2015 Legislative Talking Points

NEW YORK STATE PROFESSIONAL FIREFIGHTERS

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NEW YORK STATE PROFFESIONAL FIRE FIGHTERS ASSOCIATION

Michael McManus - President
Samuel Fresina - Secretary Treasurer
James McGowan - Executive Vice President

2015 NYSPFFA LEGISLATIVE AGENDA

Bill	Position	Senate No.	Senate Sponsor	Assembly No.	Assembly Sponsor	Status (Senate/Assembly)
Extension of Time to File Accidental Disability Retirement (Cancer)	Support		TBD		TBD	Submitted for Introduction.
Optional 20-year, Non-Contributory Retirement Plan for Tier V & VI by Local Option	Support	S.3010	Young		TBD	S. 02/02/14 - referred to civil service & pensions
Special Accidental Death Benefit COLA	Support	S.4081	Golden	A.5057	Markey	A. 02/11/15 - referred to gov employees S. 02/26/15 - referred to local government
Municipal Ambulance CON	Support	S.3354	Little	A.2185	Gottfried	A. 02/26/15 - advanced to third reading S. 02/05/15 - referred to health
NY City Bills						
NYFD Pension Equity Bill	Support	S.4269	Golden	A.6046	Abbate	A. 03/11/15 - referred to gov employees S. 03/11/15 - referred to cities
CUNY Tuition Bill	Support	S.1473	Golden	A.4230	Abbate	A. 01/29/15 - referred to higher education S. 03/11/15 - reported & committed to finance

Bills of Interest - Support						
Military Service Retirement Credit	Support			A.4313-A	Paulin	A. 03/09/15 - amended & recommitted to gov employees
Office of Administrative Hearings	Support			A.640	Lentol	A. 01/07/15 - referred to gov operations
Private Organizations in the Retirement System	Support			A.488	Ryan	A. 01/07/15 - referred to gov employees
Presumption for staph/MRSA	Support	S.2236	Libous			S. 02/25/15 - advanced to third reading
Creates Amsterdam Firefighter's Benevolent Assoc.	Support	S.3950	Amedore	A.5517	Santabarbara	A. 02/25/15 - referred to local government S. 03/19/15 - advanced to third reading
Security of Fire Fighters' Personal Information	Support					Study Bill.
Disbursement of Foreign Fire Tax Monies to NYSPFFA						Study Bill.
Bills of Interest - Opposed						
Amends N.Y. Const., Art. V, § 7	Oppose	S.4611	Budget	A.6722	Buchwald	A. 04/08/15 - opinion referred to judiciary S. 03/31/15 - passed Senate
Amends Gen Mun Law § 207-c	Oppose			A.2752	Katz	A. 01/20/15 - referred to gov employees
Eliminates the Triborough Amendment	Oppose			A.3242	Fitzpatrick	A. 1/22/15 - referred to gov employees
Extends Collective Bargaining Agreements by Six Months	Oppose			A.2206	Pretlow	A. 01/15/15 - referred to gov employees

Amends Triborough Relating to Longevity and Step Increases	Oppose			A.6460	Goodell	A. 03/25/15 - referred to gov employees
Amends Triborough Relating Impasses	Oppose			A.2802	Pretlow	A. 01/20/15 - referred to gov employees

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2015 Legislative Talking Points

STATEWIDE LEGISLATIVE PROPOSALS IN SUPPORT

1. **Extension of Time to File Accidental Disability Retirement (Cancer)**

- This bill acknowledges the evolving risk to fire fighters through their exposure to carcinogens and seeks to extend the filing period to obtain accidental disability benefits under Section 363-d of the Retirement and Social Security Law. Specifically, the filing time would be extended from two (2) years after their normal retirement to five (5) years.

- A 2013 peer-reviewed study entitled, "Persistent Organic Pollutants including polychlorinated and polybrominated dibenzo-p-dioxins and dibenzofurans in fire fighters from Northern California," which was co-authored by, among others, two research scientists from the New York State Department of Health Wadsworth Center, showed that firefighters had elevated concentrations of certain compounds produced by burning chemicals contained in flame-retardant materials when compared to the U.S. population. One of the study's conclusions was that fire fighters at fires and during cleanup suffer greater exposure to chemicals and their byproducts, which pose a significant health risk; including, cancer.

- As a result of this increased exposure to burning plastics and other chemical products, fire fighters are increasingly subjected to new, different types and larger quantities of chemical carcinogens, resulting in more incidents of cancer compared to the general population. Often times, such incidents of cancer are not evidence for years. As such, the bill extends the time filing time from two (2) year to five (5) years.

- This bill is currently awaiting introduction.

2. **S. 3010 – Optional 20-Year, Non-Contributory Retirement Plan for Tiers 5 & 6**

- This bill would add a new Article to the Retirement and Social Security Law ("RSSL") to grant police officers and paid, professional fire fighters the opportunity to participate in a non-contributory, twenty-year retirement plan upon election by their employers.

- With the creation of Tier V in 2009, police officers and fire fighters hired after January 9, 2010 were placed into contributory twenty-year retirement plans, unless the police officers or

fire fighters had a collective bargaining agreement, which contained provisions to the contrary.

- This bill would permit employers to offer non-contributory, twenty-year retirement plans to those members working without a collective bargaining agreement when Tier V became effective and to Tier VI members. Upon moving from a contributory retirement plan to a non-contributory plan, any contributions made by a member will not be refunded.

- The Retirement Systems' actuary noted that there will be no past service costs associated with this bill and any costs will be borne by the employer that elects to offer the non-contributory, twenty-year retirement plan.

3. **A. 5057 / S. 4081 – Special Accidental Death Benefit COLA**

- Since 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 fire fighters killed in the line-of-duty. The intent of the original 1978 law was to increase benefits to an amount that would reflect the impact of inflation. The law, however, did not provide for any additional cost of living increases after July 1, 1979.

- Since 1979, the cost of living has increased well over 3% each year, including some periods of double-digit inflation, without any adjustment to the benefit. As a result, 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.

4. **A. 2185 / S. 3354 – Statewide Ambulance Bill**

- Under section 3008 of the Public Health Law, municipalities and/or fire districts acting on behalf of a municipality are granted a two-year presumption of need to operate an ambulance service. After two years of operation and the expiration of the presumptive certificate of need, an application must be filed with a regional emergency medical services council ("REMSCO") to obtain a permanent certificate of need prior to continue operation of a municipal ambulance service.

- Municipalities and/or fire districts currently find themselves at a distinct disadvantage when applying for a permanent certificate of need to continue the provision of ambulance services. Since they are applying to a REMSCO, which by statute is made up of not less than one-third industry representatives, municipal and/or fire district applications have met significant resistance.

- Given that many municipalities around the State have spent great time and expense in training municipal and/or fire district employees, obtaining the appropriate equipment necessary to provide the service, they should not be subject to the additional scrutiny of the REMSCOs upon application for permanent certification. Therefore, this legislation would eliminate the requirement to prove public need for municipalities or fire districts applying for their permanent certification of need, provided the Commissioner of the Department of Health determines that such service has met the appropriate training, staffing, and equipment standards and/or has not cause a detrimental impact on services in the surrounding regions.

NEW YORK CITY SPECIFIC LEGISLATIVE PROPOSALS IN SUPPORT

5. **A. 6046 / S. 4269 – NYFD Pension Equity Bill**

- In 2009, Governor Paterson vetoed a Tier II extension bill that was applicable to all Police and Fire members of the New York State and Local Police and Fire Retirement System as well as the New York City Police Pension Fund and New York City Fire Department Pension Fund. By statutory default, those persons who became members of the two City pension systems on or after July 1, 2009 were placed in Tier III.

- The Tier III pension plan is far inferior to the Tier II plan, previously in effect and the Tier V plan which was subsequently adopted for the New York State and Local Police and Fire Retirement System. The Tier III pension plan provides a modified service credit plan and significantly inferior disability benefits. Not only are the disability benefits lower in amount, there are no presumptive disabilities provided for such as the heart presumption, lung presumption and cancer presumption.

- This bill would address the inequities relating to service retirement benefits and disability retirement benefits for NYFD fire fighters and NYPD police officers, who are under Tier III, and place them on a similar status with New York City Police and Fire members who joined before July 1, 2009.

- Currently, a bill is before the New York City Council for a home rule message. Once obtained, then the legislation could be passed by the Houses and then signed into law.

6. **A. 4230 / S. 1473 – CUNY Tuition Bill**

- This bill would amend the Education Law to allow fire fighters and fire officers employed by the New York City Fire Department (NYFD), who are enrolled in programs leading to a baccalaureate or higher degrees, to attend two (2) courses course without tuition at a senior college of the City University System (CUNY).

- The two (2) courses must be related to the fire fighters' and fire officers' employment.

- Chapter 548 of the Laws of 2004 afforded New York City Police Department police officers to attend one (1) tuition-free course at a CUNY Senior College.[1] The original law was to expire on July 1, 2006; however, it has been extended until July 1, 2016.

- This bill would provide a similar benefit to the NYFD fire fighters and fire officers.

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[1] The sponsor's memorandum states that police officers under the current law are entitled to two (2) tuition-free courses. We have not been able to find a provision in the law to that effect. *See* Educ. Law § 6206(7)(c).

STATEWIDE LEGISLATIVE PROPOSALS OF INTEREST

7. **A. 4313-A – Military Service Credit for All Veterans**

- This bill would amend the New York State Retirement and Social Security Law ("RSSL") to extend the Military Service Credit Law to all veterans who honorably served in the United States Armed Forces.

- Currently, Military Service Credit Law under the RSSL (Chapter 548 of the Laws of 2000 and Chapter 547 of the Laws of 2002) authorizes up to three (3) years of service credit in the public retirement system for a public employee's honorable military service. Current law only allows credit to veterans in the following conflicts: World War II, Korea, Vietnam, Lebanon, Panama, Grenada, Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, and the Red Sea. Noticeably absent from the list are service in Afghanistan, among many others.

- This bill would amend Section 1000 of the RSSL by removing the specific periods of time restrictions and allowing veterans' honorable military service to count even when veterans served during a time of peace.

- Recognition of all veterans for service credit places members of the armed forces on an equal playing field without comparing the contributions of members based upon arbitrarily defined time periods and conflicts. Indeed, many service members have not participated in the aforementioned conflicts but have been in harms' way and sacrificed at great personal costs to defend our Country.

- Last legislative session, both Houses passed a similar bill only to be vetoed by the Governor without any explanation or reasoning.

8. **A. 640 – Creation of Office of Administrative Hearings**

- This bill seeks to create the Office of Administrative Hearings to provide a centralized hearing procedure across agencies related to administrative hearings. The intent of this model is to create greater transparency of an agency's findings and conclusions of law underlying its final decision and create a fairer process for a citizen seeking redress.

- New York State's agency-based administrative adjudication process is fragmented and, at the very least, gives the appearance of unfairness to those seeking relief from its processes. Each agency is vested with the responsibility of conducting administrative agencies concerning enforcement of the laws, rules, and regulations relevant to that agency and adjudicating claims against it. The use of agency employees to adjudicate claims infuses an institutional bias into the process and

allows the use of facts in the agency's files and institutional knowledge that are never made available to the affected person to inspect or controvert.

- Further, as in the case of Retirement System applications, where the hearing officer is not an employee but paid by the agency, many hearing officers are reluctant to find against the agency out of the fear that they will no longer be asked to serve as a hearing officer.

- This procedure would require the agency in need of a hearing to forward the request to the Office of Administrative Hearings, where after a fair and impartial hearing officer would be appointed to collect evidence, hear testimony, and provide a recommendation to the agency on factual findings and conclusions of law.

- The agency is required to provide a written exception to any finding or conclusion of law, which shall be made a part of the record.

- Similar bills have been introduced in the past and back in the late 1980s / early 1990s were vetoed three (3) times. The more recent bills have received little attention from either House.

9. **A. 488 – Limiting Participation of Private Organizations in the Retirement System**

- This bill seeks to limit the participation of certain public and quasi-public entities in the New York State Retirement System. This bill is aimed at cutting off new hires and existing employees from receiving prospective service credit.

- Years ago, certain private organizations were authorized to participate in the State's public retirement system. These entities include NYS Association of Counties, NYS School Boards Association, the Association of Town of the State of New York, and the NYS Conference of Mayors.

- In some cases, the officers and employees of these entities are registered lobbyists and have lobbied at points to reduce the costs of pensions for local governments, yet their participation in the program increases the costs borne by the taxpayers.

- It is time for these private organizations to be removed from participation in the Retirement System, and this bill would achieve that goal.

10. **S. 2236 – MRSA Disability**

- At present, police officers and fire fighters who suffer employment-related disabilities, such as tuberculosis, hepatitis, or HIV, are able to receive a three-quarters accidental disability benefit.

- This bill would extend the same accidental disability benefit to those police officers and fire fighters who contract methicillin resistant staphylococcus aureus (MRSA) by creating a presumption that the individual is disabled.

- Due to the increased exposure of police officers and fire fighters with individuals who have MRSA and to protect the families of those police officers and fire fighters who are so exposed, such a presumption of disability is warranted.

- This legislation would deem such exposure to be an accident and the member would be eligible for three-quarters of their final average salary.

- The Retirement System has determined the fiscal impact of this bill to be negligible.

11. **A. 5517 / S. 3950 – Creation of Amsterdam Firefighters' Benevolent Association**

- This bill would incorporate the "Amsterdam Firefighters' Benevolent Association" ("Association") and designate it as the proper recipient of the foreign fire insurance monies in the City of Amsterdam.

- Sections 9104 and 9105 of the Insurance Law, also known as the foreign fire insurance tax (2% money), impose certain taxes on out-of state insurance companies writing insurance policies against fire loss on properties located within the State, which is thereafter distributed to entities affording fire protection for a specific locality, such as, among others, the fire departments, fire districts, and, upon a special act of the Legislature, fire department benevolent associations.

- The City of Amsterdam's revised charter failed to address the distribution of the foreign fire insurance monies to the unincorporated association. This legislation would correct that omission and rightly distribute the foreign fire insurance monies directly to the Association.

- The ultimate purpose of this proposed act is to ensure that the distribution of the foreign fire insurance monies in the City of Amsterdam is consistent with the intent of the Insurance Law by having it go to the use and benefit of the fire fighters protecting the City and the overall promotion of the fire service.

12. **Study Bill – Security of Fire Fighters' and Fire Officers' Personal Information**

- The Uniformed Fire Officers Association is currently seeking sponsors for legislation that would keep fire officers' and fire fighters' personal information private when pension information is disseminated to the public.

- This bill is necessary as result of a recent Supreme Court of Kings County decision, *Hagan v. City of New York* (enclosed), rejecting a challenge to the disclosure of

retirees' pension information based upon a FOIL request. Specifically, the Court held that, even in the case of retired fire marshals and supervising fire marshals, who have acted as law enforcement officers during their career, the disclosure of their names, last employers, gross retirement benefit, years of service, retirement dates, and dates of membership in the retirement was not an unwarranted invasion of personal privacy and thus exempt from disclosure.

- However, the nature of fire officers' jobs includes enforcement of laws through the issuance of violations, summonses, arrests, and initiating the vacating of people from their homes. While the citizens of the State all have the right to know how their tax dollars are spent, it is a safety and security risk to have a name accompanying an amount when a simple internet search can reveal the address of these fire officers.

- To strike a balance, identification via a reference number, rank, and department is a sufficient means to satisfy the public's right to know, while protecting the safety and privacy of fire officers.

13. **Study Bill – Disbursement of Foreign Fire Tax (2%) Monies to NYSPFFA**

- A proposed bill (enclosed) seeks to redistribute the percentage of foreign fire tax (2%) monies pursuant to Section 9105 of the Insurance Law. Specifically, this bill would redistribute a portion of the 2% funds going to Firemen's Association of New York (FASNY)—the umbrella organization for volunteer fire fighters—to the NYSPFFA.

- Currently, Section 9105 of the Insurance Law distributes 10% of the total foreign fire tax monies collected by the State to FASNY. On the other hand, NYSPFFA, the umbrella organization for paid, professional fire fighters, does not receive any distribution of the foreign fire tax monies.

- NYSPFFA represents 104 locals containing over 18,000 paid fire fighters throughout the state. Its members cover approximately three quarters of the firefighting services rendered in the State when compared to the volunteer fire fighters.

- There is likely to be no consequence for FASNY. Since Section 9105 of the Insurance Law was enacted in 1988, there has been a likely increase in the number of foreign fire insurance policies being written and a corresponding increase in the amount of monies distributed to FASNY.

- This bill would still allocate 5% of the foreign fire tax monies to FASNY with the other 5% distributed to NYSPFFA. Importantly, such redistribution would not affect or change the amounts being distributed directly to the fire companies.

STATEWIDE LEGISLATIVE PROPOSALS OPPOSED

14. **A. 6722 / S. 4611 – Constitutional Amendment to Forfeit Public Pensions**

- In conjunction with the recent enactment of the Fiscal Year 2015-16 State Budget, the Legislature introduced a proposed constitutional amendment to Section 7 of Article V of the State Constitution authorizing the forfeiture of public officials' pension for a felony conviction related to public office. The proposed amendment passed the Senate and has been pending in the Assembly.

- Section 7 of Article V established the bedrock principle in this State over the last 75 years that a public employee's pension cannot be retroactively affected by the act of the Legislature, the Governor, or a public employer. The 1940 constitutional amendment was to protect a public employee's pension from becoming a bargaining chip in the legislative and political processes.

- The current political climate is forcing this amendment that would open public employees' pensions to being subjected to the whim of the Legislature.

- The proposed amendment's reliance on implementing legislation to define its scope usurps the power of the People and permits the expansion of Section 7 of Article V at the Legislature's fancy based upon the political pressures of the moment. Indeed, the FY 2015-16 State Budget amends Sections 156 and 157 of the Retirement and Social Security Law ("RSSL") to authorize the forfeiture of a public official's pension who is convicted for a felony related to public office regardless of their date of entry in the retirement system.

- Currently, RSSL §§ 156 and 157 only apply to the New York State Employees' Retirement System and the New York City Employees' Retirement System. However, with the constitutional amendment, the pensions under, among others, the New York State and Local Police and Fire Retirement System would be merely one bill away from the same forfeiture.

- The amendments to RSSL §§ 156 and 157 take effect the first of January following the approval and ratification of the proposed constitutional amendment to Section 7 of Article V of the New York State Constitution. Then, it applies to those offenses committed on or after such effective date.

15. **A. 2752 – Heightened Risk Requirement for General Municipal Law § 207-c**

- Similar to General Municipal Law (GML) § 207-a, Section 207-c provides disability benefits to police officers injured in the performance of their duties. Courts generally treat GML § 207-a and § 207-c benefits the same. Legislation that alters GML § 207-c benefits only opens the door to the Legislature, through the urging of municipalities under the guise of being fiscally distressed, to a similar amendment to GML § 207-a.

- Over the years, municipalities continuously attempt to narrow the scope of injuries in the "performance of duty" by reading into the statute a heightened risk requirement. However, the Court of Appeals made it clear in *Theroux v. Reilly*, 1 N.Y.3d 232 (2002) that the legislative intent of the statute was that there is no heightened risk of injury requirement and an applicant need only be injured in the performance of his or her duties. Further, this is the way in which the statute has been applied since its enactment in 1961 until the change by municipalities after 2000 that was the subject of *Theroux v. Reilly*.

- The proposed amendment would significantly alter these disability benefits to countless police officers injured in the line of duty to their detriment.

- This legislation is also technically deficient, as it does not define what "heightened risk" means and, as a result, would require costly litigation to parse it out. Meanwhile, deserving police officers injured in the line of duty and for the benefit of the public will have to endure the hardships of their disability without any financial support and find the financial means to challenge the municipality's determination.

16. **A. 3242 – Triborough Repeal**

- As in other years, this bill seeks to repeal the Triborough Amendment and represents an unprecedented assault on the Triborough Doctrine. This bills should not be enacted for the following reasons:

    - Prior to the 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.

    - Public employers had little incentive to negotiate new agreements prior to the 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 practices as "blatant and arbitrary action, completely contrary to the intent of the Taylor Law," noting that such action could provoke a strike.

- The bill is technically flawed as they do not provide an alternative method of treating the terms and conditions of expired contracts.

- The Public Employee Relations Board ("PERB") 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, this bill would grant broad authority to public employers to unilaterally change the terms and conditions of expired agreements in direct contradiction to PERB's determination.

17. **A.2206 – Limits Triborough Amendment Application to Six (6) Months**

- This bill seeks to significantly limit the Triborough Amendment's application by only permitting a collective bargaining agreement to be extended for up to six (6) months beyond the expiration date solely for negotiating a new agreement. During the six-month period, the agreement remains "as is" without any increase or decrease in payments.

- The same reasons for opposing the repeal of the Triborough Amendment stated above apply to this bill's proposal to only continue the terms of an expired agreement for up to six (6) months after its expiration without any increase or decrease of payments to the employees.

- This would remove the critical protections for public employees against abuses by public employers, which under the proposed amendment, could hold out for six (6) months and then lose any incentive to bargain in good faith. Further, without the increases in payments to the employees, the employers have every incentive to wait out the six-month period.

18. **A.6460 – Amends Triborough by Eliminating Longevity and Step Inereases**

- This bill would amend the Triborough Doctrine to eliminate the requirement for employers to continue to provide longevity increases, step increases, increases in vacation and personal time, or other like increases in wage and benefits after the expiration of a collective bargaining agreement.

- The same reasons for opposing the repeal of the Triborough Amendment stated above similarly apply to this bill.

- Additionally, the practical effect of limiting the continuation of only certain terms of a collective bargaining agreement would give the employer the same, significant leverage that they would have if the collective bargaining process was returned to a

pre-Triborough Amendment state. The loss of non-mandatory subjects of negotiation can have a substantial effect on an employee organization. These non-mandatory items required time, money, and previous concessions on mandatory subjects during past negotiations, and their loss upon expiration of the contract will need to be re-negotiated to the detriment of all items under the expired agreement.

- This amendment to the Triborough Doctrine would expose employee organizations to the same abuses by public employers to not bargain in good faith and wait for the expiration of the contract.

19. **A. 2802 – Amends Taylor Law Relating to Impasses**

- This bill seeks to amend Sections 209, 209-a, and 210 of the Civil Service Law ("Taylor Law") to avoid delays in the collective negotiation process by imposing a presumption of bad faith for all negotiations that have continued for longer than one (1) year from the expiration of the last collective bargaining agreement. In such cases, the New York State Public Employee Relations Board ("PERB") may take action as necessary and appropriate to intervene and begin impasse resolution procedures.

- This bill also expands the forfeiture process in the event of a strike. Under this legislation, any court or tribunal would be authorized to hear such issues and impose strike forfeitures. Further, in considering whether to impose strike forfeitures, the history of the negotiations between the public employer and the employee union must be considered in fixing such penalties.

- The same reasons for opposing the repeal of the Triborough Amendment stated above similarly apply to this bill.

- This bill would arbitrarily and unnecessarily interject a deadline into the bargaining process that would only tip the balance in favor of the public sector employers. The deadline would force public employee unions to choose between conceding terms to the public employer or endure the cost of going through the impasse procedures. Passage of this legislation would subject public employees to the same abuses that the Triborough Amendment seeks to prevent.

Enclosure (1)

Extension of Time to File Accidental Disability Retirement (Cancer)

STATE OF NEW YORK

2015 Legislative Session

AN ACT to amend the retirement and social security law, in relation to accidental disability retirement

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph 2 of subdivision a of section 363 of the retirement and social security law, as amended by chapter 489 of the laws of 2008, is amended to read as follows:

2. Actually in service upon which his membership is based. However, in a case where a member is discontinued from service subsequent to the accident, either voluntarily or involuntarily, and provided that the member meets the requirements of paragraph one of this subdivision, application may be made, either (a) by a vested member incapacitated as the result of a qualifying World Trade Center condition as defined in section two of this chapter at any time, or (b) not later than two years after the member is first discontinued from service. **Provided further that in the case of an application filed for accidental disability benefits pursuant to section three hundred sixty-three-d of this title, the requirements for filing for such benefits shall be five years.**

Section 2. This act shall take effect immediately and apply to all applications filed on or after January 1, 2014.

FISCAL NOTE # 2015-19--Pursuant to Legislative Law, Section 50:

This bill would extend the filing deadline from 2 years to 5 years for active and retired firefighters in the New York State and Local Police and Fire Retirement System to file an application for accidental disability retirement due to certain cancers.

If this bill is enacted, the cost would depend on the age, service, salary and plan of the affected firefighters, as well as whether such person would have otherwise been eligible for, or has been receiving an ordinary disability, a performance of duty disability or a service retirement.

For those who apply for this benefit subsequent to a service retirement, it is estimated that there would be an average per person cost of approximately 1.5 times final average salary. For those who apply subsequent to a performance of duty retirement, it is estimated that there would be an average per person cost of approximately 2 times final average salary. For those who apply subsequent to an ordinary disability retirement, it is estimated that there would be an average per person cost of approximately 4 times final average salary. The number of members and retirees who could be affected by this legislation cannot be readily determined. These costs would be borne by the State of New York and all the participating employers in the New York State and Local Police and Fire Retirement System.

For the one person known to be affected there will be a cost of approximately $218,000, assuming a February 1, 2016 payment date. The cost will be shared by the State of New York and all the participating employers in the New York State and Local Police and Fire Retirement System.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2014 actuarial valuation. Distributions and other statistics can be found in the 2014 Report of the Actuary and the 2014 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2010, 2011, 2012, 2013 and 2014 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2014 New York State and Local Retirement System Financial Statements and Supplementary Information.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This estimate, dated January 14, 2015, and intended for use only during the 2015 Legislative Session, is Fiscal Note No, 2015-19, prepared by the Actuary for the New York State and Local Police and Fire Retirement System.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION

submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER:

SPONSOR:

TITLE OF BILL:

An act to amend the retirement and social security law, in relation to accidental disability retirement.

PURPOSE:

To extend the filing deadline from 2 years to 5 years for firefighters in the New York State and Local Police and Fire Retirement System to file application for disability benefits due to certain cancers.

SUMMARY OF PROVISIONS:

Paragraph 2 of subdivision a of section 363 of the retirement and social security law is amended.

JUSTIFICATION:

The increased use of plastics and other chemical products, including flame-retardant materials, in the last several decades has resulted in a qualitative change in the nature of the compounds that firefighters are exposed to while fighting fires. A 2013 peer reviewed study entitled, "Persistent Organic Pollutants including polychlorinated and polybrominated dibenzo-p-dioxins and dibenzofurans in firefighters from Northern California," which was co-authored by, among others, two research scientists from the Wadsworth Center, New York State Department of Health, showed that firefighters had elevated concentrations of certain compounds produced by burning chemicals contained in flame-retardant materials when compared to the U.S. population. One of the study's conclusions was that the firefighters at fires and during cleanup suffer greater exposure to chemicals and their byproducts that pose a significant health risk.

Concurrently with the increased exposure to these toxic and carcinogenic compounds, reports of cancer for both active and retired firefighters continue to rise when compared to average adult population across the nation, including, but not limited to, mouth and throat cancer, intestinal and rectal cancer, colon, lung, prostate, and lymphatic cancer and excess total cancer and leukemia deaths. More and more published studies are linking the increased incidents of cancer among firefighters to the proliferation of synthetic chemicals, plastics, and other materials that produce harmful byproducts when burned at the scene of fires.

It is also evident that the resulting cancers from firefighters' exposure to these toxins and carcinogens are not immediately obvious or diagnosable. Many cancers can take years to develop or even to manifest any symptoms. Due to the routine and significant exposure to the harmful chemicals and their byproducts when burned, it is necessary to extend the filing period for

cancers experienced by firefighters from the present two-year-time period after normal retirement to a five-yea-time period to adequately address the disabilities that firefighters incur while fighting fires for in service to the public.

LEGISLATIVE HISTORY: 2014 Session: A.9541 / S.7176-A

FISCAL IMPLICATIONS: See fiscal note.

EFFECTIVE DATE:

This act shall take effect immediately and apply to all applications filed on or after January 1, 2014.

4853-0458-3201, v. 2

May __, 2015

RE: An act to amend the retirement and social security law, in relation to extending the filing deadline for active and retired firefighters to file for accidental disability retirement for certain injuries

MEMORANDUM IN SUPPORT

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages and towns across New York State, strongly supports enactment of this legislation which would extend the filing deadline from two (2) years to five (5) years for fire fighters in the New York State and Local Police and Fire Retirement System to file an application for disability benefits due to certain cancers.

With the last several decades, the use of plastic and other chemical compounds have resulted in qualitative changes in the nature of the compounds to which fire fighters are exposed in combatting fires. Reports have shown that fire fighters are diagnosed with cancer in greater frequency than the average adult population. Such increase is due to fire fighter's exposure to the increasing types and quantities of chemical carcinogens off-gassing from the burning of plastic and other chemical compounds.

A 2013 peer-reviewed study entitled, "Persistent Organic Pollutants including polychlorinated and polybrominated dibenzo-p-dioxins and dibenzofurans in fire fighters from Northern California," which was co-authored by, among others, two research scientists from the Wadsworth Center, New York State Department of Health, showed that fire fighters had elevated concentrations of certain compounds produced by burning chemicals contained in flame-retardant materials when compared to the U.S. population. One of the study's conclusions was that fire fighters at fires and during cleanup suffer greater exposure to chemicals and their byproducts, which pose a significant health risk; including, cancer.

The current law requires that a fire fighter file for disability benefits within two (2) years after his or her normal retirement. This short period of time is simply insufficient due to the time it can take for cancer to develop and/or materialize into diagnosable symptoms. In many cases, the cancer is not readily apparent and can takes years to develop and/or materialize into noticeable symptoms or a diagnosis.

Therefore, the proposed five (5) year period provided by this bill would afford fire fighters an greater opportunity to file for accidental disability benefits under Section 363-d of the Retirement and Social Security Law. Alternatively, without this extension, fire fighters who suffer from cancer from the performance of their duties will be unable to receive the benefits that they would otherwise be entitled to for reasons beyond their control.

Therefore, NYSPFFA strongly supports enactment of this legislation.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4844-6708-8163, v. 1

Enclosure (2)

S. 3010 – Optional 20-Year, Non-Contributory Retirement Plan for Tiers 5 & 6

S3010 YOUNG No Same as
ON FILE: 02/05/15 Retirement and Social Security Law
TITLE....Relates to benefits for participating employers in the New York state and local police and fire retirement system
02/02/15 REFERRED TO CIVIL SERVICE AND PENSIONS

STATE OF NEW YORK

3010

2015-2016 Regular Sessions

IN SENATE

February 2, 2015

Introduced by Sen. YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the retirement and social security law, in relation to creating an optional twenty year retirement plan for certain police officers and firefighters who are members of the New York state and local police and fire retirement system

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The retirement and social security law is amended by adding a new article 26 to read as follows:

ARTICLE 26

BENEFIT ENHANCEMENTS

Section 1400. Non-contributory basis.

1401. Collective bargaining.

1402. Past service costs.

§ 1400. Non-contributory basis. (a) Notwithstanding the provisions of this chapter or any other law to the contrary a participating employer in the New York state and local police and fire retirement system may elect to provide its employees who are members of the optional twenty year retirement plan for police and firefighters eligibility to participate on a non-contributory basis.

(b) No member who participates in this non-contributory retirement plan shall be entitled to a refund of previous contributions made to the contributory twenty year retirement plan.

§ 1401. Collective bargaining. A demand in collective bargaining negotiations for the additional benefit provided by section fourteen hundred of this article shall not be subject to the provisions of paragraph (b) or (c) of subdivision four of section two hundred nine of the civil service law, nor shall such demand be subject to any provision for interest arbitration contained in any local law, resolution or ordinance

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD08156-02-5

adopted by any governmental entity pursuant to subdivision one of section two hundred twelve of the civil service law.

§ 1402. Past service costs. Any participating employer that elects the additional benefits provided by this article may also elect to pay the past service cost associated with this benefit in ten annual installments.

§ 2. This act shall take effect immediately.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill will allow employers in the New York State and Local Police and Fire Retirement System which have elected to provide their employees with the benefits of the 20 year contributory retirement plan to elect to provide eligibility for their employees to participate on a non-contributory basis. Any member who participates on a non-contributory basis will not be entitled to a refund of previous member contributions.

If this bill is enacted, there will be an increase in the annual contributions of **electing employers** on behalf of their Tiers 3, 5 and 6 members. For the fiscal year ending March 31, 2016, the contribution increases, as a percentage of salary, will be 3.2% for tier 3 members, 3.5% for tier 5 384-d and 384-e, 6.7% for tier 6 384-d and 6.8% for 384-e. These costs will be borne by the employers which elect to provide this benefit.

There will not be a past service cost.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2014 actuarial valuation. Distributions and other statistics can be found in the 2014 Report of the Actuary and the 2014 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2010, 2011, 2012, 2013 and 2014 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2014 New York State and Local Retirement System Financial Statements and Supplementary Information.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the statement of actuarial opinion contained herein.

This estimate, dated December 12, 2014, and intended for use only during the 2015 Legislative Session, is Fiscal No. 2015-11, prepared by the Actuary for the New York State and Local Police and Fire Retirement System and the New York State and Local Employees' Retirement System.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S3010

SPONSOR: YOUNG

TITLE OF BILL: An act to amend the retirement and social security law, in relation to creating an optional twenty year retirement plan for certain police officers and firefighters who are members of the New York state and local police and fire retirement system

PURPOSE:

To permit all police officers and firefighters in NYS the opportunity to be treated equally pursuant to the benefits provided in the Retirement and Social Security Law.

SUMMARY OF PROVISIONS:

Amends the retirement and social security law by adding a new Article 26 to grant police officers and professional firefighters the opportunity to participate in a non-contributory twenty year retirement if their employer so elects.

JUSTIFICATION:

In 2009 the legislature passed a new Tier V pension bill for police officers and firefighters hired after January 2010 into the Tier V plan. Those police officers and firefighters hired on or after the effective date of Tier V (January 9, 2010) were placed in a contributory twenty-year retirement plan unless they were subject to a collective bargaining agreement that provided to the contrary. This same protection was not afforded police officers and firefighters working without a collective bargaining agreement.

This bill would afford the same opportunities to such police officers and professional, paid firefighters as those working pursuant to a collective bargaining agreement at the time of the enactment of Tier V. In addition, this bill would allow any participating employer, in the future, to provide a non-contributory twenty year retirement notwith-standing the provisions of Tier V or Tier VI. It should, however, be noted that this additional benefit is not to be considered a mandatory subject of bargaining pursuant to the Taylor Law.

LEGISLATIVE HISTORY:

2014:S.7717- Referred to Civil Service & Pensions Committee

FISCAL IMPLICATIONS:

See fiscal note.

EFFECTIVE DATE:
This act shall take effect immediately.

May __, 2015

RE: An act to amend the retirement and social security law, to creating an optional twenty-year retirement plan for certain police officers and firefighters who are members of the New York State and local police and fire retirement system

S. 3010 (Young)

MEMORANDUM IN SUPPORT

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages, and towns across New York State, strongly supports enactment of this legislation that would amend the New York State Retirement and Social Security Law ("RSSL") to correct an anomaly created by legislation involving the ability of New York State and Local Police and Fire Retirement System (hereinafter the " Retirement System") Tier V and Tier VI members to enroll in an optional non-contributory, twenty-year retirement plan.

This bill adds a new Article 26 of the RSSL to permit employers to elect an optional twenty-year retirement plan for police and fire fighters to participate on a non-contributory basis.

With the creation of Tier V in 2009, police officers and fire fighters who became members of the Retirement System were placed into contributory twenty-year retirement plans, unless the police officers or fire fighters had a collective bargaining agreement, which contained provisions to the contrary. Similar protections were not afforded to fire fighters working without a current collective bargaining agreement.

This legislation would afford the same opportunities to the police officers and fire fighters who were not working with a collective bargaining agreement at the time Tier V was enacted.

This legislation would similarly allow employers the option to extend this non-contributory, twenty-year retirement plan to police officers and fire fighters who are Tier VI members. However, the option of an employer to offer this optional plan to Tier V and VI members is not considered a mandatory subject of bargaining pursuant to the Taylor Law.

As noted by the Retirement System's actuary, there would be no past service cost and the costs of the non-contribution retirement plan would be borne by the employers that have elected to provide the benefit to their police officer and/or fire fighters.

Therefore, NYSPFFA strongly supports the enactment of this legislation.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4846-7668-6369, v. 1

Enclosure (3)

A. 5057 / S. 4081 – Special Accidental Death Benefit COLA

S 4081 GOLDEN Same as A 5057 Markey
ON FILE: 02/27/15 General Municipal Law
TITLE....Increases certain special accidental death benefits
02/26/15REFERRED TO LOCAL GOVERNMENT

A5057 Markey Same as S 4081 GOLDEN
General Municipal Law
TITLE....Increases certain special accidental death benefits
02/11/15 referred to governmental employees

STATE OF NEW YORK

4081

2015-2016 Regular Sessions

IN SENATE

February 26, 2015

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law and the retirement and social security law, in relation to increasing certain special accidental death benefits

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision c of section 208-f of the general municipal law, as amended by chapter 104 of the laws of 2014, is amended to read as follows:

c. Commencing July first, two thousand [~~fourteen~~] fifteen the special accidental death benefit paid to a widow or widower or the deceased member's children under the age of eighteen or, if a student, under the age of twenty-three, if the widow or widower has died, shall be escalated by adding thereto an additional percentage of the salary of the deceased member (as increased pursuant to subdivision b of this section) in accordance with the following schedule:

calendar year of death of the deceased member	per centum
1977 or prior	[~~198.5%~~] 207.5%
1978	[~~189.8%~~] 198.5%
1979	[~~181.4%~~] 189.8%
1980	[~~173.2%~~] 181.4%
1981	[~~165.2%~~] 173.2%
1982	[~~157.5%~~] 165.2%
1983	[~~150.0%~~] 157.5%
1984	[~~142.7%~~] 150.0%
1985	[~~135.7%~~] 142.7%
1986	[~~128.8%~~] 135.7%
1987	[~~122.1%~~] 128.8%
1988	[~~115.7%~~] 122.1%

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD07688-02-5

1989	[~~109.4%~~] 115.7%
1990	[~~103.3%~~] 109.4%
1991	[~~97.4%~~] 103.3%
1992	[~~91.6%~~] 97.4%
1993	[~~86.0%~~] 91.6%
1994	[~~80.6%~~] 86.0%
1995	[~~75.4%~~] 80.6%
1996	[~~70.2%~~] 75.4%
1997	[~~65.3%~~] 70.2%
1998	[~~60.5%~~] 65.3%
1999	[~~55.8%~~] 60.5%
2000	[~~51.3%~~] 55.8%
2001	[~~46.9%~~] 51.3%
2002	[~~42.6%~~] 46.9%
2003	[~~38.4%~~] 42.6%
2004	[~~34.4%~~] 38.4%
2005	[~~30.5%~~] 34.4%
2006	[~~26.7%~~] 30.5%
2007	[~~23.0%~~] 26.7%
2008	[~~19.4%~~] 23.0%
2009	[~~15.9%~~] 19.4%
2010	[~~12.6%~~] 15.9%
2011	[~~9.3%~~] 12.6%
2012	[~~6.1%~~] 9.3%
2013	[~~3.0%~~] 6.1%
2014	[~~0.0%~~] 3.0%
2015	0.0%

§ 2. Subdivision c of section 361-a of the retirement and social security law, as amended by chapter 104 of the laws of 2014, is amended to read as follows:

c. Commencing July first, two thousand [~~fourteen~~] fifteen the special accidental death benefit paid to a widow or widower or the deceased member's children under the age of eighteen or, if a student, under the age of twenty-three, if the widow or widower has died, shall be escalated by adding thereto an additional percentage of the salary of the deceased member, as increased pursuant to subdivision b of this section, in accordance with the following schedule:

calendar year of death of the deceased member	per centum
1977 or prior	[~~198.5%~~] 207.5%
1978	[~~189.8%~~] 198.5%
1979	[~~181.4%~~] 189.8%
1980	[~~173.2%~~] 181.4%
1981	[~~165.2%~~] 173.2%
1982	[~~157.5%~~] 165.2%
1983	[~~150.0%~~] 157.5%
1984	[~~142.7%~~] 150.0%
1985	[~~135.7%~~] 142.7%
1986	[~~128.8%~~] 135.7%
1987	[~~122.1%~~] 128.8%
1988	[~~115.7%~~] 122.1%
1989	[~~109.4%~~] 115.7%
1990	[~~103.3%~~] 109.4%
1991	[~~97.4%~~] 103.3%
1992	[~~91.6%~~] 97.4%
1993	[~~86.0%~~] 91.6%

1994	[~~80.6%~~] 86.0%
1995	[~~75.4%~~] 80.6%
1996	[~~70.2%~~] 75.4%
1997	[~~65.3%~~] 70.2%
1998	[~~60.5%~~] 65.3%
1999	[~~55.8%~~] 60.5%
2000	[~~51.3%~~] 55.8%
2001	[~~46.9%~~] 51.3%
2002	[~~42.6%~~] 46.9%
2003	[~~38.4%~~] 42.6%
2004	[~~34.4%~~] 38.4%
2005	[~~30.5%~~] 34.4%
2006	[~~26.7%~~] 30.5%
2007	[~~23.0%~~] 26.7%
2008	[~~19.4%~~] 23.0%
2009	[~~15.9%~~] 19.4%
2010	[~~12.6%~~] 15.9%
2011	[~~9.3%~~] 12.6%
2012	[~~6.1%~~] 9.3%
2013	[~~3.0%~~] 6.1%
2014	[~~0.0%~~] 3.0%
2015	0.0%

§ 3. This act shall take effect July 1, 2015.

FISCAL NOTE -- Pursuant to Legislative Law, Section 50:

This bill would amend both the General Municipal Law and the Retirement and Social Security Law to increase the salary used in the computation of the special accidental death benefit by 3% in cases where the date of death was before 2015.

Insofar as this bill would amend the Retirement and Social Security Law, it is estimated that there would be an additional annual cost of approximately $451,000 above the approximately $10.2 million current annual cost of this benefit. This cost would be shared by the State of New York and all participating employers of the New York State and Local Police and Fire Retirement System.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2014 actuarial valuation. Distributions and other statistics can be found in the 2014 Report of the Actuary and the 2014 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2010, 2011, 2012, 2013 and 2014 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2014 New York State and Local Retirement System Financial Statements and Supplementary Information.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This estimate, dated January 15, 2015 and intended for use only during the 2015 Legislative Session, is Fiscal Note No. 2015-35, prepared by the Actuary for the New York State and Local Police and Fire Retirement System.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S4081

SPONSOR: GOLDEN

TITLE OF BILL:

An act to amend the general municipal law and the retirement and social security law, in relation to increasing certain special accidental death benefits

PURPOSE OR GENERAL IDEA OF BILL:

This legislation extends the escalation of a cost of living increase of approximately 3% for all line-of-duty widows or widowers for fiscal year 2015-16.

