

2592--A

2013-2014 Regular Sessions

I N   S E N A T E

January 22, 2013

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Introduced by Sen. LATIMER -- 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

AN ACT to amend the retirement and social security law and the education law, in relation to imposing a cap on the amount of contributions paid by employers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 17 of the retirement and social security law, as  
2     amended by chapter 33 of the laws of 1986, subdivision a as amended by  
3     chapter 62 of the laws of 1989, subdivision c as amended by chapter 260  
4     of the laws of 2004, is amended to read as follows:  
5     S 17. Annual appropriation by participating employers. a. On or before  
6     the fifteenth day of November, nineteen hundred eighty-nine and of each  
7     succeeding calendar year, the comptroller shall determine the amount  
8     which each participating employer is required to pay to the retirement  
9     system to discharge its obligations thereto for the fiscal year of the  
10    retirement system which ends on March thirty-first of nineteen hundred  
11    ninety and of each succeeding calendar year on account of its employees  
12    who are members of this system. The comptroller shall submit to the  
13    fiscal officer of each such employer a statement of the amount so paya-  
14    ble.  
15    This amount shall consist of the amount deemed necessary to provide  
16    for payment in full of (i) all estimated obligations of each participat-  
17    ing employer for the current fiscal year of the retirement systems and  
18    (ii) any additional obligation, plus interest on such amount, for fiscal  
19    years preceding the current fiscal year. SUCH AMOUNT SHALL, HOWEVER, BE  
20    SUBJECT TO THE LIMITATION SET FORTH IN SUBDIVISION F OF THIS SECTION. If  
21    as a result of the amount determined to be paid for any fiscal year, a  
22    participating employer overpaid its actual obligation to the retirement

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

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1 system for that year, the amount to be determined by the comptroller for  
2 the next succeeding November fifteenth shall reflect the amount of the  
3 overpayment, plus interest as defined in section sixteen of this article  
4 on such amount, as a reduction in the amount otherwise required to be  
5 paid by such participating employer.

6 b. Each participating employer annually shall appropriate a sum suffi-  
7 cient to pay such amount, SUBJECT TO THE LIMITATION SET FORTH IN SUBDI-  
8 VISION F OF THIS SECTION. In the event the comptroller's statement is  
9 not received before annual appropriations are made by such employer, a  
10 sum estimated by the comptroller to be sufficient for such purpose shall  
11 be included with such annual appropriations.

12 c. Payment of the amount specified in the comptroller's statement,  
13 SUBJECT TO THE LIMITATION SET FORTH IN SUBDIVISION F OF THIS SECTION,  
14 shall be made by a participating employer within seventy-eight days  
15 after the receipt of such statement; provided, however, that in no case  
16 shall any participating employer be required to make this payment before  
17 February first of the calendar year next succeeding the calendar year in  
18 which such statement is received. The comptroller is authorized to  
19 provide for and accept pre-payment.

20 d. If payment of the [full amount] EMPLOYER'S PORTION of such obli-  
21 gations is not made by the date required by subdivision c of this  
22 section, interest at a rate determined in accordance with the provisions  
23 of section sixteen of this article shall commence to run against the  
24 unpaid balance thereof on the first day after the date required by said  
25 subdivision c.

26 e. The comptroller shall have full power and authority to bring suit  
27 in the supreme court against any participating employer to recover any  
28 sum FOR WHICH THE EMPLOYER IS RESPONSIBLE, payment of which is not made  
29 as herein required. While any such sum OWED BY THE EMPLOYER shall remain  
30 due and unpaid [he] THE COMPTROLLER may refuse to audit any claim for  
31 funds due to such employer from the state.

32 F. (1) OF THE AMOUNT DETERMINED BY THE COMPTROLLER PURSUANT TO SUBDI-  
33 VISION A OF THIS SECTION, AN EMPLOYER SHALL NOT BE REQUIRED TO PAY MORE  
34 THAN THE PRIOR YEAR'S ACTUARIAL REQUIRED CONTRIBUTION PLUS THE LESSER  
35 OF: TWO PERCENT OR THE INFLATION FACTOR.

36 (2) ANY DIFFERENCE BETWEEN THE AMOUNT COMPUTED BY THE COMPTROLLER  
37 PURSUANT TO SUBDIVISION A OF THIS SECTION AND THE MAXIMUM AMOUNT  
38 REQUIRED TO BE PAID BY THE EMPLOYER PURSUANT TO PARAGRAPH ONE OF THIS  
39 SUBDIVISION SHALL BE APPROPRIATED TO THE RETIREMENT SYSTEM OUT OF MONEYS  
40 IN THE GENERAL FUND OF THE STATE.

