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

10567

I N A S S E M B L Y

June 6, 2016

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Abbate) -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to disability benefits for certain members of the New York city fire department pension fund; and to amend the administrative code of the city of New York, in relation to the powers, duties and responsibilities of the board of trustees of the New York city fire department pension fund, and in relation to authorizing such board of trustees to draw upon the assets of such fund to pay expenses

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

Section 1. Subdivision 24 of section 501 of the retirement and social security law, as amended by chapter 18 of the laws of 2012, is amended to read as follows:

24. "Wages" shall mean regular compensation earned by and paid to a member by a public employer, except that for members who first join the state and local employees' retirement system on or after January first, two thousand ten, overtime compensation paid in any year in excess of the overtime ceiling, as defined by this subdivision, shall not be included in the definition of wages. "Overtime compensation" shall mean, for purposes of this section, compensation paid under any law or policy under which employees are paid at a rate greater than their standard rate for additional hours worked beyond those required, including compensation paid under section one hundred thirty-four of the civil service law and section ninety of the general municipal law. The "overtime ceiling" shall mean fifteen thousand dollars per annum on January first, two thousand ten, and shall be increased by three percent each year thereafter, provided, however, that for members who first become members of the New York state and local employees' retirement system on or after April first, two thousand twelve, "overtime ceiling" shall mean fifteen thousand dollars per annum on April first, two thousand twelve, and shall be increased each year thereafter by a percentage to 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

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

LBD15773-01-6

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 on the December thirty-first prior to the cost-of-living adjustment effective on the ensuing April first. For the purpose of calculation a member's primary federal social security retirement or disability benefit, wages shall, in any calendar year, be limited to the portion of the member's wages which would be subject to tax under section three thousand one hundred twenty-one of the internal revenue code of nineteen hundred fifty-four, or any predecessor or successor provision relating thereto, if such member was employed by a private employer. For members who first become members of the New York state and local employees' retirement system on or after the effective date of [the chapter of the laws of two thousand twelve which amended this subdivision] CHAPTER EIGHTEEN OF THE LAWS OF TWO THOUSAND TWELVE, the following items shall not be included in the definition of wages: (a) wages in excess of the annual salary paid to the governor pursuant to section three of article four of the state constitution, (b) lump sum payments for deferred compensation, sick leave, accumulated vacation or other credits for time not worked, (c) any form of termination pay, (d) any additional compensation paid in anticipation of retirement, and (e) in the case of employees who receive wages from three or more employers in a twelve month period, the wages paid by the third and each succes-sive employer. FOR NEW YORK CITY ENHANCED PLAN MEMBERS WHO RECEIVE THE ORDINARY DISABILITY BENEFIT PROVIDED FOR IN SUBDIVISION C-1 OF SECTION FIVE HUNDRED SIX OF THIS ARTICLE OR THE ACCIDENTAL DISABILITY BENEFIT PROVIDED FOR IN PARAGRAPH THREE OF SUBDIVISION C OF SECTION FIVE HUNDRED SEVEN OF THIS ARTICLE, THE FOLLOWING ITEMS SHALL NOT BE INCLUDED IN THE DEFINITION OF WAGES: (A) LUMP SUM PAYMENTS FOR DEFERRED COMPENSATION, SICK LEAVE, ACCUMULATED VACATION OR OTHER CREDITS FOR TIME NOT WORKED, (B) ANY FORM OF TERMINATION PAY, (C) ANY ADDITIONAL COMPENSATION PAID IN ANTICIPATION OF RETIREMENT, AND (D) IN THE CASE OF EMPLOYEES WHO RECEIVE WAGES FROM THREE OR MORE EMPLOYERS IN A TWELVE MONTH PERIOD, THE WAGES PAID BY THE THIRD AND EACH SUCCESSIVE EMPLOYER.

S 2. Section 501 of the retirement and social security law is amended by adding a new subdivision 28 to read as follows:

28. "NEW YORK CITY ENHANCED PLAN MEMBER" SHALL MEAN (A) A NEW YORK CITY POLICE/FIRE REVISED PLAN MEMBER WHO BECOMES SUBJECT TO THE PROVISIONS OF THIS ARTICLE ON OR AFTER JUNE FIFTEENTH, TWO THOUSAND SIXTEEN AND WHO IS A MEMBER OF THE NEW YORK CITY FIRE DEPARTMENT PENSION FUND, (B) A POLICE/FIRE MEMBER WHO IS A MEMBER OF THE NEW YORK CITY FIRE DEPARTMENT PENSION FUND AND WHO MAKES AN ELECTION, WHICH SHALL BE IRREV-OCABLE AND SHALL BE DULY EXECUTED AND FILED WITH THE ADMINISTRATIVE HEAD OF SUCH PENSION FUND NO LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, TO BE SUBJECT TO THE PROVISIONS OF THIS ARTICLE RELATED TO NEW YORK CITY ENHANCED PLAN MEMBERS, OR (C) A NEW YORK CITY POLICE/FIRE REVISED PLAN MEMBER WHO BECAME SUBJECT TO THE PROVISIONS OF THIS ARTICLE BEFORE JUNE FIFTEENTH, TWO THOUSAND SIXTEEN, WHO IS A MEMBER OF THE NEW YORK CITY FIRE DEPARTMENT PENSION FUND, AND WHO MAKES AN ELECTION, WHICH SHALL BE IRREVOCABLE AND SHALL BE DULY EXECUTED AND FILED WITH THE ADMINISTRATIVE HEAD OF SUCH PENSION FUND NO LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, TO BE SUBJECT TO THE PROVISIONS OF THIS ARTICLE RELATED TO NEW YORK CITY ENHANCED PLAN MEMBERS.

