deficit.

The Governor recited his legal authority in Executive Order No. 156, issued on May 20, 2014, not to use current enacted State fiscal year appropriations for payments to the State’s pension funds to ensure that the State does not end the current fiscal year with a deficit. The enacted spending authority for these purposes will effectively be reserved from expenditure from current year appropriations.

While the authority to appropriate funds is vested in the legislative branch of government through enactments authorizing the withdrawal of monies from the State Treasury for governmental purposes, the legislative authority over appropriations is subject to checks and balances from the executive. In the exercise of the Governor’s executive power "... the Governor is to execute state programs funded by items of appropriations ..." Karcher v. Keen, 97 N.J. 483, 502 (1984). However, the appropriation of public money and its disbursement are two different and separate acts and divided between these two branches. The executive power to disburse public money of course derives from the constitutional provision which requires that he "take care that the laws be faithfully executed." N.J. Const. (1947) Art. V, Sec. I, para. 11. However, the Constitution also provides that appropriations made for a fiscal year shall not "... exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the Governor." Art. VIII, Sec. II, para. 2. This provision is of obvious application at the point at which the annual appropriation act and supplemental appropriation acts are presented for enactment. However, no direction is given in the Constitution as to the execution of this balanced budget mandate during the remainder of a fiscal year when the Governor determines that the amount of revenue on hand and anticipated as previously certified is not going to be realized. The exercise of the executive power to ensure that the balanced budget mandate for the full duration of a fiscal year in these circumstances has been specifically provided in statute under N.J.S.A. 52:273-26.

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1From information provided by the Department of the Treasury, there is determined by the Executive to be approximately $887 million in projected Fiscal Year 2014 lapses of appropriations to keep the Fiscal Year 2014 budget in balance (with an undesignated ending fund balance of $300 million) considering other identified lapses and supplemental appropriation needs. A lapse of appropriations may be accomplished at the expiration of the fiscal year pursuant to authority found in the second and third sentence of section 1 of the annual appropriations act: "Unless otherwise provided, the appropriations herein made shall be available during said fiscal year and for a period of one month thereafter for expenditures applicable to said fiscal year. Unless otherwise provided, at the expiration of said one-month period, all unexpended balances shall lapse into the State Treasury or to the credit of trust, dedicated or non-State funds as applicable ..."
N.J.S.A. 52:27B-26 permits the Director of the Division of Budget and Accounting to set aside reserves out of each appropriation and permits the Governor to revise appropriations whenever it appears to the Governor's satisfaction that revenues have fallen seriously below those anticipated.

In order to protect against and meet emergencies that may arise during each fiscal year, the commissioner (currently the Director of the Division of Budget and Accounting) shall have the power to set aside a reserve out of each appropriation, the exact amount of which shall be determined by him. Any time during the fiscal year that occasion may require this reserve or any portion of it may be returned to the appropriation to which it belongs, providing the commissioner finds such action necessary.

Whenever it appears to the satisfaction of the Governor that revenues have fallen seriously below those anticipated, the commissioner, on order of the Governor, shall have the power to revise the quarterly allotments. [N.J.S.A. 52:27B-26.]

The current wording of this statute is traceable to P.L.1944, c.112 that was enacted as one of the bills proposed by the New Jersey Commission on State Administrative Reorganization, which, in Part 2 of its report of March 1944, recommended the consolidation of "... the functions of the Budget Commissioner and the Commissioner of Finance thereby eliminating ... duplication and providing more efficient and economical administration of the quarterly work programs." Report of the New Jersey Commission on State Administrative Reorganization, Part 2, March 1944, at 2. That consolidation under the creation of a new Department of Taxation and Finance, as well as other streamlining measures involving State fiscal procedures, were expressed in the Commission's memorandum on the bill as part of an overall effort "... to provide the facilities ... [to] the Governor to meet ... his obligation ... to provide adequate direction and control of both revenues and expenditures ... without conflict in authority between the executive and legislative branch ..." Id., at 1.

The revision of the statute in P.L.1944, c.112 recomposed even earlier statutory language of the first paragraph of the section to remove the requirement that the Commissioner have the Governor's approval at the time of setting aside reserves from initial quarterly allotments. The revision also added the current last paragraph of the section: "Whenever it appears to the satisfaction of the Governor that revenues have fallen seriously below those anticipated, the commissioner, on order of the Governor, shall have the power to revise the quarterly allotments." N.J.S.A. 52:27B-26. Thus the necessity of obtaining the Governor's prior approval was apparently thought to be more appropriately reserved for revisions of
established quarterly allotments whenever there was a serious decline in anticipated revenue. The creation of appropriation reserves short of such circumstances was delegated to the discretion of the commissioner (now Director of the Division of Budget and Accounting).