41 (3) THE AFOREMENTIONED APPROPRIATED MONEYS SHALL BE PAID BY THE STATE  
42 ON OR BEFORE THE FIRST OF FEBRUARY. THE STATE SHALL NOT HAVE THE OPTION  
43 TO AMORTIZE THE PAYMENT REQUIRED IN THIS SUBDIVISION AS PROVIDED IN  
44 SECTION NINETEEN-A OF THIS ARTICLE.

45 (4) FOR THE PURPOSES OF THIS SUBDIVISION, "INFLATION FACTOR" MEANS THE  
46 QUOTIENT OF: (I) THE AVERAGE OF THE NATIONAL CONSUMER PRICE INDEXES  
47 DETERMINED BY THE UNITED STATES DEPARTMENT OF LABOR FOR THE TWELVE-MONTH  
48 PERIOD ENDING SIX MONTHS PRIOR TO THE START OF THE COMING FISCAL YEAR  
49 MINUS THE AVERAGE OF THE NATIONAL CONSUMER PRICE INDEXES DETERMINED BY  
50 THE UNITED STATES DEPARTMENT OF LABOR FOR THE TWELVE-MONTH PERIOD ENDING  
51 SIX MONTHS PRIOR TO THE START OF THE PRIOR FISCAL YEAR, DIVIDED BY: (II)  
52 THE AVERAGE OF THE NATIONAL CONSUMER PRICE INDEXES DETERMINED BY THE  
53 UNITED STATES DEPARTMENT OF LABOR FOR THE TWELVE-MONTH PERIOD ENDING SIX  
54 MONTHS PRIOR TO THE START OF THE PRIOR FISCAL YEAR, WITH THE RESULT  
55 EXPRESSED AS A DECIMAL TO FOUR PLACES.

(5) FOR PURPOSES OF THIS SUBDIVISION, "ACTUARIAL REQUIRED CONTRIBUTION" MEANS THE AMOUNT COMPUTED BY THE COMPTROLLER PRIOR TO THE DETERMINATION OF THE AMOUNT ELIGIBLE FOR AMORTIZATION, IF ANY, AS SET FORTH IN SECTION NINETEEN-A OF THIS ARTICLE.

(6) FOR PURPOSES OF THIS SUBDIVISION, THE BASE YEAR FOR THE INITIAL CALCULATION OF LIMITED EMPLOYER CONTRIBUTIONS PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION SHALL BE THE AMOUNT PAID BY THE EMPLOYER IN THE FISCAL YEAR ENDING THE THIRTY-FIRST OF MARCH, TWO THOUSAND THIRTEEN. THE EMPLOYER PARTICIPATION CAP IMPOSED BY THIS SUBDIVISION SHALL COMMENCE WITH EMPLOYER CONTRIBUTIONS MADE IN THE FISCAL YEAR ENDING THE THIRTY-FIRST OF MARCH, TWO THOUSAND FOURTEEN.

(7) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY IN CITIES WITH A POPULATION OF ONE MILLION OR MORE.

S 2. Section 317 of the retirement and social security law, as amended by chapter 33 of the laws of 1986, subdivision a as amended by chapter 62 of the laws of 1989, and subdivision c as amended by chapter 260 of the laws of 2004, is amended to read as follows:

S 317. Annual appropriation by participating employers. a. On or before the fifteenth day of November, nineteen hundred eighty-nine and of each succeeding year, the comptroller shall determine the amount which each participating employer is required to pay to the police and fire retirement system to discharge its obligations thereto for the fiscal year of the retirement system which ends on March thirty-first of nineteen hundred ninety and of each succeeding calendar year on account of its employees who are members of this system. The comptroller shall submit to the fiscal officer of each of such employer a statement of the amount so payable.

This amount shall consist of the amount deemed necessary to provide for payment in full of (i) all estimated obligations of each participating employer for the current fiscal year of the retirement systems and (ii) any additional obligation, plus interest on such amount, for fiscal years preceding the current fiscal year. SUCH AMOUNT SHALL, HOWEVER, BE SUBJECT TO THE LIMITATION SET FORTH IN SUBDIVISION F OF THIS SECTION. If as a result of the amount determined to be paid for any fiscal year, a participating employer overpaid its actual obligation to the retirement system for that year, the amount to be determined by the comptroller for the next succeeding November fifteenth shall reflect the amount of the overpayment, plus interest as defined in section three hundred sixteen of this article on such amount, as a reduction in the amount otherwise required to be paid by such participating employer.

