

S T A T E O F N E W Y O R K

5315--A

2009-2010 Regular Sessions

I N A S S E M B L Y

February 12, 2009

Introduced by M. of A. ABBATE -- (at request of the New York State Teachers' Retirement System) -- read once and referred to the Committee on Governmental Employees -- recommitted to the Committee on Governmental Employees in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to increasing to ten percent the amount of assets of the New York state teachers' retirement system which may be invested in real property

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

1 Section 1. Paragraph (e) of subdivision 6 of section 177 of the
2 retirement and social security law, as amended by chapter 560 of the
3 laws of 1997, is amended to read as follows:
4 (e) Such real property, other than property to be used primarily for
5 agricultural, horticultural, ranch, mining, recreational, amusement or
6 club purposes, as may be acquired, as an investment for the production
7 of income (INCLUDING CAPITAL APPRECIATION), or as may be acquired to be
8 improved or developed for such investment purpose pursuant to an exist-
9 ing program therefor, subject to the following limitations: (1) the cost
10 of each parcel of real property so acquired under the authority of this
11 subdivision, including the estimated cost to the fund of the improvement
12 or development thereof, when added to the value of all other real prop-
13 erty then held by it pursuant to this subdivision, shall not exceed
14 [five] TEN per cent of its assets, and (2) the cost of each parcel of
15 real property acquired under the authority of this subdivision, includ-
16 ing the estimated cost to the fund of the improvement or development
17 thereof, shall not exceed two per cent of the fund's assets.
18 S 2. Subdivision 6 of section 177 of the retirement and social securi-
19 ty law is amended by adding a new paragraph (f) to read as follows:

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

LBD07441-05-0

1 (F) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, FOR THE
2 PURPOSES OF THIS SUBDIVISION, AN INVESTMENT IN AN ENTITY THAT INVESTS OR
3 PROPOSES TO INVEST, DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE OTHER
4 ENTITIES, AT LEAST A MAJORITY OF ITS ASSETS IN (1) ANY INTEREST IN REAL
5 PROPERTY OF ANY KIND OR CHARACTER AS AN INVESTMENT FOR THE PRODUCTION OF
6 INCOME (INCLUDING CAPITAL APPRECIATION), OR (2) DEBT INSTRUMENTS SECURED
7 BY ANY INTEREST IN REAL ESTATE MAY BE CONSIDERED AN INVESTMENT IN REAL
8 ESTATE PURSUANT TO THIS SUBDIVISION AND INCLUDED IN THE ASSETS SUBJECT
9 TO THE TEN PERCENT LIMITATION OF PARAGRAPH (E) OF THIS SUBDIVISION.
10 S 3. This act shall take effect June 30, 2010, provided, that if this
11 act shall have become a law on or after June 30, 2010, this act shall
12 take effect immediately and shall be deemed to have been in full force
13 and effect on and after June 30, 2010.

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

This bill would amend subdivision 6 of section 177 of the Retirement and Social Security Law to increase the percentage of assets of the New York State Teachers' Retirement System (NYSTRS) which may be invested in real estate from five to ten percent. Additionally, this bill would add a new paragraph f to subdivision 6 of section 177 to allow NYSTRS to classify, at the System's election, real estate oriented funds or partnerships as a real estate asset for investment purposes.

It is estimated that there will be no annual cost to the employers of members of the New York State Teachers' Retirement System if this bill is enacted.

The source of this estimate is Fiscal Note 2010-4 dated October 13, 2009 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2010 Legislative Session.

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

PROVISIONS OF PROPOSED LEGISLATION: With respect to the New York City Retirement Systems ("NYCRS"), this proposed legislation would amend Retirement and Social Security Law ("RSSL") paragraph (e) of subdivision 6 of Section 177 and add paragraph (f) to subdivision 6 of the retirement and social security law section 177 to permit an increase to 10% the percentage of NYCRS assets that could be invested in real property investments and to define certain investments as investments in real estate subject to the paragraph (e) of subdivision 6 of Section 177 limitations.

The Effective Date of the proposed legislation would be June 30, 2010.

IMPACT ON REAL PROPERTY INVESTMENTS: Currently, with certain exceptions and limitations, the investments of the NYCRS in real properties as defined in the law may not exceed 5% of Fund assets and such properties must be for production of investment income.

The proposed legislation, if enacted, would increase such real property investment limitation to 10% of Fund assets on and after the Effective Date.

In addition, the proposed legislation would include capital appreciation within the definition of production of income from real property investments.

Further, for purposes of categorizing those investments that are to be considered real property investments, the proposed legislation would permit the inclusion of:

1. Any investment in an entity that invests or proposes to invest directly or indirectly at least a majority of its assets in any interest in real property of any kind or character, or
2. Debt instruments secured by any interest in real estate.

FINANCIAL IMPACT - EMPLOYER CONTRIBUTIONS: With respect to the NYCERS, the enactment of this proposed legislation would not, in and of itself, result in any change in employer contributions.

The ultimate cost of a Retirement Program is the benefits it pays. The financing of that ultimate cost is provided by contributions and investment income.

Investment income depends upon the amount of assets of the respective NYCERS Fund and the rate of return received on those assets. The rate of return depends to a large extent upon the asset allocation policy of the respective NYCERS Fund.

To the extent that the NYCERS increase their investments in the securities authorized by this proposed legislation and those securities produce greater (lesser) rates of return than the rates of return that the NYCERS would otherwise have achieved, then employer contributions to the NYCERS will be lesser (greater).

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

FISCAL NOTE IDENTIFICATION: This estimate is intended for use only during the 2010 Legislative Session. It is Fiscal Note 2010-01, dated December 4, 2009, prepared by the Chief Actuary for the New York City Retirement Systems.

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

This bill would amend the Retirement and Social Security Law to increase the percentage of assets of the eight (8) public retirement systems of New York State which may be invested in real estate from 5 to 10 percent. It would also allow such Systems to elect to classify real estate oriented funds or partnerships as a real estate asset for investment purposes.

If this bill is enacted, insofar as this bill affects the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System, we assume that there would be small investment changes as a result of enactment. Any increases or decreases in investment earnings will result in decreases or increases, respectively, in employer contributions. Annual changes in assets will be shared by all employers and will be spread over the future working lifetimes of active members.

This estimate, dated December 31, 2009, and intended for use only during the 2010 Legislative Session, is Fiscal Note No. 2010-50 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.