Subsequent to the revision of this provision in 1944, the overall powers of the Governor were generally reviewed during the Constitutional Convention of 1947. The Proceedings of the New Jersey Constitutional Convention of 1947, while demonstrating the concerns of the convention with the weak executive powers of the Governor under the preceding constitution, contains no mention of a need to strengthen any executive control over authorized expenditures. The convention addressed enhancing the Governor's role in making appropriations policy, by recommending the provisions in the present Constitution that legislative overrides of executive vetoes require a two-thirds vote of all the members of both houses rather than a simple majority, and that the Constitution require that the Governor rather than the comptroller certify that all revenues are sufficient to fund each annual appropriation act and supplementary appropriations thereto. These enhanced executive functions in the making of appropriations policy were incorporated into the 1947 Constitution while the Governor's responsibilities over expenditure controls, such as in N.J.S.A. 52:27B-26, although without specific mention in the convention proceedings, were along with all other statutory and other law in force at the time, declared to remain in full force unless superseded, altered or repealed by the new Constitution. N.J. Const. (1947) Art. XI, Sec. I, para. 3. Nothing in our review of the convention proceedings and the changes incorporated in the 1947 Constitution indicates any suspension or alteration of the executive authority to create expenditure reserves under the circumstances provided in N.J.S.A. 52:27B-26.3

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2See Proceedings of the New Jersey Constitutional Convention of 1947, Vol. 1, at 213 15, for a discussion concerning the legislative vote required to override an executive veto; and at 700 701, for a discussion of the Governor's certification of revenues.

3Examples of specific references to N.J.S.A. 52:27B-26 in the exercise of the reserve authority provide a perspective on Governors' interpretation of that authority. Governor Byrne by Executive Order No. 17, on January 15, 1975, invoked the statute to direct the State Treasurer and Division of Budget and Accounting, with the cooperation of all State officials, to identify items of appropriations to be set aside in reserve "... so as to ensure that State expenditures do not during fiscal year 1974-75 exceed State revenues." Governor Keane by Executive Order No. 23, on December 7, 1983, invoked the statute to direct, in addition to actual spending reductions throughout all appropriations categories, that $50 million in certain State aid payments to municipalities scheduled by law to be made in calendar year 1983 be held in reserve. This same reserve was reestablished by Governor Keane by Executive Order No. 30, on January 17, 1983, to be continued "... until such time as I am assured and do certify that sufficient revenues are and will be available to assure that the constitutional requirement for a balanced budget for fiscal year 1983 can and will be realized." This executive order also certified that an additional $30 million reduction in authorized expenditures had been made as had been specifically mandated by section 10 of P.L.1982, c.227. More recently, on February 11, 2010, Governor Christie signed Executive Order 14 that characterized the current State fiscal crisis as an emergency and FN3 Con'd.
established quarterly allotments whenever there was a serious decline in anticipated revenue. The creation of appropriation reserves short of such circumstances was delegated to the discretion of the commissioner (now Director of the Division of Budget and Accounting).

Subsequent to the revision of this provision in 1944, the overall powers of the Governor were generally reviewed during the Constitutional Convention of 1947. The Proceedings of the New Jersey Constitutional Convention of 1947, while demonstrating the concerns of the convention with the weak executive powers of the Governor under the preceding constitution, contains no mention of a need to strengthen any executive control over authorized expenditures. The convention addressed enhancing the Governor's role in making appropriations policy, by recommending the provisions in the present Constitution that legislative overrides of executive vetoes require a two-thirds vote of all the members of both houses rather than a simple majority, and that the Constitution require that the Governor rather than the comptroller certify that all revenues are sufficient to fund each annual appropriation act and supplementary appropriations thereto. These enhanced executive functions in the making of appropriations policy were incorporated into the 1947 Constitution while the Governor's responsibilities over expenditure controls, such as in N.J.S.A. 52:27B-26, although without specific mention in the convention proceedings, were along with all other statutory and other law in force at the time, declared to remain in full force unless superseded, altered or repealed by the new Constitution. N.J. Const. (1947) Art. XI, Sec. I, para. 3.

Nothing in our review of the convention proceedings and the changes incorporated in the 1947 Constitution indicates any suspension or alteration of the executive authority to create expenditure reserves under the circumstances provided in N.J.S.A. 52:27B-26.

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For the current Fiscal Year 2014, the State Treasurer’s Statement provided on May 21, and May 22, 2014, to the budget committees of both houses of the State Legislature indicated that anticipated revenues for Fiscal Year 2014 are $1.045 billion less for all sources than when presented in the Governor’s Budget Message to the Legislature in February 2014. With about six weeks remaining in Fiscal Year 2014, the Executive acknowledged that State revenues and resources from all sources have fallen below the amounts estimated by the Governor in February 2014. The recently acknowledged, unexpected, serious decline in anticipated Fiscal Year 2014 revenues is cited in the findings of the Executive Order, and the directions issued to the Director of the Division of Budget and Accounting in the Executive Order invoke the authority in N.J.S.A. 52:27B-26 to not expend $887 million in payments of the unfunded actuarial accrued liability portion of the State’s required fiscal year State contributions to its pension funds. This step is to be preceded by the use of authority to reserve and not pay any other available items of appropriations so as to ensure that the State does not end the fiscal year with a deficit.

II. Fiscal Year 2015: Description of Adjusted Budget Recommendation.

The State Treasurer’s Opening Statement provided on May 21, and May 22, 2014, to the budget committees of both houses of the State Legislature indicated that the administration is now projecting a reduction in total revenue for Fiscal Year 2015 of $1.7 billion or almost 5 percent less than projected in the Governor’s Budget message delivered in February, 2014. The adjusted budget proposal for Fiscal Year 2015 includes a $887 million reduction in the

[Text continues with legal and financial details, possibly including references to law and policy sources.]