SUMMARY OF PROVISIONS:

This bill amends subdivision c of section 208-f of the General Municipal Law as amended by Chapter 104 of the Laws of 2013 and subdivision c of section 361-a of the Retirement and Social Security Law, as amended by Chapter 104 of the Laws of 2014.

JUSTIFICATION:

Since 1978, 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. 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 that date, 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.

As with previous legislation, there is no cost to the localities, as the state would reimburse them for this small increase.

PRIOR LEGISLATIVE HISTORY:

2006 -- A10334/S6744 Chapter 88
2007 - A5658/2492 Chapter 39
2008 - A9666/S6733 Chapter 76
2009 - A4905/S2343 Chapter 305
2010 - A9914/S6879 Chapter 439
2011 - A6068/S3994 Chapter 161
2012 - A9116/S6438A Chapter 285
2013 - A5576-B/S4257-B Chapter 196
2014 - A8484-A/S6467-A Chapter 104

FISCAL IMPLICATIONS:

See Fiscal Notes

EFFECTIVE DATE:
This act shall take effect July 1, 2015.

May _, 2015

RE: An act to amend the general municipal law and the retirement and social security law, in relation to increasing certain special accidental death benefits

A. 5057 (Markey)
S. 4081 (Golden)

MEMORANDUM IN SUPPORT

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages and towns across New York State, strongly supports enactment of this legislation that would increase certain special accidental death benefits to account for a cost of living increase for all widows and widowers of firefighters killed in the line-of-duty.

Since 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 take into account the impact of inflation; however, the law failed to provide for annual cost of living increases past July 1, 1979. Meanwhile, the cost of living has increased well over 3% each year, including some periods of double-digit inflation.

Without legislation increasing the special accident death benefit to account for the increase in the cost-of-living, these widows and widowers will not receive the benefits originally envisioned by the Legislature, thereby creating an undue and unnecessary hardship on them. This legislation will provide, at least, some 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 the small increase in cost.

Therefore, the NYSPFFA strongly supports both the enactment of this legislation.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Firefighters Association

4835-4257-1811, v. 1

Enclosure (4)

A. 2185 / S. 3354 – Statewide Ambulance Bill

S 3354 LITTLE Same as A 2185 Gottfried
ON FILE: 02/09/15 Public Health Law
TITLE....Relates to applications for determinations of public need
02/05/15 REFERRED TO HEALTH

A2185 Gottfried Same as S 3354 LITTLE
Public Health Law
TITLE....Relates to applications for determinations of public need
01/15/15 referred to health
02/26/15 reported
02/26/15 advanced to third reading cal.43

STATE OF NEW YORK

3354

2015-2016 Regular Sessions

IN SENATE

February 5, 2015

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to applications for determination of public need

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (b) of subdivision 7 of section 3008 of the public health law, as amended by chapter 464 of the laws of 2012, is amended to read as follows:

(b) [~~In the case of an application for certification pursuant to this subdivision, for a municipal advanced life support or municipal ambulance service, to serve the area within the municipality, where the proposed service meets or exceeds the appropriate training, staffing and equipment standards, there shall be a strong presumption in favor of approving the application.~~] Notwithstanding any other provision of this article, any [~~city with a population of fourteen thousand seven hundred or sixty-two thousand two hundred thirty-five, according to the two thousand ten federal decennial census~~] **municipality within this state**, or fire district acting on behalf of any such [~~city~~] **municipality**, [~~that~~] **which** applies for permanent certification pursuant to this [~~section~~] **subdivision** at the conclusion of the two year period [~~provided in~~] **contained in paragraph (a) of** this subdivision, shall not be required to apply to its regional emergency medical services council [~~or the state emergency medical services council~~] for a determination of need, and the application shall be submitted to and approved by the commissioner unless the commissioner finds that the municipal advanced life support first responder service or municipal ambulance service has failed to meet the appropriate training, staffing and equipment standards **and/or the commissioner determines that the municipal advanced life support first responder service or municipal ambulance service has caused a detrimental impact on services in the surrounding region**.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD06552-01-5

§ 2. This act shall take effect immediately and shall apply to any

municipality or fire district that has a temporary determination of public need and to any application made by a municipality or fire district that is currently in the administrative appellate process or on appeal before any court of competent jurisdiction.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S3354

SPONSOR: LITTLE

TITLE OF BILL:

An act to amend the public health law, in relation to applications for determination of public need

PURPOSE:

To clarify the right of a municipality or a fire district to establish an advanced life support first response service or municipal ambulance service within the municipality or fire district when it meets Health Department training, staffing, and equipment standards

SUMMARY OF PROVISIONS:

Subdivision 7 (b) of Section 3008 of the Public Health Law is amended by removing the requirement that a municipality or fire district apply to the regional emergency medical services council for permanent operating authority at the conclusion of its initial two-year period. Requires the Commissioner of Health to approve the application for permanent operating authority if the service meets applicable training, staffing and equipment standards, unless the municipality or fire district has caused a detrimental impact on services in the surrounding region.

EXISTING LAW:

Currently, Public Health Law § 3008 grants municipalities or fire districts acting on behalf of municipalities a two-year presumption of need for advanced life support first response services or municipal ambulance services. After two years, an application must be filed with a regional council for determination of need prior to continued operation of the service.

JUSTIFICATION:

Like police and fire service, emergency medical service is a basic public service that a municipality should be entitled to provide.

Despite amendments to § 3008, municipalities are still at a distinct disadvantage when applying for a certificate of need to continue the provision of ambulance services, as evidenced by the 2012 City of Utica and Glens Falls legislation. Municipalities or fire districts seeking to continue established operations must apply to their Regional Emergence

Medical Services Council (REMSCO), which by statute includes at least one-third representatives of private ambulance services that may have a business interest in preventing competition. Pursuant to the REMSCO process and the definition of public need contained in the Bureau of EMS Policy 06-06, any entity, private or otherwise, can challenge the application for continued operation of the municipality or fire district based on public need through a simple statement that such challenging entity is ready, willing, and able to take over the municipality or fire district's current territory.

Given that many municipalities have spent great time and expense in training municipal employees in advanced life support and have the appropriate equipment and staffing necessary to provide services in

compliance with DOH safety requirements, they should not be subject to additional scrutiny by private providers through the REMSCO process.

The operation of ambulance services has proven to provide an invaluable benefit to municipalities. Municipal ambulance services have shown to provide faster response times by virtue of their knowledge of the communities and the fact that they are already responding to emergency calls.

Additionally, when the municipality is providing both treatment and transportation, the responders provide a continuity of care as opposed to waiting for another provider to arrive on scene before transporting the patient to a treatment facility. This continuity results in more efficient patient care and limits the need to hand off patients to another provider. For instance, the City of Saratoga Springs has operated its municipal ambulance service since 2012 and reported an 18-month average response time half that of other ambulance providers in the same area.

The bill explicitly provides that the Commissioner shall not grant the municipal or district service authority to operate permanently if it "has caused a detrimental impact on services in the surrounding region". Therefore, there should be no concern for existing providers that the removal of the RESMCO from the application process will undermine existing services. This same argument was made by the opponents to the 1992, 1997, and 2012 amendments of § 3008 and was not borne out by experience.

LEGISLATIVE HISTORY:

2014: A9852 - passed Assembly Health, died in Assembly Rules

FISCAL IMPLICATIONS:

None.

FISCAL IMPLICATIONS:

Potential generation of revenue to offset first responder services.

EFFECTIVE DATE:
This act shall take effect immediately and shall apply to any municipality or fire district that has a temporary determination of public need, any application made by a municipality or fire district for a permanent operating certificate that is currently in the administrative appellate process or judicial review.

New York State Professional Fire Fighters Association, Inc.
174 Washington Avenue, Albany, NY 12210
Phone: 518-436-8827 • 1-800-238-8827 • Fax: 518-436-8830
E Mail: profire@nyspffa.org
www.nyspffa.org

February 11, 2015

RE: An act to amend the public health law, in relation to applications for determinations of public need.

A. 2185 (Gottfried)
S. 3354 (Little)

MEMORANDUM IN SUPPORT

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages, and towns across New York State, strongly supports enactment of this legislation, which would eliminate the requirement to prove public need for municipalities or fire districts applying for their permanent certification of need to operate a municipal advanced life support and ambulance services provided that the Commissioner of the Department of Health determines that such service has met the appropriate training, staffing, and equipment standards and/or has not caused a detrimental impact on services in the surrounding region.

Overview

Since the inception of Article 30, the Legislature has amended its provisions related to a municipality's or fire district's demonstration of public need to ensure the establishment and continued operation of municipal advanced life support and ambulance services ("Ambulance Service"). This bill represents the logical progression of Article 30, removing the limited presumption of public need for municipalities and fire districts in favor of a permanent presumption with certain restrictions.

As outlined in the foregoing, this bill is necessary to protect the establishment and continued provision Ambulance Services, preserve municipal home rule, ensure the fastest response times to emergent situations, ensure a permanent source of municipal revenue to offset the cost of professional first responders, and prevent unnecessary tax increases.

Background

Pursuant to Article 30 of the Public Health Law, before an operating certificate for ambulance service can be issued, the applicant must show "public need." Such need is determined by Regional Emergency Medical Services Councils (REMSCOs).

Since 1997, municipalities and fire districts seeking to an Ambulance Service have been granted an automatic two-year presumption of public need.

Unfortunately, after expending significant resources to establish such service, at the expiration of the automatic two-year period, municipalities and fire districts must apply to their respective REMSCO and prove public need in order to continue operation.

Since its inception, neither Article 30 nor any regulations promulgated by the Department of Health ("DOH") or the State Emergency Medical Services Council ("SEMSCO") contain a definition of "public need." Instead, DOH's Bureau of Emergency Medical Services ("Bureau") defined "public need" in a "policy statement" in or about 1993 and subsequently in the Bureau's Policy Statement 06-06. The policy statement defines "public need" as:

> The demonstrated absence, reduced availability, or an inadequate level of care in ambulance or emergency medical services available to a geographical area which is not correctable through the reallocation or improvement of the existing resource.

Legislative History of Article 30

The demonstration of public need required by Article 30 prior to 1993 proved to be a significant hurdle for municipalities and fire districts that sought to establish an Ambulance Service for their respective citizens. As a result, in 1992, the Legislature amended Section 3008 of the Public Health Law to add a new subdivision (6). L. 1992, ch. 850. The new subdivision promulgated a presumption in favor of granting a municipality or fire district's application for a certificate of public need.

However, after the issuance of the Bureau's definition of public need outlined above, municipalities and fire districts continued to experience difficulty demonstrating public need through the REMSCO process.

Citing these continued difficulties, in 1997 the Legislature responded in a stronger fashion to aid municipalities. Specifically, through the enactment of subdivision (7) to Section 3008 of the Public Health Law municipalities were afforded an automatic two-year certificate of need and a strong presumption in favor of a subsequent permanent application.

The amendment to Section 3008 adding subdivision (7) provided as follows:

> 7(a) Notwithstanding any other provision of law and subject to the provisions of this article, any municipality within this state, or fire district acting on behalf of

such municipality, and acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws, ordinances or resolutions to establish and operate advanced life support first responder services or municipal ambulance services within the municipality, upon meeting or exceeding all standards set by the department for appropriate training, staffing and equipment, and upon filing with the New York state emergency medical services council, a written request for such authorization. Upon such filing, such municipal advanced life support first responder service or municipal ambulance service shall be deemed to have satisfied any and all requirements for determination of public need for the establishment of additional emergency medical services pursuant to this article for a period of two years following the date of such filing. Nothing in this article shall be deemed to exclude the municipal advanced life support first responder service or municipal ambulance service authorized to be established and operated pursuant to this article from complying with any other requirement or provision of this article or any other applicable provision of law.

(b) In the case of an application for certification pursuant to this subdivision for a municipal advanced life support or municipal ambulance service to serve the area within the municipality where the proposed service meets or exceeds the appropriate training, staffing and equipment standards, there shall be a strong presumption in favor of approving the application.

L. 1997, ch. 510.

The purpose of this new provision was set forth in the Sponsor's August 14, 1997 letter to then Governor George E. Pataki's counsel, which stated:

> Municipalities currently find themselves at a distinct disadvantage when applying for a certificate of need to provide advanced life support first response service. Since they are applying to a regional council, which by statute is made up of not less than two-thirds industry representatives, it is difficult to prove that the current service is inadequate.

Letter of Senator Guy J. Velella.

In addition, justification for this bill contained in the Sponsor's Memorandum expanded the Legislative intent beyond REMSCO issues to include municipal expense and cost effectiveness, stating:

> Municipalities currently find themselves at a distinct disadvantage when applying for a certificate of need to provide advanced life support first responder service. Since they are applying to a regional council, which by statute is made up of not less than two-thirds industry representatives, it is difficult to prove that the current service is inadequate. In most cases the service may be adequate yet not be cost effeetive. Cost effectiveness is not a criteria for the regional council in their decision to grant or deny a certificate.

> Given that many municipalities around the state have spent great time and expense in training municipal employees in advanced life support and because they may also possess the appropriate equipment and staffing they should not be subject to the additional scrutiny of the regional council.
>
> When a municipality wishes to provide a service to its citizens we should not promote the policy of deterring them. This legislation simply gives a municipality that option to provide a service as opposed to contracting that service out.

A further examination of the Legislative Bill Jacket for L. 1997, ch. 510 clearly affirms the Legislative intent of the 1992 and 1997 amendments in the form of memoranda to then Counsel to the Governor, Michael C. Finnegan, provided by myriad stakeholders including, but not limited to the NYSPFFA, the New York State Department of State, and even the then-Commissioner of DOH (*see* Legislative Bill Jacket L. 1997, ch. 510).

The following are excerpts of such memoranda:

First, the NYSPFFA stated:

> Local government will now be allowed to determine how it wants to deliver EMS service to its citizens.
>
> The prior procedure for obtaining a certificate of need was both unfair and unrealistic for local government. You have corrected this situation by allowing local government the ability to determine how it wants to function.

(Letter dated September 9, 1997 from NYSPFFA to Hon. George Pataki).

Second, in its recommendation the New York State Department of State, Office of Fire Prevention and Control and provided the following:

> The Office of Fire Prevention and Control at the Department of State is concerned with legislation affecting emergency medical services, because these services are frequently an adjunct function of fire services. Currently, it is necessary for municipalities and fire districts to apply to a regional council for a determination of public need prior to operating a first response advanced life support service or municipal ambulance service.
>
> Because this bill removes this requirement, which has been burdensome and time consuming, delivery of crucial services to the public will be facilitated and expedited.

(Memorandum of the State of New York Department of State, dated August 18, 1997).

Most importantly, then-DOH Commissioner Barbara A. DeBuono, M.D., M.P.H. stated:

> Many municipalities around the state have spent time and expense in training municipal employees in advanced life support and have the appropriate equipment and staffing necessary to provide this service. This bill empowers local municipal officials to make fundamental decisions regarding how to meet the health and safety needs of their citizens.

(Memorandum of State of New York Department of Health, dated August 18, 1997).

In light of the foregoing, it is clear that the Legislative intent of the amendments made to Article 30 in 1992 and 1997 produced at least four (4) core principles. First, municipalities may establish an Ambulance Service through a statutory presumption of public need regardless of the DOH Policy Statement defining public need.

Second, municipalities must be shielded from the REMSCO process with regard to the demonstration of public need due in part to the composition of the regional councils.

Third, given that municipalities across the state have spent great time and expense in training municipal employees, acquiring the appropriate equipment and to hire necessary personnel, they should not be subject to the additional scrutiny of a regional council and challenges from the private sector when seeking permanent certification.

Fourth, as stated by the then Commissioner of the DOH, subdivision (7) of Section 3008 sought to empower local municipal officials to make fundamental decisions regarding how to meet the health and safety needs of their citizens.

Unfortunately, even after the 1997 amendment of Section 3008, which added the strong presumption in favor of granting a municipality a permanent certificate of need at the conclusion of its two-year period of operation, several municipalities that provided faithful and high-quality ambulance services to their respective localities were again impeded by the REMSCO process. The City of Utica spent seven (7) years in the administrative and judicial appeals process resulting in significant legal expense fighting to keep its Ambulance Service. In fact, the denial of their application was set to be heard by the Court of Appeals before the Legislature stepped in and amended Section 3008 during the 2012 Legislative Session to correct the inherent unfairness that the REMSCO process imposed on the City of Utica. The 2012 amendment of Section 3008 authorized the City of Utica to apply for a permanent operating certificate directly to the Commissioner of Health, thereby circumventing the REMSCO process.

The City of Utica was not the only municipality affected. This process also proved difficult for the City of Glens Falls, which applied for its permanent certificate of need in 2011. While the City of Glens Falls received a favorable ruling from its REMSCO, an interested private ambulance company simply sent in a letter of appeal which threatened to start Glens Falls on the same administrative and judicial appeals path suffered by the City of Utica. Thankfully, the Legislature, again citing the difficulties that municipalities face in the REMSCO process, included the City of Glens Falls in the 2012 amendment of Section 3008.

Justification for Permanent Presumption of Public Need

Despite the amendments to Section 3008, other municipalities and fire districts still find themselves at a distinct disadvantage when applying for a certificate of need to continue the provision of Ambulance Services, as evidenced by the 2012 City of Utica and Glens Falls legislation. Specifically, municipalities or fire districts seeking to continue established operations must apply to their REMSCO, which by statute is made up of not less than one-third private industry representatives. Pursuant to the REMSCO process and the definition of public need contained in the Bureau's Policy 06-06, any entity, private or otherwise, can challenge the application for continued operation of the municipality or fire district based on public need through a simple statement that such challenging entity is ready, willing, and able to take over the municipality or fire district's current territory.

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 services in compliance with DOH safety requirements, they should not be subject to the additional scrutiny of their requisite REMSCO and challenges from the private sector.

The operation of Ambulance Services has proven to provide an invaluable benefit to municipalities. Indeed, municipal Ambulance Services have shown to provide faster response times by virtue of their knowledge of the communities and by the mere fact that they are already responding to emergency calls. Nor should it be discounted that firefighters are generally members and residents of the communities they serve.

Additionally, when the municipality is providing both treatment and transportation, the responders provide a continuity of care as opposed to waiting for another provider to arrive on scene before transporting the patient to a treatment facility. This continuity results in more efficient patient care, limits the need to hand off patients to another provider, and ultimately saves lives.

Opponents of this proposed legislation have argued that municipal Ambulance Services can potentially have a detrimental impact on services to surrounding areas. While we disagree with this assertion, this legislation specifically provides that if such detrimental impact occurs, the Commissioner will have the authority to deny a permanent certificate of need for such municipality.

Despite the recognized achievements by these municipalities in providing Ambulance Services through their firefighters, the opposition is likely to argue that the removal of the RESMCOs from the application process will prevent the private sector from providing adequate services, leading to the loss or reluctance of the private sector to establish ambulance services in certain regions. This same argument was made by the opponents to the 1992, 1997, and 2012 amendments of Section 3008. Yet, they have not shown any adverse effect that has prevented the private industry from similarly providing services in these areas.

To the contrary, municipalities and the private entities are collectively operating in areas throughout the State for the health and safety of the citizenry.

Furthermore, municipal Ambulance Services have proven to be cost effective for the areas served. Not only does such operation help offset the costs of the brave first responders employed by municipalities and fire districts, but it has resulted in the additional benefit of preventing tax increases above the recently enacted tax cap.

For instance, the City of Saratoga Springs has operated its municipal Ambulance Service since 2012 and reported an 18-month average response time half that of other ambulance providers in the same area. The City of Saratoga Springs also reported revenues totaling $222,940.90 for 2012 and $119,103.86 for the first seven (7) months of 2013, after deducting costs associated with additional firefighters including salary, overtime, health insurance, and pension benefits.

Indeed, the City of Utica reported municipal revenues equaling $1,774,705 for 2010 through the end of 2011 and the City of Glens Falls reported $679,724 for the same period. The revenue generated by the City of Utica saved its taxpayers a 5% tax increase.

Therefore, NYSPFFA strongly supports the enactment of this legislation.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4818-4845-5713, v. 2

Association of Fire Districts of the State of New York, Inc.

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February 25th, 2015

Re: An act to amend the Public Health Law,
in relation to applications for determinations of public need.

A 2185 (Gottfried)
S 3354 (Little)

MEMORANDUM IN SUPPORT

Submitted upon on behalf of the Association of Fire Districts of the State of New York, Inc.,

The Association of Fire Districts of the State of New York, Inc. is a not-for-profit corporation representing approximately 850 Fire Districts and 4,250 Fire District Commissioners whose Fire Departments and EMS Service provides volunteer fire protection and EMS service for the vast geographic majority of the State of New York. The Association strongly supports enactment of this legislation which would eliminate the requirement to prove public need for municipalities or fire districts applying for the permanent certification of need to operate a municipal advance life support and ambulance service provided that the Commissioner of the Department of Health determines that such service has met the appropriate training, staffing and equipment standards and/or has not caused a detrimental impact on services in the surrounding region.

With the exception of the cities of the State, Fire Districts overwhelmingly provides fire protection and EMS service to the residents of the State of New York.

Since the inception of Article 30, the Legislature has amended its provisions related to a municipality's or fire district's demonstration of public need to ensure the establishment and continued operation of municipal advance life support and ambulance services (Ambulance Service).

This bill represents the logical progression of Article 30 removing the limited presumption of public need for municipalities and fire districts in favor of a permanent presumption with certain restrictions.

Many fire districts around the State of New York have spent great time and expense in training its volunteer service and in some instances paid employees in advance life support and have the appropriate equipment and staffing necessary to provide services in compliance with the DOH safety requirements. They should not be subject to the additional periodic scrutiny by regional emergency medical services counsels.

This bill will explicitly provide that the Commissioner of Health shall not grant the municipal or fire district service authority to operate permanently if it "has caused a detrimental impact on services in the surrounding region". The operation of ambulance services has proven to provide an invaluable benefit to municipalities. Municipal ambulance services have been shown to provide faster response times by virtue of their knowledge of the communities and the fact that they are already responding to emergency calls.

The Association of Fire Districts strongly endorses the passage of this bill.

Respectfully submitted,
ASSOCIATION OF FIRE DISTRICTS
OF THE STATE OF NEW YORK

BY: _____
WILLIAM N. YOUNG, JR., COUNSEL

WNY/rb

Enclosure (5)

A. 6046 / S. 4269 – NYFD Pension Equity Bill

A 6046 Abbate Same as S 4269 GOLDEN
New York City Administrative Code
TITLE....Relates to the disability benefits of members of the New York police and fire pension funds
03/11/15referred to governmental employees

S4269 GOLDEN Same as A 6046 Abbate
ON FILE: 03/12/15 New York City Administrative Code
TITLE....Relates to the disability benefits of members of the New York police and fire pension funds
03/11/15 REFERRED TO CITIES

STATE OF NEW YORK

6046

2015-2016 Regular Sessions

IN ASSEMBLY

March 11, 2015

Introduced by M. of A. ABBATE -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the administrative code of the city of New York, the retirement and social security law, and the general municipal law, in relation to the disability benefits of members of the New York city police and fire pension funds

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions a and b of section 13-357 of the administrative code of the city of New York, subdivision a as amended by chapter 438 of the laws of 1986, are amended to read as follows:

a. Once each year the board may, and upon his or her own application shall, require any disability pensioner, under the minimum period for service retirement elected by him or her, and who at the time of his or her retirement for disability was an improved benefits plan member, **or any disability pensioner retired pursuant to section five hundred six or five hundred seven of the retirement and social security law, and who is under early retirement age as defined in section five hundred one of the retirement and social security law for police/fire members** to undergo medical examination. Such examination shall be made at the place of residence of such beneficiary or other place mutually agreed upon. Upon the completion of such examination the medical board shall report and certify to the board whether such beneficiary is or is not totally or partially incapacitated physically or mentally and whether he or she is or is not engaged in or able to engage in a gainful occupation. If the board concur in a report by the medical board that such beneficiary is able to engage in a gainful occupation, it shall certify the name of such beneficiary to the appropriate civil service commission, state or municipal, and such commission shall place his or her name as a preferred eligible on such appropriate lists of candidates as are prepared for appointment to positions for which he or she is stated to

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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be qualified. Should such beneficiary be engaged in a gainful occupation, or should he or she be offered city-service as a result of the placing of his or her name on a civil service list, such board shall reduce the amount of his or her disability pension and his or her pension-providing-for-increased-take-home-pay, if any, to an amount which, when added to that then earned by him or her, or earnable by him or her in city-service so offered him or her, shall not exceed the current maximum salary for the title next higher than that held by him or her when he or she was retired. Should the earning capacity of such beneficiary be further altered, such board may further alter his or her pension and his or her pension-providing-for-increased-take-home-pay, if any, to an amount which shall not exceed the rate of pension and his or her pension-providing-for-increased-take-home-pay, if any, upon which he or she was originally retired but which, subject to such limitation, shall equal, when added to that earnable by him or her, the current maximum salary for the title next higher than that held by him or her when he or she was retired. The provisions of this section shall be executed, any provision of the charter or the code to the contrary notwithstanding.

b. Should any disability pensioner, under the minimum period for service retirement elected by him or her, and who was an improved benefits plan member at the time of his or her retirement for disability, **or any disability pensioner retired pursuant to section five hundred six or five hundred seven of the retirement and social security law and who is under early retirement age as defined in section five hundred one of the retirement and social security law for police/fire members,** refuse to submit to one medical examination in any year by a physician or physicians designated by the medical board, his or her pension and his or her pension-providing-for-increased-take-home-pay, if any, may be discontinued until his or her withdrawal of such refusal. Should such refusal continue for one year, all his or her rights in and to such pension and his or her pension-providing-for-increased-take-home-pay, if any, may be revoked by such board.

§ 2. Section 506 of the retirement and social security law is amended by adding two new subdivisions e and f to read as follows:

e. 1. Notwithstanding any other provision of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, subdivisions a, b, c and d of this section shall not apply to members of the New York city police pension fund who are subject to this article. A member of the New York city police pension fund who is subject to this article shall instead be eligible for ordinary disability retirement pursuant to sections 13-251 and 13-254 of the administrative code of the city of New York, and shall receive a retirement allowance which shall consist of:

(i) an annuity, which shall be the actuarial equivalent of his or her accumulated contributions, if any, at the time of his or her retirement;

(ii) a pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

(iii) a pension, which, together with his or her annuity and the pension-providing-for-increased-take-home-pay, if any, shall be equal to a retirement allowance equal to one-fortieth of his or her final average salary multiplied by the number of years of city-service credited to him or her, but not less than (1) one-half of his or her final average salary, if the years of city-service credited to him or her are ten or more,

or (2) one-third of his or her final average salary, if the years of city-service credited to him or her are less than ten.

2. The provisions of subdivisions g, h and i of section five hundred seven of this article shall apply to disability benefits under this subdivision.

f. 1. Notwithstanding any other provision of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, subdivisions a, b, c and d of this section shall not apply to members of the New York fire department pension fund who are subject to this article. A member of the New York fire department pension fund who is subject to this article shall instead be eligible for ordinary disability retirement pursuant to sections 13-352 and 13-357 of the administrative code of the city of New York, and shall receive a retirement allowance which shall consist of:

(i) An annuity, which shall be the actuarial equivalent of his or her accumulated contributions, if any, at the time of his or her retirement; and

(ii) A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any, and

(iii) A pension, which together with his or her annuity and the pension-providing-for-increased-take-home-pay, if any, shall be equal to a retirement allowance equal to one-fortieth of his or her final average salary multiplied by the number of years of city-service credited to him or her, but not less than (1) one-half of his or her final average salary, if the years of city-service credited to him or her are ten or more, or (2) one-third of his or her final average salary, if the years of city-service credited to him or her are less than ten.

2. The provisions of subdivisions g, h and i of section five hundred seven of this article shall apply to disability benefits under this subdivision.

§ 3. Section 507 of the retirement and social security law is amended by adding two new subdivisions j and k to read as follows:

j. Notwithstanding any other provision of this chapter or any general, special or local law, charter, administrative code or rule or regulation to the contrary, subdivisions a, b, c, d, e, and f of this section shall not apply to members of the New York fire department pension fund who are subject to this article. A member of the New York fire department pension fund who is subject to this article shall instead be eligible for accidental disability retirement pursuant to sections 13-353, 13-354, and 13-357 of the administrative code of the city of New York and any accidental disability retirement benefits found in the general municipal law and shall receive a retirement allowance which shall consist of:

1. An annuity, which shall be the actuarial equivalent of his or her accumulated contributions, if any, at the time of his or her retirement; and

2. A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

3. A pension, of three-quarters of his or her final average salary, in addition to the annuity and pension provided for by paragraphs one and two of this subdivision.

k. Notwithstanding any other provision of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, subdivisions a, b, c, d, e and f of this

section shall not apply to members of the New York city police pension fund who are subject to this article. A member of the New York city police pension fund who is subject to this article shall instead be eligible for accidental disability retirement pursuant to sections 13-215, 13-252 and 13-254 of the administrative code of the city of New York, and shall receive a retirement allowance which shall consist of:

1. an annuity, which shall be the actuarial equivalent of his or her accumulated contributions, if any, at the time of his or her retirement;

2. a pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

3. a pension, of three-quarters of his or her final average salary, in addition to the annuity and pension provided for by paragraphs one and two of this subdivision.

§ 4. Section 510 of the retirement and social security law is amended by adding a new subdivision i to read as follows:

i. Notwithstanding any other provisions of this article or the administrative code of the city of New York, the annual escalation provided in this section shall not apply to the ordinary or accidental disability retirement benefit of members of the New York city police pension fund or members of the New York fire department pension fund who retire pursuant to section five hundred six or five hundred seven of this article. The ordinary or accidental disability retirement benefit of members of the New York fire department pension fund who retire pursuant to section five hundred six or five hundred seven of this article shall be adjusted for cost-of-living pursuant to the provisions of section 13-696 of the administrative code of the city of New York.

§ 5. Subdivision f of section 511 of the retirement and social security law, as amended by chapter 18 of the laws of 2012, is amended to read as follows:

f. This section shall not apply to general members in the uniformed correction force of the New York city department of correction or to uniformed personnel in institutions under the jurisdiction of the department of corrections and community supervision and security hospital treatment assistants, as those terms are defined in subdivision i of section eighty-nine of this chapter, provided, however, that the provisions of this section shall apply to a New York city uniformed correction/sanitation revised plan member, and this section shall also not apply to members of the New York city police pension fund or the New York fire department pension fund who are subject to this article who retire on ordinary or accidental disability retirement pursuant to section five hundred six or five hundred seven of this article.

§ 6. Section 512 of the retirement and social security law is amended by adding two new subdivisions e and f to read as follows:

e. Notwithstanding the provisions of subdivision a of this section, or any other general, special or local law, with respect to members of the New York fire department pension fund who retire pursuant to sections five hundred six and five hundred seven of this article a member's final average salary shall mean the salary earned by such member during the one-year period immediately prior to retirement, exclusive of any form of termination pay (which shall include any compensation in anticipation of retirement), or any lump sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked (other than compensation received while on sick leave or authorized leave of absence); provided, however, if the salary or wages earned

during the one year period immediately prior to retirement exceeds that of the previous one-year period by more than twenty per centum the amount in excess of twenty per centum shall be excluded from the computation of final average salary. In determining final average salary, any month or months (not in excess of three) which would otherwise be included in computing final average salary but during which the member was on authorized leave of absence without pay shall be excluded from the computation of final average salary and the month or an equal number of months immediately preceding such period shall be substituted in lieu thereof.

f. Notwithstanding the provisions of subdivision a of this section, or any other general, special or local law, with respect to members of the New York city police pension fund who retire pursuant to sections five hundred six and five hundred seven of this article a member's final average salary shall mean the salary earned by such member during the one-year period immediately prior to retirement, exclusive of any form of termination pay (which shall include any compensation in anticipation of retirement) or any lump sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked (other than compensation received while on sick leave or authorized leave of absence); provided, however, if the salary or wages earned during the one-year period immediately prior to retirement exceeds that of the previous one-year period by more than twenty per centum, the amount in excess of twenty per centum shall be excluded from the computation of final average salary. In determining final average salary, any month or months (not in excess of three) which would otherwise be included in computing final average salary but during which the member was on authorized leave of absence without pay shall be excluded from the computation of final average salary and the month or an equal number of months immediately preceding such period shall be substituted in lieu thereof.

§ 7. Paragraph (b) of subdivision 1 of section 13-353.1 of the administrative code of the city of New York is relettered paragraph (c) and a new paragraph (b) is added to read as follows:

(b) In order to be eligible for the presumption provided under paragraph (a) of this subdivision, a member must have (i) successfully passed a physical examination for entry into public service which failed to disclose evidence of the qualifying condition or impairment of health that formed the basis for the disability, or (ii) authorized release of all relevant medical records, if the member did not undergo a physical examination for entry into public service, and there is no evidence of the qualifying condition or impairment of health that formed the basis for the disability in such medical records prior to September 11, 2001.

§ 8. Section 207-k of the general municipal law, as amended by chapter 1046 of the laws of 1973, subdivision a as amended by chapter 654 of the laws of 2006, is amended to read as follows:

§ 207-k. Disabilities of policemen and firemen in certain cities. a. Notwithstanding the provisions of any general, special or local law or administrative code to the contrary, but except for the purposes of sections two hundred seven-a and two hundred seven-c of this article, the workers' compensation law and the labor law, any condition of impairment of health caused by diseases of the heart, or by a stroke, resulting in total or partial disability or death to a paid member of the uniformed force of a paid police department or fire department, where such paid policemen or firemen are drawn from competitive civil service lists, who successfully passed a physical examination on entry

into the service of such respective department, which examination failed to reveal any evidence of such condition, shall be presumptive evidence that it was incurred in the performance and discharge of duty, unless the contrary be proved by competent evidence.

b. The provisions of this section shall remain in full force and effect to and including the thirtieth day of June, nineteen hundred seventy-four.

c. In addition, any condition of impairment of health caused by diseases of the heart, or by a stroke, resulting in total or partial disability or death to a medical officer of the fire department of the city of New York, shall be presumptive evidence that it was incurred in the performance and discharge of duty, provided that such medical officer authorized release of all relevant medical records, and there is no evidence of the qualifying condition or impairment of health that formed the basis for the disability or death in such medical records unless the contrary be proved by competent evidence.

§ 9. Section 207-kk of the general municipal law, as amended by chapter 531 of the laws of 2003, is amended to read as follows:

§ 207-kk. Disabilities of firefighters in certain cities caused by cancer. a. Notwithstanding any other provisions of this chapter to the contrary, any condition of impairment of health caused by (i) any condition of cancer affecting the lymphatic, digestive, hematological, urinary, neurological, breast, reproductive, or prostate systems or (ii) melanoma resulting in total or partial disability or death to a paid member of a fire department in a city with a population of one million or more, who successfully passed a physical examination on entry into the service of such department, which examination failed to reveal any evidence of such condition, shall be presumptive evidence that it was incurred in the performance and discharge of duty unless the contrary be proved by competent evidence. The provisions of this section shall remain in full force and effect to and including the thirtieth day of June, two thousand five.

b. In addition, any condition of impairment of health caused by (i) any condition of cancer affecting the lymphatic, digestive, hematological, urinary, neurological, breast, reproductive, or prostate systems or (ii) melanoma resulting in total or partial disability or death to a medical officer of the fire department of the city of New York, shall be presumptive evidence that it was incurred in the performance and discharge of duty, provided that such medical officer authorized release of all relevant medical records, and there is no evidence of the qualifying condition or impairment of health that formed the basis for the disability or death in such medical records unless the contrary be proved by competent evidence.

§ 10. Section 207-p of the general municipal law, as added by chapter 641 of the laws of 1999, is amended to read as follows:

§ 207-p. Performance of duty disability retirement; police and fire department. a. Notwithstanding any other provision of this chapter or administrative code to the contrary, any paid member of a fire department and/or a paid police department, in a city with a population of one million or more who successfully passed a physical examination upon entry into the service of such department who contracts HIV (where the employee may have been exposed to a bodily fluid of a person under his or her care or treatment, or while the employee examined, transported, rescued or otherwise had contact with such person, in the performance of his or her duties), tuberculosis or hepatitis, will be presumed to have contracted such disease as a natural or proximate result of an acci-

dental injury received in the performance and discharge of his or her duties and not as a result of his or her willful negligence, unless the contrary be provided by competent evidence.

b. In addition, any medical officer of the fire department of the city of New York who contracts HIV (where the medical officer has been exposed to a bodily fluid of a person under his or her care or treatment, or while the medical officer examined, transported, rescued or otherwise had contact with such person, in the performance of his or her duties), tuberculosis or hepatitis, will be presumed to have contracted such disease as a natural or proximate result of an accidental injury received in the performance of his or her duties and not as a result of his or her willful negligence, provided that such medical officer authorized release of all relevant medical records, and there is no evidence of the qualifying condition or impairment of health that formed the basis for the disability in such medical records, unless the contrary be proved by competent evidence.

§ 11. Section 207-q of the general municipal law, as amended by chapter 103 of the laws of 2006, is amended to read as follows:

§ 207-q. Firefighters; presumption in certain diseases. a. Notwithstanding any provision of this chapter or of any general, special or local law to the contrary, and for the purposes of this chapter, any condition of impairment of health caused by diseases of the lung, resulting in total or partial disability or death to a uniformed member of a paid fire department, where such member successfully passed a physical examination on entry into such service or subsequent thereto, which examination failed to reveal any evidence of such conditions, shall be presumptive evidence that such disability or death (1) was caused by the natural and proximate result of an accident, not caused by such firefighter's own negligence and (2) was incurred in the performance and discharge of duty, unless the contrary be proven by competent evidence. The provisions of this section shall remain in full force and effect to and including the thirtieth day of June, two thousand eight.

b. In addition, any condition of impairment of health caused by diseases of the lung, resulting in total or partial disability or death to a medical officer of the fire department of the city of New York, shall be presumptive evidence that such disability or death (1) was caused by the natural and proximate result of an accident, not caused by such medical officer's own negligence and (2) was incurred in the performance and discharge of duty, provided that such medical officer authorized release of all relevant medical records, and there is no evidence of the qualifying condition or impairment of health that formed the basis for the disability in such medical records, unless the contrary be proved by competent evidence.

§ 12. This act shall take effect on the sixtieth day after it shall have become a law; provided, however, that the amendments to sections 207-k, 207-kk and 207-q of the general municipal law made by sections eight, nine and eleven of this act shall not affect the expiration of such sections, as provided in section 480 of the retirement and social security law.

FISCAL NOTE.-- Pursuant to Legislative Law, Section 50:

Background - Design of Proposed Legislation

* In general, the OA believes that proposed legislation should:
* Be technically accurate,
* Be clear in its intent,
* Be administrable, and
* Meet desired policy objectives.

While the OA cannot provide any legal analysis, the OA has done a review of the proposed legislation and has some concerns. These concerns that follow represent the best understanding of the Actuary and staff of the OA and should not be considered legal interpretations. All of these concerns and suggestions should be reviewed by Counsel.

For purposes of this letter, all members of the New York City Police Pension Fund ("POLICE") subject to Article 14 of the Retirement and Social Security Law ("RSSL") will be referred to as "Tier III POLICE Members." Of those Tier III POLICE Members who have a date of membership prior to April 1, 2012, they will be referred to as "Original Tier III POLICE Members." Of those Tier III POLICE Members who have a date of membership on or after April 1, 2012, they will be referred to as "Revised Tier III POLICE Members."

Concerns with Proposed Legislation with Respect to Ordinary Disability Retirement ("ODR") and Accidental Disability Retirement ("ADR")

* Benefits Compared to Tier I and Tier II

The proposed legislation, if enacted, would revise the ODR and ADR benefit formulas for Tier III POLICE Members.

It appears that the proposed Tier III ODR benefit formula is intended to be the same as the ODR benefit available to Tier I and Tier II POLICE Members (i.e., 1/40 of Final Average Salary ("FAS") multiplied by the years of service, but not less than (1) one-half of FAS if the years of service are 10 or more or (2) one-third of FAS if the years of service are less than 10) where the FAS for Tier III POLICE Members would be based on a one-year FAS, the same as for Tier II and similar to the rate of pay for Tier I.

Similarly, it also appears that the proposed ADR benefit formula for Tier III POLICE Members is intended to be the same as the ADR benefit available to Tier I and Tier II POLICE Members (i.e., 75% of Final Average Salary ("FAS")), where the FAS for Tier III POLICE Members would be based on a one-year FAS, the same as for Tier II and similar to the rate of pay for Tier I.

Note: Tier I and Tier II POLICE Members are also entitled to an additional 1/60 of total earnings after their 20th anniversary. Given the proposed statutory references, it is the understanding of the Actuary that the Tier III POLICE Members impacted by the proposed legislation would not receive this additional 1/60 of total earnings after 20 years of service.

POLICE Tier I and Tier II ODR and ADR benefits are subject to Cost-of-Living Adjustments ("COLA") under Chapter 125 of the Laws of 2000 on the first $18,000 of benefit after five years of Disability Retirement.

Given the proposed statutory references, it is the understanding of the Actuary that the proposed ODR and ADR benefits for Tier III POLICE Members would be entitled to the COLA described in the preceding paragraph, but would NOT be subject to an annual Tier III Escalation increase on the full benefit immediately from the date of Disability Retirement.

* Reference to ITHP

The proposed legislation, in defining the revised ODR and ADR benefits, uses the term Increased-Take-Home-Pay ("ITHP").

ITHP is a special benefit provided to Tier I and Tier II members and is not defined for Tier III members.

Given the history that no Tier III Members have ever received ITHP benefits, the Actuary has assumed that if the proposed legislation were enacted, Tier III POLICE Members would not be entitled to ITHP.

* Annuitization of Member Contributions

The proposed legislation would include in the ODR and ADR benefit formulas for Tier III POLICE Members, a benefit in the form of an annuity equal to the actuarial equivalent of the accumulated Tier III member contributions at retirement.

Annuitized benefits based directly on member contributions are available to Tier I and Tier II POLICE Members. However, it is the understanding of the Actuary that no current Tier III Member has any benefit which is defined as an annuitization of accumulated member contributions.

* General Plan Design: From an administrative and design viewpoint, the Actuary would suggest that consideration be given to incorporating enhanced ODR and ADR benefit eligibilities and benefit formulas within RSSL Article 14, using only Article 14 terminology and structure to achieve the desired ODR and ADR benefit eligibilities and benefit levels.

* Presumptive Conditions for ADR

It is the understanding of the Actuary that the proposed legislation, if enacted, would provide Tier III POLICE Members the ability to be eligible for and to utilize the presumptive conditions that qualify for ADR that are available to Tier I and Tier II POLICE Members.

