



**NEW YORK STATE PROFESSIONAL
FIRE FIGHTERS ASSOCIATION**

Samuel Fresina – President
James McGowan – Secretary Treasurer
David Holleran – Executive Vice President

**2019 Tentative Legislative Agenda
NYSPPFA**

Bill	Position	Senate No.	Senate Sponsor	Assembly No.	Assembly Sponsor	Status (Senate/Assembly)
Qualifications to Serve as a Fire Chief	Support	S.5206	Gounardes	A.7133-A	Abbate	New Bill has been Negotiated, See Below
Qualifications to Serve as a Fire Chief	Support	S.6524	Gounardes	A.8341	Abbate	06/20/19 - Passed Both Houses, Awaiting Delivery to the Governor
Preserve the Ability to Collectively Negotiate Disciplinary Procedures	Support	S.5803	Gounardes	A.6109	Abbate	A. 02/28/19 - Referred to Governmental Employees S. 06/13/19 - Passed Senate, Delivered to Assembly
Equitable Distribution of Foreign Fire Insurance	Support	S.3811	Gounardes	A.5783	Abbate	A. 02/19/19 - Referred to Insurance S. 02/15/19 - Referred to Insurance
20 Year Optional No Contribution "Bubble Bill"	Support	S.6367	Gounardes	A.7920-C	Abbate	06/20/19 - Passed Both Houses, Awaiting Delivery to the Governor
1 Year Final Average Salary	Support					Submitted for Introduction
Special Accident Death Benefit COLA	Support	S.3168-B	Gounardes	A.4079-B	Joyner	06/19/19 - Passed Both Houses, Awaiting Delivery to the Governor
Foreign Fire Insurance Distribution for Active Members	Support	S.2950	Breslin	A.352	Paulin	A. 01/09/19 - Referred to Insurance S. 01/31/19 - Referred to Insurance
Appointing Hearing Officer for removal and disciplinary action against Public Employees	Support	S.5205-A	Gounardes	A.7624-A	Abbate	A. 06/20/19 - Rules Report Cal.673 S. 06/19/19 - Passed Senate, Delivered to Assembly
Testimonial Privilege for Critical Incident Stress Management/Crisis Response/Peer support team members	Support					Draft Circulated for Comment
Creates Office of Administrative Hearings	Support			A.2044	Lentol	A. 01/22/19 - Referred to Governmental Operations S.
NYC Fire						
NYC Fire Cancer Presumption	Support	S.5246-A	Gounardes	A.7716-A	Reyes	06/20/19 - Passed Both Houses, Awaiting Delivery to the Governor
Bills of Interest - Support						
Twenty-five year retirement plan for firefighters employed by the division of military and naval affairs	Support	S.5286	Skoufis	A.7615-A	Abbate	A. 06/19/19 - Ordered to Third Reading Rules Cal.460 S. 05/30/19 - Passed Senate, Delivered to Assembly
Reporting Requirements regarding the Training and Qualifications of all Fire Fighters including Volunteers	Support					
Retiree Health Insurance	Support	S.5930	Breslin	A.7870	Abinanti	A. 05/28/19 - Referred to Governmental Employees S. 05/16/19 - Referred to Local Government
2% Monies/Special Act	Support	S.1605	Breslin			A. S. 01/15/19 - Referred to Insurance
State Aid to Towns based on Tax Exempt Properties	Support			A.2089	Gunther	A. 01/22/19 - Referred to Real Property Taxation S.
Local Government Jobs and Revenue Protection Act of 2017	Support					
Prohibit Diminishing Health Insurance	Support	S.3854	Lanza	A.4203	Weprin	A. 05/21/19 - Reported Referred to Ways and Means S. 06/20/19 - Committed to Rules
Authorizes Participating Employers Offering 20 Year Retirement Plans to offer such plans on a Non-contributory Basis	Support					
Cancer Presumption (207)	Support					
Binding Arbitration	Support	S.1505-C Part F	Budget Bill	A.2005-C Part F	Budget Bill	04/12/19 - Signed into Law, Chapter 55
Bills of Interest - Opposed						
Suspends the Triborough Amendment	Oppose					
Public Employer Continuing Terms of Expired Agreement	Oppose			A.5408	Fitzpatrick	A. 02/11/19 - Referred to Governmental Employees S.
Section 50-a of the Civil Rights Law	Oppose	S.3695	Bailey	A.2513	O'Donnell	A. 01/23/19 - Referred to Governmental Operations S. 02/12/19 - Referred to Codes

STATE OF NEW YORK

6524

2019-2020 Regular Sessions

IN SENATE

June 14, 2019

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

AN ACT to amend the civil service law, the general municipal law and the executive law, in relation to the minimum qualifications to serve as a fire chief in any fire department, fire district or fire protection district that employs six or more paid firefighters

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

1 Section 1. Subdivision 6 and paragraph (b) of subdivision 7 of section
2 58-a of the civil service law, subdivision 6 as amended and paragraph
3 (b) of subdivision 7 as added by chapter 406 of the laws of 2018, are
4 amended to read as follows:

5 6. The provisions of this section shall not apply to appointments made
6 by any county, city, town, village or fire district which employs [~~fewer~~
7 ~~than five~~] five or fewer fire fighters.

8 (b) has successfully completed training and education [~~courses of~~
9 ~~minimum contact hour criteria approved~~] requirements established by the
10 state fire administrator [~~and received certification for supervisory~~
11 ~~level 1 or higher pursuant to 19 NYCRR 427.9~~].

12 § 2. The general municipal law is amended by adding a new section
13 204-dd to read as follows:

14 § 204-dd. Qualifications of a fire chief. No person shall be eligible
15 for appointment or election as the fire chief, or any title or rank that
16 includes the duties of the chief, in any fire department or fire company
17 with six or more paid firefighters, unless he or she meets requirements
18 as established by the most recently developed recommended best practices
19 for incident commanders adopted by the New York state division of home-
20 land security and emergency services, office of fire prevention and
21 control. The state fire administrator shall promulgate rules and regu-
22 lations based upon requirements established pursuant to the most recent-
23 ly developed recommended best practices for incident commanders. For the

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

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1 purpose of this section, the term firefighter shall mean a member of a
2 fire department whose duties include fire service as defined in para-
3 graph d of subdivision eleven of section three hundred two of the
4 retirement and social security law and has been assigned by his or her
5 department as an interior firefighter.

6 § 3. The executive law is amended by adding a new section 159-d to
7 read as follows:

8 § 159-d. Training for fire chiefs. The state fire administrator may
9 conduct the training and education required for fire chiefs pursuant to
10 subdivision seven of section fifty-eight-a of the civil service law and
11 section two hundred four-dd of the general municipal law with sufficient
12 frequency to enable individuals to satisfy the necessary qualifications
13 for a fire chief pursuant to such section. To the extent practicable,
14 such training and education may be made available in all geographic
15 regions of the state. Such regions may be determined by the state fire
16 administrator.

17 § 4. This act shall take effect on the one hundred eightieth day after
18 it shall have become a law. Effective immediately, the addition of any
19 rule or regulation necessary for the implementation of this act on its
20 effective date are authorized to be made and completed on or before such
21 effective date.

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

BILL NUMBER: S6524

SPONSOR: GOUNARDES

TITLE OF BILL: An act to amend the civil service law, the general municipal law and the executive law, in relation to the minimum qualifications to serve as a fire chief in any fire department, fire district or fire protection district that employs six or more paid firefighters

PURPOSE OR GENERAL IDEA OF BILL:

This is a chapter amendment that makes changes to provisions of L.2018, c.406, to clarify provisions relating to the minimum qualifications to serve as a fire chief.

SUMMARY OF PROVISIONS:

The chapter amendment clarifies that the training requirements to become a fire chief of certain combination departments (mix of volunteers and professional firefighters) in New York State shall apply to both volunteer and professional firefighters.

JUSTIFICATION:

The underlying bill was enacted to ensure critical, yet basic, education, health and physical fitness training benchmarks for fire chiefs in certain combination departments. This amendment further clarifies that such requirements shall apply to both professional and volunteer fire fighters serving as fire chiefs.

PRIOR LEGISLATIVE HISTORY:

Chapter amendment to Chapter 406 of the Laws of 2018.

FISCAL IMPLICATIONS:

None to the state

EFFECTIVE DATE:

This act shall take effect on the one hundred eightieth day after it shall have become a law.

STATE OF NEW YORK

5803

2019-2020 Regular Sessions

IN SENATE

May 15, 2019

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

AN ACT to amend the civil service law, in relation to the negotiability of discipline affecting public employees

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

1 Section 1. Legislative findings and declarations. The legislature
 2 hereby finds, declares and reaffirms that the 1967 Public Employees'
 3 Fair Employment Act establishes that the public policy of the state, and
 4 the purpose of the act, is to promote harmonious and cooperative
 5 relationships between government and its employees and to protect the
 6 public by assuring, at all times, the orderly and uninterrupted opera-
 7 tion and functions of government. Included among the policies adopted
 8 was the requirement that the state, local governments, and other poli-
 9 tical subdivisions negotiate and enter into agreements with employee
 10 organizations about terms and conditions of employment. Over the many
 11 years subsequent to the enactment of such act, the negotiability of
 12 discipline, including disciplinary procedures, has been fully endorsed
 13 by the public employment relations board and disciplinary procedures
 14 have been incorporated into collective bargaining agreements throughout
 15 the state. The legislature now declares that this practice of negotiat-
 16 ing fair disciplinary protections and procedures for public employees
 17 must continue.

18 A recent court of appeals' decision involving police officers in the
 19 city of Schenectady has erroneously declared that the "public policy" of
 20 the state is to prohibit absolutely the negotiation of disciplinary
 21 procedures in certain places where there exist legislative enactments on
 22 the subject of discipline. The legislature declares a necessity for the
 23 enactment of this act to ensure that discipline, including disciplinary
 24 procedures, will continue as a mandatory subject of collective negoti-
 25 ation, and that collective bargaining agreements addressing that subject

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

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1 remain valid and enforceable and to enhance the prohibition against
2 strikes and the protection against the destruction of vital public
3 services delivered by public employees throughout the state.

