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

7104--A

2013-2014 Regular Sessions

I N A S S E M B L Y

May 1, 2013

Introduced by M. of A. ABINANTI, PAULIN, THIELE, RUSSELL, GOODELL, GUNTHER, JAFFEE, HOOPER, OTIS -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, KATZ, LUPARDO, MAGEE, McDONALD, RAIA, SCHIMEL -- 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 education law, in relation to imposing a cap on the amount of contributions paid by employers

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

Section 1. Section 17 of the retirement and social security law, as amended by chapter 33 of the laws of 1986, subdivision a as amended by chapter 62 of the laws of 1989, subdivision c as amended by chapter 260 of the laws of 2004, is amended to read as follows:

S 17. Annual appropriation by participating employers. a. On or before the fifteenth day of November, nineteen hundred eighty-nine and of each succeeding calendar year, the comptroller shall determine the amount which each participating employer is required to pay to the retirement system to discharge its obligations thereto for the fiscal year of the retirement system which ends on March thirty-first of nineteen hundred ninety and of each succeeding calendar year on account of its employees who are members of this system. The comptroller shall submit to the fiscal officer of each such employer a statement of the amount so payable.

This amount shall consist of the amount deemed necessary to provide for payment in full of (i) all estimated obligations of each participating employer for the current fiscal year of the retirement systems and (ii) any additional obligation, plus interest on such amount, for fiscal years preceding the current fiscal year. SUCH AMOUNT SHALL, HOWEVER, BE SUBJECT TO THE LIMITATION SET FORTH IN SUBDIVISION F OF THIS SECTION. If as a result of the amount determined to be paid for any fiscal year, a participating employer overpaid its actual obligation to the retirement

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

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system for that year, the amount to be determined by the comptroller for the next succeeding November fifteenth shall reflect the amount of the overpayment, plus interest as defined in section sixteen of this [article] TITLE on such amount, as a reduction in the amount otherwise required to be paid by such participating employer.

b. Each participating employer annually shall appropriate a sum sufficient to pay such amount, SUBJECT TO THE LIMITATION SET FORTH IN SUBDIVISION F OF THIS SECTION. In the event the comptroller's statement is not received before annual appropriations are made by such employer, a sum estimated by the comptroller to be sufficient for such purpose shall be included with such annual appropriations.

c. Payment of the amount specified in the comptroller's statement, SUBJECT TO THE LIMITATION SET FORTH IN SUBDIVISION F OF THIS SECTION, shall be made by a participating employer within seventy-eight days after the receipt of such statement; provided, however, that in no case shall any participating employer be required to make this payment before February first of the calendar year next succeeding the calendar year in which such statement is received. The comptroller is authorized to provide for and accept pre-payment.

d. If payment of the [full amount] EMPLOYER'S PORTION of such obligations is not made by the date required by subdivision c of this section, interest at a rate determined in accordance with the provisions of section sixteen of this article shall commence to run against the unpaid balance thereof on the first day after the date required by said subdivision c.

e. The comptroller shall have full power and authority to bring suit in the supreme court against any participating employer to recover any sum FOR WHICH THE EMPLOYER IS RESPONSIBLE, payment of which is not made as herein required. While any such sum OWED BY THE EMPLOYER shall remain due and unpaid [he] THE COMPTROLLER may refuse to audit any claim for funds due to such employer from the state.

F. (1) OF THE AMOUNT DETERMINED BY THE COMPTROLLER PURSUANT TO SUBDIVISION A OF THIS SECTION, AN EMPLOYER SHALL NOT BE REQUIRED TO PAY MORE THAN THE PRIOR YEAR'S ACTUARIAL REQUIRED CONTRIBUTION PLUS THE LESSER OF: TWO PERCENT OR THE PERCENTAGE SET FORTH IN PARAGRAPH FOUR OF THIS SUBDIVISION.

