

6376

2009-2010 Regular Sessions

I N A S S E M B L Y

March 3, 2009

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

AN ACT to amend the administrative code of the city of New York, in relation to the powers, duties and responsibilities of the board of trustees of the New York city fire department pension fund, subchapter two and in relation to authorizing such board of trustees to draw upon the assets of such pension fund to pay expenses

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

- 1 Section 1. Subdivision a of section 13-316 of the administrative code  
2 of the city of New York, paragraph 11 as added by chapter 583 of the  
3 laws of 1989, is amended to read as follows:  
4 a. A board of trustees shall be the head of the New York fire depart-  
5 ment pension fund subchapter two, and, subject to the provisions of law  
6 [and to the prior approval of the board of estimate], from time to time  
7 shall establish rules and regulations for the administration and trans-  
8 action of the business of such fund and for the control and disposition  
9 thereof. THE PROVISIONS OF SECTIONS ONE THOUSAND FORTY-TWO, ONE THOU-  
10 SAND FORTY-THREE, ONE THOUSAND FORTY-FOUR AND ONE THOUSAND FORTY-FIVE OF  
11 THE NEW YORK CITY CHARTER SHALL NOT BE CONSTRUED TO APPLY TO THE  
12 ADOPTION OF SUCH RULES AND REGULATIONS. Such board shall consist of:  
13 1. The fire commissioner who shall be chairperson of the board and who  
14 shall be entitled to cast three votes.  
15 2. The comptroller of the city who shall be entitled to cast three  
16 votes.  
17 3. A representative of the mayor who shall be appointed by the mayor  
18 and who shall be entitled to cast three votes.  
19 4. The commissioner of finance of the city who shall be entitled to  
20 cast three votes.  
21 5. The president of the uniformed firefighters' association of greater  
22 New York who shall be entitled to cast two votes.

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

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1 6. The vice-president of the uniformed firefighters' association of  
2 greater New York who shall be entitled to cast two votes.

3 7. The treasurer of the uniformed firefighters' association of greater  
4 New York who shall be entitled to cast two votes.

5 8. The chairperson of the board of trustees of the uniformed fire-  
6 fighters' association of greater New York who shall be entitled to cast  
7 two votes.

8 9. Three elected members of the executive board of the uniformed fire  
9 officers' association of the fire department, city of New York, of whom  
10 one shall be an officer of the said department with rank above that of  
11 captain and shall be entitled to cast one vote; another shall be a  
12 captain of the said department and shall be entitled to cast one vote;  
13 another shall be a lieutenant of the said department and shall be enti-  
14 tled to cast one and one-half votes.

15 10. The president of the uniformed pilots and marine engineers associ-  
16 ation, fire department, city of New York, who shall be entitled to cast  
17 one-half vote.

18 11. (i) Where, during any six-month period during a fiscal year, as  
19 defined in subdivision three of section 13-382 of the code, the equity  
20 portion of the assets of the pension fund is less than forty-five  
21 percent, subparagraph (ii) of this paragraph [eleven] shall be effective  
22 during the succeeding fiscal year.

23 (ii) Two investment representatives, one of whom shall be appointed by  
24 the mayor and one of whom shall be appointed by the comptroller upon the  
25 occurrence of the condition specified in subparagraph (i) of this para-  
26 graph [eleven]. Each such representative shall be entitled to cast two  
27 votes only in relation to determinations of the board:

28 (A) as to whether the assets of the pension fund shall be invested in  
29 equities or fixed income securities and the proportion of the assets of  
30 the pension fund to be invested in equities and fixed income securities;  
31 and

32 (B) as to the identity, nature, character and amounts of the equities  
33 (within the proportion as determined under item (A) of this subpara-  
34 graph) to be acquired, held, sold, disposed of or otherwise dealt with  
35 by the pension fund; and

36 (C) as to any steps necessary to effectuate any of the functions set  
37 forth in items (A) and (B) of this subparagraph; and

38 (D) as to delegation by the board, pursuant to law, of the functions  
39 described in items (A), (B) and (C) of this subparagraph.