4 § 2. Subdivision 4 of section 201 of the civil service law, as amended
5 by chapter 606 of the laws of 1992, is amended to read as follows:

6 4. The term "terms and conditions of employment" means:

7 (a) salaries, wages, hours and other terms and conditions of employ-
8 ment provided, however, that such term shall not include any benefits
9 provided by or to be provided by a public retirement system, or payments
10 to a fund or insurer to provide an income for retirees, or payment to
11 retirees or their beneficiaries. No such retirement benefits shall be
12 negotiated pursuant to this article, and any benefits so negotiated
13 shall be void.

14 (b) In addition, the terms and conditions of employment for firefight-
15 ers and police officers shall include discipline, disciplinary proce-
16 dures including alternatives to any statutory disciplinary system,
17 provided, however, that any right of firefighters and police officers
18 under the terms of any state law to elect coverage under either a statu-
19 tory disciplinary system or a disciplinary system established by collec-
20 tive negotiations shall not be impaired, unless any such state law
21 authorizes exclusivity of a negotiated disciplinary system and provided
22 further that no provision contained in the town law, general city law,
23 second class cities law, general municipal law, municipal home rule law,
24 county law, or other state, local, special law or charter provision, or
25 any special police act or other special act created by local law or
26 charter or otherwise created, or this chapter shall prevent or impair
27 the right to collective bargaining for or to modify disciplinary proce-
28 dures.

29 § 3. Section 204-a of the civil service law is amended by adding a new
30 subdivision 4 to read as follows:

31 4. The terms of any current or expired agreement or interest arbi-
32 tration award between any public employer and any public employee organ-
33 ization representing firefighters or police officers relating to the
34 discipline of any firefighters or police officers shall be deemed valid
35 and enforceable from the effective date of this subdivision.

36 § 4. This act shall take effect immediately.

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

BILL NUMBER: S5803

SPONSOR: GOUNARDES

TITLE OF BILL: An act to amend the civil service law, in relation to the negotiability of discipline affecting public employees

PURPOSE OR GENERAL IDEA OF BILL:

To preserve the ability of competitive class public employees to negotiate disciplinary procedures that affect them in their employment.

SUMMARY OF PROVISIONS:

This bill amends the Civil Service Law to modify the language relied on by several courts in holding disciplinary procedures to be outside the protection of the Taylor Law where any other law commits discipline to the discretion of local officials and to make clear that police officers and firefighters in this state are entitled to collectively bargain the disciplinary procedures that affect them in their employment. The bill would also restore the provisions of any collective bargaining agreements or interest arbitration awards between public employers and public employee organizations representing police officers or firefighters relative to discipline that were invalidated by judicial or administrative decisions.

JUSTIFICATION:

The fundamental purpose of the Taylor law adopted in 1967 was to make all terms and conditions of employment in the public sector subject to collective bargaining. Early Taylor Law decisions established that disciplinary procedures subject to collective bargaining, and many collective bargaining agreements containing disciplinary provisions and procedures were adopted across the State, including those negotiated by police and fire labor unions. Over time, a series of judicial decisions, including most notably several cases decided by the Court of Appeals, found a countervailing policy in favor of strong local control of discipline to override the public policy expressed in the Taylor Law favoring the collective bargaining of all terms and conditions of employment. However, the Taylor Law did not repeal or modify any local law or charter provisions vesting control of discipline in local authorities. The Court of Appeals in its decisions also noted that the several statutes also contained provisions favoring the local control of police and fire discipline that would override the Taylor Law presumption of negotiability.

Thus, at the present time, all police officers and firefighters in cities, towns and villages across the state have had their contractual disciplinary procedures taken away from them without compensation. Their disciplinary procedure is controlled by local law. These police officers and firefighters cannot even avail themselves of the rudimentary protections provided in sections 75 and 76 of the Civil Service Law,

which were adopted in 1958, nine years prior to the Taylor Law. Every police officer and firefighter employed in any town or village in the State of New York that has not already been divested of his or her contractual disciplinary procedure is subject to immediate divestment by the simple expedient of the passage by the town or village that employs him or her of a local law declaring local control over police and fire discipline.

This bill would legislatively overrule the judicial decisions on this issue declaring it to be the public policy of the State of New York that for police officers and firefighters, disciplinary procedures are terms and conditions of employment subject to mandatory negotiation under the Taylor Law. It would also restore those collective bargaining provisions that were previously declared invalid on grounds of public policy by prior judicial or administrative decisions.

PRIOR LEGISLATIVE HISTORY:

S.8270B of 2018 - Passed Senate, died in Assembly

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This act shall take effect immediately.

STATE OF NEW YORK

3811

2019-2020 Regular Sessions

IN SENATE

February 15, 2019

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

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:

1 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
2 read as follows:

3
4 (1) The amount of all monies which were received by the superintendent
5 on or before the first day of April in each year under the provisions of
6 this section or section nine thousand one hundred four of this article
7 shall be distributed by him or her not later than the first day of July
8 in such year, after adding any earnings resulting from the investment of
9 such monies and deducting the expenses of collection and distribution.
10 ~~Ten~~ Nine percent of such remaining monies received under this section
11 shall be paid to the treasurer of the Firemen's Association of the State
12 of New York for the support and maintenance of the firemen's home at
13 Hudson, New York, and one percent of such remaining monies received
14 under this section shall be paid to the treasurer of the New York State
15 Professional Firefighters Association to promote, support and maintain
16 the well-being of paid professional firefighters employed in the state
17 of New York, and the balance shall be paid as specified in paragraph two
18 ~~hereof~~ of this subsection, in amounts which will be that proportion of
19 the balance so to be distributed which the total amount of fire insurance
20 business written by foreign mutual fire insurance companies on
21 property situated in such locality bears to the total amount of fire
22 insurance business written by foreign mutual fire insurance companies on
23 property situated in any and all of the protected localities in the
24 state having treasurers or other fiscal officers as designated in para-
25 graph two ~~hereof~~ of this subsection afforded fire protection by a fire

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

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1 department or fire company and upon which the tax provided in this
2 section has been paid.

3 § 2. This act shall take effect immediately and shall apply to all
4 monies received by the superintendent of financial services pursuant to
5 section 9105 of the insurance law commencing with those monies received
6 on or after April 1, 2020.

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

BILL NUMBER: S3811

SPONSOR: GOUNARDES

TITLE OF BILL: An act to amend the insurance law, in relation to the distribution of fire insurance premium taxes

PURPOSE:

This bill provides funds for the New York State Professional Firefighter's Association to promote, support and maintain the well-being of paid professional firefighters.

SUMMARY OF PROVISIONS:

Section one of this bill amends Insurance Law section 9105(d)(1). This amendment reallocates one percent of amount remaining after the Superintendent deducts the expenses of collection and distribution from the amount that he or she received from the Fire Insurance Premium Tax pursuant to Insurance Law sections 9104 and 9105 to the New York State Professional Firefighters Association instead of the Fireman's Association of the State of New York. The Fireman's Association of the State of New York which would receive nine percent, instead of ten percent, of the remaining monies.

Section two of this bill provides that this act shall take effect immediately and shall apply to all monies received by the superintendent of financial services pursuant to section 9105 of the insurance law commencing with those monies received on or after April 1, 2020.

CURRENT LAW:

Insurance Law section 9105(d)(1) provides that 10 percent of the Fire Insurance Premium Taxes (less the cost of collection and distribution) received by the Superintendent will be paid to the Fireman's Association of the State of New York.

JUSTIFICATION:

The Fireman's Association trains and educates firefighters; the Professional Firefighters Association is a representative organization of the common interests of firefighters from across the state. Both the Fireman's Association and the Professional Firefighters Association serve important yet distinct purposes. This bill provides funds for the Professional Firefighters Association to ensure that firefighters are not just educated and trained, but that their workplace is safe and efficient.

LEGISLATIVE HISTORY:

2018: S.4543-A - Referred to Insurance

2017: S.4543 - Referred to Insurance

2016: S.7033 - Referred to Insurance

FISCAL IMPLICATIONS:

None to the State

EFFECTIVE DATE:

This act shall take effect immediately and shall apply to all monies received by the superintendent of financial services pursuant to section 9105 of the insurance law starting with monies received on or after April 1, 2020.

STATE OF NEW YORK

7920

2019-2020 Regular Sessions

IN ASSEMBLY

May 28, 2019

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

AN ACT to amend chapter 504 of the laws of 2009 amending the retirement and social security law and other laws relating to establishing police and fire retirement provisions, in relation to a special retirement plan for certain 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:

1 Section 1. Section 8 of part A of chapter 504 of the laws of 2009
2 amending the retirement and social security law and other laws relating
3 to establishing police and fire retirement provisions, as amended by
4 chapter 263 of the laws of 2016, is amended to read as follows:

5 § 8. (a) Notwithstanding any provision of law to the contrary, nothing
6 in this act shall limit the eligibility of any member of an employee
7 organization to join a special retirement plan open to him or her pursu-
8 ant to a collectively negotiated agreement with any state or local
9 government employer, where such agreement is in effect on the effective
10 date of this act and so long as such agreement remains in effect there-
11 after; provided, however, that any such eligibility shall not apply upon
12 termination of such agreement for employees otherwise subject to the
13 provisions of article [~~twenty-two~~] 22 of the retirement and social secu-
14 rity law.

15 (b) Notwithstanding any other provision of law to the contrary, any
16 member of a retirement system within New York state who became a member
17 of such system on or after July 1, 2009 and before January 10, 2010 and
18 subsequently become a member of the New York state and local police and
19 fire retirement system and thereafter transferred his or her membership
20 in the first retirement system to the New York state and local police
21 and fire retirement system may elect to be covered by the provisions of
22 article [~~twenty-two~~] 22 of the retirement and social security law effec-

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

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A. 7920

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1 tive on the date of membership in the first retirement system. Such
 2 member shall also be permitted to elect any special retirement plan
 3 available to him or her. Any contributions for previous pension benefits
 4 shall not be refunded.

5 (c) Notwithstanding any other provision of law to the contrary any
 6 member of the New York state and local police and fire retirement system
 7 who became a member on or after July 1, 2009 and before January 9, 2010
 8 may join a special retirement plan open to him or her pursuant to a
 9 collective negotiated agreement with any state or local government
 10 employer, where such agreement was in effect on or after July 1, 2009
 11 and before January 9, 2010.

