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

S. 5418--A A. 8059--A

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

May 1, 2009

IN SENATE -- Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. ABBATE -- read once and referred to the Committee on Governmental Employees -- 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 the preparation of legislative fiscal notes and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Legislative findings. The legislature finds that it is critically important to ensure that all fiscal notes required pursuant to section 50 of the legislative law reflect the most accurate estimate of the total cost of any proposed change to a retirement system or plan of the state of New York or any of its political subdivisions. In order to accomplish this public purpose, the legislature hereby finds that all fiscal notes required pursuant to section 50 of the legislative law should be prepared and submitted by the chief actuary of the affected retirement system or plan, if applicable, in as timely a manner as practicable. The legislature further finds that all fiscal notes generated pursuant to such section 50 shall represent the best faith estimate of the chief actuary of the affected retirement system or plan, if applicable, and that such estimate shall be generated in accordance with the generally-accepted actuarial standards and practices in effect at the time for such retirement system or plan.

S 2. The retirement and social security law is amended by adding two new sections 809 and 810 to read as follows:

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

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S 809. PREPARATION OF LEGISLATIVE FISCAL NOTES. A. 1. NOTWITHSTANDING ANY OTHER PROVISION OF ANY GENERAL, SPECIAL, OR LOCAL LAW, CHARTER, ADMINISTRATIVE CODE OR RULE OR REGULATION TO THE CONTRARY, THE ACTUARY OF EACH PUBLIC RETIREMENT SYSTEM, AS DEFINED IN SUBDIVISION A OF SECTION EIGHT HUNDRED OF THIS ARTICLE, IS RESPONSIBLE FOR FISCAL NOTES ON LEGISLATION AFFECTING THE PUBLIC RETIREMENT SYSTEM FOR WHICH HE OR SHE PROVIDES ACTUARIAL SERVICES IN ACCORDANCE WITH SECTION FIFTY OF THE LEGISLATIVE LAW. EACH FISCAL NOTE SHALL BE PREPARED BY APPLYING GENERALLY ACCEPTED ACTUARIAL METHODOLOGIES TO ESTIMATE THE FINANCIAL IMPACT OF LEGISLATION SUBMITTED FOR ACTUARIAL REVIEW. IN THE EVENT LEGISLATION CONTAINS PROVISIONS APPLICABLE TO MORE THAN ONE PUBLIC RETIREMENT SYSTEM, A FISCAL NOTE ASSESSING THE FINANCIAL IMPACT ON EACH SYSTEM SHALL BE PREPARED.

2. LEGISLATIVE FISCAL NOTES REQUIRED PURSUANT TO SECTION FIFTY OF THE LEGISLATIVE LAW SHALL BE REQUESTED IN WRITING. SUCH WRITTEN REQUEST SHALL ACCOMPANY A DRAFT OF THE PROPOSED LEGISLATION AND MEMORANDUM IN SUPPORT AND SHALL CLEARLY IDENTIFY THE NAME OF THE INDIVIDUAL OR ENTITY REQUESTING SUCH FISCAL NOTE AND THE DATE THAT SUCH REQUEST WAS MADE.

3. FISCAL NOTES REQUESTED PURSUANT TO PARAGRAPH TWO OF THIS SUBDIVISION SHALL BE PROVIDED TO THE REQUESTING INDIVIDUAL OR ENTITY IN A REASONABLE AND TIMELY MANNER. UPON COMPLETION OF THE FISCAL NOTE, THE ACTUARY SHALL NOT CIRCULATE THE FISCAL NOTE PUBLICLY PRIOR TO THE RECEIPT OF THE FISCAL NOTE BY THE ORIGINAL REQUESTER. ALL FISCAL NOTES SHALL BE SUBJECT TO ALL FREEDOM OF INFORMATION LAWS IN THE STATE OF NEW YORK.