40 S 2. Subdivision b of section 13-316 of the administrative code of the  
41 city of New York, as amended by chapter 583 of the laws of 1989, is  
42 amended to read as follows:

43 b. Subject to the provisions of subdivision b-1 AND SUBDIVISION F of  
44 this section, every act of the board of trustees shall be by resolution  
45 which shall be adopted only by a vote of at least seven-twelfths of the  
46 whole number of votes authorized to be cast by all of the members of  
47 such board.

48 S 3. Subdivision c of section 13-316 of the administrative code of the  
49 city of New York is amended to read as follows:

50 c. The [fire commissioner shall assign to the] board of trustees [a  
51 sufficient number of clerical and other assistants to permit the board  
52 efficiently to exercise their powers and to perform their duties] SHALL  
53 APPOINT AN EXECUTIVE DIRECTOR OF THE PENSION FUND, WHO SHALL PERFORM  
54 SUCH DUTIES AS MAY BE CONFERRED UPON HIM OR HER BY THE CHAIRPERSON OF  
55 THE BOARD, BY RESOLUTION PASSED BY THE BOARD, OR BY LAW.

1 S 4. Section 13-316 of the administrative code of the city of New York  
2 is amended by adding five new subdivisions e, f, g, h and i to read as  
3 follows:

4 E. 1. IN ADDITION TO THE POWERS CONFERRED UPON IT BY ANY OTHER  
5 PROVISION OF LAW, THE BOARD OF TRUSTEES SHALL, ON OR BEFORE APRIL FIRST  
6 OF EACH YEAR, ESTABLISH A BUDGET SUFFICIENT TO FULFILL THE POWERS,  
7 DUTIES AND RESPONSIBILITIES SET FORTH IN THIS CHAPTER AND ANY OTHER  
8 PROVISION OF LAW WHICH SETS FORTH THE BENEFITS OF MEMBERS OF THE PENSION  
9 FUND AND MAY DRAW UPON THE ASSETS OF THE PENSION FUND TO FUND SUCH BUDG-  
10 ET, SUBJECT TO THE PROVISIONS OF PARAGRAPHS TWO, THREE, FOUR, FIVE AND  
11 SIX OF THIS SUBDIVISION AND SUBDIVISIONS F, G, H AND I OF THIS SECTION.  
12 THE PROVISIONS OF THIS SECTION SHALL NOT BE APPLICABLE TO THE PAYMENT OF  
13 INVESTMENT EXPENSES PURSUANT TO SECTION 13-705 OF THIS TITLE, AND NOTH-  
14 ING CONTAINED IN THIS SECTION SHALL BE CONSTRUED AS ABOLISHING, LIMITING  
15 OR MODIFYING ANY POWER OF THE BOARD OF TRUSTEES TO PROVIDE FOR THE  
16 PAYMENT OF INVESTMENT EXPENSES PURSUANT TO SECTION 13-705 OF THIS TITLE.

17 2. IF A BUDGET HAS NOT BEEN ADOPTED BY THE COMMENCEMENT OF THE NEW  
18 FISCAL YEAR, THE BUDGET FOR THE PRECEDING FISCAL YEAR SHALL BE DEEMED TO  
19 HAVE BEEN EXTENDED FOR THE NEW FISCAL YEAR UNTIL SUCH TIME AS A NEW  
20 BUDGET IS ADOPTED.

21 3. ANY BUDGET IN EFFECT PURSUANT TO PARAGRAPH ONE OR TWO OF THIS  
22 SUBDIVISION MAY BE MODIFIED DURING SUCH SUCCEEDING FISCAL YEAR.

23 4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE BOARD OF TRUSTEES  
24 SHALL HAVE THE POWER, EITHER DIRECTLY OR BY DELEGATION TO THE EXECUTIVE  
25 DIRECTOR, TO OBTAIN BY EMPLOYMENT OR BY CONTRACT THE GOODS, PROPERTY AND  
26 SERVICES NECESSARY TO FULFILL ITS POWERS, DUTIES AND RESPONSIBILITIES  
27 WITHIN THE APPROPRIATION AUTHORIZED BY THE BOARD OF TRUSTEES PURSUANT TO  
28 PARAGRAPH ONE OF THIS SUBDIVISION.