12 § 2. No employee contributions made to the New York state and local
 13 police and fire retirement system by any police officer or firefighter
 14 who elects to make such change in plan coverage pursuant to this act
 15 shall be returned to such officer or firefighter. Such employee contrib-
 16 ution shall be used to offset any past service costs incurred by opera-
 17 tion of the provisions of this act.

18 § 3. This act shall take effect immediately.

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

This bill would amend Chapter 504 of the Laws of 2009 to allow indi-
 viduals who became a member of the New York State and Local Police and
 Fire Retirement System (PFRS) on or after July 1, 2009 and before Janu-
 ary 9, 2010, to make an irrevocable election to become covered by the
 provisions of Tier 2. Any member who elects to become covered would not
 receive a refund of member contributions.

If this bill is enacted during the 2019 legislative session, there
 will be an increase in annual contributions made to PFRS on behalf of
 affected members by such member's employers based upon the current and
 resulting plan coverage. For the fiscal year ending March 31, 2020,
 anticipated increases in employer contribution rates, as a percent of
 salary, are approximately

Resulting Tier 2 Plan	Current Plan		
	Tier 3	Tier 5 Contributory	Tier 5 Non-Contrib
384-d	0.1%	4.5%	1.1%
384-e	0.9%	4.5%	1.1%
381-b	2.8%	4.6%	

In future years, these costs will vary as billing rates and salaries
 change.

This proposal is expected to affect 231 active members earning a sala-
 ry of approximately \$21.6 million as of March 31, 2018.

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, 2018 actuarial valu-
 ation. Distributions and other statistics can be found in the 2018
 Report of the Actuary and the 2018 Comprehensive Annual Financial
 Report.

The actuarial assumptions and methods used are described in the 2015,
 2016, 2017 and 2018 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, 2018
 New York State and Local Retirement System Financial Statements and
 Supplementary Information.

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

This fiscal note does not constitute a legal opinion on the viability of the proposed change nor is it intended to serve as a substitute for the professional judgment of an attorney.

This estimate, dated May 16, 2019, and intended for use only during the 2019 Legislative Session, is Fiscal Note No. 2019-112, prepared by the Actuary for the New York State and Local Retirement System.

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

BILL NUMBER: A7920

SPONSOR: Abbate

TITLE OF BILL: An act to amend chapter 504 of the laws of 2009 amending the retirement and social security law and other laws relating to establishing police and fire retirement provisions, in relation to a special retirement plan for certain members of the New York state and local police and fire retirement system

PURPOSE:

To amend section 8 of Part A of Chapter 504 of the Laws of 2009 to apply to members of the New York State and Local police and Fire Retirement System who became members on or after July 1, 2009 and before January 9, 2010.

SUMMARY OF PROVISIONS:

New section 8b provides that any member of the New York State and Local Police and Fire Retirement System who became a member on or after July 1, 2009 and before January 9, 2010 may join a special retirement plan open to him or her pursuant to a collectively negotiated agreement with any state or local government employer, where such agreement was in effect on or after July 1, 2009 and before January 9, 2010 or any agreement that was expired but continued pursuant to Section 209 of the Civil Service Law on or after July 1, 2009 and before January 9, 2010.

JUSTIFICATION:

The purpose of Section 8 of Part A of Chapter 504 of the Laws of 2009 was to provide that members of an employee organization that were eligible to join a special retirement plan pursuant to a collectively negotiated agreement with any state or local government employer, would be able to continue to enroll in that special plan after the enactment of" this bill, until the date on which such agreement terminated. However, due to the effective date of Part A and the date the Chapter was signed, members who joined the New York State and Local police and Fire Retirement System on or after July 1, 2009 and before January 9, 2010 remain on the "bubble" as they are unaddressed by the provisions of Chapter 504 of the Laws of 2009. As such, this bill allows members who joined the New York State and Local Police and Fire Retirement System on or after July 1, 2009 and before January 9, 2010 to enroll in a special retirement plan subject to Article 11 of the Retirement and Social Security Law.

LEGISLATIVE HISTORY:

None.

FISCAL IMPLICATIONS:

See fiscal note.

EFFECTIVE DATE:

This act shall take effect immediately.

STATE OF NEW YORK

3168--B

2019-2020 Regular Sessions

IN SENATE

February 4, 2019

Introduced by Sens. GOUNARDES, ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. Subdivision c of section 208-f of the general municipal
2 law, as amended by chapter 179 of the laws of 2018, is amended to read
3 as follows:

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

11	calendar year of death		per centum
12	of the deceased member		
13	1977 or prior	[236%]	<u>246.1%</u>
14	1978	[226.2%]	<u>236%</u>
15	1979	[216.7%]	<u>226.2%</u>
16	1980	[207.5%]	<u>216.7%</u>
17	1981	[198.5%]	<u>207.5%</u>
18	1982	[189.8%]	<u>198.5%</u>
19	1983	[181.4%]	<u>189.8%</u>

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

LBD07653-07-9

S. 3168--B

2

1	1984	[173.2%]	<u>181.4%</u>
2	1985	[165.2%]	<u>173.2%</u>
3	1986	[157.5%]	<u>165.2%</u>
4	1987	[150.0%]	<u>157.5%</u>
5	1988	[142.7%]	<u>150.0%</u>
6	1989	[135.7%]	<u>142.7%</u>
7	1990	[128.8%]	<u>135.7%</u>
8	1991	[122.1%]	<u>128.8%</u>
9	1992	[115.7%]	<u>122.1%</u>
10	1993	[109.4%]	<u>115.7%</u>
11	1994	[103.3%]	<u>109.4%</u>
12	1995	[97.4%]	<u>103.3%</u>
13	1996	[91.6%]	<u>97.4%</u>
14	1997	[86.0%]	<u>91.6%</u>
15	1998	[80.6%]	<u>86.0%</u>
16	1999	[75.4%]	<u>80.6%</u>
17	2000	[70.2%]	<u>75.4%</u>
18	2001	[65.3%]	<u>70.2%</u>
19	2002	[60.5%]	<u>65.3%</u>
20	2003	[55.8%]	<u>60.5%</u>
21	2004	[51.3%]	<u>55.8%</u>
22	2005	[46.9%]	<u>51.3%</u>
23	2006	[42.6%]	<u>46.9%</u>
24	2007	[38.4%]	<u>42.6%</u>
25	2008	[34.4%]	<u>38.4%</u>
26	2009	[30.5%]	<u>34.4%</u>
27	2010	[26.7%]	<u>30.5%</u>
28	2011	[23.0%]	<u>26.7%</u>
29	2012	[19.4%]	<u>23.0%</u>
30	2013	[15.9%]	<u>19.4%</u>
31	2014	[12.6%]	<u>15.9%</u>
32	2015	[9.3%]	<u>12.6%</u>
33	2016	[6.1%]	<u>9.3%</u>
34	2017	[3.0%]	<u>6.1%</u>
35	2018	[0.0%]	<u>3.0%</u>
36	<u>2019</u>		<u>0.0%</u>

37 § 2. Subdivision c of section 361-a of the retirement and social secu-
 38 rity law, as amended by chapter 179 of the laws of 2018, is amended to
 39 read as follows:

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

47	calendar year of death		per centum
48	of the deceased member		
49	1977 or prior	[236%]	<u>246.1%</u>
50	1978	[226.2%]	<u>236%</u>
51	1979	[216.7%]	<u>226.2%</u>
52	1980	[207.5%]	<u>216.7%</u>
53	1981	[198.5%]	<u>207.5%</u>
54	1982	[189.8%]	<u>198.5%</u>
55	1983	[181.4%]	<u>189.8%</u>
56	1984	[173.2%]	<u>181.4%</u>

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1	1985	[165.2%]	<u>173.2%</u>
2	1986	[157.5%]	<u>165.2%</u>
3	1987	[150.0%]	<u>157.5%</u>
4	1988	[142.7%]	<u>150.0%</u>
5	1989	[135.7%]	<u>142.7%</u>
6	1990	[128.8%]	<u>135.7%</u>
7	1991	[122.1%]	<u>128.8%</u>
8	1992	[115.7%]	<u>122.1%</u>
9	1993	[109.4%]	<u>115.7%</u>
10	1994	[103.3%]	<u>109.4%</u>
11	1995	[97.4%]	<u>103.3%</u>
12	1996	[91.6%]	<u>97.4%</u>
13	1997	[86.0%]	<u>91.6%</u>
14	1998	[80.6%]	<u>86.0%</u>
15	1999	[75.4%]	<u>80.6%</u>
16	2000	[70.2%]	<u>75.4%</u>
17	2001	[65.3%]	<u>70.2%</u>
18	2002	[60.5%]	<u>65.3%</u>
19	2003	[55.8%]	<u>60.5%</u>
20	2004	[51.3%]	<u>55.8%</u>
21	2005	[46.9%]	<u>51.3%</u>
22	2006	[42.6%]	<u>46.9%</u>
23	2007	[38.4%]	<u>42.6%</u>
24	2008	[34.4%]	<u>38.4%</u>
25	2009	[30.5%]	<u>34.4%</u>
26	2010	[26.7%]	<u>30.5%</u>
27	2011	[23.0%]	<u>26.7%</u>
28	2012	[19.4%]	<u>23.0%</u>
29	2013	[15.9%]	<u>19.4%</u>
30	2014	[12.6%]	<u>15.9%</u>
31	2015	[9.3%]	<u>12.6%</u>
32	2016	[6.1%]	<u>9.3%</u>
33	2017	[3.0%]	<u>6.1%</u>
34	2018	[0.0%]	<u>3.0%</u>
35	<u>2019</u>		<u>0.0%</u>

36 § 3. This act shall take effect July 1, 2019.

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 2019.

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 \$547,000 above the approximately \$12.5 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, 2018 actuarial valuation. Distributions and other statistics can be found in the 2018 Report of the Actuary and the 2018 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2015, 2016, 2017 and 2018 Annual Report to the Comptroller on Actuarial

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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, 2018 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 fiscal note does not constitute a legal opinion on the viability of the proposed change nor is it intended to serve as a substitute for the professional judgment of an attorney.

