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

2344--A

2009-2010 Regular Sessions

I N  A S S E M B L Y

January 15, 2009

Introduced by M. of A. McENENY, CANESTRARI, DESTITO, ENGLEBRIGHT, HOYT -- Multi-Sponsored by -- M. of A. BOYLAND, COLTON, PERRY, PHEFFER -- 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 and the civil service law, in relation to university police officers appointed by the state university

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

Section 1. Subdivision 11 of section 302 of the retirement and social security law is amended by adding a new paragraph i to read as follows:

I. SERVICE AS A UNIVERSITY POLICE OFFICER APPOINTED BY THE STATE UNIVERSITY PURSUANT TO PARAGRAPH L OF SUBDIVISION TWO OF SECTION THREE HUNDRED FIFTY-FIVE OF THE EDUCATION LAW.

S 2. Subdivision d of section 375-f of the retirement and social security law, as separately amended by chapters 674 and 677 of the laws of 1986, is amended to read as follows:

d. In addition to the retirement allowance provided pursuant to the plans set forth in sections three hundred eighty-three, three hundred eighty-three-a [and], three hundred eighty-three-b AND THREE HUNDRED EIGHTY-THREE-D of this [chapter] ARTICLE, a member of either such plan who retires on or after April first, nineteen hundred sixty-nine with more than twenty-five years of total service shall be entitled to receive, in addition to the benefits provided pursuant to [either] ANY such section and notwithstanding the limitations of [either] ANY such section, an additional retirement allowance for such years of service rendered in excess of twenty-five. The additional retirement allowance for such additional years of service shall be computed as if such member had been eligible to have his OR HER retirement allowance computed

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

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pursuant to the provisions of subdivision b of section three hundred seventy-five-c and of paragraph one of subdivision a of section three hundred seventy-five-d of this [chapter] TITLE.

S 3. The retirement and social security law is amended by adding a new section 383-d to read as follows:

S 383-D. ALTERNATE RETIREMENT BENEFITS FOR UNIVERSITY POLICE OFFICERS APPOINTED BY THE STATE UNIVERSITY. A. AS USED IN THIS SECTION, THE TERM "UNIVERSITY POLICE OFFICER" SHALL MEAN A PERSON WHO IS SO APPOINTED PURSUANT TO PARAGRAPH L OF SUBDIVISION TWO OF SECTION THREE HUNDRED FIFTY-FIVE OF THE EDUCATION LAW.

B. NOTWITHSTANDING ANY OTHER PROVISION OF LAW PROVIDING FOR TRANSFERS BETWEEN RETIREMENT SYSTEMS, ANY UNIVERSITY POLICE OFFICER IN THE SERVICE OF THE STATE UNIVERSITY WHO IS A MEMBER OF THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM MAY TRANSFER TO THE NEW YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM AND SHALL RECEIVE CREDIT PURSUANT TO AND BE ENTITLED TO THE RETIREMENT BENEFITS AFFORDED IN ACCORDANCE WITH THIS SECTION. UPON ANY SUCH TRANSFER THE MEMBER SHALL BE ENTITLED TO THE AMOUNT OF SERVICE WHICH WOULD HAVE BEEN DEEMED CREDITABLE AND SUCH MEMBER SHALL BE ENTITLED TO THE AMOUNT OF SERVICE WHICH WOULD HAVE BEEN DEEMED CREDITABLE HAD SUCH MEMBER BEEN SUBJECT TO SUCH SYSTEM DURING THE COURSE OF HIS OR HER MEMBERSHIP WITHIN SUCH SYSTEM. CONTRIBUTIONS TO SUCH SYSTEM SHALL BE MADE IN ACCORDANCE WITH APPROPRIATE PROVISIONS OF LAW RELATING THERETO. APPLICATION FOR SUCH TRANSFER MUST BE MADE TO THE STATE COMPTROLLER ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND TEN. THE PROVISIONS OF SECTION THREE HUNDRED FORTY-THREE OF THIS ARTICLE SHALL APPLY TO ANY MEMBER MAKING APPLICATION FOR TRANSFER UNDER THIS SUBDIVISION.