29 5. (I) THE PENSION FUND SHALL BE CONSIDERED AN ENTITY SEPARATE FROM  
30 THE FIRE DEPARTMENT OF THE CITY OF NEW YORK.

31 (II) THE PROVISIONS OF CHAPTER SEVENTEEN OF THE NEW YORK CITY CHARTER  
32 SHALL CONTINUE TO APPLY TO THE PENSION FUND AND THE PENSION FUND SHALL  
33 CONSTITUTE AN AGENCY FOR THE PURPOSES OF SUCH CHAPTER. THE BOARD OF  
34 TRUSTEES SHALL NOT OBTAIN ANY LEGAL SERVICES BY THE RETENTION OF EMPLOY-  
35 EES OR BY CONTRACT UNLESS THE CORPORATION COUNSEL SHALL CONSENT THERETO.

36 6. ALL CONTRACTS FOR GOODS OR SERVICES ENTERED INTO BY THE PENSION  
37 FUND SHALL BE PROCURED AS PRESCRIBED IN CHAPTER THIRTEEN OF THE NEW YORK  
38 CITY CHARTER; PROVIDED, HOWEVER, THAT WHERE THE PROVISIONS OF SUCH CHAP-  
39 TER THIRTEEN REQUIRE ACTION BY THE MAYOR OR AN APPOINTEE OF THE MAYOR IN  
40 REGARD TO A PARTICULAR PROCUREMENT (EXCEPT FOR MAYORAL ACTION PURSUANT  
41 TO SUBDIVISION C OF SECTION THREE HUNDRED THIRTY-FOUR OF THE NEW YORK  
42 CITY CHARTER) SUCH ACTION SHALL NOT BE TAKEN BY THE MAYOR OR SUCH  
43 APPOINTEE OF THE MAYOR, BUT SHALL BE TAKEN BY THE BOARD OF TRUSTEES OR  
44 THE EXECUTIVE DIRECTOR PURSUANT TO A RESOLUTION ADOPTED BY THE BOARD OF  
45 TRUSTEES DELEGATING SUCH AUTHORITY TO THE EXECUTIVE DIRECTOR.

46 F. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, ANY RESOLUTION  
47 OF THE BOARD OF TRUSTEES WHICH ESTABLISHES A BUDGET OR MODIFIES A BUDGET  
48 PURSUANT TO THE PROVISIONS OF PARAGRAPH ONE OR THREE OF SUBDIVISION E OF  
49 THIS SECTION SHALL REQUIRE THE CONCURRENCE OF THE COMPTROLLER AND THE  
50 REPRESENTATIVE OF THE MAYOR. THIS PROVISION SHALL APPLY ONLY TO THIS  
51 SUBDIVISION, AND NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE  
52 CONSTRUED TO APPLY TO ANY OTHER VOTE OF THE BOARD. NO ASSETS OF THE  
53 PENSION FUND SHALL BE DRAWN UPON PURSUANT TO THE PROVISIONS OF PARAGRAPH  
54 ONE OF SUBDIVISION E OF THIS SECTION UNLESS AUTHORIZED BY A BUDGET OR  
55 BUDGET MODIFICATION ESTABLISHED BY A RESOLUTION OF THE BOARD OF TRUS-  
56 TEES.

1 G. EMPLOYMENT BY THE PENSION FUND SHALL CONSTITUTE CITY-SERVICE FOR  
2 THE PURPOSES OF THIS SUBCHAPTER FOR THOSE EMPLOYEES WHO ARE MEMBERS OF  
3 THE FUND PURSUANT TO SECTION 13-314 OF THIS SUBCHAPTER; FOR ALL OTHER  
4 EMPLOYEES, EMPLOYMENT BY THE PENSION FUND SHALL CONSTITUTE CITY-SERVICE  
5 FOR THE PURPOSES OF CHAPTER ONE OF THIS TITLE; PROVIDED, HOWEVER, THAT  
6 NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE CONSTRUED AS GRANTING  
7 MEMBERSHIP RIGHTS IN THE PENSION FUND OR ANY RETIREMENT SYSTEM TO A  
8 CONTRACTOR OF THE PENSION FUND OR SUCH CONTRACTOR'S EMPLOYEES. EMPLOYEES  
9 OF THE PENSION FUND SHALL BE DEEMED TO BE EMPLOYEES OF THE CITY OF NEW  
10 YORK FOR THE PURPOSES OF CHAPTER THIRTY-FIVE OF THE NEW YORK CITY CHAR-  
11 TER AND TITLE TWELVE OF THE CODE.

