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

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:

Section 1. Subdivision a of section 13-316 of the administrative code of the city of New York, paragraph 11 as added by chapter 583 of the laws of 1989, is amended to read as follows:

a. A board of trustees shall be the head of the New York fire department pension fund subchapter two, and, subject to the provisions of law [and to the prior approval of the board of estimate], from time to time shall establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof. *THE PROVISIONS OF SECTIONS ONE THOUSAND FORTY-TWO, ONE THOUSAND FORTY-THREE, ONE THOUSAND FORTY-FOUR AND ONE THOUSAND FORTY-FIVE OF THE NEW YORK CITY CHARTER SHALL NOT BE CONSTRUED TO APPLY TO THE ADOPTION OF SUCH RULES AND REGULATIONS.* Such board shall consist of:

1. The fire commissioner who shall be chairperson of the board and who shall be entitled to cast three votes.

2. The comptroller of the city who shall be entitled to cast three votes.

3. A representative of the mayor who shall be appointed by the mayor and who shall be entitled to cast three votes.

4. The commissioner of finance of the city who shall be entitled to cast three votes.

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

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

8. The chairperson of the board of trustees of the uniformed firefighters' association of greater New York who shall be entitled to cast two votes.

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

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

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

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

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

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

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

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

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

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

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

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

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

E. 1. IN ADDITION TO THE POWERS CONFERRED UPON IT BY ANY OTHER PROVISION OF LAW, THE BOARD OF TRUSTEES SHALL, ON OR BEFORE APRIL FIRST OF EACH YEAR, ESTABLISH A BUDGET SUFFICIENT TO FULFILL THE POWERS, DUTIES AND RESPONSIBILITIES SET FORTH IN THIS CHAPTER AND ANY OTHER PROVISION OF LAW WHICH SETS FORTH THE BENEFITS OF MEMBERS OF THE PENSION FUND AND MAY DRAW UPON THE ASSETS OF THE PENSION FUND TO FUND SUCH BUDGET, SUBJECT TO THE PROVISIONS OF PARAGRAPHS TWO, THREE, FOUR, FIVE AND SIX OF THIS SUBDIVISION AND SUBDIVISIONS F, G, H AND I OF THIS SECTION. THE PROVISIONS OF THIS SECTION SHALL NOT BE APPLICABLE TO THE PAYMENT OF INVESTMENT EXPENSES PURSUANT TO SECTION 13-705 OF THIS TITLE, AND NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED AS ABOLISHING, LIMITING OR MODIFYING ANY POWER OF THE BOARD OF TRUSTEES TO PROVIDE FOR THE PAYMENT OF INVESTMENT EXPENSES PURSUANT TO SECTION 13-705 OF THIS TITLE.

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

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

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

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

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

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

F. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, ANY RESOLUTION OF THE BOARD OF TRUSTEES WHICH ESTABLISHES A BUDGET OR MODIFIES A BUDGET PURSUANT TO THE PROVISIONS OF PARAGRAPH ONE OR THREE OF SUBDIVISION E OF THIS SECTION SHALL REQUIRE THE CONCURRENCE OF THE COMPTROLLER AND THE REPRESENTATIVE OF THE MAYOR. THIS PROVISION SHALL APPLY ONLY TO THIS SUBDIVISION, AND NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE CONSTRUED TO APPLY TO ANY OTHER VOTE OF THE BOARD. NO ASSETS OF THE PENSION FUND SHALL BE DRAWN UPON PURSUANT TO THE PROVISIONS OF PARAGRAPH ONE OF SUBDIVISION E OF THIS SECTION UNLESS AUTHORIZED BY A BUDGET OR BUDGET MODIFICATION ESTABLISHED BY A RESOLUTION OF THE BOARD OF TRUSTEES.

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

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

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

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

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

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