S 3. Section 506 of the retirement and social security law is amended by adding a new subdivision c-1 to read as follows:

C-1. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF SUBDIVISION A OR B OF THIS SECTION, THE ORDINARY DISABILITY BENEFIT FOR A NEW YORK CITY ENHANCED PLAN MEMBER IN ACTIVE SERVICE WHO IS NOT ELIGIBLE FOR A NORMAL RETIREMENT BENEFIT, HAS COMPLETED FIVE YEARS OR MORE OF SERVICE, AND HAS BEEN DETERMINED TO BE ELIGIBLE FOR PRIMARY SOCIAL SECURITY DISABILITY BENEFITS SHALL BE A PENSION EQUAL TO THE GREATER OF (I) THIRTY-THREE AND ONE-THIRD PERCENT OF FINAL AVERAGE SALARY, OR (II) TWO PERCENT OF FINAL AVERAGE SALARY TIMES YEARS OF CREDITED SERVICE NOT IN EXCESS OF THE MAXIMUM YEARS OF SERVICE FOR COMPUTING SERVICE RETIREMENT, SUCH BENEFIT IN EACH CASE TO BE REDUCED BY ONE HUNDRED PERCENT OF ANY WORKERS' COMPENSATION BENEFITS PAYABLE.

S 4. Subdivisions c and e of section 507 of the retirement and social security law, subdivision c as amended by chapter 18 of the laws of 2012, and subdivision e as added by chapter 890 of the laws of 1976, are amended to read as follows:

c. 1. In the case of a member of a retirement system other than the New York state and local employees' retirement system, the New York state teachers' retirement system, the New York city employees' retirement system, the New York city board of education retirement system or the New York city teachers' retirement system, or in the case of a member of the New York city employees' retirement system who is a New York city uniformed correction/sanitation revised plan member or an investigator revised plan member, the accidental disability benefit hereunder shall be a pension equal to two percent of final average salary times years of credited service which such member would have attained if employment had continued until such member's full escalation date, not in excess of the maximum years of service creditable for the normal service retirement benefit, less (i) fifty percent of the primary social security disability benefit, if any, as provided in section five hundred eleven of this article, and (ii) one hundred percent of any workers' compensation benefits payable. THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO NEW YORK CITY ENHANCED PLAN MEMBERS.

2. In the case of a member of the New York state and local employees' retirement system, the New York state teachers' retirement system, the New York city employees' retirement system (other than a New York city uniformed correction/sanitation revised plan member or an investigator revised plan member), the New York city board of education retirement system or the New York city teachers' retirement system, the accidental disability benefit hereunder shall be a pension equal to sixty percent of final average salary, less (i) fifty percent of the primary social security disability benefit, if any, as provided in section five hundred eleven of this article, and (ii) one hundred percent of any workers' compensation benefits payable. In the event a disability retiree from any retirement system is not eligible for the primary social security disability benefit and continues to be eligible for disability benefits hereunder, such disability benefit shall be reduced by one-half of such retiree's primary social security retirement benefit, commencing at age sixty-two, in the same manner as provided for service retirement benefits under section five hundred eleven of this article.

3. IN THE CASE OF A NEW YORK CITY ENHANCED PLAN MEMBER, THE ACCIDENTAL DISABILITY BENEFIT HEREUNDER SHALL BE A PENSION EQUAL TO SEVENTY-FIVE PERCENT OF FINAL AVERAGE SALARY, LESS ONE HUNDRED PERCENT OF ANY WORKERS' COMPENSATION BENEFITS PAYABLE.

e. A member, EXCEPT A NEW YORK CITY ENHANCED PLAN MEMBER, shall not be eligible to apply for disability benefits under section five hundred six or this section unless such member shall, at the time of application,

sign a waiver prepared by the retirement system and approved by the administrative head of such system pursuant to which such member agrees to waive the benefits of any statutory presumption relating to the cause of disability or eligibility for disability benefits, and a determination of eligibility for benefits hereunder shall be made without regard to any such statutory provision.

S 5. Section 507 of the retirement and social security law is amended by adding a new subdivision j to read as follows:

J. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS CHAPTER OR ANY LAW, ANY CONDITION OF IMPAIRMENT OF HEALTH CAUSED BY DISEASES OF THE LUNG, RESULTING IN DISABILITY OR DEATH TO A MEMBER OF THE NEW YORK CITY FIRE DEPARTMENT PENSION FUND WHO IS A NEW YORK CITY ENHANCED PLAN MEMBER, WHO SUCCESSFULLY PASSED A PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS A FIREFIGHTER, WHICH EXAMINATION FAILED TO DISCLOSE EVIDENCE OF ANY DISEASE OR OTHER IMPAIRMENT OF THE LUNG, SHALL BE PRESUMPTIVE EVIDENCE THAT IT WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY, UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE.