b. Each participating employer annually shall appropriate a sum sufficient to pay such amount, SUBJECT TO THE LIMITATION SET FORTH IN SUBDIVISION F OF THIS SECTION. In the event the comptroller's statement is not received before annual appropriations are made by such employer, a sum estimated by the comptroller to be sufficient for such purpose shall be included with such annual appropriations.

c. Payment of the amount specified in the comptroller's statement, SUBJECT TO THE LIMITATION SET FORTH IN SUBDIVISION F OF THIS SECTION, shall be made by a participating employer within seventy-eight days after the receipt of such statement; provided, however, that in no case shall any participating employer be required to make this payment before February first of the calendar year next succeeding the calendar year in which such statement is received. The comptroller is authorized to provide for and accept pre-payment.

d. If payment of the [full amount] EMPLOYER'S PORTION of such obligations is not made by the date required by subdivision c of this

1 section, interest at a rate determined in accordance with the provisions  
2 of section three hundred sixteen of this article shall commence to run  
3 against the unpaid balance thereof on the first day after the date  
4 required by said subdivision c.

5 e. The comptroller shall have full power and authority to bring suit  
6 in the supreme court against any participating employer to recover any  
7 sum FOR WHICH THE EMPLOYER IS RESPONSIBLE, payment of which is not made  
8 as herein required. While any such sum OWED BY THE EMPLOYER shall remain  
9 due and unpaid [he] THE COMPTROLLER may refuse to audit any claim for  
10 funds due to such employer from the state.

11 F. (1) OF THE AMOUNT DETERMINED BY THE COMPTROLLER PURSUANT TO SUBDI-  
12 VISION A OF THIS SECTION, AN EMPLOYER SHALL NOT BE REQUIRED TO PAY MORE  
13 THAN THE PRIOR YEAR'S ACTUARIAL REQUIRED CONTRIBUTION PLUS THE LESSER  
14 OF: TWO PERCENT OR THE INFLATION FACTOR.

15 (2) ANY DIFFERENCE BETWEEN THE AMOUNT COMPUTED BY THE COMPTROLLER  
16 PURSUANT TO SUBDIVISION A OF THIS SECTION AND THE MAXIMUM AMOUNT  
17 REQUIRED TO BE PAID BY THE EMPLOYER PURSUANT TO PARAGRAPH ONE OF THIS  
18 SUBDIVISION SHALL BE APPROPRIATED TO THE RETIREMENT SYSTEM OUT OF MONEYS  
19 IN THE GENERAL FUND OF THE STATE.

20 (3) THE AFOREMENTIONED APPROPRIATED MONEYS SHALL BE PAID BY THE STATE  
21 ON OR BEFORE THE FIRST OF FEBRUARY. THE STATE SHALL NOT HAVE THE OPTION  
22 TO AMORTIZE THE PAYMENT REQUIRED IN THIS SUBDIVISION AS PROVIDED IN  
23 SECTION THREE HUNDRED NINETEEN-A OF THIS TITLE.

24 (4) FOR THE PURPOSES OF THIS SUBDIVISION, "INFLATION FACTOR" MEANS THE  
25 QUOTIENT OF: (I) THE AVERAGE OF THE NATIONAL CONSUMER PRICE INDEXES  
26 DETERMINED BY THE UNITED STATES DEPARTMENT OF LABOR FOR THE TWELVE-MONTH  
27 PERIOD ENDING SIX MONTHS PRIOR TO THE START OF THE COMING FISCAL YEAR  
28 MINUS THE AVERAGE OF THE NATIONAL CONSUMER PRICE INDEXES DETERMINED BY  
29 THE UNITED STATES DEPARTMENT OF LABOR FOR THE TWELVE-MONTH PERIOD ENDING  
30 SIX MONTHS PRIOR TO THE START OF THE PRIOR FISCAL YEAR, DIVIDED BY: (II)  
31 THE AVERAGE OF THE NATIONAL CONSUMER PRICE INDEXES DETERMINED BY THE  
32 UNITED STATES DEPARTMENT OF LABOR FOR THE TWELVE-MONTH PERIOD ENDING SIX  
33 MONTHS PRIOR TO THE START OF THE PRIOR FISCAL YEAR, WITH THE RESULT  
34 EXPRESSED AS A DECIMAL TO FOUR PLACES.

35 (5) FOR THE PURPOSES OF THIS SUBDIVISION, "ACTUARIAL REQUIRED CONTRIB-  
36 UTION" MEANS THE AMOUNT COMPUTED BY THE COMPTROLLER PRIOR TO THE DETER-  
37 MINATION OF THE AMOUNT ELIGIBLE FOR AMORTIZATION, IF ANY, AS SET FORTH  
38 IN SECTION THREE HUNDRED NINETEEN-A OF THIS TITLE.

