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

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2009-2010 Regular Sessions

I N S E N A T E

June 8, 2009

Introduced by Sen. SAVINO -- (at request of the State Comptroller) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the retirement and social security law, in relation to the manner of paying employer contributions to the New York state and local employees' retirement system and the New York state and local police and fire retirement system

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

Section 1. The retirement and social security law is amended by adding a new section 19-a to read as follows:

S 19-A. EMPLOYER CONTRIBUTIONS FOR THE TWO THOUSAND TEN - TWO THOUSAND ELEVEN FISCAL YEAR AND SUBSEQUENT FISCAL YEARS. A. IN ADDITION TO THE DEFINITIONS IN SECTION TWO OF THIS ARTICLE, WHEN USED IN THIS SECTION:

(1) "AMORTIZING EMPLOYER" SHALL MEAN AN EMPLOYER THAT ELECTS TO AMORTIZE A PORTION OF THE EMPLOYER'S ANNUAL BILL PURSUANT TO PARAGRAPH ONE OF SUBDIVISION D OF THIS SECTION FOR THE TWO THOUSAND TEN - TWO THOUSAND ELEVEN FISCAL YEAR, OR ANY SUBSEQUENT FISCAL YEAR, REGARDLESS OF WHETHER THE EMPLOYER HAS SUBSEQUENTLY PAID IN FULL ALL SUCH AMORTIZED AMOUNTS.

(2) "AMOUNT ELIGIBLE FOR AMORTIZATION" FOR A GIVEN FISCAL YEAR SHALL MEAN THE AMOUNT BY WHICH AN EMPLOYER'S ACTUARIAL CONTRIBUTION FOR SUCH FISCAL YEAR EXCEEDS THE EMPLOYER'S GRADED CONTRIBUTION FOR THE SAME FISCAL YEAR, LESS ANY AMOUNT FROM THE EMPLOYER CONTRIBUTION RESERVE FUND APPLIED TO REDUCE THE EMPLOYER'S PAYMENT TO THE RETIREMENT SYSTEM FOR THE FISCAL YEAR, PROVIDED, HOWEVER, THAT IF THE EMPLOYER'S AVERAGE ACTUARIAL CONTRIBUTION RATE FOR THE FISCAL YEAR IS LESS THAN NINE AND ONE-HALF PERCENT, THEN THE AMOUNT ELIGIBLE FOR AMORTIZATION SHALL BE ZERO.

(3) "EMPLOYER'S ACTUARIAL CONTRIBUTION" FOR A GIVEN FISCAL YEAR SHALL MEAN AN EMPLOYER'S ANNUAL BILL FOR SUCH FISCAL YEAR EXCLUSIVE OF DEFI-

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

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CIENCY CONTRIBUTIONS AND PAYMENTS ON ACCOUNT OF GROUP TERM LIFE INSURANCE, ADJUSTMENTS RELATING TO PRIOR FISCAL YEARS' OBLIGATIONS, RETIREMENT INCENTIVES AND PRIOR AMORTIZATIONS.

(4) "EMPLOYER'S ANNUAL BILL" SHALL MEAN FOR A GIVEN FISCAL YEAR THE SUM OF THE FOLLOWING AMOUNTS: (I) AN EMPLOYER'S NORMAL CONTRIBUTIONS FOR THE FISCAL YEAR DETERMINED IN ACCORDANCE WITH PARAGRAPH ONE OF SUBDIVISION B OF SECTION TWENTY-THREE OF THIS ARTICLE AND THE COMPREHENSIVE STRUCTURAL REFORM PROGRAM IMPLEMENTED PURSUANT TO SUBDIVISION B OF SECTION TWENTY-THREE-A OF THIS ARTICLE, INCLUDING THE PROVISIONS OF SUBDIVISION B OF SECTION TWENTY-THREE-A OF THIS ARTICLE RELATING TO THE REQUIRED MINIMUM ANNUAL CONTRIBUTION OF FOUR AND ONE-HALF PERCENT OF PENSIONABLE SALARIES; (II) THE EMPLOYER'S DEFICIENCY CONTRIBUTIONS AND ADMINISTRATION CONTRIBUTIONS FOR THE FISCAL YEAR DETERMINED IN ACCORDANCE WITH PARAGRAPHS TWO AND THREE OF SUBDIVISION B OF SECTION TWENTY-THREE OF THIS ARTICLE; AND (III) ANY PAYMENTS BY THE EMPLOYER DUE IN THE FISCAL YEAR ON ACCOUNT OF GROUP TERM LIFE INSURANCE, ADJUSTMENTS RELATING TO PRIOR FISCAL YEARS' OBLIGATIONS, RETIREMENT INCENTIVES AND PRIOR AMORTIZATIONS.

(5) "EMPLOYER'S AVERAGE ACTUARIAL CONTRIBUTION RATE" FOR A GIVEN FISCAL YEAR SHALL MEAN AN EMPLOYER'S ACTUARIAL CONTRIBUTION FOR SUCH FISCAL YEAR DIVIDED BY THE EMPLOYER'S PROJECTED PAYROLL FOR THE SAME FISCAL YEAR.

(6) "EMPLOYER CONTRIBUTION RESERVE FUND" OR "FUND" SHALL MEAN THE EMPLOYER CONTRIBUTION RESERVE FUND ESTABLISHED PURSUANT TO SUBDIVISION E OF THIS SECTION.

(7) "EMPLOYER'S GRADED CONTRIBUTION" FOR A GIVEN FISCAL YEAR SHALL MEAN THE AMOUNT DETERMINED BY APPLYING THE SYSTEM GRADED CONTRIBUTION RATE FOR SUCH FISCAL YEAR TO AN EMPLOYER'S PROJECTED PAYROLL FOR THE SAME FISCAL YEAR.

(8) "EMPLOYER'S GRADED PAYMENT" FOR A GIVEN FISCAL YEAR SHALL MEAN THE AMOUNT BY WHICH AN EMPLOYER'S GRADED CONTRIBUTION FOR SUCH FISCAL YEAR EXCEEDS THE EMPLOYER'S ACTUARIAL CONTRIBUTION FOR THE SAME FISCAL YEAR.

(9) "PRIOR AMORTIZATION" SHALL MEAN WITH RESPECT TO A GIVEN FISCAL YEAR ANY PAYMENT DUE IN SUCH FISCAL YEAR ON ACCOUNT OF AN OBLIGATION FROM A PRIOR FISCAL YEAR THAT AN EMPLOYER IS PERMITTED TO PAY TO THE RETIREMENT SYSTEM ON AN AMORTIZED BASIS.