This estimate, dated January 24, 2019, and intended for use only during the 2019 Legislative Session, is Fiscal Note No. 2019-38, prepared by the Actuary for the New York State and Local Retirement System.

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

SUMMARY OF BILL: This proposed legislation would amend General Municipal Law (GML) Section 208-f(c) to increase certain Special Accidental Death Benefits (SADB) for surviving spouses, dependent children, and certain other individuals (Eligible Beneficiaries) of former uniformed employees of the City of New York and the New York City Health and Hospitals Corporation, and for certain former employees of the Triborough Bridge and Tunnel Authority, who were members of certain New York City Pension Funds or Retirement Systems (NYCRS) and died as a natural and proximate result of an accident sustained in the performance of duty.

Effective Date: July 1, 2019.

BACKGROUND: Under the GML, the basic SADB is defined as:

The salary of the deceased member at date of death (or, in certain instances, a greater salary based on a higher rank or other status)(Final Salary), less the following payments to an Eligible Beneficiary:

- * Any NYCRS death benefit as adjusted by any Supplementation or Cost-of-Living Adjustment (COLA),

- * Any Social Security death benefit, and

- * Any Workers' Compensation benefit.

The SADB is paid to the deceased member's surviving spouse, if alive. If the spouse is no longer alive, the SADB is paid to the deceased member's children until age eighteen or until age twenty-three if a student. If neither a spouse nor a dependent child is alive, the SADB may be paid to certain other individuals, if eligible, in accordance with certain laws related to the World Trade Center attack.

The GML also provides that the SADB is subject to escalation based on the calendar year in which the former member died. The SADB has traditionally been increased by a cumulative, incremental percentage of Final Salary based on the calendar year of the member's death.

IMPACT ON BENEFITS: With respect to the NYCRS, the proposed legislation would impact the SADB payable to certain survivors of members of the:

- * New York City Employees' Retirement System (NYCERS),

- * New York City Police Pension Fund (POLICE), or

- * New York City Fire Pension Fund (FIRE),

and who were employed by one of the following employers in certain positions:

- * New York City Police Department - Uniformed Position,

- * New York City Fire Department - Uniformed Position,

- * New York City Department of Sanitation - Uniformed Position,

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- * New York City Housing Authority - Uniformed Position,
- * New York City Transit Authority - Uniformed Position,
- * New York City Department of Correction - Uniformed Position,
- * New York City - Uniformed Position as Emergency Medical Technician (EMT),
- * New York City Health and Hospitals Corporation - Uniformed Position as EMT, or
- * Triborough Bridge and Tunnel Authority - Bridge and Tunnel Position.

Under the proposed legislation, effective July 1, 2019, an additional 3.0% of Final Salary would be applied to the SADB paid due to deaths occurring in each calendar year on and after 1977. The SADB for deaths occurring prior to 1977 would receive the same escalation as deaths occurring in 1977.

FINANCIAL IMPACT - PRESENT VALUES: Based on the Eligible Beneficiaries of deceased NYCERS members who would be impacted by this proposed legislation and the actuarial assumptions and methods described herein, the enactment of this proposed legislation would increase the Present Value of Future Benefits (PVFB) by approximately \$49.2 million.

FINANCIAL IMPACT - ANNUAL EMPLOYER CONTRIBUTIONS: As a result of the past four decades' practice of providing 3.0% COLAs on the SADB each year, and the likelihood that COLAs will continue to be granted in the future, the Actuary assumes that the SADB benefit will continue to increase 3% per year in the future in determining the NYCERS employer contributions. Therefore, the costs of this proposed legislation have already been accounted for and will not result in a further increase in employer contributions. There will, however, be a decrease in employer contributions if the proposed legislation is not enacted.

In accordance with Administrative Code of the City of New York (ACCN) Section 13-638.2(k-2), new Unfunded Accrued Liability 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. However, since changes in the SADB COLA paid are not known in advance, the decrease in expected pension payments due to this legislation not passing would be treated as an actuarial gain. These actuarial gains would be amortized over a 15-year period (14 payments under the One-Year Lag Methodology (OYLM)) using level dollar payments. This would result in a decrease in NYCERS annual employer contributions of approximately \$5.8 million each year.

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

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

CONTRIBUTION TIMING: For the purposes of this Fiscal Note, it is assumed that the changes in the PVFB and annual employer contributions if this proposed legislation fails to pass, would be reflected for the first time in the Final June 30, 2020 actuarial valuations of NYCERS, POLICE, and FIRE. In accordance with the OYLM used to determine employer contributions, the decrease in employer contributions would first be reflected in Fiscal Year 2022.

CENSUS DATA: The estimates presented herein are based on upon the census data for such Eligible Beneficiaries provided by the NYCERS.

Retirement System	Number of Decreased Members with Eligible Survivors	Annual Accidental Death Benefit Prior to Proposed July 1, 2019
-------------------	---	--

		Increase (\$ Millions)
NYCERS	39	\$ 3.1
POLICE	398	44.0
FIRE	<u>631</u>	<u>74.1</u>
Total	1,068	\$121.2

ACTUARIAL ASSUMPTIONS AND METHODS: The changes in the PVFB and annual employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the June 30, 2018 (Lag) actuarial valuations used to determine the Preliminary Fiscal Year 2020 employer contributions of NYCERS, POLICE, and FIRE.

RISK AND UNCERTAINTY: The costs presented in this Fiscal Note depend highly on the actuarial assumptions and methods used and are subject to change based on the realization of potential investment, demographic, contribution, and other risks. If actual experience deviates from actuarial assumptions, the actual costs could differ from those presented herein. Costs are also dependent on the actuarial methods used, and therefore different actuarial methods could produce different results. Quantifying these risks is beyond the scope of this Fiscal Note.

STATEMENT OF ACTUARIAL OPINION: I, Sherry S. Chan, am the Chief Actuary for, and independent of, the New York City Retirement Systems and Pension Funds. I am a Fellow of the Society of Actuaries, an Enrolled Actuary under the Employee Retirement Income and Security Act of 1974, a Member of the American Academy of Actuaries, and a Fellow of the Conference of Consulting Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein. To the best of my knowledge, the results contained herein have been prepared in accordance with generally accepted actuarial principles and procedures and with the Actuarial Standards of Practice issued by the Actuarial Standards Board.

FISCAL NOTE IDENTIFICATION: This Fiscal Note 2019-21 dated May 17, 2019 was prepared by the Chief Actuary for the New York City Employees' Retirement System, the New York City Police Pension Fund, and New York City Fire Pension Fund. This estimate is intended for use only during the 2019 Legislative Session.

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

BILL NUMBER: S3168B

SPONSOR: GOUNARDES

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 2019-20.

SUMMARY OF PROVISIONS:

This bill amends subdivision c of section 208-f of the General Municipal Law as amended by Chapter 179 of the Laws of 2018 and subdivision c of section 361-a of the Retirement and Social Security Law, as amended by Chapter 179 of the Laws of 2018.

EXISTING LAW:

The law allows special accidental death benefits to be paid to a deceased members' widow or widower, or children under the age of eighteen or, if a student, under the age of twenty-three, in accordance with the stated schedule.

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 the localities for this small increase.

PRIOR LEGISLATIVE HISTORY:

2018: S.7158-B - Chapter 179
2017: S.4588-A - Chapter 76
2016: S.7179-A - Chapter 347
2015: S.4081-A - Chapter 23
2014: S.6467-A - Chapter 104
2013: S.4257-B - Chapter 196
2012: S.6438-A - Chapter 285
2011: S.3994-A - Chapter 161
2010: S.6879 - Chapter 439
2009: S.2343 - Chapter 305
2008: S.6733 - Chapter 76
2007: S.2492 - Chapter 39
2006: S.6744 - Chapter 88
2005: S.3971-C - Chapter 48
2004: S.6579-C - Chapter 351
2003: S.3903 - Chapter 139
2002: S.7263 - Chapter 313
2001: S.3297-A - Chapter 264
2000: S.6866-A - Chapter 231

FISCAL IMPLICATIONS:

See fiscal notes.

EFFECTIVE DATE:

This act shall take effect July 1, 2019

STATE OF NEW YORK

2950

2019-2020 Regular Sessions

IN SENATE

January 31, 2019

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

AN ACT to amend the insurance law, in relation to the distribution of the foreign and alien fire insurance premium tax

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

1 Section 1. Paragraph 4 of subsection (a) of section 9104 of the insurance law, as amended by chapter 293 of the laws of 1988, is amended to
2 read as follows:

3
4 (4) if such payment is made to the treasurer or other fiscal officer
5 of a fire department or fiscal officer of authorities having jurisdiction and control of such fire department, such treasurer or fiscal officer shall on or before the fifteenth day of March in each year distribute the amount so received to the fire companies constituting the fire
6 department if such fire department is constituted of more than one fire
7 company. Beginning on the effective date of the chapter of the laws of
8 two thousand nineteen which amended this paragraph, the amount so
9 received shall be distributed to the fire companies in proportion to the
10 number of active members within each company. For the purposes of this
11 paragraph, the term "active member" shall mean a member who participates
12 in firefighting and is subject to call for whatever duties may be
13 assigned to him or her under the rules and regulations of the fire
14 department or company of which he or she is a member.

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18 § 2. Subparagraph (E) of paragraph 2 of subsection (d) of section 9105
19 of the insurance law, as amended by chapter 293 of the laws of 1988, is
20 amended to read as follows:

21 (E) if such payment is received by the treasurer or other fiscal officer of a fire department or fiscal officer of authorities having jurisdiction and control of such fire department, such treasurer or fiscal officer shall on or before the fifteenth day of July in each year distribute the amount so received to the fire companies constituting the
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23
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25

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

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1 fire department if such fire department is constituted of more than one
2 fire company. Beginning on the effective date of the chapter of the laws
3 of two thousand nineteen which amended this subparagraph, the amount so
4 received shall be distributed to the fire companies in proportion to the
5 number of active members within each company. For the purposes of this
6 subparagraph, the term "active member" shall mean a member who partic-
7 ipates in firefighting and is subject to call for whatever duties may be
8 assigned to him or her under the rules and regulations of the fire
9 department or company of which he or she is a member.

