

MEMORANDUM

TO: New York State Professional Firefighters Association

FROM: Hinman Straub P.C.

RE: 2011 Legislative Session Report

DATE: September 7, 2011

The information provided in this memorandum is intended to summarize the 2011 Legislative Session.

A New Political Landscape

The results of the 2010 elections provided New York State with a new political dynamic for the 2011 legislative session. In addition to the landslide victory of Gov. Andrew Cuomo, New York's voters also elected former Democratic State Senator Eric Schneiderman as Attorney General and Democrat Thomas DiNapoli as Comptroller.

The Republicans recaptured the State Senate after a two-year hiatus, and currently hold a 32-30 majority in that chamber. In the Assembly, the Republicans gained nine seats, however the Democrats still held an overwhelming majority of 99-51 following the fall elections. However, during this legislative session, six Assembly Democrats have resigned to take positions within the Cuomo Administration.

Budget

This year, Gov. Cuomo and lawmakers in Albany completed an on-time state budget for 2011-2012. Votes in the Assembly and Senate were completed during the early morning hours of March 31, a day ahead of April 1 – the start of the new fiscal year.

The new budget eliminates a projected \$10 billion deficit. In so doing, lawmakers agreed to a series of actions that will result in spending cuts for education and healthcare, the merger of several state agencies, and the closure of a number of prisons.

The plan totals \$132.5 billion, and reduces overall spending 2% from the current year. More significantly, the budget plan achieves balance without new taxes or borrowing, and reduces the projected budget deficit for 2012–2013 from \$15 billion to approximately \$2 billion.

Highlights of the agreed-upon budget plan feature funding additions or restorations that were priorities for either house, which included:

- An additional \$272 million in education
- \$91 million in additional human services funding
- \$86 million for higher education, including SUNY hospitals, and SUNY and CUNY community colleges

The 2011-2012 budget agreement contains measures first proposed in Governor Cuomo's executive budget, including “redesigning” Medicaid and reducing the overall cost of state government by merging and consolidating agencies as well as curbing spending growth. The budget plan provides for a two-year funding plan for education and Medicaid; small increases in spending are expected in both areas next year.

A key feature of the Governor's strategy in negotiating the budget agreement was the creation of several new panels designated to recommend changes in particular issue areas:

- **Medicaid Redesign Team (MRT)** - Gov. Cuomo created a panel - the Medicaid Redesign Team (MRT) - to redesign and restructure the Medicaid program. This group held a series of public meetings throughout the winter to elicit recommendations for the future of the Medicaid program. The final budget includes a cap on State Medicaid expenditures of approximately \$15 billion and the implementation of a majority of recommendations by the MRT, including an overall reduction of \$2.8 billion - achieved through a variety of means.
- **Regional Economic Development Councils**: The budget establishes 10 Regional Economic Development Councils, chaired by Lieutenant Governor Robert Duffy. These regionally-based councils are to allocate economic development funds to hasten job creation, and will be supported with \$130 million in funding from existing resources.
- **“SAGE” Commission**: Gov. Cuomo also established a commission to recommend reductions in the number of state agencies, authorities, and commissions by 20%. The “Spending and Government Efficiency” (SAGE) Commission asked for the consolidation of the Departments of Parole and Corrections (\$16.8 million projected savings), merging of the NYS Foundation for Science, Technology and Innovation (NYSTAR) into the Department of Economic Development (saving \$1.9 million), and merging the state’s Banking and Insurance Departments into a new Department of Financial Services.

The budget agreement also contained other actions of interest:

- **Juvenile Justice Reform:** The budget includes significant changes to the state's juvenile justice system to encourage greater use of community-based alternatives, downsize the state juvenile facilities system by more than 30%, and invest resources into enhanced services for juveniles in state custody.