(10) "SYSTEM AVERAGE ACTUARIAL CONTRIBUTION RATE" FOR A GIVEN FISCAL YEAR SHALL MEAN THE SUM OF ALL EMPLOYERS' ACTUARIAL CONTRIBUTIONS FOR SUCH FISCAL YEAR DIVIDED BY THE SUM OF ALL EMPLOYERS' PROJECTED PAYROLL FOR THE SAME FISCAL YEAR.

(11) "SYSTEM GRADED CONTRIBUTION RATE" FOR A GIVEN FISCAL YEAR SHALL MEAN THE GRADED CONTRIBUTION RATE FOR THE RETIREMENT SYSTEM AS A WHOLE DETERMINED FOR SUCH FISCAL YEAR PURSUANT TO SUBDIVISION C OF THIS SECTION.

B. NOTWITHSTANDING THE PROVISIONS OF THIS CHAPTER OR ANY OTHER LAW TO THE CONTRARY, THE COMPTROLLER, IN HIS OR HER DISCRETION, SHALL HAVE AUTHORITY TO IMPLEMENT THIS SECTION. IF THE COMPTROLLER ELECTS TO IMPLEMENT THIS SECTION, THE PROVISIONS OF THIS SECTION SHALL APPLY TO THE PAYMENT OF EMPLOYER CONTRIBUTIONS FOR THE FISCAL YEAR COMMENCING ON APRIL FIRST, TWO THOUSAND TEN, AND FOR SUBSEQUENT FISCAL YEARS.

C. FOR EACH FISCAL YEAR TO WHICH THE PROVISIONS OF THIS SECTION APPLY, THE COMPTROLLER SHALL DETERMINE A GRADED CONTRIBUTION RATE FOR THE RETIREMENT SYSTEM AS A WHOLE IN THE MANNER PROVIDED IN THIS SUBDIVISION.

(1) FOR THE TWO THOUSAND TEN - TWO THOUSAND ELEVEN FISCAL YEAR THE SYSTEM GRADED CONTRIBUTION RATE SHALL BE NINE AND ONE-HALF PERCENT.

(2) FOR THE TWO THOUSAND ELEVEN - TWO THOUSAND TWELVE FISCAL YEAR, AND SUBSEQUENT FISCAL YEARS, SYSTEM GRADED CONTRIBUTION RATES SHALL BE DETERMINED AS FOLLOWS:

(I) IF THE SYSTEM AVERAGE ACTUARIAL CONTRIBUTION RATE FOR A GIVEN FISCAL YEAR IS AT LEAST NINE AND ONE-HALF PERCENT AND EXCEEDS THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR BY MORE THAN ONE PERCENTAGE POINT, THEN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE GIVEN FISCAL YEAR SHALL EQUAL THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR PLUS ONE PERCENTAGE POINT, PROVIDED, HOWEVER, THAT IN NO EVENT SHALL THE SYSTEM GRADED CONTRIBUTION RATE BE LESS THAN NINE AND ONE-HALF PERCENT;

(II) IF THE SYSTEM AVERAGE ACTUARIAL CONTRIBUTION RATE FOR A GIVEN FISCAL YEAR IS AT LEAST NINE AND ONE-HALF PERCENT AND EITHER EQUALS THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR OR EXCEEDS THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR BY ONE PERCENTAGE POINT OR LESS, THEN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE GIVEN FISCAL YEAR SHALL EQUAL THE SYSTEM AVERAGE ACTUARIAL CONTRIBUTION RATE FOR SUCH FISCAL YEAR, PROVIDED, HOWEVER, THAT IN NO EVENT SHALL THE SYSTEM GRADED CONTRIBUTION RATE BE LESS THAN NINE AND ONE-HALF PERCENT;

(III) IF THE SYSTEM AVERAGE ACTUARIAL CONTRIBUTION RATE FOR A GIVEN FISCAL YEAR IS LESS THAN NINE AND ONE-HALF PERCENT AND GREATER THAN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR, THEN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE GIVEN FISCAL YEAR SHALL EQUAL THE SYSTEM ACTUARIAL CONTRIBUTION RATE FOR SUCH FISCAL YEAR;

(IV) IF THE SYSTEM AVERAGE ACTUARIAL CONTRIBUTION RATE FOR A GIVEN FISCAL YEAR IS SMALLER THAN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR BY MORE THAN ONE PERCENTAGE POINT, THEN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE GIVEN FISCAL YEAR SHALL EQUAL THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR MINUS ONE PERCENTAGE POINT; AND

(V) IF THE SYSTEM AVERAGE ACTUARIAL CONTRIBUTION RATE FOR A GIVEN FISCAL YEAR EITHER EQUALS THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR OR IS SMALLER THAN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR BY ONE PERCENTAGE POINT OR LESS, THEN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE GIVEN FISCAL YEAR SHALL EQUAL THE SYSTEM ACTUARIAL CONTRIBUTION RATE FOR SUCH FISCAL YEAR.

D. (1) FOR ANY GIVEN FISCAL YEAR FOR WHICH AN EMPLOYER'S AVERAGE ACTUARIAL CONTRIBUTION RATE EXCEEDS THE SYSTEM GRADED CONTRIBUTION RATE, THE EMPLOYER SHALL PAY TO THE RETIREMENT SYSTEM AN AMOUNT EQUAL TO THE EMPLOYER'S ANNUAL BILL FOR SUCH YEAR OR, IN LIEU OF PAYING THE ENTIRE ANNUAL BILL, THE EMPLOYER MAY PAY AN AMOUNT EQUAL TO THE EMPLOYER'S ANNUAL BILL LESS ALL OR A PORTION OF THE EMPLOYER'S AMOUNT ELIGIBLE FOR AMORTIZATION FOR THE FISCAL YEAR. IF IN ACCORDANCE WITH THIS PARAGRAPH THE EMPLOYER'S PAYMENT TO THE RETIREMENT SYSTEM IS LESS THAN THE ENTIRE AMOUNT OF THE EMPLOYER'S ANNUAL BILL, THEN THE DIFFERENCE BETWEEN THE EMPLOYER'S ANNUAL BILL, AND THE AMOUNT ACTUALLY PAID BY THE EMPLOYER TO THE RETIREMENT SYSTEM EXCLUSIVE OF ANY AMOUNT FROM THE EMPLOYER CONTRIBUTION RESERVE FUND APPLIED TO REDUCE THE EMPLOYER'S PAYMENT, SHALL BE THE AMOUNT AMORTIZED FOR THE FISCAL YEAR. THE AMOUNT AMORTIZED FOR THE FISCAL YEAR SHALL BE PAID TO THE RETIREMENT SYSTEM IN EQUAL ANNUAL INSTALLMENTS OVER A TEN-YEAR PERIOD, WITH INTEREST ON THE UNPAID BALANCE AT A RATE DETERMINED BY THE COMPTROLLER WHICH APPROXIMATES A MARKET RATE OF RETURN ON TAXABLE FIXED RATE SECURITIES WITH SIMILAR TERMS ISSUED BY

COMPARABLE ISSUERS, AND WITH THE FIRST INSTALLMENT DUE IN THE IMMEDIATELY SUCCEEDING FISCAL YEAR.

