

**PA13-219**

SB0704

House	10031-10035	5
Labor	401-407, 439, 490, 511-518, 531, 532-540	27
Senate	881-884, 890-895	10
		<b>42</b>

**H – 1178**

**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
2013**

**VOL.56  
PART 29  
9742 – 10110**

Those voting Nay 0  
Absent and not voting 8

DEPUTY SPEAKER RITTER:

The bill passes in concurrence with the Senate.

Will the Clerk please call Calendar 370?

THE CLERK:

On page 42, Madam Speaker, Calendar 370,  
favorable report of the Joint Standing Committee on  
Planning and Development, Senate Bill 704, AN ACT  
CONCERNING REEMPLOYMENT AND THE MUNICIPAL EMPLOYEES'  
RETIREMENT SYSTEM.

DEPUTY SPEAKER RITTER:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker.

Will the Clerk please call -- oh, I'm sorry.

Madam Speaker, I move for acceptance of the Joint  
Committee's favorable report and passage of the bill.

DEPUTY SPEAKER RITTER:

The question before the Chamber is acceptance of  
the Joint Committee's favorable report and passage of  
the bill perhaps in concurrence with the Senate.

Representative Tercyak, you have the floor.

REP. TERCYAK (26th):

You're correct, Madam Speaker, in concurrence with the Senate.

This bill clarifies the intent of existing legislation and eliminates inconsistencies in the manner of Agency has (inaudible) re-employment rules for retirees rehired in non (inaudible) positions.

Thank you, Madam Speaker.

With that I urge accept -- I urge passage of the bill.

DEPUTY SPEAKER RITTER:

Will you remark further?

Representative Smith, you have the floor, sir.

REP. SMITH (108th):

Thank you, Madam Speaker, and good evening to you.

DEPUTY SPEAKER RITTER:

Good evening.

REP. SMITH (108th):

Just a little further clarification on the bill. It's -- I -- I stand in support of the bill, but it seems to allow retirees who are re-employed for more than 20 hours per week, or 90 days per year, to continue to collect their pension, despite being re-employed. And there were some inconsistencies in the

law. And I -- just for clarification purposes, once the person is re-employed they're only collecting one pension. And I just want to make sure that's -- I'm accurate in my interpretation of this bill.

Through you, Madam Speaker.

DEPUTY SPEAKER RITTER:

Representative Tercyak, would you be able to respond?

REP. TERCYAK (26th):

Yes, Madam Speaker.

Through you, not surprisingly, my Ranking member is correct again.

Thank you, Madam Speaker.

DEPUTY SPEAKER RITTER:

Representative Smith.

REP. SMITH (108th):

There has been more love in the Labor Committee this year than ever before and I hope the Chamber has noticed that.

DEPUTY SPEAKER RITTER:

Representative Tercyak, I'm not sure if that was a question, but if you care to respond.

Representative Smith.

REP. SMITH (108th):

Thank you, Madam Speaker.

Just one follow-up question. The -- with the MERS system employers and employees contribute to the system, does this change that ratio at all?

Through you, Madam Speaker.

DEPUTY SPEAKER RITTER:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker.

Through you.

No, this does not change that ratio at all. This merely clarifies the rules.

Thank you.

DEPUTY SPEAKER RITTER:

Representative Smith.

REP. SMITH (108th):

Through you, Madam Speaker.

I urge my colleagues to support the bill.

Thank you.

DEPUTY SPEAKER RITTER:

Will you remark further? Will you remark further on the bill before us? Will you remark further?

If not, will staff and guests please come to the Well of the House? Will members please take their seats; the machine will be opened.

THE CLERK:

The House of Representatives is voting by roll.

The House of Representatives is voting by roll. Will members please return to the Chamber immediately?

DEPUTY SPEAKER RITTER:

Have all the members voted? Have all the members voted?

Will members please check the board to determine if their votes have been properly cast?

If all the members have voted, the machine will be locked and the Clerk will take a tally.

Will the Clerk please announce the tally?

THE CLERK:

In concurrence with the Senate, Senate Bill 704

Total Number Voting            142

Necessary for Passage           72

Those voting Yea                141

Those voting Nay                 1

Absent and not voting            8

DEPUTY SPEAKER RITTER:

The bill passes in concurrence with the Senate.

**S - 654**

**CONNECTICUT  
GENERAL ASSEMBLY  
SENATE**

**PROCEEDINGS  
2013**

**VOL. 56  
PART 3  
614 - 910**

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SENATE

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Thank you, Madam President.

Now if there's no objection, I'd like to move this to the Consent Calendar.

THE CHAIR:

Seeing no objection so ordered, sir.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Just wanted to mark additional item. If we might move to it next before going back to those other items that had previously been PT'd and then mark go. Calendar page 20, Calendar 191, Senate Bill 704, if that might be marked go and taken up next.

THE CHAIR:

191, Senator Looney? It's on --

SENATOR LOONEY:

-- 20.

THE CHAIR:

It is a go.

Mr. Clerk, will you call that Calendar, please.

THE CLERK:

On page 20, Calendar 191, Senate Bill Number 704, AN ACT CONCERNING REEMPLOYMENT AND THE MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM, favorable report of the Committee on Labor and Public Employees.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

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Madam President, I now have a cheat sheet so I should do this a little bit better, but I move acceptance of the joint committee's favorable report and passage of the bill and seek leave to summarize.

THE CHAIR:

The motion is on passage. Will you remark?

SENATOR OSTEN:

Madam President, this bill seeks to remedy administrative inconsistencies in the application of eligibility provisions related to the Municipal Employees' Retirement Fund. In addition, this bill clarifies the intent of existing language and eliminates those inconsistencies and it is for retirees rehired in non-MER's positions. It is not prospective. It is for any employee that has ever been hired under a non-MER's position.

THE CHAIR:

Will you remark? Will you remark?

Senator Fasano.

SENATOR FASANO:

Thank you, Madam President.

Madam President, I support the bill, but I have a question for proponent. So it's my understanding that this bill is -- doesn't add any new language. It just clarifies what the existing law is; is that correct?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Through you, Madam President.

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April 18, 2013

Yes.

THE CHAIR:

Senator Fasano.

SENATOR FASANO:

Thank you, Madam President.

THE CHAIR:

Thank you.

Senator Gerratana.

SENATOR GERRATANA:

Thank you, Madam President.

I just want to rise and stand in favor of the legislation. I went to the Labor Committee and was appointed this year as vice chairman and it's been delightful working with our new chairwoman on the committee. I explained to her those approached by a couple of individuals who wanted this clarification put into law. I also spoke with the Comptroller's Office just to make it clear that -- and engage them in conversation, and I thank them for their help in this matter in discussing it with me, as well as the Attorney General. The Attorney General's Office also gave some help, so I thank very much the chairwoman for doing this and speaking in favor of this bill.

Thank you.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

Senator Osten, would you like to try to move this to Consents, nobody is talking.

SENATOR OSTEN:

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Yes, I would, Madam President.

THE CHAIR:

Seeing no objection, it's moved to Consent.

Mr. Clerk.

THE CLERK:

On page 16, Calendar 157, Senate Bill Number 1006, AN ACT CONCERNING PERMITTING ACCOUNTABILITY, favorable report of the Committee on Commerce, and there are amendments.

THE CHAIR:

This is -- excuse me -- oh, there you are.

Senator LeBeau, sorry.

SENATOR LEBEAU:

Thank you, Madam President.

I move acceptance of the joint committee's favorable report and passage of the bill.

THE CHAIR:

The motion is on acceptance. Will you remark, sir?