S 6. Section 510 of the retirement and social security law is amended by adding a new subdivision i to read as follows:

I. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE ANNUAL ESCALATION PROVIDED IN THIS SECTION SHALL NOT APPLY TO THE ORDINARY DISABILITY BENEFIT FOR NEW YORK CITY ENHANCED PLAN MEMBERS PROVIDED FOR IN SUBDIVISION C-1 OF SECTION FIVE HUNDRED SIX OF THIS ARTICLE OR THE ACCIDENTAL DISABILITY BENEFIT FOR NEW YORK CITY ENHANCED PLAN MEMBERS PROVIDED FOR IN PARAGRAPH THREE OF SUBDIVISION C OF SECTION FIVE HUNDRED SEVEN OF THIS ARTICLE. SUCH MEMBERS WHO RECEIVE SUCH ORDINARY DISABILITY BENEFIT OR ACCIDENTAL DISABILITY BENEFIT SHALL HAVE A COST-OF-LIVING ADJUSTMENT FOR SUCH BENEFIT, WHICH SHALL BE COMPUTED IN THE SAME MANNER AS PROVIDED FOR BY SECTION 13-696 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK.

S 7. Section 511 of the retirement and social security law is amended by adding a new subdivision g to read as follows:

G. THIS SECTION SHALL NOT APPLY TO A NEW YORK CITY ENHANCED PLAN MEMBER WHO RECEIVES THE ORDINARY DISABILITY BENEFIT PROVIDED FOR IN SUBDIVISION C-1 OF SECTION FIVE HUNDRED SIX OF THIS ARTICLE OR THE ACCIDENTAL DISABILITY BENEFIT PROVIDED FOR IN PARAGRAPH THREE OF SUBDIVISION C OF SECTION FIVE HUNDRED SEVEN OF THIS ARTICLE.

S 8. Subdivision a of section 512 of the retirement and social security law, as amended by chapter 18 of the laws of 2012, is amended to read as follows:

a. A member's final average salary shall be the average wages earned by such a member during any three consecutive years which provide the highest average wage; provided, however, if the wages earned during any year included in the period used to determine final average salary exceeds that of the average of the previous two years by more than ten percent, the amount in excess of ten percent shall be excluded from the computation of final average salary. Notwithstanding the preceding provisions of this subdivision to the contrary, for a member who first becomes a member of the New York state and local employees' retirement system on or after April first, two thousand twelve, or for a New York city police/fire revised plan member, A NEW YORK CITY ENHANCED PLAN MEMBER WHO RECEIVES THE ORDINARY DISABILITY BENEFIT PROVIDED FOR IN SUBDIVISION C-1 OF SECTION FIVE HUNDRED SIX OF THIS ARTICLE OR THE ACCIDENTAL DISABILITY BENEFIT PROVIDED FOR IN PARAGRAPH THREE OF SUBDIVISION C OF SECTION FIVE HUNDRED SEVEN OF THIS ARTICLE, a New York city uniformed correction/sanitation revised plan member or an investigator

revised plan member, a member's final average salary shall be the average wages earned by such a member during any five consecutive years which provide the highest average wage; provided, however, if the wages earned during any year included in the period used to determine final average salary exceeds that of the average of the previous four years by more than ten percent, the amount in excess of ten percent shall be excluded from the computation of final average salary. In determining final average salary pursuant to any provision of this subdivision, where the period used to determine final average salary is the period which immediately precedes the date of retirement, any month or months (not in excess of twelve) which would otherwise be included in computing final average salary but during which the member was on authorized leave of absence at partial pay or without pay shall be excluded from the computation of final average salary and the month or an equal number of months immediately preceding such period shall be substituted in lieu thereof.

S 9. Section 517 of the retirement and social security law is amended by adding a new subdivision h to read as follows:

H. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF SUBDIVISION A OF THIS SECTION, NEW YORK CITY ENHANCED PLAN MEMBERS SHALL, AS OF THE EFFECTIVE DATE OF THIS SUBDIVISION, CONTRIBUTE THREE PERCENT OF ANNUAL WAGES TO THE PENSION FUND IN WHICH THEY HAVE MEMBERSHIP, PLUS AN ADDITIONAL PERCENTAGE OF ANNUAL WAGES AS SET FORTH IN THE CHAPTER OF THE LAWS OF TWO THOUSAND SIXTEEN WHICH ADDED THIS SUBDIVISION.

S 10. The opening paragraph of subdivision a of section 13-316 of the administrative code of the city of New York is amended to read as follows:

A board of trustees shall be the head of the New York fire department pension fund subchapter two, and, subject to the provisions of law [and to the prior approval of the board of estimate], from time to time shall establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof. THE PROVISIONS OF SECTIONS ONE THOUSAND FORTY-TWO, ONE THOUSAND FORTY-THREE, ONE THOUSAND FORTY-FOUR AND ONE THOUSAND FORTY-FIVE OF THE NEW YORK CITY CHARTER SHALL NOT BE CONSTRUED TO APPLY TO THE ADOPTION OF SUCH RULES AND REGULATIONS. Such board shall consist of:

S 11. Paragraph 11 of subdivision a of section 13-316 of the administrative code of the city of New York, as added by chapter 583 of the laws of 1989, is amended to read as follows:

11. (i) Where, during any six-month period during a fiscal year, as defined in subdivision three of section 13-382 of the code, the equity portion of the assets of the pension fund is less than forty-five percent, subparagraph (ii) of this paragraph [eleven] shall be effective during the succeeding fiscal year.