The reasoning behind this understanding is that in the proposed legislation, eligibility conditions for Tier III POLICE members for ODR would be determined pursuant to the Administrative Code of the City of New York ("ACNY") Sections 13-216, 13-251 and 13-254 (i.e., those that apply to Tier I and Tier II POLICE Members), notwithstanding anything to the contrary.

Similarly, in the proposed legislation, eligibility conditions for Tier III POLICE Members for ADR would be determined pursuant to ACNY Sections 13-216, 13-252 and 13-254 (i.e., those that apply to Tier I and Tier II POLICE Members), notwithstanding anything to the contrary.

It is the understanding of the Actuary that in the proposed legislation, eligibility for ODR and ADR would not be pursuant to RSSL Section 507.e. RSSL Section 507.e provides that a member shall not be eligible for ODR or ADR unless the member waives the benefits of any statutory presumptions. Accordingly, it is the understanding of the Actuary that since under the proposed legislation RSSL Section 507.e would no longer apply to Tier III POLICE Members, Tier III POLICE Members would not be required to waive RSSL Section 507.e in order to be eligible for ODR or ADR benefits. Consequently, the statutory presumptions would apply since that have not been waived.

In accordance with the above reasoning, since current Tier III POLICE Members are required to waive the presumptions pursuant to RSSL Section 507.e, it is the understanding of the Actuary that Tier III POLICE Members are currently not entitled to presumptive conditions for ADR.

* Consistency Amongst Uniformed Groups

This proposed legislation would cover members of POLICE but not members of the New York Fire Department Pension Fund ("FIRE") or any other uniformed groups. Given the historical consistency in benefits amongst certain uniformed groups, this proposed legislation would likely lead to demands for similar legislation for at least some other uniformed groups.

PROVISIONS OF PROPOSED LEGISLATION: This proposed legislation would amend Retirement and Social Security Law ("RSSL") Sections 506, 507, 510, 511 and 512 and amend Administrative Code of the City of New York ("ACNY") Section 13-254 to change, for members of the New York City Police Pension Fund ("POLICE") subject to Article 14 of the RSSL, the

eligibility for and the calculation of Ordinary Disability Retirement ("ODR") benefits and Accidental Disability Retirement ("ADR") benefits.

For purposes of this Fiscal Note, all POLICE members subject to Article 14 of the RSSL will be referred to as "Tier III POLICE Members." Of those Tier III POLICE Members who have a date of membership prior to April 1, 2012, they will be referred to as "Original Tier III POLICE Members." Of those Tier III POLICE Members who have a date of membership on or after April 1, 2012, they will be referred to as "Revised Tier III POLICE Members."

The Effective Date of the proposed legislation would be the 60th day after the date of enactment.

IMPACT ON ODR BENEFITS PAYABLE: The current eligibility provisions for ODR benefits for Tier III POLICE Members are based on:

* Completing five or more years of service, and

* Becoming eligible for Primary Social Security Disability retirement benefits.

Such ODR benefits are equal to the greater of:

* 33 1/3% of Three-Year Final Average Salary ("FAS3") for Original Tier III POLICE Members or Five-Year Final Average Salary ("FAS5") for Revised Tier III POLICE Members, or

* 2% of FAS3 (FAS5 For Revised Tier III POLICE Members) multiplied by years of credited service (not in excess of 22 years),

* Reduced by 50% of the Primary Social Security Disability benefits (determined under RSSL Section 511), and

* Reduced by 100% of Workers' Compensation benefits (if any).

It is the understanding of the Actuary that POLICE Members are not covered by Workers' Compensation.

Under the proposed legislation the eligibility requirements for ODR benefits for the Tier III POLICE Members would be revised to be the same as those provided in ACNY Sections 13-216, 13-251 and 13-254 (i.e., the provisions applicable to Tier I and Tier II POLICE members).

In particular, completing five or more years of service would not be required in order to be eligible for ODR benefits. In other words, there would not any requirement for any minimum length of service to be completed in order to be eligible for ODR benefits.

Under the proposed legislation, if enacted, the ODR benefit for Tier III POLICE Members would be an allowance consisting of:

* An actuarial equivalent annuity of accumulated member contributions, plus

* A pension, which together with the annuity, equal to 1/40 of One-Year Final Average Salary ("FAS1") multiplied by years of credited service, but not less than:

* 1/2 of FAS1, if years of credited service are greater than or equal to 10 years, or

* 1/3 of FAS1, if years of credited service are less than 10 year.

Note: The proposed legislation also states that one component of the ODR benefit would be the actuarial equivalent annuity of an Increased-Take-Home-Pay ("ITHP") reserve. This theoretical benefit is not included in this Fiscal Note analysis since it is the understanding of the Actuary that ITHP is not available to Tier III members generally and is not specifically defined in the proposed legislation.

In addition, the proposed legislation would <u>not</u> apply the Escalation available under RSSL Section 510 to ODR benefits for Tier III POLICE Members. However, such ODR benefits would still be eligible for Cost-of-Living Adjustments ("COLA") under Chapter 125 of the Laws of 2000.

IMPACT ON ADR BENEFITS PAYABLE: The current eligibility provisions for ADR benefits for Tier III POLICE Members are based on satisfying either:

* Being eligible for Social Security Disability retirement benefits and having become disabled due to an accident sustained in the line of duty, or

* Being physically or mentally incapacitated as a result of an accident sustained in the line of duty as determined by the appropriate administrative authority assigned by POLICE.

As a consequence of RSSL Section 507.e, a Tier III POLICE Member would not be eligible for ADR unless the member waived the benefits of any statutory presumptions (e.g., certain heart diseases).

Such ADR benefits are calculated using a formula of 50% multiplied by FAS3 for Original Tier III POLICE Members or FAS5 for Revised Tier III POLICE Members less 50% of Primary Social Security disability benefit (determined under RSSL Section 511) and less 100% of Worker's Compensation benefits (if any).

Note: It is the understanding of the Actuary that POLICE Members are not covered by Worker's Compensation.

Under the proposed legislation the eligibility requirements for ADR benefits for Tier III POLICE Members would be revised to be the same as those provided in ACNY Sections 13-216, 13-252 and 13-254 (i.e., the provisions applicable to Tier I and Tier II POLICE Members).

In addition, it is the understanding of the Actuary that the proposed legislation, if enacted, would provide Tier III POLICE Members the ability to be eligible for and to utilize the statutory presumptions (e.g., certain heart diseases) that qualify certain Tier I and Tier II POLICE Members for ADR.

Under the proposed legislation, if enacted, the ADR benefit for Tier III POLICE Members would be revised to equal a retirement allowance equal to the sum of:

* An actuarial equivalent annuity of accumulated member contributions, plus

* 75% multiplied by FAS1.

Note: The proposed legislation also states that one component of the ADR benefit would be the actuarial equivalent annuity of the Increased-Take-Home-Pay ("ITHP") reserve. This theoretical benefit is not included in this Fiscal Note analysis since it is the understanding of the Actuary that ITHP is not available to Tier III members generally and is not specifically defined in the proposed legislation.

Also note, it is the understanding of the Actuary that the Tier III POLICE Members impacted by the proposed legislation would not receive any additional 1/60 of annual earnings after 20 years of service.

In addition, the proposed legislation would **not** apply the Escalation available under RSSL Section 510 to ADR benefits for Tier III POLICE Members. However, such ADR benefits would still be eligible for Cost-of-Living Adjustments ("COLA") under Chapter 125 of the Laws of 2000.

FINANCIAL IMPACT - CHANGES IN BENEFITS - ACTUARIAL PRESENT VALUES. Based on the census data and the actuarial assumptions and methods noted herein, if the Effective Date is on or before June 30, 2015, then this would change the Actuarial Present Value ("APV") of benefits ("APVB"), APV of member contributions, the Unfunded Actuarial Accrued Liability ("UAAL") and APV of future employer contributions as of June 30, 2013 for Tier III POLICE Members.

FINANCIAL IMPACT - CHANGES IN PROJECTED APV OF FUTURE EMPLOYER CONTRIBUTIONS AND PROJECTED EMPLOYER CONTRIBUTIONS: For purposes of this

Fiscal Note, it is assumed that the changes in APVB, APV of member contributions, UAAL and APV of future employer contributions would be reflected for the first time in the June 30, 2013 actuarial valuation of POLICE.

Under the One-Year Lag Methodology ("OYLM"), the first year that changes in benefits for Tier III POLICE Members could impact employer contributions to POLICE would be Fiscal Year 2015.

In accordance with ACNY Section 13.638.2(k-2), new UAAL attributable to benefit changes are to be amortized as determined by the Actuary but generally over the remaining working lifetime of those impacted by the benefit changes. As of June 30, 2013, the remaining working lifetime of the Tier III POLICE Members is approximately 18 years. Recognizing that this period will decrease over time as the group of Tier III Members matures, the Actuary would likely choose to amortize the new UAAL attributable to this proposed legislation over a 15-year period (14 payments under the OYLM Methodology).

The following Table one presents an estimate of the increases due to the changes in ODR and ADR provisions for Tier III POLICE Members in the APV of future employer contributions and in employer contributions to POLICE for Fiscal Years 2015 through 2019 that would occur based on the applicable actuarial assumptions and methods noted herein:

Table 1

Estimated Financial Impact on POLICE
If Certain Revisions are Made to
Provisions for ODR and ADR Benefits
for Tier III POLICE Members*

($ Millions)

Fiscal Year	Increase in APV of Future Employer Contributions	Increase in Employer Contributions
2015	$272.3	$35.7
2016	378.7	47.2
2017	469.6	56.9
2018	552.8	65.5
2019	622.9	72.2

* Based on actuarial assumptions and methods set forth in the Actuarial Assumptions and Method Section. Also, based on the projection assumptions as described herein.

ODR and ADR benefits are **not** subject to Tier III Escalation (RSSL Section 510).

The estimated increases in employer contributions shown in Table 1 are based upon the following projection assumptions:

* Level workforce (i.e., new employees are hired to replace those who leave active status).

* Projected salary increases consistent with those used in projections presented to the New York City Office of Management and Budget ("NYCOMB") for use in the January 2015 Financial Plan ("Updated Preliminary Projections").

* New entrant salaries consistent with those used in the Updated Preliminary Projections.

These "open group" projections include future new entrants introduced into the census data models to project the future workforces.

As of each future actuarial valuation date, the current "closed group" actuarial assumptions and valuation methodology are used.

Under this methodology only Plan participants as of each actuarial valuation date are utilized to determine APVs, employer costs and employer contributions.

FINANCIAL IMPACT - EMPLOYER ENTRY AGE NORMAL COSTS: Employer Entry Age Normal Costs can provide a useful basis to compare the value of alternative benefit programs.

For each member who enters POLICE, there is a theoretical net annual employer cost to be paid for such member while such member remains actively employed (i.e., the Employer Entry Age Normal Cost (referred to hereafter as "EEANC")).

In addition, such EEANC may be expressed as a percentage of salary earned over a working lifetime and referred to as the Employer Entry Age Normal Rate (referred to hereafter as "EEANR").

Under the proposed legislation and based on the actuarial assumptions noted herein, the EEANC and EEANR of Tier III POLICE Members would be greater than the EEANC and EEANR for comparable Tier III POLICE Members entering at the same attained age and gender under the current POLICE provisions.

Table 2A shows a summary of the change in EEANC for Original Tier III POLICE Members for entry ages 25, 30 and 35 determined as of the most recent date of published EEANR calculations:

Table 2A

Comparison of Employer Entry Age Normal Rates
Determined as of June 30, 2012*

To Implement Certain ODR and ADR Provisions for
Original Tier III POLICE Members

Under Proposed Legislation
and Under Current Law

EEANR Under Proposed Legislation**

Retirement System	Entry Age 25		Entry Age 30		Entry Age 35	
	Male	Female	Male	Female	Male	Female
POLICE	23.91%	24.74%	25.15%	26.14%	27.27%	28.46%
	EEANR Under Current Law					
POLICE	20.92%	21.75%	20.73%	21.71%	20.50%	21.63%
	Increase in EEANR Due to Proposed Legislation					
POLICE	2.99%	2.99%	4.42%	4.43%	6.77%	6.83%

* Based on salaries paid over entire working lifetime. EEANR do not vary significantly over time, absent benefit and/or actuarial assumption changes.

** EEANR determined under the terms of the revised ODR and ADR benefit provisions based on the Actuarial Assumptions and Methods as noted herein including changes in assumptions for ADR. ODR and ADR benefits are **not** subject to Tier III Escalation (RSSL Section 510).

Table 2B shows a summary of the change in EEANC for Revised Tier III POLICE Members for entry ages 25, 30 and 35 determined as of the most recent date of published EEANR calculations:

Table 2B

Comparison of Employer Entry Age Normal Rates
Determined as of June 30, 2012*

To Implement Certain ODR and ADR Provisions for
Revised Tier III POLICE Members

Under Proposed Legislation
and Under Current Law

EEANR Under Proposed Legislation**

Retirement System	Entry Age 25		Entry Age 30		Entry Age 35	
	Male	Female	Male	Female	Male	Female
POLICE	23.36%	24.17%	24.68%	25.64%	26.90%	28.07%
	EEANR Under Current Law					
POLICE	19.91%	20.71%	19.66%	20.59%	19.38%	20.46%
	Increase in EEANR Due to Proposed Legislation					
POLICE	3.45%	3.46%	5.02%	5.05%	7.52%	7.61%

* Based on salaries paid over entire working lifetime. EEANR do not vary significantly over time, absent benefit and/or actuarial assumption changes.

** EEANR determined under the terms of the revised ODR and ADR benefit provisions based on the Actuarial Assumptions and Methods as noted herein including changes in assumptions for ADR, ODR and ADR benefits are **not** subject to Tier III Escalation (RSSL Section 510).

OTHER COSTS: Not measured in this Fiscal Note are the following:

* The initial, additional administrative costs of POLICE and other New York City agencies to implement the proposed legislation.

* The potential impact if this proposed legislation were to be extended to other public safety employees (e.g., firefighters).

* The impact of this proposed legislation on Other Postemployment Benefit ("OPEB") costs.

CENSUS DATA: The starting census data used for the calculations presented herein are the census data used in the Updated Preliminary June 30, 2013 (Lag) actuarial valuation of POLICE used under the OYLM to determine the Updated Preliminary Fiscal Year 2015 employer contributions.

The census data used for the estimates of additional employer contributions presented herein are based on average salaries of new entrants

utilized in the Updated Preliminary June 30, 2013 (Lag) actuarial valuations used to determine Updated Preliminary Fiscal Year 2015 employer contributions of POLICE.

The 3,601 Original Tier III POLICE Members as of June 30, 2013 had an average age of approximately 28, average service of approximately 2.2 years and an average salary of approximately $63,000.

The 1,916 Revised Tier III POLICE Members as of June 30, 2013 had an average age of approximately 27, average service of approximately 0.6 years and an average salary of approximately $55,000.

Overall, the 5,517 Tier III POLICE Members as of June 30, 2013 had an average age of approximately 28, average service of approximately 1.7 years, and an average salary of approximately $60,000.

ACTUARIAL ASSUMPTIONS AND METHODS: The additional employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the June 30, 2013 (Lag) actuarial valuations used to determine Updated Preliminary Fiscal Year 2015 employer contributions of POLICE and adjusted for revised ADR eligibility provisions.

The probabilities of accidental disability used for Tier III POLICE Members in the event statutory presumptions were to apply equal those currently used for Tier I and Tier II POLICE Members.

The actuarial valuation methodology does not include a calculation of the value of an offset for Workers' Compensation benefits as it is the understanding of the Actuary that POLICE Members are not covered by such benefits.

To the extent that the enactment of this proposed legislation would cause a greater (lesser) number of Tier III POLICE Members to be reclassified from Ordinary Disability to Accidental Disability Retirement, or to the extent that Tier III POLICE Members who would not otherwise ever choose to apply and then receive an Ordinary Disability Retirement benefit or an Accidental Disability Retirement benefit, then the additional APVB and employer contributions shown herein would be greater (lesser).

Employer contributions under current methodology have been estimated assuming the additional APVB would be financed through future normal contributions including an amortization of the new UAAL attributable to this proposed legislation over a 15-year period (14 payments under the OYLM Methodology).

New entrants into Tier III POLICE Members were projected to replace the POLICE members expected to leave the active population to maintain a steady-state population.

The following Table 3 presents the total number of active employees of POLICE used in the projections, assuming a level work force, and the cumulative number (i.e., net of withdrawals) of Revised Tier III Members as of each June 30 from 2013 through 2017.

Table 3
Surviving Actives from Census on June 30, 2013
and
Cumulative New Revised Tier III POLICE Members from 2013
Used in the Projections*

June 30	Tier I&II	Original Tier III	Revised Tier III	Total
2013	29,258	3,601	1,916	34,775
2014	26,784	3,500	4,491	34,775
2015	24,565	3,406	6,804	34,775

2016	22,571	3,314	8,890	34,775
2017	20,937	3,225	10,613	34,775

* Total active members included in the projections assume a level work force based on the June 30, 2013 (Lag) actuarial valuation census data. Assumes presumptions apply to Tier III POLICE members.

For purposes of estimating the impact of the Tier III Escalation for retired Tier III POLICE Members, consistent with an underlying Consumer Price Inflation ("CPI") assumption of 2.5% per year, Tier III Escalation of 2.5% per year has been assumed.

This compares with the current Chapter 125 of the Laws of 2000 COLA assumption of 1.5% per year (i.e., 50% of CPI adjusted to recognize 1.0% minimum and 3.0% maximum) on the first $18,000 of benefit.

For Variable Supplements Fund ("VSF") benefits, it has been assumed that retroactive lump sum payments of VSF ("DROP payments") would be payable from the completion of 20 years of service.

ECONOMIC VALUES OF BENEFITS: The actuarial assumptions used to determine the financial impact of the proposed legislation discussed in this Fiscal Note are those appropriate for budgetary models and determining annual employer contributions to POLICE.

However, the economic assumptions (current and proposed) that are used for determining employer contributions do not develop risk-adjusted, economic values of benefits. Such risk-adjusted, economic values of benefits would likely differ significantly from those developed by the budgetary models.

STATEMENT OF ACTUARIAL OPINION: I, Robert C. North, Jr., am the Acting Chief Actuary for the New York City Retirement Systems. I am a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

FISCAL NOTE IDENTIFICATION: This estimate is intended for use only during the 2015 Legislative Session. It is Fiscal Note 2015-02, dated January 30, 2015 prepared by the Acting Chief Actuary of the New York City Retirement Systems.

FISCAL NOTE.-- Pursuant to Legislative Law, Section 50:

In response to your request received by the Office of the Actuary ("OA") on January 15, 2015, enclosed is a Fiscal Note presenting the estimated financial impact if proposed legislation similar to A9975/S7736 which was introduced during the 2014 Legislative Session is enacted into law during the 2015 Legislative Session.

Background - Design of Proposed Legislation

In general, the OA believes that proposed legislation should:

* Be technically accurate,
* Be clear in its intent,
* Be administrable, and
* Meet desired policy objectives.

While the OA cannot provide any legal analysis, the OA has done a review of the proposed legislation and has some concerns. These concerns that follow represent the best understanding of the Actuary and staff of the OA and should not be considered legal interpretations. All of these concerns and suggestions should be reviewed by Counsel.

Unless otherwise noted, for purposes of this letter the term Tier III FIRE Members refers to members of the New York Fire Department Pension Fund ("FIRE") who have a date of membership on or after April 1, 2012 and the one Tier III member of FIRE who has a date of membership on or after July 1, 2009 and prior to April 1, 2012.

Concerns with Proposed Legislation with Respect to Ordinary Disability Retirement ("ODR") and Accidental Disability Retirement ("ADR")

* Benefits Compared to Tier II: The proposed legislation, if enacted, would revise the ODR and ADR benefit formulas for Tier III FIRE Members.

It appears that the proposed Tier III ODR benefit formula is intended to be the same as the ODR benefit available to Tier II FIRE Members (i.e., 1/40 of Final Average Salary ("FAS") multiplied by the years of service, but not less than (1) one-half of FAS if the years of service are 10 or more or (2) one-third of FAS if the years of service are less than 10) where the FAS for Tier III FIRE Members would be based on a one-year FAS, the same as for Tier II.

Similarly, it also appears that the proposed ADR benefit formula for Tier III FIRE Members is intended to be the same as the ADR benefit available to Tier II FIRE Members (i.e., 75% of Final Average Salary ("FAS")), where the FAS for Tier III FIRE Members would be based on a one-year FAS, the same as for Tier II.

Note: Tier II FIRE Members are also entitled to an additional 1/60 of total earnings after their 20th anniversary. Given the proposed statutory references it is the understanding of the Actuary that the Tier III FIRE Members impacted by the proposed legislation would not receive this additional 1/60 of total earnings after 20 years of service.

FIRE Tier II ODR and ADR benefits are subject to Cost-of-Living Adjustments ("COLA") under Chapter 125 of the Laws of 2000 on the first $18,000 of benefit after five years of Disability Retirement.

Given the proposed statutory references, it is the understanding of the Actuary that the proposed ODR and ADR benefits for Tier III FIRE Members would be entitled to the COLA described in the preceding paragraph, but would NOT be subject to an annual Tier III Escalation increase on the full benefit immediately from the date of Disability Retirement.

* Reference to ITHP: The proposed legislation, in defining the revised ODR and ADR benefits, uses the term Increased-Take-Home-Pay ("ITHP").

ITHP is a special benefit provided to Tier I and Tier II members and is not defined for Tier III members.

Given the history that no Tier III Members have ever received ITHP benefits, the Actuary has assumed that if the proposed legislation were enacted, Tier III FIRE Members would not be entitled to ITHP.

* Annuitization of Member Contributions: The proposed legislation would include in the ODR and ADR benefit formulas for Tier III FIRE Members, a benefit in the form of an annuity equal to the actuarial equivalent of the accumulated Tier III member contributions at retirement.

Annuitized benefits based directly on member contributions are available to Tier II FIRE Members. However, it is the understanding of the Actuary that no current Tier III Member has any benefit which is defined as an annuitization of accumulated member contributions.

* General Plan Design: From an administrative and design viewpoint, the Actuary would suggest that consideration be given to incorporating enhanced ODR and ADR benefit eligibilities and benefit formulas within Retirement and Social Security Law ("RSSL") Article 14, using only Article 14 terminology and structure to achieve the desired ODR and ADR benefit eligibilities and benefit levels.

* Name: The official name of the Pension Fund is the New York Fire Department Pension Fund.

* Presumptive Conditions for ADR

It is the understanding of the Actuary that the proposed legislation, if enacted, would provide Tier III FIRE Members the ability to be eligible for and to utilize the presumptive conditions that qualify for ADR that are available to Tier I and Tier II FIRE Members.

The reasoning behind this understanding is that in the proposed legislation eligibility conditions for Tier III FIRE members for ODR would be determined pursuant to the Administrative Code of the City of New York ("ACNY") Sections 13-316, 13-352 and 13-357 (i.e., those that apply to Tier I and Tier II FIRE Members), notwithstanding anything to the contrary.

Similarly, in the proposed legislation, eligibility conditions for Tier III FIRE Members for ADR would be determined pursuant to the ACNY Sections 13-316, 13-353 and 13-357 (i.e., those that apply to Tier I and Tier II FIRE Members), notwithstanding anything to the contrary.

It is the understanding of the Actuary that in the proposed legislation, eligibility for ODR and ADR would not be pursuant to RSSL Section 507.e. RSSL Section 507.e provides that a member shall not be eligible for ODR or ADR unless the member waives the benefits of any statutory presumptions. Accordingly, it is the understanding of the Actuary that since under the proposed legislation RSSL Section 507.e would no longer apply to Tier III FIRE Members, Tier III FIRE Members would not be required to waive RSSL Section 507.e in order to be eligible for ODR or ADR benefits. Consequently, the statutory presumptions would apply since they have not been waived.

In accordance with the above reasoning, since current Tier III FIRE Members are required to waive the presumptions pursuant to RSSL Section 507.e, it is the understanding of the Actuary that Tier III FIRE Members are currently not entitled to presumptive conditions for ADR.

* Consistency Amongst Uniformed Groups

This proposed legislation would cover members of FIRE but not members of the New York City Police Pension Fund ("POLICE") or any other uniformed groups. Given the historical consistency in benefits amongst certain uniformed groups, this proposed legislation would likely lead to demands for similar legislation for at least some other uniformed groups.

PROVISIONS OF PROPOSED LEGISLATION: This proposed legislation would amend Retirement and Social Security Law ("RSSL") Sections 506, 507, 510, 511 and 512 and amend Administrative Code of the City of New York ("ACNY") Section 13-357 to change, for members of the New York Fire Department Pension Fund ("FIRE") subject to Article 14 of the RSSL, the eligibility for and the calculation of Ordinary Disability Retirement ("ODR") benefits and Accidental Disability Retirement ("ADR") benefits.

Unless otherwise noted, for purposes of this Fiscal Note the term Tier III FIRE members refers to members of the New York Fire Department Pension Fund ("FIRE") who have a date of membership on or after July 1, 2009. Note: Although referred to herein as Tier III members, it should be noted that members who join FIRE on or after April 1, 2012 are often referred to as Tier VI members or Revised Tier III members. Also Note: There is only one Tier III member of FIRE who has a date of membership on or after July 1, 2009 and prior to April 1, 2012.

The Effective Date of the proposed legislation would be the 60th day after the date of enactment.

IMPACT ON ODR BENEFITS PAYABLE: The current eligibility provisions for ODR benefits for Tier III FIRE Members are based on:

* Completing five or more years of service, and

* Becoming eligible for Primary Social Security Disability retirement benefits.

Such ODR benefits are equal to the greater of:

* 33 1/3% of Five-Year Final Average Salary ("FAS"), or

* 2% of FAS multiplied by years of credited service (not in excess of 22 years),

* Reduced by 50% of the Primary Social Security Disability benefits (determined under RSSL Section 511), and

* Reduced by 100% of Workers' Compensation benefits (if any).

It is the understanding of the Actuary that FIRE Members are not covered by Workers' Compensation.

Under the proposed legislation the eligibility requirements for ODR benefits for Tier III FIRE Members would be revised to be the same as those provided in ACNY Sections 13-316, 13-352 and 13-357 (i.e., the provisions applicable to Tier I and Tier II FIRE members).

In particular, completing five or more years of service would not be required in order to be eligible for ODR benefits. In other words, there would not be any requirement for any minimum length of service to be completed in order to be eligible for ODR benefits.

Under the proposed legislation, if enacted, the ODR benefit for Tier III FIRE Members would be an allowance consisting of:

* An actuarial equivalent annuity of accumulated member contributions, plus

* A pension, which together with the annuity, equal to 1/40 of One-Year Final Average Salary ("FAS1") multiplied by years of credited service, but not less than:

** 1/2 of FAS1, if years of credited service are greater than or equal to 10 years, or

** 1/3 of FAS1, if years of credited service are less than 10 years.

Note: The proposed legislation also states that one component of the ODR benefit would be the actuarial equivalent annuity of an Increased-Take-Home-Pay ("ITHP") reserve. This theoretical benefit is not included in this Fiscal Note analysis since it is the understanding of the Actuary that ITHP is not available to Tier III members generally and is not specifically defined in the proposed legislation.

In addition, the proposed legislation would <u>not</u> apply the Escalation available under RSSL Section 510 to ODR benefits for Tier III FIRE Members. However, such ODR benefits would still be eligible for Cost-of-Living Adjustments ("COLA") under Chapter 125 of the Laws of 2000.

IMPACT ON ADR BENEFITS PAYABLE: The current eligibility provisions for ADR benefits for Tier III FIRE Members are based on satisfying either:

* Being eligible for Social Security Disability retirement benefits and having become disabled due to an accident sustained in the line of duty, or

* Being physically or mentally incapacitated as a result of an accident sustained in the line of duty as determined by the appropriate administrative authority assigned by FIRE.

As a consequence of RSSL Section 507.e, a Tier III FIRE Member would not be eligible for ADR unless the member waived the benefits of any statutory presumptions (e.g., certain heart diseases).

Such ADR benefits are calculated using a formula of 50% multiplied by FAS less 50% of Primary Social Security disability benefit (determined under RSSL Section 511) and less 100% of Workers' Compensation benefits (if any).

Note: It is the understanding of the Actuary that FIRE Members are not covered by Workers' Compensation.

Under the proposed legislation the eligibility requirements for ADR benefits for Tier III FIRE Members would be revised to be the same as those provided in ACNY Sections 13-316, 13-353 and 13-357 (i.e., the provisions applicable to Tier I and Tier II FIRE Members).

In addition, it is the understanding of the Actuary that the proposed legislation, if enacted, would provide that Tier III FIRE Members could be eligible for and utilize the statutory presumptions (e.g., certain heart diseases) that qualify certain Tier I and Tier II Fire Members for ADR.

Under the proposed legislation, if enacted, the ADR benefit for Tier III FIRE Members would be revised to equal a retirement allowance equal to the sum of:

* An actuarial equivalent annuity of accumulated member contributions, plus

* 75% multiplied by FAS1.

Note: The proposed legislation also states that one component of the ADR benefit would be the actuarial equivalent annuity of an Increased-Take-Home-Pay ("ITHP") reserve. This theoretical benefit is not included in this Fiscal Note analysis since it is the understanding of the Actuary that ITHP is not available to Tier III members generally and is not specifically defined in the proposed legislation.

Also note, it is the understanding of the Actuary that the Tier III FIRE Members impacted by the proposed legislation would not receive any additional 1/60 of annual earnings after 20 years of service.

In addition, the proposed legislation would **not** apply the Escalation available under RSSL Section 510 to ADR benefits for Tier III FIRE Members. However, such ADR benefits would still be eligible for Cost-of-Living Adjustments ("COLA") under Chapter 125 of the Laws of 2000.

FINANCIAL IMPACT - CHANGES IN BENEFITS - ACTUARIAL PRESENT VALUES. Based on the census data and the actuarial assumptions and methods noted herein, if the Effective Date is on or before June 30, 2015, then this would change the Actuarial Present Value ("APV") of benefits ("APVB"), APV of member contributions, the Unfunded Actuarial Accrued Liability ("UAAL") and APV of future employer contributions as of June 30, 2013 for Tier III FIRE Members.

FINANCIAL IMPACT - CHANGES IN PROJECTED APV OF FUTURE EMPLOYER CONTRIBUTIONS AND PROJECTED EMPLOYER CONTRIBUTIONS: For purposes of this Fiscal Note, it is assumed that the changes in APVB, APV of member contributions, UAAL and APV of future employer contributions would be reflected for the first time in the June 30, 2013 actuarial valuation of FIRE.

Under the One-Year Lag Methodology ("OYLM"), the first year that changes in benefits for Tier III FIRE Members could impact employer contributions to FIRE would be Fiscal Year 2015.

In accordance with ACNY Section 13.638.2(k-2), new UAAL attributable to benefit changes are to be amortized as determined by the Actuary but generally over the remaining working lifetime of those impacted by the benefit changes. As of June 30, 2013, the remaining working lifetime of the Tier III FIRE Members is approximately 24 years. Recognizing that this period will decrease over time as the group of Tier III Members matures, the Actuary would likely choose to amortize the new UAAL attributable to this proposed legislation over a 15-year to 20-year period (between 14 and 19 payments under the OYLM Methodology). However, since virtually all of the Tier III FIRE members that would be impacted by the benefit changes are new entrants, the resulting UAAL would be de

minimis and therefore the amortization period used for the UAAL has very little impact on the final results.

The following Table 1 presents an estimate of the increases due to the changes in ODR and ADR provisions for Tier III FIRE Members in the APV of future employer contributions and in employer contributions to FIRE for Fiscal Years 2015 through 2019 that would occur based on the applicable actuarial assumptions and methods noted herein:

Table 1
Estimated Financial Impact on FIRE
If Certain Revisions are Made to
Provisions for ODR and ADR Benefits
for Tier III FIRE Members*

($ Millions)

Fiscal Year	Increase in APV of Future Employer Contributions	Increase in Employer Contributions
2015	$15.7	$1.9
2016	67.7	8.0
2017	119.6	13.4
2018	172.7	18.3
2019	227.0	23.0

* Based on actuarial assumptions and methods set forth in the Actuarial Assumptions and Method section. Also, based on the projection assumptions as described herein.

ODR and ADR benefits are **not** subject to Tier III Escalation (RSSL Section 510).

The estimated increases in employer contributions shown in Table 1 are based upon the following projection assumptions:

* Level workforce (i.e., new employees are hired to replace those who leave active status).

* Projected salary increases consistent with those used in projections presented to the New York City Office of Management and Budget ("NYCOMB") for use in the January 2015 Financial Plan ("Preliminary Projections").

* New entrant salaries consistent with those used in the Updated Preliminary Projections.

These "open group" projections include future new entrants introduced into the census data models to project the future workforces.

As of each future actuarial valuation date, the current "closed group" actuarial assumptions and valuation methodology are used.

Under this methodology only Plan participants as of each actuarial valuation date are utilized to determine APVs, employer costs and employer contributions.

FINANCIAL IMPACT - EMPLOYER ENTRY AGE NORMAL COSTS: Employer Entry Age Normal Costs can provide a useful basis to compare the value of alternative benefit programs.

For each member who enters FIRE, there is a theoretical net annual employer cost to be paid for such member while such member remains actively employed (i.e., the Employer Entry Age Normal Cost ("EEANC")).

In addition, such EEANC may be expressed as a percentage of salary earned over a working lifetime and referred to as the Employer Entry Age Normal Rate ("EEANR").

Under the proposed legislation and based on the actuarial assumptions noted herein, the EEANC and EEANR of Tier III Fire Members would be greater than the EEANC and EEANR for comparable Tier III FIRE Members entering at the same attained age and gender under the current FIRE provisions.

Table 2 shows a summary of the change in EEANR for Tier III FIRE Members who have a date of membership on or after April 1, 2012 for entry ages 25, 30 and 35 with a starting salary of $45,000, determined as of the most recent date of published EEANR calculations:

Table 2
Comparison of Employer Entry Age Normal Rates
Determined as of June 30, 2012*

To Implement Certain ODR and ADR Provisions for
Tier III FIRE Members with a Membership Date on or After April 1, 2012

Under Proposed Legislation
and
Under Current Law

EEANR Under Proposed Legislation**

Retirement System	Entry Age 25		Entry Age 30		Entry Age 35	
	Male	Female	Male	Female	Male	Female
FIRE	21.92%	22.50%	27.31%	28.01%	34.55%	35.31%
	EEANR Under Current Law					
FIRE	15.94%	16.51%	18.99%	19.68%	21.78%	22.51%
	Increase In EEANR Due to Proposed Legislation					
FIRE	5.98%	5.99%	8.32%	8.33%	12.77%	12.80%

* Based on salaries paid over entire working lifetime. EEANR do not vary significantly over time, absent benefit and/or actuarial assumption changes.

** EEANR determined under the terms of the revised ODR and ADR benefit provisions based on the Actuarial Assumptions and Methods as noted herein including changes in assumptions for ADR, ODR and ADR benefits are **not** subject to Tier III Escalation (RSSL Section 510).

OTHER COSTS: Not measured in this Fiscal Note are the following:

* The initial, additional administrative costs of FIRE and other New York City agencies to implement the proposed legislation.

* The potential impact if this proposed legislation were to be extended to other public safety employees.

* The impact of this proposed legislation on Other Postemployment Benefit ("OPEB") costs.

CENSUS DATA: The starting census data use for the calculations presented herein are the census data used in the Updated Preliminary June 30, 2013 (Lag) actuarial valuation of FIRE used to determine the Updated Preliminary Fiscal Year 2015 employer contributions.

The census data used for the estimates of additional employer contributions presented herein are based on average salaries of new entrants

utilized in the Updated Preliminary June 30, 2013 (Lag) actuarial valuations used to determine Updated Preliminary Fiscal Year 2015 employer contributions of FIRE.

The 169 Tier III FIRE Members as of June 30, 2013 (including the one Tier III member who has a date of membership prior to April 1, 2012) had an average age of approximately 27, average service of approximately 0.5 years and an average salary of approximately $48,200.

ACTUARIAL ASSUMPTIONS AND METHODS: The additional employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the June 30, 2013 (Lag) actuarial valuations used to determine Updated Preliminary Fiscal Year 2015 employer contributions of FIRE and adjusted for revised ADR eligibility provisions.

The probabilities of accidental disability used for Tier III FIRE Members in the event statutory presumptions were to apply equal those currently used for Tier I and Tier II FIRE Members.

The actuarial valuation methodology does not include a calculation of the value of an offset for Workers' Compensation benefits as it is the understanding of the Actuary that FIRE members are not covered by such benefits.

To the extent that the enactment of this proposed legislation would cause a greater (lesser) number of Tier III FIRE Members to be reclassified from Ordinary Disability to Accidental Disability Retirement, or to the extent that Tier III FIRE Members who would not otherwise ever choose to apply and then receive an Ordinary Disability Retirement benefit or an Accidental Disability Retirement benefit, then the additional APVB and employer contributions shown herein would be greater (lesser).

Employer contributions under current methodology have been estimated assuming the additional APVB would be financed through future normal contributions including an amortization of the new UAAL attributable to this proposed legislation over a 15-year period (14 payments under the OYLM Methodology).

New entrants into Tier III FIRE Members were projected to replace the FIRE members expected to leave the active population to maintain a steady-state population.

The following Table 3 presents the total number of active employees of FIRE used in the projections, assuming a level work force, and the cumulative number (i.e., net of withdrawals) of Tier III Members as of each June 30 from 2013 through 2017.

Table 3
Surviving Actives from Census on June 30, 2013
and
Cumulative New Tier III FIRE Members from 2013
Used in the Projections*

June 30	Tier I & II	Tier III	Total
2013	10,013	169	10,182
2014	9,486	696	10,182
2015	8,988	1,194	10,182
2016	8,509	1,673	10,182
2017	8,055	2,127	10,182

* Total active members included in the projections assume a level work force based on the June 30, 2013 (Lag) actuarial valuation census data. Assumes presumptions apply to Tier III FIRE members.

For purposes of estimating the impact of the Tier III Escalation for retired Tier III FIRE Members, consistent with an underlying Consumer Price Inflation ("CPI") assumption of 2.5% per year, Tier III Escalation of 2.5% per year has been assumed.

This compares with the current Chapter 125 of the Laws of 2000 COLA assumption of 1.5% per year (i.e., 50% of CPI adjusted to recognize 1.0% minimum and 3.0% maximum) on the first $18,000 of benefit.

For Variable Supplements Fund ("VSF") benefits, it has been assumed that retroactive lump sum payments of VSF ("DROP payments") would be payable from the completion of 20 years of service.

ECONOMIC VALUES OF BENEFITS: The actuarial assumptions used to determine the financial impact of the proposed legislation discussed in this Fiscal Note are those appropriate for budgetary models and determining annual employer contributions to FIRE.

However, the economic assumptions (current and proposed) that are used for determining employer contributions do not develop risk-adjusted, economic values of benefits. Such risk-adjusted, economic values of benefits would likely differ significantly from those developed be the budgetary models.

STATEMENT OF ACTUARIAL OPINION: I, Robert C. North Jr., am the Acting Chief Actuary for the New York City Retirement Systems. I am a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

FISCAL NOTE IDENTIFICATION: This estimate is intended for use only during the 2015 Legislative Session. It is Fiscal Note 2015-03, dated January 30, 2015 prepared by the Acting Chief Actuary of the New York Fire Department Pension Fund.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

Background - Design of Proposed Legislation

In general, the OA believes that proposed legislation should:

* Be technically accurate,
* Be clear in its intent,
* Be administrable, and
* Meet desired policy objectives.

While the OA cannot provide any legal analysis, the OA has done a review of the proposed legislation and has some concerns. These concerns that follow represent the best understanding of the Actuary and staff of the OA and should not be considered legal interpretations. All of these concerns and suggestions should be reviewed by Counsel.

Unless otherwise noted, for purposes of this letter the term Tier III FIRE Members refers to members of the New York Fire Department Pension Fund ("FIRE") who have a date of membership on or after April 1, 2012 and the one Tier III member of FIRE who has a date of membership on or after July 1, 2009 and prior to April 1, 2012.

Concerns with Proposed Legislation with Respect to Ordinary Disability Retirement ("ODR") and Accidental Disability Retirement ("ADR")

* Benefits Compared to Tier II: The proposed legislation, if enacted, would revise the ODR and ADR benefit formulas for Tier III FIRE Members.

It appears that the proposed Tier III ODR benefit formula is intended to be the same as the ODR benefit available to Tier II FIRE Members (i.e., 1/40 of Final Average Salary ("FAS") multiplied by the years of service, but not less than (1) one-half of FAS if the years of service

are 10 or more or (2) one-third of FAS if the years of service are less than 10) where the FAS for Tier III FIRE Members would be based on a one-year FAS, the same as for Tier II.

Similarly, it also appears that the proposed ADR benefit formula for Tier III FIRE Members is intended to be the same as the ADR benefit available to Tier II FIRE Members (i.e., 75% of Final Average Salary ("FAS")), where the FAS for Tier III FIRE Members would be based on a one-year FAS, the same as for Tier II.

Note: Tier II FIRE Members are also entitled to an additional 1/60 of total earnings after their 20th anniversary. Given the proposed statutory references it is the understanding of the Actuary that the Tier III FIRE Members impacted by the proposed legislation would not receive this additional 1/60 of total earnings after 20 years of service.

FIRE Tier II ODR and ADR benefits are subject to Cost-of-Living Adjustments ("COLA") under Chapter 125 of the Laws of 2000 on the first $18,000 of benefit after five years of Disability Retirement.

Given the proposed statutory references, it is the understanding of the Actuary that the proposed ODR and ADR benefits for Tier III FIRE Members would be entitled to the COLA described in the preceding paragraph, but would NOT be subject to an annual Tier III Escalation increase on the full benefit immediately from the date of Disability Retirement.

* Reference to ITHP: The proposed legislation, in defining the revised ODR and ADR benefits, uses the term Increased-Take-Home-Pay ("ITHP").

ITHP is a special benefit provided to Tier I and Tier II members and is not defined for Tier III members.

Given the history that no Tier III Members have ever received ITHP benefits, the Actuary has assumed that if the proposed legislation were enacted, Tier III FIRE Members would not be entitled to ITHP.

* Annuitization of Member Contributions: The proposed legislation would include in the ODR and ADR benefit formulas for Tier III FIRE Members, a benefit in the form of an annuity equal to the actuarial equivalent of the accumulated Tier III member contributions at retirement.

Annuitized benefits based directly on member contributions are available to Tier II FIRE Members. However, it is the understanding of the Actuary that no current Tier III Member has any benefit which is defined as an annuitization of accumulated member contributions.