SENATOR LEBEAU:

Yes, I will, Madam President.

The bill -- the -- no rhyming -- yes, the Clerk has an amendment. This time it's LCO Number 5799, may he call it and may -- I be allowed to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

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Mr. Clerk, call for a roll call vote, but will you do the proceedings and go through and read the vote on the -- on that Consent Calendar. Read the bills on the Consent Calendar and the machine then will be opened.

THE CLERK:

On page 1, Calendar 96, Senate Resolution Number 19, RESOLUTION CONFIRMING THE NOMINATION OF JASON E. BOWSA OF BROAD BROOK TO BE A MEMBER OF THE CONNECTICUT RIVER VALLEY FLOOD CONTROL COMMISSION, favorable report of the Senate Committee on Executive and Legislative Nominations.

Also on page 1 --

THE CHAIR:

Mr. Clerk, if you'd like you can just read the Calendar Number --

THE CLERK:

Okay.

THE CHAIR:

-- and the Resolution Number. Okay.

THE CLERK:

Great.

Page 1, Calendar 97, Senate Resolution Number 20.

On page 2, Calendar 98, Senate Joint Resolution Number 46; also on page 2, Calendar 99, Senate Joint Resolution Number 47; page 2, Calendar 130, Senate Joint Resolution Number 21; page 2, Calendar 131, Senate Joint Resolution Number 48; page 2, Calendar 136, Senate Joint Resolution 49.

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On page 3, Calendar 197, Senate Joint Resolution Number 50; also on page 3, Calendar 198, Senate Joint Resolution Number 51; page 3, Calendar 245, Senate Resolution Number 22; page 3, Calendar 246, Senate

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Joint Resolution Number 23; page 3, Calendar 247,  
Senate Joint Resolution Number 52.

And on page 4, Calendar 316, House Joint Resolution  
Number 72; page 4, Calendar 317, House Joint  
Resolution Number 73; also on page 4, Calendar 318,  
House Joint Resolution Number 74; page 4, Calendar  
319, House Joint Resolution Number 75.

On page 5, Calendar 320, House Joint Resolution Number  
76; also on page 5, Calendar 321, House Joint  
Resolution Number 77; page 5, Calendar 322, House  
Joint Resolution Number 78; on page 5, 323 is the  
Calendar, House Joint Resolution Number 79.

And on page 6, Calendar 324, House Joint Resolution  
Number 80; also on page 6, Calendar 325, House Joint  
Resolution 81; page 6, Calendar 326, House Joint  
Resolution Number 82; page 6, Calendar 327, House  
Joint Resolution Number 84.

HJR 83  
Calendar 328-HJR 84

On page 7, Calendar 329, House Joint Resolution Number  
85; page 7, Calendar 330, House Joint Resolution  
Number 86; page 7, Calendar 331, House Joint  
Resolution Number 87; and on page 7, Calendar 332,  
House Joint Resolution Number 88.

On page 13, Calendar 128 --

THE CHAIR:

Mr. Clerk, would you also check page 11, Calendar  
Number 1 -- 0111.

THE CLERK:

I think that was referred to the Consent Calendar.

THE CHAIR:

It is the Consent Calendar, sir.

THE CLERK:

Oh, yes, yes, yes, you're right. Sorry about that.

On page 11, Calendar 111, Senate Bill Number 825.

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And on page 13, now, Calendar 128, Senate Bill --

THE CHAIR:

Mr. Clerk, would you look at 127, also, please, 127,  
Calendar 127.

THE CLERK:

Okay.

Calendar 127, Senate Bill Number 927; also on page 13,  
Calendar 128, Senate Bill 1032; and on page 13,  
Calendar 137, Substitute for Senate Bill Number 837.

On page 8 --

THE CHAIR:

-- 15.

THE CLERK:

-- 15, Calendar 151 --

THE CHAIR:

Senator, would you look at Calendar 147, please.

THE CLERK:

-- Calendar 147 --

THE CHAIR:

Thank you.

THE CLERK:

-- Senate Bill Number 1061; also on page 15, Calendar  
1 --

THE CHAIR:

-- 49.

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THE CLERK:

-- 49, Substitute for Senate Bill Number 909; on page 15, Calendar 151, Senate Bill Number 63.

And, now, on page 16, Calendar 156, Senate Bill Number 1004; also Calendar 157, Senate Bill Number 1006.

And on page 18, Calendar 173, Substitute --

THE CHAIR:

-- Mr. Clerk, can you look at 168 first, please.

THE CLERK:

I'm sorry.

Calendar 168, Substitute for Senate Bill Number 880, and Calendar 173, Substitute for Senate Bill Number 874.

On page 19; Calendar 183, Substitute for Senate Bill Number 853.

And on page 20, Calendar 187, Senate Bill Number 953; also on page 20, Calendar 191, Senate Bill Number 704.

On page 22, Calendar 206, Substitute for Senate Bill Number 950.

On page 23, Calendar 213, Substitute for Senate Bill Number 826.

On page 24, Calendar 221, Senate Bill Number 946.

And on page 29, Calendar 25 --

THE CHAIR:

Sir, on page 28, first.

THE CLERK:

I'm sorry.

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Page 28, Calendar 250, Substitute for Senate Bill  
Number 1010.

And on page 29, Calendar 258, Substitute for Senate  
Bill Number 1073.

On page 37, Calendar 306, Senate Bill Number 111.

And I think that's it.

THE CHAIR:

Yes, I think so.

This time I'll ask everybody to please vote. The machine is open, and we're voting on the Consent Calendar.

Do you -- would you please announce it again, Mr. Clerk.

THE CLERK:

Immediate roll call has been ordered in the Senate,  
voting today's Consent Calendar. Immediate roll call has been ordered in the Senate.

THE CHAIR:

Have all members voted, all members have voted, the machine will be closed.

Mr. Clerk, will you please call the tally.

THE CLERK:

On today's Consent Calendar.

Total Number Voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

cd/gbr  
SENATE

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The Consent Calendar passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, a couple of additional items. First of all, on a matter adopted earlier today, Calendar 344, Substitute for House Bill Number 6648, would ask for a suspension for immediate transmittal of that item to the Governor.

THE CHAIR:

Seeing no objection so ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, for a couple of -- of items for recommittals on the last -- near the end of the Calendar, Calendar page 52, under "Favorable Reports and Resolutions," Calendar 34, Senate Resolution Number 8, I would move to recommit that item to the Appropriations Committee.

THE CHAIR:

Seeing no objection so ordered.

SENATOR LOONEY:

And also, Madam President, Calendar 212, Senate Resolution Number 14, I move to recommit that item to the Education Committee.

THE CHAIR:

Seeing no objection so ordered.

SENATOR LOONEY:

Thank you, Madam President.

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**LABOR AND  
PUBLIC EMPLOYEES  
PART 2  
365 - 714**

**2013**

plan, but I think you raise a good point. If this is policy for the state, if we're seeking regionalization, we should be doing what we can to promote it across all the reasonable areas, particularly we're creating these nonmunicipal entities. It's not something I'm an expert on, but I think it's worth exploring.

REP. TERCYAK: Thank you very much.

Thank you, Madam Chair.

SENATOR OSTEN: Any further questions?

Seeing none, thank you very much.

And our next person to be up -- we're now done with the public officials. We're on to Marilynn Cruz-Aponte followed by Rich Pokorski, and I apologize for names.

Thank you for coming.

MARILYNN CRUZ-APONTE: Thank you, Senator Osten and Representative Tercyak and members of the committee. My name is Marilynn Cruz-Aponte. I'm speaking in support of Senate Bill 704, AN ACT CONCERNING RETIREMENT DEFINITIONS OF MUNICIPALITIES AND PARTICIPATING MUNICIPALITIES.