(ii) Two investment representatives, one of whom shall be appointed by the mayor and one of whom shall be appointed by the comptroller upon the occurrence of the condition specified in subparagraph (i) of this paragraph [eleven]. Each such representative shall be entitled to cast two votes only in relation to determinations of the board:

(A) as to whether the assets of the pension fund shall be invested in equities or fixed income securities and the proportion of the assets of the pension fund to be invested in equities and fixed income securities; and

(B) as to the identity, nature, character and amounts of the equities (within the proportion as determined under item (A) of this subpara-

graph) to be acquired, held, sold, disposed of or otherwise dealt with by the pension fund; and

(C) as to any steps necessary to effectuate any of the functions set forth in items (A) and (B) of this subparagraph; and

(D) as to delegation by the board, pursuant to law, of the functions described in items (A), (B) and (C) of this subparagraph.

S 12. Subdivision b of section 13-316 of the administrative code of the city of New York, as amended by chapter 583 of the laws of 1989, is amended to read as follows:

b. Subject to the provisions of subdivision b-1 AND SUBDIVISION F of this section, every act of the board of trustees shall be by resolution which shall be adopted only by a vote of at least seven-twelfths of the whole number of votes authorized to be cast by all of the members of such board.

S 13. Subdivision c of section 13-316 of the administrative code of the city of New York is amended to read as follows:

c. The fire commissioner shall [assign to the board of trustees a sufficient number of clerical and other assistants to permit the board efficiently to exercise their powers and to perform their duties] APPOINT AN EXECUTIVE DIRECTOR OF THE PENSION FUND, PROVIDED, HOWEVER, THAT IF SUCH DESIGNEE OF THE FIRE COMMISSIONER IS NOT A MEMBER OF THE UNIFORMED FORCE OF THE FIRE DEPARTMENT, THE BOARD OF TRUSTEES SHALL APPROVE SUCH APPOINTMENT. THE EXECUTIVE DIRECTOR OF THE PENSION FUND SHALL PERFORM SUCH DUTIES AS MAY BE CONFERRED UPON SUCH EXECUTIVE DIRECTOR BY THE CHAIRPERSON OF THE BOARD, BY RESOLUTION PASSED BY THE BOARD, OR BY LAW.

S 14. Section 13-316 of the administrative code of the city of New York is amended by adding five new subdivisions e, f, g, h and i to read as follows:

E. 1. IN ADDITION TO THE POWERS CONFERRED UPON IT BY ANY OTHER PROVISION OF LAW, THE BOARD OF TRUSTEES SHALL, ON OR BEFORE APRIL FIRST OF EACH YEAR, ESTABLISH A BUDGET, SUFFICIENT TO FULFILL THE POWERS, DUTIES AND RESPONSIBILITIES SET FORTH IN THIS CHAPTER AND ANY OTHER PROVISION OF LAW WHICH SETS FORTH THE BENEFITS OF MEMBERS OF THE PENSION FUND AND MAY DRAW UPON THE ASSETS OF THE PENSION FUND TO FUND SUCH BUDGET, SUBJECT TO THE PROVISIONS OF PARAGRAPHS TWO, THREE, FOUR, FIVE AND SIX OF THIS SUBDIVISION AND SUBDIVISIONS F, G, H AND I OF THIS SECTION. THE PROVISIONS OF THIS SECTION SHALL NOT BE APPLICABLE TO THE PAYMENT OF INVESTMENT EXPENSES PURSUANT TO SECTION 13-705 OF THIS TITLE AND NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE CONSTRUED AS ABOLISHING, LIMITING, OR MODIFYING ANY POWER OF THE BOARD OF TRUSTEES TO PROVIDE FOR THE PAYMENT OF INVESTMENT EXPENSES PURSUANT TO SECTION 13-705 OF THIS TITLE.

2. IF A BUDGET HAS NOT BEEN ADOPTED BY THE COMMENCEMENT OF THE NEW FISCAL YEAR, THE BUDGET FOR THE PRECEDING FISCAL YEAR SHALL BE DEEMED TO HAVE BEEN EXTENDED FOR THE NEW FISCAL YEAR UNTIL SUCH TIME AS A NEW BUDGET IS ADOPTED.

3. ANY BUDGET IN EFFECT PURSUANT TO PARAGRAPH ONE OR TWO OF THIS SUBDIVISION MAY BE MODIFIED DURING SUCH SUCCEEDING FISCAL YEAR.

4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE BOARD OF TRUSTEES SHALL HAVE THE POWER EITHER DIRECTLY OR BY DELEGATION TO THE EXECUTIVE DIRECTOR, TO OBTAIN BY EMPLOYMENT OR BY CONTRACT THE GOODS, PROPERTY AND SERVICES NECESSARY TO FULFILL ITS POWERS, DUTIES AND RESPONSIBILITIES WITHIN THE APPROPRIATION AUTHORIZED BY THE BOARD OF TRUSTEES PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION.

5. (I) THE PENSION FUND SHALL BE CONSIDERED AN ENTITY SEPARATE FROM THE CITY OF NEW YORK FIRE DEPARTMENT. THE BOARD OF TRUSTEES OF THE

PENSION FUND SHALL WORK CLOSELY WITH THE CITY OF NEW YORK FIRE DEPARTMENT.

(II) THE PROVISIONS OF CHAPTER SEVENTEEN OF THE NEW YORK CITY CHARTER SHALL CONTINUE TO APPLY TO THE FIRE DEPARTMENT PENSION FUND AND SUCH FUND SHALL CONSTITUTE AN AGENCY FOR THE PURPOSES OF SUCH CHAPTER. THE BOARD OF TRUSTEES SHALL NOT OBTAIN ANY LEGAL SERVICES BY THE RETENTION OF EMPLOYEES OR BY CONTRACT UNLESS THE CORPORATION COUNSEL SHALL CONSENT THERETO.