C. ANY UNIVERSITY POLICE OFFICER IN THE SERVICE OF THE STATE UNIVERSITY WHO ELECTS OR IS REQUIRED TO CONTRIBUTE UNDER THIS SECTION SHALL CONTRIBUTE TO THE NEW YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM ON THE BASIS OF RETIREMENT UPON HIS OR HER:

1. COMPLETION OF TWENTY-FIVE YEARS OF TOTAL CREDITABLE SERVICE, OR

2. ATTAINMENT OF AGE SIXTY AS A UNIVERSITY POLICE OFFICER IN THE SERVICE OF THE STATE UNIVERSITY, IF PRIOR THERETO, ON AN ALLOWANCE OF ONE-FIFTIETH OF HIS OR HER FINAL AVERAGE SALARY FOR EACH YEAR OF TOTAL CREDITABLE SERVICE NOT IN EXCESS OF TWENTY-FIVE YEARS. SUCH ELECTION SHALL BE IN WRITING AND SHALL BE DULY EXECUTED AND FILED WITH THE COMPTROLLER.

D. EVERY EMPLOYEE ENTERING OR RE-ENTERING SERVICE AS A UNIVERSITY POLICE OFFICER IN THE SERVICE OF THE STATE UNIVERSITY ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL CONTRIBUTE ON THE BASIS PROVIDED FOR BY THIS SECTION.

E. A MEMBER WHO IS REQUIRED TO CONTRIBUTE IN ACCORDANCE WITH THIS SECTION SHALL CONTRIBUTE, IN LIEU OF THE PROPORTION OF COMPENSATION AS PROVIDED IN SECTION THREE HUNDRED TWENTY-ONE OF THIS ARTICLE, A PROPORTION OF HIS OR HER COMPENSATION SIMILARLY DETERMINED. SUCH LATTER PROPORTION SHALL BE COMPUTED TO PROVIDE AT THE TIME WHEN HE OR SHE SHALL FIRST BECOME ELIGIBLE FOR RETIREMENT UNDER THIS SECTION, AN ANNUITY EQUAL TO ONE-ONE HUNDREDTH OF HIS OR HER FINAL AVERAGE SALARY FOR EACH YEAR OF SERVICE AS A MEMBER PRIOR TO THE ATTAINMENT OF THE AGE WHEN HE OR SHE SHALL FIRST BECOME ELIGIBLE FOR RETIREMENT. SUCH MEMBER'S RATE OF CONTRIBUTION PURSUANT TO THIS SECTION SHALL BE APPROPRIATELY REDUCED PURSUANT TO SECTION THREE HUNDRED SEVENTY-A OF THIS ARTICLE FOR SUCH PERIOD OF TIME AS HIS OR HER EMPLOYER CONTRIBUTES PURSUANT TO SUCH SECTION TOWARD PENSIONS-PROVIDING-FOR-INCREASED-TAKE-HOME-PAY. NO SUCH

MEMBER SHALL BE REQUIRED TO CONTINUE CONTRIBUTIONS AFTER COMPLETING TWENTY-FIVE YEARS OF SUCH SERVICE.

F. A MEMBER CONTRIBUTING ON THE BASIS OF THIS SECTION, AT THE TIME OF RETIREMENT, SHALL BE ENTITLED TO RETIRE AFTER THE COMPLETION OF TWENTY-FIVE YEARS OF TOTAL CREDITABLE SERVICE OR UPON THE ATTAINMENT OF AGE SIXTY BY FILING AN APPLICATION THEREFOR IN A MANNER SIMILAR TO THAT PROVIDED IN SECTION THREE HUNDRED SEVENTY OF THIS ARTICLE. HE OR SHE SHALL RECEIVE, ON RETIREMENT, A RETIREMENT ALLOWANCE CONSISTING OF:

1. AN ANNUITY WHICH SHALL BE THE ACTUARIAL EQUIVALENT OF HIS OR HER ACCUMULATED CONTRIBUTIONS AT THE TIME OF HIS OR HER RETIREMENT, PLUS

2. A PENSION WHICH, TOGETHER WITH SUCH ANNUITY AND A PENSION WHICH IS THE ACTUARIAL EQUIVALENT OF THE RESERVE-FOR-INCREASED-TAKE-HOME-PAY TO WHICH HE OR SHE MAY THEN BE ENTITLED, IF ANY, SHALL EQUAL ONE-FIFTIETH OF HIS OR HER FINAL AVERAGE SALARY FOR EACH YEAR OF CREDITABLE SERVICE IN SUCH DIVISION. THIS PENSION SHALL NOT EXCEED THE AMOUNT NEEDED TO MAKE THE TOTAL AMOUNT OF THE BENEFITS PROVIDED UNDER THIS PARAGRAPH AND PARAGRAPH ONE OF THIS SUBDIVISION EQUAL TO ONE-HALF OF FINAL AVERAGE SALARY.