10 § 3. This act shall take effect immediately.

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

BILL NUMBER: S2950

SPONSOR: BRESLIN

TITLE OF BILL:

An act to amend the insurance law, in relation to the distribution of the foreign and alien fire insurance premium tax

PURPOSE:

To provide that fire insurance money for fire departments, companies, and volunteer benevolent associations be distributed in proportion to the number of active members within each company.

SUMMARY OF PROVISIONS:

Sections one and two amend sections 9104 and 9105 of the insurance law to provide that beginning on the effective date of the chapter of the laws of 2018 which amended these sections, the monies received by fire companies shall be distributed to the companies in proportion to the number of active members within each company. The term 'active member' shall mean a member who participates in firefighting and is subject to call for whatever duties may be assigned to him or her under the rules and regulations of the fire department or company of which he or she is a member.

Section three provides the effective date.

JUSTIFICATION:

Sections 9104 and 9105 of the Insurance Law establish a tax on all out-of-state insurance companies selling policies to protect against loss or damage by fire of properties within New York. These funds are colloquially referred to as "2% funds" because the percentage of the tax obligated under the Insurance Law are 2% of the premiums. The tax is paid by insurers to the New York State Insurance Department and dispensed to fire departments, fire companies, fire department benevolent associations, and the Firemen's Association of the State of New York (FASNY).

The overwhelming majority of entities receiving 2% monies spend them appropriately on approved uses and are in compliance with State law, their individual charters or enabling legislation, and guidelines put out by FASNY, DFS, and the State Comptroller. However, a number of problems have surfaced over the last two decades which, although representing a tiny fraction of entities receiving 2% monies, have received sufficient press attention to suggest areas where the program could be improved.

There have been some high profile disputes in municipalities, where both an existing voluntary benevolent association and a professional fire department or fire company co-exist, as to which entity is entitled to

which percentage of the money. Most notably, Eastchester had a Volunteer Benevolent Association which had for decades received the 2% monies when the town established a professional Fire Department as well. Because there was no clarity in the insurance law on how to distribute the money where multiple entities existed and had active members, the current formula for distribution was arrived at through the negotiated settlement of a lawsuit. Because of the adversarial way the formula was established, this has resulted in continued strained relations between the two entities.

The Office of General Counsel for the Department of Financial Services has issued opinions and guidance on how fire districts that contain multiple fire companies ought to distribute 2% monies for those companies. The standard set by both the General Counsel's most recent opinion and court cases over the previous decades have held that the money should be distributed pro rata on the basis of the number of active members in each company. They have come to the same decision often, as there is nothing in the relevant sections of the insurance law to determine how the money is to be allocated between multiple overlapping companies, or between a paid and voluntary organization covering the same fire district. Codifying the "active member" standard would help resolve or perhaps even avoid future disputes.

LEGISLATIVE HISTORY:

2018: A11027

2019: This is a new bill in the Senate

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

Immediately.

STATE OF NEW YORK

5205

2019-2020 Regular Sessions

IN SENATE

April 16, 2019

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

AN ACT to amend the civil service law, in relation to hearing procedures for certain public employees

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

1 Section 1. Subdivision 2 of section 75 of the civil service law, as
2 amended by chapter 226 of the laws of 1994, is amended to read as
3 follows:

4 2. Procedure. An employee who at the time of questioning appears to be
5 a potential subject of disciplinary action shall have a right to repre-
6 sentation by his or her certified or recognized employee organization
7 under article fourteen of this chapter and shall be notified in advance,
8 in writing, of such right. A state employee who is designated managerial
9 or confidential under article fourteen of this chapter, shall, at the
10 time of questioning, where it appears that such employee is a potential
11 subject of disciplinary action, have a right to representation and shall
12 be notified in advance, in writing, of such right. If representation is
13 requested a reasonable period of time shall be afforded to obtain such
14 representation. If the employee is unable to obtain representation with-
15 in a reasonable period of time the employer has the right to then ques-
16 tion the employee. A hearing officer under this section shall have the
17 power to find that a reasonable period of time was or was not afforded.
18 In the event the hearing officer finds that a reasonable period of time
19 was not afforded then any and all statements obtained from said ques-
20 tioning as well as any evidence or information obtained as a result of
21 said questioning shall be excluded, provided, however, that this subdi-
22 vision shall not modify or replace any written collective agreement
23 between a public employer and employee organization negotiated pursuant
24 to article fourteen of this chapter. A person against whom removal or
25 other disciplinary action is proposed shall have written notice thereof

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

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1 and of the reasons therefor, shall be furnished a copy of the charges
2 preferred against him or her and shall be allowed at least eight days
3 for answering the same in writing. The hearing upon such charges shall
4 be held by [~~the officer or body having the power to remove the person~~
5 ~~against whom such charges are preferred, or by a deputy or other person~~
6 ~~designated by such officer or body in writing for that purpose. In case~~
7 ~~a deputy or other person is so designated, he~~] a hearing officer who
8 shall be a member of the American Arbitration Association, and such
9 hearing officer shall be selected by the mutual agreement of the person
10 against whom disciplinary action is proposed and of the employing offi-
11 cer or body. If such mutual agreement cannot be reached, then the hear-
12 ing officer shall be selected pursuant to the rules of the American
13 Arbitration Association. Such hearing officer shall, for the purpose of
14 such hearing, be vested with all the powers of such officer or body and
15 shall make a record of such hearing which shall, with his or her recom-
16 mendations and decision, be referred to such officer or body for [~~review~~
17 ~~and decision~~] implementation. The [~~person or persons~~] hearing officer
18 holding such hearing shall, upon the request of the person against whom
19 charges are preferred, permit him or her to be represented by counsel,
20 or by a representative of a recognized or certified employee organiza-
21 tion, and shall allow him or her to summon witnesses in his or her
22 behalf. The burden of proving incompetency or misconduct shall be upon
23 the person alleging the same. Compliance with technical rules of
24 evidence shall not be required. The hearing officer shall be paid a fee
25 which is equivalent to the normal and customary fee paid to him or her
26 for services as an arbitrator under the auspices of the American Arbi-
27 tration Association.

28 § 2. Subdivision 3 of section 75 of the civil service law, as amended
29 by chapter 710 of the laws of 1984, is amended to read as follows:

30 3. Suspension pending determination of charges; penalties. Pending
31 the hearing and determination of charges of incompetency or misconduct,
32 the officer or employee against whom such charges have been preferred
33 may be suspended [~~without pay~~] for a period not exceeding thirty days.
34 The suspension shall be with pay, except the employee may be suspended
35 without pay if the employee has entered a guilty plea to or has been
36 convicted of a felony crime concerning the criminal sale or possession
37 of a controlled substance or a precursor of a controlled substance. If
38 such officer or employee is found guilty of the charges, the penalty or
39 punishment may consist of a reprimand, a fine not to exceed one hundred
40 dollars to be deducted from the salary or wages of such officer or
41 employee, suspension without pay for a period not exceeding two months,
42 demotion in grade and title, or dismissal from the service; provided,
43 however, that the time during which an officer or employee is suspended
44 without pay may be considered as part of the penalty. If he or she is
45 acquitted, he or she shall be restored to his or her position [~~with full~~
46 ~~pay for the period of suspension less the amount of any unemployment~~
47 ~~insurance benefits he may have received during such period~~]. If such
48 officer or employee is found guilty, a copy of the charges, his or her
49 written answer thereto, a transcript of the hearing, and the determi-
50 nation shall be filed in the office of the department or agency in which
51 he or she has been employed, and a copy thereof shall be filed with the
52 civil service commission having jurisdiction over such position. A copy
53 of the transcript of the hearing shall, upon request of the officer or
54 employee affected, be furnished to him or her without charge.

55 § 3. This act shall take effect immediately.

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

BILL NUMBER: S5205

SPONSOR: GOUNARDES

TITLE OF BILL: An act to amend the civil service law, in relation to hearing procedures for certain public employees

PURPOSE OR GENERAL IDEA OF BILL:

Provides for procedures to be followed in appointing a hearing officer for removal and disciplinary action against certain public employees

SUMMARY OF PROVISIONS:

This bill amends Subdivision 2 of Section 75 of the Civil Service Law to provide that disciplinary hearings against individual employees under the Civil Service Law to provide that disciplinary hearing against individual employees under the civil service law shall be held by a hearing officer who is a member of the American Arbitration Association, selected by the mutual agreement of the parties involved. The decision of the hearing officer will be required to be implemented by the employer. In addition, this legislation provides that such employees may be suspended with pay during such disciplinary action.

JUSTIFICATION:

The purpose of this bill is to ensure an impartial and fair due process hearing for permanent employees retained under the Civil Service Law and who are the subject of disciplinary charges. In addition, this bill seeks to protect civil service employees from being suspended without pay during such process.

Under the present provisions of Section 75 of the Civil Service Law, individuals who have attained permanent appointment as employees under the jurisdiction of the Civil Service Law may be removed from their positions or have other disciplinary actions taken (i.e., suspension without pay, demotion from grade and title) after a hearing held before the officer or body who has brought the charges. The employing officer or body therefore becomes both the prosecutor and the judge of the permanent employees actions.

This bill would provide a more fair procedure in which the hearing is before an impartial arbitrator selected upon mutual agreement of the parties, if no agreement can be reached, then selected under the rules of the American Arbitration Association. The hearing officer would hear the case and determine the appropriate penalty, if any. Such a system would give both the employer and the employee a fair opportunity to present their respective sides of the case and allow for impartial adjudication.

In addition, by protecting civil service employees from being suspended without pay during such procedures, this bill conforms disciplinary

hearing procedures brought against tenured teachers pursuant to Section 3020-a of the Education Law, thus ensuring the same due process for civil service employees.

PRIOR LEGISLATIVE HISTORY:

New Bill.

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This act shall take effect immediately.

STATE OF NEW YORK

2044

2019-2020 Regular Sessions

IN ASSEMBLY

January 22, 2019

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:

1 Section 1. Legislative findings. New York's system of administrative
2 adjudication is fragmented, and offers the appearance of unfairness to
3 those who seek access to relief from administrative actions that they
4 consider unfair or unfounded.

