

**Testimony of Daniel E. Livingston in Opposition to Raised Bills No. 1183 and  
Committee Bill No 43  
--March 16, 2007--**

Senator Slossberg, Representative Caruso, and members of the Government Administration and Elections Committee.

On behalf of the State Employees Bargaining Agent Coalition, and on behalf of 43,000 unionized state workers, I am here to testify in opposition to Raised Bill No. 1183, and Committee Bill No 43, both of which as written would give judges unfettered power to reduce or revoke the pensions of state employees. I have also attached some proposed compromise language which while not perfect, would make the bill something we feel we could live with. As I'll explain in a moment, while we understand that the Attorney General has suggested his own language, we have been told by the Attorney General's office that he has agreed in concept with the two most crucial of the changes we suggest.

There was a famous moment in the Bush/Dukakis campaign debates in 1988 where Dukakis – a death penalty opponent – was asked if he would feel differently about the death penalty if his wife or daughter were raped and murdered. He was supposed to answer that of course he'd feel differently, he'd want to strangle the killer with his bare hands, but that public policy needed to be based on a broader and sounder basis than the outraged response of the victim. Dukakis messed up the answer. But we need to remember the answer he was supposed to give as we consider the legislation before us today.

All of us are the outraged victims of the crimes of the Rowland administration that are the genesis of the bill before you -- and none of us more than state employees, whom he lied about, sought to bully, some of whom he laid off, and all of whom he then tarnished with the ugly brush of corruption. And then to add insult to injury, he got off with less than a year in an apparently cushy federal prison, and got to keep his healthy pension as ex-Governor. Well we can't get him, but we can get the next one like him. And our instinct is to pass legislation which metaphorically, at least, strangles those future John Rowlands with our bare hands. And that's what the bill before you does. But there are broader and sounder public policy reasons to oppose the bill before you, or at least to replace it with the language which we attach to our testimony here.

First, the bill as written ignores the fact that most state employees are union members, whose benefits have vested pursuant to the collective bargaining agreement between them and the State. In a related context, the United States Supreme Court described vesting as "the process by which an employee's already-accrued pension account becomes irrevocably his property." In the bill before you, represented workers' property is treated as subject to forfeiture by the state, their employer, in direct violation of the collective bargaining agreement. As understandable as the outrage of the state may be in cases of corruption, outrage is not a basis for violating a collective bargaining agreement, nor ignoring the federal constitution that protects that agreement. Thus we

have attached language which respects the collective bargaining agreement by treating represented employees differently than public officials, and stating that their pensions, their property, can be reduced or revoked but only to the extent necessary to pay for any fine or restitution in the criminal case, or any subsequent confinement.

Secondly, the bill as written would have a devastating secondary impact that would protect the very corruption it is intended to punish. That impact is to discourage whistleblowers. The reality is the most whistleblowers are either at some level involved in the corruption they report, or at least can be made to appear to be. Under the language as proposed, a potential whistleblower considering reporting the corruption of a generally more powerful superior risks losing his life's savings if things go badly and the corruption gets blamed partially on him. The predictable outcome is that many will remain silent, and the corruption will persist. Thus we have attached language which protects those who voluntarily bring corruption to the attention of the authorities, as long as they do so prior to their being a target of investigation, and as long as they are not the primary wrong-doer.

The final change we have proposed comes because we have received advice from benefits counsel that the language at issue today could result in the entire pension plan being deemed non-qualified by the IRS, with terrible financial consequences to the State and perhaps even to beneficiaries. We have therefore suggested language which would get an IRS opinion before the reduction or revocation of pension benefits occurs under the proposed Act.

Even with these changes, we still have concerns about the bill. It gives tremendous discretion to judges, far more than they have in virtually any other area of the law, and the stakes are tremendously high. A 30 year worker can lose every penny he has in retirement because of a mistake he made in year 29. With so much discretion, fairness and consistency between judges are hard to assure. And frankly, prosecutors are granted a weapon with a dangerous combination of power and unpredictability that we think could lead even innocent employees to accept a deal to plead guilty simply to protect their pensions and their families from risk. But we are willing to put these concerns aside in the interests of compromise.

Finally, as I said earlier, while we understand that the Attorney General has proposed language to the committee which does not include these changes, we also understand he has agreed in concept to the first two of these changes – that is to everything except the provision concerning the IRS. We also understand that it is up to this Committee and not to any of us who testify before you which bills get favorable recommendation. But we trust that while this Committee joins all of us in feeling the outrage of being victims of corruption, it will show its usual thoughtful leadership in protecting the broad and sound policy principles at issue today.

**2007 GENERAL ASSEMBLY SESSION  
GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE**

**TITLE:** An Act Concerning Court Reduction or Revocation of Pensions of State Employees or Officials Who Commit Fraud Against the State

**SUMMARY:** This proposal allows a judge, upon application of the Attorney General, to reduce or revoke a state pension of any state employee or official who, in federal or state court, is convicted, pleads guilty or pleads *nolo contendere* to certain crimes that constitute fraud against the state.