* General Plan Design: From an administrative and design viewpoint, the Actuary would suggest that consideration be given to incorporating enhanced ODR and ADR benefit eligibilities and benefit formulas within Retirement and Social Security Law ("RSSL") Article 14, using only Article 14 terminology and structure to achieve the desired ODR and ADR benefit eligibilities and benefit levels.

* Name: The official name of the Pension Fund is the New York Fire Department Pension Fund.

* Presumptive Conditions for ADR

It is the understanding of the Actuary that the proposed legislation, if enacted, would provide Tier III FIRE Members the ability to be eligible for and to utilize the presumptive conditions that qualify for ADR that are available to Tier I and Tier II FIRE Members.

The reasoning behind this understanding is that in the proposed legislation, eligibility conditions for Tier III FIRE members for ODR would be determined pursuant to the Administrative Code of the City of New York ("ACNY") Sections 13-316, 13-352 and 13-357 (i.e., those that apply

to Tier I and Tier II FIRE Members), notwithstanding anything to the contrary.

Similarly, in the proposed legislation, eligibility conditions for Tier III FIRE Members for ADR would be determined pursuant to the Administrative Code of the City of New York ("ACNY") Sections 13-316, 13-353 and 13-357 (i.e., those that apply to Tier I and Tier II FIRE Members), notwithstanding anything to the contrary.

It is the understanding of the Actuary that in the proposed legislation, eligibility for ODR and ADR would not be pursuant to RSSL Section 507.e. RSSL Section 507.e provides that a member shall not be eligible for ODR or ADR unless the member waives the benefits of any statutory presumptions. Accordingly, it is the understanding of the Actuary that since under the proposed legislation RSSL Section 507.e would no longer apply to Tier III FIRE Members, Tier III FIRE Members would not be required to waive RSSL Section 507.e in order to be eligible for ODR or ADR benefits. Consequently, the statutory presumptions would apply since they have not been waived.

In accordance with the above reasoning, since current Tier III FIRE Members are required to waive the presumptions pursuant to RSSL Section 507.e, it is the understanding of the Actuary that Tier III FIRE Members are currently not entitled to presumptive conditions for ADR.

* Consistency Amongst Uniformed Groups

This proposed legislation would cover members of FIRE but not members of the New York City Police Pension Fund ("POLICE") or any other uniformed groups. Given the historical consistency in benefits amongst certain uniformed groups, this proposed legislation would likely lead to demands for similar legislation for at least some other uniformed groups.

FISCAL NOTE: PROVISIONS OF PROPOSED LEGISLATION: This proposed legislation would amend Retirement and Social Security Law ("RSSL") Sections 506, 507, 510, 511 and 512 and amend Administrative Code of the City of New York ("ACNY") Section 13-357 to change, for members of the New York Fire Department Pension Fund ("FIRE") subject to Article 14 of the RSSL, the eligibility for and the calculation of Ordinary Disability Retirement ("ODR") benefits and Accidental Disability Retirement ("ADR") benefits.

The proposed legislation would also amend ACNY Section 13-353.1 and General Municipal Law ("GML") Sections 207-k, 207-kk, 207-p and 207-q to change the eligibility requirements for Medical Officers of FIRE to utilize the statutory presumptions that qualify FIRE members for ADR.

Unless otherwise noted, for purposes of this Fiscal Note the term Tier III FIRE members refers to members of the New York Fire Department Pension Fund ("FIRE") who have a date of membership on or after July 1, 2009. Note: Although referred to herein as Tier III members, it should be noted that members who join FIRE on or after April 1, 2012 are often referred to as Tier VI members or Revised Tier III members. Also Note: There is only one Tier III member of FIRE who has a date of membership on or after July 1, 2009 and prior to April 1, 2012.

The Effective Date of the proposed legislation would be the 60th day after the date of enactment.

IMPACT ON ODR BENEFITS PAYABLE: The current eligibility provisions for ODR benefits for Tier III FIRE Members are based on:

* Completing five or more years of service, and

* Becoming eligible for Primary Social Security Disability retirement benefits.

Such ODR benefits are equal to the greater of:

* 33 1/3% of Five-Year Final Average Salary ("FAS"), or
* 2% of FAS multiplied by years of credited service (not in excess of 22 years),
* Reduced by 50% of the Primary Social Security Disability benefits (determined under RSSL Section 511), and
* Reduced by 100% of Workers' Compensation benefits (if any).

It is the understanding of the Actuary that FIRE Members are not covered by Workers' Compensation.

Under the proposed legislation the eligibility requirements for ODR benefits for Tier III FIRE Members would be revised to be the same as those provided in ACNY Sections 13-316, 13-352 and 13-357 (i.e., the provisions applicable to Tier I and Tier II FIRE members).

In particular, completing five or more years of service would not be required in order to be eligible for ODR benefits. In other words, there would not any requirement for any minimum length of service to be completed in order to be eligible for ODR benefits.

Under the proposed legislation, if enacted, the ODR benefit for Tier III FIRE Members would be an allowance consisting of:

* An actuarial equivalent annuity of accumulated member contributions, plus
* A pension, which together with the annuity, equal to 1/40 of One-Year Final Average Salary ("FAS1") multiplied by years of credited service, but not less than:
* * 1/2 of FAS1, if years of credited service are greater than or equal to 10 years, or
* * 1/3 of FAS1, if years of credited service are less than 10 years.

Note: The proposed legislation also states that one component of the ODR benefit would be the actuarial equivalent annuity of an Increased-Take-Home-Pay ("ITHP") reserve. This theoretical benefit is not included in this Fiscal Note analysis since it is the understanding of the Actuary that ITHP is not available to Tier III members generally and is not specifically defined in the proposed legislation.

In addition, the proposed legislation would <u>not</u> apply the Escalation available under RSSL Section 510 to ODR benefits for Tier III FIRE Members. However, such ODR benefits would still be eligible for Cost-of-Living Adjustments ("COLA") under Chapter 125 of the Laws of 2000.

IMPACT ON ADR BENEFITS PAYABLE: The current eligibility provisions for ADR benefits for Tier III FIRE Members are based on satisfying either:

* Being eligible for Social Security Disability retirement benefits and having become disabled due to an accident sustained in the line of duty, or
* Being physically or mentally incapacitated as a result of an accident sustained in the line of duty as determined by the appropriate administrative authority assigned by FIRE.

As a consequence of RSSL Section 507.e, a Tier III FIRE Member would not be eligible for ADR unless the member waived the benefits of any statutory presumptions (e.g., certain heart diseases).

Such ADR benefits are calculated using a formula of 50% multiplied by FAS less 50% of Primary Social Security disability benefit (determined under RSSL Section 511) and less 100% of Workers' Compensation benefits (if any).

Note: It is the understanding of the Actuary that FIRE Members are not covered by Workers' Compensation.

Under the proposed legislation the eligibility requirements for ADR benefits for Tier III FIRE Members would be revised to be the same as

those provided in ACNY Sections 13-316, 13-353 and 13-357 (i.e., the provisions applicable to Tier I and Tier II FIRE Members).

In addition, it is the understanding of the Actuary that the proposed legislation, if enacted, would provide that Tier III FIRE Members could be eligible for and utilize the statutory presumptions (e.g., certain heart diseases) that qualify certain Tier I and Tier II FIRE Members for ADR.

The current eligibility to utilize the statutory presumptions requires that the member must have successfully passed a physical examination for entry into public service which failed to disclose evidence of the qualifying condition or impairment of health that formed the basis for the disability.

Under the proposed legislation, Medical Officers may satisfy the eligibility to utilize the statutory presumptions provided the Medical Officer authorized release of all relevant medical records, and there is no evidence of the qualifying condition or impairment that formed the basis for the disability in such medical records unless the contrary is proved by competent evidence.

Under the proposed legislation, if enacted, the ADR benefit for Tier III FIRE Members would be revised to equal a retirement allowance equal to the sum of:

* An actuarial equivalent annuity of accumulated member contributions, plus

* 75% multiplied by FAS1.

Note: The proposed legislation also states that one component of the ADR benefit would be the actuarial equivalent annuity of an Increased-Take-Home-Pay ("ITHP") reserve. This theoretical benefit is not included in this Fiscal Note analysis since it is the understanding of the Actuary that ITHP is not available to Tier III members generally and is not specifically defined in the proposed legislation.

Also note, it is the understanding of the Actuary that the Tier III FIRE Members impacted by the proposed legislation would not receive any additional 1/60 of annual earnings after 20 years of service.

In addition, the proposed legislation would **not** apply the Escalation available under RSSL Section 510 to ADR benefits for Tier III FIRE Members. However, such ADR benefits would still be eligible for Cost-of-Living Adjustments ("COLA") under Chapter 125 of the Laws of 2000.

FINANCIAL IMPACT - CHANGES IN BENEFITS - ACTUARIAL PRESENT VALUES: Based on the census data and the actuarial assumptions and methods noted herein, if the Effective Date is on or before June 30, 2015, then this would change the Actuarial Present Value ("APV") of benefits ("APVB"), APV of member contributions, the Unfunded Acturial Accrued Liability ("UAAL") and APV of future employer costs as of June 30, 2013 for Tier III FIRE Members.

FINANCIAL IMPACT - CHANGES IN PROJECTED APV OF FUTURE EMPLOYER COSTS AND PROJECTED EMPLOYER COSTS: For purposes of this Fiscal Note, it is assumed that the changes in APVB, APV of future member contributions, UAAL and APV of future employer costs would be reflected for the first time in the June 30, 2013 actuarial valuation of FIRE.

Under the One-Year Lag Methodology ("OYLM"), the first year that changes in benefits for Tier III FIRE Members could impact employer costs to FIRE would be Fiscal Year 2015.

In accordance with ACNY Section 13.638.2(k-2), new UAAL attributable to benefit changes are to be amortized as determined by the Actuary but generally over the remaining working lifetime of those impacted by the benefit changes. As of June 30, 2013, the remaining working lifetime of

the Tier III FIRE Members is approximately 24 years. Recognizing that this period will decrease over time as the group of Tier III Members matures, the Actuary would likely choose to amortize the new UAAL attributable to this proposed legislation over a 15-year to 20-year period (between 14 and 19 payments under the OYLM Methodology). However, since virtually all of the Tier III FIRE members that would be impacted by the benefit changes are new entrants, the resulting UAAL would be de minimis and therefore the amortization period used for the UAAL has very little impact on the final results.

The following Table 1 presents an estimate of the increases due to the changes in ODR and ADR provisions for Tier III FIRE Members and the changes in eligibility requirements for presumptions for FIRE Medical Officers in the APV of future employer costs and in employer costs to FIRE for Fiscal Years 2015 through 2019 that would occur based on the applicable actuarial assumptions and methods noted herein:

Table 1
Estimated Financial Impact on FIRE
If Certain Revisions are Made to
Provisions for ODR and ADR Benefits
for Tier III FIRE Members and to Presumption
Eligibility Requirements for Medical Officers *

($ Millions)

Fiscal Year	Increase in APV of Future Employer Costs	Increase in Employer Costs
2015	$16.3	$2.1
2016	68.3	8.2
2017	120.1	13.5
2018	173.1	18.4
2019	227.3	23.1

* Based on actuarial assumptions and methods set forth in the Actuarial Assumptions and Method section. Also, based on the projection assumptions as described herein.

ODR and ADR benefits are **not** subject to Tier III Escalation (RSSL Section 510).

The estimated increases in employer costs shown in Table 1 are based upon the following projection assumptions:

* Level workforce (i.e., new employees are hired to replace those who leave active status).

* Projected salary increases consistent with those used in projections presented to the New York City Office of Management and Budget ("NYCOMB") for use in the January 2015 Financial Plan ("Updated Preliminary Projections").

* New entrant salaries consistent with those used in the Updated Preliminary Projections.

These "open group" projections include future new entrants introduced into the census data models to project the future workforces.

As of each future actuarial valuation date, the current "closed group" actuarial assumptions and valuation methodology are used.

Under this methodology only Plan participants as of each actuarial valuation date are utilized to determine APVs employer costs and employer contributions.

FINANCIAL IMPACT - CHANGES IN PROJECTED APV OF FUTURE EMPLOYER CONTRIBUTIONS AND PROJECTED EMPLOYER CONTRIBUTIONS: Since the assumptions used in the actuarial valuation of FIRE do not distinguish between Medical Officers and other FIRE members and those assumptions for Tier II members already incorporate some or all of the presumptions available under law, the increase in employer contributions and in the APV of future employer contributions would be slightly less than those shown in Table 1.

FINANCIAL IMPACT - EMPLOYER ENTRY AGE NORMAL COSTS: Employer Entry Age Normal Costs can provide a useful basis to compare the value of alternative benefit programs.

For each member who enters FIRE, there is a theoretical net annual employer cost to be paid for such member while such member remains actively employed (i.e., the Employer Entry Age Normal Cost ("EEANC")).

In addition, such EEANC may be expressed as a percentage of salary earned over a working lifetime and referred to as the Employer Entry Age Normal Rate ("EEANR").

Under the proposed legislation and based on the actuarial assumptions noted herein, the EEANC and EEANR of Tier III FIRE Members would be greater than the EEANC and EEANR for comparable Tier III FIRE Members entering at the same attained age and gender under the current FIRE provisions.

Table 2 shows a summary of the change in EEANR for Tier III FIRE Members who have a date of membership on or after April 1, 2012 for entry ages 25, 30 and 35 with a starting salary of $45,000, determined as of the most recent date of published EEANR calculations:

Table 2
Comparison of Employer Entry Age Normal Rates
Determined as of June 30, 2012*

To Implement Certain ODR and ADR Provisions for
Tier III FIRE Members with a Membership Date on or After April 1, 2012

Under Proposed Legislation
and
Under Current Law

EEANR Under Proposed Legislation**

	Entry Age 25		Entry Age 30		Entry Age 35	
Retirement System	Male	Female	Male	Female	Male	Female
FIRE	21.92%	22.50%	27.31%	28.01%	34.55%	35.31%
EEANR Under Current Law						
FIRE	15.94%	16.51%	18.99%	19.68%	21.78%	22.51%
Increase in EEANR Due to Proposed Legislation						
FIRE	5.98%	5.99%	8.32%	8.33%	12.77%	12.80%

* Based on salaries paid over entire working lifetime. EEANR do not vary significantly over time, absent benefit and/or actuarial assumption changes.

** EEANR determined under the terms of the revised ODR and ADR benefit provisions based on the Actuarial Assumptions and Methods as noted herein including changes in assumptions for ADR. ODR and ADR benefits are not subject to Tier III Escalation (RSSL Section 510).

OTHER COSTS: Not measured in this Fiscal Note are the following:

* The initial, additional administrative costs of FIRE and other New York City agencies to implement the proposed legislation.

* The potential impact if this proposed legislation were to be extended to other public safety employees.

* The impact of this proposed legislation on Other Postemployment Benefit ("OPEB") costs.

CENSUS DATA: The starting census data used for the calculations presented herein are the census data used in the Updated Preliminary June 30, 2013 (Lag) actuarial valuation of FIRE used to determine the Updated Preliminary Fiscal Year 2015 employer contributions.

The census data used for the estimates of additional employer contributions presented herein are based on average salaries of new entrants utilized in the Updated Preliminary June 30, 2013 (Lag) actuarial valuations used to determine Updated Preliminary Fiscal Year 2015 employer contributions of FIRE.

The 169 Tier III FIRE Members as of June 30, 2013 (including the one Tier III member who has a date of membership prior to April 1, 2012) had an average age of approximately 27, average service of approximately 0.5 years and an average salary of approximately $48,200.

There were 21 Medical Officers in FIRE as of June 30, 2013. Of the 21, 7 are currently eligible to utilize the statutory presumptions. In addition, 7 of the 14 Medical Officers who are not currently eligible to utilize the statutory presumptions became members after September 11, 2001 and, therefore, are unlikely to be eligible for World Trade Center presumptive benefits but, if the proposed legislation is enacted, could become eligible for other presumptive benefits.

ACTUARIAL ASSUMPTIONS AND METHODS: The additional employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the June 30, 2013 (Lag) actuarial valuations used to determine Updated Preliminary Fiscal Year 2015 employer contributions of FIRE and adjusted for revised ADR eligibility provisions.

The probabilities of accidental disability used for Tier III FIRE Members in the event statutory presumptions were to apply equal those currently used for Tier I and Tier II FIRE Members.

The actuarial valuation methodology does not include a calculation of the value of an offset for Workers' Compensation benefits as it is the understanding of the Actuary that FIRE Members are not covered by such benefits.

To the extent that the enactment of this proposed legislation would cause a greater (lesser) number of Tier III FIRE Members to be reclassified from Ordinary Disability to Accidental Disability Retirement, or to the extent that Tier III FIRE Members who would not otherwise ever choose to apply and then receive an Ordinary Disability Retirement benefit or an Accidental Disability Retirement benefit, then the additional APVB and employer contributions shown herein would be greater (lesser).

Employer contributions under current methodology have been estimated assuming the additional APVB would be financed through future normal contributions including an amortization of the new UAAL attributable to this proposed legislation over a 15-year period (14 payments under the OYLM Methodology).

New entrants into Tier III FIRE Members were projected to replace the FIRE members expected to leave the active population to maintain a steady-state population.

The following Table 3 presents the total number of active employees of FIRE used in the projections, assuming a level work force, and the cumulative number (i.e., net of withdrawals) of Tier III Members as of each June 30 from 2013 through 2017.

Table 3
Surviving Actives from Census on June 30, 2013
and
Cumulative New Tier III FIRE Members from 2013
Used in the Projections*

June 30	Tier I&II	Tier III	Total
2013	10,013	169	10,182
2014	9,486	696	10,182
2015	8,988	1,194	10,182
2016	8,509	1,673	10,182
2017	8,055	2,127	10,182

* Total active members included in the projections assume a level work force based on the June 30, 2013 (Lag) actuarial valuation census data. Assumes presumptions apply to Tier III FIRE members.

For purposes of estimating the impact of the Tier III Escalation for retired Tier III FIRE Members, consistent with an underlying Consumer Price Inflation ("CPI") assumption of 2.5% per year, Tier III Escalation of 2.5% per year has been assumed.

This compares with the current Chapter 125 of the Laws of 2000 COLA assumption of 1.5% per year (i.e., 50% of CPI adjusted to recognize 1.0% minimum and 3.0% maximum) on the first $18,000 of benefit.

For Variable Supplements Fund ("VSF") benefits, it has been assumed that retroactive lump sum payments of VSF ("DROP payments") would be payable from the completion of 20 years of service.

ECONOMIC VALUES OF BENEFITS: The actuarial assumptions used to determine the financial impact of the proposed legislation discussed in this Fiscal Note are those appropriate for budgetary models and determining annual employer contributions to FIRE.

However, the economic assumptions (current and proposed) that are used for determining employer contributions do not develop risk-adjusted, economic values of benefits. Such risk-adjusted, economic values of benefits would likely differ significantly from those developed by the budgetary models.

STATEMENT OF ACTUARIAL OPINION: I, Robert C. North, Jr., am the Acting Chief Actuary for the New York City Retirement Systems. I am a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

FISCAL NOTE IDENTIFICATION: This estimate is intended for use only during the 2015 Legislative Session. It is Fiscal Note 2015-07, dated February 27, 2015 prepared by the Acting Chief Actuary of the New York Fire Department Pension Fund.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A6046

SPONSOR: Abbate

TITLE OF BILL: An act to amend the administrative code of the city of New York, the retirement and social security law, and the general municipal law, in relation to the disability benefits of members of the New York city police and fire pension funds

PURPOSE: To provide equal disability benefits to all police and fire pension members in New York City.

SUMMARY OF PROVISIONS:

Section one of this bill amends sections 13-357(a) and 13-357(b) of the Administrative Code of New York City, subdivision (a) as amended by the Laws of 1986, to include disability pensioners who have retired pursuant to Section 506 and Section 507 of the Retirement and Social Security Law.

Section two of this bill adds subdivisions e and f to Section 506 of the Retirement and Social Security Law. Subdivisions (e) and (f) respectively allow police and fire pension members to be eligible for ordinary disability retirement pursuant to Sections 13-251 and 13-254 of the New York City Administrative Code. They provide that a retiree under these sections shall receive an annuity equal to his or her accumulated contributions, a pension equal to the reserve-for-increased-take-home-pay for him or her, and a pension equal to one-fortieth of his or her final average salary multiplied by the number of years of city-service credited to him or her but not less than half of his or her Final average salary if his or her credited years are ten or more, or one-third of his or her Final average salary if credited years are less than ten.

Section three of this bill adds subdivisions (j) and (k) to Section 507 of the Retirement and Social Security Law. Subdivisions (j) and (k) respectively allow police and fire pensioners to be eligible for accidental disability retirement. They provide that a retiree shall receive an annuity equal to his or her accumulated contributions, a pension equal to the reserve-for-increased-take-home-pay for him or her, and a pension equal to 75 percent of his or her final average salary.

Section four of this bill adds subdivision (i) to Section 510 of the Retirement and Social Security Law. Subdivision (i) provides that annual escalation shall not apply to the ordinary or accidental disability retirement benefits for those who retire pursuant to Sections 506 and 507 of the Retirement and Social Security Law. Instead, their benefits shall be adjusted for cost-of-living pursuant to Section 13-696 of the New York City Administrative Code.

Section five of this bill amends Section 511(f) of the Retirement and Social Security Law to provide that this section shall not apply to police and fire pension members who are subject to this article.

Section six of this bill adds subdivisions (e) and (f) to Section 512 of the Retirement and Social Security Law. Subdivisions (e) and (f) respectively provide that police and fire pensioners' final average salary shall mean the salary earned the year prior to retirement, unless that salary is 20 percent more than the year prior to that, in which case that excess 20 percent is excluded from the actuarial. Leave's of absence shall be excluded from the actuarial as well.
Section seven of this bill adds reletters paragraph (b) of Section 13-353.1(1) to (c) and adds a new paragraph (b). New paragraph (b) states that in order to be eligible for paragraph (a) of this subdivision, a member must have passes a physical exam for entry into public service which failed to disclose evidence of the qualifying condition that was the basis for the disability, or have authorized for the release of medical records if he or she did not have a physical exam for entry into public service and there is no evidence in those records that the qualifying condition existed before September 11, 2001.

Section eight of this bill states that this act shall become effective on the sixtieth day after it shall become a law.

JUSTIFICATION: In 2009, Governor Paterson vetoed a Tier 2 extension bill for all New York State Police and Fire pension members. In Veto Memorandum 5, Governor Paterson stated that due to the "recession and fiscal crisis," as well as the Comptroller's announcement that the "New York State Pension Fund lost 26% of its value in the most recent fiscal year," led to his decision not to "ignore the present reality, and simply re-enact the same provisions that have contributed to New York's financial straits, without accompanying reform." This reform, which was Tier V, was approved on December 10, 2009 as Chapter 504 of the Laws of 2009.

Shortly after Governor Paterson issued Veto Memorandum 5, most of the State Police and Fire unions negotiated with management and agreed to a Tier V benefit plan. The Mayor of New York City would not agree to the same benefits, resulting in no new pension plan agreement covering New York City Police and Fire members. With no new pension plan, New York City Police and Fire members defaulted into the original Article 14 Tier Ill pension plan. Tier III provides very limited disability benefits, which are only 50% of the member's final average salary, which is reduced by 50% of the primary social security benefit received. Tier II members receive an accidental disability benefit equaling 75% of the member's final average salary with no reduction for primary social security benefits received by the member.

An example in the difference in these benefits is illustrated by the potential accidental disability benefits that would be provided to Police Officer Kenneth Healey. On October 23, 2014, by a man wielding an 18 inch hatchet struck Officer Healey in the head while he was standing on a sidewalk with three other police officers in Jamaica, Queens. As a result of the attack Officer Healy was hospitalized for five days and has underwent two surgeries on his skull. If Officer Healy received an accidental disability pension due to his injuries, the amount of the pension would be approximately $21,000 per year, with a reduction in an

amount equaling 50% of any primary social security benefits that he may receive. If Officer Healy was eligible to receive Tier II accidental disability benefits, he would receive approximately $31,500 per year without any reduction for social security benefits.

Another example of this inequity is illustrated by the potential accidental disability benefits that would be paid to Police Officer Rosa Rodriguez. Officer Rodriguez was injured when she and her partner responded to an apartment fire in Coney Island that was set by a teenager. She and her partner, Police Officer Dennis Guerra, were overcome by smoke in the burning building. They were both rushed to the hospital in critical condition. Officer Guerra died four days later as a result of his injuries. Officer Rodriguez was in a coma for six days and has been released from the hospital with an uncertain future because the doctors have said that she may never fully recover from her injuries. Officer Rodriguez would be entitled to an accidental disability pension of $22,000 per year, with a reduction in an amount equaling 50% of any primary social security benefits that she may receive. If Officer Rodriguez was eligible to receive Tier II accidental disability benefits, she would receive approximately $31,500 per year without any reduction for social security benefits.

This bill would reverse the inequities inherent in Tier III illustrated by Officer Healy and Officer Rodriguez

LEGISLATIVE HISTORY: This is a new bill.

FISCAL IMPLICATIONS: See the bill.

EFFECTIVE DATE: This act shall take effect on the sixtieth day after it shall have become law.

May __, 2015

RE: An act to amend the administrative code of the city of New York, the retirement and social security law, and the general municipal law, in relation to the disability benefits of members of the New York city police and fire pension funds

A. 6046 (Abbate)
S. 4269 (Golden)

MEMORANDUM IN SUPPORT

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages and towns across New York State, strongly supports enactment of this legislation that would amend the New York State Retirement and Social Security Law ("RSSL"), the New York City Administrative Code, and the General Municipal Law to correct a fundamental inequality for members of the New York City police and fire department pension funds, who remain under an Article 14 Tier III benefit plan.

In 2009, Governor Paterson vetoed a Tier II extension bill that was applicable to all Police and Fire members of the New York State and Local Police and Fire Retirement System as well as the New York City Police Pension Fund and New York City Fire Department Pension Fund. By statutory default, those persons who became members of the two City pension systems on or after July 1, 2009 were placed in Tier III.

The Tier III pension plan is far inferior to the Tier II plan, previously in effect and the Tier V plan which was subsequently adopted for the New York State and Local Police and Fire Retirement System. The Tier III pension plan provides a modified service credit plan and significantly inferior disability benefits. Not only are the disability benefits lower in amount, there are no presumptive disabilities provided for such as the heart presumption, lung presumption and cancer presumption.

This bill would address the inequities relating to service retirement benefits and disability retirement benefits for NYFD fire fighters and NYPD police officers, who are under Tier III, and place them on a similar status with New York City Police and Fire members who joined before July 1, 2009.

Currently, a bill is before the New York City Council for a home rule message. Once obtained, then the legislation could be passed by the Houses and then signed into law.

Therefore, NYSPFFA strongly supports the enactment of this legislation.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4849-9740-8035, v. 3

Enclosure (6)

A. 4230 / S. 1473 – CUNY Tuition Bill

A 4230 Abbate Same as S 1473 GOLDEN
Education Law
TITLE....Requires regulations to permit tuition waivers for two courses for firefighter students in baccalaureate/higher degree CUNY programs
01/29/15 referred to higher education

S1473 GOLDEN Same as A 4230 Abbate
ON FILE: 01/14/15 Education Law
TITLE....Requires regulations to permit tuition waivers for two courses for firefighter students in baccalaureate/higher degree CUNY programs
01/12/15 REFERRED TO HIGHER EDUCATION
03/11/15 REPORTED AND COMMITTED TO FINANCE

STATE OF NEW YORK

4230

2015-2016 Regular Sessions

IN ASSEMBLY

January 29, 2015

Introduced by M. of A. ABBATE -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to certain tuition waivers for firefighters and fire officer students of the city university of New York; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 7 of section 6206 of the education law is amended by adding a new paragraph (d) to read as follows:

(d) Notwithstanding the provisions of any other general, special or local law, rule or regulation, the board of trustees shall promulgate regulations to permit firefighters and fire officers employed by the New York city fire department, who are enrolled in programs leading to baccalaureate or higher degrees at a senior college of the city university to attend two courses without tuition, provided that such courses are related to their employment as firefighters and fire officers and that such tuition-waived attendance does not deny course attendance at a senior college of the city university by an individual who is otherwise qualified under this section.

§ 2. This act shall take effect immediately and shall expire and be deemed repealed July 1, 2017.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD05597-01-5

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A4230

SPONSOR: Abbate

TITLE OF BILL: An act to amend the education law, in relation to certain tuition waivers for firefighters and fire officer students of the city university of New York; and providing for the repeal of such provisions upon expiration thereof

PURPOSE: To allow firefighters and fire officers employed by the New York City Fire Department to attend two courses without tuition, at a senior college of the City University System.

SUMMARY OF PROVISIONS:

Section 1 of the bill adds a new paragraph (d) to subdivision 7 of Education Law section 6206 to require the trustees of the City University of New York ("CUNY") to promulgate regulations that would afford firefighters employed by the New York City Fire Department ("FDNY") who are enrolled in a program leading to a baccalaureate or higher degree to attend two courses without tuition, provided that such attendance does not deny course attendance by another person who is otherwise qualified under section 6206.

Section 2 of the bill provides that this bill shall take effect immediately and shall expire and be deemed repealed on July 1, 2017.

EXISTING LAW: Department ("NYPD") who are enrolled in a program leading to a baccalaureate or higher degree are afforded the opportunity to attend two tuition-free courses at CUNY. The same opportunity is not afforded to firefighters employed by FDNY who are enrolled in a program leading to a baccalaureate or higher degree.

JUSTIFICATION: Chapter 548 of the Laws of 2004 amended the Education Law to afford police officers employed by NYPD who are enrolled in a program leading to a baccalaureate or higher degree to attend two tuition-free courses at CUNY. This program was originally set to expire on July 1, 2006. It has been extended four times and is currently set to expire on July 1, 2016.

Firefighters should be afforded the same opportunity. The rationale underlying the program for police officers is equally applicable to firefighters. This underlying rationale "was to provide an incentive for public safety personnel to pursue education early in their careers so that the taxpaying citizens would enjoy the greatest long-term benefit from an educated public safety service."

LEGISLATIVE HISTORY: 2014: S.3958-B - Passed the Senate 2013: S.3958-B - Reported to Finance 2012: S.6437 - Referred to Higher Education

FISCAL IMPLICATIONS: None to the State

EFFECTIVE DATE: This bill shall take effect immediately and shall expire and be deemed repealed on July 1, 2017.

May __, 2015

RE: An act to amend the education law, in relation to certain tuition waivers for firefighters and fire officer students of the city university of New York; and providing for the repeal of such provisions upon expiration thereof

A. 4230 (Abbate)
S. 1473 (Golden)

MEMORANDUM IN SUPPORT

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages and towns across New York State, strongly supports enactment of this legislation which allow fire fighters and fire officers employed by the New York City Fire Department ("FDNY") to attend two (2) courses without tuition at a senior college of the City University System ("CUNY"), provided such courses relate to their employment and such does not deny course attendance to an otherwise eligible individual.

Current legislation offers police officers, who are employed by the New York City Police Department ("NYPD") and enrolled in a program leading to baccalaureate or higher degree, the opportunity to attend one tuition-free course at CUNY. This program for NYPD police officers has been extended since its creation in 2004 and is set to expire on July 1, 2016. FDNY fire fighters and fire officers, who are similarly enrolled in a baccalaureate or higher degree program, are not afforded the same opportunity, despite their comparable service to New York City.

NYFD fire fighters and fire officers should be treated equally and afforded an opportunity to receive two (2) tuition-free courses at CUNY. The rationale supporting the current program "was to provide an incentive for public safety personnel to pursue education early in their careers so that the taxpaying citizen

would enjoy the greatest long-term benefit from an educated public safety service." Such undoubtedly holds true for NYFD fire fighters and fire officers, as they are an integral part of protecting the public. Specifically, NYFD fire fighters and fire officers have an expansive universe of duties, including not only responding to and extinguishing fires but also responding to medical emergencies, investigating fires for potential arson, and conducting fire and building code regulatory inspections. The taxpayers would receive the same long-term benefit with educated fire fighters and fire officers by opening this program with no additional cost.

Therefore, NYSPFFA strongly supports the enactment of this legislation.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4827-0882-3587, v. 1

Enclosure (7)

A. 4313-A – Military Service Credit for All Veterans

A4313-A Paulin (MS) No Same as
Retirement and Social Security Law
TITLE....Provides credit to members of public retirement systems of the state for military service rendered during certain periods
01/30/15 referred to governmental employees
03/09/15 amend and recommit to governmental employees
03/09/15 print number 4313a

STATE OF NEW YORK

4313--A

2015-2016 Regular Sessions

IN ASSEMBLY

January 30, 2015

Introduced by M. of A. PAULIN, ABBATE, COLTON, BROOK-KRASNY, ZEBROWSKI, GOLDFEDER, SANTABARBARA, ABINANTI, BARRETT, BENEDETTO, CAHILL, CLARK, DINOWITZ, FAHY, GANTT, GUNTHER, HEVESI, JAFFEE, MAGNARELLI, MARKEY, MAYER, ORTIZ, OTIS, PICHARDO, QUART, RAMOS, ROBERTS, ROSENTHAL, RUSSELL, RYAN, SCHIMEL, SCHIMMINGER, SEPULVEDA, SIMANOWITZ, SIMOTAS, SKOUFIS, STECK, STIRPE, THIELE, TITUS, WEPRIN, BORELLI, CURRAN, GRAF, KATZ, LUPINACCI, MALLIOTAKIS, NOJAY, SALADINO, STEC, TEDISCO, TENNEY, ROZIC, KAMINSKY, DiPIETRO -- Multi-Sponsored by -- M. of A. ARROYO, BARCLAY, BLANKENBUSH, BRINDISI, BUCHWALD, BUTLER, CERETTO, CROUCH, CUSICK, DAVILA, DenDEKKER, DUPREY, FARRELL, FITZPATRICK, GARBARINO, GIGLIO, GOTTFRIED, HAWLEY, HOOPER, KEARNS, LALOR, LENTOL, LIFTON, LUPARDO, MAGEE, McDONOUGH, McLAUGHLIN, MILLER, MONTESANO, OAKS, PALMESANO, PERRY, RA, RAIA, RIVERA, RODRIGUEZ, SIMON, SKARTADOS, SOLAGES, TITONE, WRIGHT -- read once and referred to the Committee on Governmental Employees -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to providing credit to members of public retirement systems of the state for military service

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "Veterans' Equality Act".

§ 2. Section 1000 of the retirement and social security law, as added by chapter 548 of the laws of 2000, subdivision 9 as added by chapter 547 of the laws of 2002 and subdivision 10 as added by chapter 18 of the laws of 2012, is amended to read as follows:

§ 1000. Military service credit. Notwithstanding any law to the contrary, a member of a public retirement system of the state, as defined in subdivision twenty-three of section five hundred one of this

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD07824-04-5

chapter, shall be eligible for credit for military service as hereinafter provided:

1. A member, upon application to such retirement system, may obtain a total not to exceed three years of service credit for up to three years of military duty, as defined in section two hundred forty-three of the military law, if the member was honorably discharged from the military [~~and all or part of such military service was rendered during the following periods: (a) commencing December seventh, nineteen hundred forty-one and terminating December thirty-first, nineteen hundred forty-six; (b) commencing June twenty-seventh, nineteen hundred fifty and terminating January thirty-first, nineteen hundred fifty-five; or (c) commencing February twenty-eighth, nineteen hundred sixty-one and terminating May seventh, nineteen hundred seventy-five;~~

~~2. A member, upon application to such retirement system, may obtain a total not to exceed three years of service credit for up to three years of military duty, as defined in section two hundred forty-three of the military law, if honorably discharged therefrom, if all or part of such services was rendered in the military conflicts referenced below, as follows:~~

~~(a) hostilities participated in by the military forces of the United States in Lebanon, from the first day of June, nineteen hundred eighty-three to the first day of December, nineteen hundred eighty-seven, as established by receipt of the armed forces expeditionary medal, the navy expeditionary medal, or the marine corps expeditionary medal;~~

~~(b) hostilities participated in by the military forces of the United States in Grenada, from the twenty-third day of October, nineteen hundred eighty-three to the twenty-first day of November, nineteen hundred eighty-three, as established by receipt of the armed forces expeditionary medal, the navy expeditionary medal, or the marine corps expeditionary medal;~~

~~(c) hostilities participated in by the military forces of the United States in Panama, from the twentieth day of December, nineteen hundred eighty-nine to the thirty-first day of January, nineteen hundred ninety, as established by receipt of the armed forces expeditionary medal, the navy expeditionary medal, or the marine corps expeditionary medal; or~~

~~(d) hostilities participated in by the military forces of the United States, from the second day of August, nineteen hundred ninety, to the end of such hostilities in case of a veteran who served in the theater of operations including Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Red Sea, and the airspace above these locations~~].

[~~3~~] 2. A member must have at least five years of credited service (not including service granted hereunder) to be eligible to receive credit under this section.

[~~4~~] 3. To obtain such credit, a member shall pay such retirement system, for deposit in the fund used to accumulate employer contributions, a sum equal to the product of the number of years of military service being claimed and three percent of such member's compensation earned during the twelve months of credited service immediately preceding the date that the member made application for credit pursuant to this section. If permitted by rule or regulation of the applicable retirement system, the member may pay such member costs by payroll deduction for a period which shall not exceed the time period of military service to be credited pursuant to this section. In the event the member leaves the employer payroll prior to completion of payment, he or she shall forward all remaining required payments to the appropriate

retirement system prior to the effective date of retirement. If the full amount of such member costs is not paid to the appropriate retirement system prior to the member's retirement, the amount of service credited shall be proportional to the total amount of the payments made prior to retirement.

[~~5~~] 4. In no event shall the credit granted pursuant to this section, when added to credit granted for military service with any retirement system of this state pursuant to this or any other provision of law, exceed a total of three years.

[~~6~~] 5. To be eligible to receive credit for military service under this section, a member must make application for such credit before the effective date of retirement. [~~Notwithstanding the foregoing provisions of this subdivision, an individual who retired on or after December twenty-first, nineteen hundred ninety-eight and before the effective date of this section may make application for credit pursuant to this section within one year following the effective date of this section, in which event, the cost to the retiree would be based on the twelve month period immediately preceding retirement.~~]

[~~7~~] 6. All costs for service credited to a member pursuant to this section, other than the member costs set forth in subdivision [~~three~~] two of this section, shall be paid by the state and all employers which participate in the retirement system in which such member is granted credit.

[~~8~~] 7. A member who has purchased military service credit pursuant to section two hundred forty-four-a of the military law shall be entitled to a refund of the difference between the amount paid by the member for such purchase and the amount that would be payable if service had been purchased pursuant to this section.

[~~9~~] 8. Notwithstanding any other provision of law, in the event of death prior to retirement, amounts paid by the member for the purchase of military service credit pursuant to this section shall be refunded, with interest, to the extent the military service purchased with such amounts does not produce a greater death benefit than would have been payable had the member not purchased such credit.

Notwithstanding any other provision of law, in the event of retirement, amounts paid by the member for the purchase of military service credit pursuant to this section shall be refunded, with interest, to the extent the military service purchased with such amounts does not produce a greater retirement allowance than would have been payable had the member not purchased such credit.

[~~10.~~] 9. Anything to the contrary in subdivision [~~four~~] three of this section notwithstanding, to obtain such credit, a member who first joins a public retirement system of the state on or after April first, two thousand twelve shall pay such retirement system, for deposit in the fund used to accumulate employer contributions, a sum equal to the product of the number of years of military service being claimed and six percent of such member's compensation earned during the twelve months of credited service immediately preceding the date that the member made application for credit pursuant to this section.

§ 3. Notwithstanding any other provision of law to the contrary, none of the provisions of this act shall be subject to section 25 of the retirement and social security law.

§ 4. This act shall take effect immediately.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill would amend Section 1000 of the Retirement and Social Security Law to allow active members of public retirement systems of New

York State to claim service credit for up to three years of military service, regardless of when or where it was performed. Currently, active members can receive service credit for military service performed, but only during specified periods of war. A member must have at least five years of credited service to be eligible and make application for such credit before the effective date of retirement. To obtain such credit, a member must make payments as required in Section 1000 of the Retirement and Social Security Law. Tier 1, 2, 3, 4 and 5 members are required to pay three percent of salary earned during the twelve months of credited service immediately preceding the year in which a claim is made for each year of military service. Tier 6 members are required to pay six percent of salary earned during the twelve months of credited service immediately preceding the year in which a claim is made for each year of military service.

It is not possible to determine the total annual cost to the employers of members of the New York State Teachers' Retirement System since the total amount of service credit which would be claimed under this bill cannot be estimated. However, the cost to the employers of members of the New York State Teachers' Retirement System is estimated to be $21,700 per year of service credited for Tier 1 and 2 members, $21,000 per year of service credited for Tier 3 and 4 members, $20,900 per year of service credited for Tier 5 members and $15,800 per year of service credited for Tier 6 members if this bill is enacted. These costs would be offset by member payments required under Section 1000 of the Retirement and Social Security Law.

The source of this estimate is Fiscal Note 2015-2 dated December 19, 2014 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2015 Legislative Session. I, Richard A. Young, am the Actuary for the New York State Teachers' Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill would allow up to three (3) years of service credit for military duty by removing all existing requirements that such military service be performed during certain war periods, during certain hostilities while in the theater of operations or upon the receipt of an expeditionary medal. However, the total service credit granted for active and peacetime military service shall not exceed three (3) years. Tier 6 members would be required to make a payment of six percent of current compensation per year of additional service credit granted by this bill. Members of all other Tiers would be required to make a payment of three percent of current compensation per year of additional service credit granted by this bill. Members must have at least five (5) years of credited service (not including military service). In addition, the provisions of this bill are not subject to Section 25 of the Retirement and Social Security Law.

If this bill is enacted, insofar as this proposal affects the New York State and Local Employees' Retirement System (ERS), it is estimated that the past service cost will average approximately 12% (9% for Tier 6) of an affected members' compensation for each year of additional service credit that is purchased.

Insofar as this proposal affects the New York State and Local Police and Fire Retirement System (PFRS), it is estimated that the past service cost will average approximately 17% (14% for Tier 6) of an affected

members' compensation for each year of additional service that is purchased.

The exact number of current members as well as future members who could be affected by this legislation cannot be readily determined.

ERS and PFRS costs would be shared by the State of New York and the participating employers in the ERS and PFRS.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2014 actuarial valuation. Distributions and other statistics can be found in the 2014 Report of the Actuary and the 2014 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2010, 2011, 2012, 2013 and 2014 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB disclosures are found in the March 31, 2014 New York State and Local Retirement System Financial Statements and Supplementary Information.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This estimate, dated January 22, 2015 and intended for use only during the 2015 Legislative Session, is Fiscal Note No. 2015-40, prepared by the Actuary for the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

With respect to certain New York City Retirement Systems ("NYCRS"), this proposed legislation would amend New York State Retirement and Social Security Law ("RSSL") Section 1000 to provide certain members of the New York City Employees' Retirement System ("NYCERS"), the New York City Teachers' Retirement System ("NYCTRS"), the New York City Board of Education Retirement System ("BERS"), the New York City Police Pension Fund ("POLICE") and the New York Fire Department Pension Fund ("FIRE"), collectively, the New York City Retirement Systems ("NYCRS"), the opportunity to obtain additional retirement service credits for certain Military Service.