End of Session Legislation

Late into the evening on Friday, June 24th, the New York State Legislature concluded the majority of its business for the 2011 legislative session. While both houses were scheduled to adjourn on Monday, June 20th, the Senate, Assembly and Governor worked throughout the week to negotiate the details of this year's high profile initiatives such as: a 2% property tax cap, rent control, NY-SUNY 2020, and same sex marriage – all of which were passed by the legislature.

Major Initiatives

A. Affordable Housing Act- Property Tax Cap, Rent Control, and Mandate Relief (S5856 Skelos / A8518 Lopez, Chapter 97)

This law will generally limit annual property tax increases to 2% or the inflation rate, and continues rent controls for roughly one million apartments housing 2.5 million tenants for four more years while increasing the thresholds for rent and tenant income that would allow landlords to deregulate apartments. The mandate relief portion of this law is estimated to provide \$127 million in savings through a series of proposals impacting local governments and school districts, and creates a Mandate Relief Council to identify and recommend the repeal or revision of costly and unduly burdensome laws and regulations.

Real Property Tax Cap

Enacts a real property tax cap limiting local government and school district property tax increases to 2% annually or the rate of inflation (whichever is less):

- Requires a 60% vote (by the locality's governing board, or by the school district's voters) in order to override the limit;
- Allows for a "carryover" of up to 1.5% from one year to the next of any amount in which the previous year's levy was below that year's limit;
- Allows local governments and school districts to adjust the tax levy upward if there is physical or quantity growth in their property base;
- Includes a tax base growth factor to account for any increase in the full value of taxable real property; and
- Exempts pension payments over 2% from the previous year and court orders and judgments that exceed 5% of the total levy from the previous year.

Applies to counties, cities, towns, villages, fire districts and special districts, but does not include New York City. The school district cap covers all school districts except the "Big 5" School Districts -- NYC, Yonkers, Buffalo, Rochester and Syracuse.

If a proposed school budget is rejected, the school district may resubmit for another vote or adopt a zero tax levy growth budget. If the proposal is rejected for a second time, the school district would be required to adopt a zero tax levy growth budget.

The tax cap will take effect for the 2012 fiscal year for local governments and the 2012-2013 school budget year for school districts.

The bill includes a “sunset” provision that makes it effective “at a minimum until and including June 15, 2016,” and thereafter so long as the rent control/stabilization laws are in effect.

Mandate Relief Provisions

The mandate relief portion of the bill contains the following provisions of interest:

- Authorizes local governments and school districts the ability to purchase information technology and telecommunications hardware, software and services through the federal GSA schedule.
- Expands the list of shared services that local governments can enter into with state agencies.
- Allows municipalities with over a 10,000 population to recover the cost of police training when a member of a police department of a municipal corporation terminates employment and commences employment with any other municipal corporation or county sheriff from the new municipal employers.
 - Allows intrastate transfers of people sentenced to interim probation supervision (authorized by family court or probation upon request).
 - Requires the state Department of Correctional Services and Community Supervision to bear all costs for the prosecution of inmates who commit crimes.
- Allows state loans, subsidies and capital grants to fund urban renewal plans.
- Allows child care assistance payments to be made by direct deposit or debit card.
- Requires a census of pre-school aged children to be conducted biennially, rather than annually.
 - Allows school districts to provide student transportation based on actual ridership.
 - Provides districts with greater flexibility in carrying out their claims auditing function by authorizing each district to establish, by resolution, an office of deputy claims auditor to act as the claims auditor in the absence of the claims auditor.