In July 2011, legal counsel of the retirement division of the office of the comptroller issued an administrative interpretation known as "The Employer's Guide to CMERS," offering guidance as relates to implementation of Connecticut Statute 7-438, and this is the statute that deals with the continuation of retirement allowance upon other public employment participation in state retirement system and reemployment by participating

municipality.

I'm a former New Britain employee with Local 818, Council 4 of AFSCME. I served in New Britain for 22 two years and earned CMERS credits while there. When I left New Britain in 2008, the benefits office provided me a letter confirming that I had vested termination and was eligible to receive a pension under the Local 818 contract starting at age fifty-five or last year May of 2012. I left to be employed with the City of Hartford in a nonCMERS position.

In November 2011, I contacted the state retirement division. I spoke to a retirement counselor who explained that the reemployment at any other municipality made me ineligible to receive my earned CMERS benefits, and this was a result of the 2011 administrative interpretation of reemployment. The restriction applied even if my new position was not a CMERS pension system position. The retirement counselor further indicated that the only way to correct this interpretation was to clarify it through legislature and revision of the law. I did go on to the retirement division leadership to grieve this matter to no avail. I'm here today because I feel it's prudent to seek statute language clarifications to correct the administrative interpretation.

When I became employed with the City of Hartford I assumed a position covered by the Hartford pension system. The Hartford pension system under home rule established its own pension funded fully by the City in accordance with state statutes, Title 7, Section 7-450. The Hartford Pension System, known as the Municipal Employees Retirement Fund or MERF, is not a CMERS based system. A total of 82

percent of Hartford employees under the Hartford MERF pension pay nothing to the State CMERS pension, nor does the City pay anything to the CMERS system for its employees.

Hartford Local 1716, a rank and file laborers' union, 18 percent of those employees did elect to join CMERS about 20 to 25 years ago. In discussions with the Hartford Pensions Office and our human resources department, the participation of Local 1716 is not understood to legally bind the City of Hartford to CMERS policies for all other Hartford employees participating in the local MERF.

In 2011 administrative interpretation seems to presume that the participation of Local 1716 automatically defines Hartford as a participating municipality. Consequently, CMERS can apply its rules and regulations to nonCMERS employees.

I have various questions for the legislature: Were efforts to revise retirement laws in the past intended to define every municipality as a participating municipality? Does the decision by a subset of municipal employees to choose membership in state CMERS obligate the city to define itself as a participating municipality even when there's a local pension system that's established and fully funded under home rule?

SENATOR OSTEN: Hey, Marilyn, if you could wrap it up, that would be really good for us. Thank you.

MARILYNN CRUZ-APONTE: Sure. So anyway, my understanding is that the clarifications to the retirement statutes were intended to stop double dipping where an employee collects CMERS from one municipality while working towards a

second CMERS. In my current position contributions to my pension come from the City of Hartford and me only, completely independent of state CMERS. I'm not enhancing my CMERS pension credits. I'm not contributing to CMERS at all. There's no fiscal relationship to CMERS. My request is that Senate Bill 704 correct language in the retirement statutes that lead to a revision of the administrative policies to ensure that all employees like myself participating in an independent nonCMERS local system will receive our earned benefits. Thank you.

SENATOR OSTEN: Thank you, Marilyn.

Are there any questions?

Seeing none, thank you very much.

Next is Rich Pokorski, followed by Melodie Peters.

RICHARD POKORSKI: Chairwoman Osten, Chairman Tercyak, members of the labor and public employees committee, I'm testifying this afternoon in support of Senate Bill 704, TO REMEDY ADMINISTRATIVE INCONSISTENCIES IN THE APPLICATION OF ELIGIBILITY PROVISIONS RELATED TO THE MUNICIPAL EMPLOYEES RETIREMENT FUND.

My name is Rich Pokorski, and for the last five years I've been the benefits administrator for the City of Hartford. Prior to this, I was the pensions and benefits administrator for the City of New Britain for ten years. As part of my responsibilities at the City of New Britain, I counseled employees concerning their earned pension rights at the time of retirement or termination, be they vested or otherwise.

The City of New Britain, like many other cities and towns, are participants in the state's municipal employee retirement fund administered by the State of Connecticut's comptroller's office. Employees retiring through this system are guaranteed certain benefits as they pertain to vesting and pension distributions upon retirement or vested termination.

Under Connecticut's General Statutes 7-438, a former member of the state's municipal employees retirement system may be reemployed by a nonparticipating municipality and therefore can continue to receive their retirement allowances. Since the two pensions are mutually exclusive of each other, there is no financial impact on the State of Connecticut or the municipal retirement system. However, if a member again accepts employment from the same municipality from which he or she was retired or any other participating municipality, and I think that's the definition we need to correct here, such member cannot receive a retirement allowance while employed under the participating municipality language.

The historical interpretation recently changed when the retirement and benefits division of the state comptroller's office reversed their administrative interpretation. Now even though a participating municipality may have its own pension system, such as the City of Hartford, because it also incorporates a small slice of the state's system or in this case MERS, you are considered a participating municipality and therefore an employee can no longer receive a retirement contribution when somebody reaches fifty-five and has the five years vesting requirement or the 25 years of service.

As I look back at all the retirements I

administered at the City of New Britain, the question had often been asked can I seek new employment with the city or town -- another city or town -- and still collect my state MERF pension, and I always said yes because this was the past practice, you can because you're no longer a participant of the CMERS state plan, you are in a separate pension system, so there was no gray area and I always said yes.

However, the new interpretation that's being administered now through the comptroller's office is quite different, and it is unfair for the following reasons: It paints a very broad brushed approach that doesn't make financial sense to retirement systems as they are separate. One pension system does not affect the other in terms of contributions by both employees and employers, however that interpretation now accomplishes only one thing to deny people their rightful pension that they are owed and puts the State of Connecticut at a legal disadvantage if so challenged. There was no communication, public or otherwise, by the comptroller's office to signify that there's been a change in policy for people who have not yet retired yet, were vested terminated, and any prospective person who wants to retire or vest and terminate and move on to another municipality will not know that they cannot collect when the time comes because of that interpretation.

Nevertheless, that is my testimony. I'm here for any questions.

SENATOR OSTEN: Thank you very much.

Are there any questions?

Seeing none, thank you very much for coming up.

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lw/mb/gbr LABOR AND PUBLIC EMPLOYEES 2:15 P.M.  
COMMITTEE

We appreciate you pointing out this error.

RICHARD POKORSKI: Thank you.

SENATOR OSTEN: Next is Melodie Peters followed by  
Kim Chamberlain.

MELODIE PETERS: Good afternoon, Senator Osten,  
Representative Tercyak.

SENATOR OSTEN: It's nice seeing you here today.  
Thank you very much.

MELODIE PETERS: Thank you. It's nice being here.  
And members of the Labor and Public Employees  
Committee. My name is Melodie Peters, and I am  
president of AFT Connecticut, a diverse state  
federation of union of nearly 29,000 public and  
private sector employees, including state  
employees, nurses, health care workers,  
teachers and other school personnel. I'm here  
to testify today on behalf of Senate Bill 823,  
AN ACT CONCERNING SEVERE MENTAL AND EMOTIONAL  
IMPAIRMENT AND WORKERS' COMPENSATION COVERAGE.