4Executive Order No. 156 specifically notes that a reserve and nonpayment of appropriations shall not be applied to amounts of the actuarially required annual normal contribution for all active employees who are members of the pension systems.
budgeted pension contributions by the State, from $1.58 billion, an amount equal to three
sevenths of the actuarially recommended State contribution (ARC) amount, to a lower amount
equal to the full actuarial "employer normal cost" of $695 million.

The Opening Statement provides an explanation of this proposed Fiscal Year 2015
budget recommendation adjustment:

What is the employer normal cost and why did we settle
on this amount? As you will recall, the ARC calculation has two
basic components. The first is the "normal cost," the present
value of the additional benefits earned by active employees
during the current year. The total normal cost is the sum of the
employer's contribution in respect of all active employees (the
"employer's normal cost") plus employee contributions made by
each active employee.

The second component of the ARC is the amount
necessary to amortize the unfunded accrued liability (UAL). As
a result of many years of chronic underfunding, the enactment of
unfunded benefit enhancements, and investment
underperformance, at the end of the last decade, the UAL portion
of the bill (and phased-in) annual ARC payments has recently
reached approximately 80 percent of the total contribution
amount. In other words, roughly 80 percent of the payments of
this Administration and this Legislature have budgeted in recent
years relate to decisions and/or events of the past.

Given that we simply do not have the resources to make
the full three sevenths contribution, and our determination to not
skip making a payment in any fiscal year, we believe that our
financial priority must be to fund current benefit accruals for our
active employees who, after all, are continuing to contribute a
portion of their salaries to their retirement. In this manner --
with both the employer and employee contributing toward the
normal cost -- we will be keeping our commitment to fund
currently accruing benefits for our employees while, regrettably,
deferring our ability to pay down the UAL.
III. Public Employee Pensions.

"Pensions for public employees serve a public purpose. A primary objective in establishing them is to induce able persons to enter and remain in public employment, and to render faithful and efficient service while so employed." Geller v. Dept. of the Treasury of New Jersey, 53 N.J. 591, 597 (1969) (citation omitted). "It is common knowledge that a pension is an element in encouraging qualified individuals to enter and remain in public service." Masse v. Public Employees' Retirem. Sys., 87 N.J. 252, 261 (1981). Similarly, "one of the 'fundamental purposes' underlying the pensioning of civil servants is to 'secure good behavior and the maintenance of reasonable standards of discipline during service.'" Uricoll v. Police & Fire. Retirem. Sys., 91 N.J. 62, 70 (1982) (citation omitted). "Public pension statutes 'should be liberally construed and administered in favor of the persons intended to be benefited.'" Francois v. Bd. of Trustees, 415 N.J. Super. 335, 349 (App. Div. 2010) (citation omitted).

In Uricoll, the New Jersey Supreme Court acknowledged the evolution of the philosophy underlying public employee pensions from the early view that they were mere gratuities bestowed by a grateful sovereign to the more modern concept that a public pension is a form of deferred compensation to which an employee has a contractual right. In addressing the issue before it, specifically pension forfeiture for dishonorable service, the court found it unnecessary to embrace either view as to the nature of a public pension. Nevertheless, the court recognized the trend toward the acceptance of a contractual right to promised benefits:

This view of a pension as deferred compensation, designed to induce individuals to enter public service through its guarantee of payment for services and retirement security, has led some courts to regard pensions as a vested contractual right, with such benefits to be subject to forfeiture only where the Legislature clearly provided for that result. [Uricoll, 91 N.J. at 71.]

More recently, in a case involving pension forfeiture for misconduct in office, the Appellate Division of the Superior Court stated: "Deferred compensation benefits have been earned by an employee and are no longer considered a gratuity." Widdls v. Retirement System, 238 N.J. Super. 70, 77 (App. Div. 1990). On this point, the Appellate Division also quoted from its prior decision in Flora v. N.J. Treas. Dept., 193 N.J. Super. 340, 347 (App. Div. 1984):
Honorable Paul A. Sarlo
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June 5, 2014

It is virtually axiomatic that statutory pension provisions are to be liberally construed in favor of public employees and that pensions represent not merely the gratuity of a benevolent governmental employer but rather that they constitute deferred compensation earned by the employee during his years of service. [Widdia, 238 N.J. Super. at 78.]

A majority of jurisdictions now "take the view that public employees have certain contractual rights in a public pension where a pension is part of the terms of employment," 60A Am. Jur. 2d, Pensions, §1175 (2003). The modern trend has "been to protect pension rights on the theory that a state's promise of pension benefits represents an offer that can be accepted by the employee's performance." Transport Workers v. SEPTA, 145 F.3d 619, 623 (3rd Cir. 1998). However, states differ "regarding the point at which rights under public pension programs become protected from change where no right to modify is expressly reserved by the employer." Id.