39 (6) FOR PURPOSES OF THIS SUBDIVISION, THE BASE YEAR FOR THE INITIAL  
40 CALCULATION OF LIMITED EMPLOYER CONTRIBUTIONS PURSUANT TO PARAGRAPH ONE  
41 OF THIS SUBDIVISION SHALL BE THE AMOUNT PAID BY THE EMPLOYER IN THE  
42 FISCAL YEAR ENDING THE THIRTY-FIRST OF MARCH, TWO THOUSAND THIRTEEN. THE  
43 EMPLOYER PARTICIPATION CAP IMPOSED BY THIS SUBDIVISION SHALL COMMENCE  
44 WITH EMPLOYER CONTRIBUTIONS MADE IN THE FISCAL YEAR ENDING THE  
45 THIRTY-FIRST OF MARCH, TWO THOUSAND FOURTEEN.

46 (7) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY IN CITIES WITH  
47 A POPULATION OF ONE MILLION OR MORE.

48 S 3. Subdivision 2 of section 521 of the education law, paragraph a as  
49 amended by chapter 553 of the laws of 1997, paragraph b as amended by  
50 chapter 871 of the laws of 1963, paragraphs f and g as added by chapter  
51 538 of the laws of 1984, paragraph h as amended by chapter 830 of the  
52 laws of 1992, paragraphs i, j, k, l, and m as added by chapter 175 of  
53 the laws of 1990, and paragraph n as added by chapter 482 of the laws of  
54 1996, is amended and a new subdivision 4 is added to read as follows:

55 2. The collection of employers' contributions shall be made as  
56 follows:

1 a. Upon the basis of each actuarial determination and appraisal  
2 provided herein, the retirement board shall annually prepare and certify  
3 to the commissioner [of education] a statement of the total amount  
4 necessary to be paid by all employers for the ensuing fiscal year to the  
5 pension accumulation and expense funds as provided under subdivision two  
6 of section five hundred seventeen and under section five hundred nine-  
7 teen of this article. Upon the basis of the rate of contribution for  
8 supplemental retirement allowances, determined in accordance with  
9 section five hundred thirty-two of this article, the retirement board  
10 shall certify to the commissioner [of education] a statement of the  
11 total amount necessary to be paid by all employers for the ensuing  
12 fiscal year to the supplemental retirement allowance fund. Said certif-  
13 ication shall include interest on amounts necessary to repay advances  
14 made to the supplemental retirement allowance fund pursuant to subdivi-  
15 sion f of section five hundred thirty-two of this article computed from  
16 the date of such advances at the rate determined in accordance with  
17 paragraph f of this subdivision.

18 b. The commissioner [of education] shall include in the certificate  
19 which he files with the state comptroller showing the amount of state  
20 funds apportioned to the school districts within each county for the  
21 support of common schools, a statement showing the amount to be contrib-  
22 uted by each employer in each of such counties as required under this  
23 article.

24 The amount to be contributed by each employer except those who operate  
25 local district pension systems, shall be such percentage of the total  
26 compensation or salaries of all teachers in his employ who are members  
27 of the retirement system as the aggregate amount of the normal and defi-  
28 ciency contributions for the year shall bear to the total compensation  
29 or salaries paid by all employers, except those who operate local  
30 district pension systems, to all teachers who are members of the retire-  
31 ment system; PROVIDED, HOWEVER, THAT THE AMOUNT REMITTED BY SUCH EMPLOY-  
32 ER SHALL BE SUBJECT TO THE CONTRIBUTION LIMITS ESTABLISHED IN SUBDIVI-  
33 SION FOUR OF THIS SECTION.

34 c. The comptroller shall issue his warrant to the custodian of such  
35 fund directing such custodian to credit to the pension accumulation fund  
36 and expense fund respectively, from the appropriation for the support of  
37 common schools the amounts required to be made as contributions to such  
38 funds by the employers as shown by the certificate of the commissioner  
39 [of education] filed with him as directed in paragraph b of this subdivi-  
40 sion, BUT SUBJECT TO THE CONTRIBUTION LIMIT ESTABLISHED PURSUANT TO  
41 SUBDIVISION FOUR OF THIS SECTION.