5 The state's administrative adjudication responsibilities are not
6 unified because the system provides for the conduct of administrative
7 hearings in each of the state agencies which enforce laws, rules and
8 regulations. The result is duplication of functions, inconsistencies in
9 procedures and policies, and confusion for those who seek to make use of
10 the process. At the same time, lodging the responsibility for adjudicat-
11 ing cases in the agencies which are responsible for bringing enforcement
12 actions can create the appearance of unfairness to those who may feel
13 that their accuser is also judging their acts.

14 In contrast to New York's agency based system, a number of states have
15 adopted a different model for their administrative adjudication proc-
16 esses, which centralizes the responsibility for hearing contested admin-
17 istrative adjudications in a single office. This alternative model
18 offers savings from the elimination of duplicative responsibilities,
19 consistency in processes, and fairness for those who seek relief from
20 administrative rulings with which they disagree.

21 This act creates a process by which New York state will implement a
22 central system of administrative hearings.

23 § 2. The executive law is amended by adding a new article 26-A to read
24 as follows:

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

LBD04682-01-9

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ARTICLE 26-AOFFICE OF ADMINISTRATIVE HEARINGSSection 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.

1 6. "Contested adjudicatory proceeding" means an adjudicatory proceed-
2 ing in which a request for a hearing on disputed issues is made.

3 7. "Uncontested adjudicatory proceeding" means an adjudicatory
4 proceeding in which no request for a hearing is received after notice is
5 given.

6 8. "Office" means the office of administrative hearings.

7 § 721. Office of administrative hearings. 1. There is hereby created
8 in the executive department an office of administrative hearings. The
9 office shall be independent of state administrative agencies and shall,
10 notwithstanding the provisions of any other general or special law, be
11 responsible for impartial administration of adjudicatory proceedings in
12 accordance with the provisions of this article other than those exempted
13 elsewhere in this article. The central office of the office shall be
14 located in Albany, and regional offices shall be established and main-
15 tained by the office as the chief administrative law judge may determine
16 and for which appropriations are made therefor.

17 2. The head of the office, who shall be its chief executive officer,
18 shall be the chief administrative law judge who shall be appointed by
19 the governor by and with the consent of the senate to serve for a term
20 of six years. Such person shall be knowledgeable on the subject of
21 administrative law and procedures and skilled in matters pertaining
22 thereto. Once appointed and confirmed, the chief administrative law
23 judge shall serve until his or her term expires or until his or her
24 successor has been appointed and has been qualified. A vacancy in the
25 office of chief administrative law judge occurring otherwise than by
26 expiration of term shall be filled for the unexpired term in the same
27 manner as original appointments. The chief administrative law judge may,
28 after notice and an opportunity to be heard, be removed by the governor
29 for neglect of duty or misfeasance in office, and the chief administra-
30 tive law judge may be removed for other cause by the senate on the
31 recommendation of the governor. The chief administrative law judge shall
32 devote his or her entire time to the duties of the office. The chief
33 administrative law judge shall receive a salary in the same amount as
34 that received by a state officer designated in paragraph (c) of subdivi-
35 sion one of section one hundred sixty-nine of this chapter.

36 § 722. Chief administrative law judge; functions, powers and duties.
37 The chief administrative law judge shall have the following functions,
38 powers and duties:

39 1. To establish, consolidate, alter or abolish any bureau in the
40 office; to appoint the head of such bureaus and fix their duties; such
41 bureaus may be established for the purpose of providing specialized
42 hearings for any given subject area.

43 2. Subject to the civil service law and the applicable collective
44 bargaining agreement, to appoint, remove or transfer deputies, officers,
45 assistants, hearing officers, counsels and other employees as may be
46 necessary for the exercise of the powers and performance of the duties
47 of the office; and to prescribe their duties, and fix their compensation
48 within the amounts appropriated therefor.

49 3. When regularly appointed hearing officers are not available or when
50 the chief administrative law judge finds that the character of a specif-
51 ic case requires the utilization of a different procedure for assigning
52 hearing officers, the chief administrative law judge, pursuant to appli-
53 cable collective bargaining agreements, may contract with qualified
54 individuals to serve as hearing officers. Such individuals shall be
55 compensated for their services on a contractual basis for each hearing
56 pursuant to a reasonable fee schedule established in advance by the

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1 chief administrative law judge. The chief administrative law judge may
2 not contract with any individual who is at that time an officer or
3 employee of the state. Temporary hearing officers shall have the same
4 qualifications for appointment as permanent hearing officers.

5 4. To develop and implement a program of evaluation to aid the chief
6 administrative law judge in the performance of his or her duties, and to
7 assist in the making of promotions, demotions or removals. This program
8 of evaluation shall focus on three areas of performance: competence,
9 productivity and demeanor. It shall include consideration of: industry
10 and promptness in adhering to schedules, making rulings and rendering
11 decisions; tolerance, courtesy, patience, attentiveness, and self
12 control in dealing with litigants, witnesses and representatives, and in
13 presiding over adjudicatory proceedings; skills and knowledge of the
14 subject of administrative law and procedures and new developments there-
15 in; analytical talents and writing abilities; settlement skills; quanti-
16 ty, nature and quality of case load disposition; impartiality and
17 conscientiousness. The chief administrative law judge shall develop
18 standards and procedures for this program, which shall include taking
19 comments from selected litigants and representatives who have appeared
20 before a hearing officer. The methods used by a hearing officer but not
21 the results arrived at by the hearing officer in any case may be used in
22 evaluating a hearing officer. Before implementing any action based upon
23 the finding of the evaluation program, the chief administrative law
24 judge shall discuss the findings and proposed action with the affected
25 hearing officer; provided however that the chief administrative law
26 judge's authority pursuant to this subdivision is subject to the
27 provisions of the civil service law and the applicable collective
28 bargaining agreement.

29 5. To the extent permitted by law, to publish and make available to
30 the public all recommended decisions rendered by a hearing officer and
31 all decisions rendered by an agency after a review of a hearing offi-
32 cer's recommended decision. The chief administrative law judge may
33 charge a reasonable fee for a copy of such determination or decision.
34 Whenever any law of confidentiality prevents the publication of the
35 identity of any of the parties, an edited version of the recommended
36 decision and decision of the agency shall be prepared which shall not
37 disclose the identities of the protected parties.

38 6. To collect, compile and prepare for publication statistics and
39 other data with respect to the operations and duties of the office, and
40 to submit annually to the governor, the temporary president and minority
41 leader of the senate and the speaker and minority leader of the assembly
42 a report on such operations including but not limited to, the number of
43 hearings initiated, the number of recommended decisions rendered, the
44 number of partial or total reversals by the agencies, the number of
45 proceedings pending, and on any recommendations of the office of statu-
46 tory or regulatory amendments.

47 7. To study the subject of administrative adjudication in all its
48 aspects, and to develop recommendations including alternate dispute
49 resolution including preliminary or prehearing conferences or mediation
50 which would promote the goals of fairness, uniformity and cost-effec-
51 tiveness. Agencies shall give the office ready access to their records
52 and full information and reasonable assistance in any matter of research
53 requiring recourse to them or to any data within their knowledge or
54 control. Such access, information and assistance shall not be required
55 where it would be within existing requirements of confidentiality.

1 8. To adopt, promulgate, amend and rescind rules and regulations to
2 carry out the provisions of this article and the policies of the office
3 in connection therewith. Such rules and regulations shall be consistent
4 with the state administrative procedure act, shall supersede any incon-
5 sistent agency rules, and shall include, but not be limited to, uniform
6 standards and procedures, rules of practice, rules of evidence, stand-
7 ards for determining when an expedited hearing will be conducted, stand-
8 ards for uncontested proceedings, standards and guidelines related to
9 time limits for agency action pursuant to the provisions of subdivision
10 one of section three hundred seven of the state administrative procedure
11 act, standards for the assignment of hearing officers and their removal
12 from cases, and for the maintenance of records in order that, where
13 authorized by law, the costs of a hearing may be allocated to a party or
14 to the federal government.

15 9. To secure, compile and maintain all reports of hearing officers
16 issued pursuant to this article, and such reference materials and
17 supporting information as may be appropriate and to establish appropri-
18 ate management information systems.

19 10. To develop and maintain a program for the continuing training and
20 education of hearing officers and ancillary personnel.

21 11. To submit to the governor, the temporary president and minority
22 leader of the senate and the speaker and minority leader of the assembly
23 an evaluation of the effectiveness of the office in attaining the objec-
24 tives specified in this article prepared by an entity independent of the
25 office. Such evaluation shall be submitted by November thirtieth, two
26 thousand twenty-one and by September first every two years thereafter.

27 § 723. Hearings. 1. The office shall be vested with exclusive juris-
28 isdiction to hear cases which come before it and all contested adjudicatory
29 proceedings required to be conducted under this article shall be
30 conducted by a hearing officer assigned by the chief administrative law
31 judge.

32 2. If the chief administrative law judge deems it appropriate, a hear-
33 ing officer may be assigned by the chief administrative law judge to
34 conduct or assist in administrative duties and proceedings other than
35 those related to contested adjudicatory proceedings, including but not
36 limited to, rule making and investigative hearings if requested by an
37 agency.

38 3. Adjudicatory proceedings shall be scheduled for suitable locations
39 either at the offices of the office or elsewhere in the state, taking
40 into consideration the convenience of the witnesses and parties, as well
41 as the nature of the proceedings.

42 4. Hearing officers shall be assigned to conduct hearings by the chief
43 administrative law judge who shall, whenever practical, use personnel
44 having expertise in the field or subject matter of the hearing and
45 assign hearing officers primarily to the hearings of particular agencies
46 on a long term basis.

47 5. All hearings shall be conducted in conformance with the state
48 administrative procedure act.

49 6. Upon receipt of a request for a hearing, an agency shall within ten
50 business days give notice to the office and request the assignment of a
51 hearing officer to the proceeding. The chief administrative law judge
52 shall commence a hearing within the time period required by law or if no
53 such period is required, within thirty business days of such notice. If
54 the chief administrative law judge, for good cause, cannot commence such
55 hearing within the stated period of time, he or she shall provide notice
56 to all parties, with such cause shown, within ten business days of

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1 receipt of the request for such hearing and shall schedule such hearing
2 within ten additional business days of such request.