3. AN ADDITIONAL PENSION EQUAL TO THE PENSION FOR ANY CREDITABLE SERVICE RENDERED WHILE NOT EMPLOYED AS A UNIVERSITY POLICE OFFICER IN THE SERVICE OF THE STATE UNIVERSITY AS PROVIDED UNDER PARAGRAPHS TWO AND THREE OF SUBDIVISION A OF SECTION THREE HUNDRED SEVENTY-FIVE OF THIS ARTICLE. THIS PENSION SHALL:

(I) BE PAYABLE ONLY IF SUCH MEMBER HAS ATTAINED AGE SIXTY AT THE TIME OF RETIREMENT AND HAS NOT COMPLETED TWENTY-FIVE YEARS OF SERVICE AS A UNIVERSITY POLICE OFFICER IN THE SERVICE OF THE STATE UNIVERSITY FOR WHICH HE OR SHE RECEIVES CREDIT UNDER THIS ARTICLE, AND

(II) NOT INCREASE THE TOTAL ALLOWANCE TO MORE THAN HE OR SHE WOULD HAVE RECEIVED HAD HIS OR HER TOTAL SERVICE BEEN RENDERED AS A UNIVERSITY POLICE OFFICER IN THE SERVICE OF THE STATE UNIVERSITY.

FOR THE PURPOSE ONLY OF DETERMINING THE AMOUNT OF THE PENSION PROVIDED HEREIN, THE ANNUITY SHALL BE COMPUTED AS IT WOULD BE:

(A) IF NOT REDUCED BY THE ACTUARIAL EQUIVALENT OF ANY OUTSTANDING LOAN, AND

(B) IF NOT INCREASED BY THE ACTUARIAL EQUIVALENT OF ANY ADDITIONAL CONTRIBUTIONS, AND

(C) IF NOT REDUCED BY REASON OF THE MEMBER'S ELECTION TO DECREASE HIS OR HER ANNUITY CONTRIBUTIONS TO THE RETIREMENT SYSTEMS IN ORDER TO APPLY THE AMOUNT OF SUCH REDUCTION IN PAYMENT OF HIS OR HER CONTRIBUTIONS FOR OLD-AGE AND SURVIVORS INSURANCE COVERAGE.

G. THE INCREASED PENSIONS TO A UNIVERSITY POLICE OFFICER IN THE SERVICE OF THE STATE UNIVERSITY, AS PROVIDED BY THIS SECTION, SHALL BE PAID FROM ADDITIONAL CONTRIBUTIONS MADE BY THE STATE ON ACCOUNT OF SUCH MEMBERS. THE ACTUARY OF THE RETIREMENT SYSTEM SHALL COMPUTE THE ADDITIONAL CONTRIBUTION OF EACH MEMBER WHO ELECTS TO RECEIVE THE SPECIAL BENEFITS PROVIDED UNDER THIS SECTION. SUCH ADDITIONAL CONTRIBUTIONS SHALL BE COMPUTED ON THE BASIS OF CONTRIBUTIONS DURING THE PROSPECTIVE SERVICE OF SUCH MEMBER WHICH WILL COVER THE LIABILITY OF THE RETIREMENT SYSTEM FOR SUCH EXTRA PENSIONS. UPON APPROVAL BY THE COMPTROLLER, SUCH ADDITIONAL CONTRIBUTIONS SHALL BE CERTIFIED BY HIM OR HER TO THE CHANCELLOR OF THE STATE UNIVERSITY. THE AMOUNT THEREOF SHALL BE INCLUDED IN THE ANNUAL APPROPRIATION OF THE STATE FOR THE STATE UNIVERSITY. SUCH AMOUNT SHALL BE PAID ON THE WARRANT OF THE COMPTROLLER TO THE PENSION ACCUMULATION FUND OF THE RETIREMENT SYSTEM.

H. IN COMPUTING THE TWENTY-FIVE YEARS OF COMPLETED SERVICE OF A UNIVERSITY POLICE OFFICER IN THE SERVICE OF THE STATE UNIVERSITY, FULL

CREDIT SHALL BE GIVEN AND FULL ALLOWANCE SHALL BE MADE FOR SERVICE OF SUCH MEMBER IN WAR AFTER WORLD WAR I AS DEFINED IN SECTION TWO OF THIS CHAPTER, PROVIDED SUCH MEMBER AT THE TIME OF HIS OR HER ENTRANCE INTO THE ARMED FORCES WAS IN STATE SERVICE.

