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

5836

2011-2012 Regular Sessions

I N S E N A T E

June 21, 2011

Introduced by Sen. GOLDEN -- 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 certain employees' ability to borrow against contributions

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 1207 to read as follows:

S 1207. LOANS TO MEMBERS. A. NOTWITHSTANDING ANY GENERAL, SPECIAL OR LOCAL LAW TO THE CONTRARY, A MEMBER IN ACTIVE SERVICE WHO HAS CREDIT FOR AT LEAST ONE YEAR OF MEMBER SERVICE MAY BORROW, NO MORE THAN ONCE WITHIN EACH TWELVE MONTH PERIOD, AN AMOUNT NOT EXCEEDING SEVENTY-FIVE PERCENT OF THE TOTAL CONTRIBUTIONS MADE PURSUANT TO SECTION TWELVE HUNDRED FOUR OF THIS ARTICLE OR ANY OTHER ARTICLE OF THIS CHAPTER AND NOT LESS THAN ONE THOUSAND DOLLARS.

B. AN AMOUNT SO BORROWED, TOGETHER WITH INTEREST ON ANY UNPAID BALANCE THEREOF, SHALL BE REPAID IN EQUAL INSTALLMENTS WHICH SHALL BE MADE BY THE BORROWER DIRECTLY TO THE RETIREMENT SYSTEM OR THROUGH REGULAR PAYROLL DEDUCTION. SUCH INSTALLMENTS SHALL BE IN SUCH AMOUNT AS THE RETIREMENT SYSTEM SHALL APPROVE; HOWEVER, THEY SHALL BE AT LEAST (A) TWO PERCENT OF THE MEMBER'S CONTRACT SALARY, AND (B) SUFFICIENT TO REPAY THE AMOUNT BORROWED, TOGETHER WITH INTEREST ON UNPAID BALANCES THEREOF, WITHIN A PERIOD NOT IN EXCESS OF FIVE YEARS. IN THE EVENT OF DEFAULT, THE RETIREMENT SYSTEM SHALL BE AUTHORIZED TO COLLECT SUCH PAYMENTS DUE FROM THE EMPLOYER OF SUCH MEMBER THROUGH PAYROLL DEDUCTION AND SUCH MEMBER SHALL FORFEIT ALL FUTURE ENTITLEMENT TO BORROW FROM THE RETIREMENT SYSTEM UNTIL THE UNPAID BALANCE OF THE LOAN OUTSTANDING AT THE TIME OF DEFAULT IS FULLY PAID. THE RETIREMENT SYSTEM, AT ANY TIME, MAY ACCEPT PAYMENTS ON ACCOUNT OF ANY LOAN IN ADDITION TO THE INSTALLMENTS FIXED FOR REPAYMENT THEREOF. ALL PAYMENTS OF PRINCIPAL AND INTEREST AT THE RATES SET FORTH IN SUBDIVISION C OF THIS SECTION MADE BY THE MEMBER

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

LBD11397-05-1

SHALL BE CREDITED TO HIS OR HER ACCOUNT AS PRINCIPAL OR INTEREST. ANY ADDITIONAL INTEREST PAID BY THE MEMBER SHALL BE CREDITED TO THE APPROPRIATE FUND OF THE RETIREMENT SYSTEM.

C. THE RATE OF INTEREST PAYABLE UPON LOANS MADE PURSUANT TO THIS SECTION SHALL BE ONE PERCENT LESS THAN THE VALUATION RATE OF INTEREST ADOPTED FOR SUCH SYSTEM. WHENEVER THERE IS A CHANGE IN THE INTEREST RATE, IT SHALL BE APPLICABLE TO LOANS MADE OR RENEGOTIATED AFTER THE DATE OF SUCH CHANGE IN THE INTEREST RATE.