- Authorizes union free school districts with a population of over 10,000 students to use a risk-based sampling methodology to determine the number of claims to be audited.
- Authorizes small school districts (those with less than 1,000 students) to join with other small districts in a shared superintendent program.
- Authorizes school boards to enter into regional transportation services agreements with other school districts, a county or municipality, or OCFS.
- Requires notification of local social service districts of deceased individuals in guardianship.
- Modifies the State Administrative Procedure Act § 204-a, which allows alternate methods of implementing regulatory mandates, to allow local governments to join together in making applications.
 - Creates an 11-member Mandate Relief Council, consisting of the Secretary to the Governor, the Governor’s Counsel, the Budget Director, the Secretary of State, three additional appointees from Executive Chamber staff, and two appointed by each of the legislative majority leaders.
 - Authorizes the Mandate Relief Council to make a referral to the Governor that a mandate be eliminated or reformed when the mandate is found to be unsound, unduly burdensome or costly.
 - Where seven members of the Council find that a statutory mandate is unsound, unduly burdensome or costly, the Governor must, within 60 days, prepare a program bill to reform or eliminate the mandate.
 - Effective “until January 1, 2015, or upon the departure of the 56th Governor, whichever comes first.”

**B. Public Integrity Reform Act
(S5679 Skelos / A8301 Silver, Governor Program Bill #9, Chapter 399)**

This bill amends the current lobbying law by expanding lobbying disclosure requirements, including the disclosure by lobbyists of any “reportable business relationships” of more than \$1,000 with public officials. This bill also creates the Joint Commission on Public Ethics which will replace the existing Commission on Public Integrity and will have jurisdiction to oversee all elected state officials and their employees, as well as lobbyists.

- **Overview**

The legislation includes five main sections, each of which is described in greater detail below:

- Creates the Joint Commission on Public Ethics Enforcement (JCOPE) to replace the current Commission on Public Integrity (CPI); JCOPE will have jurisdiction over executive and legislative branch employees, as well as lobbyists and clients;
- Requires some advocacy organizations to disclose the sources of their funding;
- Authorizes pension forfeiture where a public official or employee is convicted of public corruption offenses;
- Makes changes to the *Lobbying Act* regarding the definition of lobbying, “widely attended events” and permissible gifts to public officials and employees; and
- Makes changes to the Election Law regarding enforcement of the campaign finance laws.

- **Ethics Reform**

- Financial Disclosure. There is no change to the current law in terms of who must file. Under current law, you must file if you are in a position with an annual salary rate in excess of the job rate of SG-24, or are designated a policy-maker by your State agency, or are an official required by statute to file. Beginning in 2012, Financial Disclosure Statements must be filed with the Joint Commission on Public Ethics (which is the successor organization to the Commission on Public Integrity).

The bill requires the public web site posting of financial disclosure statements only for elected officials. Also, no information relating to OMCE members will be included in the new “Project Sunlight” database.

The bill changes the Financial Disclosure Statement to narrow the various “categories of value.” This will largely impact high net-worth people.

The bill provides increased penalties for the failure to file a Financial Disclosure Statement, or the filing of incorrect information on a Financial Disclosure Statement. The current maximum penalty of \$10,000 is increased to \$40,000.

The bill includes a number of provisions relating to investigations conducted by JCOPE. The bill adds new due process protections that JCOPE must follow, and all reports stemming from an investigation must be made public.

A simple majority vote of JCOPE members would be required to advance an investigation. The special votes (a certain number of appointees from a particular political party) that have been described in the press apply only to legislators.

- New reporting requirements for advocacy organizations? There are new “donor disclosure” requirements. Organizations have to disclose to the JCOPE the identity and amount donated of any donor who provides them with more than \$5,000.

- Any “new” reporting requirements for our PAC? There are no new reporting requirements for PACs. The bill increases penalties for violations of the Election Law’s filing requirements and for exceeding or otherwise violating the Election Law contribution limits. It also creates new penalties for repeat violations of Election Law filing requirements, and for persons who accept an illegal contribution on behalf of a candidate or political committee.
- Other Changes of Interest. The bill makes changes to the Lobbying Act relating to gifts, and to providing food and beverages. The law provides some specific standards for offering food and beverages at “widely attended” events. Widely attended events are defined to mean attendance by at least 25 persons who are not from the governmental entity the public official serves, and which is either related to the official’s duties or responsibilities or where the official performs a ceremonial function. The bill does not change the existing law’s prohibition on gifts of more than nominal value to public officials by lobbyists and clients, but adds a stand-alone gift exemption for “food or beverage valued at fifteen dollars or less.” The bill also allows lobbyists or clients to provide transportation to public officials to tour facilities, operations or property in-state, where the tour is related to the individual’s official duties.