I. THE PROVISIONS OF THIS SECTION SHALL BE CONTROLLING NOTWITHSTANDING ANY PROVISION IN THIS ARTICLE TO THE CONTRARY.

J. NOTWITHSTANDING ANY PROVISION OF SUBDIVISION D, E OR I OF THIS SECTION TO THE CONTRARY, A MEMBER WHO IS IN THE COLLECTIVE NEGOTIATING UNIT DESIGNATED AS THE AGENCY LAW ENFORCEMENT SERVICES UNIT AND ESTABLISHED PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW AND WHO HAS ELECTED OR IS REQUIRED TO CONTRIBUTE IN ACCORDANCE WITH THIS SECTION MAY, ON OR BEFORE MARCH THIRTY-FIRST, TWO THOUSAND ELEVEN, ELECT TO COME UNDER THE PROVISIONS OF SECTION THREE HUNDRED SEVENTY-FIVE-H OF THIS ARTICLE. SUCH ELECTION SHALL BE DULY EXECUTED AND FILED WITH THE COMPTROLLER.

K. COMMENCING WITH THE EFFECTIVE DATE OF THIS SECTION AND IN A MANNER DETERMINED BY THE HEAD OF THE RETIREMENT SYSTEM, THE EMPLOYER SHALL MAKE CONTRIBUTIONS TO THE RETIREMENT SYSTEM TO FUND THE PAST SERVICE LIABILITY COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THIS SECTION AS THOSE COSTS ARE CALCULATED BY THE RETIREMENT SYSTEM ACTUARY. SUCH CONTRIBUTIONS MAY BE MADE, AT THE ELECTION OF THE EMPLOYER, IN LEVEL DOLLAR INSTALLMENTS OVER A TEN YEAR PERIOD.

S 4. No employee contributions made to the New York state and local employees' retirement system by any state university police officer who elects to make a transfer pursuant to this act shall be returned to such officer. Such employee contributions shall be used to offset any past service costs incurred by operation of the provisions of this act.

S 5. Notwithstanding subdivision h of section 343 of the retirement and social security law, the provisions of subdivisions c and d of section 343 of the retirement and social security law shall apply and the employer contributions reserve shall be transferred from the appropriate fund or funds of the New York state and local employees' retirement system to the New York state and local police and fire retirement system.

S 6. Subdivisions 1, 2 and 3 and paragraphs (a) and (b) of subdivision 4 of section 58 of the civil service law, subdivision 1 as amended by chapter 560 of the laws of 1978, the opening paragraph of subdivision 1, subdivision 3 and paragraphs (a) and (b) of subdivision 4 as amended by chapter 435 of the laws of 1997, paragraph (a) of subdivision 1 as amended by chapter 346 of the laws of 2008 and subdivision 2 as amended by chapter 32 of the laws of 1999, are amended to read as follows:

1. Notwithstanding any other provision of this law or any general, special or local law to the contrary, no person shall be eligible for provisional or permanent appointment in the competitive class of the civil service as a police officer of any police force or police department of any county, city, town, village, housing authority [or], police district OR OF THE STATE UNIVERSITY OF NEW YORK unless he OR SHE shall satisfy the following basic requirements:

(a) he or she is not less than twenty years of age as of the date of appointment nor more than thirty-five years of age as of the date when the applicant takes the written examination, provided that the maximum age requirement of thirty-five years of age as set forth in this paragraph shall not apply to eligible lists finalized pursuant to an examination administered prior to May thirty-first, nineteen hundred ninety-nine FOR THE POLICE OFFICERS DESCRIBED IN THIS SUBDIVISION EXCEPT FOR POLICE OFFICERS OF THE STATE UNIVERSITY OF NEW YORK AND, WITH RESPECT TO

STATE UNIVERSITY POLICE OFFICERS ONLY, THE MAXIMUM AGE REQUIREMENT OF THIRTY-FIVE YEARS OF AGE AS SET FORTH IN THIS PARAGRAPH SHALL NOT APPLY TO ELIGIBLE LISTS FINALIZED PURSUANT TO AN EXAMINATION ADMINISTERED PRIOR TO DECEMBER THIRTY-FIRST, TWO THOUSAND TEN, provided, however, that:

(i) time spent on military duty or on terminal leave, not exceeding a total of six years, shall be subtracted from the age of any applicant who has passed his or her thirty-fifth birthday as provided in subdivision ten-a of section two hundred forty-three of the military law;

(ii) such maximum age requirement of thirty-five years shall not apply to any police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law, who was continuously employed by the Buffalo municipal housing authority between January first, two thousand five and June thirtieth, two thousand five and who takes the next written exam offered after the effective date of this subparagraph by the city of Buffalo civil service commission for employment as a police officer in the city of Buffalo police department, or June thirtieth, two thousand six, whichever is later; and