42 d. The comptroller, in issuing his warrant to the custodian for  
43 payment to each county treasurer of that portion of the moneys appor-  
44 tioned for the support of common schools, shall deduct therefrom an  
45 amount equal to the amount required to be contributed by employers of  
46 such county, as shown by the certificate of the commissioner [of educa-  
47 tion] of this state filed with the comptroller as required by paragraph  
48 b of this subdivision, BUT SUBJECT TO THE CONTRIBUTION LIMIT ESTABLISHED  
49 PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

50 e. In order to meet the financial requirements of this article,  
51 employers who obtain funds directly by taxation are hereby authorized  
52 and directed to levy annually such additional taxes as are required to  
53 provide the [funds deducted from the amounts apportioned to such employ-  
54 ers from the appropriation of the state for the support of the common  
55 schools] EMPLOYER'S CONTRIBUTION AMOUNT AS DETERMINED PURSUANT TO SUBDI-  
56 VISION FOUR OF THIS SECTION.

1 f. Employers whose payments from the moneys apportioned from the state  
2 for the support of common schools are insufficient to pay the EMPLOYER'S  
3 PORTION OF THE amount due and owing the system, or who do not receive  
4 such payments, shall pay the system each year the amount of contrib-  
5 utions due and owing from the employer, SUBJECT TO THE CONTRIBUTION  
6 LIMIT ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION, pursuant  
7 to this article within thirty days from the date a bill is mailed by the  
8 system. Interest, at a rate equal to the average yield payable on  
9 fifty-two week United States treasury bills on June thirtieth immedi-  
10 ly preceding the day the bill is mailed by the system, shall accrue on  
11 the EMPLOYER'S PORTION OF THE outstanding amount due and owing commenc-  
12 ing with the thirty-first day after the bill is mailed.

13 g. Whenever the system determines the contributions made by an employ-  
14 er are less than the percentage of total compensation or salaries of  
15 members of the system in the employ of such employer, as required by  
16 this article, such employer shall pay the system such deficiency within  
17 thirty days from the date a bill is mailed by the system, PROVIDED SUCH  
18 DEFICIENCY AMOUNT DOES NOT CAUSE THE EMPLOYER TO PAY MORE THAN THE MAXI-  
19 MUM REQUIRED CONTRIBUTION AMOUNT CALCULATED PURSUANT TO SUBDIVISION FOUR  
20 OF THIS SECTION. Interest, at a rate equal to the average yield payable  
21 on fifty-two week United States treasury bills on June thirtieth imme-  
22 diately preceding the day before the bill is mailed by the system, shall  
23 accrue on the EMPLOYER'S PORTION OF THE outstanding amount due and owing  
24 commencing with the thirty-first day after the bill is mailed.

25 h. Notwithstanding any provision of law to the contrary, commencing  
26 with the payments made in the fiscal year beginning July first, nineteen  
27 hundred ninety, and each fiscal year thereafter, the employer contrib-  
28 utions due and payable as determined pursuant to the provisions of this  
29 article and the employee contributions due and payable pursuant to this  
30 article and articles fourteen and fifteen of the retirement and social  
31 security law, on account of compensation paid in the fiscal year imme-  
32 diately preceding, and those employer contributions due and payable in  
33 each fiscal year pursuant to chapter six hundred sixty-five of the laws  
34 of nineteen hundred eighty-four shall be made to the retirement system  
35 and collected in the manner set forth in this section each fiscal year  
36 in three payments, each equal to thirty-three and one-third percent of  
37 the total amount due for such fiscal year. Such payments shall be paid  
38 on September fifteenth, October fifteenth, and November fifteenth of  
39 each fiscal year. If a participating employer underpaid its obligation  
40 to the retirement system, such underpayment as determined by the retire-  
41 ment system shall be deducted from the amounts apportioned to such  
42 employer from the appropriation of the state for the support of the  
43 common schools due and payable the next April fifteenth. Employers whose  
44 payments from such appropriation are insufficient to pay the amount due  
45 and owing the system, or who do not receive such payments, shall be  
46 billed by the system for such underpayment and shall pay the system the  
47 amount due within thirty days from the date a bill is mailed by the  
48 system. The amount of any employer overpayment of its obligation to the  
49 retirement system, as determined by such system shall be a credit to the  
50 employer and shall reduce by an equal amount thereof the initial payment  
51 to be made by such employer to such system on the next succeeding  
52 September fifteenth.