- **Pension Forfeiture for Public Officials**

- Pension Forfeiture. The Public Integrity Reform Act of 2011 establishes a new term and condition of membership in the retirement system for all public officials and employees of New York State which enter the Retirement System after the effective date of the Act.

Such term and condition provides for the revocation of a public official’s or employee’s pension. Specifically, the Act establishes a mechanism whereby any public official or employee of New York State who stands convicted, by plea of nolo contendere (No Contest) or plea of guilty to, or by conviction after trial, of any crime related to public office could have his or her pension reduced or revoked.

- Public Officials and Employees. The Act applies to all “Public Officials” which, as defined, includes the following classes of public employees:
 - the governor, lieutenant governor, comptroller or attorney general;
 - members of the state legislature;
 - state officers and employees including:
 - heads of state departments and their deputies and assistants other than members of the board of regents of SUNY who receive no compensation or are compensated on a per diem basis;
 - officers and employees of statewide elected officials;
 - officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies; and

- members or directors of public authorities, other than multi-state authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, and employees of such authorities, corporations and commissions;
 - judges, justices and employees of the unified court system;
 - officers and employees of the legislature; and
 - paid municipal officers and employees including an officer or employee of a municipality, paid members of any administrative board, commission or other agency thereof and, in the case of a county, any officer or employee paid from county funds.
- Crimes Related to Public Office. The Act defines a “a crime related to public office” as any of the following criminal offenses, whether committed in New York or any other jurisdiction, by a public official through the use of his or her public office or by the individual representing that he or she was acting with the authority of any governmental entity, and acting as a public official:
 - a felony for committing, aiding or abetting a larceny of public funds from the state or a municipality;
 - a felony committed in direct connection with services as a public official; or
 - a felony committed by such person who, 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.

The Act further provides that public officials subject to its provisions shall be informed of the potential pension consequences associated with being convicted or pleading to a crime related to public office prior to being convicted of or entering a plea of guilty to such a crime.

- Procedure to Determine Forfeiture. Under the provisions of the Act, before a public official or employee pension could be reduced or revoked, an action must be commenced in the supreme court of the county in which the official or employee was convicted for an order to reduce or revoke such official or employee’s pension.

Such action must be filed by the District Attorney having jurisdiction over such crime or by the Attorney General if the Attorney General brought the criminal charge which resulted in such conviction. Prior to bringing the aforementioned action, both the District Attorney and the Attorney General are required to serve written notice on the individual public official and his or her retirement system.

The Act permits any public official subject to such an action to present a full defense at a hearing before the court.

The Act places the burden of proof upon the District Attorney or Attorney General to prove, by clear and convincing evidence, the facts necessary to establish a claim of pension forfeiture. As such, the District Attorney or Attorney General as the case may be must, at the time of the hearing, prove by clear and convincing evidence, that the public official knowingly and intentionally committed the crime related to public office.

- Factors in Determining Pension Reduction or Revocation. In determining whether the pension of a public official should be reduced or revoked, the Act instructs the supreme court to consider and make findings of fact and conclusions of law that include, but are not limited to, a consideration of the following factors:
 - whether the public official stands convicted of a crime related to public office;
 - the severity if the crime related to public office;
 - the amount of money loss suffered by such state or municipality as a result of the crime;
 - the degree of public trust reposed in the public official by virtue of the position held;
 - the role the public official played in the crime;
 - the public official's criminal history;
 - the impact of the potential forfeiture on the public official's dependents, present or former spouses, or domestic partners;
 - any other factors as, in the judgment of the court, justice may require.
- Spouses, Dependents and Domestic Partners. Under the provisions of the Act, in connection with an action to reduce or revoke a public official's pension, the Supreme Court is authorized to designate a spouse, dependent or domestic partner as the beneficiary of such pension as may be in the interests of justice.
- Pension Contributions Returned. Pursuant to the Act, if the Supreme Court rules to revoke a public official's pension, such public official's pension contributions are required to be returned without interest. However, no payments in return of contributions can be made until the Supreme Court determines that the public official has satisfied in full any judgments or orders for the payment of restitution to the state or a municipality for losses incurred as a result of such crime related to public office. Further, if such payment or restitution has not been made, the Supreme Court may order payment or restitution be made out of the contributions to be returned.