(2) ANY DIFFERENCE BETWEEN THE AMOUNT COMPUTED BY THE COMPTROLLER PURSUANT TO SUBDIVISION A OF THIS SECTION AND THE MAXIMUM AMOUNT REQUIRED TO BE PAID BY THE EMPLOYER PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION SHALL BE APPROPRIATED TO THE RETIREMENT SYSTEM OUT OF MONEYS IN THE GENERAL FUND OF THE STATE.

(3) THE AFOREMENTIONED APPROPRIATED MONEYS SHALL BE PAID BY THE STATE ON OR BEFORE THE FIRST OF FEBRUARY. THE STATE SHALL NOT HAVE THE OPTION TO AMORTIZE THE PAYMENT REQUIRED IN THIS SUBDIVISION AS PROVIDED IN SECTION NINETEEN-A OF THIS TITLE.

(4) THE PERCENTAGE REFERRED TO IN PARAGRAPH ONE OF THIS SUBDIVISION SHALL BE DETERMINED ANNUALLY BY REFERENCE TO THE CONSUMER PRICE INDEX (ALL URBAN CONSUMERS, CPI-U, U.S. CITY AVERAGE, ALL ITEMS, 1982-84=100), PUBLISHED BY THE UNITED STATES BUREAU OF LABOR STATISTICS, FOR EACH APPLICABLE CALENDAR YEAR. SAID PERCENTAGE SHALL EQUAL THE ANNUAL INFLATION, AS DETERMINED FROM THE INCREASE IN THE CONSUMER PRICE INDEX IN THE ONE YEAR PERIOD ENDING THE THIRTY-FIRST OF MARCH OF THE CURRENT YEAR'S ACTUARIAL, REQUIRED CONTRIBUTION. SAID PERCENTAGE SHALL THEN BE ROUNDED UP TO THE NEXT HIGHER ONE-TENTH OF ONE PERCENT.

(5) FOR PURPOSES OF THIS SUBDIVISION, "ACTUARIAL REQUIRED CONTRIBUTION" MEANS THE AMOUNT COMPUTED BY THE COMPTROLLER PRIOR TO THE DETER-

MINATION OF THE AMOUNT ELIGIBLE FOR AMORTIZATION, IF ANY, AS SET FORTH IN SECTION NINETEEN-A OF THIS TITLE.

(6) FOR PURPOSES OF THIS SUBDIVISION, THE BASE YEAR FOR THE INITIAL CALCULATION OF LIMITED EMPLOYER CONTRIBUTIONS PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION SHALL BE THE AMOUNT PAID BY THE EMPLOYER IN THE FISCAL YEAR ENDING THE THIRTY-FIRST OF MARCH, TWO THOUSAND FOURTEEN. THE EMPLOYER PARTICIPATION CAP IMPOSED BY THIS SUBDIVISION SHALL COMMENCE WITH EMPLOYER CONTRIBUTIONS MADE IN THE FISCAL YEAR ENDING THE THIRTY-FIRST OF MARCH, TWO THOUSAND FIFTEEN.

(7) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY IN CITIES WITH A POPULATION OF ONE MILLION OR MORE.

S 2. Section 317 of the retirement and social security law, as amended by chapter 33 of the laws of 1986, subdivision a as amended by chapter 62 of the laws of 1989, and subdivision c as amended by chapter 260 of the laws of 2004, is amended to read as follows:

S 317. Annual appropriation by participating employers. a. On or before the fifteenth day of November, nineteen hundred eighty-nine and of each succeeding year, the comptroller shall determine the amount which each participating employer is required to pay to the police and fire retirement system to discharge its obligations thereto for the fiscal year of the retirement system which ends on March thirty-first of nineteen hundred ninety and of each succeeding calendar year on account of its employees who are members of this system. The comptroller shall submit to the fiscal officer of each of such employer a statement of the amount so payable.