6. ALL CONTRACTS FOR GOODS OR SERVICES ENTERED INTO BY THE PENSION FUND SHALL BE PROCURED AS PRESCRIBED IN CHAPTER THIRTEEN OF THE NEW YORK CITY CHARTER; PROVIDED, HOWEVER, THAT WHERE THE PROVISIONS OF SUCH CHAPTER THIRTEEN REQUIRE ACTION BY THE MAYOR IN REGARD TO A PARTICULAR PROCUREMENT (EXCEPT FOR MAYORAL ACTION PURSUANT TO SUBDIVISION C OF SECTION THREE HUNDRED THIRTY-FOUR OF THE NEW YORK CITY CHARTER) SUCH ACTION SHALL NOT BE TAKEN BY THE MAYOR OR SUCH APPOINTEE OF THE MAYOR BUT SHALL BE TAKEN BY THE BOARD OF TRUSTEES OR THE EXECUTIVE DIRECTOR PURSUANT TO A RESOLUTION ADOPTED BY THE BOARD OF TRUSTEES DELEGATING SUCH AUTHORITY TO THE EXECUTIVE DIRECTOR.

F. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS SECTION, ANY RESOLUTION OF THE BOARD OF TRUSTEES WHICH ESTABLISHES A BUDGET OR MODIFIES A BUDGET PURSUANT TO THE PROVISIONS OF PARAGRAPH ONE OR THREE OF SUBDIVISION E OF THIS SECTION SHALL REQUIRE THE CONCURRENCE OF THE COMPTROLLER AND THE REPRESENTATIVE OF THE MAYOR. THIS PROVISION SHALL ONLY APPLY TO THIS SUBDIVISION AND NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE CONSTRUED TO APPLY TO ANY OTHER VOTE OF THE BOARD. NO ASSETS OF THE PENSION FUND SHALL BE DRAWN UPON PURSUANT TO THE PROVISIONS OF PARAGRAPH ONE OF SUBDIVISION E OF THIS SECTION UNLESS AUTHORIZED BY A BUDGET OR BUDGET MODIFICATION ESTABLISHED BY SUCH RESOLUTION OF THE BOARD OF TRUSTEES.

G. EMPLOYMENT BY THE PENSION FUND SHALL CONSTITUTE CITY-SERVICE FOR THE PURPOSES OF THIS SUBCHAPTER FOR THOSE EMPLOYEES THAT ARE MEMBERS OF THE FUND PURSUANT TO SECTION 13-314 OF THIS SUBCHAPTER; FOR ALL OTHER EMPLOYEES, EMPLOYMENT BY THE PENSION FUND SHALL CONSTITUTE CITY SERVICE FOR THE PURPOSES OF CHAPTER ONE OF TITLE THIRTEEN OF THIS CODE; PROVIDED, HOWEVER, THAT NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE CONSTRUED AS GRANTING MEMBERSHIP RIGHTS IN THE PENSION FUND OR ANY RETIREMENT SYSTEM TO A CONTRACTOR OF SUCH FUND OR SUCH CONTRACTOR'S EMPLOYEES. EMPLOYEES OF THE PENSION FUND SHALL BE DEEMED TO BE EMPLOYEES OF THE CITY OF NEW YORK FOR THE PURPOSES OF CHAPTER THIRTY-FIVE OF THE CHARTER AND TITLE TWELVE OF THIS CODE.

H. WHENEVER THE ASSETS OF THE PENSION FUND ARE DRAWN UPON PURSUANT TO THE PROVISIONS OF PARAGRAPH ONE OF SUBDIVISION E OF THIS SECTION ALL MONIES SO WITHDRAWN SHALL BE MADE A CHARGE TO BE PAID BY THE EMPLOYER OTHERWISE REQUIRED TO MAKE CONTRIBUTIONS TO THE PENSION FUND NO LATER THAN THE END OF THE SECOND FISCAL YEAR SUCCEEDING THE TIME PERIOD DURING WHICH SUCH ASSETS ARE DRAWN UPON. THE ACTUARY SHALL CALCULATE SUCH CHARGE TO BE PAID BY THE EMPLOYER. ALL CHARGES TO BE PAID PURSUANT TO THIS SUBDIVISION SHALL BE PAID AT THE REGULAR RATE OF INTEREST UTILIZED BY THE ACTUARY IN DETERMINING EMPLOYER CONTRIBUTIONS TO THE PENSION FUND PURSUANT TO THE PROVISIONS OF PARAGRAPH TWO OF SUBDIVISION B OF SECTION 13-638.2 OF THIS TITLE.

I. THE FUNDS WITHDRAWN FROM THE PENSION FUND SHALL NOT BE UTILIZED FOR ANY PURPOSE OTHER THAN THE BUDGET ESTABLISHED BY THE BOARD OF TRUSTEES. ALL EXPENDITURES OF THE PENSION FUND SHALL BE SUBJECT TO AUDIT BY THE COMPTROLLER, WHO MAY MAKE RECOMMENDATIONS, INCLUDING BUT NOT LIMITED TO, PROCEDURES DESIGNED TO IMPROVE ACCOUNTING AND EXPENDITURE CONTROL. ALL

EXPENDITURES OF THE PENSION FUND SHALL BE REPORTED TO THE MAYOR'S OFFICE OF MANAGEMENT AND BUDGET AND THE BUDGETARY OFFICE OF THE CITY OF NEW YORK FIRE DEPARTMENT.