Legislation of Interest Passed

Support

A. Tier V Loans

(A 7561-B (Abbate) / S 5836 (Golden), Chapter 171)

This bill would allow members of the New York State and Local police and fire retirement system to borrow against contributions.

Since the enactment of Tier V, members of the New York State and Local Police and Fire Retirement System have been required to contribute 3% of their annual salary to the retirement system. Under current law, several other retirement systems which require contributions allow members to borrow against their respective contributions for a five year period.

However, unlike these other retirement systems, New York State's police and fire have not been afforded the same opportunity. This bill would extend borrowing privileges to New York's uniformed personnel in order to provide equity among retirement systems.

We have drafted a letter in support of this legislation and submitted it to the Governor's office. This legislation has been signed into law.

B. Tier V 414h Treatment

(A 7605-A (Abbate) / S 5837 (Golden))

This bill would treat Police and Fire Retirement System Tier V member contributions identically to those contributions made members in other New York State Retirement Systems with regard to section 414(h) of the Internal Revenue Code.

Since the enactment of Tier V, members of the New York State and Local Police and Fire Retirement System have been required to contribute 3% of their annual salary to the retirement system.

Under current law, several other retirement systems which require contributions reduce the amount of a member's salary by the amount of the contribution in order to treat such contributions as "employer contributions" in determining income tax treatment under section 414(h) of the Internal Revenue Code. In turn, the employer "picks up" the required member contribution.

However, unlike these other retirement systems, New York State's police and fire have not been afforded the same treatment under the Internal Revenue Code. This bill would extend the section 414(h) tax treatment to New York's uniformed personnel in order to provide equity among retirement systems.

We have drafted a letter in support of this legislation and submitted it to the Governor's office.

C. Special Accidental COLA
(A 6008 (Markey) / S 3994-A (Golden), Chapter 161)

This bill would increase the cost of living adjustment for the special accidental death benefits received by widows, widowers, and children of police officers and firefighters killed in the line-of-duty. This legislation is a small step in the right direction towards stemming the devastating impact of rising inflation on the families of deceased police officers and firefighters.

In 1978, both the Governor and the Legislature recognized the need to increase the benefits received by the spouses and children of uniformed personnel fallen in the line-of-duty. The intent of the 1978 law was to increase benefits to an amount that would reflect the impact of inflation. However, the law did not provide for any new cost of living increase after July 1, 1979.

From 1979 to 2010, the Legislature has passed and the Governor signed into law a cost of living increase and a one-year escalation for all New York State widows and widowers of police officers and firefighters killed in the line-of-duty.

Since 1979, the cost of living has increased well over 3% each year, including some periods of double-digit inflation. These same widows and widowers are no longer receiving adequate benefits. This legislation does not totally cover the present inflation spiral, but it at least provides some increased relief to the widows and widowers of New York State's bravest citizens, who gave their lives in service to the people of New York State. In the past, these brave families have faced a poverty stricken existence. This legislation would prevent the return of that deplorable state of affairs.

We have drafted a letter in support of this legislation and submitted it to the Governor's office. This legislation has been signed into law.

D. Continuous Health Insurance Coverage for Spouses and Dependents
A 4954 (Abbate) / S 5098 (Golden)

This bill would provide continuous health insurance coverage to the spouses or dependents of public employees injured or taken ill as a result of their performance of duties.