D. A SERVICE CHARGE PAYABLE UPON LOANS MADE PURSUANT TO THIS SECTION SHALL BE SET BY THE RETIREMENT SYSTEM IN AN AMOUNT SUFFICIENT TO COVER THE COST TO THE RETIREMENT SYSTEM OF ADMINISTERING THE LOANS. SUCH CHARGE SHALL BE PAID TO THE RETIREMENT SYSTEM WHEN THE LOAN IS MADE OR IN EQUAL INSTALLMENTS OVER THE PERIOD THE LOAN IS OUTSTANDING. THE AMOUNT OF THE SERVICE CHARGE SHALL BE CREDITED TO THE FUND FROM WHICH ADMINISTRATIVE EXPENSES ARE PAID.

E. 1. EACH LOAN MADE PURSUANT TO THIS SECTION SHALL BE INSURED AGAINST THE DEATH OF THE MEMBER IN AN AMOUNT EQUAL TO THE AMOUNT OF THE LOAN OUTSTANDING AT ANY GIVEN TIME; WITH THE EXCEPTION THAT UNTIL THIRTY DAYS HAVE ELAPSED AFTER THE MAKING THEREOF, NO PART OF THE LOAN SHALL BE INSURED. SUCH INSURANCE SHALL BE PROVIDED BY THE RETIREMENT SYSTEM. UPON THE DEATH OF THE MEMBER, THE AMOUNT OF INSURANCE SO PAYABLE SHALL BE CREDITED TO HIS OR HER ACCOUNT. THE PREMIUM PAYABLE BY THE MEMBER FOR SUCH INSURANCE SHALL BE SET BY THE RETIREMENT SYSTEM AT A RATE NOT TO EXCEED ONE PERCENT OF THE AMOUNT LOANED.

2. SUCH PREMIUM SHALL BE PRORATED TO JULY FIRST NEXT, OR SUCH OTHER DATE FIXED BY THE RETIREMENT SYSTEM AS IS APPROPRIATE, AND SHALL BE PAID TO THE RETIREMENT SYSTEM IN EQUAL INSTALLMENTS OVER THE PERIOD OF THE LOAN. THEREAFTER, A PREMIUM NOT TO EXCEED ONE PERCENT PER ANNUM OF THE PRESENT VALUE OF THE OUTSTANDING LOAN AS OF JULY FIRST, OR SUCH OTHER APPROPRIATE DATE, SHALL BE PAID IN THE SAME MANNER EACH SUCCEEDING YEAR UNTIL SUCH LOAN IS REPAID OR THE MEMBER IS RETIRED.

3. THE RETIREMENT SYSTEM SHALL, AT LEAST ANNUALLY, REVIEW SUCH PREMIUM RATE, AND MAY, IN ITS DISCRETION, INCREASE OR REDUCE THE PREMIUM, MODIFY THE TERMS OR CONDITIONS OF COVERAGE, OR DISCONTINUE THE INSURANCE OF LOANS. IN NO EVENT SHALL THIS SUBDIVISION IMPOSE ANY OBLIGATION UPON THE RETIREMENT SYSTEM TO CONTINUE TO INSURE LOANS OF MEMBERS UPON THE TERMS AND CONDITIONS HEREIN PROVIDED OR UPON ANY OTHER TERMS OR CONDITIONS.

F. THE RETIREMENT SYSTEM IS AUTHORIZED TO ESTABLISH SUCH SPECIAL FUNDS AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF SUBDIVISIONS D AND E OF THIS SECTION.

G. WHENEVER A MEMBER OF SUCH A RETIREMENT SYSTEM, FOR WHOM A LOAN IS OUTSTANDING, BECOMES ENTITLED TO THE RETURN OF HIS OR HER CONTRIBUTIONS BECAUSE OF WITHDRAWAL FROM SUCH SYSTEM OR BECAUSE OF DEATH, THE AMOUNT OF ANY LOAN OUTSTANDING ON SUCH DATE, INCLUDING ACCRUED INTEREST AS PROVIDED IN SUBDIVISION D OF THIS SECTION, SHALL BE CONSTRUED TO ALREADY HAVE BEEN RETURNED TO SUCH MEMBER AND THE REFUND OF CONTRIBUTIONS TO WHICH HE SHALL THEN BE ENTITLED SHALL BE THE NET AMOUNT OF SUCH CONTRIBUTIONS TOGETHER WITH INTEREST THEREON.

