



# The Siren

**Important News and Updates for NYSPFFA Members**

*Prepared by Hinman Straub and Corning Place Communications*

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## **2014 LEGISLATIVE SESSION: PASSED PROPOSALS**

The 2014 legislative session drew to a close last month. The NYSPFFA and its members worked hard successfully lobbying the Legislature for important bills that will positively impact the Association, the individual locals, and the State and local communities. The following is a list of proposals that were passed and awaiting delivery to the Governor's Office.

### ***Statewide 20-Year Section 384-d Retirement Plan and "Bubble" Bill***

A bill covering the availability of a statewide 20-year retirement plan under section 384-d of the Retirement and Social Security Law and the authorization of a special retirement plan, commonly referred to as the "Buffalo-Bubble Bill," passed both houses and is awaiting delivery to the Governor. If signed and chaptered, this legislation would afford New York

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### **CALENDAR**

July 14-18, 2014 — I.A.F.F. 52nd Convention (Cincinnati, Ohio)

If you have any questions or concerns regarding the information in this newsletter, please contact Joseph Dougherty or John Black at (518) 436-0751. For other NYSPFFA matters, please contact Mike McManus or Sam Fresina at (518) 436-8827.

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State and Local Police and Fire Retirement System members

working without a collective bargaining agreement the opportunity to participate in a 20-year retirement plan and also permit members who were on the “bubble”—i.e., entered the retirement system between July 1, 2009 and January 10, 2010—to enroll in a special retirement plan pursuant to a collectively bargained agreement. This legislation corrects two major inequities that have plagued our fellow firefighters and fire officers.

The current legislation also addresses the Governor’s issue that led him to veto a similar piece of legislation in 2013.

### ***Automatic Enrollment in Optional 20-Year Retirement Plan***

During this past session, a bill, seeking to make enrollment into Section 384-d optional 20-year retirement plan automatic, was passed by both houses and is awaiting delivery to the Governor. This bill would eliminate the need for new members of the New York State

and Local Police and Fire Retirement System to apply for enrollment in the Section 384-d retirement plan. If signed into law, this bill will correct a troubling trend where fire fighters unintentionally fail to elect participation in the 20-year plan by the filing deadline. Additionally, it will eliminate the need for costly retroactive legislation to later admit a fire fighter who was late in filing his or her application.

### ***Special Accidental Death Benefit COLA Increase***

This bill, which will authorize an increase in the special accidental death benefit, passed both Houses and is awaiting delivery to Governor Cuomo. This legislation provides, similar to past years’ bills, for an upward adjustment of the special accident death benefit for widows/ widowers or children of fallen firefighters to offset the effects of increasing inflation and the cost of living.

### ***Extension of Time to File for Accidental Disability***

A bill authorizing the extension of time to file an application for disability

benefits relating to certain cancers with the New York State and Local Police and Fire Retirement System was passed in the final days of the Legislative session.

With the ever increasing use of chemicals and new building compounds, fire fighters are exposed to increasing types and quantities of chemicals when responding to fires. Yet, the harm caused by these chemicals and toxins can take years to manifest and fire fighters are increasingly unable to file for disability prior to the two years deadline because the condition is not readily apparent or diagnosed. This bill will extend the time to file from two years to five years for fire fighters, thereby affording a more reasonable opportunity to file for disability.

### ***Building and Fire Code Training for City’s Fire Officers***

Just before the close of session, the Legislature passed a bill mandating that fire officers in New York City receive at least 40 hours each of field training and classroom instruction on building and construc-

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tion codes and local ordinances. This legislation corrects a fundamental training oversight and provides necessary training for conducting building inspections to fire officers within New York City.

### ***Restoration of Collectively Bargained Disciplinary Procedures***

The Legislature passed a bill, which is awaiting delivery to the Governor's Office, that would restore the protections afforded under the Taylor Law to bargained for disciplinary proceedings that were extinguished by the Court of Appeals' holding in *Matter of PBA of NYC v. NYS PERB*, 6 N.Y.3d 563 (2006). Specifically, the Court of Appeals ruled that collectively bargained disciplinary procedures must yield to local legislation that placed police discipline to the discretion of local officials.

If signed, this legislation will declare that New York public policy mandates that all terms and conditions of public employment, including police discipline, are mandatory subjects of collective bargaining under the Taylor Law.