As we all know, the world has changed a great  
deal since our Workers' Compensation statute  
was first enacted. Sadly we live in a more  
violent society. Modern scientific research  
has shown that human beings, though they often  
can withstand and recover from the most  
debilitating of physical injuries, are often  
far more harmed by the emotional impact of the  
circumstances in which those physical injuries  
were sustained. We now know about  
post-traumatic stress syndrome -- it's become a  
household word -- and stress disorder and that  
it can be a completely debilitating condition.  
When injuries occur in the workplace, whether  
they are physical, mental or emotional, we must  
provide parity of coverage and treatment in our

ERIC BROWN: Senator Osten, Representative Tercyak, my name is Eric Brown. Members of the committee, I represent AFSCME Council 15. And before I get to Senate Bill 823, you have -- you should have before you my written testimony regarding Senate Bill 704, which deals with participation under the MERS system, and I've outlined for you in the written testimony and also provided you with an Attorney General's opinion from November 2nd of this year regarding an anomaly that recently arose regarding interpretation of qualifying disabilities and employment following the retirement with the disability on the MERS system, and what's happened since 2011 is there's been a change in interpretation which has impacted employees understanding of what their rights and benefits are and whether or not they should be able to continue working at some other job. And it's being applied retroactively which is resulting in some employees losing their opportunities to continue to work after they've taken a disability retirement.

So the entire issue is laid out quite well in the Attorney General's opinion, which we've provided to you, but which is also available on line, and we ask you to take a look at that, and we are in support of 704.

I also come here today to speak in favor of Senate Bill 823. And as I said before, I represent AFSCME Council 15, and we have the privilege and the honor of representing not only the Newtown Police Union but also the Manchester Police Union, two police departments which in the last several years have had to deal with multiple casualty events caused by violent criminal acts. And as a result of those incidents, many of their members, both



## CONNECTICUT AFL-CIO

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line 2

Testimony of Lori Pelletier, Secretary-Treasurer Connecticut AFLCIO  
before the Labor and Public Employees committee  
February 19, 2013

Senator Osten and Representative Tercyak and members of the committee my name is Lori Pelletier and I am here to testify on behalf of the 900 affiliated local unions of the Connecticut AFLCIO. Before you today are a number of bills which we are here in support of. We appreciate the work of this committee and the number of issues you are addressing and offer our assistance in ensuring that the concepts/bills raised today will move through the process up to and including the Governor's signature.

Proposed S.B. No. 159 AN ACT CONCERNING EMPLOYEE PRIVACY. (LAB) We support. Workers should not be required to hand over personal passwords to PERSONAL accounts. Management can address the use of company computers and personal use another way.

Proposed S.B. No. 188 AN ACT CONCERNING PROFESSIONAL DEVELOPMENT AND UNEMPLOYMENT BENEFITS. (LAB) We support, any time we offer assistance to unemployed workers so they can utilize their skills to be "more employable" is a good policy.

Proposed S.B. No. 344 AN ACT CLARIFYING THE DEFINITION OF INDEPENDENT CONTRACTOR. (LAB) We support strong language when it comes to workers and misclassification abuses.

Proposed S.B. No. 349 AN ACT CONCERNING TEMPORARY EMPLOYMENT AGENCIES AND WRITTEN JOB ORDERS. (LAB) We support this if the idea behind it is to better clarify who the employee is working for and what their responsibilities are.

Proposed S.B. No. 704 AN ACT CONCERNING RETIREMENT DEFINITIONS OF MUNICIPALITIES AND PARTICIPATING MUNICIPALITIES RELATING TO THE MUNICIPAL EMPLOYEES' RETIREMENT FUND. (LAB) We support.

Proposed S.B. No. 732 AN ACT CONCERNING WORKFORCE DEVELOPMENT BOARDS AND THE CHRONICALLY UNEMPLOYED. (LAB) We support. Again we need to be proactive when it comes helping those unemployed gain employment.

S.B. No. 823 (RAISED) AN ACT CONCERNING SEVERE MENTAL OR EMOTIONAL IMPAIRMENT AND WORKERS' COMPENSATION COVERAGE. (LAB) We support and applaud the committee for this comprehensive review of how we protect those who by virtue of showing up for work are put into a life changing and horrific situation. This bill will provide peace of mind for the families of those workers effected, ad although they may never be able to put that horrific day behind them, the safety net know as workers compensation will be available to help.

Thank you to the committee for this public hearing opportunity.

<b>PRESIDENT</b> John W Olsen	<b>1<sup>st</sup> VICE PRESIDENT</b> Sharon M Palmer	<b>VICE PRESIDENTS</b> John Ahern John A. Alteri Linda Armstrong Richard Benham Karen Blanchard Tammile Botelho Beverly Brakeman Calvin Bunnell Wayne J Burgess Michael Calderon Peter S. Carozza, Jr	Peter Carroll Carol Censki Frank Cirillo Everett C Corey Shellye Davis Kenneth DeLaCruz Alvin Douglas Steven R. Ferrucci III Ronald Frost Patrick Gaynor Bill Henderson Keri Hoehne	Kathleen S Jackson Clarke King Thomas Ledoux John McCarthy Richard McCombs Ronald McLellan Jean Morningstar Warren Pepicelli Melodie Peters Michael Petosa Ronald Petronella Roberta Price	Robert Proto Peter Reilly Carmen Reyes David Roche Edward Sasso Patrena Smith Valerie Stewart Ray Soucy James R. Wallace, Jr Paul Wallace Kurt Westby
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<b>GENERAL VICE PRESIDENT</b> Thomas A Wilkinson	<b>4<sup>th</sup> VICE PRESIDENT</b> Jeffrey H Matchett				
<b>EXECUTIVE SECRETARY</b> Leo Canty					



**Testimony  
Betsy Gara, Executive Director  
Connecticut Council of Small Towns  
Before the  
Labor Committee  
February 19, 2013**

**RE: SB-704 - AN ACT CONCERNING RETIREMENT DEFINITIONS OF MUNICIPALITIES AND PARTICIPATING MUNICIPALITIES RELATING TO THE MUNICIPAL EMPLOYEES' RETIREMENT FUND**

SB-704 is aimed at remedying administrative inconsistencies in the application of eligibility provisions related to the Municipal Employees Retirement Fund.

It is our understanding that the State Retirement Commission has tried to tighten up eligibility related to the Municipal Employees Retirement Fund, which we believe is appropriate. It is unclear how SB-704 intends to address "inconsistencies" but we would oppose efforts to expand eligibility, particularly in view of concerns regarding funding the Municipal Employees Retirement System.

Under current law, the State Employees Retirement Commission is authorized to increase employer contribution rates and has done so on eleven occasions in the past 12 years. However the employee contribution rate is set in statute and has not been increased since its inception. As a result, municipal employers are shouldering an increasingly larger burden in funding the system. In 2002, the employer-employee contribution ratio was 55% municipality/45% employee. By July 2013, the ratio will be 82% municipality/18% employee. This contribution ratio is creating an unsustainable system.

To ensure the continued financial viability of the system, Connecticut must adjust the employee contribution rate and more equitably fund the Municipal Employee Retirement System.

**COST recommends amending the statutorily set employee contributions to the Municipal Employee Retirement System by increasing such contributions by 1% annually over the next three years-to total employee contribution to MERS of 5.25%.**

Page 4  
June 20

Chairwoman Osten, Chairman Tercyak, members of the Labor and Public Employee Committee, I am testifying this afternoon in support of Senate Bill 704, "To remedy administrative inconsistencies in the application of eligibility provisions related to the Municipal Employees Retirement Fund."