H. NOTWITHSTANDING ANY GENERAL OR SPECIAL LAW TO THE CONTRARY, WHENEVER A MEMBER OF THE RETIREMENT SYSTEM, FOR WHOM A LOAN IS OUTSTANDING, RETIRES, THE RETIREMENT ALLOWANCE PAYABLE WITHOUT OPTIONAL MODIFICATION SHALL BE REDUCED BY A LIFE ANNUITY WHICH IS ACTUARIALLY EQUIVALENT TO THE AMOUNT OF THE OUTSTANDING LOAN (ALL OUTSTANDING LOANS SHALL CONTINUE TO ACCRUE INTEREST CHARGES UNTIL RETIREMENT), SUCH LIFE ANNUITY BEING CALCULATED UTILIZING THE INTEREST RATE ON THIRTY YEAR UNITED STATES TREASURY BONDS AS OF JANUARY FIRST OF THE CALENDAR YEAR OF THE EFFECTIVE

DATE OF RETIREMENT AND THE MORTALITY TABLES FOR OPTIONS AVAILABLE UNDER SECTION FIVE HUNDRED FOURTEEN OF THIS CHAPTER.

I. THE RETIREMENT SYSTEM SHALL ADOPT SUCH RULES AND REGULATIONS AS IT FINDS TO BE NECESSARY IN ADMINISTERING THE PROVISIONS OF THIS SECTION.

J. THE RETIREMENT SYSTEM SHALL DISCHARGE ANY EVIDENCE OF A LOAN TO A MEMBER PURSUANT TO THIS SECTION UPON THE SATISFACTION OF THE OBLIGATION OF THE MEMBER THEREUNDER.

K. THE RETIREMENT SYSTEM SHALL HAVE NO RIGHT TO BRING SUIT IN ANY COURT AGAINST ANY MEMBER TO ENFORCE THE AMOUNT DUE UNDER THIS SECTION, AND THE RETIREMENT SYSTEM'S SOLE REMEDY UPON DEATH, RETIREMENT OR WITHDRAWAL SHALL BE TO OFFSET THE AMOUNT OUTSTANDING INCLUDING INTEREST FROM THE MEMBER'S ACCOUNT OR OTHER BENEFITS PAYABLE TO OR ON BEHALF OF THE MEMBER AS PROVIDED IN THIS SECTION.

S 2. Subdivision b of section 517-c of the retirement and social security law, as added by chapter 920 of the laws of 1990, is amended to read as follows:

b. A member of the New York state and local employees' retirement system, THE NEW YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM, the New York city employees' retirement system or the New York city board of education retirement system in active service who has credit for at least one year of member service may borrow, no more than once during each twelve month period, an amount not exceeding seventy-five percent of the total contributions made pursuant to section five hundred seventeen (including interest credited at the rate set forth in subdivision c of such section five hundred seventeen compounded annually) and not less than one thousand dollars.

S 3. This act shall take effect immediately.

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

This bill would permit Tier 5 members of the New York State and Local Police and Fire Retirement System to borrow up to 75% of their member contributions at an interest rate of 1% less than the valuation interest rate. This loan program is currently available to Tiers 3, 4 and 5 members of the New York State and Local Employees' Retirement System.

If this bill is enacted, there would be an annual investment opportunity cost of 1% of the aggregate outstanding member loan balance. Therefore, for every $1 million of outstanding member loans, there would be an annual cost of $10,000, which would be borne by the State of New York and the participating employers in the New York State and Local Police and Fire Retirement System. Any administrative costs would be covered by the required loan fee (currently $20 per loan).

This estimate, dated April 6, 2011, and intended for use only during the 2011 Legislative Session, is Fiscal Note Number 2011-153 prepared by the Actuary for the New York State and Local Police and Fire Retirement System.