Traditionally, spouses and dependents of public employees obtain health care coverage through family plans offered to active employees. In some cases, this coverage has been suspended when an otherwise active public employee is injured or becomes ill in the performance of his or her duties. While such employees often have alternative coverage that is linked to the injury or illness, the employee's spouse or dependents are left without health care coverage.

Moreover, other affordable health care programs such as Family Health Plus and Child Health Plus are not available to spouses and dependents since those covered by public employer plans are not permitted to participate in such plans.

We have drafted a letter in support of this legislation and submitted it to the Governor's office.

E. Injunctive Relief

A 5738 (Abbate) / S 4131 (Golden), Chapter 112)

This bill would continue to provide for an expedited method to resolve improper labor practice issues.

Specifically, injunctive relief was enacted in 1994 to provide an expedited method to resolve improper practice cases in the public sector where there was deemed to be immediate and irreparable harm. Since its enactment, it has enable labor and management to resolve countless issues and has been extended every 2 years.

We have drafted a letter in support of this legislation and submitted it to the Governor's office. This legislation has been signed into law.

F. Health Insurance and Death Benefits to Survivors of Public Employees Ordered to Service in the Uniformed Services

A 7835-B (Abbate) / S 5558 (Ball)

This bill would amend the law pertaining to New York's public pension systems to comply with The Federal Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act") by December 31, 2012 so such systems remain qualified governmental pension plans within the meaning of the Internal Revenue Code.

The HEART Act amended section 401 of Title 26 of the US Code to provide that in order to remain a qualified pension plan, the plan must provide a death benefit for a member who dies while performing "qualified military service" as if the member had resumed and then terminated employment on account of death by December 31, 2012.

The definition of the term "qualified military service" for HEART Act purposes is the same as used in the Uniformed Services Employment and Reemployment Rights Act ("USERRA") (38 USC §§4301 et seq.) for individuals entitled to re-employment rights under such Act.

Chapter 105 of the Laws of 2005 amended the death benefit provisions of the New York State Retirement and Social Security Law to provide coverage for members who died while serving on "active duty, other than for training purposes, pursuant to Title 10 of the United States Code, with the Armed Forces of the United States."

Unfortunately, this coverage excluded some situations that would constitute "qualified military service" under the HEART Act and USERRA. Therefore, this bill further amends the Retirement and Social Security Law to comply with the more extensive coverage required by the HEART Act.

We have drafted a letter in support of this legislation and submitted it to the Governor's office.

Oppose

**A. Fallen FireFighters Memorial
S.4655 (Skelos) / A.5933 (Weisenberg)**

This bill would amend the volunteer firefighters' benefit law to create an unnecessary and exclusive standard for volunteer firefighters to be included on New York State's Fallen Firefighters Memorial in complete disregard of the established procedures of the New York State Fallen Firefighters Memorial Committee.

This bill represents a veiled attempt to circumvent the criteria adopted by the New York State Fallen Firefighters Memorial Committee utilized to evaluate requests for inclusion on the New York State Fallen Firefighters Memorial. In fact, through the Memorial Committee's established criteria, any volunteer firefighter whose death is determined to be "in the line of duty" is already placed on the Fallen Firefighters Memorial.

We have drafted a letter in opposition to this legislation and sent it to the Governor's office.

Legislation Supported but not Passed

The following legislative proposals have been introduced into the legislature and are supported by the NYSPFFA. As the 2012 Legislative session in the second half of the two-year cycle, we will continue to support these initiatives and advocate for their enactment.

**A. Buffalo FF and NFTA Participation in 20 Year Retirement Plan
(S.5378 (Gallivan) / A.5564-A Gabryszak)**

In 2009, the legislature passed a new Tier V pension bill for public employees. Tier V took effect in January. The intention of Tier V was to place any firefighter hired after January 2010 into the Tier V plan. Those firefighters hired between July 1, 2005 and the effective date of Tier V working under a current collective bargaining agreement remained in a non-contributory twenty year plan until the expiration of his or her collective bargaining agreement. This same protection for firefighters working without a contract for years appears to have been overlooked.