My name is **Richard Pokorski** and for the past 5 years I have been the Benefits Administrator for the City Hartford. Prior to this, I was the Pensions and Benefits Manager for the City of New Britain for 10 years. As part of my responsibilities at the City of New Britain I counseled employees concerning their earned pension rights at the time of retirement or termination, be they vested or otherwise.

The City of New Britain, like many other cities and towns, are participants in the State's Municipal Employee Retirement Fund administered by the State of Connecticut's Comptroller's Office. Employees retiring through this system are guaranteed certain benefits as they pertain to vesting and pension distributions upon retirement or vested termination.

Under Connecticut's General Statutes, Section 7-438 a former member of the State's municipal retirement system may be re-employed by a non-participating municipality and therefore, will continue to receive their retirement allowance. Since the two pension systems are mutually exclusive of each another, there is no financial impact on the State's Municipal Retirement system.

However, if a member again accepts employment from the same municipality from which he or she was retired or any other participating municipality, such member cannot receive a retirement allowance while employed under the "participating municipality" language.

This historical interpretation recently changed when the Retirement and Benefits Division of the State Comptroller's Office reversed their administrative interpretation.

Now, even though a "participating municipality" may have its own pension system, because it could also incorporate the State's Municipal system along-side, the employee of the participating municipality is prohibited from receiving their earned pension rights from the State Municipal Employee Fund, (even though they are NOT direct participants of the States Municipal Pension System).

As I look back on all the retirements I administered at the City of New Britain, the question had often been asked ... Can I seek new employment from another City or Town and still collect my State MERF pension? My answer was YES, as long as you, the retiree, did not again participate in the State's Municipal Pension System. And so it had always been that pensioners had always been able to receive their rightful pension distributions as long as they were not again, participants of the State's Municipal System.

The new interpretation is inherently unfair for the following reasons:

- 1) I have retired former State Municipal Pension Fund participants, before the new administrative interpretation, who currently receive their State's Municipal pension distribution while being employed under a "participating municipality." This retrospective change in interpretation creates an uneven playing field for participants of the State's Municipal Retirement Fund. Life changing decisions made by fund participants when seeking new employment based upon a previous interpretation of the definition of a "participating municipality" will face the significant negative financial impact when they plan to receive their pension distribution and they are denied. Changing the rules of the game midstream is simply unfair.
- 2) The new interpretation of the statute applies a broad brush approach that also doesn't make financial sense as the retirement systems are separate. One pension system does not affect the other in terms of contributions by both employees and employers. However, what this new interpretation does accomplish is to deny a benefit that is rightly owed, and because it is not, may create a legal challenge for the State of Connecticut to defend.
- 3) No communication, public or otherwise, has been issued interpreting such a change to current participants of the State's Municipal Retirement Fund. Prospective retirees will still assume they can receive their pension distributions as they have in the past and will continue to make the life changing decisions based upon old interpretation. Communication of such administrative changes are paramount if the change is prospective. However, since this was a retroactive change as well, a communication piece was not provided to vested terminated employees either.

Thank you. I am available for your questions.

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June 18

Testimony In Support of SB 704

Mr. /Ms. Chairperson and members of the committee, my name is Marilyn Cruz-Aponte. I am speaking in support of SB 704, An Act Concerning Retirement Definitions of Municipalities and Participating Municipalities.

In July, 2011, legal counsel for the Retirement Division, Office of the Comptroller, issued an **administrative interpretation, The Employer's Guide to CMERS**, offering guidance as relates to implementation of Connecticut Statutes, Section 7-438, Continuation of retirement allowance upon other public employment. Participation in state retirement system. Reemployment by participating municipality.

I am a former New Britain employee with Local 818 Council 4 of AFSCME and with 22 years of CMERS credits. When I left New Britain in 2008, the benefits office provided me a letter confirming that I had a vested termination and was eligible to receive a pension under the Local 818 contract terms starting at age 55, May 2012. I left to be employed with the City of Hartford in a non-CMERS position.

In November 2011, I contacted the State Retirement Division. I spoke to a retirement counselor who explained that reemployment at "**any other municipality**" made me ineligible to receive my earned CMERS benefits as a result of a 2011 administrative interpretation of reemployment statutes. The restriction applied even if my new position was not a CMERS pension system position. The retirement counselor further indicated that the only way to correct this interpretation was to clarify it through the legislature and revision of the law.

I went line staff to Retirement Division leadership to grieve the matter, to no avail. I am here today because I felt it prudent to seek statute language clarifications to correct the administrative interpretation.

When I became employed with the City of Hartford I assumed a position covered by Hartford's pension system. The City of Hartford, under home rule, established its own pension funded fully by the City in accordance with state statutes, Title 7, Sec 7-450, "Establishment of pension and retirement systems or other past employment health and life benefit systems." The Hartford pension system, known as the Municipal Employees Retirement Fund (MERF), is not a CMERS-based system. A total of 82% of Hartford employees under the Hartford MERF pension pay nothing to the State CMERS pension system nor does the City pay anything to the CMERS system for these employees.

Hartford Local 1716, rank and file laborers, (18% of city employees) did elect to join CMERS 20-25 years ago. In discussions with Hartford's Pension Office and Human Resources Department, the participation of Local 1716 is not understood to legally bind the City of Hartford to CMERS policies for all other Hartford employees participating in the local MERF.

pension. Your position at the City of Hartford does not accrue any service toward a second CMERS pension and the impact on the State of your working at the City of Hartford is the same as if you were employed by a non-participating municipality.

Please let me know if you need any additional information.

Sincerely,

  
Donna D. Parker

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**THE EMPLOYERS' GUIDE  
TO THE CMERS**

**THE CONNECTICUT MUNICIPAL EMPLOYEES  
RETIREMENT SYSTEM  
JULY 2011**

money is owed to the estate of the deceased.

## **RE-HIRED RETIREES**

The Legislature recently changed the statute to exclude part time positions (a position that is *less than 20 hours* per week on a customary basis) from the CMERS re-hired retiree limitations. Once a CMERS employee retires he or she is prohibited from returning to work in the same municipality or in a municipality that participates in the CMERS except in a 90 working day temporary capacity or if the individual works less than 20 hours per week.

Whether a rehired retiree falls under the restrictions of CGS Section 7-438 is now a three prong determination.

The first prong is to determine if the retiree is working at the "*same municipality from which he was retired or any other participating municipality*". If the retiree returns to work for an employer that participates in the CMERS he meets the first prong. This is true whether or not the department of the participating municipality where the retiree is re-employed participates in the CMERS or not. It is important to note that Housing Authorities, Boards of Education and towns are generally considered to be separate employers under CMERS. If a Town belongs to the CMERS and a Board of Education does not, a "Town" retiree can work for the Board of Education without invoking the restriction. However, for example, the Public Works Department of a municipality is a member of the CMERS and no other departments are; any employment with any department of that municipality will still be subject to the 90 day re-employment provision.

The second prong is to determine whether the position is less than 20 hours a week. If the retiree is hired for a position that is customarily less than 20 hours per week he or she will be exempted from the rehired retiree provisions of the CMERS. For example, a retiree hired to answer phones Monday, Wednesdays and Fridays mornings for 15 hours a week would be exempt from the rehire provisions: however – if at any time the employee had to work over 20 hours the entire work week (5 days) would be "counted" toward the 90 day restriction.

The last prong concerns the 90 working days. "Working days" will be determined by the number of hours and number of days worked in a week. If the number of hours worked in a week is 20 hours or greater – then the days worked will be considered "working" days for purposes of rehire restrictions regardless of actual hours worked each day. For example, a retiree is hired to answer telephones Monday, Wednesdays and Fridays for a total of 21 hours a week. This retiree will incur three working days toward the 90 day restriction. The days do not have to be continuous or be full eight hour days to be counted as a day. If a retiree is rehired to work a varying number of hours, as needed; any week where the retiree works 20 hours or more will have every day the retiree worked counted as a working day for the 90 day limitation. Any week when this retiree works less than 20 hours a week will not have the days counted as working days towards the 90 day limitation.