This proposed legislation would permit any NYCRS member, prior to the effective date of retirement, to make application for these additional service credits.

To obtain such Military Service credits, members would be required to pay to the appropriate NYCRS, for each year of Military Service purchased, a sum equal to 3.0% (6.0% for members who first join on and after April 1, 2012) of such member's compensation earned during the twelve months of credited service immediately preceding the date that the member makes application for credit.

MEMBERS IMPACTED: Insofar as this proposed legislation relates to the NYCRS, the number of members who could potentially benefit from this proposed legislation cannot be readily determined.

IMPACT ON BENEFITS: With respect to the NYCRS, a member who served in the U.S. military and received an honorable discharge would be permitted, after completing five years of credited service (exclusive of the service credit that could be purchased under this proposed legislation), to purchase a maximum of three years of Military Service (inclusive of any prior purchases of Military Service credit).

In order to purchase the Military Service credits provided in this proposed legislation, a member must have been honorably discharged following a period of "military duty" as defined in New York State Military Law Section 243.

If a member's Military Service meets these conditions, then that member would be permitted to purchase a maximum of three years of Military Service (inclusive of any previously-received Military Service credit attributable to any period of the member's military career.

For purposes of the respective NYCRS, each year of Military Service credit purchased would apply toward providing the member with a year of benefit accrual under the particular benefit formula covering the member.

In certain circumstances, the member also may be entitled to utilize such Military Service as qualifying service for benefit eligibility purposes.

For purposes of this Fiscal Note, it has been assumed that members who purchase Military Service in accordance with this proposed legislation would generally be entitled to count such service for benefit accrual purposes and for the purpose of qualifying for benefits.

FINANCIAL IMPACT - OVERVIEW: With respect to an individual member, the additional cost of this proposed legislation would depend on the length of all New York City service, age, salary history and Plan in which the member participates, as well as the number of years of service credit purchased.

With respect to employers participating in the NYCRS, the ultimate employer cost of this proposed legislation would be determined by the increase in benefits to be paid, the impact of certain benefits commencing earlier and the reduction in certain future member contributions.

FINANCIAL IMPACT.- ACTUARIAL PRESENT VALUES: The additional Actuarial Present Value ("APV") of benefits would depend on the number, salaries, ages and lengths of Military Service purchased by members who would be affected by this proposed legislation.

With respect to the NYCRS and based on the census data and assumptions herein, the enactment of this proposed legislation would increase the Actuarial Present Value ("APV") of benefits ("APVB") by approximately $155.4 million as of June 30, 2015.

In addition, with respect to the NYCRS, the APV of future member contributions (primarily attributable to the payments by members of 3.0% (6.0% for members who first join on and after April 1, 2012) of salary per year of Military Service purchased) would increase by approximately $23.4 million when measured as of June 30, 2015.

Consequently, with respect to the NYCRS, the APV of net future employer contributions would increase by approximately $132.0 million as of June 30, 2015.

FINANCIAL IMPACT - ANNUAL EMPLOYER COSTS: The ultimate cost of a pension plan is the benefits it pays. With respect to the NYCRS, the financing of that ultimate cost depends upon the census data used and the actuarial assumptions and methods employed. Assuming that all eligible members were to purchase the eligible Military Service during Fiscal Year 2015 and based on the Actuary's actuarial assumptions and methods in effect as of June 30, 2013, the enactment of this proposed legislation would increase annual employer costs by approximately $15.7 million per year.

FINANCIAL IMPACT - EMPLOYER CONTRIBUTIONS: The impact of the proposed legislation on employer contributions would be a function of the census

data (i.e., age/service/salary, etc.) reported to the Actuary and of the timing of the members electing to buy back their Military Service.

With respect to the NYCRS, based on the Actuary's actuarial assumptions and methods in effect as of June 30, 2013, the enactment of this proposed legislation would ultimately increase employer contributions by approximately the estimated additional annual employer costs.

If applications for buying back Military Service were completed during Fiscal Year 2015 and the NYCRS census data were updated to reflect this information by June 30, 2015, then employer contributions would first be impacted for Fiscal Year 2017.

If the Military Service buybacks were completed after Fiscal Year 2015, then the increase in employer contributions would be delayed.

FINANCIAL IMPACT - SUMMARY: The following table summarizes the estimated financial impact of this proposed legislation on the NYCRS.

Estimated Financial Impact to Allow Members of the NYCRS
To Purchase up to Three Years of Military Service Credit

($ Millions)

Retirement System	Additional APV of Benefits	Additional APV of Future Employer Contributions{1}	Estimated First Year Additional Employer Costs{2}
NYCERS	$52.8	$ 44.4	$5.3
NYCTRS	15.6	12.9	1.5
BERS	2.2	1.8	0.2
POLICE	67.5	57.9	6.9
FIRE	17.3	15.0	1.8
TOTAL	$155.4	$132.0	$15.7

{1} Equals increase in APVB minus increase in APV of future member contributions.

{2} Estimated Additional Employer Costs are determined without regard to the funded status of the Retirement Systems and represent the best estimates of the ultimate annual financial burden of the proposed legislation. Estimated Additional Employer Contributions would ultimately approximate Estimated Additional Employer Costs.

ADDITIONAL EMPLOYER COSTS - GENERAL: In general, the real cost of the enactment of this proposed legislation would be the additional benefits paid.

OTHER COSTS: Not measured in this Fiscal Note is the impact of this proposed legislation on the Manhattan and Bronx Surface Transit Operating Authority ("MaBSTOA") or on State or Local employers with respect to their participation in the New York State and Local Retirement Systems ("NYSLRS") or the New York State Teachers' Retirement System ("NYSTRS").

Also, this Fiscal Note does not include analyses of the impact of this proposed legislation on the expected increases in administrative costs or costs for Other Post-Employment Benefits ("OPEB").

CENSUS DATA: The census data used for estimates of APV of benefits and employer contributions presented herein are the active members included in the June 30, 2013 (Lag) actuarial valuations of NYCERS, NYCTRS, BERS, POLICE and FIRE used to determine the Updated Preliminary Fiscal Year 2015 employer contributions.

ACTUARIAL ASSUMPTIONS AND METHODS: Additional APV of benefits, of member contributions and of employer contributions have been estimated as of June 30, 2015 using various approximating techniques and assumptions by the Actuary, including, but not limited to:

* A certain percentage of Veterans being honorably discharged.

* A certain percentage of honorably discharged Veterans being disabled.

* Different percentages of members by NYCRS having prior Military Service.

* Each eligible member purchasing an average of 2.5 years of the Military Service.

Changes in employer contributions have been estimated assuming the increase in the APV of Future Employer Contributions would be financed over a time period comparable to that used for actuarial losses under the Entry Age Actuarial Cost Method. Using this approach, the Additional APV of Future Employer Contributions would be amortized over a closed 15-year period (14 payments under One-Year Lag Methodology) using level dollar payments.

ECONOMIC VALUE OF BENEFITS: The actuarial assumptions used to determine the financial impact of the proposed legislation discussed in this Fiscal Note are those appropriate for budgetary models and determining annual employer contributions to the NYCRS.

However, the economic assumptions that are used for determining employer contributions do not develop risk-adjusted economic values of benefits. Such risk-adjusted, economic values of benefits would likely differ significantly from those developed by the budgetary models.

STATEMENT OF ACTUARIAL OPINION: I, Robert C. North, Jr., am the Acting Chief Actuary for the New York City Retirement Systems. I am a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

FISCAL NOTE IDENTIFICATION: This estimate is intended for use only during the 2015 Legislative Session. It is Fiscal Note 2015-10, dated March 5, 2015, prepared by the Acting Chief Actuary for the New York City Employees' Retirement System, the New York City Teachers' Retirement System, the New York City Board of Education Retirement System, the New York City Police Pension Fund and the New York Fire Department Pension Fund.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A4313A

SPONSOR: Paulin (MS)

TITLE OF BILL: An act to amend the retirement and social security law, in relation to providing credit to members of public retirement systems of the state for military service

PURPOSE OR GENERAL IDEA OF BILL:

To extend the Military Service Credit Law of 2000 to all veterans who have served in the military

SUMMARY OF SPECIFIC PROVISIONS:

Section one provides that this act shall be known as the "Veterans' Equality Act."

Section two amends section 1000 of the retirement and social security law, as added by chapter 548 of the laws of 2000 and subdivision 9 as added by chapter 547 of the laws of 2002, by deleting the specified periods of time in which military service would had to have been rendered in order to receive up to three years of service credit. Such specified periods currently prevent a person who served in the military, outside such periods, from obtaining service credit when applying to a public retirement system of the state. This section also deletes other restricting dates.

Section three provides that section 25 of the retirement and social security law shall not apply to this act.

Section four provides the effective date.

JUSTIFICATION:

The goal of this bill is simple: to honor those who have bravely served our country and to encourage them to return to New York and continue their public service as teachers, firefighters, police officers, municipal and state employees. After five years of service to New York, these men and women would become eligible to buy additional pension credit. This is a small price to pay to recognize the training and leadership skills that our veterans received during their honorable military service.

I. New York's military service credit law leads to arbitrary and inconsistent results.

Under the existing law, whether or not a veteran is eligible for the

military service credit program depends entirely upon when and where he or she served, leading to arbitrary and inconsistent results.

A. Limiting service credit to specific dates of war leaves out veterans who performed the same duties at other times.

Currently, military service credit is available to anyone who served during World War II (12/7/1941 to 12/31/1946), the Korean War (6/27/1950 to 1/31/1955) and the War in Vietnam (2/28/1961 to 5/7/1975). While all of these periods of conflict did involve massive amounts of troops in combat, 30% of troops during the Vietnam Era served outside of Vietnam and the surrounding Southeast Asian theater*. It makes little sense that the approximately three million troops that served outside of the Vietnam region during that era are eligible for this pension credit when men and women who are currently in the line of fire are not eligible. All veterans, regardless of when they served should have the same pension opportunities as those that served in these eras.

B. Limiting service credit to those who received an expeditionary medal discriminates against women veterans.

Those who received an expeditionary medal for service in the military conflicts in Lebanon (6/1/1983 to 12/1/1987), Grenada (10/23/1983 to 11/21/1983), and Panama (12/20/1989 to 1/31/1990) are also eligible to purchase pension credit. Because the expeditionary medal is awarded for participation in a military conflict, women who served during these conflicts were not awarded the medal since they were not eligible for deployment into the theater of operations at that time. The women who served during these conflicts are unfairly excluded from buying back military service credit, simply because they were not permitted to be deployed.

A 1994 Pentagon ruling permitted women to serve in the theater of combat to assist with contingency operations, but prohibited them from serving in direct combat roles including serving in the infantry.** Therefore, men and women who served in the theater of operations in Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, the Persian Gulf and the Red Sea since August 2, 1990 are eligible to buy back military service credit. In 2013, the Pentagon lifted the ban on women serving in direct combat roles and more positions are now available for women.*** However, since it is still uncommon for women to serve in combat roles, they are disproportionately excluded from buying back military service credit when eligibility for the credit is based on combat service.

C. Limiting service credit to service in a specific country or conflict leaves out veterans who served in active combat or performed critical operations in other locations.

*See National Vietnam Veterans Foundation Statistics
http://www.nationalvietnamveteransfoundation.orgistatistics.htm

** See New York Times "Pentagon Is Set to Lift Combat Ban for Women." January 3, 2013.
http://www.nytimes.com/2013/01/24/us/pentagon-says-it-is-lifting-banon-women-in-combat.html?pagewanted=all& r=0.

***Id.

Many veterans who served in active combat are ineligible for the military service credit. Troops that have participated in active combat in Somalia, Bosnia, Haiti, Kosovo, Afghanistan, Pakistan, and the Korean DMZ are not eligible for the military service credit. There should be no distinction between service in one of these operations or one of the many other operations that are currently eligible for the military service credit.

Additionally, military personnel aiding in any of these operations from other locations, such as Israel, Turkey, and Germany are also ineligible to access this credit buyback. Further, the veterans who served around the world in dangerous situations during the Cold War are also excluded. All of these troops have played and continue to play a critical role in our nation's defense and should be permitted to buy back the military service credit.

II. The New York State pension system is one of the least generous to veterans.

The New York State pension system is one of only six state pension systems to limit credit based on dates and/or combat service. States that allow for the purchasing of credit based on any military service include Arizona, California, Illinois, Massachusetts, New Jersey, Ohio, Pennsylvania, Texas and Virginia and encompass nine of the ten largest cities in the country. Currently, New York has one of the least comprehensive military service credit programs in the nation when considering who is eligible and the number of years available for purchase. By comparison, New Jersey**** allows any veteran to buy up to ten years of service credit and California***** allows four; the current structure under our laws is one of the least veteran friendly in the nation. The great State of New York should be a leader in supporting our returning veterans and passage of this bill will be a positive step in making this a reality.

III. It is impossible to accurately determine the cost of this bill.

Although the Governor's veto message (Veto 484 of 2014) indicates that this bill would cost local governments an estimated $57 million per year in near-term obligations, it is impossible to accurately determine the cost of this bill.

In fact, the fiscal notes produced by the New York State and Local Retirement System (ERS), and New York State Teachers' Retirement System (NYSTRS) state that it is impossible to determine the number of individuals impacted by this bill as there are no records of the number of veterans who are members of these retirement systems. Additionally, even if there was a record of the total number of veterans, it would not indicate how many additional veterans would be covered by this expansion nor would it be possible to predict the number of veterans who would opt to buy pension credit. Such a record would also include veterans who are not yet vested in the retirement system. Due to the cost to purchase credits, it is unlikely that these veterans would buy back credit until they are fully vested and closer to retirement.

The New York City Retirement Systems (NYCRS) fiscal note also acknowledges that it is impossible to determine the exact number of individuals impacted by this bill. However, the Office of the Actuary did estimate the number of veterans in the NYCRS who could, potentially become eligi-

ble for the military service credit pursuant to this legislation by using publicly available census data. Under this estimate, if every veteran were to purchase the full three years of service credit, it would cost New York City approximately $18 million annually, which is only two tenths of one percent more than the approximately $9 billion that New York City currently contributes to the NYCRS annually.

**** See The New Jersey Division of Pension and Benefits http://www.state.nj.us/treasury/pensions/pdf/factsheets/factOl.pdf

*****See CalPERS "A Guide to Your CalPERS Service Credit Purchase Options" http://www.calpers.ca.gov/eip-docs/about/pubs/member/ guidecal-pers-service-credit-options.pdf.

PRIOR LEGISLATIVE HISTORY:

A.6974-B, 2014 veto484 and 2013 referred to government employees. Same as S. 7839, 2014 veto484. A.8067-B, 2011 referred to govern- mental operations and 2012 held for consideration in ways and means. Same as S.6904-A, 2012 referred to civil service and pensions. A.6663-A, 2010 referred to ways and means. Same as S.4316-A, 2010 referred to civil service and pensions. A.6663, 2009 referred to governmental employees. Same as S.4316, 2009 referred to civil service and pensions. A.6318-C, 2007 referred to governmental employees and 2008 passed Assembly. Same as S.5495, 2007 and 2008 referred to civil service and pensions.

FISCAL IMPLICATION:

See fiscal notes included at the end of the bill.

EFFECTIVE DATE:
This act shall take effect immediately.

New York State Professional Fire Fighters Association, Inc.
174 Washington Avenue, Albany, NY 12210
Phone: 518-436-8827 • 1-800-238-8827 • Fax: 518-436-8830
E Mail: profire@nyspffa.org
www.nyspffa.org

March 20, 2015

RE: An act to amend the retirement and social security law, in relation to providing credit to members of public retirement systems of the state for military service

A. 4313-A (Paulin)

MEMORANDUM IN SUPPORT

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages and towns across New York State, strongly supports enactment of this legislation that would amend the New York State Retirement and Social Security Law ("RSSL") to extend the Military Service Credit Law of 2000 to all veterans who honorably served in the United States Armed Forces.

The Military Service Credit Law of 2000, Chapter 548 of the Laws of 2000 and Chapter 547 of the Laws of 2002, authorizes up to three years of service credit in the public retirement system for a public employee's honorable military service. The Law, however, only identifies certain armed conflicts that would allow a veteran to qualify for this service credit.

For nearly the last two generations, this Country has relied upon its citizens to volunteer for military service. Such volunteers are vital to ensuring this Country's readiness to protect our borders and citizens during times of war and peace. However, only a miniscule fraction of Americans have answered our Nation's call. Those veterans currently in active public employment should be recognized for their selfless military service.

This proposed legislation would amend Section 1000 of the RSSL by removing the specific periods of time restricting a public employee from receiving the credit and allow veterans' honorable military service to count even when veterans served during a time of peace.

Moreover, the military experience and skills of fire fighters have shown to significantly contribute to and increase the professionalism and effectiveness of fire districts and fire departments throughout the State. In addition to recognizing New York State veterans for their service, this legislation would assist in recruiting and retaining these highly qualified veterans to continue serving and protecting the public.

Therefore, the NYSPFFA strongly supports the enactment of this legislation.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4830-6006-3778, v. 1

Enclosure (8)

A. 640 – Creation of Office of Administrative Hearings

A640 Lentol No Same as
Executive Law
TITLE....Creates an office of administrative hearings
01/07/15 referred to governmental operations

STATE OF NEW YORK

640

2015-2016 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 7, 2015

Introduced by M. of A. LENTOL -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law and the state administrative procedure act, in relation to the creation of an office of administrative hearings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. New York's system of administrative adjudication is fragmented, and offers the appearance of unfairness to those who seek access to relief from administrative actions that they consider unfair or unfounded.

The state's administrative adjudication responsibilities are not unified because the system provides for the conduct of administrative hearings in each of the state agencies which enforce laws, rules and regulations. The result is duplication of functions, inconsistencies in procedures and policies, and confusion for those who seek to make use of the process. At the same time, lodging the responsibility for adjudicating cases in the agencies which are responsible for bringing enforcement actions can create the appearance of unfairness to those who may feel that their accuser is also judging their acts.

In contrast to New York's agency based system, a number of states have adopted a different model for their administrative adjudication processes, which centralizes the responsibility for hearing contested administrative adjudications in a single office. This alternative model offers savings from the elimination of duplicative responsibilities, consistency in processes, and fairness for those who seek relief from administrative rulings with which they disagree.

This act creates a process by which New York state will implement a central system of administrative hearings.

EXPLANATION--Matter in ***italics*** (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD01818-01-5

§ 2. The executive law is amended by adding a new article 26-A to read as follows:

ARTICLE 26-A

OFFICE OF ADMINISTRATIVE HEARINGS

Section 720. Definitions.

721. Office of administrative hearings.

722. Chief administrative law judge; functions, powers and duties.

723. Hearings.

724. Hearing officers; qualifications, powers and duties.

725. Adjudicatory proceedings to which hearing officers are not assignable; exceptions.

726. Construction; severability.

§ 720. Definitions. When used in this article unless the context otherwise requires:

1. "Agency" means any department, board, bureau, commission, division, office, council, committee or officer of the state, or a public benefit corporation or public authority, a majority of the governing board members of which are either appointed by the governor or serve as members by virtue of their service as an officer of a state department, division, agency, board or bureau or combination thereof authorized by law to make rules or to make final decisions in adjudicatory proceedings but shall not include the governor, agencies in the legislative and judicial branches, agencies created by interstate compact or international agreement or the division of military and naval affairs to the extent it exercises its responsibility for military and naval affairs, the division of state police, the identification and intelligence unit of the division of criminal justice services, the state insurance fund, the unemployment insurance appeals board, the workers' compensation board, the state division of parole, the department of corrections and community supervision, the division of tax appeals, the public employment relations board, the employment relations board, the New York state ethics commission or the department of family assistance.

2. "Agency member" means and includes the individual or group of individuals constituting the highest authority within any agency authorized or required by law to make final decisions in an adjudicatory proceeding.

3. "Adjudicatory proceeding" means any activity, including licensing activity, as defined in article one of the state administrative procedure act and hearings of the department of motor vehicles pursuant to article two-A of the vehicle and traffic law, before an agency in which a determination of the legal rights, duties, obligations, privileges, benefits or other legal relations of named parties thereto is required by law or pursuant to a contract to which an agency is a party where such contract includes adjudicatory determinations conducted by an agency to be made only after an opportunity for a hearing on the record, but shall not include rule making proceedings as defined in article one of the state administrative procedure act including rate making proceedings or other actions as defined by paragraph (a) of subdivision two of section one hundred two of the state administrative procedure act, an employee disciplinary action, professional licensing or student disciplinary action or a proceeding conducted by the American Arbitration Association or any similar neutral adjudicatory entity.

4. "Chief administrative law judge" means the director of administrative hearings.

5. "Hearing officer" means a person appointed by the chief administrative law judge to conduct or preside over contested adjudicatory proceedings in accordance with this article.

6. "Contested adjudicatory proceeding" means an adjudicatory proceeding in which a request for a hearing on disputed issues is made.

7. "Uncontested adjudicatory proceeding" means an adjudicatory proceeding in which no request for a hearing is received after notice is given.

8. "Office" means the office of administrative hearings.

§ 721. Office of administrative hearings. 1. There is hereby created in the executive department an office of administrative hearings. The office shall be independent of state administrative agencies and shall, notwithstanding the provisions of any other general or special law, be responsible for impartial administration of adjudicatory proceedings in accordance with the provisions of this article other than those exempted elsewhere in this article. The central office of the office shall be located in Albany, and regional offices shall be established and maintained by the office as the chief administrative law judge may determine and for which appropriations are made therefor.

2. The head of the office, who shall be its chief executive officer, shall be the chief administrative law judge who shall be appointed by the governor by and with the consent of the senate to serve for a term of six years. Such person shall be knowledgeable on the subject of administrative law and procedures and skilled in matters pertaining thereto. Once appointed and confirmed, the chief administrative law judge shall serve until his or her term expires or until his or her successor has been appointed and has been qualified. A vacancy in the office of chief administrative law judge occurring otherwise than by expiration of term shall be filled for the unexpired term in the same manner as original appointments. The chief administrative law judge may, after notice and an opportunity to be heard, be removed by the governor for neglect of duty or misfeasance in office, and the chief administrative law judge may be removed for other cause by the senate on the recommendation of the governor. The chief administrative law judge shall devote his or her entire time to the duties of the office. The chief administrative law judge shall receive a salary in the same amount as that received by a state officer designated in paragraph (c) of subdivision one of section one hundred sixty-nine of this chapter.

§ 722. Chief administrative law judge; functions, powers and duties. The chief administrative law judge shall have the following functions, powers and duties:

1. To establish, consolidate, alter or abolish any bureau in the office; to appoint the head of such bureaus and fix their duties; such bureaus may be established for the purpose of providing specialized hearings for any given subject area.

2. Subject to the civil service law and the applicable collective bargaining agreement, to appoint, remove or transfer deputies, officers, assistants, hearing officers, counsels and other employees as may be necessary for the exercise of the powers and performance of the duties of the office; and to prescribe their duties, and fix their compensation within the amounts appropriated therefor.

3. When regularly appointed hearing officers are not available or when the chief administrative law judge finds that the character of a specific case requires the utilization of a different procedure for assigning hearing officers, the chief administrative law judge, pursuant to applicable collective bargaining agreements, may contract with qualified

individuals to serve as hearing officers. Such individuals shall be compensated for their services on a contractual basis for each hearing pursuant to a reasonable fee schedule established in advance by the chief administrative law judge. The chief administrative law judge may not contract with any individual who is at that time an officer or employee of the state. Temporary hearing officers shall have the same qualifications for appointment as permanent hearing officers.

4. To develop and implement a program of evaluation to aid the chief administrative law judge in the performance of his or her duties, and to assist in the making of promotions, demotions or removals. This program of evaluation shall focus on three areas of performance: competence, productivity and demeanor. It shall include consideration of: industry and promptness in adhering to schedules, making rulings and rendering decisions; tolerance, courtesy, patience, attentiveness, and self control in dealing with litigants, witnesses and representatives, and in presiding over adjudicatory proceedings; skills and knowledge of the subject of administrative law and procedures and new developments therein; analytical talents and writing abilities; settlement skills; quantity, nature and quality of case load disposition; impartiality and conscientiousness. The chief administrative law judge shall develop standards and procedures for this program, which shall include taking comments from selected litigants and representatives who have appeared before a hearing officer. The methods used by a hearing officer but not the results arrived at by the hearing officer in any case may be used in evaluating a hearing officer. Before implementing any action based upon the finding of the evaluation program, the chief administrative law judge shall discuss the findings and proposed action with the affected hearing officer; provided however that the chief administrative law judge's authority pursuant to this subdivision is subject to the provisions of the civil service law and the applicable collective bargaining agreement.

5. To the extent permitted by law, to publish and make available to the public all recommended decisions rendered by a hearing officer and all decisions rendered by an agency after a review of a hearing officer's recommended decision. The chief administrative law judge may charge a reasonable fee for a copy of such determination or decision. Whenever any law of confidentiality prevents the publication of the identity of any of the parties, an edited version of the recommended decision and decision of the agency shall be prepared which shall not disclose the identities of the protected parties.

6. To collect, compile and prepare for publication statistics and other data with respect to the operations and duties of the office, and to submit annually to the governor, the temporary president and minority leader of the senate and the speaker and minority leader of the assembly a report on such operations including but not limited to, the number of hearings initiated, the number of recommended decisions rendered, the number of partial or total reversals by the agencies, the number of proceedings pending, and on any recommendations of the office of statutory or regulatory amendments.

7. To study the subject of administrative adjudication in all its aspects, and to develop recommendations including alternate dispute resolution including preliminary or prehearing conferences or mediation which would promote the goals of fairness, uniformity and cost-effectiveness. Agencies shall give the office ready access to their records and full information and reasonable assistance in any matter of research requiring recourse to them or to any data within their knowledge or

control. Such access, information and assistance shall not be required where it would be within existing requirements of confidentiality.

8. To adopt, promulgate, amend and rescind rules and regulations to carry out the provisions of this article and the policies of the office in connection therewith. Such rules and regulations shall be consistent with the state administrative procedure act, shall supersede any inconsistent agency rules, and shall include, but not be limited to, uniform standards and procedures, rules of practice, rules of evidence, standards for determining when an expedited hearing will be conducted, standards for uncontested proceedings, standards and guidelines related to time limits for agency action pursuant to the provisions of subdivision one of section three hundred seven of the state administrative procedure act, standards for the assignment of hearing officers and their removal from cases, and for the maintenance of records in order that, where authorized by law, the costs of a hearing may be allocated to a party or to the federal government.

9. To secure, compile and maintain all reports of hearing officers issued pursuant to this article, and such reference materials and supporting information as may be appropriate and to establish appropriate management information systems.

10. To develop and maintain a program for the continuing training and education of hearing officers and ancillary personnel.

11. To submit to the governor, the temporary president and minority leader of the senate and the speaker and minority leader of the assembly an evaluation of the effectiveness of the office in attaining the objectives specified in this article prepared by an entity independent of the office. Such evaluation shall be submitted by November thirtieth, two thousand seventeen and by September first every two years thereafter.

§ 723. Hearings. 1. The office shall be vested with exclusive jurisdiction to hear cases which come before it and all contested adjudicatory proceedings required to be conducted under this article shall be conducted by a hearing officer assigned by the chief administrative law judge.

2. If the chief administrative law judge deems it appropriate, a hearing officer may be assigned by the chief administrative law judge to conduct or assist in administrative duties and proceedings other than those related to contested adjudicatory proceedings, including but not limited to, rule making and investigative hearings if requested by an agency.

3. Adjudicatory proceedings shall be scheduled for suitable locations either at the offices of the office or elsewhere in the state, taking into consideration the convenience of the witnesses and parties, as well as the nature of the proceedings.

4. Hearing officers shall be assigned to conduct hearings by the chief administrative law judge who shall, whenever practical, use personnel having expertise in the field or subject matter of the hearing and assign hearing officers primarily to the hearings of particular agencies on a long term basis.

5. All hearings shall be conducted in conformance with the state administrative procedure act.

6. Upon receipt of a request for a hearing, an agency shall within ten business days give notice to the office and request the assignment of a hearing officer to the proceeding. The chief administrative law judge shall commence a hearing within the time period required by law or if no such period is required, within thirty business days of such notice. If the chief administrative law judge, for good cause, cannot commence such

hearing within the stated period of time, he or she shall provide notice to all parties, with such cause shown, within ten business days of receipt of the request for such hearing and shall schedule such hearing within ten additional business days of such request.

7. Nothing in this article shall be construed to deprive an agency member of the authority to determine whether a disputed issue exists or to adopt, reject or modify the findings of fact and conclusions of law of any hearing officer.

§ 724. Hearing officers; qualifications, powers and duties. 1. The chief administrative law judge shall appoint hearing officers who shall be authorized to conduct any hearing or motion practice authorized to be held by the office. Hearing officers shall be in the competitive class of the classified civil service.

2. Unless otherwise authorized by law and except as provided in subdivision three of this section, a hearing officer shall not communicate in connection with any issue that relates in any way to the merits of an adjudicatory proceeding pending before the hearing officer with any person except upon notice and opportunity for all parties to participate.

3. A hearing officer may consult on questions of law and ministerial matters with his or her supervisor, other hearing officers, and support staff of the office, provided that such supervisors, hearing officers or support staff have not been engaged in investigative or prosecutorial functions in connection with the adjudicatory proceeding under consideration or a factually related adjudicatory proceeding.

4. A hearing officer shall not participate in any proceeding to which he or she is a party; in which he or she has been attorney, counsel or representative; in which he or she is interested; or if he or she is related by consanguinity or affinity to any party to the controversy within the sixth degree.

5. Hearing officers shall:

(a) Have all of the powers and duties of presiding officers as authorized by article three of the state administrative procedure act.

(b) Advise an agency, as to the location at which and the time during which a hearing should be held so as to allow for participation by all affected interests.

(c) Conduct only hearings for which proper notice has been given.

(d) See to it that all hearings are conducted in a fair and impartial manner.

(e) Issue a recommended decision to an agency stating findings of fact and conclusions of law.

6. Notwithstanding the requirements of paragraph (e) of subdivision five of this section, hearing officers shall render determinations concerning charges pursuant to article two-A of the vehicle and traffic law.

§ 725. Adjudicatory proceedings to which hearing officers are not assignable; exceptions. Unless a request is made by the agency, no hearing officer shall be assigned by the chief administrative law judge to hear an adjudicatory proceeding with respect to:

1. The division of military and naval affairs to the extent it exercises its responsibility for military and naval affairs, the division of state police, the identification and intelligence unit of the division of criminal justice services, the state insurance fund, the unemployment insurance appeals board, the workers' compensation board, the state division of parole, the department of corrections and community supervision, the division of tax appeals, the public employment relations

board and the employment relations board, the New York state ethics commission or the department of family assistance.

2. Any proceeding relating to individuals in the care or custody of a medical, mental, rehabilitative or custodial program operated by an agency.

3. Uncontested adjudicatory proceedings.

4. Any matter where an agency member, commissioner or several commissioners are required to conduct, or determine to conduct, the hearings directly and individually.

5. Any hearing which must, by the requirements of federal law, be conducted by another state agency.

§ 726. Construction; severability. 1. The provisions of this article shall not be construed to limit or repeal additional requirements imposed by law.

2. If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this article or the application thereof to other persons or circumstances.

§ 3. Subdivision 2 of section 301 of the state administrative procedure act, as amended by chapter 675 of the laws of 1986, is amended to read as follows:

2. All parties shall be given reasonable written notice of such hearing, which notice shall include (a) a statement of the time, place, and nature of the hearing; (b) a statement of the legal authority and jurisdiction under which the hearing is to be held; (c) a reference to the particular sections of the statutes and rules involved, where possible; (d) a short and plain statement of matters asserted; and (e) a statement that interpreter services shall be made available to deaf persons, at no charge, pursuant to this section. Upon application of any party, a more definite and detailed statement shall be furnished whenever the agency finds that the statement is not sufficiently definite or not sufficiently detailed. The finding of the agency as to the sufficiency of definiteness or detail of the statement or its failure or refusal to furnish a more definite or detailed statement shall not be subject to judicial review. Any statement furnished shall be deemed, in all respects, to be a part of the notice of hearing.

§ 4. Subdivision 6 of section 301 of the state administrative procedure act, as amended by chapter 703 of the laws of 1991, is amended to read as follows:

6. Whenever any deaf person is a party or a witness therein, to an adjudicatory proceeding before an agency[~~,~~] or [~~a witness therein~~] the office of administrative hearings in the executive department, as the case may be, such agency or such office of administrative hearings in all instances shall appoint a qualified interpreter who is certified by a recognized national or New York state credentialing authority to interpret the proceedings to, and the testimony of, such deaf person. The agency or such office of administrative hearings conducting the adjudicatory proceeding shall determine a reasonable fee for all such interpreting services which shall be a charge upon the agency. Where the adjudicatory hearing is before a hearing officer assigned by the chief administrative law judge of such office of administrative hearings, the chief administrative law judge shall determine a reasonable fee for all such interpreting services and may charge the agency for such services, but in no instance shall such deaf persons be charged for such services.

§ 5. Subdivision 1 of section 302 of the state administrative procedure act, as amended by chapter 250 of the laws of 1985, is amended to read as follows:

1. The record in an adjudicatory proceeding shall include: (a) all notices, pleadings, motions, intermediate rulings; (b) evidence presented; (c) a statement of matters officially noticed except matters so obvious that a statement of them would serve no useful purpose; (d) questions and offers of proof, objections thereto, and rulings thereon; (e) proposed findings and exceptions, if any; (f) any findings of fact, conclusions of law or other recommendations made by a presiding officer; and (g) any decision, **recommended decision,** determination, opinion, order or report rendered.

§ 6. The opening paragraph of subdivision 2 of section 302 of the state administrative procedure act is designated paragraph (a) and a new paragraph (b) is added to read as follows:

(b) Where the adjudicatory hearing is before a hearing officer assigned by the chief administrative law judge of the office of administrative hearings in the executive department, the chief administrative law judge shall make a complete record of all adjudicatory proceedings. For this purpose, unless otherwise provided by statute, the chief administrative law judge may use whatever means he or she deems appropriate, including but not limited to, the use of stenographic transcriptions or electronic recording devices. Upon request made by any party upon the agency within a reasonable time, but prior to the time for commencement of judicial review, of its giving notice of its decision, determination, opinion or order, the agency shall secure a copy of the final record together with any transcript of proceedings from the chief administrative law judge within a reasonable time and shall furnish a copy of the record and transcript or any part thereof to any party as he or she may request. Except when any statute provides otherwise, the chief administrative law judge is authorized to charge the agency not more than its cost for the preparation and furnishing of such record or transcript or any part thereof, and the agency may pass any such charge on to the person requesting the record.

§ 7. Section 307 of the state administrative procedure act, subdivision 3 as added by chapter 504 of the laws of 1983 and paragraph (a) of subdivision 3 as amended by chapter 645 of the laws of 1995, is amended to read as follows:

§ 307. Decisions, determinations and orders. 1. **Where the administrative hearing is before a hearing officer assigned by the chief administrative law judge of the office of administrative hearings in the executive department:**

(a) After the hearing, the hearing officer shall issue a recommended decision based on findings of fact and conclusions of law which shall be submitted to the agency, to the parties to the proceeding and their representatives within reasonable time limits provided for by statute, or, if no time limit is so provided for, within thirty days after submission of briefs subsequent to the completion of the hearing or, if briefs are not submitted, then within thirty days after completion of the hearing, provided however, that such thirty day time limit may be extended in complex cases for good cause shown for an additional thirty day period upon approval by the chief administrative law judge of an application for each such extension filed therefor by the hearing officer. The agency may adopt the recommended decision in its entirety or in part, or issue its own decision. Upon receipt of the recommended decision of the hearing officer, the agency shall adopt or issue its final

decision within fifteen business days. Should the agency fail to adopt or issue its final decision within fifteen days, the recommended decision shall become final.

(b) Where the agency differs from a finding of fact or conclusion of law made by the hearing officer in the recommended decision, the agency shall make a written exception to such finding and state why it has made such exception, which shall be made part of the record. The agency shall transmit a copy of each final decision to the office of administrative hearings in the executive department.

(c) If the agency determines that additional evidence is necessary, the matter shall be referred to such office of administrative hearings. If the same hearing officer is unavailable, a different hearing officer shall be assigned by the chief administrative law judge of such office. After taking the additional evidence, the hearing officer shall prepare a recommended decision as provided in paragraph (a) of this subdivision upon the additional evidence and the record of the prior hearing. A copy of such recommended decision shall be submitted to the agency and to the parties and their representatives as provided in such paragraph.

2. A final decision, determination or order adverse to a party in an adjudicatory proceeding shall be in writing or stated in the record and shall include findings of fact and conclusions of law or reasons for the decision, determination or order. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If [~~, in accordance with agency rules,~~] a party submitted proposed findings of fact, [~~the~~] a recommended or final decision, determination or order shall include a ruling upon each proposed finding. A copy of the decision, determination or order shall be delivered or mailed forthwith to each party and to his or her attorney of record.

[~~2~~] 3. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his or her representative, except upon notice and opportunity for all parties to participate. Any such agency member (a) may communicate with other members of the agency, and (b) may have the aid and advice of agency staff other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.

This subdivision does not apply (a) in determining applications for initial licenses for public utilities or carriers; or (b) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers.

[~~3~~] 4. (a) Each agency shall maintain an index by name and subject of all written recommended and final decisions, determinations and orders rendered by the agency in adjudicatory proceedings. For purposes of this subdivision, such index shall also include by name and subject all written recommended or final decisions, determinations and orders rendered by the agency pursuant to a statute providing any party an opportunity to be heard, other than a rule making. Such index and the text of any such written recommended or final decision, determination or order shall be available for public inspection and copying. Each recommended and final decision, determination and order shall be indexed within sixty days after having been rendered.

(b) An agency may delete from any such index, **recommended or final** decision, determination or order any information that, if disclosed, would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of the public officers law and may also delete at the request of any person all references to trade secrets that, if disclosed, would cause substantial injury to the competitive position of such person. Information which would reveal confidential material protected by federal or state statute, shall be deleted from any such index, **recommended or final** decision, determination or order.

§ 8. Transfer of employees. 1. On or before January 1, 2016, the chief administrative law judge of the office of administrative hearings in the executive department, with the approval of the director of the budget, shall file with the chairpersons of the senate finance and assembly ways and means committees an implementation plan that indicates which positions are to be transferred (and from which agencies) in order to implement the organization of such office of administrative hearings and the structure of the program required to be administered pursuant to article 26-A of the executive law.

2. Upon the filing of an approved plan as provided for in subdivision 1 of this section, the chief administrative law judge of such office is authorized, subject to the approval of the director of the budget and in accordance with the provisions of section 70 of the civil service law to transfer to such office such employees as he or she may deem necessary. An employee so transferred shall not within a period of two years from the date of his or her transfer be subject to an involuntary assignment which would require a relocation.

3. A transferred employee shall remain in the same collective bargaining unit as was the case prior to his or her transfer; successor employees to the positions held by such transferred employees shall, consistent with the provisions of article 14 of the civil service law, be included in the same unit as their predecessors. Employees serving in positions in newly created titles shall be assigned to the appropriate bargaining unit. Nothing contained in article 26-A of the executive law shall be construed to affect: (a) the rights of employees pursuant to a collective bargaining agreement; (b) the representational relationships among employee organizations or the bargaining relationships between the state and an employee organization; or (c) existing law with respect to an application to the public employment relations board seeking designation by such board that certain persons are managerial or confidential.

§ 9. Transfer of records. The records and files of all hearings pending in and unheard by agencies as of September 1, 2016 shall be transferred to the office of administrative hearings in the executive department.

§ 10. Evaluations. 1. By July 1, 2017, a preliminary program evaluation of the following items shall be undertaken by an entity independent of government, selected by the office of administrative hearings in the executive department through a request for proposal process. The evaluation shall assess:

(a) The effectiveness of such office to date in meeting legislative objectives in program design and funding and its efficiency in performing its functions;

(b) Any changes needed in organization or processes, or in program design, to provide adjudicatory services more effectively and efficiently.

Such evaluation shall be completed no later than November 30, 2017, and shall be submitted to the governor, the temporary president of the senate, the speaker of the assembly, the minority leaders of the senate and the assembly, and the chairpersons of the senate finance committee and the assembly ways and means committee.

2. By July 1, 2019, program evaluations of the following issues shall be undertaken:

(a) The extent to which such office has operated efficiently;

(b) Changes needed in office organization or processes, or in program design, to provide adjudicatory services more efficiently;

(c) The effectiveness of the office in meeting legislative objectives in program design and funding;

(d) Changes needed in the organization or processes, or in program design to deliver the program more effectively; and

(e) An assessment of alternative mechanisms which could provide adjudicatory services, taking into account potential effectiveness and efficiency.

3. Program evaluations shall be undertaken by: (a) the state comptroller; and (b) an entity independent of government, selected by such office of administrative hearings through a request for proposal process. Each review shall be completed no later than November 30, 2019, and shall be submitted to the governor, the temporary president of the senate, the speaker of the assembly, the minority leaders of the senate and the assembly, and the chairpersons of the senate finance committee and the assembly ways and means committee.

§ 11. This act shall take effect immediately; provided however, that section two of this act shall take effect September 1, 2016; and further provided that this act shall be applicable only to those adjudicatory proceedings pending or unheard on or after September 1, 2016.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A640

SPONSOR: Lentol

TITLE OF BILL: An act to amend the executive law and the state administrative procedure act, in relation to the creation of an office of administrative hearings

SUMMARY OF PROVISIONS:

Section 1. Legislative Findings

Section 2 creates an Office of Administrative Hearings in the Executive Department. The head of the office shall be the Chief Administrative Law Judge. The Chief Administrative Law Judge will be responsible for supervising, training and assigning hearing officers to conduct hearings. A summary of the specific provisions of the new office follows.

Sec. 720, defines various terms.

"Agency" is defined using the definition of Public Authority or Public Benefit Corporation, as contained in Chapter 183 of the Laws of 1987, the Prompt Pay Bill.

"Adjudicatory proceeding" is defined to explicitly include licensing activity, DMV hearings under art. 2A of the Vehicle and Traffic Law, and hearings pursuant to a contract to which the State is a party. Also deleted from the definition as it would appear in SAPA is a requirement that the proceeding be "on the record." In US v. Allegheny Ludlum 406A.S.742, the Supreme Court held that a hearing need not be on the record, but can be on notice with public comment. This definition takes that understanding of hearings into account.

