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

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I N A S S E M B L Y

June 8, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Zebrowski, Abbate, P. Rivera, Maisel, Raia, Abinanti, Reilly, Galef, M. Miller, Calhoun, McDonough, Gunther, Jaffee, Boyland, Skartados, Arroyo, Cook, DenDekker, Dinowitz, Glick, Magee, Paulin) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the retirement and social security law, in relation to establishing a residency requirement for certain persons employed by the state or its subdivisions

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 79-a to read as follows:

S 79-A. RESIDENCY REQUIREMENT FOR STATE OFFICERS, EMPLOYEES; EXCEPTIONS. 1. EVERY PERSON HOLDING AN OFFICE, EMPLOYMENT, OR POSITION WITH THE FOLLOWING ENTITIES SHALL MAINTAIN HIS OR HER PRINCIPAL RESIDENCE IN THE STATE:

A. IN THE EXECUTIVE, LEGISLATIVE, OR JUDICIAL BRANCH OF THIS STATE;

B. WITH AN AUTHORITY, BOARD, BODY, AGENCY, COMMISSION, OR INSTRUMENTALITY OF THE STATE INCLUDING ANY STATE COLLEGE, UNIVERSITY, OR OTHER HIGHER EDUCATIONAL INSTITUTION, AND, TO THE EXTENT CONSISTENT WITH LAW, ANY INTERSTATE AGENCY TO WHICH THE STATE IS A PARTY;

C. WITH A COUNTY, MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION OF THE STATE OR AN AUTHORITY, BOARD, BODY, AGENCY, DISTRICT, COMMISSION, OR INSTRUMENTALITY OF THE COUNTY, MUNICIPALITY, OR SUBDIVISION; OR

D. WITH A SCHOOL DISTRICT OR AN AUTHORITY, BOARD, BODY, AGENCY, COMMISSION, OR INSTRUMENTALITY OF THE DISTRICT.

2. A. SUBJECT TO THE PROVISIONS OF PARAGRAPH D OF SUBDIVISION THREE OF THIS SECTION, THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PERSON WHO IS EMPLOYED:

(1) ON A TEMPORARY OR PER-SEMESTER BASIS AS A VISITING PROFESSOR, TEACHER, LECTURER, OR RESEARCHER BY ANY STATE COLLEGE, UNIVERSITY, OR OTHER HIGHER EDUCATIONAL INSTITUTION, OR COUNTY OR COMMUNITY COLLEGE; OR

(2) IN A FULL OR PART-TIME POSITION AS A MEMBER OF THE FACULTY, THE RESEARCH STAFF, OR THE ADMINISTRATIVE STAFF BY ANY STATE COLLEGE,

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

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UNIVERSITY, OR OTHER HIGHER EDUCATIONAL INSTITUTION, OR COUNTY OR COMMUNITY COLLEGE, THAT THE COLLEGE, UNIVERSITY, OR INSTITUTION HAS INCLUDED IN THE REPORT REQUIRED TO BE FILED PURSUANT TO PARAGRAPH D OF SUBDIVISION THREE OF THIS SECTION; OR

(3) ON A FULL-TIME BASIS BY THE STATE WHO SERVES IN AN OFFICE, EMPLOYMENT, OR POSITION THAT REQUIRES THE PERSON TO SPEND THE MAJORITY OF HIS OR HER WORKING HOURS IN A LOCATION OUTSIDE OF THIS STATE.

B. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PERSON WHO HOLDS AN OFFICE, EMPLOYMENT, OR POSITION IN THIS STATE ON THE EFFECTIVE DATE OF THIS SECTION BUT DOES NOT HAVE HIS OR HER PRINCIPAL RESIDENCE IN THIS STATE ON THAT EFFECTIVE DATE, PROVIDED SUCH PERSON CONTINUES TO HOLD OFFICE, EMPLOYMENT, OR POSITION WITHOUT A BREAK IN PUBLIC SERVICE OF GREATER THAN SEVEN DAYS.

