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

10739--A

I N A S S E M B L Y

June 17, 2016

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Buchwald, Morelle, Barrett, Brindisi, Fahy, Galef, Lavine, Lupardo, McDonald, Otis, Russell, Sepulveda, Skoufis, Stirpe, Zebrowski, Paulin, Woerner, Steck, Santabarbara, Quart, Thiele, Stec, Ortiz, Magee, Gjonaj, Kearns, Ceretto, Jaffee, Rozic, Peoples-Stokes, DenDekker, Montesano, Bronson, Schimminger) -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to section 7 of article 5 of the constitution, in relation to the public pension of a public officer

Section 1. Resolved (if the Senate concur), That section 7 of article 5 of the constitution be amended to read as follows:

S 7. (A) After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired.

(B) NOTWITHSTANDING SUBDIVISION (A) OF THIS SECTION, THE PUBLIC PENSION OF A PUBLIC OFFICER, AS DEFINED IN PARAGRAPH (C) OF THIS SECTION, WHO STANDS CONVICTED OF A FELONY FOR WHICH SUCH FELONY HAS A DIRECT AND ACTUAL RELATIONSHIP TO THE PERFORMANCE OF THE PUBLIC OFFICER'S EXISTING DUTIES, MAY BE REDUCED OR REVOKED, FOLLOWING NOTICE AND A HEARING BY AN APPROPRIATE COURT, AS PROVIDED BY LAW. THE COURT DETERMINATION WHETHER TO REDUCE OR REVOKE SUCH PENSION SHALL BE BASED ON THE CONSIDERATION OF FACTORS INCLUDING THE SEVERITY OF THE CRIME AND THE PROPORTIONALITY OF A REDUCTION OR REVOCATION OF SUCH PENSION TO SUCH CRIME. WHEN A COURT ISSUES AN ORDER TO REDUCE OR REVOKE SUCH PENSION, THE COURT SHALL CONSIDER AND DETERMINE SPECIFIC FINDINGS AS TO THE AMOUNT OF SUCH FORFEITURE, IF ANY, AND WHETHER FORFEITURE, IN WHOLE OR IN PART, WOULD RESULT IN UNDUE HARDSHIP OR OTHER INEQUITY UPON ANY DEPENDENT CHILDREN, SPOUSE OR OTHER DEPENDENTS; AND OTHER FACTORS AS PROVIDED BY LAW. THE LEGISLATURE SHALL ENACT LEGISLATION TO IMPLEMENT THIS AMENDMENT TAKING INTO ACCOUNT INTERESTS OF JUSTICE.

(C) FOR THE PURPOSES OF PARAGRAPH (B) OF THIS SECTION, THE TERM "PUBLIC OFFICER" SHALL MEAN: (I) AN OFFICIAL FILLING AN ELECTED OFFICE

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

LBD89134-08-6

WITHIN THE STATE; (II) A HOLDER OF OFFICE FILLED BY DIRECT APPOINTMENT BY THE GOVERNOR OF THIS STATE, EITHER UPON OR WITHOUT SENATE CONFIRMATION; (III) A COUNTY, CITY, TOWN OR VILLAGE ADMINISTRATOR, MANAGER OR EQUIVALENT POSITION; (IV) THE HEAD OR HEADS OF ANY STATE OR LOCAL GOVERNMENT DEPARTMENT, DIVISION, BOARD, COMMISSION, BUREAU, PUBLIC BENEFIT CORPORATION, OR PUBLIC AUTHORITY OF THIS STATE WHO ARE VESTED WITH AUTHORITY, DIRECTION AND CONTROL OVER SUCH DEPARTMENT, DIVISION, BOARD, COMMISSION, BUREAU, PUBLIC BENEFIT CORPORATION OR PUBLIC AUTHORITY; (V) THE CHIEF FISCAL OFFICER OR TREASURER OF ANY MUNICIPAL CORPORATION OR POLITICAL SUBDIVISION OF THE STATE; (VI) A JUDGE OR JUSTICE OF THE UNIFIED COURT SYSTEM; AND (VII) A LEGISLATIVE, EXECUTIVE, OR JUDICIAL EMPLOYEE OF THIS STATE WHO DIRECTLY ASSISTS IN THE FORMULATION OF LEGISLATION, RULES, REGULATIONS, POLICY, OR JUDICIAL DECISION-MAKING AND WHO IS DESIGNATED AS A POLICYMAKER AS SET FORTH IN STATUTE.

(D) PARAGRAPH (B) OF THIS SECTION SHALL ONLY APPLY TO CRIMES COMMITTED ON OR AFTER THE FIRST OF JANUARY NEXT SUCCEEDING THE DATE UPON WHICH THE PEOPLE SHALL APPROVE AND RATIFY THE AMENDMENT TO THE CONSTITUTION THAT ADDED THIS PARAGRAPH.

S 2. Resolved (if the Senate concur), That the foregoing amendment be referred to the first regular legislative session convening after the next succeeding general election of members of the assembly, and, in conformity with section 1 of article 19 of the constitution, be published for 3 months previous to the time of such election.