This amount shall consist of the amount deemed necessary to provide for payment in full of (i) all estimated obligations of each participating employer for the current fiscal year of the retirement systems and (ii) any additional obligation, plus interest on such amount, for fiscal years preceding the current fiscal year. SUCH AMOUNT SHALL, HOWEVER, BE SUBJECT TO THE LIMITATION SET FORTH IN SUBDIVISION F OF THIS SECTION. If as a result of the amount determined to be paid for any fiscal year, a participating employer overpaid its actual obligation to the retirement system for that year, the amount to be determined by the comptroller for the next succeeding November fifteenth shall reflect the amount of the overpayment, plus interest as defined in section three hundred sixteen of this [article] TITLE on such amount, as a reduction in the amount otherwise required to be paid by such participating employer.

b. Each participating employer annually shall appropriate a sum sufficient to pay such amount, SUBJECT TO THE LIMITATION SET FORTH IN SUBDIVISION F OF THIS SECTION. In the event the comptroller's statement is not received before annual appropriations are made by such employer, a sum estimated by the comptroller to be sufficient for such purpose shall be included with such annual appropriations.

c. Payment of the amount specified in the comptroller's statement, SUBJECT TO THE LIMITATION SET FORTH IN SUBDIVISION F OF THIS SECTION, shall be made by a participating employer within seventy-eight days after the receipt of such statement; provided, however, that in no case shall any participating employer be required to make this payment before February first of the calendar year next succeeding the calendar year in which such statement is received. The comptroller is authorized to provide for and accept pre-payment.

d. If payment of the [full amount] EMPLOYER'S PORTION of such obligations is not made by the date required by subdivision c of this section, interest at a rate determined in accordance with the provisions of section three hundred sixteen of this [article] TITLE shall commence

to run against the unpaid balance thereof on the first day after the date required by said subdivision c.

e. The comptroller shall have full power and authority to bring suit in the supreme court against any participating employer to recover any sum FOR WHICH THE EMPLOYER IS RESPONSIBLE, payment of which is not made as herein required. While any such sum OWED BY THE EMPLOYER shall remain due and unpaid [he] THE COMPTROLLER may refuse to audit any claim for funds due to such employer from the state.

F. (1) OF THE AMOUNT DETERMINED BY THE COMPTROLLER PURSUANT TO SUBDIVISION A OF THIS SECTION, AN EMPLOYER SHALL NOT BE REQUIRED TO PAY MORE THAN THE PRIOR YEAR'S ACTUARIAL REQUIRED CONTRIBUTION PLUS THE LESSER OF: TWO PERCENT OR THE PERCENTAGE SET FORTH IN PARAGRAPH FOUR OF THIS SUBDIVISION.

(2) ANY DIFFERENCE BETWEEN THE AMOUNT COMPUTED BY THE COMPTROLLER PURSUANT TO SUBDIVISION A OF THIS SECTION AND THE MAXIMUM AMOUNT REQUIRED TO BE PAID BY THE EMPLOYER PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION SHALL BE APPROPRIATED TO THE RETIREMENT SYSTEM OUT OF MONEYS IN THE GENERAL FUND OF THE STATE.

(3) THE AFOREMENTIONED APPROPRIATED MONEYS SHALL BE PAID BY THE STATE ON OR BEFORE THE FIRST OF FEBRUARY. THE STATE SHALL NOT HAVE THE OPTION TO AMORTIZE THE PAYMENT REQUIRED IN THIS SUBDIVISION AS PROVIDED IN SECTION THREE HUNDRED NINETEEN-A OF THIS TITLE.

(4) THE PERCENTAGE REFERRED TO IN PARAGRAPH ONE OF THIS SUBDIVISION SHALL BE DETERMINED ANNUALLY BY REFERENCE TO THE CONSUMER PRICE INDEX (ALL URBAN CONSUMERS, CPI-U, U.S. CITY AVERAGE, ALL ITEMS, 1982-84=100), PUBLISHED BY THE UNITED STATES BUREAU OF LABOR STATISTICS, FOR EACH APPLICABLE CALENDAR YEAR. SAID PERCENTAGE SHALL EQUAL THE ANNUAL INFLATION, AS DETERMINED FROM THE INCREASE IN THE CONSUMER PRICE INDEX IN THE ONE YEAR PERIOD ENDING THE THIRTY-FIRST OF MARCH OF THE CURRENT YEAR'S ACTUARIAL, REQUIRED CONTRIBUTION. SAID PERCENTAGE SHALL THEN BE ROUNDED UP TO THE NEXT HIGHER ONE-TENTH OF ONE PERCENT.