S 15. Notwithstanding any other law to the contrary, any condition of impairment of health caused by diseases of the lung, diseases of the heart, or by a stroke, resulting in disability or death to a medical officer of the fire department of the city of New York who is a member of the New York city fire department pension fund, who is presently employed, and who shall have sustained such disability while so employed, shall be presumptive evidence that it was incurred in the performance and discharge of duty, unless the contrary be proved by competent evidence, provided that (i) such officer successfully passed a physical examination for entry into public service, or authorized release of all relevant medical records, if such officer did not undergo a physical examination for entry into public service, and (ii) there is no evidence of the qualifying condition or impairment of health that formed the basis for the disability in such physical examination for entry into public service or in the relevant medical records, prior to such officer's entry into public service.

S 16. Notwithstanding any other law to the contrary, any medical officer of the fire department of the city of New York who is a member of the New York city fire department pension fund, who is presently employed, and who contracts HIV (where the officer may have been exposed to a bodily fluid of a person under his or her care or treatment, or while the officer examined, transported, rescued or otherwise had contact with such person, in the performance of his or her duties), tuberculosis or hepatitis, who shall have contracted such disease while so employed, will be presumed to have contracted such disease as a natural or proximate result of an accidental injury received in the performance and discharge of his or her duties and not as a result of his or her willful negligence, unless the contrary be proved by competent evidence, provided that (i) such officer successfully passed a physical examination for entry into public service, or authorized release of all relevant medical records, if such officer did not undergo a physical examination for entry into public service, and (ii) there is no evidence of the qualifying disease that formed the basis for the disability in such physical examination for entry into public service or in the relevant medical records, prior to such officer's entry into public service.

S 17. Notwithstanding any other law to the contrary, any condition of impairment of health caused by (a) any condition of cancer affecting the lymphatic, digestive, hematological, urinary, neurological, breast, reproductive, or prostate systems or (b) melanoma resulting in total or partial disability or death, resulting in disability or death to a medical officer of the fire department of the city of New York who is a member of the New York city fire department pension fund, who is presently employed, and who shall have sustained such disability while so employed, shall be presumptive evidence that it was incurred in the performance and discharge of duty, unless the contrary be proved by competent evidence, provided that (i) such officer successfully passed a physical examination for entry into public service, or authorized release of all relevant medical records, if such officer did not undergo a physical examination for entry into public service, and (ii) there is no evidence of the qualifying condition or impairment of health that formed the basis for the disability in such physical examination for

entry into public service or in the relevant medical records, prior to such officer's entry into public service.

S 18. New York city enhanced plan members, as defined in section 501 of the retirement and social security law as amended by section two of this act, shall contribute, pursuant to subdivision h of section 517 of the retirement and social security law as added by section nine of this act, an additional two percent of annual wages to the pension fund in which they have membership. Every three years from the effective date of this act, the actuary of such pension fund shall prepare an analysis, using current actuarial methods and assumptions in effect as of the date of such analysis, assessing the total cost of providing the benefits established by this act expressed as an employee contribution of a percentage of annual wages of New York City enhanced plan members which would require no additional employer contribution. On the basis of such analysis, the additional percentage of annual wages provided for herein shall be adjusted to equal two percent of annual wages plus any amount by which the employee contribution calculated in such analysis exceeds 4.3 percent of annual wages, provided, however, that in no event shall the additional percentage of annual wages exceed three percent.

S 19. Except as specified in this act, nothing contained in this act shall affect or impair the rights or privileges of officers or employees of the New York city fire department pension fund in relation to the personnel, appointment, ranks, grades, length of service, promotion, removal, pension and retirement rights, civil rights, or any other rights or privileges of officers or employees of the city of New York generally or officers or employees of such fund.

S 20. Section 81 of chapter 18 of the laws of 2012 shall not apply to this act.

S 21. This act shall take effect immediately; provided, however, that the provisions of this act authorizing the adoption of a budget and the use of the assets of the New York city fire department pension fund to pay expenses may be utilized during the fiscal year commencing on July 1, 2016 and provided further, that in such event, such budget shall be deemed to have been established on April 1, 2016.

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

PROVISIONS OF PROPOSED LEGISLATION: With respect to the New York Fire Department Pension Fund (FIRE), the proposed legislation would amend Sections 501, 506, 507, 510, 511, 512, and 517 of the Retirement and Social Security Law (RSSL) to provide changes to the benefit provisions of Tier 3 and Revised Tier 3 FIRE members, including changes to Accidental Disability Retirement (ADR) and Ordinary Disability Retirement (ODR) benefits. The proposed legislation would also allow eligible FIRE Members to utilize applicable statutory presumptions for purposes of ADR. The proposed legislation would further amend Section 13-316 of the Administrative Code of the City of New York (ACNY) to authorize the FIRE Board of Trustees to draw upon assets of such fund to pay for certain budgeted expenses.

The Effective Date of the proposed legislation would be the date of enactment. For budgetary purposes, FIRE may adopt a budget and draw upon the assets of such fund commencing on July 1, 2016. Such budget shall be deemed effective as of April 1, 2016.