(2) FOR ANY GIVEN FISCAL YEAR FOR WHICH THE SYSTEM GRADED CONTRIBUTION RATE EQUALS OR EXCEEDS AN AMORTIZING EMPLOYER'S AVERAGE ACTUARIAL CONTRIBUTION RATE, THE AMORTIZING EMPLOYER SHALL PAY TO THE RETIREMENT SYSTEM AN AMOUNT EQUAL TO THE EMPLOYER'S ANNUAL BILL FOR SUCH YEAR PLUS THE EMPLOYER'S GRADED PAYMENT FOR THE FISCAL YEAR.

(I) IF THE AMORTIZING EMPLOYER'S ANNUAL BILL FOR THE FISCAL YEAR DOES NOT INCLUDE AN AMOUNT ATTRIBUTABLE TO A PRIOR AMORTIZATION, THEN THE EMPLOYER'S GRADED PAYMENT SHALL BE PAID INTO THE EMPLOYER CONTRIBUTION RESERVE FUND PROVIDED FOR IN SUBDIVISION E OF THIS SECTION AND CREDITED TO AN ACCOUNT WITHIN SUCH FUND ESTABLISHED FOR THE EMPLOYER.

(II) IF THE AMORTIZING EMPLOYER'S ANNUAL BILL FOR THE FISCAL YEAR INCLUDES AN AMOUNT ATTRIBUTABLE TO A PRIOR AMORTIZATION, THE EMPLOYER'S GRADED PAYMENT SHALL BE USED FIRST TO ELIMINATE THE AMOUNT OF THE EMPLOYER'S UNPAID PRIOR AMORTIZATION BALANCES IN CHRONOLOGICAL ORDER STARTING WITH THE OLDEST PRIOR AMORTIZATION BALANCE. WHEN IN ANY FISCAL YEAR THE EMPLOYER'S GRADED PAYMENT ELIMINATES ALL BALANCES OWED ON THE EMPLOYER'S PRIOR AMORTIZATIONS, ANY REMAINING PORTION OF THE EMPLOYER'S GRADED PAYMENT FOR SUCH FISCAL YEAR, AND THE EMPLOYER'S GRADED PAYMENT IN ANY SUBSEQUENT FISCAL YEAR IN WHICH THE AMORTIZING EMPLOYER HAS NO UNPAID PRIOR AMORTIZATIONS, SHALL BE PAID INTO THE EMPLOYER CONTRIBUTION RESERVE FUND PROVIDED FOR IN SUBDIVISION E OF THIS SECTION AND CREDITED TO AN ACCOUNT WITHIN SUCH FUND ESTABLISHED FOR THE EMPLOYER.

(3) NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED AS PROHIBITING AN EMPLOYER FROM PRE-PAYING ANY PRIOR AMORTIZATION.

E. (1) NOTWITHSTANDING ANY LAW TO THE CONTRARY, THERE SHALL BE MAINTAINED SEPARATE AND APART FROM THE OTHER FUNDS OF THE RETIREMENT SYSTEM AN EMPLOYER CONTRIBUTION RESERVE FUND, THE ASSETS OF WHICH SHALL NOT BE USED OR INVESTED IN A MANNER CONTRARY TO THE PROVISIONS OF THIS SUBDIVISION. THE FUND SHALL CONSIST OF ALL EMPLOYER CONTRIBUTIONS REQUIRED TO BE DEPOSITED INTO THE FUND PURSUANT TO SUBDIVISION D OF THIS SECTION. WITHIN SUCH FUND THERE SHALL BE A SEPARATE ACCOUNT FOR EACH EMPLOYER MAKING SUCH CONTRIBUTIONS AND PAYMENTS.

(2) FOR ANY GIVEN FISCAL YEAR FOR WHICH (I) THE SYSTEM ACTUARIAL CONTRIBUTION RATE EXCEEDS NINE AND ONE-HALF PERCENT OF PAYROLL, AND (II) AN EMPLOYER'S AVERAGE ACTUARIAL CONTRIBUTION RATE EXCEEDS THE SYSTEM GRADED CONTRIBUTION RATE, THE BALANCE IN THE EMPLOYER'S ACCOUNT WITHIN SUCH FUND SHALL BE APPLIED TO REDUCE THE EMPLOYER'S PAYMENT TO THE RETIREMENT SYSTEM FOR SUCH FISCAL YEAR IN AN AMOUNT NOT TO EXCEED THE DIFFERENCE BETWEEN THE EMPLOYER'S ACTUARIAL CONTRIBUTION AND THE EMPLOYER'S GRADED CONTRIBUTION FOR THE FISCAL YEAR.

(3) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH TWO OF THIS SUBDIVISION, IF AT THE CLOSE OF ANY GIVEN FISCAL YEAR THE BALANCE OF AN EMPLOYER'S ACCOUNT WITHIN THE FUND EXCEEDS ONE HUNDRED PERCENT OF THE EMPLOYER'S PAYROLL FOR SUCH FISCAL YEAR, THE EXCESS SHALL BE APPLIED TO REDUCE THE EMPLOYER'S PAYMENT TO THE RETIREMENT SYSTEM FOR THE NEXT SUCCEEDING FISCAL YEAR.