(5) FOR THE PURPOSES OF THIS SUBDIVISION, "ACTUARIAL REQUIRED CONTRIBUTION" MEANS THE AMOUNT COMPUTED BY THE COMPTROLLER PRIOR TO THE DETERMINATION OF THE AMOUNT ELIGIBLE FOR AMORTIZATION, IF ANY, AS SET FORTH IN SECTION THREE HUNDRED NINETEEN-A OF THIS TITLE.

(6) FOR PURPOSES OF THIS SUBDIVISION, THE BASE YEAR FOR THE INITIAL CALCULATION OF LIMITED EMPLOYER CONTRIBUTIONS PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION SHALL BE THE AMOUNT PAID BY THE EMPLOYER IN THE FISCAL YEAR ENDING THE THIRTY-FIRST OF MARCH, TWO THOUSAND FOURTEEN. THE EMPLOYER PARTICIPATION CAP IMPOSED BY THIS SUBDIVISION SHALL COMMENCE WITH EMPLOYER CONTRIBUTIONS MADE IN THE FISCAL YEAR ENDING THE THIRTY-FIRST OF MARCH, TWO THOUSAND FIFTEEN.

(7) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY IN CITIES WITH A POPULATION OF ONE MILLION OR MORE.

S 3. Subdivision 2 of section 521 of the education law, paragraph a as amended by chapter 553 of the laws of 1997, paragraph b as amended by chapter 871 of the laws of 1963, paragraphs f and g as added by chapter 538 of the laws of 1984, paragraph h as amended by chapter 830 of the laws of 1992, paragraphs i, j, k, l, and m as added by chapter 175 of the laws of 1990, and paragraph n as added by chapter 482 of the laws of 1996, is amended and a new subdivision 4 is added to read as follows:

2. The collection of employers' contributions shall be made as follows:

a. Upon the basis of each actuarial determination and appraisal provided herein, the retirement board shall annually prepare and certify to the commissioner [of education] a statement of the total amount

necessary to be paid by all employers for the ensuing fiscal year to the pension accumulation and expense funds as provided under subdivision two of section five hundred seventeen and under section five hundred nineteen of this article. Upon the basis of the rate of contribution for supplemental retirement allowances, determined in accordance with section five hundred thirty-two of this article, the retirement board shall certify to the commissioner [of education] a statement of the total amount necessary to be paid by all employers for the ensuing fiscal year to the supplemental retirement allowance fund. Said certification shall include interest on amounts necessary to repay advances made to the supplemental retirement allowance fund pursuant to subdivision f of section five hundred thirty-two of this article computed from the date of such advances at the rate determined in accordance with paragraph f of this subdivision.

b. The commissioner [of education] shall include in the certificate which he files with the state comptroller showing the amount of state funds apportioned to the school districts within each county for the support of common schools, a statement showing the amount to be contributed by each employer in each of such counties as required under this article.

The amount to be contributed by each employer except those who operate local district pension systems, shall be such percentage of the total compensation or salaries of all teachers in his employ who are members of the retirement system as the aggregate amount of the normal and deficiency contributions for the year shall bear to the total compensation or salaries paid by all employers, except those who operate local district pension systems, to all teachers who are members of the retirement system; PROVIDED, HOWEVER, THAT THE AMOUNT REMITTED BY SUCH EMPLOYER SHALL BE SUBJECT TO THE CONTRIBUTION LIMITS ESTABLISHED IN SUBDIVISION FOUR OF THIS SECTION.