IV. The Contractual Right to Payment of the Annual Required Contribution Amount Established by N.J.S.A. 43:3C-9.5.

In 1997, the New Jersey Legislature acted to protect public employee pension rights through the enactment of N.J.S.A. 43:3C-9.5 which established, for members of State-administered retirement systems, a non-forfeitable right to receive benefits. Subsection b. of N.J.S.A. 43:3C-9.5 was amended by section 29 of P.L.2010, c.1 to provide that the non-forfeitable right will not be applicable to a person who becomes a member of these systems or funds on or after the effective date of P.L.2010, c.1 (May 21, 2010), except for certain persons transferring between systems. Accordingly, the law provides that a member of a retirement system with five or more years of service on the effective date of N.J.S.A. 43:3C-9.5, June 5, 1997, has a non-forfeitable right to receive benefits under the laws governing the retirement system on that date. A member accruing five years of service credit after that law's effective date, except any member enrolled on or after May 21, 2010, has a non-forfeitable right to benefits based on the laws governing the retirement system on the date the member completes five years of service. In either case, the non-forfeitable right to receive

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3Use of the term "vested members" in N.J.S.A. 43:3C-9.5 is apparently intended to mean that a member's non-forfeitable right to receive benefits as provided by law after five years of service is contingent upon the member vesting (that is, eligible for deferred retirement) in the retirement system after ten years of service. See, for example N.J.S.A. 18A:66-36 for 'Teachers' Pension and Annuity Fund (TPAF) and 43:15A-38 for Public Employees' Retirement System (PERS).
benefits means that the "benefits program" for that member "cannot be reduced." In 2011, N.J.S.A. 43:3C-9.5 was amended by section 26 of P.L.2011, c.78. In its current form, the statute provides:

5. a. For purposes of this section, a "non-forfeitable right to receive benefits" means that the benefits program, for any employee for whom the right has attached, cannot be reduced. The provisions of this section shall not apply to post-retirement medical benefits which are provided pursuant to law.

b. Vested members of the Teachers' Pension and Annuity Fund, the Judicial Retirement System, the Prison Officers' Pension Fund, the Public Employees' Retirement System, the Consolidated Police and Firemen's Pension Fund, the Police and Firemen's Retirement System, and the State Police Retirement System, upon the attainment of five years of service credit in the retirement system or fund or on the date of enactment of this bill, whichever is later, shall have a non-forfeitable right to receive benefits as provided under the laws governing the retirement system or fund upon the attainment of five years of service credit in the retirement system or fund or on the effective date of this act, whichever is later. This subsection shall not be applicable to a person who becomes a member of these systems or funds on or after the effective date of P.L.2010, c.1, except that such person shall not include a person who at the time of enrollment in the retirement system or fund on or after that effective date transfers service credit, as permitted, from another State-administered retirement system or fund of which the person was a member immediately prior to the effective date and continuously thereafter, but shall include a former member of the retirement system or fund who has been granted a retirement allowance and is reenrolled in the retirement system or fund on or after that effective date after becoming employed again in a position that makes the person eligible to be a member of the retirement system.

c. (1) The State and all other applicable employers shall make their annual normal contribution to each system or fund as determined by the applicable board of trustees in consultation with the system's or fund's actuary. The State and all other applicable employers shall also make their annual unfunded accrued liability contribution to each system or fund as determined by the applicable board in consultation with the system's or fund's actuary, pursuant
to standard actuarial practices authorized by law, unless: (1) there is no existing unfunded accrued liability contribution due to the system or fund at the close of the valuation period applicable to the upcoming fiscal year; or (2) there are excess valuation assets in excess of the actuarial accrued liability of the system or fund at the close of the valuation period applicable to the upcoming fiscal year. The annual normal contribution plus the annual unfunded accrued liability contribution shall together be the annual required contribution, provided, however, that for the State, section 36 of P.L.2010, c.1 (C.43:3C-14) shall apply with regard to the State’s annual required contribution. The amount of the State’s annually required contributions shall be included in all annual appropriations as a dedicated line item.

(2) Each member of the Teachers’ Pension and Annuity Fund, the Judicial Retirement System, the Prison Officers’ Pension Fund, the Public Employees’ Retirement System, the Consolidated Police and Firemen’s Pension Fund, the Police and Firemen’s Retirement System, and the State Police Retirement System shall have a contractual right to the annual required contribution amount being made by the member’s employer or by any other public entity. The contractual right to the annual required contribution means that the employer or other public entity shall make the annual required contribution on a timely basis to help ensure that the retirement system is securely funded and that the retirement benefits to which the members are entitled by statute and in consideration for their public service and in compensation for their work will be paid upon retirement. The failure of the State or any other public employer to make the annually required contribution shall be deemed to be an impairment of the contractual right of each employee. The Superior Court, Law Division shall have jurisdiction over any action brought by a member of any system or fund or any board of trustees to enforce the contractual right set forth in this subsection. The State and other public employers shall submit to the jurisdiction of the Superior Court, Law Division and shall not assert sovereign immunity in such an action. If a member or board prevails in litigation to enforce the contractual right set forth in this subsection, the court may award that party their reasonable attorney’s fees.

d. This act shall not be construed to preclude forfeiture, suspension or reduction in benefits for dishonorable service.
Except as expressly provided herein and only to the extent so expressly provided, nothing in this act shall be deemed to (1) limit the right of the State to alter, modify or amend such retirement systems and funds, or (2) create in any member a right in the corpus or management of a retirement system or pension fund. The rights reserved to the State in this subsection shall not diminish the contractual rights of employees established by subsections a., b., and c. of this section. (emphasis added - underlined material indicates 2011 amendments.)