Rule making and rate making proceedings, as defined under Article 1 of SAPA, employee disciplinary proceedings, student disciplinary actions, or hearings adjudicated by a neutral party such as AAA are specifically excluded from the provision of this legislation. Professional licensing or disciplinary proceedings are not excluded.

Sec. 721, relating to the Office of Administrative Hearings, creates the Office and provides for the appointment of a Chief Administrative Law Judge. The language is similar to language found in Tax Law, Paragraph 2002, creating the tax tribunal. (See also Revised Washington Code 24.12.0110; New Jersey statute s.52:14F-1).

Sec. 721, paragraph 2, deals with the appointment, terms and qualifications of the Chief Administrative Law Judge, the questions of holdover, how a vacancy is filled, and the question of removal. The language added is derived from Tax Law, S.2004. (Terms: Washington a five-year term; Minnesota a six-year term; New Jersey a six-year term). (Quali-

fications: New Jersey requires a lawyer; Minnesota-the director must be "learned in the law" and also demonstrate "knowledge of administrative procedures" and be "free from political and economic associations which would impair his ability to function"; Washington-requires a lawyer.) (Removal: Minnesota-for cause; Washington-for cause.)

Sec. 722, outlines the powers, duties and responsibilities of the Chief Administrative Law Judge, it allows him or her to establish administrative units and appoint deputies, hearing officers, counsels and employees as necessary.
Paragraph 3, deals with the appointment of temporary hearing officers. The language is derived from the New Jersey statute. It would prohibit state employees from receiving such contracts and is similar to language found in the Minnesota and Washington statutes.

Paragraph 4, derived from the New Jersey statute, contains a provision with respect to evaluation. It is absolutely essential that evaluation of hearing officers be conducted to allow for promotions, demotions and removals. Various scholars have indicated that the New Jersey statute has one of the best programs of evaluation.

Paragraph 7, deals with studies of adjudicatory proceedings, and requires the Chief Administrative Law Judge to study administrative law and recommend changes to the Legislature and Governor.

Paragraph 8, is derived in part from Washington's S.34.12.080 and allows uniform standards to be promulgated, taking into consideration the agency's needs for variances in certain cases. Paragraph 8(b) authorizes the office to promulgate rules for the conduct of conciliation and mediation conferences.

Sec. 723, paragraph 1 requires all contested adjudicatory proceedings to be conducted by hearing officers assigned by the Chief Administrative Law Judge. It is derived from Minnesota 5.14.50.

Paragraph 2 authorizes, on a voluntary basis, agencies which are exempted from the requirements of the Article to use the services of the Chief Administrative Law Judge if the agency and the Chief ALJ deem it appropriate. This could include hearings on legislative facts which the agency has determined requires a full airing. This is similar to New Jersey Statute S.52:14F-5 and Minnesota S.14.50.

Paragraph 3 allows the Chief Administrative Law Judge to schedule adjudicatory hearings and conciliation and mediation conferences at the Office of Administrative Hearings or other suitable locations in the State, taking into consideration the convenience of witnesses and parties.

Paragraph 4 deals with assignments of hearing officers. It provides that, whenever practical, the Chief ALJ use personnel having expertise in the field and assign hearing officers primarily to the hearings of particular agencies on a long-term basis. This language is taken from Washington code 5.34.12.040.

Paragraph 5 states that all Hearings conducted under the Article be conducted in conformance with the State Administrative Procedure Act.

Paragraph 6 deals with the scheduling of hearings. It assures that hear-

ings will not be held up indefinitely by an agency failing to request the Chief Administrative Law Judge specifically to conduct the hearing.

Sec. 724, deals with the qualifications, powers and duties of hearing officers. Paragraph 1 requires hearing officers to be selected by competitive examination and is derived from Tax Law. Paragraph 4 requires hearing officers to be free from any political or economic associations that would impair their ability to function officially in a fair and objective manner. This language is taken from Minnesota

5.14.48. Parties may, of course, move to dismiss a judge on the basis of bias on particular facts under SAPA, in any event.

Paragraph 5, derived from Minnesota S.14.50, is a re-statement of the powers that a hearing officer would have as a presiding officer under Article 3 of SAPA.

The core concept: Agencies maintain control of the administrative process and have the final authority to determine issues of fact and conclusions of law, as well as to determine whether or not they are dealing with a contested issue of adjudicative fact. Fairness requires a full blown trial-type hearing before an impartial hearing officer if there is a dispute over adjudicative facts. No such requirement exists regarding agency policy.

Paragraph 3 (e) provides for recommended decisions for most hearings or a report on the recommended or final decision of the hearing panel or administrative review board.

Paragraph 6 provides that the decisions of hearing officers in Vehicle and Traffic cases shall be final decisions.

Finally S.675 specifically identifies those agencies and activities which are exempt from the bill unless an agency wishes to use the process.

Paragraph 1, for the most part, tracks those agencies exempted from the provision of SAPA for both rule making and adjudicatory procedures and adds the Division of Tax Appeals and the Public Employee Relations Board. In addition, the Employment Relations Board, the State Insurance Fund, the Unemployment Insurance Appeals Board, and the Workers' Compensation Board are added.

Paragraph 2 exempts those proceedings relating to individuals in medical, mental, rehabilitative or custodial programs operated by the state.

Paragraph 3 states the obvious: adjudicatory proceedings which do not involve disputed issues of adjudicative fact are exempt from this act unless an agency determines that it wishes to use this Article.

Paragraph 4 is derived from the New Jersey Statute and provides that, where a final decision maker wishes to conduct a hearing, he may do so. The New Jersey Statute has been interpreted by the New Jersey Court, on the basis of this provision, as excluding the administrative law judges of the Unemployment Insurance Board. Since the New York Statute is virtually identical, this language will exempt UI hearing officers from the provision of this bill. However, hearings conducted by members of

professional licensing or disciplinary boards are not excluded from the bill. The hearing committees on which board members sit are required by law to have a hearing officer, officially titled an Administrative Officer, advise the committee members. The Chief ALJ will assign hearing officers to hear cases with board members. It is not the intent of this legislation for the hearing officer to usurp in any way the statutory power of the professional licensing and disciplinary boards or their hearing committees.

Section 725, paragraph 5 is added to insure that hearings which are required to be held by another agency by the Federal Government shall not be transferred into this new office.

Sections three, four, five, six, & seven of the Bill amends the State Administrative Procedure Act to conform to the new process.

Sections eight and nine provides for the transfer of employees, records and functions once the new agency is created.

Section ten provides for two evaluations of the Office of Administrative Hearings, one by July 1, 2017, and another by July 1, 2019.

PURPOSE AND JUSTIFICATION: The citizens of this State have a right to fairness in adjudicatory proceedings. Adjudicatory proceedings are similar to rule making proceedings in many important respects including policy making, law making, and the resolution of issues of legislative facts. However, adjudicatory proceedings are unique regarding the resolution of issues of fact concerning the immediate parties or so called adjudicative facts. When a protected interest is at stake, a citizen is entitled to the opportunity for a trial-type hearing, including such procedural rights as calling witnesses, confrontations, cross examination, a chance to know and refute all evidence the agency considers, and a statement of finding and reasons on disputed adjudicative facts.

Where legislating is done in an adjudicatory proceeding, fairness requires that those who oppose the legislation should have an opportunity to challenge any fact the agency uses that is susceptible to reasonable challenge. However, trial procedure is inappropriate in both rule making and adjudication for the development of facts which are utilized for informing the agency's legislative judgment on questions of the law and policy, so called legislative facts. An agency may use facts in its files and in the minds of its personnel, but not without making the facts known so that any citizen who is affected may either submit rebuttal material or identify specific facts and request an opportunity for cross examination. Certain facts are mixed with judgment, policy ideas, opinion, discretion, or philosophical or political preference. These facts are often controverted but may be found without supporting evidence. Trial procedure is inappropriate in both rule making and adjudication for the development of judgmental, predictive or evaluative facts. Some such facts cannot be and therefore need not be proved with evidence.

Agencies must uncover and use the available facts that may importantly affect their policy judgments, whether in formal or informal action, and whether in adjudication or rule making. Except where such judgmental, predictive or evaluative facts are deemed too clear for argument, an

agency should allow an affected person a pre-decision chance to respond with written or oral argument to judgmental, predictive or evaluative facts which affect the decision. However, cross examination of judgmental, predictive or evaluative facts should be denied unless the agency finds that cross examination is an efficient way to determine judgmental, predictive or evaluative facts which are specific and essential for the governmental action.

Fairness requires an agency to provide the citizens of this state with a statement of reasons supporting a decision. Such a statement should

inform the party of both the grounds of the decision and the essential facts on which the agency's inferences are based.

The use of agency employees to adjudicate claims against an agency encourages an institutional bias that undermines the fairness and impartiality desired in administrative adjudication. The perception of fairness will be greater if hearing officers are employed by a central state agency.

The creation of a central, independent hearing office will permit an agency to fully develop before a hearing officer those adjudicative, legislative, and judgmental, predictive or evaluative facts on which it relied in making its decision. In this way, an agency will be able to clearly articulate the standards, policies and considerations which led to its decision and provide a reasoned explanation of the decision.

PRIOR LEGISLATIVE HISTORY: A.9230 in 1978, A.1032 in 1979, A.11057 in 1986, A.5766 (Lentol) in 1987-88, S.8538 (Floss) was Starred on the Senate Calendar in 1986. S.3613A of 1989 Considered by both Houses - Veto 22 A.9194 of 1990 Considered by both Houses - Veto 23 A.3863A/S.2340A of 1993 - Veto 40 A.10059A/S.6941A passed in Senate and was not considered by Assembly A.2818-A was passed in the Assembly in 1995 S.2029-B was not acted upon by the Senate in 1995 A.2818-D was passed in the Assembly in 1996 S.2029-D was not acted upon by the Senate in 1996 A.108-A of 1997-98 A.144 of 1999-00 A.662/S.7034 of 2001-2002 A209/S278 of 2003-04 A4521/S2085 of 2005-06 A.2892 of 2007-08 A.6063 of 2011-12 A.1334 of 2013-14

EFFECTIVE DATE: Immediately, except for section 2 which will take effect on September 1, 2014, and shall be applicable to proceedings pending or unheard on or after September 1, 2016.

May __, 2014

RE: An act to amend the executive law and the state administrative procedure act, in relation to the creation of an officer of administration hearings

A. 640 (Lentol)

MEMORANDUM IN SUPPORT

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages and towns across New York State, strongly supports enactment of this bill to amend the Executive Law and the State Administrative Procedure Act to create a centralized system for administrative hearings through the Office of Administrative Hearings.

New York State's agency-based administrative adjudication process is fragmented and, at the very least, gives the appearance of unfairness to those seeking relief from its processes. Each agency is vested with the responsibility of conducting administrative agencies concerning enforcement of the laws, rules, and regulations relevant to that agency and adjudicating claims against it. The use of agency employees to adjudicate claims infuses an institutional bias into the process and allows the use of facts in the agency's files and institutional knowledge that are never made available to the affected person to inspect or challenge. Further, in some cases, where the hearing officer is not an employee and paid for each hearing, many hearing officers are reluctant to find against the agency out of the fear that they will no longer be requested to serve as a hearing officer.

This legislation would move to a centralized model for administrative adjudication, where there would be a single Office of Administrative Hearings that is comprised of independent and impartial hearing officers. The intent of this model is to create greater transparency of the agency's findings and conclusions of law underlying its final decision and create a fair process for an affected person.

Generally, the procedure would require the agency in need of a hearing to forward the request to the Office of Administrative Hearings, where after a fair and impartial hearing officer would be appointed to collect evidence, hear testimony, and provide a recommendation to the agency on factual findings and conclusions of law. In those situations where the agency differs from the recommendations of the hearing officer, a written exception to any finding is necessary with an explanation that shall become a part of the record. This will allow the agency to set forth the standards, policies, and considerations that led the decision, while giving the affected person and others notice of the same.

This legislation is necessary to entrench greater fairness in the administrative process and receive a just result at the agency level, as opposed to commencing costly litigation that many individuals do not have the means to finance or the time to endure.

Therefore, NYSPFFA strongly supports the enactment of this legislation.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4821-6730-0387, v. 1

Enclosure (9)

A. 488 – Limiting Participation of Private Organizations in the Retirement System

A488-A Ryan No Same as
Retirement and Social Security Law
TITLE....Relates to limiting participation by certain public or quasi-public organizations in the retirement system
01/07/15 referred to governmental employees
03/30/15 amend and recommit to governmental employees
03/30/15 print number 488a

STATE OF NEW YORK

488--A

2015-2016 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 7, 2015

Introduced by M. of A. RYAN -- read once and referred to the Committee on Governmental Employees -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to participation by public or quasi-public organizations in the retirement system

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision a of section 31 of the retirement and social security law, as amended by chapter 379 of the laws of 1989, is amended to read as follows:

a. Any public or quasi-public organization created wholly or partly or deriving its powers by the legislature of the state and which organization employs persons engaged in service to the public or any state agency as defined in section fifty-three-a of the state finance law, or the New York state association of town superintendents of highways, inc. or any school board association, by resolution legally adopted by its governing body and approved by the comptroller, may elect to have its officers and employees become eligible to participate in the retirement system. Acceptance of the officers and employees of such an employer for membership in the retirement system shall be optional with the comptroller. If he shall approve their participation, such organization, except as specifically provided in this article to the contrary, shall thereafter be treated as a participating employer. Any election made pursuant to this subdivision by a school board association shall be applicable to current employees of such association. Notwithstanding the foregoing provisions, any officer or employee of the New York state association of town superintendents of highways, inc., the New York state school boards association, the New York state association of counties, the association of towns of the state of New York, the New York

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD00612-02-5

conference of mayors and other municipal officials, or any school board association, first employed on or after the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, shall not be eligible to participate and/or receive service credit in the retirement system based on such employment.

§ 2. Section 609 of the retirement and social security law is amended by adding a new subdivision i to read as follows:

i. Notwithstanding any other provision of this section or any other law, rule or regulation, an officer or employee of the New York state association of town superintendents of highways, inc., the New York state school boards association, the New York state association of counties, the association of towns of the state of New York, the New York conference of mayors and other municipal officials, or any school board association, shall not receive service credit for employment with such organization on or after the effective date of this subdivision.

§ 3. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 4. This act shall take effect immediately.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill would require that persons first employed by the following associations on or after the effective date will not be eligible for membership in the New York State and Local Employees' Retirement System:

The New York state association of town superintendents of highways, inc,

The New York state school board association,

The New York state association of counties,

The association of towns of the state of New York,

The New York conference of mayors and other municipal officials, and

Any school board association.

This legislation also would freeze the benefit accruals of employees of one of the boards of associations who are members of the NYS&LERS as of the effective date. If this bill is enacted, it is likely to face a constitutional challenge based upon the guarantee that a member's benefits may not be diminished.

If this bill is enacted, there will be no cost to the retirement system.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2014 actuarial valuation. Distributions and other statistics can be found in the 2014 Report of the Actuary and the 2014 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2010, 2011, 2012, 2013 and 2014 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2014 New York State and Local Retirement System Financial Statements and Supplementary Information.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the statement of actuarial opinion contained herein.

This estimate, dated March 30, 2015, and intended for use only during the 2015 Legislative Session, is Fiscal Note No. 2015-93, prepared by the Actuary for the New York State and Local Employees' Retirement System.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A488A

SPONSOR: Ryan

TITLE OF BILL: An act to amend the retirement and social security law, in relation to participation by public or quasi-public organizations in the retirement system

PURPOSE:

To limit participation by officers and employees of certain private organizations in the New York State public retirement system.

SUMMARY OF PROVISIONS:

Section 1 of the bill amends section 31 of the retirement and social security law in relation to participation of certain private organizations in the New York•State pension system.

Section 2 of the bill is the effective date.

JUSTIFICATION:

The NYS retirement system is one of the largest in the nation - with over a million participants and having a value of almost $160 billion. The system is a benefit to hardworking public employees and.it is a benefit to state and local government in terms of attracting and retaining qualified employees. As much as the retirement system is a benefit, it is also a financial burden especially to local governments. According to the NYS Office of the State Comptroller, for the 2011-2012 fiscal year, contributions to the retirement system from government employers totaled over $4.5 billion.

In recent years, the NYS Legislature has acted responsibly in passing measures to help control the cost of the state pension system, particularly for local governments. And, although reform measures such as new pension tiers have been established, there are still other problems with the pension system that must be fixed. A prime example of this is the state's law permitting employees of certain private organizations to participate in the state's public retirement system.

Under current law, officers and employees of private organizations such as the NYS Association of Counties, the NYS School Boards Association, the Association of Towns of the State of New York, and the NYS Conference of Mayors are all eligible to participate in New York's retirement system. Decades ago, these organizations applied for (and were granted) this special privilege. Consequently, the state's public retirement system includes certain private-sector employees that enjoy a special

benefit that other similarly situated private sector employees do not have. A particularly troubling aspect of this arrangement is that, in some cases, the officers and employees of these private organizations are actually registered lobbyists. Ultimately, the state pensions for these individuals increases costs for state and local government - costs that are ultimately borne by New York residents. It is outrageous and unfair to require New York residents to pay the costs of a public pension for private sector lobbying organizations. Another particularly irksome aspect of this situation is that these groups regularly lobby New York state government officials to reduce the high costs of pensions for local governments - the very costs that their officers and employees are contributing to through the special privilege they are taking advantage of. In fact, the NYS Association of Counties, The NYS Conference of Mayors and the NYS Schools Boards Association have all had pension reform on their lobbying agenda.

To be sure, the NYS retirement system is large and costs a lot of money. There are many, many hard-working public employees that deserve a public pension - and a pension system should be maintained for these individuals. However, the fact that the current system provides a public pension to private-sector lobbying organizations demands a fix. This bill does just that.

BILL HISTORY:

2014: A8211

FISCAL IMPLICATIONS:

This bill will reduce the number of individuals eligible for the NYS retirement system and will therefore reduce pension costs for NYS and for local governments.

EFFECTIVE DATE:
Immediately.

May __, 2015

RE: An act to amend the retirement and social security law, in relation to participation by public or quasi-public organizations in the retirement system

A. 488-A (Ryan)

MEMORANDUM IN SUPPORT

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages and towns across New York State, strongly supports enactment of this bill to amend the Retirement and Social Security Law ("RSSL") to prohibit the participation of new employees of certain private organizations in the New York State public retirement system (hereinafter the "Retirement System") and cease the employees of such private organizations to earn additional service credit.

Years ago, certain private organizations were authorized to participate in the State's public retirement system. These entities include NYS Association of Counties, NYS School Boards Association, the Association of Town of the State of New York, and the NYS Conference of Mayors.

In some cases, the officers and employees of these private organizations are registered lobbyists and have lobbied at points to reduce the costs of pensions for local governments. Ironically, their participation in the Retirement System increases the costs of the Retirement System, which is ultimately borne by the taxpayers.

It is time for the employees of these private organizations to be barred from participation in the Retirement System, and this legislation will achieve that goal with regard to new hires and by freezing existing employees' service credit on the date that this legislation is enacted into law.

Therefore, NYSPFFA strongly supports the enactment of this legislation.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4850-3712-1059, v. 1

Enclosure (10)

S. 2236 – MRSA Disability

S2236 LIBOUS No Same as
ON FILE: 01/26/15 Retirement and Social Security Law
TITLE....Relates to impairments of health, presumption and staph/MRSA
01/22/15 REFERRED TO CIVIL SERVICE AND PENSIONS
02/09/15 1ST REPORT CAL.70
02/10/15 2ND REPORT CAL.
02/25/15 ADVANCED TO THIRD READING

STATE OF NEW YORK

2236

2015-2016 Regular Sessions

IN SENATE

January 22, 2015

Introduced by Sen. LIBOUS -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the retirement and social security law, in relation to impairments of health, presumption and staph/MRSA

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The retirement and social security law is amended by adding a new section 363-ddd to read as follows:

§ 363-ddd. Impairments of health; presumption; Staph/MRSA. Notwithstanding any provision of this chapter or of any general, special or local law to the contrary, any police officer or firefighter who is covered by the provisions of section three hundred sixty-three of this title and who contracts methicillin resistant staphylococcus aureus (MRSA) or Staph/MRSA will be presumed to have contracted such disease in the performance or discharge of his or her duties as the natural and proximate result of an accident and to be disabled from the performance of his or her duties unless the contrary be proven by competent evidence.

§ 2. This act shall take effect immediately.

FISCAL NOTE.--This bill will affect certain members of the New York State and Local Police and Fire Retirement System by presuming that contracting MRSA or Staph/MRSA will qualify them for a accidental disability retirement, unless the contrary be proven by competent evidence.

If this bill is enacted, it would lead to more disabilities being classified as "accidental". For the disabilities so classified due to this bill, the cost would depend on whether such person would have otherwise been eligible for an ordinary disability, a performance of duty disability or a service retirement. For those who contract such disease prior to being eligible to receive an ordinary disability retirement, it is estimated that there would be an average per person cost of approximately eight (8) times final average salary. For those

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who contract such disease who would be eligible to receive an ordinary disability retirement, it is estimated that there would be an average per person cost of approximately four (4) times final average salary. For those who contract such disease who would be eligible to receive a performance of duty disability retirement, it is estimated that there would be an average per person cost of approximately two (2) times final average salary. For those who contract such disease who are eligible for service retirement, it is estimated that there would be an average per person cost of approximately 150% of final average salary.

However, we anticipate that few additional accidental disability retirements will be granted, and thus, the resulting costs are expected to be negligible.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2014 actuarial valuation. Distributions and other statistics can be found in the 2014 Report of the Actuary and the 2014 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2010, 2011, 2012, 2013 and 2014 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2014 New York State and Local Retirement System Financial Statements and Supplementary Information.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This estimate, dated January 16, 2015 and intended for use only during the 2015 Legislative Session, is Fiscal Note No. 2015-32, prepared by the Actuary for the New York State and Local Police and Fire Retirement System.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S2236

SPONSOR: LIBOUS

TITLE OF BILL: An act to amend the retirement and social security law, in relation to impairments of health, presumption and staph/MRSA

PURPOSE OR GENERAL IDEA OF BILL:

This bill intends to provide to police officers and firefighters a proper pension in case of employment related disabilities associated with MRSA.

SUMMARY OF SPECIFIC PROVISIONS:

This bill would provide a 75% accidental disability benefit for police officers and firefighters provide the assumption that methicillin resistant staphylococcus aureus was contracted in the line of duty.

EFFECTS OF PRESENT LAN WHICH THIS BILL WOULD ALTER:

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.

JUSTIFICATION:

Due to the increased exposure which police officers and firefighters have to those individuals who have methicillin resist--ant 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. The retirement system has the burden of proving otherwise. This legislation would deem such exposure as an accident so that the member would be, eligible for three-quarters of their final average salary. There can be no dispute that such protection is more than warranted.

PRIOR LEGISLATIVE HISTORY:

S.3785B of 2013: Passed Senate
S.3785 of 2014: Passed Senate

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

See fiscal note.

EFFECTIVE DATE:
Immediately.

May __, 2015

RE: An act to amend the retirement and social security law, in relation to impairments of health, presumption and staph/MRSA

S. 2236 (Libous)

MEMORANDUM IN SUPPORT

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages and towns across New York State, strongly supports enactment of this legislation which would provide a three-quarters pension benefit for police officers and fire fighters who contract methicillin resistant staphylococcus aureus (MRSA).

Due to the increased exposure that police officers and fire fighters have to individuals who have MRSA and to protect the families of those police officers and fire fighters who are so exposed, a presumption that the individual is disabled from the performance of duties is warranted.

Under current law, police officers and fire fighters who suffer similar blood borne employment-related disabilities, such as tuberculosis, hepatitis or HIV, are able to receive a three-quarters accidental disability benefit. This legislation would extend this accidental disability benefit to those police officers and fire fighters who contract MRSA in the line of duty by creating a presumption that it occurred in the performance or discharge of his or her duties.

Alternatively, without this presumption, individual police officers and fire fighters will have the burden of proving that contraction of MRSA was the natural and proximate result of an accident, which is difficult in most cases because MRSA can be contracted by simply skin-to-skin contact or coming into contact with an object previously touched by a person infected with MRSA.

In 2012, the Legislature through the passage of A. 5739-A / S. 7209 determined that this presumption is warranted. However, the Governor vetoed this legislation despite it offering a necessary benefit to New York State police officers and fire fighters with a service-related disability at a negligible cost, as determined by the New York State and Local Police and Fire Retirement System's actuarial analysis.

Therefore, NYSPFFA strongly supports enactment of this legislation.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4831-4293-4051, v. 1

Enclosure (11)

A. 5517 / S. 3950 – Creation of Amsterdam Firefighters' Benevolent Association

S 3950 AMEDORE Same as A 5517 Santabarbara
ON FILE: 02/25/15 Firefighters
TITLE....Creates the Amsterdam Firefighters' Benevolent Association
02/24/15REFERRED TO LOCAL GOVERNMENT
03/17/151ST REPORT CAL.263
03/18/152ND REPORT CAL.
03/19/15ADVANCED TO THIRD READING

A5517 Santabarbara Same as S 3950 AMEDORE Firefighters
TITLE....Creates the Amsterdam Firefighters' Benevolent Association
02/25/15 referred to local governments

STATE OF NEW YORK

3950

2015-2016 Regular Sessions

IN SENATE

February 24, 2015

Introduced by Sen. AMEDORE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT in relation to the creation of the "Amsterdam Firefighters' Benevolent Association"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Incorporation; membership. A not-for-profit corporation by the name of "Amsterdam Firefighters' Benevolent Association", hereinafter referred to as the "association", is hereby created. It shall be composed of such members eligible for membership therein as hereinafter provided as shall: (a) notify the secretary of the Amsterdam Professional Firefighters Union in writing prior to the organization meeting hereinafter provided for the corporation created by this act of their desire to become members; or (b) attend such meeting or an adjournment thereof, and also such persons eligible as may thereafter become members of such corporation pursuant to its by-laws.

§ 2. Persons eligible for membership. All persons who are now or hereafter shall be employed as professional firefighters in the fire department of the city of Amsterdam, county of Montgomery shall be eligible for membership in the corporation created by this act except that any firefighter who has been removed for cause from the fire department and who has not been reinstated therein shall not be eligible for membership in such corporation. The membership of any person in such corporation shall terminate when his membership in the city of Amsterdam fire department terminates.

§ 3. Purposes. The association shall have as its purposes the promotion of a friendly association for the betterment of its members and their relations with the community, for promotion of fraternal intercourse among its members, to study and disseminate among its members the most efficient manner of fighting fires and the relief, aid and assistance of its members and their families who are disabled or

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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indigent, and for the promotion of the welfare of the fire service, and for any of the foregoing purposes shall have the power to purchase, take and hold, transfer and convey real and personal property.

§ 4. Powers and duties. Such corporation shall have all the powers of a not-for-profit corporation, and the provisions of law relating to not-for-profit corporations shall apply to such corporation except where they conflict with the provisions of this act. However, unless the written approval of the state board of social services shall have first been obtained this corporation shall not establish and maintain any home or institution which, if separately incorporated, would require the approval of such board.

§ 5. Organization meeting; by-laws. The secretary of the Amsterdam Professional Firefighters' Union shall call a meeting for the organization of such corporation to be held not later than three months after the effective date of this act, notice of which shall be given by him by posting or causing to be posted a notice thereof in five conspicuous places within the territory protected by the city of Amsterdam fire department and also by publication of notice thereof in one or more newspapers having a general circulation within such territory, and such posting and publication shall be effected at least ten days prior to the date of such meeting. At such meeting or any adjournment thereof the members of such corporation present shall adopt by-laws and elect officers and trustees to serve until the first annual meeting which shall be held on a date to be fixed by the by-laws. Any member failing to comply with the by-laws, rules or regulations duly adopted by such corporation shall be subject to suspension and expulsion in such manner as may be provided for in such by-laws. Any member who ceases to be such, voluntarily or otherwise, shall forfeit all interest in the property of such corporation.

§ 6. Control and disposal of funds and property. The control and disposal of the funds of property of such corporation, the exercise of its powers, and the management and control of its affairs shall be vested in and exercised by a board of trustees which shall consist of seven members of such corporation, viz: the president, the vice-president, the secretary, the treasurer and three other members having the title of trustee. Such officer and trustees shall be elected at the annual meeting of such corporation in the manner prescribed by its by-laws.

§ 7. Precept for payment of foreign fire insurance premium taxes. Such corporation shall collect and there shall be paid to it all taxes imposed by section 9104 of the insurance law for fire department use and benefit, upon premiums for insurance against loss or damage by fire covering property situated in the city of Amsterdam, county of Montgomery. The officer of such corporation designated by its by-laws to collect and receive the aforesaid tax shall have all the powers and be subject to all the provisions of the iusurance law, relating to treasures of fire departments. Such corporation shall also be entitled to receive a share of the tax imposed by section 9105 of the insurance law, based upon the business written in the territory with respect to which it is entitled to collect and receive the tax under section 9104 of the insurance law. Such taxes shall only be used for the use and benefit of the fire department.

§ 8. The city of Amsterdam shall pay over to the association any foreign fire insurance monies in its custody. These monies will be used for the purposes set forth in section three of this act.

§ 9. This act shall take effect January 1, 2017.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S3950

SPONSOR: AMEDORE

TITLE OF BILL:

An act in relation to the creation of the "Amsterdam Firefighters' Benevolent Association"

PURPOSE:

Creates the Amsterdam Firefighters' Benevolent Association.

SUMMARY OF PROVISIONS:

Section 1: Creates the "Amsterdam Firefighters' Benevolent Association".

Section 2: Defines the persons eligible for membership.

Section 3: Defines the purpose of the association.

Section 4: Powers and duties shall be that of a not for profit.

Section 5: Includes the by-laws of the organization.

Section 6: Identifies control and disposal of funds and property.

Section 7: Describes precept for payment of foreign fire insurance premium taxes.

Section 8: Requires the City of Amsterdam to pay the Association any foreign fire insurance monies in its custody.

Section 9: Establishes the effective date.

JUSTIFICATION:

A recently revised City Charter failed to include the local law that obligated the Treasurer to distribute the foreign fire insurance monies to the unincorporated association, This legislation seeks to incorporate this Association and designate it as the proper recipient of the foreign fire insurance monies.

LEGISLATIVE HISTORY:

2013/2014 - S7327/A 9726 - Referred to Local Government/Passed Assembly.

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:
This act shall take effect January 1, 2017.

May __, 2015

RE: An act in relation to the creation of the "Amsterdam Firefighters' Benevolent Association"

A. 5517 (Santabarbara)
S. 3950 (Amedore)

MEMORANDUM IN SUPPORT

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages and towns across New York State, strongly supports enactment of this legislation that would incorporate the "Amsterdam Firefighters' Benevolent Association" ("Association") and designate it as the proper recipient of the foreign fire insurance monies in the City of Amsterdam.

Sections 9104 and 9105 of the Insurance Law, also known as the foreign fire insurance tax (2% money), impose certain taxes on out-of state insurance companies writing insurance policies against fire loss on properties located within the State. Generally, the State collects the monies and then distributes it to entities affording fire protection for a specific locality, such as, among others, the fire departments, fire districts, and, upon a special act of the Legislature, fire department benevolent associations.

The City of Amsterdam's revised charter failed to address the distribution of the foreign fire insurance monies to the unincorporated association. This legislation would correct that omission and rightly distribute the foreign fire insurance monies directly to the Association. Ultimately, this proposed act would make the distribution of the foreign fire insurance monies in the City of Amsterdam more consistent with the intent of the Insurance Law by having it go to the use and benefit of the fire fighters protecting the City and the overall promotion of the fire service.

Therefore, NYSPFFA strongly supports the enactment of this legislation.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

Enclosure (12)

Study Bill – Security of Fire Fighters' and Fire Officers' Personal Information

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 012574/2014
Return Date: 3-9-15
Cal. No.: 35-37

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ALEXANDER HAGAN, as President of and on behalf of UNIFORMED FIRE OFFICERS ASSOCIATION, LOCAL UNION NO. 854, I.A.F.F., STEPHEN CASSIDY, as President of and on behalf of UNIFORMED FIREFIGHTERS ASSOCIATION, LOCAL 94, I.A.F.F., AFL-CIO, EDWARD BURKE, and JOSEPH HENNELLY, individually, and on behalf of those similarly situated,

Petitioners,

-against-

DECISION/ORDER

CITY OF NEW YORK, and BILL DE BLASIO, as Mayor of the City of New York and NEW YORK CITY FIRE DEPARTMENT, and DANIEL A. NIGRO, as Commissioner of the New York City Fire Department and as Chairman of the New York City Fire Pension Fund,

Respondents.

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The following papers numbered 1 to 14 were read on this motion:

Papers:	**Numbered**
Notice of Petition/Petition Affidavits/Affirmations/Exhibits.....	1,2,3
Notice of Motion for Admission Pro Hac Vice Affidavits/Affirmations/Exhibits.....	4
Empire's Notice of Motion to Intervene on Consent Proposed Answer, etc.....	5
Respondents' Answer Affirmations/Affidavits/Exhibits/etc.....	6,7
Reply Affirmations/Affidavits/Exhibits.....	8,9,10,11
Other...(Sur-Reply, Affidavit, Opposition to Sur-Reply).....	12,13,14

Upon the foregoing papers, the motion and petition are decided as follows:

Petitioners commenced this CPLR article 78 proceeding seeking to enjoin the City of New York (the "City") and the New York City Fire Department ("FDNY") from disclosing information concerning certain FDNY retirees. The proceeding stems from a May 6, 2014 request for information made by the Empire Center for Public Policy ("Empire")[1] under the Freedom of Information Law ("FOIL") to the New York City Fire Department Pension Fund (the "Pension Fund"). Empire requested a list of the Pension Fund's retired members for fiscal years 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014, and for each such retiree, the retiree's last employer, gross retirement benefit for each calendar year, years of service (service credit), retirement date and date of commencement of retirement system membership.

The City and FDNY agreed to disclose all the requested information except for the names of the members of the Pension Fund who retired from law enforcement positions, namely fire marshals and supervising fire marshals, on the ground that disclosing the names of these individuals could endanger their lives and safety (Public Officers Law § 87[2][f]).

Petitioners subsequently commenced this CPLR article 78 proceeding seeking to enjoin the City and FDNY from releasing any of the requested information. Petitioners contend that disclosing the information would be an "unwarranted invasion of personal privacy"(Public Officers Law § 87[2][b]) and would violate New York City Administrative Code, Section 13-

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[1]Empire is a think tank whose purpose is to inform voters and policymakers about issues, including pension reform.

316(b)[2] since the Board of Trustees of the Pension Fund never voted to release the information. Empire filed a motion to intervene in the proceeding and maintains that under FOIL, all information that was requested must be disclosed and that there is no merit to the City's and the FDNY's position that disclosure of the names of retired marshals and supervising marshals is exempt from disclosure under Public Officers Law § 87[2][f]. Empire further maintains that disclosure of the requested information would not be an unwarranted invasion of personal privacy or a violation of New York City Administrative Code, Section 13-316(b). Empire's counsel also made a motion to have Gregory G. Katsas Esq. admitted *pro hac vice* to the Supreme Court of the State of New York, Kings County in order to have him argue and try this matter for Empire.

The motions and the petition are consolidated for disposition.

ANALYSIS:

The Motions:

CPLR 7802(d) provides for intervention in an article 78 proceeding and provides: "[t]he court ... may allow other interested persons to intervene." Intervention lies in the "sound discretion of the court" (*White v. Incorporated Village of Plandome Manor*, 190 A.D.2d 854, 593 N.Y.S.2d 881 [2nd Dep' 1993], *leave to appeal denied,* 83 N.Y.2d 752, 633 N.E.2d 489, 611 N.Y.S.2d 134 [1994]. Having filed the FOIL requests under review, Empire has a clear interest in the proceeding. Accordingly, its unopposed motion to intervene is **GRANTED**. Empire's

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[2]Administrative Code § 13–316 provides that the Board of Trustees shall be the head of the Pension Fund and that the Board shall make all determinations regarding the retirement of its members. Section 13–316(b) provides that the Board shall act by resolution "which shall be adopted by a vote of at least seven-twelfths" of the number of votes authorized to be cast.

unopposed motion to have Gregory G. Katsas Esq. admitted *pro hac vice* to the Supreme Court of the State of New York in order to argue and try this matter for Empire is **GRANTED.**

The Statutory Framework:

The starting point for any FOIL inquiry is that the public has the right to know and it is the burden of the government to justify the denial of access (*Matter of Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 463, 849 N.Y.S.2d 489, 880 N.E.2d 10 [2007]). Thus, "[i]n a proceeding pursuant to CPLR article 78 to compel the production of material pursuant to FOIL, the agency denying access has the burden of demonstrating that the material requested falls within a statutory exemption . . . ." (*Baez v. Brown*, 124 A.D.3d 881, 1 N.Y.S.3d 376, 379 [2nd Dep't 2015], *citing* Public Officers Law § 89[5][e], [f]; *Matter of West Harlem Bus. Group v. Empire State Dev. Corp.*, 13 N.Y.3d 882, 885, 893 N.Y.S.2d 825, 921 N.E.2d 592 [2009]; *Matter of Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462–463, 849 N.Y.S.2d 489, 880 N.E.2d 10 [2007]; *Matter of Fappiano v. New York City Police Dept.*, 95 N.Y.2d 738, 746, 724 N.Y.S.2d 685, 747 N.E.2d 1286 [2001]; *Matter of Verizon N.Y., Inc. v. Mills*, 60 A.D.3d 958, 959, 875 N.Y.S.2d 572 [2nd Dep't 2009]). "The oft-stated standard of review in CPLR article 78 proceedings, i.e., that the agency's determination will not be set aside unless arbitrary or capricious or without rational basis, is not applicable" *(Capital Newspapers Div. of Hearst Corp. v. Burns*, 109 A.D.2d 92, 94, 490 N.Y.S.2d 651, 653 [3rd Dep't 1985]).

The entity resisting disclosure must articulate a particularized and specific justification for denying access to the requested information (*Baez*, 1 N.Y.S.3d at 379 [*citations omitted*]). "Conclusory assertions that certain records fall within a statutory exemption are not sufficient; evidentiary support is needed" (*Dilworth v. Westchester County Dept. of Correction*, 93 A.D.3d

722, 724, 940 N.Y.S.2d 146, 149 [2nd Dep't 2012]). Moreover, exemptions from disclosure "are to be narrowly interpreted so that the public is granted maximum access to the records of government" (*Matter of Data Tree, LLC* v. Romaine, 9 N.Y.3d at 462, 849 N.Y.S.2d 489, 880 N.E.2d 10).

Public Officers Law § 87(2)(f).

FDNY and the CITY have not met their burden of demonstrating that disclosure of the names of the retired fire marshals and supervising fire marshals is exempt under Public Officers Law § 87(2)(f), which exempts from disclosure materials that, "if disclosed[,] could endanger the life or safety of any person." Respondents point out that many of the retired fire marshals and supervising fire marshals whose names have been requested acted as law enforcement officers during their careers and effected many arrests. Respondents contend that if the names of these individuals are made public, those individuals individual who have been arrested could easily ascertain, through the internet, the current address of the fire marshal or supervising fire marshal who made the arrest and then seek retribution against the fire marshal or supervising fire marshal and possibly his or her family. Respondents further contend that it is well known that retired law enforcement officers, such as retired marshals and supervising fire marshals, are likely to own firearms and that disclosure of their names would make them targets of individuals seeking to secure a firearm.

The Court rejects both of these arguments for the same reasons they were rejected in *Matter of New York Veteran Police Assn. v. New York City Police Dept. Art. I Pension Fund*, 92 A.D.2d 772, 773, 459 N.Y.S.2d 770 [1st Dep't 1983], *revd. on other grounds* 61 N.Y.2d 639, 471 N.Y.S.2d 851, 459 N.E.2d 1288 [1983]). In *Matter of New York Veteran Police Assn.*, the

petitioner filed a FOIL request for disclosure of the names and addresses of all retirees of the New York City Police Department ("NYPD") who were currently receiving pensions and annuities. NYPD and the lower Court denied the request partly on the ground that such disclosure might endanger the lives and safety of these individuals. In rejecting this argument and directing that the names and addresses of the retired officers be disclosed, the Appellate Division, First Department stated:

> The only point raised by respondents which could feasibly support their non-disclosure is the defense that such disclosure might endanger the lives of the retired police officers. However, such a contention is without support in the record below and is bolstered completely by speculation. As noted, the requested information had been made available to petitioner up until 1978 and no incident has been set forth by respondents involving danger to an officer from such disclosure.

(New York Veteran Police Ass'n v. New York City Police Dept. Article I Pension Fund, 92 A.D.2d at 773, 459 N.Y.S.2d 770 at 772).

In rejecting the argument that public disclosure of the names of the retired police officers would make them targets of unsavory individuals seeking to secure firearms, the Court cited, with approval, a case where pistol license applications were permitted to be inspected and the same argument of potential danger upon disclosure was made. In that case, the court stated:

> [R]espondent argues that serious harm might ensue if the records were open to inspection. He speculates that criminals will spend their diurnal hours at police stations and county clerks' offices searching for likely 'targets' who may then be nocturnally attacked for their weapons or those valuables the weapons were carried to safeguard. This suggestion is at best speculative; the ordinary mugger may generally prefer the little old lady with a string handbag to the subject lethally armed with a loaded pistol. . . .

(*Veteran Police Ass'n,* 92 A.D.2d at 773, 459 N.Y.S.2d at 772, *citing Kwitny v. McGuire*, 102 Misc.2d 124, 125, 422 N.Y.S.2d 867 [1979], *aff'd* for reasons of Wallach, J., 77 A.D.2d 839, 432 N.Y.S.2d 149 [1st Dep't 1980], *aff'd* for reasons stated in op. of Wallach, J., 53 N.Y.2d 968, 441 N.Y.S.2d 659, 424 N.E.2d 546 [1981]).

Here, the record is devoid of any evidence substantiating petitioners' and respondents' claim that the retired fire marshals and supervising fire marshals could face danger if their names were made public. The petitioners and respondents failed to cite to any specific instances where someone who was arrested by any law enforcement officer attempted to locate and cause the officer harm upon seeing the officer's name in the public domain. One would think that if someone who had a grudge against a law enforcement officer, he or she would already know his or her name. Similarly, the petitioners and respondents failed to cite to any instance where a retired law enforcement officer who name was made public was targeted by someone for the purpose of stealing his firearm.