(4) THE ASSETS OF THE FUND SHALL BE INVESTED IN ONLY THE FOLLOWING TYPES OF INVESTMENTS:

(I) OBLIGATIONS OF THE UNITED STATES OF AMERICA OR IN OBLIGATIONS GUARANTEED BY AGENCIES OF THE UNITED STATES OF AMERICA WHERE THE PAYMENT OF PRINCIPAL AND INTEREST ARE GUARANTEED BY THE UNITED STATES OF AMERICA OR IN OBLIGATIONS OF THE STATE OF NEW YORK;

(II) GENERAL OBLIGATION BONDS AND NOTES OF ANY STATE OTHER THAN THIS STATE, PROVIDED THAT SUCH BONDS AND NOTES RECEIVE THE HIGHEST RATING OF AT LEAST ONE INDEPENDENT RATING AGENCY;

(III) OBLIGATIONS OF, OR INSTRUMENTS ISSUED BY OR FULLY GUARANTEED AS TO PRINCIPAL AND INTEREST BY, ANY AGENCY OR INSTRUMENTALITY OF THE UNITED STATES ACTING PURSUANT TO A GRANT OF AUTHORITY FROM THE CONGRESS OF THE UNITED STATES, INCLUDING, BUT NOT LIMITED TO, ANY FEDERAL HOME LOAN BANK OR BANKS, THE TENNESSEE VALLEY AUTHORITY, THE FEDERAL NATIONAL MORTGAGE ASSOCIATION, THE FEDERAL HOME LOAN MORTGAGE CORPORATION AND THE UNITED STATES POSTAL SERVICE;

(IV) CERTIFICATE OF DEPOSITS THAT ARE FULLY SECURED BY THE ISSUER BY DEPOSITING WITH THE COMPTROLLER DIRECT OR INDIRECT OBLIGATIONS OF THE UNITED STATES OR ITS AGENCIES OR A LETTER OF CREDIT ISSUED BY THE FEDERAL HOME LOAN BANK; AND

(V) OBLIGATIONS OF ANY CORPORATION ORGANIZED UNDER THE LAWS OF ANY STATE IN THE UNITED STATES MATURING WITHIN TWO HUNDRED SEVENTY DAYS PROVIDED THAT SUCH OBLIGATIONS RECEIVE THE HIGHEST RATING OF TWO INDEPENDENT RATING SERVICES DESIGNATED BY THE COMPTROLLER.

(5) AT THE CLOSE OF EACH FISCAL YEAR, THE AMOUNT OF INTEREST AND EARNINGS ATTRIBUTABLE TO EACH EMPLOYER'S ACCOUNT SHALL BE COMPUTED BY THE ACTUARY AND CERTIFIED TO THE COMPTROLLER, WHO SHALL THEREUPON CREDIT EACH EMPLOYER'S ACCOUNT IN ACCORDANCE THEREWITH.

(6) THE ASSETS OF THE FUND SHALL BE EXCLUDED FROM THE ANNUAL VALUATION OF THE ASSETS AND LIABILITIES OF THE FUNDS OF THE RETIREMENT SYSTEM REQUIRED BY SECTION ELEVEN OF THIS TITLE. THE ASSETS OF THE FUND SHALL NOT BE USED TO FINANCE INCREASES IN PENSION BENEFITS.

S 2. The opening paragraph and paragraph 1 of subdivision b of section 23 of the retirement and social security law, as amended by chapter 210 of the laws of 1990 and clause (ii) of subparagraph (a) of paragraph 1 as amended by chapter 947 of the laws of 1990, are amended to read as follows:

Each employer shall make [two] THREE contributions annually. They shall be known as the normal contribution [as defined in subparagraph (a) of paragraph one of this subdivision and], the deficiency contribution [as defined in paragraph two of this subdivision], AND THE ADMINISTRATION CONTRIBUTION. The rates thereof shall be computed by the actuary.

1. [(a)] Normal contribution. The rate of such contribution shall be applied to the members' annual compensation as of the end of the fiscal year. Such rate shall be a uniform and constant rate per centum of annual compensation [when determined by dividing the valuation costs by the payroll amount used in the valuation. Notwithstanding any provision of law to the contrary, the valuation costs consist of:

(i) the normal cost, which shall be the actuarial present value of the employer provided benefits accrued during the year, based upon the projected future salary on which benefits are expected to be paid, by prorating each employee's projected benefit over his or her total years of service;

(ii) the supplemental cost, which shall be the cost of providing supplemental retirement allowance payments pursuant to subdivision e of section seventy-eight of this article;

(iii) the administrative cost, which shall be the expenses of the retirement system pursuant to paragraph three of subdivision b of this section;

(iv) the prior service cost, which shall be equal to the interest on the unfunded actuarial accrued liability or surplus plus a portion of

the unfunded liability or surplus, said portion to be equal to the unfunded liability or surplus divided by the average future years of service of active employees; and

(v) the annual amortization cost, which shall be equal to the amount of the annual amortization payment required to be paid into the system's pension accumulation fund under sections sixteen-a and seventeen-a of this article.

Provided, however, in no event shall the amount of contribution be less than zero.

(b) The comptroller is authorized to make appropriate adjustments for those participating employers that have paid an amount in excess of the minimum annual amortization payment required by section seventeen-a of this article. The excess payment shall accumulate with interest earned at the rate used in the annual actuarial valuation and be applied against future pension contribution requirements to insure equitable treatment of all participating employers.

(c) In any year in which no contribution is required to the pension accumulation fund, any adjustment reducing a prior year's contribution resulting from the enactment of section sixteen-b of this chapter, shall be credited with interest earned at the rate used in the annual actuarial valuation and applied against future pension contributions]. WHEN APPLIED TO THE COMPENSATION OF THE AVERAGE NEW ENTRANT DURING THE REMAINING PERIOD OF HIS OR HER MEMBERSHIP, SUCH RATE SHALL BE COMPUTED TO BE SUFFICIENT TO PROVIDE ALL THE BENEFITS, OTHER THAN THOSE ON ACCOUNT OF PRIOR SERVICE, GRANTED BY THIS ARTICLE AND WHICH ARE PAYABLE FROM FUNDS CONTRIBUTED TO THE PENSION ACCUMULATION FUND.

Such rate shall be computed each year by means of an actuarial valuation as prescribed in section eleven of this [chapter] ARTICLE AND AS AUTHORIZED BY SECTION TWENTY-THREE-A OF THIS TITLE.

S 3. The retirement and social security law is amended by adding a new section 319-a to read as follows:

S 319-A. EMPLOYER CONTRIBUTIONS FOR THE TWO THOUSAND TEN - TWO THOUSAND ELEVEN FISCAL YEAR AND SUBSEQUENT FISCAL YEARS. A. IN ADDITION TO THE DEFINITIONS IN SECTION THREE HUNDRED TWO OF THIS ARTICLE, WHEN USED IN THIS SECTION:

(1) "AMORTIZING EMPLOYER" SHALL MEAN AN EMPLOYER THAT ELECTS TO AMORTIZE A PORTION OF THE EMPLOYER'S ANNUAL BILL PURSUANT TO PARAGRAPH ONE OF SUBDIVISION D OF THIS SECTION FOR THE TWO THOUSAND TEN - TWO THOUSAND ELEVEN FISCAL YEAR, OR ANY SUBSEQUENT FISCAL YEAR, REGARDLESS OF WHETHER THE EMPLOYER HAS SUBSEQUENTLY PAID IN FULL ALL SUCH AMORTIZED AMOUNTS.