53 i. Notwithstanding any provision of law to the contrary, the employer  
54 and employee contributions due and payable in the nineteen hundred  
55 eighty-nine--ninety fiscal year on account of compensation paid in the  
56 nineteen hundred eighty-eight--eighty-nine fiscal year which were paid

1 prior to April first, nineteen hundred ninety shall be deemed (to the  
2 extent such amount is sufficient) to have consisted of all the employee  
3 contributions due and payable pursuant to this article and articles  
4 fourteen and fifteen of the retirement and social security law in the  
5 nineteen hundred eighty-nine--ninety fiscal year and those employer  
6 contributions due and payable in such fiscal year pursuant to chapter  
7 six hundred sixty-five of the laws of nineteen hundred eighty-four; and  
8 the remaining employer contributions so paid shall be applied evenly to  
9 the payments due and payable on September fifteenth, nineteen hundred  
10 ninety, October fifteenth, nineteen hundred ninety and November  
11 fifteenth, nineteen hundred ninety and the employer contributions  
12 amounting to eight hundred seventy-three million seven hundred eleven  
13 thousand six hundred fifteen dollars (\$873,711,615), due and payable  
14 pursuant to the provisions of this section in the nineteen hundred  
15 eighty-nine--ninety fiscal year on account of compensation paid in nine-  
16 teen hundred eighty-eight--eighty-nine fiscal year, except those employ-  
17 er contributions due and payable in such fiscal year pursuant to chapter  
18 six hundred sixty-five of the laws of nineteen hundred eighty-four,  
19 shall be deferred and payment shall be made to the retirement system in  
20 fifteen equal annual payments of ninety-eight million five hundred thir-  
21 ty-seven thousand five hundred seven dollars (\$98,537,507) on October  
22 fifteenth, commencing on October fifteenth, nineteen hundred ninety.  
23 Such payments are calculated at an interest rate of eight percent per  
24 annum. Provided, however, the retirement board is directed to permit the  
25 pre-payment of the amounts outstanding under this paragraph. The retire-  
26 ment board shall: (1) On or before September first, nineteen hundred  
27 ninety, in addition to the amount due for the current fiscal year bill-  
28 ing and for the payment of the amortized annual installment, furnish the  
29 total amount due and be authorized to accept pre-payment in full of said  
30 amount by October fifteenth, nineteen hundred ninety. (2) On or before  
31 each September first thereafter, in addition to the amount due for the  
32 current fiscal year billing and for the payment of the annual amortized  
33 installment, furnish the total amount still outstanding and be author-  
34 ized to accept the pre-payment of any portion of the balance remaining  
35 to be paid by October fifteenth of that year.

36 j. Prior to June first, nineteen hundred ninety, the valuation rate of  
37 interest adopted by the retirement board on April twenty-seventh, nine-  
38 teen hundred eighty-nine, may be retroactively revised to eight percent  
39 by the retirement board, as recommended by the actuary, as if adopted at  
40 the April twenty-seventh, nineteen hundred eighty-nine board meeting,  
41 and the employer contribution rate, adopted by the retirement board at  
42 the April twenty-seventh, nineteen hundred eighty-nine board meeting,  
43 revised by the retirement board at the July twenty-seventh, nineteen  
44 hundred eighty-nine board meeting, may be retroactively amended by the  
45 retirement board as if adopted at the July twenty-seventh, nineteen  
46 hundred eighty-nine board meeting and applied to contributions paid in  
47 the nineteen hundred ninety--ninety-one fiscal year. Notwithstanding any  
48 provision of law to the contrary, the actions of the retirement board  
49 pursuant to the provisions of this paragraph shall be deemed reasonable,  
50 prudent and proper. No member of the retirement board, officer, or  
51 employee of the New York state teachers' retirement system shall incur  
52 or suffer any liability whatsoever by reason of any actions pursuant to  
53 this paragraph, and such system shall save harmless and indemnify all  
54 members of the retirement board, its officers and employees from finan-  
55 cial loss arising out of any claim, demand, suit, action or judgment as  
56 a result of the actions taken pursuant to this paragraph provided that

1 such person shall, within five days after the date on which he is served  
2 with any summons, complaint, process, notice, demand, claim or pleading,  
3 deliver the original or a true copy thereof to the legal advisor of such  
4 system. Upon such delivery, the legal advisor of such system may assume  
5 control of the representation of such person in connection with such  
6 claim, demand, suit, action or proceeding. Such person shall cooperate  
7 fully with the legal advisor of the system or any other person desig-  
8 nated to assume such defense in respect of such representation or  
9 defense.

10 k. The retirement board is authorized to adopt procedures and/or to  
11 promulgate rules and regulations as it deems necessary to adjust and  
12 reconcile any payments from employers to actual amounts due whether such  
13 payments were received prior or subsequent to the effective date of  
14 [the] chapter ONE HUNDRED SEVENTY-FIVE of the laws of nineteen hundred  
15 ninety [which added this paragraph to this section].

16 l. The provisions of paragraphs h and i of this subdivision shall  
17 constitute a contract and the rights of the New York state teachers'  
18 retirement system thereunder shall not be impaired in any way whatsoev-  
19 er.