**TEXT:**

Section 1. (NEW) (*Effective from passage*) As used in sections 1 to 3, inclusive, of this act:

(1) "Public official" means public official, as defined in section 1-79 of the general statutes;

(2) "State employee" means state employee, as defined in section 5-154 of the general statutes; and

(3) "Crime related to state office" means any of the following criminal offenses committed by a person while serving as a public official or state employee:

(A) The committing, aiding or abetting of an embezzlement of public funds from the state or a quasi-public agency;

(B) The committing, aiding or abetting of any felonious theft from the state or a quasi-public agency;

(C) Bribery in connection with service as a public official or state employee; or

(D) The committing of any felony by such person who, willfully and with the intent to defraud, realizes or obtains, or attempts to realize or obtain, a profit, gain or advantage for himself or herself or for some other person, through the use or attempted use of the power, rights, privileges or duties of his or her position as a public official or state employee.

Sec. 2. (NEW) (*Effective from passage*) (a) If any public official is convicted or pleads guilty or *nolo contendere* to any crime related to state office in federal or state court, the Attorney General may apply to the superior court for an order to revoke or reduce any retirement or other benefit or payment of any kind to which such person is otherwise entitled under the general statutes for service as a public official or state employee.

(b) In determining whether the retirement or other benefit or payment shall be revoked or reduced, the court shall consider and make findings on the following factors:

(1) The severity of the crime related to state office for which the person has been convicted or to which the person has pled guilty or *nolo contendere*;

(2) The amount of monetary loss suffered by the state or a quasi-public agency or by any other person as a result of the crime related to state office in comparison to the monetary loss of any reduction or suspension of any retirement or other benefit;

(3) The degree of public trust reposed in the person by virtue of the person's position as a public official or state employee;

(4) if the crime related to state office was part of a fraudulent scheme against the state, the role of the person in the fraudulent scheme against the state;

(5) Any such other factors as, in the judgment of the court, justice may require.

(c) If the court determines that a retirement or other benefit or payment of a person should be revoked or reduced, it may, after taking into consideration the financial needs and resources of any innocent spouse, dependents and designated beneficiaries of the person, order that some or all of the revoked or reduced benefit or payment be paid to any such innocent spouse, dependent or beneficiary as justice may require.

(d) If the court determines that the retirement or other benefit or payment of such person should not be revoked or reduced, it shall order that the retirement or other benefit or payment be made to such person.

Sec. 3 (NEW) (*Effective from passage*) If any state employee who is not a public official is convicted or pleads guilty or *nolo contendere* to any crime related to state office in federal or state court, the Attorney General may apply to the superior court for an order to revoke or reduce any retirement or other benefit or payment of any kind to which such person is otherwise entitled under the general statutes for service as a state employee. In no event shall the value of the reduction or revocation of benefits exceed the amount necessary to satisfy any fine, restitution, or other monetary order made by the criminal court which convicted the employee of the crime related to state office, plus any amount necessary to pay the costs of such person's incarceration under section 18-85a of the general statutes and regulations adopted in accordance with said section. The court may reduce the amount of any reduction or in accordance with the factors set forth in Section 2 of this Act.

Sec. 4. (NEW) (*Effective from passage*) (a) Any person whose retirement or other benefits or payments are revoked pursuant to section 2 of this act shall be entitled to a return of his or her contribution paid into the relevant pension fund, without interest.

(b) Notwithstanding the provisions of subsection (a) of this section, no payments in return of contributions shall be made or ordered unless and until the Superior Court determines that the person whose retirement or other benefits or payments have been revoked under section 2 of this act has satisfied in full any judgments or orders rendered by any court of competent jurisdiction for the payment of restitution for losses as a result of the crime related to state office. If the Superior Court determines that the person whose retirement or other benefits or payments have been revoked under section 2 of this act has failed to satisfy any outstanding judgment or order of restitution rendered by any court of competent jurisdiction, it may order that any funds otherwise due to such person as a return of contribution, or any portion thereof, be paid in satisfaction of the judgment or order.

Sec. 5. (NEW) (*Effective from passage*) If the court determines, or the Attorney General certifies, that any person voluntarily came forward to provide information to the Attorney General, state auditors, or to any local, state, or federal law enforcement official, concerning an unlawful act by a state employee, and that such person came forward before becoming aware that he was a target or subject of any criminal investigation, and that the information provided concerned a person more directly or primarily responsible for the unlawful conduct than the person voluntarily coming forward, no reduction or revocation of pension benefits shall be permitted under this act.

Sec. 6. (NEW) (*Effective from passage*) (a) No retirement benefit shall be reduced or revoked and no payment of any such amount shall be made to the General Fund, unless and until the comptroller seeks and receives a formal opinion letter from the Internal Revenue Service indicating that the implementation of this section shall not negatively impact on the qualified status under Section 401(a) of the Internal Revenue Code of any government retirement plans as may be impacted by the implementation of this section.