(2) "AMOUNT ELIGIBLE FOR AMORTIZATION" FOR A GIVEN FISCAL YEAR SHALL MEAN THE AMOUNT BY WHICH AN EMPLOYER'S ACTUARIAL CONTRIBUTION FOR SUCH FISCAL YEAR EXCEEDS THE EMPLOYER'S GRADED CONTRIBUTION FOR THE SAME FISCAL YEAR, LESS ANY AMOUNT FROM THE EMPLOYER CONTRIBUTION RESERVE FUND APPLIED TO REDUCE THE EMPLOYER'S PAYMENT TO THE RETIREMENT SYSTEM FOR THE FISCAL YEAR, PROVIDED, HOWEVER, THAT IF THE EMPLOYER'S AVERAGE ACTUARIAL CONTRIBUTION RATE FOR THE FISCAL YEAR IS LESS THAN SEVENTEEN AND ONE-HALF PERCENT, THEN THE AMOUNT ELIGIBLE FOR AMORTIZATION SHALL BE ZERO.

(3) "EMPLOYER'S ACTUARIAL CONTRIBUTION" FOR A GIVEN FISCAL YEAR SHALL MEAN AN EMPLOYER'S ANNUAL BILL FOR SUCH FISCAL YEAR EXCLUSIVE OF THE DEFICIENCY CONTRIBUTIONS AND PAYMENTS ON ACCOUNT OF GROUP TERM LIFE INSURANCE, ADJUSTMENTS RELATING TO PRIOR FISCAL YEARS' OBLIGATIONS, RETIREMENT INCENTIVES AND PRIOR AMORTIZATIONS.

(4) "EMPLOYER'S ANNUAL BILL" SHALL MEAN FOR A GIVEN FISCAL YEAR THE SUM OF THE FOLLOWING AMOUNTS: (I) AN EMPLOYER'S NORMAL CONTRIBUTIONS FOR

THE FISCAL YEAR DETERMINED IN ACCORDANCE WITH PARAGRAPH ONE OF SUBDIVISION B OF SECTION THREE HUNDRED TWENTY-THREE OF THIS ARTICLE AND THE COMPREHENSIVE STRUCTURAL REFORM PROGRAM IMPLEMENTED PURSUANT TO SUBDIVISION B OF SECTION THREE HUNDRED TWENTY-THREE-A OF THIS ARTICLE, INCLUDING THE PROVISIONS OF SUBDIVISION B OF SECTION THREE HUNDRED TWENTY-THREE-A OF THIS ARTICLE RELATING TO THE REQUIRED MINIMUM ANNUAL CONTRIBUTION OF FOUR AND ONE-HALF PERCENT OF PENSIONABLE SALARIES; (II) THE EMPLOYER'S DEFICIENCY CONTRIBUTIONS AND ADMINISTRATION CONTRIBUTIONS FOR THE FISCAL YEAR DETERMINED IN ACCORDANCE WITH PARAGRAPHS TWO AND THREE OF SUBDIVISION B OF SECTION THREE HUNDRED TWENTY-THREE OF THIS ARTICLE; AND (III) ANY PAYMENTS BY THE EMPLOYER DUE IN THE FISCAL YEAR ON ACCOUNT OF GROUP TERM LIFE INSURANCE, ADJUSTMENTS RELATING TO PRIOR FISCAL YEARS' OBLIGATIONS, RETIREMENT INCENTIVES AND PRIOR AMORTIZATIONS.

(5) "EMPLOYER'S AVERAGE ACTUARIAL CONTRIBUTION RATE" FOR A GIVEN FISCAL YEAR SHALL MEAN AN EMPLOYER'S ACTUARIAL CONTRIBUTION FOR SUCH FISCAL YEAR DIVIDED BY THE EMPLOYER'S PROJECTED PAYROLL FOR THE SAME FISCAL YEAR.

(6) "EMPLOYER CONTRIBUTION RESERVE FUND" OR "FUND" SHALL MEAN THE EMPLOYER CONTRIBUTION RESERVE FUND ESTABLISHED PURSUANT TO SUBDIVISION E OF THIS SECTION.

(7) "EMPLOYER'S GRADED CONTRIBUTION" FOR A GIVEN FISCAL YEAR SHALL MEAN THE AMOUNT DETERMINED BY APPLYING THE EMPLOYER'S GRADED CONTRIBUTION RATE FOR SUCH FISCAL YEAR TO AN EMPLOYER'S PROJECTED PAYROLL FOR THE SAME FISCAL YEAR.

(8) "EMPLOYER'S GRADED CONTRIBUTION RATE" FOR A GIVEN FISCAL YEAR SHALL MEAN (I) THE SYSTEM GRADED CONTRIBUTION RATE FOR SUCH FISCAL YEAR, OR (II) IN THE CASE OF AN INDIVIDUAL EMPLOYER FOR WHICH A GRADED CONTRIBUTION RATE HAS BEEN DETERMINED PURSUANT TO PARAGRAPH THREE OF SUBDIVISION C OF THIS SECTION, THE GRADED CONTRIBUTION RATE FOR THE INDIVIDUAL EMPLOYER FOR SUCH FISCAL YEAR.

(9) "EMPLOYER'S GRADED PAYMENT" FOR A GIVEN FISCAL YEAR SHALL MEAN THE AMOUNT BY WHICH AN EMPLOYER'S GRADED CONTRIBUTION FOR SUCH FISCAL YEAR EXCEEDS THE EMPLOYER'S ACTUARIAL CONTRIBUTION FOR THE SAME FISCAL YEAR.

(10) "PRIOR AMORTIZATION" SHALL MEAN WITH RESPECT TO A GIVEN FISCAL YEAR ANY PAYMENT DUE IN SUCH FISCAL YEAR ON ACCOUNT OF AN OBLIGATION FROM A PRIOR FISCAL YEAR THAT AN EMPLOYER IS PERMITTED TO PAY TO THE RETIREMENT SYSTEM ON AN AMORTIZED BASIS.

(11) "SYSTEM AVERAGE ACTUARIAL CONTRIBUTION RATE" FOR A GIVEN FISCAL YEAR SHALL MEAN THE SUM OF ALL EMPLOYERS' ACTUARIAL CONTRIBUTIONS FOR SUCH FISCAL YEAR, DIVIDED BY THE SUM OF ALL EMPLOYERS' PROJECTED PAYROLL FOR THE SAME FISCAL YEAR.

(12) "SYSTEM GRADED CONTRIBUTION RATE" FOR A GIVEN FISCAL YEAR SHALL MEAN THE GRADED CONTRIBUTION RATE FOR THE RETIREMENT SYSTEM AS A WHOLE DETERMINED FOR SUCH FISCAL YEAR PURSUANT TO PARAGRAPH ONE OR TWO OF SUBDIVISION C OF THIS SECTION.