20 m. In addition to any other payment or collection procedure provided  
21 by this article, if the amounts credited from the appropriation for the  
22 support of common schools are insufficient to fully cover the amounts to  
23 be contributed by the employers, SUBJECT TO THE EMPLOYER'S CONTRIBUTION  
24 LIMIT ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION, the  
25 retirement board is authorized to certify the unpaid amount OF THE  
26 EMPLOYER'S CONTRIBUTION to the state comptroller, and the state comp-  
27 troller shall, to the extent not otherwise prohibited by law, withhold  
28 such amount from any succeeding payment from any other form of state aid  
29 provided to the employer. If any employer fails to pay the amounts  
30 required to be contributed pursuant to this section, the retirement  
31 system shall be entitled to reasonable attorney fees and other expenses  
32 incurred to collect such amounts due and owing. Fees shall be determined  
33 pursuant to prevailing market rates for the kind and quality of the  
34 services furnished.

35 n. Notwithstanding any other provision of law to the contrary, the  
36 board of education or trustees of a school district which is a partic-  
37 ipating employer, which has elected to make payments of the employer  
38 contributions due and payable to the retirement system pursuant to para-  
39 graph i of this subdivision in amortized annual installments, and which  
40 has determined to make pre-payment of the total amount of such contrib-  
41 utions outstanding in accordance with said paragraph i, may adopt a bond  
42 resolution authorizing the refinancing of such debt by the issuance of  
43 bonds in the amount of such pre-payment without conducting a vote on a  
44 tax to be collected in installments, provided that such refinancing will  
45 result in savings to the school district, as certified by the state  
46 comptroller, and provided further that the issuance of such obligations  
47 otherwise complies with the requirements of the local finance law and  
48 this chapter.

49 4. A. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, AN EMPLOYER  
50 SHALL NOT BE REQUIRED TO CONTRIBUTE MORE THAN THE PRIOR PLAN YEAR'S  
51 EMPLOYER CONTRIBUTION PLUS THE LESSER OF: TWO PERCENT OR THE INFLATION  
52 FACTOR.

53 B. ANY DIFFERENCE BETWEEN THE AMOUNT CONTAINED IN THE WARRANT ISSUED  
54 BY THE COMPTROLLER PURSUANT TO SUBDIVISION TWO OF THIS SECTION AND THE  
55 MAXIMUM AMOUNT REQUIRED TO BE PAID BY THE EMPLOYER PURSUANT TO THIS



1 SUBDIVISION SHALL BE APPROPRIATED TO THE RETIREMENT SYSTEM OUT OF MONEYS  
2 IN THE GENERAL FUND OF THE STATE.

3 C. THE MONEYS APPROPRIATED BY THE STATE FROM THE GENERAL FUND IN  
4 ACCORDANCE WITH THIS SUBDIVISION SHALL BE PAID BY THE STATE TO THE  
5 RETIREMENT SYSTEM ON OR BEFORE THE FIFTEENTH OF NOVEMBER IN THE FISCAL  
6 YEAR IN WHICH THE MONEYS ARE DUE AND PAYABLE BY THE PARTICIPATING  
7 EMPLOYER.

8 D. FOR THE PURPOSES OF THIS SUBDIVISION, "INFLATION FACTOR" MEANS THE  
9 QUOTIENT OF: (I) THE AVERAGE OF THE NATIONAL CONSUMER PRICE INDEXES  
10 DETERMINED BY THE UNITED STATES DEPARTMENT OF LABOR FOR THE TWELVE-MONTH  
11 PERIOD ENDING SIX MONTHS PRIOR TO THE START OF THE CURRENT FISCAL YEAR  
12 MINUS THE AVERAGE OF THE NATIONAL CONSUMER PRICE INDEXES DETERMINED BY  
13 THE UNITED STATES DEPARTMENT OF LABOR FOR THE TWELVE-MONTH PERIOD ENDING  
14 SIX MONTHS PRIOR TO THE START OF THE PRIOR FISCAL YEAR, DIVIDED BY: (II)  
15 THE AVERAGE OF THE NATIONAL CONSUMER PRICE INDEXES DETERMINED BY THE  
16 UNITED STATES DEPARTMENT OF LABOR FOR THE TWELVE-MONTH PERIOD ENDING SIX  
17 MONTHS PRIOR TO THE START OF THE PRIOR FISCAL YEAR, WITH THE RESULT  
18 EXPRESSED AS A DECIMAL TO FOUR PLACES.