(iii) such maximum age requirement of thirty-five years shall not apply to any police officer of any county, town, city or village police force not otherwise provided for in this section if the eligible list has been exhausted and there are no other eligible candidates; provided, however, the police officer themselves are on the eligible list of such county, town, city or village and meet all other requirements of merit and fitness set forth by this chapter and do not exceed the maximum age of thirty-nine;

(b) he OR SHE is a high school graduate or a holder of a high school equivalency diploma issued by an education department of any of the states of the United States or a holder of a comparable diploma issued by any commonwealth, territory or possession of the United States or by the Canal Zone or a holder of a report from the United States armed forces certifying his OR HER successful completion of the tests of general educational development, high school level;

(c) he OR SHE satisfies the height, weight and physical fitness requirements prescribed by the municipal police training council pursuant to the provisions of section eight hundred forty of the executive law; and

(d) he OR SHE is of good moral character.

2. The provisions of this section shall not prevent any county, city, town, village, housing authority, transit authority [or], police district OR THE STATE UNIVERSITY OF NEW YORK from setting more restrictive requirements of eligibility for its police officers, except the maximum age to be a police officer as provided in paragraph (a) of subdivision one of this section.

3. As used in this section, the term "police officer" means a member of the regional state park police, THE STATE UNIVERSITY OF NEW YORK POLICE or a police force, police department, or other organization of a county, city, town, village, housing authority, transit authority or police district, who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but shall not include any person serving as such solely by virtue of his OR HER occupying any other office or position, nor shall such term include a sheriff, under-sheriff, commissioner of police, deputy or assistant commissioner of police, chief of police, deputy or assistant chief of police or any person having an equivalent title who is appointed or employed to exercise equivalent supervisory authority.

(a) Any person who has received provisional or permanent appointment in the competitive class of the civil service as a police officer of the regional state park police, THE STATE UNIVERSITY OF NEW YORK POLICE or any police force or police department of any county, city, town, village, housing authority, transit authority or police district shall be eligible to resign from any police force or police department, and to be appointed as a police officer in the same or any other police force or police department without satisfying the age requirements set forth in paragraph (a) of subdivision one of this section at the time of such second or subsequent appointment, provided such second or subsequent appointment occurs within thirty days of the date of resignation.

(b) Any person who has received permanent appointment in the competitive class of the civil service as a police officer of the regional state park police, THE STATE UNIVERSITY OF NEW YORK POLICE or any police force or police department of any county, city, town, village, housing authority, transit authority or police district shall be eligible to resign from any police force or police department and, subject to such civil service rules as may be applicable, shall be eligible for reinstatement in the same police force or police department or in any other police force or police department to which he OR SHE was eligible for transfer, without satisfying the age requirements set forth in paragraph (a) of subdivision one of this section at the time of such reinstatement, provided such reinstatement occurs within one year of the date of resignation.

S 7. This act shall take effect immediately, provided, however, that the provisions of subdivisions 1 and 2 of section 58 of the civil service law, as amended by section six of this act, shall not apply to university police officers in the service of the state university of New York on or before such effective date.

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

This bill would allow State University Police Officers to transfer to the New York State and Local Police and Fire Retirement System and to be covered by the provisions of a new twenty-five (25) year half pay retirement plan, with additional one-sixtieths of final average salary for each year of service in excess of twenty-five (25) years, but not exceeding fifteen (15) such years. For Tier 2 members, the additional one-sixtieths can not exceed seven (7) such years. There will be no refund of Article 14 or Article 15 member contributions for officers who transfer to the Police and Fire Retirement system.

If this bill is enacted, we anticipate that there will be an increase of approximately $1.0 million in the annual contributions of the State of New York for the fiscal year ending March 31, 2011.

In addition to the annual contributions discussed above, there will be an immediate past service cost of approximately $4.83 million which would be borne by the State of New York. This estimate is based on the assumption that payment will be made on March 1, 2011. If this cost is amortized over ten (10) years, the cost for the first year, including interest, would be approximately $667,000.

It should be noted that in addition to the increase in annual contributions given above, there would be increases in annual contributions for future State University Police Officers who would be Tier 5 members of the New York State and Local Police and Fire Retirement System rather than Tier 5 members of the New York State and Local Employees' Retirement System.

These estimated costs are based on five hundred fourteen (514) State University Police Officers with a total estimated salary of approximately $31.4 million for the fiscal year ending March 31, 2009.

This estimate, dated January 5, 2010 and intended for use only during the 2010 Legislative Session, is Fiscal Note No. 2010-56 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.