B. NOTWITHSTANDING THE PROVISIONS OF THIS CHAPTER OR ANY OTHER LAW TO THE CONTRARY, THE COMPTROLLER, IN HIS OR HER DISCRETION, SHALL HAVE AUTHORITY TO IMPLEMENT THIS SECTION. IF THE COMPTROLLER ELECTS TO IMPLEMENT THIS SECTION, THE PROVISIONS OF THIS SECTION SHALL APPLY TO THE PAYMENT OF EMPLOYER CONTRIBUTIONS FOR THE FISCAL YEAR COMMENCING ON APRIL FIRST, TWO THOUSAND TEN, AND FOR SUBSEQUENT FISCAL YEARS.

C. FOR EACH FISCAL YEAR TO WHICH THE PROVISIONS OF THIS SECTION APPLY, THE COMPTROLLER SHALL DETERMINE A GRADED CONTRIBUTION RATE FOR THE RETIREMENT SYSTEM AS A WHOLE IN THE MANNER PROVIDED IN THIS SUBDIVISION.

(1) FOR THE TWO THOUSAND TEN - TWO THOUSAND ELEVEN FISCAL YEAR THE SYSTEM GRADED CONTRIBUTION RATE SHALL BE SEVENTEEN AND ONE-HALF PERCENT.

(2) FOR THE TWO THOUSAND ELEVEN - TWO THOUSAND TWELVE FISCAL YEAR, AND SUBSEQUENT FISCAL YEARS, SYSTEM GRADED CONTRIBUTION RATES SHALL BE DETERMINED AS FOLLOWS:

(I) IF THE SYSTEM AVERAGE ACTUARIAL CONTRIBUTION RATE FOR A GIVEN FISCAL YEAR IS AT LEAST SEVENTEEN AND ONE-HALF PERCENT AND EXCEEDS THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR BY MORE THAN ONE PERCENTAGE POINT, THEN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE GIVEN FISCAL YEAR SHALL EQUAL THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR PLUS ONE PERCENTAGE POINT, PROVIDED HOWEVER, THAT IN NO EVENT SHALL THE SYSTEM GRADED CONTRIBUTION RATE BE LESS THAN SEVENTEEN AND ONE-HALF PERCENT;

(II) IF THE SYSTEM AVERAGE ACTUARIAL CONTRIBUTION RATE FOR A GIVEN FISCAL YEAR IS AT LEAST SEVENTEEN AND ONE-HALF PERCENT AND EITHER EQUALS THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR OR EXCEEDS THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR BY ONE PERCENTAGE POINT OR LESS, THEN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE GIVEN FISCAL YEAR SHALL EQUAL THE SYSTEM AVERAGE ACTUARIAL CONTRIBUTION RATE FOR SUCH FISCAL YEAR, PROVIDED, HOWEVER, THAT IN NO EVENT SHALL THE SYSTEM GRADED CONTRIBUTION RATE BE LESS THAN SEVENTEEN AND ONE-HALF PERCENT;

(III) IF THE SYSTEM AVERAGE ACTUARIAL CONTRIBUTION RATE FOR A GIVEN FISCAL YEAR IS LESS THAN SEVENTEEN AND ONE-HALF PERCENT AND GREATER THAN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR, THEN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE GIVEN FISCAL YEAR SHALL EQUAL THE SYSTEM ACTUARIAL CONTRIBUTION RATE FOR SUCH FISCAL YEAR;

(IV) IF THE SYSTEM AVERAGE ACTUARIAL CONTRIBUTION RATE FOR A GIVEN FISCAL YEAR IS SMALLER THAN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR BY MORE THAN ONE PERCENTAGE POINT, THEN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE GIVEN FISCAL YEAR SHALL EQUAL THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR MINUS ONE PERCENTAGE POINT; AND

(V) IF THE SYSTEM AVERAGE ACTUARIAL CONTRIBUTION RATE FOR A GIVEN FISCAL YEAR EITHER EQUALS THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR OR IS SMALLER THAN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE IMMEDIATELY PRECEDING FISCAL YEAR BY ONE PERCENTAGE POINT OR LESS, THEN THE SYSTEM GRADED CONTRIBUTION RATE FOR THE GIVEN FISCAL YEAR SHALL EQUAL THE SYSTEM ACTUARIAL CONTRIBUTION RATE FOR SUCH FISCAL YEAR.

(3) THE COMPTROLLER SHALL DETERMINE A GRADED CONTRIBUTION RATE FOR INDIVIDUAL EMPLOYERS AS PROVIDED IN THIS PARAGRAPH.

(I) IF THE ACTUARIAL CONTRIBUTION RATE FOR AN EMPLOYER FOR A GIVEN FISCAL YEAR IS EQUAL TO OR GREATER THAN FIFTY PERCENT OF THE SYSTEM ACTUARIAL CONTRIBUTION RATE FOR SUCH YEAR, AND LESS THAN OR EQUAL SEVENTY-FIVE PERCENT OF SUCH SYSTEM ACTUARIAL CONTRIBUTION RATE, THEN THE GRADED CONTRIBUTION RATE FOR THE EMPLOYER FOR THE FISCAL YEAR SHALL EQUAL SEVENTY-FIVE PERCENT OF THE SYSTEM GRADED CONTRIBUTION FOR SUCH YEAR.

(II) IF THE ACTUARIAL CONTRIBUTION RATE FOR AN EMPLOYER FOR A GIVEN FISCAL YEAR IS LESS THAN FIFTY PERCENT OF THE SYSTEM ACTUARIAL CONTRIBUTION RATE FOR SUCH YEAR, THEN THE GRADED CONTRIBUTION RATE FOR THE EMPLOYER FOR THE FISCAL YEAR SHALL EQUAL FIFTY PERCENT OF THE SYSTEM GRADED CONTRIBUTION RATE FOR SUCH YEAR.