B. 1. THE ACTUARY OF THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM AND THE NEW YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM MAY BE RESPONSIBLE FOR PREPARING LEGISLATIVE FISCAL NOTES AS PROVIDED IN SUBDIVISION A OF THIS SECTION WHICH MAY BE FUNDED THROUGH THE PORTION OF THE ADMINISTRATIVE BUDGET OF SUCH SYSTEM ATTRIBUTABLE TO THE POWERS AND DUTIES OF THE ACTUARY AS PROVIDED BY LAW OR OTHERWISE REQUIRED BY THE COMPTROLLER.

2. THE ACTUARY OF THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM MAY BE RESPONSIBLE FOR PREPARING LEGISLATIVE FISCAL NOTES AS PROVIDED IN SUBDIVISION A OF THIS SECTION WHICH MAY BE FUNDED THROUGH THE PORTION OF THE ADMINISTRATIVE BUDGET OF SUCH SYSTEM ATTRIBUTABLE TO THE POWERS AND DUTIES OF THE ACTUARY AS PROVIDED BY LAW OR OTHERWISE REQUIRED BY THE BOARD OF TRUSTEES OF SUCH SYSTEM.

C. THE ACTUARY OF THE FIVE ACTUARIALLY FUNDED RETIREMENT SYSTEMS OF THE CITY OF NEW YORK SHALL, IN ADDITION TO THE POWERS DELINEATED IN SUBDIVISION A OF THIS SECTION, FULFILL SUCH POWERS AND DUTIES AS PROVIDED IN THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, THE EDUCATION LAW AND ALL OTHER APPLICABLE SECTIONS OF LAW, AND PERFORM ALL OTHER DUTIES AS REQUIRED BY THE BOARDS OF TRUSTEES OF THE FIVE ACTUARIALLY FUNDED RETIREMENT SYSTEMS IN THE CITY OF NEW YORK.

S 810. ACTUARIAL OVERSIGHT BOARD. A. THERE IS HEREBY ESTABLISHED THE ACTUARIAL OVERSIGHT BOARD ("BOARD") AS AN INDEPENDENT ENTITY WITHIN THE GUISE OF THE FIVE PUBLIC RETIREMENT SYSTEMS OF THE CITY OF NEW YORK.

B. THE BOARD SHALL CONSIST OF SEVEN MEMBERS AS FOLLOWS: 1. ONE APPOINTMENT BY THE BOARD OF TRUSTEES OF THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM WHO CURRENTLY HOLDS A POSITION THAT IS ELECTED BY A PORTION OF THE MEMBERSHIP OF SAID RETIREMENT SYSTEM; 2. ONE APPOINTMENT BY THE BOARD OF TRUSTEES OF THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM WHO CURRENTLY HOLDS A POSITION THAT IS ELECTED BY A PORTION OF THE MEMBERSHIP OF SAID RETIREMENT SYSTEM; 3. ONE APPOINTMENT BY THE BOARD OF TRUSTEES OF THE NEW YORK CITY BOARD OF EDUCATION RETIREMENT

