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**RE: SFY 2012-13 Budget Public
Protection General Government
Article VII
S. 6255 / A. 9055**

TIER VI MEMORANDUM IN OPPOSITION

Submitted on behalf of the New York State Professional Firefighters Association.

The New York State Professional Fire Fighters Association (NYSPFFA), I.A.F.F. AFL-CIO, a not-for-profit association representing approximately 18,000 firefighters in 102 Locals in various cities, villages and towns across New York State, strongly opposes enactment of the new pension tier contained in the Governor's proposed SFY 2012-13 Budget proposal.

Professional Firefighters do not think that they are any better than any other municipal worker but they are different. Every time we go to work, we willingly go into harm's way to protect the citizens of the New York State not knowing whether or not we will come home safely to our families.

Specifically, the likelihood of injury, illness and even death that firefighters face every day cannot be compared to that of any other non-uniformed state employee. In addition, professional firefighters receive rigorous training which is not required of non-uniformed state employees. For instance, the State Office of Fire Prevention and Control's Academy of Fire Science in Montour Falls, offers Recruit Firefighter Training (RFFT). The RFFT class is 11 weeks long and

includes more than 450 hours of intense training that meets the provisions of the New York State standard for career, probationary and non-permanent firefighters.

Given these inherent differences, it is simply wrong to discuss omnibus pension changes, including the Governor's Tier VI proposal, without differentiating between the services provided by professional firefighters and non-uniformed state employees.

In the past, we discussed the importance of the opportunity to have an open dialogue with the Legislature on pension reforms that would have a direct impact on our members. We are mindful of the financial burden currently experienced by the State and Municipal Employers and that all concerned, including firefighters, must share in reducing this burden.

However, we cannot agree with the Tier VI proposal as presented in the Governor's Budget. We firmly believe that our uniformed members are being asked to share too much of the burden and are deeply concerned with certain aspects of the Governor's Tier VI proposal. The following outlines some of our concerns:

Defined Contribution Plan 401(K)

A prominent part of the Governor's Tier VI proposal is the creation of a defined contribution plan (DCP) option for employees. NYSPPFA opposes the creation of a DCP as it would not provide adequate benefits to our members and has the potential to induce newly hired professional firefighters to enter such plan without fully understanding the potential consequences.

First, while the DCP provides for a death benefit, as drafted, the DCP does not provide for either accidental or performance of duty disability benefits. Given the likelihood of injury, illness and even death that firefighters face every day, the lack of any provision of disability benefits makes the DCP plan unacceptable for the State's uniformed firefighters and their families.

Moreover, the lack of disability benefits in the DCP plan, combined with New York State General Municipal Law §207, could increase costs for municipal employers. Under §207, municipal employers are obligated to continue to pay the salary of injured or disabled firefighters. Under the existing defined benefit plan (DBP), municipalities can mitigate such costs through a disabled firefighter's application for accidental or performance of duty disability benefits whereby the injured firefighter would receive disability benefits from the New York State Retirement System. As drafted, the DCP would eviscerate a municipality's ability to mitigate such costs for any firefighter that enters the DCP and force the municipality to shoulder the salary costs on its own for the life of the injured or disabled firefighter.

Second, significant aspects of the DCP make election of such plan look attractive for new employees and given that the election of such plan is irrevocable, are of great concern to the NYSPPFA and its members. For instance, the DCP employer contribution of 3% is made regardless of employee contribution which is less than the proposed 4% to 6% contribution in the DBP. As such, the DCP would look, on its face, more appealing to a newly hired firefighter as they would not have to contribute. However, without an employee contribution and the necessary

disability protections of the DBP, adequate retirement benefits would be in jeopardy for firefighters opting into the DCP.

In addition, the proposed reforms to the existing DBP, notably the “additional” contribution requirement will serve to induce newly hired firefighters to opt into the DCP if the contribution rates are high, even for a short period. This could potentially harm the solvency of the DBP as well as steer firefighters into the DCP. Unlike some other non-uniformed employees, firefighters anticipate a career in state service and are not looking for portability and given the perils of their job have earned the right to receive a defined benefit.

