



2012 NYSPFFA Legislative Talking Points

Support

1. A. 6028-A / S. 4128-A Bubble 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.

2. A. 3781-A Heart Bill

- 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.

3. A. 9943 / S. 7013 Municipal Ambulance Bill

- Under §3008 of the Public Health Law, municipalities or fire districts acting on behalf of a municipality are granted a two-year presumption of need. Upon two years of operation and the expiration of the presumption, an application must be filed with a regional council for a determination of public need prior to the continued operation of a municipal advanced life support first response service or municipal ambulance service.
- Municipalities currently find themselves at a distinct disadvantage when applying for a certificate of need to continue the provision of advanced life support first response service. Since they are applying to a regional council, which by statute is made up of not less than one-third industry representatives, it is difficult to prove that the current service is inadequate.
- Given that many municipalities around the State have spent great time and expense in training municipal employees in advanced life support and have the appropriate equipment and staffing necessary to provide the service, they should not be subject to the additional scrutiny of the regional council upon application for permanent certification. As such, review of a municipal or fire district application after the initial two-year period should be conducted by the Commissioner of Health.
- Last year the City of Utica's municipal ambulance service resulted in \$959,000 being placed in the City's general fund after all expenses were paid. This revenue saved the City's taxpayers a 5% tax increase. However, the City of Utica's application for a permanent certificate was denied by its regional council and its municipal ambulance is only operating pending the outcome of its appeal.
- The City of Glens Falls has operated its ambulance service since 2009. In 2011 it applied to its regional council for permanent operating authority. Its application was challenged by a private ambulance service and is on administrative appeal. Through the operation of its municipal ambulance service in 2011, \$370,323 in revenue was generated to decrease municipal taxes.

4. A. 10126 Statewide 20-Year Optional No CBA

- In 2009, the Legislature passed Tier V for public employees. Tier V placed firefighters hired after January 2010 into the Tier V plan. Those firefighters hired between July 1, 2005 and the effective date of Tier V (January 9, 2010), working under a current collective bargaining agreement, were provided the opportunity to elect or remain in a non-contributory twenty-year plan until the expiration of their respective contracts.
- This same protection was not afforded firefighters working without a collective bargaining agreement. For example, Buffalo professional firefighters have operated honorably without a new collective bargaining agreement since 2001.
- This bill amended the retirement and social security law by adding a new section 334-f to grant professional firefighters not subject to a collective bargaining agreements the same rights as those subject to collective bargaining agreements with respect to electing an optional retirement plan pursuant to RSSL Section 384-d.
- The provisions of this bill would not apply to Tier VI members.

5. A. 5739 / S. 7209 MRSA Disability

- Presently, police officers and firefighters who suffer employment-related disabilities such as tuberculosis, hepatitis, or HIV, are able to receive a three-quarters accidental disability benefit.
- This legislation would extend such a benefit to those police officers and firefighters who contract methicillin resistant staphylococcus aureus.
- Due to the increased exposure which police officers and firefighters have to individuals who have methicillin resistant staphylococcus aureus, and to protect the families of those police officers and firefighters who are so exposed, a presumption that the individual is disabled from the performance of duties is warranted.
- This legislation would deem such exposure as an accident so that the member would be eligible for three-quarters of their final average salary.
- The New York State Retirement System has determined the fiscal impact of this bill to be negligible.

6. A. 9116-A / S. 6438-A Special Accidental Death COLA

- In 1978, the Legislature 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. The intent of the original 1978 law was to increase their 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.
- 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.
- As with previous legislation, there is no cost to the localities, as the State would reimburse them for their portion of this small increase.