For purposes of this Fiscal Note, all FIRE members subject to Article 14 of the RSSL will be referred to as "Tier 3 FIRE Members" (Tier 3 Fire Members include Tier 3 FIRE Medical Officers). Tier 3 FIRE Members who have a date of membership prior to April 1, 2012, will be referred to as "Original Tier 3 FIRE Members." Tier 3 FIRE Members who have a date of

membership on or after April 1, 2012, will be referred to as "Revised Tier 3 FIRE Members."

Tier 3 FIRE Members who are Members prior to June 15, 2016 would have the option of remaining under the current benefit structure or irrevocably electing, within 120 days of the effective date of the proposed legislation, to be covered under the benefit structure contained in the proposed legislation. Tier 3 FIRE Members who become Members on and after June 15, 2016 would be subject to the benefit structure contained in the proposed legislation. Tier 3 FIRE Members who elect the benefits of this proposed legislation, and Tier 3 FIRE Members who are subject to mandatory participation, are referred to as "Enhanced Plan Members."

Enhanced Plan Members would, in addition to paying the current contribution rate of 3% of annual wages, be required to contribute additional contributions initially at 2% of annual wages and, in the future, ranging from 2% to 3% of annual wages depending on specified future cost calculations.

CURRENT ODR BENEFITS PAYABLE: The current ODR benefits for Tier 3 FIRE Members are equal to the greater of:

* 33 1/3% of Final Average Salary (FAS), or
* 2% of FAS multiplied by years of credited service (not in excess of 22 years),

Reduced by:

* 50% of the Primary Social Security Disability benefits (determined under RSSL Section 511), and
* 100% of Workers' Compensation benefits (if any).

FAS is a Three-Year Average (FAS3) for Original Tier 3 FIRE Members and a Five-Year Average (FAS5) for Revised Tier 3 FIRE Members.

It is the understanding of the Actuary that FIRE Members are not covered by Workers' Compensation.

IMPACT ON ODR BENEFITS PAYABLE: Under the proposed legislation, the ODR benefits for Enhanced Plan Members would be revised to be equal to the greater of:

* 33 1/3% of FAS5, or
* 2% of FAS5 multiplied by years of credited service (not in excess of 22 years).

Reduced by:

* 100% of Workers' Compensation benefits (if any).

It is the understanding of the Actuary that FIRE Members are not covered by Workers' Compensation.

Eligibility for ODR benefits for Enhanced Plan Members would remain the same.

In addition, the proposed legislation would NOT apply the Escalation available under RSSL Section 510 to ODR benefits for Enhanced Plan Members. However, such ODR benefits would still be eligible for Cost-of-Living Adjustments (COLA) under Chapter 125 of the Laws of 2000.

CURRENT ADR BENEFITS PAYABLE: The current ADR benefits for Tier 3 FIRE Members is equal to:

* 50% multiplied by FAS,

Reduced by:

* 50% of Primary Social Security disability benefit or Primary Social Security benefits, whichever begins first (determined under RSSL Section 511), and
* 100% of Workers' Compensation benefits (if any).

FAS is a FAS3 for Original Tier 3 FIRE Members and a FAS5 for Revised Tier 3 FIRE Members.

It is the understanding of the Actuary that FIRE Members are not covered by Workers' Compensation.

IMPACT ON ADR BENEFITS PAYABLE: Under the proposed legislation, the eligibility requirements for ADR benefits for Enhanced Plan Members would be the same. However these Members would be eligible to utilize applicable statutory presumptions (e.g., certain lung diseases) for purposes of ADR. In addition, under the proposed legislation, eligible Medical Officers may utilize the applicable statutory presumptions provided the Medical Officer authorized release of all relevant medical records, and there is no evidence of the qualifying condition or impairment that formed the basis for the disability in such medical records.

Under the proposed legislation, the ADR benefits for Enhanced Plan Members would be revised to equal a retirement allowance of:

* 75% multiplied by FAS5,

Reduced by:

* 100% of Workers' Compensation benefits (if any).

It is the understanding of the Actuary that FIRE Members are not covered by Workers' Compensation.

In addition, the proposed legislation would NOT apply the Escalation available under RSSL Section 510 to ADR benefits for Enhanced Plan Members. However, such ADR benefits would still be eligible for COLA under Chapter 125 of the Laws of 2000.

FINANCIAL IMPACT -- CORPUS FUNDING: Consistent with the methodology used to finance administrative expenses for the other New York City Pension Funds and Retirement Systems, administrative expenses paid from the assets of FIRE in accordance with this proposed legislation would be reimbursed with interest through employer contributions for the second Fiscal Year following their occurrence. For example, administrative expenses paid from the assets of FIRE during July 1, 2016 through June 30, 2017 would be reimbursed with interest through the employer contributions for Fiscal Year 2019.

To the extent that the assets of FIRE are used to pay administrative expenses of FIRE, then those expenses would no longer be included in the operating budget of the New York City Fire Department. Therefore, all else being equal, there should be no cost impact to the City of New York for changing FIRE to a corpus funded entity.

FINANCIAL IMPACT -- CHANGES IN PROJECTED ACTUARIAL PRESENT VALUE OF FUTURE EMPLOYER CONTRIBUTIONS AND PROJECTED EMPLOYER CONTRIBUTIONS: For purposes of this Fiscal Note, it is assumed that the changes in the Actuarial Present Value (APV) of benefits (APVB), APV of member contributions, the Unfunded Actuarial Accrued Liability (UAAL) and APV of future employer contributions would be reflected for the first time in the June 30, 2015 actuarial valuation of FIRE. Under the One-Year Lag Methodology (OYLM), the first year in which changes in benefits for Enhanced Plan Members could impact employer contributions to FIRE would be Fiscal Year 2017.