The changes to N.J.S.A. 43:3C-9.5 effectuated by P.L.2011, c.78 are summarized in the Senate Budget and Appropriations Committee Statement to Senate, No. 2937, adopted on June 16, 2011, as follows:

One section of the bill provides that each member of the TPAF, JRS, Prison Officers' Pension Fund, PBRS, and SPRS will have a contractual right to the annual required contribution made by the employer or by any other public entity. The contractual right to the annual required contribution means that the employer or other public entity must make the annual required contribution on a timely basis to help ensure that the retirement system is securely funded and that the retirement benefits to which members are entitled by statute and in consideration for their public service and in compensation for their work will be paid upon retirement. The failure of the State or any other public employer to make the annually required contribution will be deemed to be an impairment of the contractual right of each employee. The Superior Court, Law Division will have jurisdiction over any action brought by a member of any system or fund or any board of trustees to enforce the contractual right set forth in this bill. The State and other public employers will submit to the jurisdiction of the Superior Court, Law Division and will not assert sovereign immunity in such action. If a member or board prevails in litigation to enforce the contractual right set forth in the bill, the court may award that party their reasonable attorney's fees.

That section also provides that the rights reserved to the State in current law to alter, modify, or amend such retirement systems and funds, or to create in any member a right in the corpus or management of a retirement system or pension fund, cannot diminish the contractual right of employees established by this bill.
The changes to N.J.S.A. 43:3C-9.5 made by P.L.2011, c.78 followed the 2010
decision of the Appellate Division of the Superior Court in New Jersey Educ. Ass'n v. State,
under that statute, as then constituted, members of TPAF did not have a constitutionally-
protected contract right to systemic funding of the retirement system.6 The Appellate Division
stated that: "Under well-settled rules of construction, a statute will not be presumed to create
private, vested contractual rights, unless the intent to do so is clearly stated. . . . This is
because the effect of such authorization is to surrender the fundamental legislative prerogative
of statutory revision and amendment, . . . and to restrict the legislative authority of succeeding
legislatures." Id. at 207. Nevertheless, the Appellate Division acknowledged the
Legislature's authority to create statutory contracts provided that "a commitment of that kind
should be so plainly expressed that one cannot doubt the individual legislator understood and
intended it." Ibid. (quoting Spina v. Conrail Police and Firemen's Pension Fund, 41 N.J.
391, 405 (1964)).

The standard applied by the Appellate Division in New Jersey Educ. Ass'n for
determining when a statute itself is intended to constitute a contract is in accord with United
States Supreme Court case law on this issue. "In general, a statute is itself treated as a
contract when the language and circumstances evince a legislative intent to create private
rights of a contractual nature enforceable against the State." United States Trust Co. v. New

Thus, the plain language of N.J.S.A. 43:3C-9.5 (as set forth above), following its
amendment by P.L.2011, c.78, indicates that the Legislature intended to give public workers a
"contractual right to the annual required contribution amount" to be paid by the public employer.

6In regard to the "non-forfeitable right to receive benefits" provided for by N.J.S.A. 43:3C-9.5, and
applicable to members enrolled prior to May 21, 2010, the court stated, "The essence of the right, acknowledged
by the Attorney General, is receipt of promised funds upon retirement, presumably at the rate fixed by law when
such benefits were conferred. Indeed, the Attorney General concedes that in granting a non-forfeitable right to
receive benefits, 'the Legislature intended to create enforceable contractual rights.'" New Jersey Educ. Ass'n,
412 N.J. Super. at 215. Thus, this decision draw a distinction between a member's interest in the means by
which the retirement system is funded and the member's right, protected by the law of contract, to the receipt of
benefits. Therefore, P.L.2011, c.78 created the statutory contract guaranteeing funding of the pension systems.
V. The Constitutional Prohibition Against Impairment of the Obligation of Contracts.

The United States Constitution provides that:

No State shall...pass any...Law impairing the Obligation of Contracts.... [U.S. Const. Art.I, Sec.X, cl.1]

Similarly, the New Jersey Constitution states that:

The Legislature shall not pass any...law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made. [N.J. Const. Art.IV, Sec.VII, par.3]

It has been held that these two constitutional provisions provide "parallel guarantees" and are to be construed in the same way to provide the same protection. Fidelity Union Trust Co. v. N.J. Highway Auth., 85 N.J. 277, 299 (1981). In general, "Our federal and state courts apply a three-prong test to determine whether legislation has unconstitutionally impaired a contract; they ask (1) has it substantially impaired a contractual relationship? (2) if so, does it have a significant and legitimate public purpose? and (3) is it based on reasonable conditions and reasonably related to appropriate governmental objectives?" In re PSE&G Co.'s Rate Unbundling, 330 N.J. Super. 65, 93 (2000); aff'd 167 N.J. 377 (2001); cert. den. 534 U.S. 813 (2001).