While an agency invoking Public Officers Law § 87(2)(f) "need only demonstrate a possibility of endanger[ment]" (*Matter of Bellamy v. New York City Police Dept.*, 87 A.D.3d 874, 875, 930 N.Y.S.2d 178 [1st Dep't 2011], *aff'd.* 20 N.Y.3d 1028, 960 N.Y.S.2d 343, 984 N.E.2d 317 [2013]; *see Matter of Hynes v. Fischer*, 101 A.D.3d 1188, 1190, 956 N.Y.S.2d 604 [3rd Dep't 2012]), the exemption may not be invoked, as here, on the basis of mere speculation that harm will result from the requested disclosure (*Mack v. Howard*, 91 A.D.3d 1315, 1316, 937 N.Y.S.2d 785 [4th Dep't 2012]; *Matter of New York Veteran Police Assn. v. New York City Police Dept. Art. I Pension Fund*, 92 A.D.2d at 773, 459 N.Y.S.2d 770). The court therefore rejects FDNY's and the City's contention that the names of the retired fire marshals and supervising fire marshals are

exempt from disclosure under Public Officers Law § 87(2)(f).

Public Officers Law § 87[2][b] .

Public Officers Law § 87[2][b] exempts from FOIL disclosure information which, "if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article." Pursuant to Public Officers Law § 89(2)(b), "[a]n unwarranted invasion of personal privacy includes, but shall not be limited to" seven specified kinds of disclosure.[3] Where, as here, the requested disclosure does not fall within any of these seven categories, this Court "must decide whether any invasion of privacy ... is 'unwarranted' by balancing the privacy interests at stake against the public interest in disclosure of the information" (*Matter of New York Times Co. v. City of N.Y. Fire Dept.*, 4 N.Y.3d 477, 485, 796 N.Y.S.2d 302, 829 N.E.2d 266 [2005]; see also *Harbatkin v. New York City Dept. of Records and Information Services,* 19 N.Y.3d 373, 380, 971 N.E.2d 350, 352, 948 N.Y.S.2d 220, 222 [2012]).

In *Empire Center for New York State Policy v. New York State Teachers' Retirement System,* 23 N.Y.3d 438, 444, 15 N.E.3d 271, 272, 991 N.Y.S.2d 516, 517 [2014] Court of Appeals apparently conducted such a balancing analysis and concluded that the disclosure of the names of

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[3]Public Officers Law § 89(2)(b) provides that "An unwarranted invasion of personal privacy includes, but shall not be limited to: I. disclosure of employment, medical or credit histories or personal references of applicants for employment; ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility; iii. sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes; iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency; vi. information of a personal nature contained in a workers' compensation record, except as provided by section one hundred ten-a of the workers' compensation law; or vii. disclosure of electronic contact information, such as an e-mail address or a social network username, that has been collected from a taxpayer under section one hundred four of the real property tax law.

the retired members of the New York State Teachers' Retirement System would not be an unwarranted invasion of personal privacy.

While *Empire* is instructive, it is not determinative. The petitioner in *Empire* sought disclosure of only the names of retirees of New York State Teachers' Retirement System . Here, not only is Empire seeking disclosure of the names of certain retirees of the Pension Fund, it is also seeking disclosure of their gross retirement benefit for certain years, years of service (service credit), retirement date, date of commencement of retirement system membership and last employer. "What constitutes an unwarranted invasion of personal privacy is measured by what would be offensive and objectionable to a reasonable [person] of ordinary sensibilities" (*Thomas v. New York City Dept. of Educ.*, 103 A.D.3d 495, 497, 962 N.Y.S.2d 29, 31 [1st Dep't 2013], *citing*, *Matter of Beyah v. Goord*, 309 A.D.2d 1049, 1050, 766 N.Y.S.2d 222 [3d Dept. 2003] [internal quotation marks omitted]). While the court recognizes that most individuals would object to their pension information being made public, it would not be reasonable for a public employee to make such an objection. Public employees simply do not enjoy the same privacy rights as employees who work in the private sector. In *Capital Newspapers Div. of Hearst Corp. v. Burns,* 109 A.D.2d 92, 94, 490 N.Y.S.2d 651, 653 [3rd Dep't 1985], the Court stated that

> Since tax dollars are spent to pay public employees, the public has a right to know certain facts relating to such employment. This is not to say that public employees do not have a right of privacy. However, the acceptance of public employment carries with it a realization that certain facts relating to such employment must be public knowledge. This includes, for example, a public employee's name, public office address, title and salary (Public Officers Law § 87[3][b]). This disclosure has, on occasion, been extended to former employees (*Matter of New York Teachers Pension Assn. v. Teachers' Retirement System of City of N.Y.*, 71 A.D.2d 250, 422 N.Y.S.2d 389, lv. denied 49 N.Y.2d 701, 426 N.Y.S.2d 1025, 403

N.E.2d 187; *Matter of Gannett Co. v. County of Monroe*, 59 A.D.2d 309, 399 N.Y.S.2d 534, affd. 45 N.Y.2d 954, 411 N.Y.S.2d 557, 383 N.E.2d 1151)[4].

While *Capital Newspapers Div. of Hearst Corp.* did not specifically address disclosure of pension information, the court sees no reason to treat such information differently for FOIL purposes.

Petitioners' concern that placing the requested information in the public domain would make FDNY retirees more susceptible to identity theft is not supported by the record. Empire correctly points out that similar information has been in the public domain for many years[5] and petitioners have failed to cite to any specific instance where the disclosure of a person's salary or pension benefit was used for identity theft purposes.

Because the City and FDNY has failed to proffer more than conclusory assertions supporting their claims that disclosing the information requested by Empire would be an unwarranted invasion of personal privacy, they failed to meet their burden of demonstrating that the information is exempt from disclosure pursuant to Public Officers Law § 87[2][b] (*see* Public Officers Law § 89[5][e], [f]; *Matter of West Harlem Bus. Group v. Empire State Dev. Corp.*, 13 N.Y.3d 882, 885, 893 N.Y.S.2d 825, 921 N.E.2d 592 [2009]; *Matter of Cook v. Nassau County Police Dept.*, 110 A.D.3d 718, 719, 972 N.Y.S.2d 638 [2nd Dep't 2013]).

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[4]In this case, the Court granted petitioner's petition for the release of the names, job titles, and salary levels of certain County employees who had been terminated.

[5]Empire states that since 1883, the City has published the names and salaries of City employees in its yearly "Civil List." Empire further states that the City had previously made public the names and pension amounts of retirees in the FDNY Pension Fund for certain fiscal years was well as the names and salaries of New York City public employees for other fiscal years. Indeed, Empire maintains that it published this information on its website.

The Court has considered the other arguments against directing disclosure of the requested information, including the argument that such would violate New York City Administrative Code, Section 13-316(b), and find them to be without merit.

Accordingly, it is hereby

ORDERED that Empire's motion to intervene and the motion to have Gregory G. Katsas, Esq. admitted *pro hac vice* to the Supreme Court of the State of New York, Kings County in order to argue and try this matter for Empire are **GRANTED**; and it is further

ADJUDGED that the City and FDNY are directed to comply with Empire's FOIL request dated May 6, 2014 forthwith; and it is further

ADJUDGED that the petition is denied and the proceeding is dismissed.

Dated: April 2, 2015

S/ HON. PETER P. SWEENEY, J.S.C.

PETER P. SWEENEY, A.J.S.C.

Enclosure (13)

Study Bill – Disbursement of Foreign Fire Tax (2%) Monies to NYSPFFA

STATE OF NEW YORK

2015 Legislative Session

AN ACT to amend the insurance law, in relation to the distribution of fire insurance premium taxes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph 1 of subsection (d) of section 9105 of the insurance law, as amended by chapter 293 of the laws of 1988, is amended to read as follows:

(1) The amount of all monies which were received by the superintendent on or before the first day of April in each year under the provisions of this section or section nine thousand one hundred four of this article shall be distributed by him or her not later than the first day of July in such year, after adding any earnings resulting from the investment of such monies and deducting the expenses of collection and distribution. [~~Ten~~] **Five** percent of such remaining monies received under this section shall be paid to the treasurer of the Firemen's Association of the State of New York for the support and maintenance of the firemen's home at Hudson, New York**, and five percent of such remaining monies received under this section shall be paid to the treasurer of the New York State Professional Fire Fighters Association to promote, support and maintain the well-being of paid professional firefighters employed in the state of New York**, the balance shall be paid as specified in paragraph two hereof, in amounts which will be that proportion of the balance so to be distributed which the total amount of fire insurance business written by foreign mutual fire insurance companies on property situated in such locality bears to the total amount of fire insurance business written by foreign mutual fire insurance companies on property situated in any and all of the protected localities in the state having treasurers or other fiscal officers as designated in paragraph two hereof afforded fire protection by a fire department or fire company and upon which the tax provided in this section has been paid.

§ 2. This act shall take effect immediately and shall apply to all monies received by the superintendent of insurance pursuant to section 9105 of the insurance law commencing with these monies received on or before April 1, 2015.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION

submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER:

SPONSOR:

TITLE OF BILL: An act to amend the insurance law, in relation to the distribution of fire insurance premium taxes.

PURPOSE: To include the New York State Professional Fire Fighters Association in the apportionment of certain fire insurance premium taxes collected by the Superintendent of Insurance under section 9105 of the insurance law.

SUMMARY OF PROVISIONS: Paragraph 1 of subsection (d) of section 9105 of the insurance law, as amended by chapter 293 of the laws of 1988, is amended to apportion 5% of monies collected by the Superintendent of Insurance to the New York State Professional Fire Fighters Association.

JUSTIFICATION: A majority of the monies collected by the Superintendent of Insurance that represents fire insurance premium taxes is distributed to paid and volunteer fire companies. However, the present law required that ten percent of those monies be distributed to the umbrella organization for volunteer fire fighters (Firemen's Association of New York). No similar distribution is made to the umbrella organization for paid, professional fire fighters (New York State Professional Fire Fighters Association), despite the professional fire fighters facing the same dangers as volunteer firefighters. The New York State Professional Fire Fighters Association represents over 18,000 paid fire fighters in 104 locals in various towns, cities and villages across the state of New York. The main purpose of this organization is to protect and enhance the working conditions and benefits for paid, professional fire fighters. Accordingly, it is only fair and equitable that the New York State Professional Fire Fighters Association share in the monies previously distributed exclusively to the Firemen's Association of New York.

LEGISLATIVE HISTORY:

2005-2006: A7266
2007-2008: A6547
2009-2010: A6006/S5240

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: This act shall take effect on or after April 1, 2015.

4811-2707-5617, v. 1

Enclosure (14)

A. 6722 / S. 4611 – Constitutional Amendment to Forfeit Public Pensions

S 4611 BUDGET Same as A 6722 Buchwald (MS)
ON FILE: 03/31/15 Constitution, Concurrent Resolutions to Amend
TITLE....Provides that members of a public pension or retirement system convicted of a felony involving breach of public trust be subject to forfeiture of pension benefits, rights and privileges
03/30/15 REFERRED TO FINANCE
03/31/15 ORDERED TO THIRD READING
CAL.318
03/31/15 PASSED SENATE
03/31/15 DELIVERED TO ASSEMBLY
03/31/15 referred to judiciary

A6722 Buchwald (MS) Same as S 4611 BUDGET
Constitution, Concurrent Resolutions to Amend
TITLE....Provides that members of a public pension or retirement system convicted of a felony involving breach of public trust be subject to forfeiture of pension benefits, rights and privileges
Currently on Assembly Committee Agenda
Judiciary (WEINSTEIN)
OFF THE FLOOR, Tuesday, March 31, 2015
03/30/15 referred to judiciary
03/30/15 to attorney-general for opinion
04/08/15 opinion referred to judiciary

STATE OF NEW YORK

4611

2015-2016 Regular Sessions

IN SENATE

March 30, 2015

Introduced by BUDGET BILL -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to section 7 of article 5 of the constitution, in relation to forfeiture of pension rights or retirement benefits upon conviction of a felony related to public employment

Section 1. Resolved (if the Assembly concur), That section 7 of article 5 of the constitution be amended to read as follows:

§ 7. After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired. A public official who is a member of a pension or retirement system who is convicted of a felony related to public office shall be deemed to have wilfully breached such contractual relationship regardless of when such relationship was established. As a result of such breach, all benefits, rights and privileges he or she may have under such pension or retirement system regardless of when such rights or privileges accrued or vested, shall be subject to forfeiture as may be provided by law. The legislature shall enact legislation to implement this amendment taking into account interests of justice.

§ 2. Resolved (if the Assembly concur), That the foregoing amendment be referred to the first regular legislative session convening after the next succeeding general election of members of the assembly, and, in conformity with section 1 of article 19 of the constitution, be published for 3 months previous to the time of such election.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD89094-01-5

Legislation in New York State Fiscal Year 2015-16 Budget

S. 3006-B
S. 2006-B

Part CC — An act to amend, among other things, to amend the retirement and social security law, in relating to revocation of the public pension of a public official.

NOTE: This legislation should be read in conjunction with S.4611 (Budget) / A.6722 (Buchwald), proposing an amendment to section 7 of Article V of the New York State Constitution, in relation to forfeiture of pension rights or retirement benefits upon conviction of a felony related to public office.

STATE OF NEW YORK

S. 2006--B A. 3006--B

SENATE - ASSEMBLY

January 21, 2015

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to contracts for excellence, apportionment of school aid, total foundation aid and the gap elimination adjustment restoration, the teachers of tomorrow teacher recruitment and retention program and waivers from certain duties; to amend the state finance law, in relation to moneys appropriated from the commercial gaming revenue fund; to amend chapter 756 of the laws of 1992, relating to funding a program for work force education conducted by the consortium for worker education in New York city, in relation to reimbursements for the 2015-2016 school year; to amend chapter 756 of the laws of 1992, relating to funding a program for work force education conducted by the consortium for worker education in New York city, in relation to withholding a portion of employment preparation education aid and in relation to extending the effectiveness of such chapter; to amend chapter 169 of the laws of 1994 relating to certain provisions related to the 1994-95 state operations, aid to localities, capital projects and debt service budgets; to amend chapter 82 of the laws of 1995, amending the education law and other laws relating to state aid to school districts and the appropriation of funds for the support of government; to amend section 7 of chapter 472 of the laws of 1998 amending the education law relating to the lease of school buses by school districts; to amend chapter 147 of the laws of 2001 amending the education law relating to conditional appointment of school district, charter school or BOCES employees; to amend chapter 425 of the laws of 2002 amending the education law

EXPLANATION--Matter in ***italics*** (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD12572-03-5

relating to the provision of supplemental educational services, attendance at a safe public school and the suspension of pupils who bring a firearm to or possess a firearm at a school, in relation to the effectiveness thereof; to amend chapter 101 of the laws of 2003 amending the education law relating to implementation of the No Child Left Behind Act of 2001, in relation to extending the expiration of certain provisions of such chapters; to amend part A of chapter 57 of the laws of 2013 relating to school district eligibility for an increase in apportionment of school aid and implementation of standards for conducting annual professional performance reviews to determine teacher and principal effectiveness, in relation to funds appropriated in the 2014-15 school year; allocates school bus driver training grants to school districts and boards of cooperative education services; allows for eligible school districts to receive special apportionments for salary expenses; allows for eligible school districts to receive special apportionments for public pension accruals; allows any moneys appropriated to the state education department to be suballocated to other state departments or agencies and/or shall be made available for specific payment of aid; allows the city school district of the city of Rochester to purchase services as a non-component school district; to amend chapter 121 of the laws of 1996 relating to authorizing the Roosevelt union free school district to finance deficits by the issuance of serial bonds, in relation to certain apportionments; specifies amounts of state funds set aside for each school district for the purpose of the development, maintenance or expansion of magnet schools or magnet school programs; prohibits moneys appropriated for the support of public libraries to be used for library construction; to amend the general municipal law, in relation to authorized withdrawals; and to repeal certain provisions of the education law relating thereto (Part A); intentionally omitted (Part B); to amend the education law, in relation to creating the New York state get on your feet loan forgiveness program (Part C); intentionally omitted (Part D); intentionally omitted (Part E); to amend the banking law, in relation to creating a standard financial aid award letter (Part F); intentionally omitted (Part G); intentionally omitted (Part H); to amend the social services law, in relation to increasing the standards of monthly need for aged, blind and disabled persons living in the community (Part I); to amend the education law, in relation to certain contracts with the office of children and family services; to amend the education law, in relation to the possession of a gun on school grounds by a student; to amend the executive law, in relation to persons in need of supervision or youthful offenders; to amend part K of chapter 57 of the laws of 2012, amending the education law, relating to authorizing the board of cooperative educational services to enter into contracts with the commissioner of children and family services to provide certain services, in relation to making such provisions permanent (Part J); to amend the social services law, in relation to state reimbursement and subsidies for the adoption of children (Part K); to amend the social services law, the surrogate's court procedure act, the family court act, the public health law and the executive law, in relation to implementing provisions required by the federal preventing sex trafficking and strengthening families act (Part L); to utilize reserves in the mortgage insurance fund for various housing purposes (Part M); intentionally omitted (Part N); to amend the labor law, in relation to authorized absences by healthcare professionals who volunteer to fight the Ebola virus disease overseas;

and providing for the repeal of such provisions upon expiration thereof (Part O); to amend the labor law, the workers' compensation law and chapter 784 of the laws of 1951, constituting the New York state defense emergency act, in relation to eliminating certain fees charged by the department of labor; and to repeal certain provisions of the labor law and the workers' compensation law relating thereto (Part P); to amend the education law, in relation to requiring experiential learning as a requirement for graduation (Part Q); to amend part U of chapter 57 of the laws of 2005 relating to the New York state higher education capital matching grant program for independent colleges, in relation to the New York state higher education matching grant program for independent colleges and the effectiveness thereof (Part R); to amend the labor law, in relation to the project notification fee imposed for asbestos removal (Part S); to amend chapter 141 of the laws of 1994, amending the legislative law and the state finance law relating to the operation and administration of the legislature, in relation to extending such provisions (Part T); to amend the state finance law, in relation to the creation of the SUNY DSRIP escrow fund (Part U); to amend the education law, in relation to the tuition assistance program for students with disabilities (Part V); to amend the education law, in relation to the investment of contributions to a family tuition account (Part W); to amend the education law, in relation to the allocation of funds from the foster youth college success initiative (Part X); to amend the education law, in relation to the offering of associate of occupational studies degrees by community colleges (Part Y); to amend the education law, in relation to establishing the New York state achievement and investment in merit scholarship (Part Z); to amend the labor law and the tax law, in relation to a program to provide tax incentives for employers employing at risk youth (Part AA); to amend the environmental conservation law, the tax law and the general municipal law, in relation to eligibility for participation in the brownfield cleanup program, assignment of the brownfield redevelopment tax credits and brownfield opportunity areas; to amend part H of chapter 1 of the laws of 2003, amending the tax law relating to brownfield redevelopment tax credits, remediated brownfield credit for real property taxes for qualified sites and environmental remediation insurance credits, in relation to tax credits for certain sites; to amend the environmental conservation law, in relation to hazardous waste generator fees and taxes; to amend the environmental conservation law and the state finance law, in relation to the environmental restoration program; to amend the environmental conservation law, in relation to limitations on liability; to amend the public authorities law, in relation to certain environmental restoration projects; and to repeal certain provisions of the environmental conservation law and the tax law relating thereto (Part BB); to amend the public officers law, the legislative law, the election law and the retirement and social security law, in relation to reporting and disclosure; and to repeal subdivision 2 of section 5 of the legislative law relating to per diem and travel expenses (Part CC); to amend part A of chapter 399 of the laws of 2011, relating to establishing the public integrity reform act of 2011, in relation to the joint commission on public ethics (Part DD); and to amend the education law, in relation to establishing the New York state masters-in-education teacher incentive scholarship program (Subpart A); to amend the education law, in relation to admission requirements for graduate-level teacher education programs (Subpart B); to amend the educa-

tion law, in relation to institution deregistration and suspension, teacher registration and continuing teacher education requirements (Subpart C); to amend the education law, in relation to the appointment of teachers, principals, administrators, supervisors and all other members of the teaching and supervising staff of school districts (Subpart D); to amend the education law, in relation to annual performance reviews of classroom teachers and building principals (Subpart E); relating to testing reduction reports (Subpart F); to amend the education law, in relation to disciplinary procedures for ineffective teaching or performance by building principal or teacher and to streamlined removal procedures for teachers rated ineffective (Subpart G); and to amend the education law, in relation to takeover and restructuring failing schools (Subpart H) (Part EE)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2015-2016 state fiscal year. Each component is wholly contained within a Part identified as Parts A through EE. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

. . .

PART CC

§ 10. The opening paragraph of paragraph (a) of subdivision 6 of section 156 of the retirement and social security law, as added by section 1 of part C of chapter 399 of the laws of 2011, is amended to read as follows:

"Public official" shall mean any of the following individuals [~~who were not members of any retirement system prior to the effective date of the chapter of the laws of two thousand eleven which added this article but who have become members of a covered retirement system on or after the effective date of the chapter of the laws of two thousand eleven which added this article~~]:

§ 11. Subdivisions 1 and 2 of section 157 of the retirement and social security law, as added by section 1 of part C of chapter 399 of the laws of 2011, are amended to read as follows:

1. Notwithstanding any other law to the contrary, it shall be a term and condition of membership for every public official [~~who becomes a member of any retirement system on or after the effective date of the chapter of the laws of two thousand eleven which added this article,~~] that such public official's rights to a pension in a retirement system that accrue in such retirement system after his or her date of initial membership in the retirement system shall be subject to the provisions of this article.

2. In the case of a public official who stands convicted, by plea of nolo contendere or plea of guilty to, or by conviction after trial, of

any crime related to public office, **and has been sentenced,** an action may be commenced in supreme court of the county in which such public official was convicted of such felony crime, 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, for an order to reduce or revoke the pension to which such public official is otherwise entitled for service as a public official. Such complaint shall specify with particularity which category of felony pursuant to subdivision one of section one hundred fifty-six of this article the defendant has committed, and all other facts that are alleged to qualify such crime as a felony crime related to public office subject to pension reduction or revocation pursuant to this article, and the amount of pension reduction or revocation requested. Such action shall be commenced within six months after such [~~conviction~~] **sentencing.**

§ 12. Subdivision 10 of section 157 of the retirement and social security law, as added by section 1 of part C of chapter 399 of the laws of 2011, is amended to read as follows:

10. **(a)** Upon a finding by the court by clear and convincing evidence that the defendant knowingly and intentionally committed a crime related to public office, the court may issue an order to the appropriate retirement system to reduce or revoke the defendant's pension to which he or she is otherwise entitled as such a public official. All orders and findings made by the court pursuant to this section shall be served by the attorney general or the district attorney, as the case may be upon the chief administrator of the defendant's retirement system and the defendant.

(b) If the court issues an order pursuant to paragraph (a) of this subdivision, the court shall order payment of a portion of such pension benefit to: (1) the innocent spouse if so requested by such spouse payable at the time the public official would have been eligible for retirement if such spouse has not otherwise waived, in writing, his or her right to such benefit; and (2) innocent minor children and other dependents pursuant to law of the public official in an amount that the court finds just and proper consistent with the pension benefits to which the public official would be entitled and the portion of those benefits which would be used for the support of such minor children or dependents pursuant to law. Such payment to the innocent spouse shall be computed pursuant to paragraph (c) of this subdivision, and payments pursuant to subparagraphs one and two of this paragraph shall be adjusted to reflect interest accrued between the time of such conviction and the time of such payment.

(c) When determining the amount of benefits which the defendant's innocent spouse is entitled to receive, the factors contained in paragraph d of subdivision five of part B of section two hundred thirty-six of the domestic relations law shall be considered by the court. However, when determining such apportionment, the court shall not annul or modify any prior court order regarding such benefits.

§ 13. Subdivision 8 of section 157 of the retirement and social security law, as added by section 1 of part C of chapter 399 of the laws of 2011, is amended to read as follows:

8. In determining whether the pension shall be reduced or revoked, the supreme court shall consider and make findings of fact and conclusions of law that include, but shall not be limited to, a consideration of the following factors:

(a) Whether the defendant stands convicted of such a felony of a crime

related to public office, and the specific paragraph or paragraphs of subdivision one of section one hundred fifty-six of this article that have been proven or not proven;

(b) The severity of the crime related to public office of which the defendant stands convicted;

(c) The amount of monetary loss suffered by such state or municipality as a result of such crime related to public office;

(d) The degree of public trust reposed in the public official by virtue of the person's position as a public official;

(e) If the crime related to public office was part of a fraudulent scheme against the state or a municipality, the role of the public official in such fraudulent scheme against such state or a municipality;

(f) The defendant's criminal history, if any;

(g) The impact of forfeiture, in whole or in part, on defendant's dependents, present or former spouses, or domestic partners;

(h) The proportionality of forfeiture of all or part of the pension to the crime committed;

(i) The years of service in public office by the defendant where no criminal activity has been found by a court; and

[~~(i)~~] **(j)** Any such other factors as, in the judgment of the supreme court, justice may require.

. . .

§ 15. Severability clause. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 16. This act shall take effect immediately; provided, however, the amendments made to subparagraph (c) of paragraph 8 of subdivision 3 of section 73-a of the public officers law by section one of this act shall take effect December 31, 2015; provided, further, that sections ten, eleven, and twelve of this act shall take effect on the first of January next succeeding the date upon which the people shall approve and ratify amendments to section 7 of article V of the constitution by a majority of the electors voting thereon relating to the reduction of pension benefits for public officials convicted of certain felony offenses related to public office and shall only apply to offenses committed on or after such first of January.

April __, 2015

RE: Concurrent Resolution of
the Senate and Assembly proposing
amendment to section 7 of article 5 of the
constitution, in relation to forfeiture of
pension rights or retirement benefits upon
conviction of a felony related to public
employment

A.6722 (Buchwald)
S.4611 (Budget)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages, and towns across New York State, strongly opposes an amendment to Section 7 of Article V of the New York Constitution to authorize the forfeiture of a pension benefits from a public employee convicted of a felony related to public office.

By amending the New York State Constitution in 1940 to include Section 7 of Article V, the People determined that it was necessary to confer contractual protections for the pension benefits of public employees and prohibit existing pensions from being diminished or impaired prior to retirement. Indeed, the People, through the enactment of Section 7, declared that pensions are not to be wholly subjected to the whim of the Legislature or the caprice of the employer. The proposed amendment contravenes the original purpose and intent of Section 7 of Article V by allowing the retroactive forfeiture of a public employees' pension through implementing legislation.

The proposed amendment would shatter a right definitively carved in stone by the People and that has served this State well for over the last 75 years. The proposed amendment's reliance on implementing legislation to define its scope offensively usurps the power of the People and permits the expansion of Section 7 of Article V at the Legislature's fancy based upon the political pressures of the moment. By allowing the Legislature in the future to define and

redefine "public official" and which felonies qualify, public employees' pensions will again be reduced to leverage in the legislative and political processes.

Due to the significance of this proposed amendment that would retroactively interfere with contractual rights of public employees, it would be prudent for the Legislature to stay any further action until the New York State Attorney General renders an opinion on its propriety.

Ultimately, this bill is an unduly aggressive stand by the Legislature to respond to the current political climate involving the misconduct of a few elected officials at the expense of the pensions of all public employees. Therefore, we strongly that this proposed amendment to the New York State Constitution be defeated.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4839-7260-4706, v. 2

Enclosure (15)

A. 2752 – Heightened Risk Requirement for General Municipal Law § 207-c

A2752 Katz (MS) No Same as
General Municipal Law
TITLE....Provides eligibility for benefits for injuries sustained while performing the high risk duties of law enforcement and provides a time requirement on the determination of accidental disability retirement
01/20/15 referred to governmental employees

STATE OF NEW YORK

2752

2015-2016 Regular Sessions

IN ASSEMBLY

January 20, 2015

Introduced by M. of A. KATZ -- Multi-Sponsored by -- M. of A. CROUCH, GIGLIO, McLAUGHLIN, RAIA, SALADINO -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the general municipal law, in relation to eligibility for disability benefits for injuries sustained while performing the high risk duties of law enforcement; and the retirement and social security law, in relation to accidental disability retirement

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 207-c of the general municipal law, as added by chapter 920 of the laws of 1961, subdivision 1 as amended by section 3 of chapter 675 of the laws of 1997, subdivisions 2, 3 and 5 as amended by chapter 661 of the laws of 1984, is amended to read as follows:

§ 207-c. Payment of salary, wages, medical and hospital expenses of policemen with injuries or illness incurred in the performance of duties **entailing the heightened risk of law enforcement**.

1. Any sheriff, undersheriff, deputy sheriff or corrections officer of the sheriff's department of any county (hereinafter referred to as a [~~"policeman"~~] **"police officer"**) or any member of a police force of any county, city of less than one million population, town or village, or of any district, agency, board, body or commission thereof, or a detective-investigator or any other investigator who is a police officer pursuant to the provisions of the criminal procedure law employed in the office of a district attorney of any county, or any corrections officer of the county of Erie department of corrections, or an advanced ambulance medical technician employed by the county of Nassau, or any supervising fire inspector, fire inspector, fire marshal or assistant fire marshal employed full-time in the county of Nassau fire marshal's office, or at the option of the county of Nassau, any probation officer of the county of Nassau who is injured in the performance of his **or her** duties **entailing the heightened risk of law enforcement** or who is taken

EXPLANATION--Matter in ***italics*** (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD04454-01-5

sick as a result of the performance of his or her duties entailing the heightened risk of law enforcement so as to necessitate medical or other lawful remedial treatment shall be paid by the municipality by which he or she is employed the full amount of his or her regular salary or wages until his or her disability arising therefrom has ceased, and, in addition such municipality shall be liable for all medical treatment and hospital care necessitated by reason of such injury or illness. Provided, however, and notwithstanding the foregoing provisions of this section, the municipal health authorities or any physician appointed for the purpose by the municipality, after a determination has first been made that such injury or sickness was incurred during, or resulted from, such performance of duty entailing the heightened risk of law enforcement, may attend any such injured or sick [~~policeman~~] police officer, from time to time, for the purpose of providing medical, surgical or other treatment, or for making inspections and the municipality shall not be liable for salary or wages payable to such [~~policeman~~] police officer, or for the cost of medical treatment or hospital care furnished after such date as such health authorities or physician shall certify that such injured or sick [~~policeman~~] police officer has recovered and is physically able to perform his or her regular duties. Any injured or sick [~~policeman~~] police officer who shall refuse to accept medical treatment or hospital care or shall refuse to permit medical inspections as herein authorized, including examinations pursuant to subdivision two of this section, shall be deemed to have waived his or her rights under this section in respect to expenses for medical treatment or hospital care rendered and for salary or wages payable after such refusal.

Notwithstanding any provision of law to the contrary, a provider of medical treatment or hospital care furnished pursuant to the provisions of this section shall not collect or attempt to collect reimbursement for such treatment or care from any such [~~policeman~~] police officer, a member of a police force of any county, city, any such advanced ambulance medical technician or any such detective-investigator or any other such investigator who is a police officer pursuant to the provisions of the criminal procedure law.

2. Payment of the full amount of regular salary or wages, as provided by subdivision one of this section, shall be discontinued with respect to any [~~policeman~~] police officer who is permanently disabled as a result of an injury or sickness incurred or resulting from the performance of his or her duties entailing the heightened risk of law enforcement if such [~~policeman~~] police officer is granted an accidental disability retirement allowance pursuant to section three hundred sixty-three of the retirement and social security law, a retirement for disability incurred in performance of duty allowance pursuant to section three hundred sixty-three-c of the retirement and social security law or similar accidental disability pension provided by the pension fund of which he or she is a member. If application for such retirement allowance or pension is not made by such [~~policeman~~] police officer, application therefor may be made by the head of the police force or as otherwise provided by the chief executive officer or local legislative body of the municipality by which such [~~policeman~~] police officer is employed.

3. If such a [~~policeman~~] police officer is not eligible for or is not granted such accidental disability retirement allowance or retirement for disability incurred in performance of duty allowance or similar accidental disability pension and is nevertheless, in the opinion of such health authorities or physician, unable to perform his or her regu-

lar duties as a result of such injury or sickness but is able, in their opinion, to perform specified types of light police duty, payment of the full amount of regular salary or wages, as provided by subdivision one of this section, shall be discontinued with respect to such [~~policeman~~] **police officer** if he **or she** shall refuse to perform such light police duty if the same is available and offered to him **or her**, provided, however, that such light duty shall be consistent with his **or her** status as a [~~policeman~~] **police officer** and shall enable him **or her** to continue to be entitled to his **or her** regular salary or wages, including increases thereof and fringe benefits, to which he **or she** would have been entitled if he **or she** were able to perform his **or her** regular duties.

4. The appropriate municipal officials may transfer such a [~~policeman~~] **police officer** to a position in another agency or department where they are able to do so pursuant to applicable civil service requirements and provided the [~~policeman~~] **police officer** shall consent thereto.

5. If such a [~~policeman~~] **police officer** is not eligible for or is not granted an accidental disability retirement allowance or retirement for disability incurred in performance of duty allowance or similar accidental disability pension, he **or she** shall not be entitled to further payment of the full amount of regular salary or wages, as provided by subdivision one of this section, after he **or she** shall have attained the mandatory service retirement age applicable to him **or her** or shall have attained the age or performed the period of service specified by applicable law for the termination of his **or her** service. Where such a [~~policeman~~] **police officer** is transferred to another position pursuant to subdivision four of this section or retires or is retired under any procedure applicable to him **or her**, including but not limited to circumstances described in subdivision two of this section or in this subdivision, he **or she** shall thereafter, in addition to any retirement allowance or pension to which he **or she** is then entitled, continue to be entitled to medical treatment and hospital care necessitated by reason of such injury or illness.

6. Notwithstanding any provision of law contrary thereto contained herein or elsewhere, a cause of action shall accrue to the municipality for reimbursement in such sum or sums actually paid as salary or wages and or for medical treatment and hospital care as against any third party against whom the [~~policeman~~] **police officer** shall have a cause of action for the injury sustained or sickness caused by such third party.

§ 2. Subdivisions 1, 4 and 6 of section 207-c of the general municipal law, subdivision 1 as amended by section 4 of chapter 675 of the laws of 1997, subdivisions 4 and 6 as amended by chapter 628 of the laws of 1991, are amended to read as follows:

1. Any sheriff, undersheriff, deputy sheriff or corrections officer of the sheriff's department of any county or any member of a police force of any county, city of less than one million population, town or village, or of any district, agency, board, body or commission thereof, or any LIRR police officer as defined in paragraph two of subdivision a of section three hundred eighty-nine of the retirement and social security law whose benefits are provided in and pursuant to such section three hundred eighty-nine, or a detective-investigator or any other investigator who is a police officer pursuant to the provisions of the criminal procedure law employed in the office of a district attorney of any county, or any corrections officer of the county of Erie department of corrections, or an advanced ambulance medical technician employed by the county of Nassau, or any supervising fire inspector, fire inspector,

fire marshal, or assistant fire marshal employed full-time in the county of Nassau fire marshal's office, or at the option of the county of Nassau, any probation officer of the county of Nassau who is injured in the performance of his **or her** duties **entailing the heightened risk of law enforcement** or who is taken sick as a result of the performance of his **or her** duties **entailing the heightened risk of law enforcement** so as to necessitate medical or other lawful remedial treatment shall be paid by the municipality or The Long Island Rail Road Company by which he **or she** is employed the full amount of his **or her** regular salary or wages from such employer until his **or her** disability arising therefrom has ceased, and, in addition such municipality or The Long Island Rail Road Company shall be liable for all medical treatment and hospital care necessitated by reason of such injury or illness.

Provided, however, and notwithstanding the foregoing provisions of this section, the municipal or The Long Island Rail Road Company health authorities or any physician appointed for the purpose by the municipality or The Long Island Rail Road Company, as relevant, after a determination has first been made that such injury or sickness was incurred during, or resulted from, such performance of duty **entailing the heightened risk of law enforcement**, may attend any such injured or sick [~~policeman~~] **police officer**, from time to time, for the purpose of providing medical, surgical or other treatment, or for making inspections, and the municipality or The Long Island Rail Road Company, as the case may be, shall not be liable for salary or wages payable to such [~~policeman~~] **police officer**, or for the cost of medical treatment or hospital care furnished after such date as such health authorities or physician shall certify that such injured or sick [~~policeman~~] **police officer** has recovered and is physically able to perform his **or her** regular duties. Any injured or sick [~~policeman~~] **police officer** who shall refuse to accept medical treatment or hospital care or shall refuse to permit medical inspections as herein authorized, including examinations pursuant to subdivision two of this section, shall be deemed to have waived his **or her** rights under this section in respect to expenses for medical treatment or hospital care rendered and for salary or wages payable after such refusal.

Notwithstanding any provision of law to the contrary, a provider of medical treatment or hospital care furnished pursuant to the provisions of this section shall not collect or attempt to collect reimbursement for such treatment or care from any such [~~policeman~~] **police officer** or any such advanced ambulance medical technician.

4. The appropriate municipal or The Long Island Rail Road Company officials may transfer a [~~policeman~~] **police officer** to a position in another agency or department where they are able to do so pursuant to applicable civil service or The Long Island Rail Road Company requirements and provided the [~~policeman~~] **police officer** shall consent thereto.

6. Notwithstanding any provision of law contrary thereto contained herein or elsewhere, a cause of action shall accrue to the municipality or The Long Island Rail Road Company for reimbursement in such sum or sums actually paid as salary or wages and or for medical treatment and hospital care as against any third party against whom the [~~policeman~~] **police officer** shall have a cause of action for the injury sustained or sickness caused by such third party.

§ 3. Subdivision d of section 363 of the retirement and social security law, as added by chapter 1000 of the laws of 1966, is amended to read as follows:

d. If the comptroller determines that the member is physically or mentally incapacitated for the performance of duty and ought to be retired for accidental disability, such member shall be so retired. Such retirement shall be effective as of a date approved by the comptroller. **The comptroller shall make a determination within ninety days from the date the application was filed.**

§ 4. This act shall take effect immediately, provided that the amendments to section 207-c of the general municipal law made by section one of this act shall be subject to the expiration and reversion of subdivisions 1, 4, and 6 of such section pursuant to section 7 of chapter 628 of the laws of 1991, as amended, when upon such date the provisions of section two of this act shall take effect.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A2752

SPONSOR: Katz (MS)

TITLE OF BILL: An act to amend the general municipal law, in relation to eligibility for disability benefits for injuries sustained while performing the high risk duties of law enforcement; and the retirement and social security law, in relation to accidental disability retirement

PURPOSE OR GENERAL IDEA OF BILL: This legislation would heighten the risk of injury in order to obtain disability benefits for first responders and would require that the comptroller to investigate and make a decision on an individual's Disability Retirement Pension claim within 90 days.

SUMMARY OF SPECIFIC PROVISIONS:;

Section 1. Section 207-c of the general municipal law, as added by chapter 920 of the laws of 1961, subdivision 1 as amended by section 3 of chapter 1975 of the laws of 1997, subdivisions 2, 3 and 5 as amended by chapter 661 of the laws of 1984, is amended to read as follows:

§ 207-c. Payment of salary, wages, medical, and hospital expenses of policemen with injuries or illness incurred in the performance of duties entailing the heightened risk of law enforcement.

Section 3. Subdivision d of section 363 of the retirement and social security law, as added by chapter 1000 of laws 1966, is amended to read as follows:

d. If the comptroller determines that the Member is physically or mentally incapacitated for the performance of duty and ought to be retired for accidental disability, such members shall be so retired. Such retirement shall be effective as of a date approved by the comptroller. The comptroller shall make a determination within ninety days from the date the application was filed.

JUSTIFICATION: In light of new evidence that suggests that individuals are embellishing injuries or prolonging hearings to receive enhanced benefits leading up to retirement, this bill would adjust the hearing time to provide more efficient responses to disability claims.

PRIOR LEGISLATIVE HISTORY: 2014 - A9307: held for consideration in governmental employees

FISCAL IMPLICATIONS: To be determined.

EFFECTIVE DATE: This act shall take effect immediately, provided that the amendments to section 207-c of the general municipal law made by section one of this act shall be subject to the expiration and reversion of subdivisions 1, 4 and 6 of such section pursuant to section 7 of chapter 628 of the laws of 1991, as amended, when upon such date the provisions of section two of this act shall take effect.

1 N.Y.3d 232
Court of Appeals of New York.

In the Matter of Denise M.
THEROUX et al., Appellants,
v.
Edward REILLY, as Nassau
County Sheriff, et al., Respondents.
In the Matter of David Wagman, Appellant,
v.
Johu A. Kapica, as Chief of the Town of Greenburgh
Police Department, et al., Respondents.
In the Matter of Loren S. James, Appellant,
v.
County of Yates Sheriff's
Department et al., Respondents.

Dec. 2, 2003.

Synopsis

Background: County correction officers brought article 78 proceeding to review county sheriff's denial of their applications for disability benefits under General Municipal Law. The Supreme Court, Nassau County, Daniel Martin, J., 187 Misc.2d 723, 725 N.Y.S.2d 515, granted petitions, and appeal was taken. The Supreme Court, Appellate Division, 297 A.D.2d 384, 746 N.Y.S.2d 501, reversed, and officers appealed. In separate proceeding, town police officer brought article 78 proceeding to review decision of town chief of police denying him disability benefits. The Supreme Court, Westchester County, Leavitt, J., denied the petition, and officer appealed. The Supreme Court, Appellate Division, 300 A.D.2d 406, 751 N.Y.S.2d 754, affirmed, and officer again appealed. In third proceeding, deputy sheriff brought article 78 proceeding seeking to compel payment of disability benefits for injury sustained while performing a routine building check. The Supreme Court, Yates County, Bender, J., granted the petition, and sheriff's department and county appealed. The Supreme Court, Appellate Division, 300 A.D.2d 989, 752 N.Y.S.2d 513, reversed, and officer appealed.

[Holding:] The Court of Appeals, Read, J., held that statute entitling municipal employees to disability benefits if they are injured while performing their duties did not require injury to be sustained in the performance of a task related to the heightened risks and duties inherent in law enforcement.

Reversed.

West Headnotes (6)

[1] Municipal Corporations
⇦ Pensions and benefits

Statute entitling municipal employees to disability benefits if they are injured while performing their duties did not require injury to be sustained in the performauce of a task related to the heightened risks and duties inherent in law enforcement. McKinney's General Municipal Law § 207–c.

14 Cases that cite this headnote

[2] Statutes
⇦ Language and intent, will, purpose, or policy

When interpreting a statute, Court of Appeals turns first to the text as the best evidence of the Legislature's intent.

9 Cases that cite this headnote

[3] Statutes
⇦ Absence of Ambiguity; Application of Clear or Unambiguous Statute or Language

As a general rule, unambiguous language of a statute is alone determinative.

3 Cases that cite this headnote

[4] Statutes
⇦ Natural, obvious, or accepted meaning

Statute's plain meaning must be discerned without resort to forced or unnatural interpretations.