This Bill amends retirement and social security law by adding a new section 384-f, affecting the rights of Buffalo professional firefighters. Specifically, firefighters employed by the City of Buffalo, city of Niagara Falls, and Niagara frontier transportation authority whose membership in retirement system commenced between July 1, 2009 and the effective date of this act would be able to participate in non-contributory optional twenty year retirement plans similar to those permitted to participate until the expiration of his or her collective bargaining agreement under Tier V.

B. Heart Bill
(A. 3781 Jaffee)

This bill is intended to clarify the intent of the Legislature regarding the existing statutory “Heart Presumption” with regard to performance of duty and accidental disability benefits.

Since the Heart Presumption was enacted it has been interpreted differently by several New York State courts. As such, this bill would address the unintended narrow interpretations the presumption has received thus allowing the “Heart Presumption” to function as originally envisioned.

C. Bubble Bill
(S.4128 (Golden) / A.6028 (Abbate))

This Bill Amends Section 8 of Part A of Chapter 504 of the Laws of 2009 to apply to members of the New York State and Local Police and Fire Retirement System who became members on or after July 1, 2009 and before January 10, 2010.

New Section 8(a) provides that any member of the New York State and Local Police and Fire Retirement System who became a member on or after July 1, 2009 and before January 10, 2010 may join a special retirement plan open to him or her pursuant to a collectively negotiated agreement with any state or local government employer, where such agreement was in effect on or after July 1, 2009 and before January 10, 2010.

The purpose of Section 8 of Part A of Chapter 504 of the Laws of 2009 was to provide that members of an employee organization that were eligible to join a special retirement plan pursuant to a collectively negotiated agreement with any state or local government employer, would be able to continue to enroll in that special plan after the enactment of Chapter 504, until the date on which such agreement terminated.

However, due to the effective date of Part A and the date the Chapter was signed, members who joined the New York State and Local Police and Fire Retirement System on or after July 1, 2009 and before January 10, 2010 remain on the “bubble” as they are unaddressed by the provisions of Chapter 504 of the Laws of 2009.

As such, this bill allows members who joined the New York State and Local Police and Fire Retirement System on or after July 1, 2009 and before January 10, 2010 to enroll in a special retirement plan.

Detrimental Legislation Defeated

A. Tier VI

On June 8, 2011, Governor Cuomo announced the introduction of pension reform legislation that would impose a new Tier VI for future employees. Citing dramatic increases in both the State and New York City pension systems since 2001, the Governor's press release estimated that the new Tier VI proposal would reduce State pension costs by \$93 billion over the next 30 years and City pension costs by \$30 billion over the next 30 years.

During the final days of session, we worked to and were successful in defeating consideration of this proposal. However, Tier VI remains one of the Governor's "top priorities" for 2012.

- **Provisions in the legislation included:**
 - Raising the retirement age from 62 to 65
 - Ending early retirement
 - Requiring employees to contribute 6% of their salary
 - Providing a 1.67% annual pension multiplier
 - Vesting after 12 years instead of 10 years
 - Excluding overtime from final average salary
 - Using a five year final average salary calculation with an 8% anti-spiking cap
 - Excluding wages above the Governor's salary of \$179,000 from the final average salary calculation
 - Eliminating lump sum payouts for unused vacation leave from the final average salary calculation
 - Prohibiting the use of unused sick leave for additional service credit at retirement
- If enacted, Tier VI would have impacted new hires by the state and local governments on or after July 1, 2011, including uniformed police and fire. The City pension reform plan, also proposed through Tier VI would have impacted new employees of New York City hired on or after July 1, 2011, including police and fire.
- **New York State and Local Employees' Retirement System**

The following is a brief overview of the changes to the New York State and Local Police and Fire Retirement System (PFRS) that would have occurred if Tier VI was enacted:

- **Employee Contributions.** The Governor's Tier VI proposal would have required contributions of 6% of pay. This is a 3% increase of what is currently required under Tier V. In addition, the 6% contribution would have been for all years of service with the exception of uniformed personnel enrolled in a plan that limits the amount of creditable service which may be accrued. In such plans, contributions would not have been required after accruing the maximum amount of creditable service under the plan.