12 H. WHENEVER THE ASSETS OF THE PENSION FUND ARE DRAWN UPON PURSUANT TO  
13 THE PROVISIONS OF PARAGRAPH ONE OF SUBDIVISION E OF THIS SECTION, ALL  
14 MONIES SO WITHDRAWN SHALL BE MADE A CHARGE TO BE PAID BY THE EMPLOYER  
15 OTHERWISE REQUIRED TO MAKE CONTRIBUTIONS TO THE PENSION FUND NO LATER  
16 THAN THE END OF THE SECOND FISCAL YEAR SUCCEEDING THE TIME PERIOD DURING  
17 WHICH SUCH ASSETS WERE DRAWN UPON. THE ACTUARY SHALL CALCULATE SUCH  
18 CHARGE TO BE PAID BY THE EMPLOYER. ALL CHARGES TO BE PAID PURSUANT TO  
19 THIS SUBDIVISION SHALL BE PAID AT THE REGULAR RATE OF INTEREST UTILIZED  
20 BY THE ACTUARY IN DETERMINING EMPLOYER CONTRIBUTIONS TO THE PENSION FUND  
21 PURSUANT TO THE PROVISIONS OF PARAGRAPH TWO OF SUBDIVISION B OF SECTION  
22 13-638.2 OF THIS TITLE.

23 I. THE FUNDS WITHDRAWN FROM THE PENSION FUND SHALL NOT BE UTILIZED FOR  
24 ANY PURPOSE OTHER THAN THE BUDGET ESTABLISHED BY THE BOARD OF TRUSTEES.  
25 ALL EXPENDITURES OF THE PENSION FUND SHALL BE SUBJECT TO AUDIT BY THE  
26 COMPTROLLER, WHO MAY MAKE RECOMMENDATIONS, INCLUDING BUT NOT LIMITED TO,  
27 PROCEDURES DESIGNED TO IMPROVE ACCOUNTING AND EXPENDITURE CONTROL. ALL  
28 EXPENDITURES OF THE PENSION FUND SHALL BE REPORTED TO THE MAYOR'S OFFICE  
29 OF MANAGEMENT AND BUDGET AND THE BUDGETARY OFFICE OF THE FIRE DEPARTMENT  
30 OF THE CITY OF NEW YORK.

31 S 5. Except as specified in this act, nothing contained in such act  
32 shall affect or impair the rights or privileges of officers or employees  
33 of the fire department pension fund, subchapter two in relation to the  
34 personnel, appointment, ranks, grades, length of service, promotion,  
35 removal, pension and retirement rights, civil rights or any other rights  
36 or privileges of officers or employees of the city generally or officers  
37 or employees of such fund.

38 S 6. In the event that any provision of this act shall be adjudged to  
39 be invalid or unconstitutional on its face or in its application to any  
40 person or circumstances by a court of competent jurisdiction, after all  
41 rights to appeal have been exhausted, such judgment shall not affect,  
42 impair or invalidate the remainder of this act, but shall be confined in  
43 its operation to the provision of such section directly involved in the  
44 controversy in which judgment shall have been rendered.

45 S 7. This act shall take effect immediately; provided, however, that  
46 the provisions of this act authorizing the adoption of a budget and the  
47 use of the assets of the fire department pension fund to pay expenses  
48 may be utilized during the fiscal year commencing on July 1, 2009, and  
49 provided further that in such event, such budget shall be deemed to have  
50 been established on April 1, 2009.