c. The comptroller shall issue his warrant to the custodian of such fund directing such custodian to credit to the pension accumulation fund and expense fund respectively, from the appropriation for the support of common schools the amounts required to be made as contributions to such funds by the employers as shown by the certificate of the commissioner [of education] filed with him as directed in paragraph b of this subdivision, BUT SUBJECT TO THE CONTRIBUTION LIMIT ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

d. The comptroller, in issuing his warrant to the custodian for payment to each county treasurer of that portion of the moneys apportioned for the support of common schools, shall deduct therefrom an amount equal to the amount required to be contributed by employers of such county, as shown by the certificate of the commissioner [of education] of this state filed with the comptroller as required by paragraph b of this subdivision, BUT SUBJECT TO THE CONTRIBUTION LIMIT ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

e. In order to meet the financial requirements of this article, employers who obtain funds directly by taxation are hereby authorized and directed to levy annually such additional taxes as are required to provide the [funds deducted from the amounts apportioned to such employers from the appropriation of the state for the support of the common schools] EMPLOYER'S CONTRIBUTION AMOUNT AS DETERMINED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

f. Employers whose payments from the moneys apportioned from the state for the support of common schools are insufficient to pay the EMPLOYER'S PORTION OF THE amount due and owing the system, or who do not receive

such payments, shall pay the system each year the amount of contributions due and owing from the employer, SUBJECT TO THE CONTRIBUTION LIMIT ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION, pursuant to this article within thirty days from the date a bill is mailed by the system. Interest, at a rate equal to the average yield payable on fifty-two week United States treasury bills on June thirtieth immediately preceding the day the bill is mailed by the system, shall accrue on the EMPLOYER'S PORTION OF THE outstanding amount due and owing commencing with the thirty-first day after the bill is mailed.

g. Whenever the system determines the contributions made by an employer are less than the percentage of total compensation or salaries of members of the system in the employ of such employer, as required by this article, such employer shall pay the system such deficiency within thirty days from the date a bill is mailed by the system, PROVIDED SUCH DEFICIENCY AMOUNT DOES NOT CAUSE THE EMPLOYER TO PAY MORE THAN THE MAXIMUM REQUIRED CONTRIBUTION AMOUNT CALCULATED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION. Interest, at a rate equal to the average yield payable on fifty-two week United States treasury bills on June thirtieth immediately preceding the day before the bill is mailed by the system, shall accrue on the EMPLOYER'S PORTION OF THE outstanding amount due and owing commencing with the thirty-first day after the bill is mailed.

h. Notwithstanding any provision of law to the contrary, commencing with the payments made in the fiscal year beginning July first, nineteen hundred ninety, and each fiscal year thereafter, the employer contributions due and payable as determined pursuant to the provisions of this article and the employee contributions due and payable pursuant to this article and articles fourteen and fifteen of the retirement and social security law, on account of compensation paid in the fiscal year immediately preceding, and those employer contributions due and payable in each fiscal year pursuant to chapter six hundred sixty-five of the laws of nineteen hundred eighty-four shall be made to the retirement system and collected in the manner set forth in this section each fiscal year in three payments, each equal to thirty-three and one-third percent of the total amount due for such fiscal year. Such payments shall be paid on September fifteenth, October fifteenth, and November fifteenth of each fiscal year. If a participating employer underpaid its obligation to the retirement system, such underpayment as determined by the retirement system shall be deducted from the amounts apportioned to such employer from the appropriation of the state for the support of the common schools due and payable the next April fifteenth. Employers whose payments from such appropriation are insufficient to pay the amount due and owing the system, or who do not receive such payments, shall be billed by the system for such underpayment and shall pay the system the amount due within thirty days from the date a bill is mailed by the system. The amount of any employer overpayment of its obligation to the retirement system, as determined by such system shall be a credit to the employer and shall reduce by an equal amount thereof the initial payment to be made by such employer to such system on the next succeeding September fifteenth.