Here are some examples to help navigate this area:

1. A CMERS employee vests after five (5) years and can take a retirement at any age (albeit actuarially reduced). Sam Jones, a 30 year old employee worked for the City of Nutmeg (a participating municipality) for six years. He left to work for the Town of Habit, a non-CMERS municipality and started to start to receive a CMERS retirement benefit (albeit substantially reduced) at the age of 36. There is no rehired retirement restriction with regard to this

employment.

2. Former Fire Fighter John Smith retired July 9, 2005 from the City of Nutmeg Fire Department with 25 years of service. He collects a CMERS pension benefit. He went directly from fire fighter to the position of full time building inspector in the City of Nutmeg – a position not covered by the CMERS retirement system but in the same municipality. Smith is covered by the rehired retiree restrictions and subject to the 90 day rule.
3. Former Fire Fighter John Smith retired July 9, 2005 from the City of Nutmeg Fire Department with 25 years of service. He collects a CMERS pension benefit. He went directly from fire fighter to the full time position of Special Building Project Coordinator with the Board of Education in the City of Nutmeg – an entity/employer which his not covered by the CMERS retirement system. There is no restriction with regard to this employment.
4. Former Fire Fighter John Smith retired July 9, 2005 from the City of Nutmeg Fire Department with 25 years of service. He collects a CMERS pension benefit. He went directly from fire fighter to a full time position of Special Building Project Coordinator with the Board of Education in the City of Nutmeg – an entity/employer which is covered by the CMERS retirement system. Smith is covered by the rehired retiree restrictions and subject to the 90 day rule.
5. Former Fire Fighter John Smith retired July 9, 2005 from the City of Nutmeg Fire Department with 25 years of service. He collects a CMERS pension benefit. Several years after retirement, he accepts the part time position of Special Building Project Coordinator (2 days a week @ 8 hours a day) with the Board of Education in the City of Nutmeg – an entity/employer which is covered by the CMERS retirement system. There is no restriction with regard to this employment.
6. Former Fire Fighter John Smith retired July 9, 2005 from the City of Nutmeg Fire Department with 25 years of service. He collects a CMERS pension benefit. Several years after retirement, he accepts the part time position of Special Building Project Coordinator (3 days a week @ 8 hours a day) with the Board of Education in the City of Nutmeg – an entity/employer which is covered by the CMERS retirement system. Because this position works 24 hours a week, Smith is covered by the rehired retiree restrictions and subject to the 90 day rule. Smith would be considered as working 3 days a week – he would reach the 90 day restriction in about 30 weeks.
7. Former Fire Fighter John Smith retired July 9, 2005 from the City of Nutmeg Fire Department with 25 years of service. He collects a CMERS pension benefit. Several years after retirement, he accepts the part time position of Special Building Project Coordinator (2 days a week @ 8 hours a day) with the Board of Education in the City of Nutmeg – an entity/employer which is covered by the CMERS retirement system. There is no restriction with regard to this employment. However, a building situation occurs where Smith must work two extra days a week over the summer to prepare the buildings for school opening. During these weeks, Smith would be considered as working 4 days a week and all his time would count toward the 90 day restriction.
8. Former Fire Fighter John Smith retired July 9, 2005 from the City of Nutmeg Fire Department with 25 years of service. He collects a CMERS pension benefit. Several years after retirement, he accepts the part time position of Special Building Project Coordinator (2 days a week @ 8 hours a day) with the Board of Education in the City of Nutmeg. Both entities/employers are covered by the CMERS retirement system. He also ran for public office and is elected to the Assessor position a paid position with office hours totaling 12 hours per week. The total amount of time exceeds 20 hours a week. John must either give up one of his position or be subject to the 90 day restriction in approximately 13 weeks.

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**IN SUPPORT OF SENATE BILL 823\***  
**IN SUPPORT OF SENATE BILL 704**

**TESTIMONY OF ERIC BROWN**  
**STAFF COUNSEL**  
**CONNECTICUT COUNCIL OF POLICE UNIONS**  
**AFSCME, COUNCIL 15**

**BEFORE THE LABOR AND PUBLIC EMPLOYEES COMMITTEE OF**  
**THE CONNECTICUT GENERAL ASSEMBLY**

**FEBRUARY 19, 2011**

Ladies and Gentlemen of the Committee, my name is Eric Brown and I am staff counsel with AFSCME Council 15, a labor union representing the interests of almost 4000 police officers in 60 municipal communities throughout Connecticut.

I am here today to speak in support of the following bills before this Committee:

**SENATE BILL 823 - AN ACT CONCERNING SEVERE MENTAL OR**  
**EMOTIONAL IMPAIRMENT AND WORKERS' COMPENSATION COVERAGE**

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This bill would become effective October 1, 2013. We believe that it should be made effective December 13, 2012 in order to account for those individuals who responded to the tragedy at Sandy Hook Elementary School on December 14, 2012.

We speak in support of SB 823. Following the tragedy at Sandy Hook on December 14 last year, fifteen of our members witnessed the immediate aftermath of that massacre. And since the moments immediately after we became aware of the enormity of the tragedy, our focus as a union has been on making sure that our members do not suffer any financial loss as a result of heroically doing their jobs that day.

The facts are that our members, as the law stands now, face the possibility of financial ruin, job loss, and lack of medical care all because they were doing their jobs on 12/14.

As a community we cannot stand for that. We cannot tell our workers to do their jobs and then when it comes time, tell them that they are on their own for the real and permanent injuries that they suffer.

The time has come for us to recognize that PTSD is a real, serious, and sometimes tragic consequence that our workers face when they perform their jobs. When it occurs, they should be compensated the same way they would be if they had broken an arm or thrown out a disc in their back. The injury from PTSD is real. The compensation should be too.

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**SENATE BILL 704 - AN ACT CONCERNING RETIREMENT DEFINITIONS OF  
MUNICIPALITIES AND PARTICIPATING MUNICIPALITIES RELATING TO  
THE MUNICIPAL EMPLOYEES' RETIREMENT FUND.**

We speak in support of SB 704, which is needed to clean up an administrative anomaly in the interpretation of the statute which has suddenly changed the way the Retirement Commission interprets when and how a disability under the MERS system should be approved. Until 2011, employees from a MERS municipality who retired due to a qualifying disability, would be allowed to find other work if they were disabled from performing the duties of the job they originally held. So a police officer who retired on a disability could not go work for another town as a police officer, or perform similarly strenuous work. But recently the pension board has determined that so long as a disabled individual could perform any job in the town, even if the job is not available, then he is not eligible for a disability. This interpretation essentially prohibits any individual from retiring under a disability and it is not what has been intended under the statute. The change in interpretation occurred without any policy change by this Legislature. It occurred as a result of fiat by counsel in the Retirement Services Division of the Office of the State Comptroller. The Attorney General, by opinion issued on November 2, 2012<sup>1</sup> has laid out the genesis of the change in interpretation, and has further recommended that the Commission revert to the pre-2011 interpretation. This Legislature, absent some clear change in public policy, should require that the Commission revert back to the pre-2011 interpretation as the Attorney General has suggested is proper.

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<sup>1</sup> See the Opinion of the Attorney General dated November 2, 2012 to Peter R. Blum, Chairman, State Employees Retirement Commission.