7. A. 8359-A / S. 7026 Elevator Bill

- This bill would establish licensing standards for elevator and escalator mechanics, inspectors and designers.
- New York State Property Maintenance Code Section 606.1 (Code) requires that all elevators, dumbwaiters and escalators be maintained to safely carry all imposed loads, that they operate properly and that they be free from physical and fire hazards. In addition, Article 18 of the New York State Uniform Fire Prevention and Building Code Act (Article 18) requires local governments to enforce the Code and ensure that property owners meet schedules for inspections and tests set forth in the Code.
- While laudable, the Code and Article 18 do not provide an adequate enforcement mechanism to ensure that elevators and escalators are maintained properly. The use of unsafe and defective elevators and other automated conveyances expose both NYSPFFA members and the public to unsafe conditions and increase the probability of serious injury.
- In fact, in 2010, the New York State Comptroller conducted a six city audit to determine whether local governments were ensuring that all elevators and related equipment were being properly inspected and tested in accordance with the Code. The audit found that five of the six cities audited were not properly ensuring that public elevators and related equipment were inspected as required by the Code.

- Members of the NYSPFFA rely heavily on proper working elevators at fires and other emergencies. Similarly, the public relies on elevators and escalators on a daily basis.

8. A. 7455-A / S. 4239-A Fire Instructor No Pension Penalty

- This bill would permit retired firefighters to receive their pension benefits without diminution while earning compensation for employment by a career and technical education center as an instructor of fire science in a program approved by the State Education Department.
- As a result of years of dedicated service, retired firefighters possess the unique training, skills, and experience necessary to train future generations of fire professionals. If enacted, this bill would allow approved education centers to take advantage of such highly qualified retired public employees as fire science instructors without having the burden of providing additional training.
- Enactment of this bill would incentivize extremely qualified retired firefighters to pass on their invaluable knowledge, experience, training and skills to a new generation of firefighters.

9. A. 9922 Exemption of Uniformed Members of Emergency Services from Limitations on Post-Retirement Reemployment.

- This bill amends Section 211 of the retirement and social security law by adding new subdivision 9. This subdivision exempts any uniformed member of an emergency service (i.e. police, firefighters, emergency medical technicians or a member of a certified emergency response team) from the requirements of existing law when seeking post-retirement reemployment in any position to which the section applies subsequent to securing such previous approval.
- This legislation allows employers flexibility by authorizing them to issue 211 waivers internally. These positions are often difficult to fill when a former position holder retires-especially with an employee that has the same breadth of knowledge in relation to the job as the former employee.
- The 211 waiver currently allows employees who receive a pension to return to work after they reach their retirement qualifications. This legislation would simply cut through the red tape of the process by permitting the issuance of these waivers from those who are more knowledgeable of the position's needs and understand how they can best be fulfilled.

10. A. 6536 / S. 4515 Retiree Health Insurance Protection

11. A. 2007 / S. 4371 Retiree Health Insurance Protection

- These two bills seek to protect the terms and conditions of retiree health insurance from unilateral changes post-retirement.
- Specifically, these bills would prohibit public employers from diminishing the health insurance benefits and contributions of retired public employees and their dependents in the New York State and Local Employees' Retirement System.
- Health insurance coverage is a critical issue for retirees, who often face tremendous health care costs at a time of severely diminished income. Continuation of health insurance after retirement is provided for some retirees by statute and for some others by union contract.
- These proposals seek to protect health insurance coverage for all public sector retirees in two different ways. First, A. 6536 / S. 4515 provides that a public employer may not unilaterally reduce benefit coverage or employer contributions unless making a parallel reduction for active employees. Second, A. 2007 / S. 4371 provides that a public employer may not unilaterally reduce benefit coverage or employer contributions regardless of negotiated parallel reductions for active employees.
- Both proposals contain language protecting the contractual rights of retired public employees under their respective collective bargaining agreements.
- A similar law has protected school district retirees since 1994.

12. A. 9923 Police and Fire Retiree Health Insurance Protection

- This bill would ensure that the health insurance coverage for certain retired firefighters, police officers, and their dependents, as well as NYC fire officers and their dependents, are maintained.
- This bill provides that once enacted, the level of health insurance benefits and the employer contributions made toward such health insurance for certain retired firefighters, police officers, and their dependents, as well as NYC fire officers and their dependents, shall not be diminished below the benefits and contributions in place as of the date of enactment.
- Pursuant to this proposal, collective bargaining agreements may grant higher levels of protection.
- Our firefighters and police officers are acknowledged as true heroes who place themselves in danger to protect their fellow citizens. Part of society's obligation to our firefighters and police officers should be to assure them of adequate health insurance, both during their working years and into retirement. Although some other retirees,

such as retirees from school districts and BOCES, are afforded retiree health insurance protection by statute, there is no statutory protection for firefighters and police officers. This bill would correct that omission.