C. THE FACT THAT A PERSON IS DOMICILED IN THIS STATE SHALL NOT BY ITSELF SATISFY THE REQUIREMENT OF PRINCIPAL RESIDENCY HEREUNDER. FOR THE PURPOSES OF THIS SUBDIVISION, A PERSON MAY HAVE, AT MOST, ONE PRINCIPAL RESIDENCE, AND THE STATE OF A PERSON'S PRINCIPAL RESIDENCE MEANS THE STATE:

(1) WHERE THE PERSON SPENDS THE MAJORITY OF HIS OR HER NON-WORKING TIME; AND

(2) WHICH IS MOST CLEARLY THE CENTER OF HIS OR HER DOMESTIC LIFE; AND

(3) WHICH IS DESIGNATED AS HIS OR HER LEGAL ADDRESS AND LEGAL RESIDENCE FOR VOTING.

3. A. ANY PERSON MAY REQUEST AN EXEMPTION FROM THE PROVISIONS OF THIS SECTION ON THE BASIS OF CRITICAL NEED OR HARDSHIP FROM A FIVE-MEMBER COMMITTEE HEREBY ESTABLISHED TO CONSIDER APPLICATIONS FOR SUCH EXEMPTIONS. THE COMMITTEE SHALL BE COMPOSED OF FIVE PEOPLE, THREE OF WHOM SHALL BE APPOINTED BY THE GOVERNOR, AND ONE OF WHOM SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE AND ONE OF WHOM SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY. EACH APPOINTEE SHALL SERVE AT THE PLEASURE OF THE PERSON MAKING THE APPOINTMENT AND SHALL HAVE A TERM NOT TO EXCEED FIVE YEARS. A VACANCY ON THE COMMITTEE SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT WAS MADE. THE GOVERNOR SHALL MAKE PROVISION TO PROVIDE SUCH CLERICAL, SECRETARIAL AND ADMINISTRATIVE SUPPORT TO THE COMMITTEE AS MAY BE NECESSARY FOR IT TO CONDUCT ITS RESPONSIBILITIES PURSUANT TO THIS SUBDIVISION.

B. THE DECISION ON WHETHER TO APPROVE AN APPLICATION FROM ANY PERSON SHALL BE MADE BY A MAJORITY VOTE OF THE MEMBERS OF THE COMMITTEE, AND THOSE VOTING IN THE AFFIRMATIVE SHALL SO SIGN THE APPROVED APPLICATION. IF THE COMMITTEE FAILS TO ACT ON AN APPLICATION WITHIN THIRTY DAYS AFTER THE RECEIPT THEREOF, NO EXEMPTION SHALL BE GRANTED AND THE RESIDENCY REQUIREMENT OF THIS SUBDIVISION SHALL BE OPERATIVE.

C. THE FOLLOWING PERSONS SHALL NOT BE ELIGIBLE TO REQUEST FROM THE COMMITTEE AN EXEMPTION FROM THE PROVISIONS OF THIS SUBDIVISION:

(1) THE HEAD OF A DEPARTMENT OF THE EXECUTIVE BRANCH OF THE STATE GOVERNMENT; OR

(2) A JUSTICE OF THE SUPREME COURT, JUDGE OF THE SUPERIOR COURT AND JUDGE OF ANY INFERIOR COURT ESTABLISHED UNDER THE LAWS OF THIS STATE.

D. THE EXEMPTION PROVIDED IN SUBPARAGRAPH TWO OF PARAGRAPH A OF SUBDIVISION TWO OF THIS SECTION SHALL APPLY ONLY TO THOSE PERSONS HOLDING POSITIONS THAT THE COLLEGE, UNIVERSITY, OR INSTITUTION HAS INCLUDED IN A REPORT OF THOSE FULL OR PART-TIME POSITIONS AS A MEMBER OF THE FACULTY, THE RESEARCH STAFF, OR THE ADMINISTRATIVE STAFF REQUIRING SPECIAL EXPERTISE OR EXTRAORDINARY QUALIFICATIONS IN AN ACADEMIC, SCIENTIFIC, TECHNICAL, PROFESSIONAL, OR MEDICAL FIELD OR IN ADMINISTRATION, THAT, IF NOT EXEMPT FROM THE RESIDENCY REQUIREMENT, WOULD SERIOUSLY IMPEDE THE ABILI-