In United States Trust Co., the United States Supreme Court established the standard of review to be applied when a state impairs a contract to which it is a party. The Port Authority of New York and New Jersey had issued bonds containing a statutory covenant restricting the extent to which revenues could be applied to deficits created by mass transit operations. Both states subsequently repealed the covenants. A trustee and holder of Port Authority bonds challenged the constitutionality of New Jersey's legislation repealing the covenant. The court held that repeal of the covenant violated the Contract Clause by impairing the obligation of the State's contract with the bondholders. In reaching this conclusion, the court said that a state statute which impairs a financial obligation of the state, like laws impairing private contracts, may be constitutional if it is reasonable and necessary to serve an important public purpose. The extent of the impairment is a relevant factor in determining its reasonableness. However, because the state's self interest is at stake, complete deference to a legislative assessment of reasonableness and necessity is not appropriate. "A governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an...
important public purpose, the Contract Clause would provide no protection at all." United States Trust Co., 431 U.S. at 26.

The standard of review established in United States Trust Co. was applied by the New Jersey Supreme Court in Fidelity Union Trust Co. v. N.J. Highway Auth., 85 N.J. 277 (1981). Bondholders brought a challenge under the Contract Clause to an amendment to the New Jersey Highway Authority Act which provided that toll increases could not become effective without the prior approval of the Governor and the Treasurer or Comptroller of the Treasury. The court summarized the appropriate standard of review as follows:

When a state's contract is involved, the initial inquiry is whether the state had the power to create an irrevocable contract right in the first place, since a state cannot surrender "an essential attribute of its sovereignty." . . . .

The next step in the analysis is whether the impairment is reasonable and necessary to serve an important public purpose. Necessity is met if the objectives could not have been achieved by a less drastic alternative. Reasonableness depends upon the extent of the impairment and upon whether the circumstances giving rise to the impairment were foreseeable when the contract was made. [85 N.J. at 287, 288 (citations to United States Trust Co. omitted)]

When these standards are applied to the provisions of N.J.S.A. 43:3C-9.5 that require the State to make its annual contributions to the several State pension systems and confer a contractual right thereon on the members of those systems in return "for their public service and in compensation for their work," it is apparent that this statute creates a contractual relationship. It also confers standing to sue on retirement system members, establishes that the Superior Court, Law Division, has jurisdiction to enforce these contractual rights, and eliminates assertions of sovereign immunity as a bar to such an action. There would appear to be no doubt that the State has the ability to contractually obligate itself to the funding of public employee pensions in order to ensure the payment of promised retirement benefits as a means of attracting and retaining qualified employees. In doing so, the State has not relinquished an essential aspect of its sovereignty because an impairment of those contractual rights may be permissible if tests of reasonableness and necessity are met. As noted above, reasonableness depends upon the extent of the impairment and upon whether the circumstances giving rise to

7See also Tenesco Local 97 v. State, 43 N.J. Super. 593 (2013) under a Contract Clause analysis there must be a contractual relationship, a change in law that impairs the contractual relationship; and the impairment must be substantial. Id. at 593.
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The impairment were foreseeable when the contract was made. The requirement of necessity is met if the objectives could not have been achieved by a less drastic alternative. The current administration's proposal to fund only a portion of its pension payment obligation for Fiscal Years 2014 and 2015, would seem to constitute a substantial impairment because it would undermine the purpose of the statutory contract, to remedy the chronic underfunding of State pension funds, and would set back efforts to address the unfunded liability of those funds. Also, the proposal is being made despite substantial increases in the employee contribution rate as a result of the enactment of P.L.2011, c.78. In addition, the circumstances giving rise to the proposed impairment, that State revenues at some future time could be insufficient to cover this and other commitments and other expenses, was certainly a foreseeable possibility. The extent to which the current revenue shortfall was foreseeable, or the result of optimistic revenue estimates, is an open question. Finally, the necessity of the impairment may be doubtful in view of the fact that less drastic alternatives exist. Increases in taxes, while perhaps unpalatable, nevertheless, could enable the State to meet its obligations for Fiscal Year 2015. With little more than a month left in Fiscal Year 2014, tax increases would not be a viable option; however, making the State's 2014 payment early in Fiscal Year 2015, while not entirely consistent with the statutory contract, may not be viewed as a substantial impairment. 8

The impairment of the statutorily-created contractual right to fund the State's pension funds, that is protected by the constitutional prohibition against the impairment of the obligation of contracts, must be balanced against the relevant constitutional and statutory provisions discussed in section one of this opinion concerning the appropriation and expenditure of public money, and that specifically grant the Governor authority to modify State spending when revenues are insufficient. When provisions in a constitution are in conflict, a court will try to reconcile those provisions: "... when a court is faced with conflicting policies arising out of constitutional provisions in a specific factual situation, it must, if it can, strike a balance between the provisions." 16 C.J.S. Constitutional Law, §66 (2005). This suggests that the Governor's constitutional responsibility to "take care that the laws be faithfully executed" would include compliance with statutorily-established contractual rights the impairment of which would violate the constitution.

As the United States Supreme Court observed in United States Trust Co., the Contract Clause would be meaningless if the mere fact that the government decides that money should be spent differently, or not spent at all, was a sufficient interest to justify the impairment of

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8This assumes that a delayed Fiscal Year 2014 payment is not intended as a substitute for FY 2015's obligation.
the obligation of contract. A reduction of promised State contributions would effectuate an impairment of the State's responsibility under a contract that it created. In addition, the circumstance giving rise to the need for a possible reduction in the agreed-to level of funding, that the State at a future time may wish to reduce its financial obligations, was foreseeable at the inception of the contractual relationship and the State, nevertheless, committed itself.