13. A. 5728 Payment in Lieu of Terminal Leave

- This bill would add new sections 14-152 and 15-129 to the administrative code of the City of New York to allow members of the Police Department and Fire Department to receive terminal leave payment while continuing to serve.
- Retaining veteran police officers, firefighters and fire officers within the City's ranks is a paramount concern to the State and Constituencies of the City of New York. The New York City Police and Fire Departments continue to face an unprecedented wave of retirements.
- A large number of police officers, firefighters and fire officers are quickly approaching 20 years of active service making them eligible for retirement. Thus, the departments are confronted with a significant loss of their most experienced officers.
- One way to allow veteran police officers, firefighters and fire officers to continue working is to grant them the option of taking cash payment in lieu of their terminal leave. The bill will provide an incentive to officers to remain on the job and provide additional months of public protection at no additional cost.

14. A. 7188 / S. 5334 Immunity for Failure to Train

- Provides that the failure of a contractor or subcontractor to post the legally required statement of all wage rates and supplements would constitute a Misdemeanor, subject to a fine of \$500 to \$5,000 for each offense. It further requires the contractor and subcontractors to maintain "sign in" and "sign out" sheets or other records reflecting the actual dates and times of work for all laborers, workers or mechanics employed on the project.
- During the 2010 legislative session a bill to provide New York City fire officers 40 hours training in the new Fire Code and 40 hours training in the new Building Code (both effective July 2008) received a New York City Council Home Rule Message and overwhelmingly passed both houses of the NY State Legislature only to be vetoed by the Governor primarily for financial reasons.
- Since the mandate to provide the training has effectively been removed and the City of New York refuses to provide adequate training on building inspection and code enforcement, the bill will provide immunity from administrative action against New York City fire officers who, due to lack of such training, are effectively unable to properly conduct building inspections.

15. A. 9367-A / S. 6436 NYC Training Bill

- This bill adds a new section 209-ff to the general municipal law, requiring training of NYC fire officers in changes to building and construction codes and local ordinances in NYC.
- New fire and building codes took effect in NYC on July 1, 2008. Since then there has not been any significant effort to train fire officers in the numerous changes to the codes.
- This legislation would require a minimum of 40 hours of field training and 40 hours of classroom instruction to be completed no later than July 1, 2014.

16. S. 6437 CUNY Tuition Waiver

- This bill would amend the education law to allow firefighters and fire officers employed by the New York City Fire Department to attend one course without tuition at a senior college of the City University System.
- Chapter 548 of the Laws of 2004 provided the authority for police officers to have tuition waived for one course at a CUNY Senior College. This bill would grant the same for New York City firemen and fire officers.

17. A. 7758 Public Hearing Bill

- The residents of New York State have the right to obtain necessary fire safety, fire prevention and fire safety services. It is the public policy of this State to promote a safe environment for residents and protect such residents from residential and commercial fires.
- Across the State, local governments are seeking to reduce the number of firefighters within their jurisdiction in order to cut costs.
- This bill would require that such potential reductions in force would be subject to an investigation and public hearing concerning the effect such reductions would have on public safety within a given locality.