SYSTEM WHO CURRENTLY HOLDS A POSITION THAT IS ELECTED BY A PORTION OF THE MEMBERSHIP OF SAID RETIREMENT SYSTEM; 4. ONE APPOINTMENT BY THE BOARD OF TRUSTEES OF THE NEW YORK CITY POLICE PENSION FUND WHO CURRENTLY HOLDS A POSITION THAT IS ELECTED BY A PORTION OF THE MEMBERSHIP OF SAID RETIREMENT SYSTEM; 5. ONE APPOINTMENT BY THE BOARD OF TRUSTEES OF THE NEW YORK CITY FIRE DEPARTMENT PENSION FUND WHO CURRENTLY HOLDS A POSITION THAT IS ELECTED BY A PORTION OF THE MEMBERSHIP OF SAID RETIREMENT SYSTEM; 6. THE COMPTROLLER OF THE CITY OF NEW YORK OR HIS OR HER DESIGNEE; AND 7. THE MAYOR OF THE CITY OF NEW YORK OR HIS OR HER DESIGNEE. EACH MEMBER OF THE BOARD SHALL SERVE FOR A TERM OF TWO YEARS. ALL MEMBERS SHALL CONTINUE IN OFFICE UNTIL THEIR SUCCESSORS HAVE BEEN APPOINTED. THE MEMBERS SHALL SERVE WITHOUT COMPENSATION FOR THEIR SERVICES AS MEMBERS, BUT SHALL BE ENTITLED TO REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES. THE STATE AND CITY OF NEW YORK SHALL HOLD HARMLESS AND INDEMNIFY MEMBERS OF THE BOARD PURSUANT TO SECTIONS SEVENTEEN AND EIGHTEEN OF THE PUBLIC OFFICERS LAW AGAINST ANY CLAIM, DEMAND, SUIT OR JUDGMENT ARISING BY REASON OF ANY ACT OR OMISSION BY SUCH MEMBER OCCURRING IN THE DISCHARGE OF HIS OR HER DUTIES AND WITHIN THE SCOPE OF HIS OR HER SERVICE ON BEHALF OF THE BOARD. THE BOARD AND ITS MEMBERS SHALL BE SUBJECT TO THE PROVISIONS OF SECTIONS SEVENTY-THREE AND SEVENTY-FOUR OF THE PUBLIC OFFICERS LAW AND CHAPTER SIXTY-EIGHT OF THE CHARTER OF THE CITY OF NEW YORK. NOTWITHSTANDING ANY OTHER PROVISION OF ANY GENERAL, SPECIAL OR LOCAL LAW, CHARTER, ADMINISTRATIVE CODE OR RULE OR REGULATION TO THE CONTRARY, NO OFFICER OR EMPLOYEE OF THE STATE OR CIVIL DIVISION THEREOF SHALL BE DEEMED TO HAVE FORFEITED OR SHALL FORFEIT HIS OR HER OFFICE OR EMPLOYMENT BY REASON OF HIS OR HER ACCEPTANCE OF MEMBERSHIP ON THE BOARD CREATED BY THIS SUBDIVISION.

C. THE CHAIRPERSON OF THE BOARD SHALL BE THE MEMBER OF THE BOARD APPOINTED BY THE RETIREMENT SYSTEM HAVING THE LARGEST PERCENTAGE OF ASSETS OF THE FIVE ACTUARIALLY FUNDED RETIREMENT SYSTEMS OF THE CITY OF NEW YORK AS OF THE END OF THE PRECEDING FISCAL YEAR AS DETERMINED BY THE COMPTROLLER OF THE CITY OF NEW YORK.

D. THE BOARD SHALL MEET NO LESS THAN ONCE EACH QUARTER IN A CALENDAR YEAR. MEETINGS OF THE BOARD SHALL COMPLY WITH THE OPEN MEETINGS LAW PURSUANT TO ARTICLE SEVEN OF THE PUBLIC OFFICERS LAW. THE ACTUARY OF THE FIVE ACTUARIALLY FUNDED RETIREMENT SYSTEMS IN THE CITY OF NEW YORK SHALL ASSIGN TO THE BOARD A SUFFICIENT NUMBER OF CLERICAL AND OTHER ASSISTANTS TO PERMIT THE BOARD TO EFFICIENTLY EXERCISE ITS POWERS AND TO PERFORM ITS DUTIES.

E. THE BOARD IS EMPOWERED TO OVERSEE THE OPERATIONS OF THE ACTUARY OF THE FIVE ACTUARIALLY FUNDED RETIREMENT SYSTEMS OF THE CITY OF NEW YORK INCLUDING AUDITING AND MONITORING THE IMPLEMENTATION OF THE ANNUAL BUDGET AND ALL ADMINISTRATIVE OPERATIONS. THE BOARD SHALL ESTABLISH A REASONABLE TIMEFRAME FOR THE PREPARATION OF FISCAL NOTES AFFECTING ANY OF THE FIVE ACTUARIALLY FUNDED RETIREMENT SYSTEMS IN THE CITY OF NEW YORK.