i. Notwithstanding any provision of law to the contrary, the employer and employee contributions due and payable in the nineteen hundred eighty-nine--ninety fiscal year on account of compensation paid in the nineteen hundred eighty-eight--eighty-nine fiscal year which were paid prior to April first, nineteen hundred ninety shall be deemed (to the extent such amount is sufficient) to have consisted of all the employee contributions due and payable pursuant to this article and articles

fourteen and fifteen of the retirement and social security law in the nineteen hundred eighty-nine--ninety fiscal year and those employer contributions due and payable in such fiscal year pursuant to chapter six hundred sixty-five of the laws of nineteen hundred eighty-four; and the remaining employer contributions so paid shall be applied evenly to the payments due and payable on September fifteenth, nineteen hundred ninety, October fifteenth, nineteen hundred ninety and November fifteenth, nineteen hundred ninety and the employer contributions amounting to eight hundred seventy-three million seven hundred eleven thousand six hundred fifteen dollars ($873,711,615), due and payable pursuant to the provisions of this section in the nineteen hundred eighty-nine--ninety fiscal year on account of compensation paid in nineteen hundred eighty-eight--eighty-nine fiscal year, except those employer contributions due and payable in such fiscal year pursuant to chapter six hundred sixty-five of the laws of nineteen hundred eighty-four, shall be deferred and payment shall be made to the retirement system in fifteen equal annual payments of ninety-eight million five hundred thirty-seven thousand five hundred seven dollars ($98,537,507) on October fifteenth, commencing on October fifteenth, nineteen hundred ninety. Such payments are calculated at an interest rate of eight percent per annum. Provided, however, the retirement board is directed to permit the pre-payment of the amounts outstanding under this paragraph. The retirement board shall: (1) On or before September first, nineteen hundred ninety, in addition to the amount due for the current fiscal year billing and for the payment of the amortized annual installment, furnish the total amount due and be authorized to accept pre-payment in full of said amount by October fifteenth, nineteen hundred ninety. (2) On or before each September first thereafter, in addition to the amount due for the current fiscal year billing and for the payment of the annual amortized installment, furnish the total amount still outstanding and be authorized to accept the pre-payment of any portion of the balance remaining to be paid by October fifteenth of that year.

j. Prior to June first, nineteen hundred ninety, the valuation rate of interest adopted by the retirement board on April twenty-seventh, nineteen hundred eighty-nine, may be retroactively revised to eight percent by the retirement board, as recommended by the actuary, as if adopted at the April twenty-seventh, nineteen hundred eighty-nine board meeting, and the employer contribution rate, adopted by the retirement board at the April twenty-seventh, nineteen hundred eighty-nine board meeting, revised by the retirement board at the July twenty-seventh, nineteen hundred eighty-nine board meeting, may be retroactively amended by the retirement board as if adopted at the July twenty-seventh, nineteen hundred eighty-nine board meeting and applied to contributions paid in the nineteen hundred ninety--ninety-one fiscal year. Notwithstanding any provision of law to the contrary, the actions of the retirement board pursuant to the provisions of this paragraph shall be deemed reasonable, prudent and proper. No member of the retirement board, officer, or employee of the New York state teachers' retirement system shall incur or suffer any liability whatsoever by reason of any actions pursuant to this paragraph, and such system shall save harmless and indemnify all members of the retirement board, its officers and employees from financial loss arising out of any claim, demand, suit, action or judgment as a result of the actions taken pursuant to this paragraph provided that such person shall, within five days after the date on which he is served with any summons, complaint, process, notice, demand, claim or pleading, deliver the original or a true copy thereof to the legal advisor of such

system. Upon such delivery, the legal advisor of such system may assume control of the representation of such person in connection with such claim, demand, suit, action or proceeding. Such person shall cooperate fully with the legal advisor of the system or any other person designated to assume such defense in respect of such representation or defense.

k. The retirement board is authorized to adopt procedures and/or to promulgate rules and regulations as it deems necessary to adjust and reconcile any payments from employers to actual amounts due whether such payments were received prior or subsequent to the effective date of [the] chapter ONE HUNDRED SEVENTY-FIVE of the laws of nineteen hundred ninety [which added this paragraph to this section].

l. The provisions of paragraphs h and i of this subdivision shall constitute a contract and the rights of the New York state teachers' retirement system thereunder shall not be impaired in any way whatsoever.