3 7. Nothing in this article shall be construed to deprive an agency
4 member of the authority to determine whether a disputed issue exists or
5 to adopt, reject or modify the findings of fact and conclusions of law
6 of any hearing officer.

7 § 724. Hearing officers; qualifications, powers and duties. 1. The
8 chief administrative law judge shall appoint hearing officers who shall
9 be authorized to conduct any hearing or motion practice authorized to be
10 held by the office. Hearing officers shall be in the competitive class
11 of the classified civil service.

12 2. Unless otherwise authorized by law and except as provided in subdivi-
13 sion three of this section, a hearing officer shall not communicate in
14 connection with any issue that relates in any way to the merits of an
15 adjudicatory proceeding pending before the hearing officer with any
16 person except upon notice and opportunity for all parties to partic-
17 ipate.

18 3. A hearing officer may consult on questions of law and ministerial
19 matters with his or her supervisor, other hearing officers, and support
20 staff of the office, provided that such supervisors, hearing officers or
21 support staff have not been engaged in investigative or prosecutorial
22 functions in connection with the adjudicatory proceeding under consider-
23 ation or a factually related adjudicatory proceeding.

24 4. A hearing officer shall not participate in any proceeding to which
25 he or she is a party; in which he or she has been attorney, counsel or
26 representative; in which he or she is interested; or if he or she is
27 related by consanguinity or affinity to any party to the controversy
28 within the sixth degree.

29 5. Hearing officers shall:

30 (a) Have all of the powers and duties of presiding officers as author-
31 ized by article three of the state administrative procedure act.

32 (b) Advise an agency, as to the location at which and the time during
33 which a hearing should be held so as to allow for participation by all
34 affected interests.

35 (c) Conduct only hearings for which proper notice has been given.

36 (d) See to it that all hearings are conducted in a fair and impartial
37 manner.

38 (e) Issue a recommended decision to an agency stating findings of fact
39 and conclusions of law.

40 6. Notwithstanding the requirements of paragraph (e) of subdivision
41 five of this section, hearing officers shall render determinations
42 concerning charges pursuant to article two-A of the vehicle and traffic
43 law.

44 § 725. Adjudicatory proceedings to which hearing officers are not
45 assignable; exceptions. Unless a request is made by the agency, no hear-
46 ing officer shall be assigned by the chief administrative law judge to
47 hear an adjudicatory proceeding with respect to:

48 1. The division of military and naval affairs to the extent it exer-
49 cises its responsibility for military and naval affairs, the division of
50 state police, the identification and intelligence unit of the division
51 of criminal justice services, the state insurance fund, the unemployment
52 insurance appeals board, the workers' compensation board, the state
53 division of parole, the department of corrections and community super-
54 vision, the division of tax appeals, the public employment relations
55 board and the employment relations board, the New York state ethics
56 commission or the department of family assistance.

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1 2. Any proceeding relating to individuals in the care or custody of a
2 medical, mental, rehabilitative or custodial program operated by an
3 agency.

4 3. Uncontested adjudicatory proceedings.

5 4. Any matter where an agency member, commissioner or several commis-
6 sioners are required to conduct, or determine to conduct, the hearings
7 directly and individually.

8 5. Any hearing which must, by the requirements of federal law, be
9 conducted by another state agency.

10 § 726. Construction; severability. 1. The provisions of this article
11 shall not be construed to limit or repeal additional requirements
12 imposed by law.

13 2. If any provision of this article or the application thereof to any
14 person or circumstances is adjudged invalid by a court of competent
15 jurisdiction, such judgment shall not affect or impair the validity of
16 the other provisions of this article or the application thereof to other
17 persons or circumstances.

18 § 3. Subdivision 2 of section 301 of the state administrative proce-
19 dure act, as amended by chapter 675 of the laws of 1986, is amended to
20 read as follows:

21 2. All parties shall be given reasonable written notice of such hear-
22 ing, which notice shall include (a) a statement of the time, place, and
23 nature of the hearing; (b) a statement of the legal authority and juris-
24 diction under which the hearing is to be held; (c) a reference to the
25 particular sections of the statutes and rules involved, where possible;
26 (d) a short and plain statement of matters asserted; and (e) a statement
27 that interpreter services shall be made available to deaf persons, at no
28 charge, pursuant to this section. Upon application of any party, a more
29 definite and detailed statement shall be furnished whenever the agency
30 finds that the statement is not sufficiently definite or not sufficient-
31 ly detailed. The finding of the agency as to the sufficiency of defin-
32 iteness or detail of the statement or its failure or refusal to furnish
33 a more definite or detailed statement shall not be subject to judicial
34 review. Any statement furnished shall be deemed, in all respects, to be
35 a part of the notice of hearing.

36 § 4. Subdivision 6 of section 301 of the state administrative proce-
37 dure act, as amended by chapter 703 of the laws of 1991, is amended to
38 read as follows:

39 6. Whenever any deaf person is a party or a witness therein, to an
40 adjudicatory proceeding before an agency[~~7~~] or [~~a witness therein~~] the
41 office of administrative hearings in the executive department, as the
42 case may be, such agency or such office of administrative hearings in
43 all instances shall appoint a qualified interpreter who is certified by
44 a recognized national or New York state credentialing authority to
45 interpret the proceedings to, and the testimony of, such deaf person.
46 The agency or such office of administrative hearings conducting the
47 adjudicatory proceeding shall determine a reasonable fee for all such
48 interpreting services which shall be a charge upon the agency. Where the
49 adjudicatory hearing is before a hearing officer assigned by the chief
50 administrative law judge of such office of administrative hearings, the
51 chief administrative law judge shall determine a reasonable fee for all
52 such interpreting services and may charge the agency for such services,
53 but in no instance shall such deaf persons be charged for such services.

54 § 5. Subdivision 1 of section 302 of the state administrative proce-
55 dure act, as amended by chapter 250 of the laws of 1985, is amended to
56 read as follows:

1 1. The record in an adjudicatory proceeding shall include: (a) all
2 notices, pleadings, motions, intermediate rulings; (b) evidence
3 presented; (c) a statement of matters officially noticed except matters
4 so obvious that a statement of them would serve no useful purpose; (d)
5 questions and offers of proof, objections thereto, and rulings thereon;
6 (e) proposed findings and exceptions, if any; (f) any findings of fact,
7 conclusions of law or other recommendations made by a presiding officer;
8 and (g) any decision, recommended decision, determination, opinion,
9 order or report rendered.

10 § 6. The opening paragraph of subdivision 2 of section 302 of the
11 state administrative procedure act is designated paragraph (a) and a new
12 paragraph (b) is added to read as follows:

13 (b) Where the adjudicatory hearing is before a hearing officer
14 assigned by the chief administrative law judge of the office of adminis-
15 trative hearings in the executive department, the chief administrative
16 law judge shall make a complete record of all adjudicatory proceedings.
17 For this purpose, unless otherwise provided by statute, the chief admin-
18 istrative law judge may use whatever means he or she deems appropriate,
19 including but not limited to, the use of stenographic transcriptions or
20 electronic recording devices. Upon request made by any party upon the
21 agency within a reasonable time, but prior to the time for commencement
22 of judicial review, of its giving notice of its decision, determination,
23 opinion or order, the agency shall secure a copy of the final record
24 together with any transcript of proceedings from the chief administra-
25 tive law judge within a reasonable time and shall furnish a copy of the
26 record and transcript or any part thereof to any party as he or she may
27 request. Except when any statute provides otherwise, the chief adminis-
28 trative law judge is authorized to charge the agency not more than its
29 cost for the preparation and furnishing of such record or transcript or
30 any part thereof, and the agency may pass any such charge on to the
31 person requesting the record.

32 § 7. Section 307 of the state administrative procedure act, subdivi-
33 sion 3 as added by chapter 504 of the laws of 1983 and paragraph (a) of
34 subdivision 3 as amended by chapter 645 of the laws of 1995, is amended
35 to read as follows:

36 § 307. Decisions, determinations and orders. 1. Where the administra-
37 tive hearing is before a hearing officer assigned by the chief adminis-
38 trative law judge of the office of administrative hearings in the execu-
39 tive department:

40 (a) After the hearing, the hearing officer shall issue a recommended
41 decision based on findings of fact and conclusions of law which shall be
42 submitted to the agency, to the parties to the proceeding and their
43 representatives within reasonable time limits provided for by statute,
44 or, if no time limit is so provided for, within thirty days after
45 submission of briefs subsequent to the completion of the hearing or, if
46 briefs are not submitted, then within thirty days after completion of
47 the hearing, provided however, that such thirty day time limit may be
48 extended in complex cases for good cause shown for an additional thirty
49 day period upon approval by the chief administrative law judge of an
50 application for each such extension filed therefor by the hearing offi-
51 cer. The agency may adopt the recommended decision in its entirety or in
52 part, or issue its own decision. Upon receipt of the recommended deci-
53 sion of the hearing officer, the agency shall adopt or issue its final
54 decision within fifteen business days. Should the agency fail to adopt
55 or issue its final decision within fifteen days, the recommended deci-
56 sion shall become final.

1 (b) Where the agency differs from a finding of fact or conclusion of
2 law made by the hearing officer in the recommended decision, the agency
3 shall make a written exception to such finding and state why it has made
4 such exception, which shall be made part of the record. The agency shall
5 transmit a copy of each final decision to the office of administrative
6 hearings in the executive department.

7 (c) If the agency determines that additional evidence is necessary,
8 the matter shall be referred to such office of administrative hearings.
9 If the same hearing officer is unavailable, a different hearing officer
10 shall be assigned by the chief administrative law judge of such office.
11 After taking the additional evidence, the hearing officer shall prepare
12 a recommended decision as provided in paragraph (a) of this subdivision
13 upon the additional evidence and the record of the prior hearing. A copy
14 of such recommended decision shall be submitted to the agency and to the
15 parties and their representatives as provided in such paragraph.