19 E. FOR PURPOSES OF THIS SUBDIVISION, "ACTUARIAL REQUIRED CONTRIBUTION"  
20 MEANS THE AMOUNT COMPUTED BY THE ACTUARY, AS SET FORTH IN SECTION FIVE  
21 HUNDRED SEVENTEEN OF THE EDUCATION LAW.

22 F. FOR PURPOSES OF THIS SUBDIVISION, THE BASE YEAR FOR THE INITIAL  
23 CALCULATION OF LIMITED EMPLOYER CONTRIBUTIONS PURSUANT TO PARAGRAPH A OF  
24 THIS SUBDIVISION SHALL BE THE AMOUNT PAID BY THE EMPLOYER IN THE PLAN  
25 YEAR ENDING THE THIRTIETH OF JUNE, TWO THOUSAND THIRTEEN. THE EMPLOYER  
26 CONTRIBUTION CAP IMPOSED BY THIS SUBDIVISION SHALL COMMENCE WITH EMPLOY-  
27 ER CONTRIBUTIONS DUE IN THE PLAN YEAR ENDING THE THIRTIETH OF JUNE, TWO  
28 THOUSAND FOURTEEN.

29 S 4. This act shall take effect immediately and shall apply to employ-  
30 er contributions made commencing in the employer's fiscal year ending  
31 2014.

FISCAL NOTE.-- This bill would limit the year to year increase in the dollar amount of the annual employer contributions to be made by participating employers of the New York State and Local Employees' Retirement System (NYSLERS), the New York State and Local Police and Fire Retirement System (NYSLPFRS) and the New York State Teachers' Retirement System. Such dollar increase in the actuarially determined contributions will be limited to the lesser of 2% and the increase in the Consumer Price Index (CPI), as determined by the United States Department of Labor. The difference between the actuarially determined contributions and the limited contributions would be paid by the State of New York on behalf of the participating employers. This change shall first apply to contributions made during the fiscal year ending in the year 2014.

If this bill is enacted, insofar as it would affect the NYSLERS and the NYSLPFRS, we estimate that the additional contribution payable by the State of New York on behalf of the participating employers would be approximately \$400 million for the fiscal year ending March 31, 2014. The costs for future years would depend on each year's actuarially determined contributions, increases in employer payroll and CPI.

There would be no cost to the Systems.

Summary of relevant resources:

Data: March 31, 2012 Actuarial Year End File with distributions of membership and other statistics displayed in the 2012 Report of the Actuary and 2012 Comprehensive Annual Financial Report.

Assumptions and Methods: 2010, 2011 and 2012 Annual Report to the Comptroller on Actuarial Assumptions, Codes Rules and Regulations of the State of New York: Audit and Control.

Market Assets and GASB Disclosures: March 31, 2012 New York State and Local Retirement System Financial Statements and Supplementary Information.

Valuations of Benefit Liabilities and Actuarial Assets: summarized in the 2012 Actuarial Valuations report.

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

This estimate, dated March 25, 2013 and intended for use only during the 2013 Legislative Session, is Fiscal Note No. 2013-73, prepared by the Actuary for the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

FISCAL NOTE.-- This bill would amend Section 521 of the Education Law to limit the amount of year over year increase in employer contributions required to be made each year to the New York State Teachers' Retirement System (NYSTRS) by participating employers. Participating employers of NYSTRS would not be required to contribute more than the prior year's contribution increased by the lesser of two percent, or an inflation factor based upon the increase in the Consumer Price Index (CPI). Any difference in the actuarially required contribution and this limited contribution would be paid by the State of New York out of the General Fund of the state. The employer contribution cap imposed under this bill would commence with employer contributions made in the fiscal year ending June 30, 2014.

To the extent that the actuarially required employer contribution continues to be paid in full to the Retirement System every year, there will be no cost to the employers of members of NYSTRS if this bill is enacted. This bill would make the State of New York into a contributing partner to NYSTRS.

The actuarially required contribution is based upon a number of actuarial assumptions, member demographic data, and investment returns. The rate of increase in this contribution can be expected to bear very little relationship to the rate of inflation. Therefore the required contribution due from the state could grow substantially in any given year.

The first year the employer contribution cap would be applied would be with respect to contributions due in the plan year ending June 30, 2014, which for NYSTRS corresponds to contributions collected in the fall of 2013. We estimate the State of New York would be required to make a payment of approximately \$75 million at that time for its share of the contribution. In the fall of 2014 we estimate the state would be required to make a payment of approximately \$675 million for its share of the contribution. The state's cost in future years would depend on the actuarially required contribution and the rate of inflation in those years.

The source of this estimate is Fiscal Note 2013-19 dated April 23, 2013 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2013 Legislative Session. I, Richard A. Young, am the Actuary for the New York State Teachers' Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.