m. In addition to any other payment or collection procedure provided by this article, if the amounts credited from the appropriation for the support of common schools are insufficient to fully cover the amounts to be contributed by the employers, SUBJECT TO THE EMPLOYER'S CONTRIBUTION LIMIT ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION, the retirement board is authorized to certify the unpaid amount OF THE EMPLOYER'S CONTRIBUTION to the state comptroller, and the state comptroller shall, to the extent not otherwise prohibited by law, withhold such amount from any succeeding payment from any other form of state aid provided to the employer. If any employer fails to pay the amounts required to be contributed pursuant to this section, the retirement system shall be entitled to reasonable attorney fees and other expenses incurred to collect such amounts due and owing. Fees shall be determined pursuant to prevailing market rates for the kind and quality of the services furnished.

n. Notwithstanding any other provision of law to the contrary, the board of education or trustees of a school district which is a participating employer, which has elected to make payments of the employer contributions due and payable to the retirement system pursuant to paragraph i of this subdivision in amortized annual installments, and which has determined to make pre-payment of the total amount of such contributions outstanding in accordance with said paragraph i, may adopt a bond resolution authorizing the refinancing of such debt by the issuance of bonds in the amount of such pre-payment without conducting a vote on a tax to be collected in installments, provided that such refinancing will result in savings to the school district, as certified by the state comptroller, and provided further that the issuance of such obligations otherwise complies with the requirements of the local finance law and this chapter.

4. A. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, AN EMPLOYER SHALL NOT BE REQUIRED TO CONTRIBUTE MORE THAN THE PRIOR PLAN YEAR'S EMPLOYER CONTRIBUTION PLUS THE LESSER OF: TWO PERCENT OR THE PERCENTAGE SET FORTH IN PARAGRAPH D OF THIS SUBDIVISION.

B. ANY DIFFERENCE BETWEEN THE AMOUNT CONTAINED IN THE WARRANT ISSUED BY THE COMPTROLLER PURSUANT TO SUBDIVISION TWO OF THIS SECTION AND THE MAXIMUM AMOUNT REQUIRED TO BE PAID BY THE EMPLOYER PURSUANT TO THIS SUBDIVISION SHALL BE APPROPRIATED TO THE RETIREMENT SYSTEM OUT OF MONEYS IN THE GENERAL FUND OF THE STATE.

C. THE MONEYS APPROPRIATED BY THE STATE FROM THE GENERAL FUND IN ACCORDANCE WITH THIS SUBDIVISION SHALL BE PAID BY THE STATE TO THE

RETIREMENT SYSTEM ON OR BEFORE THE FIFTEENTH OF NOVEMBER IN THE FISCAL YEAR IN WHICH THE MONEYS ARE DUE AND PAYABLE BY THE PARTICIPATING EMPLOYER.

D. THE PERCENTAGE REFERRED TO IN PARAGRAPH A OF THIS SUBDIVISION SHALL BE DETERMINED ANNUALLY BY REFERENCE TO THE CONSUMER PRICE INDEX (ALL URBAN CONSUMERS, CPI-U, U.S. CITY AVERAGE, ALL ITEMS, 1982-84=100), PUBLISHED BY THE UNITED STATES BUREAU OF LABOR STATISTICS, FOR EACH APPLICABLE CALENDAR YEAR. SAID PERCENTAGE SHALL EQUAL THE ANNUAL INFLATION, AS DETERMINED FROM THE INCREASE IN THE CONSUMER PRICE INDEX IN THE ONE YEAR PERIOD ENDING THE THIRTIETH OF JUNE OF THE CURRENT YEAR'S ACTUARIAL REQUIRED CONTRIBUTION. SAID PERCENTAGE SHALL THEN BE ROUNDED UP TO THE NEXT HIGHER ONE-TENTH OF ONE PERCENT.

E. FOR PURPOSES OF THIS SUBDIVISION, "ACTUARIAL REQUIRED CONTRIBUTION" MEANS THE AMOUNT COMPUTED BY THE ACTUARY, AS SET FORTH IN SECTION FIVE HUNDRED SEVENTEEN OF THE EDUCATION LAW.