### ***Military Service Credit for Retirement***

A bill, affording veterans to obtain up to three years of service credit towards retirement, was passed by the Legislature and is awaiting delivery to Governor Cuomo. If signed into law, this legislation would permit a member of the New York State Retirement System with at least five years of service to obtain up to three years of service credit for each year of honorable military duty.

### ***Extension of Deadline to File a World Trade Center Registration of Participation***

Both houses passed a bill that would extend the deadline for filing a registration of participation under the World Trade Center Disability Law. If the Governor signs the bill into law, this would allow those members who served at ground zero to file a registration of participation to preserve the ability to apply for and receive disability benefits under the World Trade Center Disability Law.

## **U.S. SUPREME COURT RULED ILLINOIS HOME HEALTH CARE WORKERS NOT REQUIRED TO SUPPORT UNIONS**

On June 30, 2014, the United States Supreme Court, by a 5-4 majority, ruled in [\*Harris v. Quinn\*](#), that home health care workers in Illinois are not required to financially support public employee unions. Such financial support is commonly referred to as "agency shop fees".

Justice Alito, writing for the majority, held that the Illinois statute mandating such payments to unions violates the home health care workers' rights under the First Amendment.

This decision has come as a blow to unionization efforts of similar quasi-public employees' unionization efforts across the country. The Court effectively ruled that agency shop fee statutes requiring payment by partial-public employees, quasi-public employees, or simply private employees are unconstitutional.

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Justice Alito, however, distinguished the Illinois statute from other state statutes requiring the payment of agency shop fees by highlighting that the Illinois home health care workers were not full-fledged public sector employees. Therefore, the decision left intact the Court's 1977 decision, *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), ruling that agency shop fees were constitutional, for "full-fledged" public employees.

As we discussed in a previous Siren issue, agency shop fees under New York law are statutorily required payments from public employees in a collective bargaining unit to the official representative of that collective bargaining unit. The purpose of these fees is to prevent freeriding by non-union members who ultimately benefit from the union's collective bargaining activities and is to maintain peaceful labor relations. Accordingly, this decision should have no cognizable impact on the current deduction of agency shop fees with regard to full-fledged fire fighters employed by a public entity in New York.

However, Justice Alito took the opportunity to criticize the *Abood* decision in general, which may have left room for a future challenge to agency shop fees even for full-fledged public employees. For now, the important point is that the Supreme Court had an opportunity to entirely abolish agency shops fees and did not do so.

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### **RETIREMENT SYSTEM'S EXPERT FAILS TO SUPPORT COMPTROLLER'S DETERMINATION**

In a recent decision handed down by the Third Department on July 3, 2014, the Court annulled a determination of the State Comptroller for an application for benefits of a Lieutenant with the Port Authority of New York and New Jersey because the Retirement System's expert was insufficient to overcome the substantial evidence in the record.

The Lieutenant applied for performance of duty and accidental disability retirement benefits due to

his disability resulting from a February 2009 accident. While on duty, the Lieutenant fell down a flight of stairs at a bus terminal and injured his right shoulder, right hip, and right lower back. After his accident, the Lieutenant was unable to walk or return to work.

During the proceedings, the Retirement System conceded that the Lieutenant was disabled and the incident was an accident; however, they contested that the February 2009 accident was not the cause of the Lieutenant's disabilities.

The dispute centered on whether the February 2009 accident caused his current disability or whether it was the result of previous injuries—i.e., a fractured spine from a skydiving accident in 1996 and three shoulder surgeries from 2004 through 2007.

The Lieutenant and his treating neurosurgeon testified that those injuries resolved prior to the February 2009 accident. Moreover, his treating neurosurgeon

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testified that his disability was causally related to the most recent accident.

On the other hand, the Retirement System's expert opined that the Lieutenant's injuries were degenerative in nature caused by his earlier injuries and surgeries and that the accident was only a "temporary exacerbation" of his previous conditions.

Ultimately, the Third Department overturned the Comptroller's determination. The Court held that despite the Retirement System's expert saying that his condition was temporary, the expert's inability to explain why the Lieutenant still suffered from his disabilities if such injuries were only temporary and in light of the fact that there was no issue prior to the February 2009 accident from his earlier injuries. Therefore, the Court held that the Comptroller's determination was unsupported by the substantial evidence in the record.

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