3 Cases that cite this headnote

[5] Municipal Corporations

Pensions and benefits

In order to be eligible for disability benefits for injuries sustained in performance of his duties, a covered municipal employee need only prove a direct causal relationship between job duties and the resulting illness or injury. McKinney's General Municipal Law § 207–c.

12 Cases that cite this headnote

[6] **Municipal Corporations**

Pensions and benefits

"Duties" in statute entitling municipal employees to disability benefits if they are injured while performing their duties encompasses the full range of a covered employee's job duties. McKinney's General Municipal Law § 207–c.

8 Cases that cite this headnote

Attorneys and Law Firms

***44 *233 **365 Certilman Balin Adler & Hyman, East Meadow (Wayne J. Schaefer of counsel), for appellants in the first above-entitled *234 proceeding.

Lorna B. Goodman, County Attorney, Mineola (Dennis J. Saffran and David B. Goldin of counsel), for respondents in the first above-entitled proceeding.

*235 Donna M.C. Giliberto, Albany, for New York State Conference of Mayors and Municipal Officials, amicus curiae, in the first above-entitled proceeding.

Richard A. Glickel, West Nyack, for Town of Clarkstown and others, amici curiae, in the first above-entitled proceeding.

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Hancock & Estabrook, LLP, Syracuse (Janet D. Callahan and John F. Corcoran of counsel), for respondents in the third above-entitled proceeding.

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Gleason, Dunn, Walsh & O'Shea, Albany (Ronald G. Dunn and Michael K. Barrett of counsel), for New York State Deputies Association, Inc., amicus curiae, in the three above-entitled proceedings.

***239 OPINION OF THE COURT**

READ, J.

At issue in this appeal is whether eligibility for benefits under General Municipal Law § 207–c is contingent upon the municipal employee's demonstrating an injury sustained in the performance of special work related to the heightened risks and duties inherent in law enforcement. We ***45 **366 conclude that section 207–c does not require such a " heightened risk" standard.

I.

[1] Originally enacted in 1961, General Municipal Law § 207–c provides for the payment of the full amount of regular salary or wages to a police officer or other covered municipal employee who is injured "in the performance of his duties" or is taken ill "as a result of the performance of his duties" (§ 207–c [1]). These payments continue until the disability has ceased, or the disabled employee is granted a disability retirement. The payments stop if the employee either performs, or refuses to perform, light-duty work. The municipality is also liable for all medical treatment and hospital care necessitated by the injury or illness. Payments for these medical expenses continue after the employee's retirement, and are bestowed in addition to any retirement allowance or pension.

[2] [3] [4] When interpreting a statute, we turn first to the text as the best evidence of the Legislature's intent. "As a general rule, unambiguous language of a statute is alone determinative" (*Riley v. County of Broome,* 95 N.Y.2d 455, 463, 719 N.Y.S.2d 623, 742 N.E.2d 98

[2000] [citation omitted]). Here, the text does not suggest any legislative intent to ***240** create a "heightened risk" standard. Section 207–c affords eligibility to those covered municipal employees who are "injured in the performance of [their] duties," not to those who are "injured in the performance of duties entailing the heightened risk of law enforcement," or words to similar effect. If the Legislature had intended to restrict sectiou 207–c eligibility to employees injured when performing specialized tasks, it easily could have and surely would have written the statute to say so. We may not create a limitation that the Legislature did not enact. Further, a statute's plain meaning must be discerned "without resort to forced or unnatural interpretations" (*Castro v. United Container Mach. Group,* 96 N.Y.2d 398, 401, 736 N.Y.S.2d 287, 761 N.E.2d 1014 [2001], citing McKinney's Cons Laws of NY, Book 1, Statutes § 232). Reading section 207–c in an unforced and natural manner, we conclude that the word "duties" encompasses the full range of a covered municipal employee's job duties.

Our interpretation is consistent not only with the statute's words, but also with legislative history. While repeatedly amending section 207–c to extend its benefits to additional classes of municipal employees,[1] the Legislature routinely referred to the important, often dangerous and stressful, work these employees perform day in and day out.[2] The Legislature *****46** ****367** thus pointed to "heightened risk" as the rationale for selecting additional classes of municipal employees for inclusion within ***241** section 207–c, not as the standard for determining eligibility for section 207–c benefits.

Finally, the Legislature enacted section 207–c to create parity between police officers and firefighters, who had been eligible for the same benefits since 1938 under General Municipal Law § 207–a and its predecessor (*see* L 1961, ch 920; L 1938, ch 562, § 1). While section 207–a served as the template for section 207–c, Governor Nelson A. Rockefeller approved the bill enacting section 207–c at a price of the Legislature's fixing the "substantial problems" that had arisen iu section 207–a's administration (*see* Governor's Mem approving L 1961, ch 920, 1961 McKinney's Session Laws of NY, at 2141). Notably, these "substantial problems" did not include the standard for determining eligibility. Thus, sections 207–a and 207–c share the identical operative phrase regarding eligibility—"in the performance of his duties."

There is every indication that municipalities have always awarded section 207–a benefits to firefighters without reference to whether the specific injury-causing activity was one entailing the "heightened risk" of firefighting (*see e.g. Matter of Robida v. Mirrington,* 1 Misc.2d 968, 149 N.Y.S.2d 152 [Sup. Ct. 1956] [firefighter injured while performing duties as master mechanic of the department]; *Matter of Adam v. Farbo,* 16 Misc.2d 614, 184 N.Y.S.2d 772 [Sup. Ct. 1959] [firefighter injured when he slipped during demonstration of new fire fighting technique]; *Matter of Kirley v. Department of Fire, City of Oneida,* 138 A.D.2d 842, 526 N.Y.S.2d 240 [3d Dept. 1988] [firefighter injured when cleaning a firetruck]). Until very recently, municipalities seem to have likewise routinely awarded section 207–c benefits without regard to any "heightened risk" posed by the task that the employee was carrying out when injured (*see e.g. O'Dette v. Parton,* 190 A.D.2d 1074, 1074, 593 N.Y.S.2d 690 [4th Dept. 1993] [deputy sheriff "was injured while on routine patrol in a sheriff's patrol vehicle"]); or the courts have thwarted municipalities seeking to impose this kind of limitation, regarding it as " 'out of harmony with the statute' " (*Matter of Laudico v. Netzel,* 254 A.D.2d 811, 812, 679 N.Y.S.2d 487 [4th Dept. 1998] [citation omitted] [Court rejected municipality's rule to limit section 207–c eligibility to injuries occurring "as a direct result of contact with an inmate"]). What dramatically altered this picture was our decision in *Matter of Balcerak v. County of Nassau,* 94 N.Y.2d 253, 701 N.Y.S.2d 700, 723 N.E.2d 555 [1999], to which we now turn.

***242 II.**

In *Balcerak,* a Nassau County corrections officer applied for workers' compensation and section 207–c benefits following his injury while driving home from a special assignment. The officer received workers' compensation benefits, but the County denied him section 207–c benefits. The officer commenced au article 78 proceeding, arguing that he was entitled to section 207–c benefits because the County was bound, under collateral estoppel principles, by the Workers' Compensation Board's finding that he had been injured *****47** ****368** while on duty. We rejected his argument, noting that these two statutory benefit schemes "follow paths of differential interpretation and application" (*Balcerak,* 94 N.Y.2d at 258, 701 N.Y.S.2d 700, 723 N.E.2d 555). In fact, the Legislature chose different eligibility standards—"arising out of and in the course of employment" for workers' compensation benefits; "in the performance of his duties" for section 207–c benefits (*id.* at 258–259, 701 N.Y.S.2d 700, 723 N.E.2d 555).

We compared the legislative rationale for enacting the two differeut benefit regimes:

> "General Municipal Law § 207–c benefits were meant to fulfill a narrow and important purpose. The goal is to compensate specified municipal employees for injuries incurred iu the performauce of special work related to the nature of heightened risks and duties. These functions are keyed to 'the criminal justice process, including investigations, presentencing, criminal supervision, treatment and other preventative corrective services' " (*id.* at 259, 701 N.Y.S.2d 700, 723 N.E.2d 555, quoting Senate Mem in Support of L. 1997, ch. 675, 1997 N.Y. Legis Ann., at 458 [adding Nassau County probation officers to section 207–c]).

By contrast, the Workers' Compensation Law "is the State's most general and comprehensive social program, enacted to provide all injured employees with some scheduled compensation and medical expenses, regardless of fault for ordinary and unqualified employment duties" (*id.* [citation omitted]).

We concluded that an officer might qualify for workers' compensation, but not for section 207–c benefits, offering this illustration:

> "[A] police officer may be entitled to Workers' Compensation benefits as a result of an injury during a Police Department team basketball practice ***243** because the nature of the activities may allow the injury to be considered as 'arising out of and in the course' of the employment. That kind of injury, however, is not the heightened risk type intended to be deemed automatically as arising during the 'performance' of duties related to 'the criminal justice process' " (*id.* at 260, 701 N.Y.S.2d 700, 723 N.E.2d 555 [quoted citation omitted]).

Knitting together this illustration and our discussion of the Legislature's stated rationale for selecting the classes of municipal employees covered by section 207–c, the Appellate Divisions in the cases before us read *Balcerak* to create a "heightened risk" standard. Under this standard, benefit eligibility turns on the nature of the specific task being performed by the employee at the time of injury; the employee is eligible for section 207–c benefits only if performing a task that entails a "heightened risk" peculiar to law enforcement work. The only question before us in *Balcerak,* however, was "whether a determination by the Workers' Compensation Board that an injury is work-rclated should, by operation of collateral estoppel, automatically entitle an injured employee to General Municipal Law § 207–c benefits" (*Balcerak,* 94 N.Y.2d at 256, 701 N.Y.S.2d 700, 723 N.E.2d 555). We did not set out to interpret the phrase "in the performance of his duties." Indeed, we remitted the case to the Appellate Division to address whether the officer was injured in the performance of his duties without specifying any standard for making this determination. [3]

*****48 **369 [5] [6]** Moreover, in *Matter of White v. County of Cortland,* 97 N.Y.2d 336, 740 N.Y.S.2d 288, 766 N.E.2d 950 [2002] we rejected a "heightened standard of proof" to establish eligibility for section 207–c benefits (*id.* at 339, 740 N.Y.S.2d 288, 766 N.E.2d 950). There, we stated that "[s]ection 207–c provides benefits to officers who are disabled 'in the performance of' or 'as a result of' their job duties and does not require that they additionally demonstrate that their disability is related in a substantial degree to their job duties" (*id.*). Consistent with *White,* we hold that in order to be eligible for section 207–c benefits, a covered municipal employee ***244** need only prove a "direct causal relationship between job duties and the resulting illness or injury" (*id.* at 340, 740 N.Y.S.2d 288, 766 N.E.2d 950 [citations omitted]). The word " duties" in section 207–c encompasses the full range of a covered employee's job duties.

III.

In each of these three article 78 proceedings, the Appellate Division upheld the municipality's denial of section 207–c benefits to municipal employees based on erroneous application of a "heightened risk" standard to determine eligibility. Although we acknowledge that there are competing financial and policy considerations on both sides of this issue, "legislative intent is the great and controlling principle" (*Council of City of N.Y. v. Giuliani,* 93 N.Y.2d 60, 69, 687 N.Y.S.2d 609, 710 N.E.2d 255 [1999]). The Legislature expressed its intent in the language of section 207–c, which manifestly does not restrict eligibility for its benefits in the manner advocated by the municipal respondents.

Accordingly, in *Theroux,* the order of the Appellate Division should be reversed, with costs, and the order of Supreme Court reinstated; in *Wagman,* the order of the Appellate Division should be reversed, with costs, and the case remitted to Supreme Court for further proceedings in accordance with this opinion; and in *James,* the order of the Appellate Division

should be reversed, with costs, and the judgment of Supreme Court reinstated.

Chief Judge KAYE and Judges G.B. SMITH, CIPARICK, ROSENBLATT and GRAFFEO concur.
In *Matter of Theroux v. Reilly:* Order reversed, etc.

In *Matter of Wagman v. Kapica:* Order reversed, etc.

In *Matter of James v County of Yates Sheriff's Dept.:* Order reversed, etc.

Parallel Citations

1 N.Y.3d 232, 803 N.E.2d 364, 771 N.Y.S.2d 43, 2003 N.Y. Slip Op. 18983

Footnotes

1 In 1980, the Legislature amended section 207–c to add sheriffs, under-sheriffs and sheriff's department corrections officers to the list of covered employees. In 1985, 1990, 1991, 1993, 1996 (twice) and 1997, the Legislature extended section 207–c to additional classes of municipal employees; specifically, detective-investigators in the district attorney's office (L 1985, ch 696), Erie County corrections officers (L 1990, ch 885), Long Island Rail Road police officers (L 1991, ch 628), certain investigators in the office of a county's district attorney (L 1993, ch 565), Nassau County advanced ambulance medical technicians (L 1996, ch 476), certain Nassau County fire inspectors and fire marshals (L 1996, ch 621) and Nassau County probation officers (L 1997, ch 675).

2 For example, advanced ambulance medical technicians "are assigned to many of the same hazardous situations and potentially life-threatening duties" as police officers, and often respond to "life-threatening police assignments such as riots, hostage or barricade situations" (Senate Mem in Support of L. 1996, cb. 476, 1996 McKinney's Session Laws of N.Y., at 2418). Similarly, Nassau County probation officers "find themselves performing many of the functions performed by their counterparts in the police and corrections services," and "are exposed on a daily basis to the risks and dangers involved in managing an increasingly violent criminal population. In addition, they are regularly exposed to significant amounts of stress and aggravation, not to mention a high possibility of bodily injury that may result from the performance of their duties" (Senate Mem in Support of L. 1997, ch. 675, 1997 McKinney's Session Laws of N.Y., at 2648).

3 Interestingly, on remand the Appellate Division held that Supreme Court had erred in concluding that the County did not have a rational basis for its decision because "[t]he [officer] had been relieved of his post, had left the hospital property [where he had been stationed], and was en route home in his own car when he was injured. Thus, the [County's] determination that the [officer] was not injured in the performance of his duties was a rational one" (*Matter of Balcerak v. County of Nassau,* 274 A.D.2d 580, 581, 711 N.Y.S.2d 501 [2d Dept. 2000]). In other words, the officer was off duty and so was necessarily no longer performing his job duties when he was injured. There was no discussion of "heightened risk."

End of Document

May __, 2015

RE: An act to amend the general municipal law, in relation to eligibility for disability benefits for injuries sustained while performing the high risk duties of law enforcement; and the retirement and social security law, in relation to accidental disability retirement

A.2752 (Katz)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages, and towns across New York State, strongly opposes the passage of this legislation that would heighten the risk of injury in order for police officers to collect benefits under General Municipal Law § 207-c.

General Municipal Law § 207-c provides an invaluable benefit to police officers injured in the line of duty. Yet, over the years, municipalities continuously try to narrow the scope of injuries incurred in the "performance of duty" to avoid affording these benefits to its disabled police officers. In response, the Court of Appeals made it clear in *Theroux v. Reilly*, 1 N.Y.3d 232 (2002) that the legislative intent of the statute was that there was no heightened risk of injury requirement. Further, the Court noted that the statute has been applied since its enactment in 1961 until the change by municipalities that was the subject of *Theroux v. Reilly* without a heightened risk standard.

The proposed heightened risk requirement would significantly change the applicability of these disability benefits to countless police officers injured in the line of duty. Moreover, this legislation fails to sufficiently define what heightened risk means and, as a result, would require costly litigation to parse it out. Meanwhile, deserving police officers injured in the line of duty will have to endure the hardships of their disability without the support of the public.

Ultimately, this bill is an unnecessary request by municipalities reacting to the past 2008 financial climate and, in the process, attacking those members of its community that ensure that its citizens have a safe area to live. Therefore, we strongly oppose passage of this legislation.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4826-0796-4707, v. 1

Enclosure (16)

A. 3242 – Triborough Repeal

A3242 Fitzpatrick (MS) No Same as
Civil Service Law
TITLE....Removes the requirement that a public employer continue terms of an expired agreement until a new agreement is negotiated with an employee organization
01/22/15 referred to governmental employees

STATE OF NEW YORK

3242

2015-2016 Regular Sessions

IN ASSEMBLY

January 22, 2015

Introduced by M. of A. FITZPATRICK, CORWIN, MONTESANO, LALOR -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to removing the requirement that a public employer continue terms of an expired agreement until a new agreement is negotiated with an employee organization

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 209-a of the civil service law, as amended by chapter 244 of the laws of 2007, is amended to read as follows:

1. Improper employer practices. It shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two of this article for the purpose of depriving them of such rights; (b) to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of such rights; (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization; (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees; (e) [~~to refuse to continue all the terms of an expired agreement until a new agreement is negotiated, unless the employee organization which is a party to such agreement has, during such negotiations or prior to such resolution of such negotiations, engaged in conduct violative of subdivision one of section two hundred ten of this article; (f)~~] to utilize any state funds appropriated for any purpose to train managers, supervisors or other administrative personnel regarding methods to discourage union organization or to discourage an employee from participating in a union organizing drive; or [~~(g)~~] **(f)** to fail to permit or refuse to afford a public employee the right, upon the employee's demand, to representation by a representative

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD05725-01-5

of the employee organization, or the designee of such organization, which has been certified or recognized under this article when at the time of questioning by the employer of such employee it reasonably appears that he or she may be the subject of a potential disciplinary action. If representation is requested, and the employee is a potential target of disciplinary action at the time of questioning, a reasonable period of time shall be afforded to the employee to obtain such representation. It shall be an affirmative defense to any improper practice charge under paragraph [~~(g)~~] **(f)** of this subdivision that the employee has the right, pursuant to statute, interest arbitration award, collectively negotiated agreement, policy or practice, to present to a hearing officer or arbitrator evidence of the employer's failure to provide representation and to obtain exclusion of the resulting evidence upon demonstration of such failure. Nothing in this section shall grant an employee any right to representation by the representative of an employee organization in any criminal investigation.

§ 2. This act shall take effect immediately.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A3242

SPONSOR: Fitzpatrick (MS)

TITLE OF BILL:

An act to amend the civil service law, in relation to removing the requirement that a public employer continue terms of an expired agreement until a new agreement is negotiated with an employee organization

PURPOSE:

Removes the requirement that a public employer continue terms of an expired agreement until a new agreement is negotiated with an employee organization.

SUMMARY OF PROVISIONS:

Section 1: Paragraph (e) of Subdivision 1 of section 209-a of the civil service law is deleted, and the original paragraphs (f), and (g), are renumbered as (e), and (f).

Section 2: This act shall take effect immediately.

JUSTIFICATION:

The 1982 Triborough Amendment to the Taylor Law prohibits a public employer from altering any provision of an expired labor agreement until a new agreement is reached.

New York is the only state in the nation to have such a requirement, and in the private sector, where collective bargaining has existed for more than 60 years under the National. Labor Relations Act, no similar obligation is imposed upon employers who are parties to a labor contract.

This mandate undermines the collective bargaining process and discourages those at the negotiating table from making givebacks or concessions, putting New York's taxpayers at an extreme disadvantage.

The Triborough Amendment should be repealed so that public employer's and employees can be encouraged to work together to achieve labor contracts that are both fair and affordable.

PRIOR LEGISLATIVE HISTORY:

2014 - A.5106 - Held in Governmental Employees

FISCAL IMPLICATIONS:

The bill will bring an undetermined amount of savings to the state and localities by granting them greater flexibility to negotiate when an agreement is failed to be reached, as employers will no longer be forced to abide by the previous collective bargaining agreement.

EFFECTIVE DATE:
This act shall take effect immediately.

May __, 2015

RE: An act to amend the civil service law, in relation to removing the requirement that a public employer continue terms of an expired agreement until a new agreement is negotiated with an employee organization.

A.3242 (Fitzpatrick)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages and towns across New York State, strongly opposes enactment of this bill that would repeal the requirement that a public employer continue the terms of an expired collective bargaining agreement until a new agreement is negotiated with an employee organization, commonly known as the "Triborough Amendment."

The Triborough Amendment enhances the negotiation process and ensures fair and equitable negotiations between the parties.

The Triborough Amendment, enacted in 1982, maintains the status quo and preserves the fundamental balance in negotiating power between public employers and employees, which furthers the important public policy of ensuring uninterrupted government service. The Triborough Amendment is justified on two grounds.

First, prior to 1982, the bargaining power overwhelmingly favored public employers. Reliance upon the Taylor Law served as tool for employers to not bargain in good

faith, as they could unilaterally change the terms and conditions of employment and force employees to accept a new contract that was less than agreeable to them. In fact, employers were able to better their own financial state at the expense of the welfare of their employees. Historical precedent has shown that as a result, public employers had little incentive to negotiate new agreements prior to expiration of the old agreement as their power to change the terms of such agreements was exponentially increased upon expiration. In 1982, the Legislature viewed such practices as "blatant and arbitrary action, completely contrary to the intent of the Taylor Law," noting that it could provoke a strike, and enacted the Triborough Amendment.

This bill is flawed as it reverts back to a pre-Triborough status without providing a safety clause or provision for employees against the resulting imbalance in negotiating power.

Second, the continuation of contractual terms until a new agreement has been negotiated does not impose any new financial burdens on public employers. In fact, it merely continues the status quo under the Taylor Law, which also prohibits certain employees from striking until a new agreement can be reached.

This bill is technically flawed and contrary to the determinations of the Public Employee Relations Board (PERB)

This bill is technically flawed as it does not provide for any alternative method of treating the terms and conditions of expired contracts. The importance of such provisions has also been well recognized within the private sector. For instance, under the aegis of the National Labor Relations Act (NLRA), private sector collective bargaining agreements do not provide an expressed provision concerning expired contracts. However, because the NLRA does not contain a provision similar to the Triborough Amendment, provisions are frequently added to individual agreements which address the expiration of contracts.

Such provisions state that the terms of the expired contract shall govern until a new agreement is reached. This practice of maintaining the status quo was judicially sanctioned in the *Katz* decision, requiring employers "to maintain, during the period of negotiations, the status quo concerning conditions of employment in order to avoid committing a [violation of the duty to bargain in good faith]."

The public sector adopted this private sector ruling in *Triborough Bridge & Tunnel Authority*, which gave rise to the Triborough Amendment. As this bill does not provide for an alternative method for treating expired contracts, and New York collective bargaining agreements were negotiated upon the existence of the Triborough Amendment, if enacted, there would be no provisions addressing governance of expired agreements.

Moreover, the PERB 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, this bill would grant broad authority to public employers to unilaterally change the terms and conditions of expired agreements in direct contradiction to PERB's determinations.

Ultimately, this bill is an unduly aggressive stand by public sector employers to respond to claimed budgetary problems by expanding management's prerogative to act unilaterally, instead of using the collective bargaining process to develop a mutual response to budget concerns. Therefore, in order to keep and preserve the balance between public employers and employees, we strongly oppose the passage of this bill.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4818-3613-1873, v. 1

Enclosure (17)

A. 2206 – Limits Triborough Amendment Application to Six (6) Months

A2206 Pretlow No Same as
Civil Service Law
TITLE....Authorizes a public employee's contractual rights extended for six months beyond expiration date of current agreement for negotiation of new agreement
01/15/15 referred to governmental employees

STATE OF NEW YORK

2206

2015-2016 Regular Sessions

IN ASSEMBLY

January 15, 2015

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to limiting the continuation of the terms and benefits coverage of an expired agreement for up to six months beyond the expiration date

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 209-a of the civil service law is amended by adding a new subdivision 1-a to read as follows:

1-a. A public employee's contractual rights shall be extended for up to six months beyond the expiration date of such employee's agreement for the sole purpose of negotiating a new agreement. During such six month extension period, all payroll and benefits assigned to such employee under such expired agreement shall remain "as is", with no increase or decrease in payments until a new agreement is renegotiated.

§ 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD05422-01-5

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A2206

SPONSOR: Pretlow

TITLE OF BILL: An act to amend the civil service law, in relation to limiting the continuation of the terms and benefits coverage of an expired agreement for up to six months beyond the expiration date

PURPOSE:

This bill puts boundaries on the timeline to arrive at a contract agreement beyond the expiration of contract for public service employees, while protecting their interests during the extended negotiation timeline

JUSTIFICATION:

This change fosters a climate for good-faith bargaining efforts earlier in any contract cycle-measure that will yield equitable and affordable agreements to both sides of a labor agreement. By nature, this change will significantly reduce the specter of open contracts, and their impact on budget planning process going forward

LEGISLATIVE HISTORY:

01/30/13 referred to governmental employees
01/08/14 referred to governmental employees
05/13/14 held for consideration in governmental employees

FISCAL IMPLICATIONS:

None

EFFECTIVE DATE:
This Act shall take effect immediately.

May __, 2015

RE: An act to amend the civil service law, in relation to limiting the continuation of the terms and benefits coverage of an expired agreement for up to six months beyond the expiration date

A. 2206 (Pretlow)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages and towns across New York State, strongly opposes enactment of this bill that would repeal the requirement that a public employer continue the terms of an expired collective bargaining agreement until a new agreement is negotiated with an employee organization, commonly known as the "Triborough Amendment," by limiting the continuation of the terms and benefits of an expired collective bargaining agreement to six (6) months without any increase or decrease of payroll and benefits until a new agreement is reached.

The Triborough Amendment enhances the negotiation process and ensures fair and equitable negotiations between the parties.

The Triborough Amendment, enacted in 1982, maintains the status quo and preserves the fundamental balance in negotiating power between public employers and employees, which furthers the important public policy of ensuring uninterrupted government service. The amendment is justified on two grounds.

First, prior to 1982, the bargaining power overwhelmingly favored public employers. Reliance upon the Taylor Law served as tool for employers to not bargain in good

faith, as they could unilaterally change the terms and conditions of employment and force employees to accept a new contract that was less than agreeable to them. In fact, employers were able to better their own financial state at the expense of the welfare of their employees. Historical precedent has shown that as a result, public employers had little incentive to negotiate new agreements prior to expiration of the old agreement as their power to change the terms of such agreements was exponentially increased upon expiration. In 1982, the Legislature viewed such practices as "blatant and arbitrary action, completely contrary to the intent of the Taylor Law," noting that it could provoke a strike, and enacted the Triborough Amendment.

This bill is flawed as it reverts back to a pre-Triborough status without providing a safety clause or provision for employees against the resulting imbalance in negotiating power.

Second, the continuation of contractual terms until a new agreement has been negotiated does not impose any new financial burdens on public employers. In fact, it merely continues the status quo under the Taylor Law, which also prohibits certain employees from striking until a new agreement can be reached.

This bill is technically flawed and contrary to the determinations of the Public Employee Relations Board (PERB)

This bill is technically flawed as it does not provide for any alternative method of treating the terms and conditions of expired contracts after the six (6) month period has lapsed. The importance of such provisions has also been well recognized within the private sector. For instance, under the aegis of the National Labor Relations Act (NLRA), private sector collective bargaining agreements do not provide an expressed provision concerning expired contracts. However, because the NLRA does not contain a provision similar to the Triborough Amendment, provisions are frequently added to individual agreements which address the expiration of contracts.

Such provisions state that the terms of the expired contract shall govern until a new agreement is reached. This practice of maintaining the status quo was judicially sanctioned in the *Katz* decision, requiring employers "to maintain, during the period of negotiations, the status quo concerning conditions of employment in order to avoid committing a [violation of the duty to bargain in good faith]."

The public sector adopted this private sector ruling in *Triborough Bridge & Tunnel Authority*, which gave rise to the Triborough Amendment. As this bill does not provide for an alternative method for treating expired contracts, and New York collective bargaining agreements were negotiated upon the existence of the Triborough Amendment, if enacted, there would be no provisions addressing governance of expired agreements.

Moreover, the PERB 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, this bill would grant broad authority to public employers to unilaterally change the terms and conditions of expired agreements in direct contradiction to PERB's determinations.

Ultimately, this bill is an unduly aggressive stand by public sector employers to respond to claimed budgetary problems by expanding management's prerogative to act unilaterally, instead of using the collective bargaining process to develop a mutual response to budget concerns. Therefore, in order to keep and preserve the balance between public employers and employees, we strongly oppose the passage of this bill.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4831-9241-8339, v. 1

Enclosure (18)

A. 6460 – Amends Triborough by Eliminating Longevity and Step Increases

A6460 Goodell (MS) No Same as
Civil Service Law
TITLE....Creates requirements of a public employer when a collective bargaining agreement has expired and a new agreement is not in place
03/25/15 referred to governmental employees

STATE OF NEW YORK

6460

2015-2016 Regular Sessions

IN ASSEMBLY

March 25, 2015

Introduced by M. of A. GOODELL, TENNEY, FITZPATRICK -- Multi-Sponsored by -- M. of A. KATZ -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to the requirements of a public employer when a collective bargaining agreement has expired and a new agreement is not in place

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (e) of subdivision 1 of section 209-a of the civil service law, as amended by chapter 244 of the laws of 2007, is amended to read as follows:

(e) to refuse to continue all the terms of an expired agreement until a new agreement is negotiated, unless the employee organization which is a party to such agreement has, during such negotiations or prior to such resolution of such negotiations, engaged in conduct violative of subdivision one of section two hundred ten of this article**, provided, however, that nothing herein or in any other provision of law shall require a public employer to pay higher wages or benefits to any employee based on longevity, length of service or passage of time after the expiration of such agreement and before a new agreement has been negotiated, including without limitation any step increases in wages based on existing wage scales, longevity payments, increased vacation or personal time, or other similar increases in wages or benefits**;

§ 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD09057-02-5

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A6460

SPONSOR: Goodell (MS)

TITLE OF BILL: An act to amend the civil service law, in relation to the requirements of a public employer when a collective bargaining agreement has expired and a new agreement is not in place

PURPOSE OR GENERAL IDEA OF BILL: To amend the civil service law to provide that a public employer is not required to pay increases in wages or benefits after the expiration of collective bargaining agreement pending negotiation of a new collective bargaining agreement.

SUMMARY OF SPECIFIC PROVISIONS: This act amends section 209-a(1)(e)of the civil service law to specify that a public employer is not required to pay public employees step increases in wages or other increases in wages or benefits based on longevity after the expiration of a collective bargaining agreement and before a new collective bargaining agreement has been negotiated.

JUSTIFICATION: Many public sector collective bargaining agreements provide wage and benefit increases to employees based on their length of employment, such as step increases in wages based on a specified wage scale, longevity payments, increased vacation or personal time, or other similar increases in wages or benefits. As a result, public employers often face significant employee cost increases even after the expiration of a collective bargaining agreement. In addition to increasing the cost of government, these built-in cost increases reduce the incentive for public employees to reach a new collective bargaining agreement with the public employer. This act would freeze all employee wages and benefits pending the negotiation of a new collective bargaining agreement.

PRIOR LEGISLATIVE HISTORY: A.6344 (2012): Held for Consideration in Governmental Employees A.4932 (2014): Held for Consideration in Governmental Employees

FISCAL IMPLICATIONS:This would reduce the costs to the State and other public employers after the expiration of a collective bargaining and agreement and before a new collective bargaining agreement has been negotiated.

EFFECTIVE DATE: This act shall take effect immediately.

May __, 2015

RE: An act to amend the civil service law, in relation to the requirements of a public employer when a collective bargaining agreement has expired and a new agreement is not in place

A. 6460 (Goodell)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages and towns across New York State, strongly opposes enactment of this bill that would repeal the requirement that a public employer continue the terms of an expired collective bargaining agreement until a new agreement is negotiated with an employee organization, commonly known as the "Triborough Amendment," by freezing increases in longevity, vacation or personal time, or in similar wage or benefits.

The Triborough Amendment enhances the negotiation process and ensures fair and equitable negotiations between the parties.

The Triborough Amendment, enacted in 1982, maintains the status quo and preserves the fundamental balance in negotiating power between public employers and employees, which furthers the important public policy of ensuring uninterrupted government service. The Triborough Amendment is justified on two grounds.

First, prior to 1982, the bargaining power overwhelmingly favored public employers. Reliance upon the Taylor Law served as tool for employers to not bargain in good

faith, as they could unilaterally change the terms and conditions of employment and force employees to accept a new contract that was less than agreeable to them. In fact, employers were able to better their own financial state at the expense of the welfare of their employees. Historical precedent has shown that as a result, public employers had little incentive to negotiate new agreements prior to expiration of the old agreement as their power to change the terms of such agreements was exponentially increased upon expiration. In 1982, the Legislature viewed such practices as "blatant and arbitrary action, completely contrary to the intent of the Taylor Law," noting that it could provoke a strike, and enacted the Triborough Amendment.

This bill is flawed as it reverts back to a pre-Triborough status without providing a safety clause or provision for employees against the resulting imbalance in negotiating power.

Second, the continuation of contractual terms until a new agreement has been negotiated does not impose any new financial burdens on public employers. In fact, it merely continues the status quo under the Taylor Law, which also prohibits certain employees from striking until a new agreement can be reached. By removing the wage and benefit increases, the bill would eliminate public employers' incentive to bargain in good faith.

Ultimately, this bill is an unduly aggressive stand by public sector employers to respond to claimed budgetary problems by expanding management's prerogative to act unilaterally, instead of using the collective bargaining process to develop a mutual response to budget concerns. Therefore, in order to keep and preserve the balance between public employers and employees, we strongly oppose the passage of this bill.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4824-0474-1155, v. 1

Enclosure (19)

A. 2802 – Amends Taylor Law Relating to Impasses

A2802 Pretlow No Same as
Civil Service Law
TITLE....Relates to disputes arising from collective negotiations
01/20/15 referred to governmental employees

STATE OF NEW YORK

2802

2015-2016 Regular Sessions

IN ASSEMBLY

January 20, 2015

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to disputes arising from collective negotiations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 6 of section 209-a of the civil service law, as amended by chapter 467 of the laws of 1990 and as renumbered by chapter 695 of the laws of 1994, is amended to read as follows:

6. Application. In applying this section, fundamental distinctions between private and public employment shall be recognized, and no body of federal or state law applicable wholly or in part to private employment, shall be regarded as binding or controlling precedent. With respect to any improper practice charge filed against either a public employer or a public employee organization that alleges a refusal to negotiate in good faith a presumption of bad faith shall apply whenever the last agreement between the parties or, as applicable, the last interest arbitration award between them, has been expired for a period in excess of one year from final execution of the agreement or delivery of the award to the parties and no new agreement has been reached at the date such improper practice charge is filed.

§ 2. Subdivision 1 of section 209 of the civil service law, as amended by chapter 216 of the laws of 1977, is amended to read as follows:

1. (a) For purposes of this section, an impasse may be deemed to exist if the parties fail to achieve agreement at least one hundred twenty days prior to the end of the fiscal year of the public employer and shall be deemed to exist if the last agreement between the parties at impasse, or as applicable, their last interest arbitration award, has been expired for a period in excess of one year from final execution of the agreement or delivery of the arbitration award to the parties.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD05582-01-5

(b) In any circumstance in which an impasse has been found to exist or has been deemed to exist, the board shall take such action as it considers to be necessary and appropriate to ensure the completion without delay of any and all applicable impasse resolution procedures authorized or required by this article.

§ 3. Paragraph (b) of subdivision 2 of section 210 of the civil service law, as amended by chapter 24 of the laws of 1969, is amended to read as follows:

(b) Presumption. **(i)** For purposes of this subdivision an employee who is absent from work without permission, or who abstains wholly or in part from the full performance of his duties in his normal manner without permission, on the date or dates when a strike occurs, shall be presumed to have engaged in such strike on such date or dates.

(ii) Any strike which occurs on a date or dates more than one year after the expiration of the last agreement between the employee's public employer and the public employee organization representing such employee, or, as applicable, more than one year after delivery of an interest arbitration award to such employee's employer and public employee organization shall be presumed to have been one caused by acts of extreme provocation within the meaning of this article.

§ 4. Paragraph (f) of subdivision 3 of section 210 of the civil service law, as amended by chapter 677 of the laws of 1977, is amended to read as follows:

(f) If the board determines that an employee organization has violated the provisions of subdivision one of this section, the board shall order forfeiture of the rights granted pursuant to the provisions of paragraph (b) of subdivision one, and subdivision three of section two hundred eight of this [~~chapter~~] **article**, for such specified period of time as the board shall determine, or, in the discretion of the board, for an indefinite period of time subject to restoration upon application, with notice to all interested parties, supported by proof of good faith compliance with the requirements of subdivision one of this section since the date of such violation, such proof to include, for example, the successful negotiation, without a violation of subdivision one of this section, of a contract covering the employees in the unit affected by such violation; provided, however, that where a fine imposed on an employee organization pursuant to subdivision two of section seven hundred fifty-one of the judiciary law remains wholly or partly unpaid, after the exhaustion of the cash and securities of the employee organization, the board shall direct that, notwithstanding such forfeiture, such membership dues deduction shall be continued to the extent necessary to pay such fine and such public employer shall transmit such moneys to the court. In fixing the duration of the forfeiture, the board**, or any other court or other tribunal authorized by law, including without limitation section seven hundred fifty-one of the judiciary law, to determine such issue** shall consider all the relevant facts and circumstances, including but not limited to: (i) the extent of any wilful defiance of subdivision one of this section**;** (ii) the impact of the strike on the public health, safety, and welfare of the community [~~and~~]**;** (iii) the financial resources of the employee organization; [~~and the board may consider (i)~~] **(iv)** the refusal of the employee organization or the appropriate public employer or the representative thereof, to submit to the [~~mediation and fact-finding~~] **impasse resolution** procedures provided in section two hundred nine **of this article;** and [~~(ii)~~] **(v)** whether, if so alleged by the employee organization, the appropriate public employer or its representatives engaged in such acts of extreme

provocation as to detract from the responsibility of the employee organization for the strike. In determining the financial resources of the employee organization, the board shall consider both the income and the assets of such employee organization. In the event membership dues are collected by the public employer as provided in paragraph (b) of subdivision one of section two hundred eight of this [~~chapter~~] **article**, the books and records of such public employer shall be prima facie evidence of the amount so collected.

§ 5. This act shall take effect immediately.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A2802

SPONSOR: Pretlow

TITLE OF BILL: An act to amend the civil service law, in relation to disputes arising from collective negotiations

TITLE OF BILL: An act to amend the civil service law, in relation to disputes arising from collective negotiations

PROVISIONS OF BILL: The bill amends Sections 209, 209-a and 210 of the Civil Service Law as described herein for the purpose of avoiding delay in the conduct of collective negotiations and in the processing of impasses through the statutory procedures and to allow such delay to be taken into account in determining the penalties to be imposed upon unions found to have violated the no-strike provisions of the Taylor Law.

JUSTIFICATION: The Taylor Law was founded upon a belief that negotiations would be conducted in good faith and that those negotiations would result in an unbroken series of collective agreements with little or no periods of expiration between agreements. The impasse procedures were designed to help ensure that very result. Unfortunately, the legislative intent has not been accomplished. Negotiations in most instances continue long after agreements have expired resulting in many instances where the last agreement between the parties has been expired for several years before a successor agreement is reached. In these circumstances existing law has not afforded the parties an incentive to negotiate in good faith and the existing impasse procedures have not been invoked by the parties or PERB in a timely manner. The tensions generated by the failure of collective negotiations can and has caused strikes that the Taylor Law prohibits and strives to prevent.

This bill avoids any rigid time limits for completion of the impasse procedures. Instead, it charges PERB to intervene quickly when parties have gone a year or more without an agreement in place and instructs PERB to take the steps necessary to ensure the completion of the statutory impasse procedures without delay. This bill also does not contain the financial penalties that were included in last year's proposal. Instead, it requires a consideration of the history of negotiation in fixing existing penalties for strikes.

As no one legislative change can restore vitality to the bargaining and impasse processes, a combination of approaches is embodied in the bill.

Bargaining that continues more than a year without a successor agreement in place would be presumed to have resulted from bad faith. In such circumstances, an impasse would be deemed to exist and PERB would be

required to intervene and to monitor the applicable impasse procedures to ensure these procedures were completed as quickly as possible. Should a strike arise in this time frame, there would be a presumption of extreme provocation which would have to be considered in the establishment of the duration of forfeiture of dues and fees imposed upon a union found to be responsible for the strike.

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: Immediately.

May __, 2015

RE: An act to amend the civil service law, in relation to disputes arising from collective negotiations

A. 2802 (Pretlow)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the New York State Professional Fire Fighters 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 fire fighters in 104 Locals in various cities, villages and towns across New York State, strongly opposes enactment of this bill that would create a presumption of bad faith for negotiations that extended over a year from the expiration of the latest collective bargaining agreement and to allow such delay to be considered in imposing or determining the penalties in the event of a strike.

This bill is another example of an unprecedented attack on the Triborough Amendment that is to protect employees from public employers not bargaining in good faith. It attempts to remove a vital protection for employees by threatening to return the collective negotiations procedures to a pre-Triborough state.

The Triborough Amendment enhances the negotiation process and ensures fair and equitable negotiations between the parties.

The Triborough Amendment, enacted in 1982, maintains the status quo and preserves the fundamental balance in negotiating power between public employers and employees, which furthers the important public policy of ensuring uninterrupted government service. The amendment is justified on two grounds.

First, prior to 1982, the bargaining power overwhelmingly favored public employers. Reliance upon the Taylor Law served as tool for employers to not bargain in good

faith, as they could unilaterally change the terms and conditions of employment and force employees to accept a new contract that was less than agreeable to them. In fact, employers were able to better their own financial state at the expense of the welfare of their employees. Historical precedent has shown that as a result, public employers had little incentive to negotiate new agreements prior to expiration of the old agreement as their power to change the terms of such agreements was exponentially increased upon expiration. In 1982, the Legislature viewed such practices as "blatant and arbitrary action, completely contrary to the intent of the Taylor Law," noting that it could provoke a strike, and enacted the Triborough Amendment.

Second, the continuation of contractual terms until a new agreement has been negotiated does not impose any new financial burdens on public employers. In fact, it merely continues the status quo under the Taylor Law, which also prohibits certain employees from striking until a new agreement can be reached.

This bill would arbitrarily and unnecessarily interject a deadline into the bargaining process that would only tip the balance in favor of the public sector employers. After the one year, the resulting loss of ability to settle the differences substantially changes the dynamics of the negotiation process. Public employers would be able hold out for over a year and then proceed to impasse procedures, which would significantly increase the negotiating costs for a public employee union. To avoid this, public employee unions will be required to make a hard choice between conceding items and spending the costs to go through the impasse procedures. This would afford public employers a higher negotiating position and revert back to a pre-Triborough state without providing an adequate safety clause or provision for employees against the resulting imbalance.

Ultimately, this bill is yet another unduly aggressive stand by public sector employers to respond to claimed budgetary problems by expanding management's prerogative to act unilaterally, instead of using the collective bargaining process to develop a mutual response to budget concerns. Therefore, in order to keep and preserve the balance between public employers and employees, we strongly oppose the passage of this bill.

Respectfully submitted,

Michael T. McManus, President
New York State Professional Fire Fighters Association

4846-5374-0067, v. 1