16 2. A final decision, determination or order adverse to a party in an
17 adjudicatory proceeding shall be in writing or stated in the record and
18 shall include findings of fact and conclusions of law or reasons for the
19 decision, determination or order. Findings of fact, if set forth in
20 statutory language, shall be accompanied by a concise and explicit
21 statement of the underlying facts supporting the findings. If [~~in~~
22 ~~accordance with agency rules,~~] a party submitted proposed findings of
23 fact, [~~the~~] a recommended or final decision, determination or order
24 shall include a ruling upon each proposed finding. A copy of the deci-
25 sion, determination or order shall be delivered or mailed forthwith to
26 each party and to his or her attorney of record.

27 [~~2~~] 3. Unless required for the disposition of ex parte matters
28 authorized by law, members or employees of an agency assigned to render
29 a decision or to make findings of fact and conclusions of law in an
30 adjudicatory proceeding shall not communicate, directly or indirectly,
31 in connection with any issue of fact, with any person or party, nor, in
32 connection with any issue of law, with any party or his or her represen-
33 tative, except upon notice and opportunity for all parties to partic-
34 ipate. Any such agency member (a) may communicate with other members of
35 the agency, and (b) may have the aid and advice of agency staff other
36 than staff which has been or is engaged in the investigative or prose-
37 cuting functions in connection with the case under consideration or
38 factually related case.

39 This subdivision does not apply (a) in determining applications for
40 initial licenses for public utilities or carriers; or (b) to proceedings
41 involving the validity or application of rates, facilities, or practices
42 of public utilities or carriers.

43 [~~3~~] 4. (a) Each agency shall maintain an index by name and subject of
44 all written recommended and final decisions, determinations and orders
45 rendered by the agency in adjudicatory proceedings. For purposes of
46 this subdivision, such index shall also include by name and subject all
47 written recommended or final decisions, determinations and orders
48 rendered by the agency pursuant to a statute providing any party an
49 opportunity to be heard, other than a rule making. Such index and the
50 text of any such written recommended or final decision, determination or
51 order shall be available for public inspection and copying. Each recom-
52 mended and final decision, determination and order shall be indexed
53 within sixty days after having been rendered.

54 (b) An agency may delete from any such index, recommended or final
55 decision, determination or order any information that, if disclosed,
56 would constitute an unwarranted invasion of personal privacy under the

1 provisions of subdivision two of section eighty-nine of the public offi-
2 cers law and may also delete at the request of any person all references
3 to trade secrets that, if disclosed, would cause substantial injury to
4 the competitive position of such person. Information which would reveal
5 confidential material protected by federal or state statute, shall be
6 deleted from any such index, recommended or final decision, determi-
7 nation or order.

8 § 8. Transfer of employees. 1. On or before January 1, 2020, the chief
9 administrative law judge of the office of administrative hearings in the
10 executive department, with the approval of the director of the budget,
11 shall file with the chairpersons of the senate finance and assembly ways
12 and means committees an implementation plan that indicates which posi-
13 tions are to be transferred (and from which agencies) in order to imple-
14 ment the organization of such office of administrative hearings and the
15 structure of the program required to be administered pursuant to article
16 26-A of the executive law.

17 2. Upon the filing of an approved plan as provided for in subdivision
18 1 of this section, the chief administrative law judge of such office is
19 authorized, subject to the approval of the director of the budget and in
20 accordance with the provisions of section 70 of the civil service law to
21 transfer to such office such employees as he or she may deem necessary.
22 An employee so transferred shall not within a period of two years from
23 the date of his or her transfer be subject to an involuntary assignment
24 which would require a relocation.

25 3. A transferred employee shall remain in the same collective bargain-
26 ing unit as was the case prior to his or her transfer; successor employ-
27 ees to the positions held by such transferred employees shall, consist-
28 ent with the provisions of article 14 of the civil service law, be
29 included in the same unit as their predecessors. Employees serving in
30 positions in newly created titles shall be assigned to the appropriate
31 bargaining unit. Nothing contained in article 26-A of the executive law
32 shall be construed to affect: (a) the rights of employees pursuant to a
33 collective bargaining agreement; (b) the representational relationships
34 among employee organizations or the bargaining relationships between the
35 state and an employee organization; or (c) existing law with respect to
36 an application to the public employment relations board seeking desig-
37 nation by such board that certain persons are managerial or confiden-
38 tial.

39 § 9. Transfer of records. The records and files of all hearings pend-
40 ing in and unheard by agencies as of September 1, 2020 shall be trans-
41 ferred to the office of administrative hearings in the executive depart-
42 ment.

43 § 10. Evaluations. 1. By July 1, 2021, a preliminary program evalu-
44 ation of the following items shall be undertaken by an entity independ-
45 ent of government, selected by the office of administrative hearings in
46 the executive department through a request for proposal process. The
47 evaluation shall assess:

48 (a) The effectiveness of such office to date in meeting legislative
49 objectives in program design and funding and its efficiency in perform-
50 ing its functions;

51 (b) Any changes needed in organization or processes, or in program
52 design, to provide adjudicatory services more effectively and efficient-
53 ly.

54 Such evaluation shall be completed no later than November 30, 2021,
55 and shall be submitted to the governor, the temporary president of the
56 senate, the speaker of the assembly, the minority leaders of the senate

A. 2044

11

1 and the assembly, and the chairpersons of the senate finance committee
2 and the assembly ways and means committee.

3 2. By July 1, 2023, program evaluations of the following issues shall
4 be undertaken:

5 (a) The extent to which such office has operated efficiently;

6 (b) Changes needed in office organization or processes, or in program
7 design, to provide adjudicatory services more efficiently;

8 (c) The effectiveness of the office in meeting legislative objectives
9 in program design and funding;

10 (d) Changes needed in the organization or processes, or in program
11 design to deliver the program more effectively; and

12 (e) An assessment of alternative mechanisms which could provide adju-
13 dicatory services, taking into account potential effectiveness and effi-
14 ciency.

15 3. Program evaluations shall be undertaken by: (a) the state comp-
16 troller; and (b) an entity independent of government, selected by such
17 office of administrative hearings through a request for proposal proc-
18 ess. Each review shall be completed no later than November 30, 2023, and
19 shall be submitted to the governor, the temporary president of the
20 senate, the speaker of the assembly, the minority leaders of the senate
21 and the assembly, and the chairpersons of the senate finance committee
22 and the assembly ways and means committee.

23 § 11. This act shall take effect immediately; provided however, that
24 section two of this act shall take effect September 1, 2020; and further
25 provided that this act shall be applicable only to those adjudicatory
26 proceedings pending or unheard on or after September 1, 2020.

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

BILL NUMBER: A2044

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). (Qualifications: 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 5.14.50.

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 hearings 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 5.14.50, 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 5.675 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.

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 (Lento') in 1987-88, 5.8538 (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. A.640 of 2015-16A2041 Lento! No Same as

EFFECTIVE DATE:

Immediately, with exceptions

STATE OF NEW YORK

5246

2019-2020 Regular Sessions

IN SENATE

April 18, 2019

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

AN ACT to amend the general municipal law, in relation to disabilities of certain retired firefighters caused by cancer

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

1 Section 1. Section 207-kk of the general municipal law, as amended by
2 chapter 531 of the laws of 2003, is amended to read as follows:

3 § 207-kk. Disabilities of firefighters in certain cities caused by
4 cancer. Notwithstanding any other provisions of this chapter to the
5 contrary, any condition of impairment of health caused by (i) any condi-
6 tion of cancer affecting the lymphatic, digestive, hematological,
7 urinary, neurological, breast, reproductive, or prostate systems or (ii)
8 melanoma resulting in total or partial disability or death to a paid
9 member of a fire department in a city with a population of one million
10 or more, or any retired member of such department who has been retired
11 for five or less years, who successfully passed a physical examination
12 on entry into the service of such department, which examination failed
13 to reveal any evidence of such condition, shall be presumptive evidence
14 that it was incurred in the performance and discharge of duty unless the
15 contrary be proved by competent evidence. The provisions of this section
16 shall remain in full force and effect [~~to and including the thirtieth~~
17 ~~day of June, two thousand five~~] pursuant to section four hundred eighty
18 of the retirement and social security law.

19 § 2. The board of trustees of the New York City fire department
20 pension fund shall take appropriate administrative action to implement
21 the intent of section one of this act.

22 § 3. This act shall take effect immediately.

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

LBD11238-01-9

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

BILL NUMBER: S5246

SPONSOR: GOUNARDES

TITLE OF BILL: An act to amend the general municipal law, in relation to disabilities of certain retired firefighters caused by cancer

PURPOSE OR GENERAL IDEA OF BILL:

To provide retirees of the New York City fire department diagnosed with certain cancers at a certain time a presumption that the cancer was incurred in the performance of duties.

SUMMARY OF PROVISIONS:

Section 1 establishes that for any paid member of a fire department in a city of one million or more who has been retired five years or less and contracts certain conditions of cancer that were not present at the time of entry, such diagnosis shall be presumptive evidence that the cancer was performed in the discharge of duty.

Section 2 provides that the New York City Fire Department Pension Fund shall implement the intent of this section in providing disability retirement benefits for members that qualify under this bill.

Section 3 establishes an immediate effective date.

EXISTING LAW: Currently members of the New York City fire department will be eligible for enhanced retirement benefits under this presumption if the disease is found during the term of service but not after they retire. This is in contrast to firefighters in the rest of the state who are provided this benefit both during the term of service and five years into retirement.

JUSTIFICATION:

This bill would provide parity for NYC firefighters by providing a five-year lookback window for retirees who are diagnosed with lymphatic, digestive, hematological, urinary, neurological, breast, reproductive, or prostate cancer or melanoma with the same presumption of evidence for disability benefits as is received by other firefighters around the state. This bill would apply proactively to firefighters who entered the department in 2002 and can retire at the earliest at 2022.

The firefighters advocating for this bill say this lookback window is necessary because these cancers can often take years to metastasize and a firefighter may not realize they are sick until after they leave public service. Furthermore, the increased presence of plastics and other chemical compounds in circulation today drastically increases the chances of a firefighter in the line of duty contracting one of these debilitating diseases. It is therefore only fair that we allow these

firefighters the same presumption of evidence in absence of proof to the contrary as is afforded to other firefighters around the state.

FISCAL IMPLICATIONS:

TBD

EFFECTIVE DATE:

This bill would take effect immediately