VI. Executive Order No. 156's Assertion of the Governor's Emergency Powers

While Executive order No. 156 does not expressly declare that an emergency exists as a consequence of the revenue shortfall, its preamble states that, "... the Governor is entrusted with the responsibility to protect the health, safety, and welfare of the people of this State, as well as the responsibility to aid in the prevention of damage, loss, destruction of property in the event of emergency affecting the State pursuant to the Disaster Control Act, N.J.S.A. AppA:9-30 et seq."

The Legislature has defined the extent of the Governor's ability to address emergencies through enactment of the "Disaster Control Act," N.J.S.A. AppA:9-30 et seq. This law was originally enacted in 1941 to authorize the Governor to assist the federal government in the war effort. It was amended in 1942 to give the executive broad power to provide for civil defense. It was amended in 1949 to apply to "any emergency" resulting from natural causes (e.g., fire, flood or earthquake) and again in 1953 to include emergencies that were the result of "unnatural causes." Worthington v. Fauver, 88 N.J. 183, 192-193 (1982).

The purpose of the Disaster Control Act is to provide for the public health, safety and welfare and to "... aid in the prevention of damage to and the destruction of property during any emergency as herein defined." N.J.S.A. AppA:9-33. It grants the Governor authority to use the resources of the State and its political subdivisions, and to commandeer personal services and private property (subject to future payment), to avoid or protect against an emergency. N.J.S.A. AppA:9-34. It also authorizes the Governor to "make such orders, rules and regulations as may be necessary" to address problems presented by an emergency. N.J.S.A. AppA:9-45. The Act defines an "emergency" to include both a "war emergency" resulting from enemy attack and a "disaster." A "disaster" is defined as any unusual event which results from natural or unnatural causes, endangers the health, safety or resources of residents of one or more municipalities and "... is or may become too large in scope or unusual in type to be handled in its entirety by regular municipal operating services." N.J.S.A. AppA:9-33.1(f).

In Worthington, supra, the court stated:
While the Disaster Control Act grants broad authority to the Governor to deal with an emergency, his powers under the statute are not without limit. These emergency powers represent an extraordinary delegation of authority by the Legislature to the Executive. Because of the extraordinary nature of that authority, the executive orders must not only bear a rational relationship to the goal of protecting the public, but their scope must not exceed the extent of the emergency. The statutory validity of executive actions pursuant to emergency power will depend on the nature of the emergency and the gravity of the threat to the public. Worthington, 88 N.J. at 201 (emphasis added).

The New Jersey Constitution does not expressly address emergency powers of the Governor. The decision of the United States Supreme Court in Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), which was relied upon by the New Jersey Supreme Court in Worthington, suggests a judicial reticence to imply emergency powers from the constitution's grant of executive authority except in the most extraordinary circumstances, especially when legislation has been enacted that defines the executive authority to address an emergency. Youngstown, 343 U.S. at 660, (Burton, J. concurring).

The Legislature enacted the Disaster Control Act to authorize the Governor to act to protect the public health, safety and welfare during an emergency. In order to legitimately exercise that authority the Governor must be addressing a "war emergency" resulting from enemy attack, or a "disaster" which is an unusual event resulting from natural or unnatural causes that threatens the public health, safety, or resources and which cannot be handled at the municipal level.\(^9\) Furthermore, the Governor's exercise of emergency powers must be authorized by the act. This requires determining whether the actions taken are rationally related to the goal of protecting the public and closely tailored to the magnitude of the emergency. The exercise of emergency powers must also be of a duration that is limited in view of the extent to which the problem is within the government's control and the extent to which remedial efforts are undertaken.

While the Governor, in appropriate circumstances, may exercise the authority delegated to him under the Disaster Control Act to temporarily override statutory provisions,

there would seem to be no emergent situation, at least with respect to Fiscal Year 2015, that could justify the use of that act as the basis for ignoring the mandate of N.J.S.A. 49:3C-9.5.10

VII. Possible Judicial Remedies.

Your inquiry necessarily raises the issue of remedies that may be available to a court if the State is found by a court to be in violation of the Contract Clause of the constitution by Impairment of its contract to make the required payments to the State’s pension systems. Of course, remedies to address either Fiscal Year 2014 or Fiscal Year 2015 would present different sets of facts, each with major State fiscal impacts. Court ordered remedies to be fashioned by a court would journey into legal territory for which precedents provide little guidance.11 A ruling in favor of pension system members, to enforce contractual payments established by pension statutes, would raise legal issues of first impression, and may involve a court in directing the exclusively legislative and executive powers over appropriations that courts have been reticent to exercise.

In Amantia v. Centwell, 89 N.J. Super. 7 (App. Div. 1965), 200 full-time State employees in the New Jersey Department of Defense, tasked with maintaining National Guard equipment in possession of the department, were called with their National Guard units to active United States military duty in the Berlin Crisis of 1961-1962. A State statute provided for payment by the State of “differential pay,” i.e., the difference between civilian and military pay, for State employees who were members of National Guard units when called into active federal service. The State employees sought a declaratory judgment that they were entitled to differential pay and also sought relief in the nature of mandamus to compel the budget request officer of the department and the State Treasurer to request an appropriation for this purpose. The court determined that while entitled to the pay they sought,

[what this court cannot do, however, is direct that the money be paid to the petitioners or compel respondents to request an appropriation. The power to appropriate money rests with the Legislature. While we recognize petitioners’ moral and legal right to the differential pay they seek, this court cannot secure it for them by way of a directive. We can

10Inded, the 2013 amendments to that section were intended to address years of inadequate funding of the pension funds.

and do declare that the money is due them. Whether or not petitioners receive the money to which they are clearly entitled rests exclusively with the Legislature. Id. at 7-8.