GEORGE C. JEPSEN  
ATTORNEY GENERAL



55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120

Office of The Attorney General  
State of Connecticut

November 2, 2012

Peter R. Blum, Chairman  
State Employees Retirement Commission  
55 Elm St.  
Hartford, CT 06106

Dear Chairman Blum:

You have requested this office's opinion regarding the proper construction of statutory language governing disability retirements under the Connecticut Municipal Retirement System ("CMERS"). Specifically, you have asked us to interpret the meaning of the phrases "permanently and totally disabled," "gainful employment," and "in the service of the municipality" as contained in Conn. Gen. Stat. § 7-432. In addition, you have inquired whether an employee's "disability" should be determined on a physical/medical standard, or whether it should be determined on an availability of employment standard. Finally, you have asked about the circumstances in which an individual who is a CMERS disability retiree (or any retiree) may continue to receive retirement benefits if gainfully employed for twenty or more hours per week.

In offering an interpretation of these statutory provisions, however, we would not be writing on a blank slate. The information provided to this office indicates that recently, in May, 2011, the Retirement Services Division of the Office of the State Comptroller ("Division") altered the way in which it interprets and administers the statutory language governing municipal disability retirements and reemployment rules, creating some confusion among applicants, staff and Commission members. To address your question properly, we must first review the historical backdrop in light of this recent change.

CMERS has been serving Connecticut's municipalities since the 1940s by administering the collection, reconciliation and disbursement of municipal pension contributions to employees who are part of a participating CMERS

Peter R. Blum, Chairman  
State Employees Retirement Commission  
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entity.<sup>1</sup> Along with administering pension contributions and disbursements, CMERS manages the application and eligibility process for individuals who seek to retire due to a disability. Your inquiries focus on both eligibility for a disability retirement and the relationship between receipt of retirement benefits and reemployment, therefore requiring us to review Conn. Gen. Stat. §§ 7-432, 7-438.

Connecticut General Statutes § 7-432 provides in relevant part:

Any member shall be eligible for retirement and for a retirement allowance who has completed at least ten years of continuous service if he becomes permanently and totally disabled from engaging in any gainful employment in the service of the municipality. For purposes of this section, "gainful employment" shall not include a position in which a member customarily works less than twenty hours per week. If such disability is shown to the satisfaction of the Retirement Commission to have arisen out of and in the course of his employment by the municipality, . . . he shall be eligible for retirement irrespective of the duration of his employment. Such retirement allowance shall continue during the period of such disability. The existence and continuance of disability shall be determined by the Retirement Commission upon such medical evidence and other investigation as it requires . . . .

(Emphasis added). In addition, Connecticut General Statutes § 7-438 provides in relevant part:

(a) Any member retired under this part<sup>2</sup> who again accepts employment from this state or from any municipality of this state

<sup>1</sup> Not all municipal employees participate in CMERS or are governed by its provisions. Conn. Gen. Stat. § 7-425(2) defines "participating municipality" to mean "any municipality which has accepted [CMERS], as provided in section 7-247." In turn, Conn. Gen. Stat. § 7-427(a) governs how a municipality accepts CMERS: "Any municipality . . . may, by resolution passed by its legislative body and subject to such referendum as may be hereinafter provided, accept this part as to any department or departments of such municipality as may be designated therein . . . . The acceptance of this part as to any department or departments of a municipality shall not affect the right of such municipality to accept it in the future as to any other department or departments. . . ." Thus, some municipalities have accepted CMERS and some have not; also, some municipalities that have accepted CMERS have not accepted it as to every department within the municipality.

<sup>2</sup> The phrase "any member retired" includes those who qualify for a regular retirement under Connecticut General Statutes § 7-428, and those who qualify for a disability retirement under Connecticut General Statutes § 7-432, as both statutes are contained in Part II of Chapter 113 for the General Statutes.

Peter R. Blum, Chairman  
State Employees Retirement Commission  
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other than a participating municipality, shall continue to receive his retirement allowance while so employed, . . . but any such member shall not be eligible to participate or be entitled to credit in any municipal retirement system for the period of such municipal employment.

(b) If a member is retired under this part and again accepts employment from the same municipality from which he was retired or any other participating municipality, he shall be eligible to participate, and shall be entitled to credit, in the municipal employees' retirement system for the period of such municipal employment. Such member shall receive no retirement allowance while so employed except if his services are rendered for not more than ninety working days in any one calendar year . . .<sup>3</sup>

(Emphasis added).

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As explained to this office, before its approximate 2011 revised statutory interpretation, the Division required the following materials as part of the application for a disability retirement: (1) a disability application; (2) medical progress reports and diagnostic results; (3) an accident report, if any; (4) a Form CO-649 completed by the applicant's physician; and (5) correspondence from the municipality indicating whether any other employment for the applicant was immediately available.<sup>4</sup> This information was forwarded to the Medical Examining Board ("MEB") for a strictly record review. Based on that record, the MEB determined whether the applicant was "permanently and totally disabled" from the position and would provide a list to the State Employees Retirement Commission ("Commission") for a final decision. During this time, the Division interpreted the state's disability standard – "permanently and totally disabled from engaging in any gainful employment in the service of the municipality" – to mean that 1) the applicant could not physically perform the duties of the position he or she was applying to retire from, and 2) no alternate position was immediately

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<sup>3</sup> Conn Gen. Stat. §§7-432 and 7-438 were amended in June 2011. See 2011 Conn. Pub. Acts No. 11-251. Because these changes do not alter the legal analysis, this opinion will reference the current statutes.

<sup>4</sup> If a position were available, the municipality forwarded the available job posting information to the Medical Examining Board for review

Peter R. Blum, Chairman  
State Employees Retirement Commission  
Page 4

available in the municipality that was covered by MERS and that the applicant was qualified to perform.

As further explained to this office, from approximately the 1990s (and perhaps before) until 2011, the Division permitted retirees to return to work without implicating their retirement benefits if: 1) the retiree worked for a private employer; 2) the retiree worked for the same municipality or another municipality as long as the position was not covered by CMERS; or 3) the retiree worked for the same municipality in any position covered by CMERS but the position was for ninety days or less per calendar year, or under twenty hours per week.

Finally, notwithstanding the statute's admonition that "[t]he existence and continuance of disability shall be determined by the Retirement Commission upon such medical evidence and other investigation as it requires" (emphasis added), no follow-up procedures have been in place to monitor whether disability retirees continue to be disabled. Conn. Gen. Stat. § 7-432. We have, however, learned anecdotally that the Division and the Commission have occasionally – but not often -- come into some information prompting action to revoke a disability retirement.<sup>5</sup>

In 2011, § 7-438 was changed to include the following language: "Such member shall receive no retirement allowance while so employed except if (1) such employment is for less than twenty hours per week, or (2) his services are rendered for not more than ninety working days in any one calendar year." (Emphasis added.) 2011 Conn. Pub. Acts No. 11-251. In addition, § 7-432 was also amended to include the following language: "For purposes of this section, 'gainful employment' shall not include a position in which a member customarily works less than twenty hours per week." *Id.*

At about the same time that the Legislature made these changes to §§ 7-432, 7-438, the Division altered its interpretation and application of both §§ 7-432, 7-438. Specifically, as explained to this office, the information now required

<sup>5</sup> We suggest that the Commission be more rigorous in determining whether a disability "continues." Although the Legislature clearly contemplated that certain retirees – including disability retirees – might continue to work after being granted a disability retirement, in some cases certain types of employment might constitute evidence of the lack of the "continuance of [such] disability." We are available to discuss whether it would be advisable or appropriate to promulgate regulations, for example, to address a process for determining "[t]he existence and continuance of disability."