F. FOR PURPOSES OF THIS SUBDIVISION, THE BASE YEAR FOR THE INITIAL CALCULATION OF LIMITED EMPLOYER CONTRIBUTIONS PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION SHALL BE THE AMOUNT PAID BY THE EMPLOYER IN THE PLAN YEAR ENDING THE THIRTIETH OF JUNE, TWO THOUSAND FOURTEEN. THE EMPLOYER CONTRIBUTION CAP IMPOSED BY THIS SUBDIVISION SHALL COMMENCE WITH EMPLOYER CONTRIBUTIONS DUE IN THE PLAN YEAR ENDING THE THIRTIETH OF JUNE, TWO THOUSAND FIFTEEN.

S 4. This act shall take effect immediately and shall apply to employer contributions made commencing in the employer's fiscal year ending 2015.

FISCAL NOTE.-- This bill would amend Section 521 of the Education Law to limit the amount of year over year increase in employer contributions required to be made each year to the New York State Teachers' Retirement System (NYSTRS) by participating employers. Participating employers of NYSTRS would not be required to contribute more than the prior year's contribution amount increased by the lesser of two percent, or a percentage based upon the one year increase in the Consumer Price Index (CPI). Any difference in the actuarially required contribution and this limited contribution would be paid by the State of New York out of the General Fund of the state. The employer contribution cap imposed under this bill would commence with employer contributions made in the fiscal year ending June 30, 2015.

To the extent that the actuarially required employer contribution continues to be paid in full and on time to the Retirement System every year, there will be no cost to the employers of members of NYSTRS if this bill is enacted. This bill would make the State of New York into a contributing partner to NYSTRS.

The actuarially required contribution is based upon a number of actuarial assumptions, member demographic data, and investment returns. The rate of increase in this contribution can be expected to bear very little relationship to the rate of inflation. Therefore the required contribution due from the state could grow substantially in any given year.

The first year the employer contribution cap would be applied would be with respect to contributions due in the plan year ending June 30, 2015, which for NYSTRS corresponds to contributions collected in the fall of 2014. We estimate the State of New York would be required to make a payment of approximately $640 million at that time for its share of the contribution. In the fall of 2015 we estimate the state would be required to make a payment of approximately $170 million for its share of the contribution. The state's cost in future years would depend on

the actuarially required contribution and the rate of inflation in those years.

The source of this estimate is Fiscal Note 2014-20 dated February 27, 2014 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2014 Legislative Session. I, Richard A. Young, am the Actuary for the New York State Teachers' Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

FISCAL NOTE.-- This bill would limit the year to year increase in the dollar amount of the annual employer contributions to be made by participating employers of the New York State and Local Employees' Retirement System (NYSLERS), the New York State and Local Police and Fire Retirement System (NYSLPFRS) and the New York State Teachers' Retirement System. Such dollar increase in the actuarially determined contributions would be limited to the lesser of 2% and the increase in the Consumer Price Index (CPI-U), as determined by the United States Department of Labor. The difference between the actuarially determined contributions and the limited contributions would be paid by the State of New York on behalf of the participating employers. This change shall first apply to contributions made during the fiscal year ending in the year 2015.

If this bill is enacted, insofar as it would affect the NYSLERS and the NYSLPFRS, it is unlikely that there would be an additional contribution payable by the State of New York on behalf of most of the participating employers for the fiscal year ending March 31, 2015. However, there could be costs on behalf of certain participating employers whose payroll increases were significantly greater than our salary increase assumptions or who adopted significant plan improvements. The costs for future years would depend on each year's actuarially determined contributions, increases in employer payroll, and CPI.

There would be no cost to the Systems.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2013 actuarial valuation. Distributions and other statistics can be found in the 2013 Report of the Actuary and the 2013 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2010, 2011, 2012 and 2013 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2013 New York State and Local Retirement System Financial Statements and Supplementary Information.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the statement of actuarial opinion contained herein.

This estimate, dated February 27, 2014, and intended for use only during the 2014 Legislative Session, is Fiscal Note No. 2014-73, 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.