Yet, the New Jersey Supreme Court, when confronting a violation of what it considered to be a compelling constitutional obligation, did not avoid a remedy ordering a level of State appropriations. In Abbott v. Burke, 205 N.J. 332 (2011) (Abbott XXI), after reviewing a twenty-year record of appropriations levels and State school aid payment distributions that frustrated judicial remedies to meet constitutional obligations to provide adequate funding for a thorough and efficient system of public education for pupils of Abbott districts, the State Supreme Court asserted the authority to order a level of appropriations and State school aid distribution. Despite the exclusive authority of the Legislature over appropriations provided in the Appropriations Clause,

[It does not follow that the Appropriations Clause authority to modify or suspend statutes that raise some expectation of funding, . . . empowers the political branches to ignore judicial orders and decrees that specify a remedy to ameliorate a historical finding of constitutional violation. It simply cannot be said that the authority to "disregard prior fiscal enactments." Camden v. Byrne, 82 N.J. at 147 carries a corresponding authority to suspend judicial decrees issued to remedy substantiated constitutional deprivations. Id. at 363 (citations omitted).]

Whether a constitutional deprivation would result in a similar remedy in current circumstances is difficult to predict. The enactment of a Fiscal Year 2015 appropriations act, that may involve both law-making branches as contributing to the breach of contract, while abrogating a constitutionally protected contractual payment, might be considered by a court to present the exigency of fiscal necessity and administrative impossibility for a remedy to apply to this next fiscal year.

The United States Supreme Court has stated that consideration of retroactively imposed remedies depend " ... upon a consideration of the particular relations between and conduct of the parties, of rights that have vested, of status, of prior determinations deemed to have finality, and of public policy." Lemon v. Kurtzman, 411 U.S. 192, 199 (1973). Courts, in reaching an appropriate equitable remedy in cases that are the equivalent of a new rule of law, often weigh heavily in reliance interests of the parties.

There is no question but that appellate courts in this State and elsewhere have long regarded themselves as empowered and justified in confining the effect of a decision of first impression or of novel or unexpected impact to prospective application if considerations of fairness and justice, related to reasonable surprise and prejudice to those affected, seemed to call for such treatment. (Salorio v. Glaser, 98 N.J. 447, 465 (1983), citing Oxford Consumer Discount Co. v. Stefanelli, 104 N.J. Super. 512, 52c (App.Div.1969), aff'd, 55 N.J. 489 (1970))

The New Jersey Supreme Court was confronted by a challenge to an appropriation act in Lance v. McGreevey, 180 N.J. 590 (2004), where the Legislature and the Executive would have had about 11 months remaining in a fiscal year to implement a court ordered remedy applicable to the current act. In Lance, the court had to determine "whether the State properly can rely on borrowed funds to balance its annual budget and fund general expenses, an issue of first impression." However, the court constructed a future, or prospective only, remedy, effectively authorizing a State Fiscal Year appropriations act for one fiscal year that would not meet the newly declared constitutional standard that this form of "borrowed" revenue could not be recognized as available to balance any future annual State appropriations act.

Confronted by a recently enacted, month-old appropriations act, the court opined that where: (1) no court precedent clearly set forth the new rule of law being decided, (2) barring the pending bond sales would require significant revisions to, if not a complete overhaul of, the current fiscal year's budget, (3) the resulting disruption to the State government could be great, and (4) the legislative and executive branches had acted in good faith, relying on an honest, albeit erroneous, belief that the budget properly was balanced under existing constitutional standards, the court reasoned that the holding should be given prospective effect only. At the current, near concluding point during this current fiscal year, and the approaching deadline of July 1 for the formulation and enactment of the Fiscal Year 2015 appropriations act, the deferral of a court remedy for a full fiscal year, similar in timing and application as found in Lance, might be one possible, cautious application of the judicial power to fashion a prospective-only remedy.

VIII. Conclusion.

It is our opinion that, in view of the fact that only a few weeks remain in Fiscal Year 2014, the Governor's action in withholding payment to the State's pension funds in order to avoid ending Fiscal Year 2014 with a deficit, while an impairment of the State's contractual obligation under N.J.S.A. 43:3C-9.5 to make annual required contributions to its pension
funds, nevertheless, may be warranted by necessity, although it would be more defensible, if still an impairment, to delay payment until the beginning of Fiscal Year 2015 in order to substantially comply with the statute’s requirements. It is also our opinion that if the proposed revisions to the Governor’s recommendations for the Fiscal Year 2015 are enacted into law, the failure to make the annual required contributions to the State’s pension funds pursuant to N.J.S.A. 43:3C-9.5 would be found to violate the constitutional proscription against impairment of the obligation of contracts.

Very truly yours,

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