D. (1) FOR ANY GIVEN FISCAL YEAR FOR WHICH AN EMPLOYER'S AVERAGE ACTUARIAL CONTRIBUTION RATE EXCEEDS THE GRADED CONTRIBUTION RATE, THE

EMPLOYER SHALL PAY TO THE RETIREMENT SYSTEM AN AMOUNT EQUAL TO THE EMPLOYER'S ANNUAL BILL FOR SUCH YEAR OR, IN LIEU OF PAYING THE ENTIRE ANNUAL BILL, THE EMPLOYER MAY PAY AN AMOUNT EQUAL TO THE EMPLOYER'S ANNUAL BILL LESS ALL OR A PORTION OF THE EMPLOYER'S AMOUNT ELIGIBLE FOR AMORTIZATION FOR THE FISCAL YEAR. IF IN ACCORDANCE WITH THIS PARAGRAPH THE EMPLOYER'S PAYMENT TO THE RETIREMENT SYSTEM IS LESS THAN THE ENTIRE AMOUNT OF THE EMPLOYER'S ANNUAL BILL, THEN THE DIFFERENCE BETWEEN THE EMPLOYER'S ANNUAL BILL, AND THE AMOUNT ACTUALLY PAID BY THE EMPLOYER TO THE RETIREMENT SYSTEM EXCLUSIVE OF ANY AMOUNT FROM THE EMPLOYER CONTRIBUTION RESERVE FUND APPLIED TO REDUCE THE EMPLOYER'S PAYMENT, SHALL BE THE AMOUNT AMORTIZED FOR THE FISCAL YEAR. THE AMOUNT AMORTIZED FOR THE FISCAL YEAR SHALL BE PAID TO THE RETIREMENT SYSTEM IN EQUAL ANNUAL INSTALLMENTS OVER A TEN-YEAR PERIOD, WITH INTEREST ON THE UNPAID BALANCE AT A RATE DETERMINED BY THE COMPTROLLER WHICH APPROXIMATES A MARKET RATE OF RETURN ON TAXABLE FIXED RATE SECURITIES WITH SIMILAR TERMS ISSUED BY COMPARABLE ISSUERS, AND WITH THE FIRST INSTALLMENT DUE IN THE IMMEDIATELY SUCCEEDING FISCAL YEAR.

(2) FOR ANY GIVEN FISCAL YEAR FOR WHICH THE SYSTEM GRADED CONTRIBUTION RATE EQUALS OR EXCEEDS AN AMORTIZING EMPLOYER'S AVERAGE ACTUARIAL CONTRIBUTION RATE, THE AMORTIZING EMPLOYER SHALL PAY TO THE RETIREMENT SYSTEM AN AMOUNT EQUAL TO THE EMPLOYER'S ANNUAL BILL FOR SUCH YEAR PLUS THE EMPLOYER'S GRADED PAYMENT FOR THE FISCAL YEAR.

(I) IF THE AMORTIZING EMPLOYER'S ANNUAL BILL FOR THE FISCAL YEAR DOES NOT INCLUDE AN AMOUNT ATTRIBUTABLE TO A PRIOR AMORTIZATION, THEN THE EMPLOYER'S GRADED PAYMENT SHALL BE PAID INTO THE EMPLOYER CONTRIBUTION RESERVE FUND PROVIDED FOR IN SUBDIVISION E OF THIS SECTION AND CREDITED TO AN ACCOUNT WITHIN SUCH FUND ESTABLISHED FOR THE EMPLOYER.

(II) IF THE AMORTIZING EMPLOYER'S ANNUAL BILL FOR THE FISCAL YEAR INCLUDES AN AMOUNT ATTRIBUTABLE TO A PRIOR AMORTIZATION, THE EMPLOYER'S GRADED PAYMENT SHALL BE USED FIRST TO ELIMINATE THE AMOUNT OF THE EMPLOYER'S UNPAID PRIOR AMORTIZATION BALANCES IN CHRONOLOGICAL ORDER STARTING WITH OLDEST PRIOR AMORTIZATION BALANCE. WHEN IN ANY FISCAL YEAR THE EMPLOYER'S GRADED PAYMENT ELIMINATES ALL BALANCES OWED ON THE EMPLOYER'S PRIOR AMORTIZATIONS, ANY REMAINING PORTION OF THE EMPLOYER'S GRADED PAYMENT FOR SUCH FISCAL YEAR, AND THE EMPLOYER'S GRADED PAYMENT IN ANY SUBSEQUENT FISCAL YEAR IN WHICH THE AMORTIZING EMPLOYER HAS NO UNPAID PRIOR AMORTIZATIONS, SHALL BE PAID INTO THE EMPLOYER CONTRIBUTION RESERVE FUND PROVIDED FOR IN SUBDIVISION E OF THIS SECTION AND CREDITED TO AN ACCOUNT WITHIN SUCH FUND ESTABLISHED FOR THE EMPLOYER.

(3) NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED AS PROHIBITING AN EMPLOYER FROM PRE-PAYING ANY PRIOR AMORTIZATION.

E. (1) NOTWITHSTANDING ANY LAW TO THE CONTRARY, THERE SHALL BE MAINTAINED SEPARATE AND APART FROM THE OTHER FUNDS OF THE RETIREMENT SYSTEM AN EMPLOYER CONTRIBUTION RESERVE FUND, THE ASSETS OF WHICH SHALL NOT BE USED OR INVESTED IN A MANNER CONTRARY TO THE PROVISIONS OF THIS SUBDIVISION. THE FUND SHALL CONSIST OF ALL EMPLOYER CONTRIBUTIONS REQUIRED TO BE DEPOSITED INTO THE FUND PURSUANT TO SUBDIVISION D OF THIS SECTION. WITHIN SUCH FUND THERE SHALL BE A SEPARATE ACCOUNT FOR EACH EMPLOYER MAKING SUCH CONTRIBUTIONS AND PAYMENTS.

(2) FOR ANY GIVEN FISCAL YEAR FOR WHICH (I) THE SYSTEM ACTUARIAL CONTRIBUTION RATE EXCEEDS SEVENTEEN AND ONE-HALF PERCENT OF PAYROLL, AND (II) FOR WHICH AN EMPLOYER'S AVERAGE ACTUARIAL CONTRIBUTION RATE EXCEEDS THE GRADED CONTRIBUTION RATE, THE BALANCE IN THE EMPLOYER'S ACCOUNT WITHIN SUCH FUND SHALL BE APPLIED TO REDUCE THE EMPLOYER'S PAYMENT TO THE RETIREMENT SYSTEM FOR SUCH FISCAL YEAR IN AN AMOUNT NOT TO EXCEED

THE DIFFERENCE BETWEEN THE EMPLOYER'S ACTUARIAL CONTRIBUTION AND THE EMPLOYER'S GRADED CONTRIBUTION FOR THE FISCAL YEAR.

(3) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH TWO OF THIS SUBDIVISION, IF AT THE CLOSE OF ANY GIVEN FISCAL YEAR THE BALANCE OF AN EMPLOYER'S ACCOUNT WITHIN THE FUND EXCEEDS ONE HUNDRED PERCENT OF THE EMPLOYER'S PAYROLL FOR SUCH FISCAL YEAR, THE EXCESS SHALL BE APPLIED TO REDUCE THE EMPLOYER'S PAYMENT TO THE RETIREMENT SYSTEM FOR THE NEXT SUCCEEDING FISCAL YEAR.