- Retirement Benefit. The Governor's Tier VI proposal provided that the retirement benefit would be 1/60th of the member's final average salary (FAS) for the first 30 years of creditable service and 1.5% of FAS in excess of 30 years.

- Vesting. The Governor's Tier VI proposal provided that members of Tier VI would need a minimum of 12 years of credible service instead of 10 years in order to qualify for service retirement. However, credit would have been given for military service as currently defined under the RSSL.

- Calculation of Final Average Salary. The Governor's Tier VI proposal would have changed the formula for calculation of a member's final average salary (FAS). Specifically, FAS would have been based on a 5 year average rather than the current 3 year average. In addition, the 5 year average would have been subject to an 8% "anti-spiking" cap which provided that no one year's salary be permitted to exceed 8% of the average of the previous 4 year's salary.

- Overtime. The Governor's Tier VI proposal would have eliminated overtime from being included in pensions. Specifically, Tier VI eliminated any overtime paid at a rate greater than the standard rate of pay from the definitions of wages and FAS.

- Overall Salary Cap. The Governor's Tier VI proposal would have created a new overall salary cap for the calculation of FAS. The cap was based on the salary of the Governor. Therefore, under Tier VI no reportable salary for use in calculation of FAS could have exceeded the salary of the Governor, which is currently set at \$179,000. Furthermore, Tier VI would have eliminated from the calculation of FAS any form of lump sum payments for deferred compensation, sick leave, vacation time, termination pay or payments made in anticipation of retirement. As is current practice, the Comptroller would have had the authority to determine what is and is not termination pay and/or a payment in anticipation of retirement.

- Retirement Age and Payment of Service Benefit. The Governor's Tier VI proposal provided that members with less than 20 years of service would need at least 12 years of service before becoming eligible for retirement benefits and need to reach the age of 65 before receiving the vested retirement allowance. Under the proposed plan, members would retain the right to retire upon the completion of 20 or 25 years of service regardless of age.

- Sick Leave Credit. The Governor's Tier VI proposal would have eliminated service credit for unused sick leave time.

- Employer Contributions. The Governor's Tier VI proposal would have changed the long term expected annual employer contribution rates for all police and fire members included in Tier VI as follows:
 - Minus 5% for municipal 20 year plans with additional 60ths
 - Minus 5.7% for the state 20 year plan with additional 60ths
 - Minus 4.8% for 20 year plans
 - Minus 2% to 4% for regular 25 year plans with additional 60ths

B. Mandate Relief

In the final days of session, Mandate Relief received considerable attention. As discussed above, Mandate Relief was eventually included in the omnibus legislation with the Tax Cap and Rent Regulation.

However, as originally drafted and introduced, the Mandate Relief portion of the omnibus legislation contained significant detrimental provisions including:

- Requirements that a public employer's ability to pay (with Tax Cap) be considered above all other factors in any arbitration over collective bargaining agreements;
- Considerable changes to the factors an arbitrator could take into consideration in deciding whether to uphold a decision of a public employer; and
- Various other public employer friendly provisions which would have significantly shifted the balance of power in favor of the employer.

Through a targeted effort at the end of session, we were able to fight off many of these proposed changes and preserve the rights of public employees throughout the state.

If you have any questions regarding any of the above-referenced initiatives please contact Joseph M. Dougherty, Esq. at (518) 436-0751 or jdougherty@hinmanstraub.com