Peter R. Blum, Chairman  
State Employees Retirement Commission  
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by the Division to process a disability retirement application consists of the following materials: (1) a disability application; (2) medical progress reports and diagnostic results; (3) an accident report, if any; (4) a "Physicians Statement" from the treating physician(s); (5) a "Members Statement" from the applicant; and (6) an "Employer Statement," which addresses other job availability. The MEB still limits its review to the paper record, and it provides a list to the Commission for a final decision.

However, the MEB no longer employs the same disability standard, which as stated above had been: 1) the applicant could not physically perform the duties of the position he or she was applying to retire from, and 2) no alternate position was immediately available in the municipality that was covered by CMERS and that the applicant was qualified to perform. Rather, Division staff informed this office that the MEB now considers whether the applicant's condition prevents him or her from performing any work at all for more than twenty hours per week. That is, the MEB will not approve a disability application if there is any other position within a municipality that the applicant could perform, regardless of whether that alternate position is 1) available; 2) a position the applicant is qualified or trained to perform; or 3) within a CMERS unit or not. Not surprisingly, this new standard has resulted in more denials of disability retirements, and more particularly has resulted in denials to applicants with conditions that likely would have qualified them for disability retirements in the past.

The Division has also altered its interpretation of its "return to work rules," limiting a retiree's return to work for a participating municipality to ninety days or less per calendar year, or twenty hours per week, regardless of whether or not the position is covered by CMERS. This restriction applies to any municipality that contains any group of employees covered by CMERS. A retiree may still return to work for any employer who has no employee covered by the CMERS; however, if the individual works for a municipality, he or she may not participate in the pension plan of the municipality. Disability retirees clearly now are limited to twenty hours or less per week "during the period of such disability." 2011 Conn. Pub. Acts No. 11-251.

Having administered the statutes as newly interpreted for more than a year, the Commission has now essentially asked my office to opine on whether the "historical" interpretations or the "new" interpretations are correct.

Peter R. Blum, Chairman  
State Employees Retirement Commission  
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I note that the statutes, which have been amended over the years and which implicate competing policies of providing for disabled employees while protecting pension funds, are not "models of clarity." See Foley v. State Elections Enforcement Commission, 297 Conn. 764, 782 (2010). In my view, neither the agency's historical interpretations of the statutes nor its revised interpretations are clearly wrong. Under these circumstances, the Legislature not the Attorney General is better suited to choose among competing agency-approved interpretations.

The Division and the Commission changed their interpretations without any intervening guidance from the Legislature. These changed interpretations are particularly problematic because they can result in -- and perhaps have already resulted in -- disparate treatment of individuals based only on the date the conditions arose that gave rise to their disability retirement applications, without any direction from the legislature of a need to alter the administration of this program prospectively. "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." Landgraf v. USI Film Products, 511 U.S. 244, 265 (1994). Given the prior interpretation and administration of the statutes discussed above, many municipal employees, and their bargaining representatives, had settled expectations about what the CMERS system would afford them if they became disabled, or retired from a position and sought to continue working. This has likely affected choices individuals have made for themselves (such as purchasing or not purchasing insurance), as well as choices bargaining representatives have made for their membership (such as negotiating for certain benefits instead of other benefits).

At least two principles suggest that an agency should not lightly undertake to alter its consistent interpretation of laws it is charged to administer. First, "in certain circumstances, the legislature's failure to make changes to a long-standing agency interpretation implies its acquiescence to the agency's construction of the statute." Longley v. State Employees Retirement Commission, 284 Conn. 149, 164 (2007). "It is true that the legislature is presumed to be aware of the interpretation of a statute and its subsequent nonaction may be understood as a validation of that interpretation." Berkley v. Gavin, Commissioner of Revenue Services, 253 Conn. 761, 776-77 n.11 (2000) (Internal quotation marks omitted). A court would employ the doctrine of legislative acquiescence "not simply because of legislative inaction, but because the legislature affirmatively amended the statute subsequent to a judicial or administrative interpretation, but chose not

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to amend the specific provision of the statute at issue." Id.; see also State v. Salamon, 287 Conn. 509, 525 (2008) ("[l]egislative concurrence is particularly strong [when] the legislature makes unrelated amendments in the same statute").

In this instance, in June 2011, the legislature amended slightly the language of §§ 7-432, 7-438; however, it was silent with respect to defining the language "totally and permanently disabled," "gainful employment," or "in the service of the municipality." See 2011 Conn. Pub. Acts No. 11-251. As early as the 1990s, the Division articulated its interpretation of these statutes to permit a disability retirement recipient to work for a municipality (even the same municipality), as long as it was in a non-CMERS unit. The Legislature is presumed to have been aware of the long-standing agency interpretation/application of the statutes prior to the 2011 legislative change. Therefore, its "nonaction" with respect to defining the statutory language that is the basis of your request "may be understood as a validation of that [long-standing] interpretation." Berkley, supra, 776-77 n. 11. The Division's past practice apparently met with the Legislature's approval as it did not amend any other language within the statutes.

Second, "an agency's interpretation of a statute is accorded deference when the agency's interpretation has been formally articulated and applied for an extended period of time, and that interpretation is reasonable." Longley supra, 164; see also Department of Public Safety v. FOIC, 298 Conn. 703, 717 (2010). In the absence of a defined agency declaration regarding its practice, and a limited history with respect to application of its practice, courts are reluctant to accord such deference to the agency. See Connecticut Assn. of Not-for-Profit Providers for the Aging v. Dept. of Social Services, 244 Conn. 378, 390 n. 18 (no deference warranted to agency interpretation when agency failed to make public statement of its practice, and four years "hardly constitutes a 'time-tested' agency interpretation"). As a result, if an applicant were to appeal a denial of retirement benefits and contest the Commission's interpretation of any of these terms, there is a serious question as to whether a court would afford deference to the Commission's new legal interpretations. Such a lack of deference might very well be appropriate both because the Commission's new interpretation is not "time-honored," and its previous interpretation was.

Both of the maxims of statutory construction recited above militate against any new interpretations of the relevant statutes without legislative direction to undertake such a re-interpretation. Whether and under what circumstances a

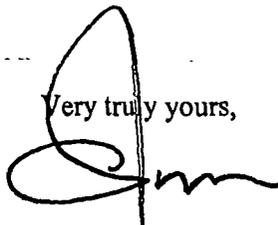
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municipal employee ought to be eligible for a disability retirement at the Fund's expense is a matter of state policy. Just as it "is decidedly not the role of [the] court to make the public policy determinations"; neither is it for an executive agency to do the same. See Raftapol v. Ramey, 299 Conn. 681, 713 (2011) ("The legislature will be required to grapple with numerous questions implicating significant public policy issues--that body, with the ability to hold public hearings and seek out expert assistance, is the appropriate one to make such public policy determinations."). An executive agency – like a court – must determine from the words of the statute the legislature's intention in carrying out that articulated public policy. "In areas where the legislature has spoken, the primary responsibility for formulating public policy must remain with the legislature." State v. Wilhelm, 204 Conn. 98, 103 (1987).

Thus, we cannot counsel you that it is appropriate to deviate from your agency's historical applications of the Commission's statutes without legislative direction on these issues. My advice is that your agency should return to administering disability retirement applications and return-to-work rules based on pre-2011 interpretations. Any change to the applications of the statutes discussed above – which might very well be in order – should come only after legislative action.

We remain available to address your questions as necessary.

Very truly yours,



GEORGE JEPSEN  
ATTORNEY GENERAL