Opposed

18. A. 8077 City of Rochester 2% Raid

- This bill represents a veiled attempt by the City of Rochester to circumvent a litany of judicial decisions protecting the long-standing and statutorily required distribution of fire insurance taxes to the City of Rochester fire department.
- First codified in 1849, New York State Insurance Law Sections 9104 and 9105 currently require that fire insurance companies not incorporated in New York pay a fee of between 1.8 and 2% on all fire insurance premiums (“2% Fund”). This fee must be paid to the respective fire districts where the insured property is located. Sections 9104 and 9105 provide that the 2% Fund is to be used for the benefit of all of the district’s firefighters as determined by the firefighters in that district.
- Across New York State, fire departments use their respective 2% Funds to purchase equipment and provide lifesaving training to their personnel, as well as many other laudable purposes.
- In 1979, in direct violation of Sections 9104 and 9105, the City of Rochester, through an amendment to its City Charter, diverted the 2% Fund proceeds to be used as part of its annual budget process for certain expenses. While such expenses included the payment of medical and dental benefits of the City’s firefighters, such diversion of funds was in direct contradiction of Sections 9104 and 9105 as such statutes require that the 2% Funds be used for the benefit of all of the district’s firefighters as determined by the firefighters in that district.
- The City Firefighters Union justifiably demanded that the Fund be given to the fire department, in accordance with Sections 9104 and 9105, to be spent in a manner different than that being determined by the City. After the City refused the Union’s request, litigation ensued.
- However, contrary to the Sponsor’s summary of pending litigation, this matter has been decided through a series of cases. Most recently, on February 18, 2011, the New York State Appellate Division, Fourth Department, unanimously affirmed the ruling of the Supreme Court, Monroe County in *Montesano v. Madison, 2011 NY Slip Op 1166*, which found in favor of the Firefighters Union. Subsequently, the City of Rochester’s appeal to the Court of Appeals was denied.
- Specifically, the Court found that the City used portions of the 2% Funds for the payment of expenses that they were already contractually obligated to pay and for other “miscellaneous” City purposes. Concomitantly, the Court ordered a formal accounting and the misused funds returned to the City Fire Department.

- In fact, throughout the aforementioned litigation, the City refused to discuss any sort of settlement with the City Firefighters Union, was sanctioned by the Court and found liable for certain costs and fees due to its unwillingness to cooperate.
- As such, this bill represents a thinly veiled attempt by the City of Rochester to take yet another bite at the apple, seeking to legislatively undermine a series of Supreme Court and Appellate Division rulings to preserve its continued misuse of the 2% Funds.

19. A. 10046 Firefighters Memorial Committee

- This bill as it is an 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 1997, a collaborative effort of public and private entities joined together to create the New York State Fallen Firefighters Memorial.
- The State Memorial is now under the auspices of the New York State Office of Fire Prevention and Control. Since inception of the Memorial the Committee has worked under a set of guidelines originally formulated in 1999 to evaluate requests as follows:
 - prevention organization firefighter;
 - such firefighter must have been engaged in a line-of-duty activity at the time of death; and
 - the potential honoree must receive a majority vote of the volunteer and professional committee members.
- This bill attempts to circumvent the good intentions and criteria developed in 1997 by the Committee and substitute the judgment of **“any authoritative agency”** to qualify one’s name to be placed upon the Memorial.
- This bill would direct the State Memorial Committee to amend its guidelines pursuant to the above referenced standard.

20. **A. 1329 Triborough Repeal**
21. **A. 8115 2-year Triborough Repeal**
22. **A. 6344 Expiration of Triborough**

- These three bills seek to repeal the Triborough Amendment in various ways. While the exact nature of the repeal varies between these bills, each proposal represents an unprecedented assault on Triborough. These bills should not be enacted for the following reasons:
- Prior to enactment of the Triborough Amendment in 1982, many public employers simply “went through the motions” during negotiations, deliberately biding their time until the current agreement expired. Upon expiration of the agreement, these employers could and would unilaterally delete or otherwise change terms and conditions of employment.
- As such, public employers had little incentive to negotiate new agreements prior to expiration of the old agreements as their power to change the terms of such agreements was exponentially increased upon expiration.
- In 1982, the Legislature viewed such practice as “blatant and arbitrary action, completely contrary to the intent of the Taylor Law,” noting that such action could provoke a strike.
- These bills are technically flawed as they do not provide for an alternative method of treating the terms and conditions of expired contracts.
- The Public Employee Relations Board has determined that it is an improper practice for an employer to change the existing terms and conditions of employment, including mandatory subjects of negotiation contained in an expired agreement, during the pendency of negotiations and impasse procedures under the Taylor Law. If enacted, these bills would grant broad authority to public employers to unilaterally change the terms and conditions of expired agreements in direct contradiction to PERB’s determination.