F. THE ACTUARY OF THE FIVE ACTUARIALLY FUNDED RETIREMENT SYSTEMS OF THE CITY OF NEW YORK SHALL SUBMIT TO THE BOARD A PROPOSED ANNUAL ADMINISTRATIVE BUDGET WHICH IS SUFFICIENT TO CARRY OUT THE POWERS AND DUTIES OF SUCH ACTUARY AS PROVIDED BY LAW. SUCH PROPOSED BUDGET SHALL INCLUDE AN ALLOCATION FOR REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES INCURRED BY THE MEMBERS OF THE BOARD IN THE PERFORMANCE OF THEIR DUTIES. THE BOARD SHALL HAVE THE POWER TO APPROVE, MODIFY OR REJECT SUCH PROPOSED ANNUAL ADMINISTRATIVE BUDGET; PROVIDED, HOWEVER, THAT UPON THE EFFECTIVE DATE OF THIS SECTION FOR CITY FISCAL YEAR TWO THOUSAND TEN THE

BUDGET OF THE ACTUARY OF THE FIVE ACTUARIALLY FUNDED RETIREMENT SYSTEMS OF THE CITY OF NEW YORK SHALL BE EQUAL TO THE ADOPTED BUDGET OF THE OFFICE OF THE ACTUARY FOR CITY FISCAL YEAR TWO THOUSAND NINE AS SPECIFIED IN THE ADOPTED BUDGET OF THE CITY OF NEW YORK INCLUDING ANY MODIFICATIONS THERETO. THE COSTS OF THE ANNUAL BUDGET IN CITY FISCAL YEAR TWO THOUSAND TEN AND THE COSTS OF THE APPROVED ANNUAL BUDGET IN EACH SUBSEQUENT YEAR SHALL BE ALLOCATED AMONG THE: 1. NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM; 2. NEW YORK CITY TEACHERS' RETIREMENT SYSTEM; 3. NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM; 4. NEW YORK CITY POLICE PENSION FUND; AND 5. NEW YORK CITY FIRE DEPARTMENT PENSION FUND, AND SHALL BE ASSESSED ANNUALLY ON A PRO RATA SHARE BASED UPON THE ASSETS OF SUCH SYSTEMS AS DETERMINED BY THE OFFICE OF THE COMPTROLLER OF THE CITY OF NEW YORK AS OF THE THIRTIETH DAY OF JUNE OF THE PRECEDING FISCAL YEAR AND SHALL BE PAYABLE BY THE LAST DAY OF THE CALENDAR YEAR IN WHICH THE EXPENSES WERE ASSESSED. THE BOARD OF TRUSTEES OF THE: (I) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM; (II) NEW YORK CITY TEACHERS' RETIREMENT SYSTEM; (III) NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM; (IV) NEW YORK CITY POLICE PENSION FUND; AND (V) NEW YORK CITY FIRE DEPARTMENT PENSION FUND MAY DRAW UPON THE ASSETS OF ITS RESPECTIVE RETIREMENT SYSTEM TO FUND ITS PRO RATA SHARE.

G. THE ACTUARY OF THE FIVE ACTUARIALLY FUNDED RETIREMENT SYSTEMS OF THE CITY OF NEW YORK SHALL HAVE THE POWER TO OBTAIN BY EMPLOYMENT OR BY CONTRACT THE GOODS, PROPERTY AND SERVICES NECESSARY TO FULFILL HIS OR HER POWERS, DUTIES AND RESPONSIBILITIES WITHIN THE APPROVED ANNUAL BUDGET. ALL CONTRACTS FOR GOODS AND SERVICES ENTERED INTO BY THE ACTUARY SHALL BE PROCURED AS PRESCRIBED IN CHAPTER THIRTEEN OF THE CHARTER OF THE CITY OF NEW YORK.

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

S 3. This act shall take effect on the ninetieth day after it shall have become a law and shall expire and be deemed repealed June 30, 2011.