(4) THE ASSETS OF THE FUND SHALL BE INVESTED IN ONLY THE FOLLOWING TYPES OF INVESTMENTS:

(I) OBLIGATIONS OF THE UNITED STATES OF AMERICA OR IN OBLIGATIONS GUARANTEED BY AGENCIES OF THE UNITED STATES OF AMERICA WHERE THE PAYMENT OF PRINCIPAL AND INTEREST ARE GUARANTEED BY THE UNITED STATES OF AMERICA OR IN OBLIGATIONS OF THE STATE OF NEW YORK;

(II) GENERAL OBLIGATION BONDS AND NOTES OF ANY STATE OTHER THAN THIS STATE, PROVIDED THAT SUCH BONDS AND NOTES RECEIVE THE HIGHEST RATING OF AT LEAST ONE INDEPENDENT RATING AGENCY; AND

(III) OBLIGATIONS OF, OR INSTRUMENTS ISSUED BY OR FULLY GUARANTEED AS TO PRINCIPAL AND INTEREST BY, ANY AGENCY OR INSTRUMENTALITY OF THE UNITED STATES ACTING PURSUANT TO A GRANT OF AUTHORITY FROM THE CONGRESS OF THE UNITED STATES, INCLUDING, BUT NOT LIMITED TO, ANY FEDERAL HOME LOAN BANK OR BANKS, THE TENNESSEE VALLEY AUTHORITY, THE FEDERAL NATIONAL MORTGAGE ASSOCIATION, THE FEDERAL HOME LOAN MORTGAGE CORPORATION AND THE UNITED STATES POSTAL SERVICE.

(5) AT THE CLOSE OF EACH FISCAL YEAR, THE AMOUNT OF INTEREST AND EARNINGS ATTRIBUTABLE TO EACH EMPLOYER'S ACCOUNT SHALL BE COMPUTED BY THE ACTUARY AND CERTIFIED TO THE COMPTROLLER, WHO SHALL THEREUPON CREDIT EACH EMPLOYER'S ACCOUNT IN ACCORDANCE THEREWITH.

(6) THE ASSETS OF THE FUND SHALL BE EXCLUDED FROM THE ANNUAL VALUATION OF THE ASSETS AND LIABILITIES OF THE FUNDS OF THE RETIREMENT SYSTEM REQUIRED BY SECTION THREE HUNDRED ELEVEN OF THIS TITLE. THE ASSETS OF THE FUND SHALL NOT FINANCE INCREASES IN PENSION BENEFITS.

S 4. The opening paragraph and paragraph 1 of subdivision b of section 323 of the retirement and social security law, as amended by chapter 210 of the laws of 1990 and clause (ii) of subparagraph (a) of paragraph 1 as amended by chapter 947 of the laws of 1990, are amended to read as follows:

Each employer shall make [two] THREE contributions annually. They shall be known as the normal contribution [as defined in subparagraph (a) of paragraph one of this subdivision and], the deficiency contribution [as defined in paragraph two of this subdivision], AND THE ADMINISTRATION CONTRIBUTION. The rates thereof shall be computed by the actuary.

1. [(a)] Normal contribution. The rate of such contribution shall be applied to the members' annual compensation as of the end of the fiscal year. Such rate shall be a uniform and constant rate per centum of annual compensation [when determined by dividing the valuation costs by the payroll amount used in the valuation. Notwithstanding any provision of law to the contrary, the valuation costs consist of:

(i) the normal cost, which shall be the actuarial present value of the employer provided benefits accrued during the year, based upon the projected future salary on which benefits are expected to be paid, by prorating each employee's projected benefit over his or her total years of service;

(ii) the supplemental cost, which shall be the cost of providing supplemental retirement allowance payments pursuant to subdivision e of section three hundred seventy-eight of this article;

(iii) the administrative cost, which shall be the expenses of the retirement system pursuant to paragraph three of subdivision b of this section;

(iv) the prior service cost, which shall be equal to the interest on the unfunded actuarial accrued liability or surplus plus a portion of the unfunded liability or surplus, said portion to be equal to the unfunded liability or surplus divided by the average future years of service of active employees; and

(v) the annual amortization cost, which shall be equal to the amount of the annual amortization payment required to be paid into the system's pension accumulation fund under section three hundred sixteen-a and three hundred seventeen-a of this article.

Provided, however, in no event shall the amount of contribution cost be less than zero.

(b) The comptroller is authorized to make appropriate adjustments for those participating employers that have paid an amount in excess of the minimum annual amortization payment required by section three hundred seventeen-a of this article. The excess payment shall accumulate with interest earned at the rate used in the annual actuarial valuation and be applied against future pension contribution requirements to insure equitable treatment of all participating employers.

(c) In any year in which no contribution is required to the pension accumulation fund, any adjustment reducing a prior year's contribution resulting from the enactment of section three hundred sixteen-b of this chapter, shall be credited with interest earned at the rate used in the annual actuarial valuation and applied against future pension contributions]. WHEN APPLIED TO THE COMPENSATION OF THE AVERAGE NEW ENTRANT DURING THE REMAINING PERIOD OF HIS OR HER MEMBERSHIP, SUCH RATE SHALL BE COMPUTED TO BE SUFFICIENT TO PROVIDE ALL THE BENEFITS, OTHER THAN THOSE ON ACCOUNT OF PRIOR SERVICE, GRANTED BY THIS ARTICLE AND WHICH ARE PAYABLE FROM FUNDS CONTRIBUTED TO THE PENSION ACCUMULATION FUND.

Such rate shall be computed each year by means of an actuarial valuation as prescribed in section three hundred eleven of this [chapter] ARTICLE AND AS AUTHORIZED BY SECTION THREE HUNDRED TWENTY-THREE-A OF THIS TITLE.

S 5. This act shall take effect immediately.

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

This bill would amend the Retirement and Social Security Law as it pertains to employer bills of the New York State and Local Employees' Retirement System (ERS) and the New York State and Local Police and Fire Retirement System (PFRS).

This bill puts in place a program that allows ERS and PFRS employers, if they choose to participate, to amortize a portion of their bill with their respective Retirement System when employer contributions rates rise above certain levels. If they do this, then when rates are falling below certain levels and they have paid off all outstanding amortizations, the employer will be required to pay additional monies into a reserve fund that will be used when employer contribution rates begin to rise in the future.

If this bill is enacted, we estimate that there would be a small administrative cost to the System to revise the current billing processes.

This estimate, dated May 28, 2009, and intended for use only during the 2009 Legislative Session, is Fiscal Note No. 2009-262, 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.