“Risk Reward” (i.e. Additional Contribution Rates)

The Governor’s Tier VI proposal contains an unprecedented variable contribution feature. In essence, the Governor is proposing that half of any required employer contributions beyond 7% of payroll be shifted to employees. However, employer contributions must fall below 4% in order for employees to obtain a contribution reduction. The proposal is flawed for a variety of reasons:

- **Unfair Individual Burden.** The proposal shifts an extraordinary degree of risk to individual workers with very modest incomes, who are not well positioned to absorb higher contribution rates during an economic downturn. In addition, it is not clear how the “additional” contribution policy would be implemented. Nevertheless, the proposal could demand that firefighters subject to “additional” contributions would be required to pay additional contributions not attributed to his or her individual retirement benefit. In other words, new employees should not pay the legacy costs of older employees or retirees.
- **Collective bargaining.** Automatically increasing a firefighter’s contribution due to market conditions therefore reducing his or her overall salary could be compounded by the collective bargaining process. For example, as recent history shows in times of economic hardship adjustments to employee compensation levels in the form of pay reductions/freezes, furloughs, health benefit concessions and layoffs are implemented. If enacted, the “risk reward” system would have an unprecedented effect on firefighter salaries in tough economic times.
- **Additional Contributions Will Influence Employee Choice and Affect Plan Funding.** As stated above, if the “additional” contributions to the DBP spike, even for a short period, new firefighters will be induced to opt into the DCP. The result will be a loss of new entrants, and funding sources to the traditional plan thus increasing required contributions as well as the potential unknowing sacrifice of necessary disability benefits.

Exclusion of All Overtime

Tier V, adopted in 2010, created a cap on the amount of overtime that can be considered for pension purposes. In addition, Tier V contained safeguards and exclusions for pension computation purposes including salary increases that exceed the average salary of the two previous years by more than 15%. Accordingly, spiking of pensions by working excessive overtime during the FAS period is already restricted. As such, total elimination of overtime is

unnecessary as the Tier V protections have not yet been tested or vetted and will provide adequate protection against "spiking".

In addition, eliminating overtime totally from the pension calculation will cause employees to suffer greater income reduction in retirement because they have relied upon overtime earnings to meet their economic needs and that overtime income will not be even partially replaced in retirement.

Timing

Given the complexities of the State's pension system, the differences between classes of government employees and the time, as well as consideration needed to create real reform, a new pension tier has no place in the budget process. As such reforms will directly affect the retirement of a future generation of dedicated employees. Reforms should be implemented in a forum where all stakeholders have an opportunity and the time to evaluate the strengths and weaknesses of proposed changes.

Increased Contribution Rates and 5 Year FAS Period.

The Tier VI pension proposal seeks to reduce the pay of new firefighters by requiring greater direct employee contribution to the pension plan. The employer contribution to the pension plan is simply deferred wages so a shifting of pension contribution, from the employer to the employee, is a wage reduction. As such, the Tier VI proposal seeks to "end around" the collective bargaining process by asking the Legislature to cut pay.

Under Tier V, FAS is calculated using the final three year salary period. Tier V includes spiking protections within this three year period as well as a blanket exclusion of salary increases that exceed the average salary of the two previous years by more than 15%.

The spiking protections as well as the 15% limit have yet to be tested and it is anticipated that they will adequately protect the pension system. We see no need to extend the three year period to five years.

In order to protect the defined benefit pensions of New York State's brave firefighters, we respectfully request that the Legislature take into consideration the inherent differences between firefighters and non-uniformed governmental employees.

We would be happy to discuss our concerns with you further and request that you protect the pension rights of uniformed firefighters that have dedicated their lives to protecting your constituencies.

Respectfully submitted,



Michael McManus

President

New York State Professional Fire Fighters Association, I.A.F.F. AFL-CIO