TY OF THE COLLEGE, UNIVERSITY, OR INSTITUTION TO COMPETE SUCCESSFULLY WITH SIMILAR COLLEGES, UNIVERSITIES, OR INSTITUTIONS IN OTHER STATES. THE REPORT SHALL BE COMPILED ANNUALLY AND SHALL ALSO CONTAIN THE REASONS WHY THE POSITIONS WERE SELECTED FOR INCLUSION IN THE REPORT. THE REPORT SHALL BE COMPILED AND FILED WITHIN SIXTY DAYS FOLLOWING THE EFFECTIVE DATE OF THIS SECTION. THE REPORT SHALL BE REVIEWED, REVISED AS NECESSARY, AND FILED BY JANUARY FIRST OF EACH YEAR THEREAFTER WITH THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY. A REPORT MAY BE REVISED AT ANY TIME BY FILING AN AMENDMENT TO THE REPORT WITH THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY.

4. ANY PERSON HOLDING ANY OFFICE, EMPLOYMENT, OR OTHER POSITION IN THIS STATE WHO ATTEMPTS TO LET, FARM OUT OR TRANSFER SUCH OFFICE, EMPLOYMENT, OR POSITION OR ANY PART THEREOF TO ANY PERSON, SHALL FORFEIT THE SUM OF FIFTEEN HUNDRED DOLLARS, TO BE RECOVERED WITH COSTS BY ANY PERSON WHO SHALL SUE FOR THE SAME, ONE-HALF TO THE PROSECUTOR AND THE OTHER HALF TO THE COMPTROLLER FOR THE USE OF THE STATE.

5. ANY PERSON HOLDING OR ATTEMPTING TO HOLD AN OFFICE, EMPLOYMENT, OR POSITION IN VIOLATION OF THIS SECTION SHALL BE CONSIDERED AS ILLEGALLY HOLDING OR ATTEMPTING TO HOLD THE SAME; PROVIDED THAT A PERSON HOLDING AN OFFICE, EMPLOYMENT, OR POSITION IN THIS STATE SHALL HAVE ONE YEAR FROM THE TIME OF TAKING THE OFFICE, EMPLOYMENT, OR POSITION TO SATISFY THE REQUIREMENT OF PRINCIPAL RESIDENCY, AND IF THEREAFTER SUCH PERSON FAILS TO SATISFY THE REQUIREMENT OF PRINCIPAL RESIDENCY AS DEFINED HEREIN WITH RESPECT TO ANY THREE HUNDRED SIXTY-FIVE-DAY PERIOD, THAT PERSON SHALL BE DEEMED UNQUALIFIED FOR HOLDING THE OFFICE, EMPLOYMENT, OR POSITION. THE SUPREME COURT SHALL, IN A CIVIL ACTION, GIVE JUDGMENT OF OUSTER AGAINST SUCH PERSON, UPON THE COMPLAINT OF ANY OFFICER OR CITIZEN OF THE STATE, PROVIDED THAT ANY SUCH COMPLAINT SHALL BE BROUGHT WITHIN ONE YEAR OF THE ALLEGED THREE HUNDRED SIXTY-FIVE-DAY PERIOD OF FAILURE TO HAVE HIS OR HER PRINCIPAL RESIDENCE IN THIS STATE.

6. NO PERSON SHALL BE APPOINTED TO OR HOLD ANY POSITION IN THIS STATE WHO HAS NOT THE REQUISITE QUALIFICATIONS FOR PERSONALLY PERFORMING THE DUTIES OF SUCH POSITION IN CASES WHERE SCIENTIFIC ENGINEERING SKILL IS NECESSARY TO THE PERFORMANCE OF THE DUTIES THEREOF.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law.