PENSION SUSTAINABILITY COMMISSION

LEGAL SUBGROUP

PRELIMINARY DRAFT OF LEGAL SUBGROUP SECTION OF FINAL REPORT

2/25/19

The legal subgroup initially looked at the legal issues raised by the concept of transferring certain state property to a Legacy Obligation Trust ("LOT"), a privately managed and held entity which might be able to be sold by the state to create immediate revenue which the state could use help pay down underfunded long term obligations. As our review developed, we determined that each piece of property under consideration for inclusion in the LOT would require a detailed and specific legal review to determine how, when, and with what, if any conditions the property was acquired, what legal restrictions might attach to an attempt to sell the property because of answers to those questions, and what other legal restrictions might attach to each property because of applicable statutes, constitutional requirements, and common law requirements.

As these considerations are discussed more fully in the report of the Asset Selection Subgroup, they will not be further discussed here. In light of these concerns, and in light of presentations by the Treasurer about the benefits of making any transfer of assets to the Treasurer, rather than a LOT, the Commission has already voted preliminarily that it would support a transfer of the CT Lottery or its proceeds to the Treasurer for the purposes discussed above, but has not pressed for transfer of other state properties. If that continues to be the Commission's recommendation, then there will no need for further analysis of these issues. Because it appeared that the LOT concept was not going to be recommended by the Commission, there was no analysis of the other issued raised by the LOT concept such as fiduciary issues and even the legality of transfer of state assets to a privately managed entity.

The Commission was also informed that federal law requires that lotteries such as the CT Lottery must be owned and operated by a state to comply with federal law. This requirement comes from the fact that federal law generally prohibits the promotion of lotteries in interstate commerce, 18 U.S.C. Secs. 1301-1304, 1953(a), but exempts Lotteries "conducted by [a] State acting under the authority of State law." *Id.* Secs. 1307(a)(1), 1307(b)(1), 1953(b)(4). These requirements are detailed and analyzed in an opinion of the Office of Legal Counsel of the U.S. Department of Justice dated October 16,2008, entitled "Scope of Exemption Under Federal Lottery Statutes for Lotteries Conducted by a State Acting Under the Authority of State Law," available on the Commission's website. Because of this legal requirement, it appears that the only way to use the value of the State Lottery or its revenues towards pension sustainability would be for the legislature to direct or guarantee those revenues to a particular pension-related purpose, or to entrust the revenues or the lottery and its revenues to the Treasurer for specified purposes. Such an avenue, to the best of the Commission's present knowledge, appears to be lawful.