Note that since the assumptions used in the actuarial valuation do not distinguish between Medical Officers and other FIRE members, and since assumptions for Tier 2 members already incorporate the presumptions available under law, there will be only a de minimis change in employer contributions for the three medical officers who are Tier 3 members. The increase in employer costs for providing presumptions to all medical officers has been estimated to be approximately $100,000 to $200,000 per year.

In accordance with ACNY Section 13.638.2(k-2), new UAAL attributable to benefit changes are to be amortized as determined by the Actuary but

generally over the remaining working lifetime of those impacted by the benefit changes. As of June 30, 2015, the remaining working lifetime of the Tier 3 FIRE members is approximately 23 years. Recognizing that these periods will decrease over time as the group of Enhanced Plan Members matures, the Actuary would likely choose to amortize the new UAAL attributable to this proposed legislation over a 15-year to 20-year period (between 14 and 19 payments under the OYLM Methodology). For purposes of this Fiscal Note, the Actuary has elected to amortize the change in UAAL over a 15-year period (14 payments).

The following Table 1 presents an estimate of the increases in the APV of future employer contributions and in employer contributions to FIRE for Fiscal Years 2017 through 2021 due to the changes in ODR and ADR provisions for Enhanced Plan Members and the changes in eligibility requirements for presumptions for FIRE Medical Officers based on the applicable actuarial assumptions and methods noted herein:

Table 1

Estimated Financial Impact on FIRE
if Certain Revisions are Made to
Provisions for ODR and ADR Benefits for Tier 3 FIRE Members
and to Presumption Eligibility Requirements for Medical Officers

($ Millions)

Fiscal Year	Increase In APV of Future Employer Contributions	Increase in Employer Contributions
2017	$41.9	$6.1
2018	55.9	8.0
2019	66.6	9.7
2020	75.5	11.2
2021	84.6	12.6

The estimated increases in employer contributions shown in Table 1 are based upon the following projection assumptions:

* Level workforce (i.e., new employees are hired to replace those who leave active status).

* Salary increases consistent with those used in projections presented to the New York City Office of Management and Budget in February, 2016 (Preliminary Projections).

* New entrant salaries consistent with those used in the Preliminary Projections.

OTHER COSTS: Not measured in this Fiscal Note are the following:

* The initial, additional administrative costs of FIRE to implement the proposed legislation.

* The potential impact if this proposed legislation were to be extended to other public safety employees.

* The impact of this proposed legislation on Other Postemployment Benefit (OPEB) costs.

CENSUS DATA: The starting census data used for the calculations presented herein is the census data used in the Preliminary June 30, 2015 (Lag) actuarial valuation of FIRE to determine the Preliminary Fiscal Year 2017 employer contributions.

The 318 Tier 3 FIRE members who have a date of membership prior to April 1, 2012 had an average age of approximately 29, average service of approximately 2.0 years and an average salary of approximately $54,300 as of June 30, 2015. The 1,065 Tier 3 FIRE Members who have a date of membership on or after April 1, 2012 had an average age of approximately 28, average service of approximately 0.8 years and an average salary of approximately $47,500 as of June 30, 2015. There are 3 Tier 3 Medical Officers in FIRE as of June 30, 2015.

ACTUARIAL ASSUMPTIONS AND METHODS: The additional employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the Preliminary June 30, 2015 (Lag) actuarial valuations used to determine the Preliminary Fiscal Year 2017 employer contributions of FIRE.

In determining the change in employer contributions, the probabilities of accidental disability used for Tier 3 FIRE members equal those currently used for Tier 2 FIRE members.

It has been further assumed that all Tier 3 FIRE members who became members prior to the effective date of the proposed legislation will choose the new disability provisions.

The actuarial valuation methodology does not include a calculation of the value of an offset for Workers' Compensation benefits for Tier 3 FIRE members as it is the understanding of the Actuary that these members are not covered by such benefits.

Employer contributions under current methodology have been estimated assuming the additional APVB would be financed through future normal contributions including an amortization of the new UAAL attributable to this proposed legislation over a 15-year period (14 payments under the OYLM Methodology).

New entrants were projected to replace the members expected to leave the active population to maintain a steady-state population.

For purposes of estimating the impact of Escalation for retired Enhanced Plan Members, an assumption of 2.5% was used, which is consistent with the underlying Consumer Price Inflation (CPI) assumption of 2.5% per year. This compares with the current Chapter 125 of the Laws of 2000 COLA assumption of 1.5% per year (i.e., 50% of CPI adjusted to recognize a 1.0% minimum and 3.0% maximum) on the first $18,000 of benefit.

The following Table 2 presents the total number of active employees of FIRE used in the projections, assuming a level work force, and the cumulative number (i.e., net of withdrawals) of Tier 3 Members as of each June 30 from 2015 through 2019.

Table 2

Surviving Actives from Census Data on June 30, 2015
and
Cumulative Tier 3 FIRE Members from 2015
Used in the Projections*

June 30	Tier 1 & 2	Tier 3	Total
2015	9,397	1,383	10,780
2016	8,827	1,953	10,780
2017	8,335	2,445	10,780
2018	7,864	2,916	10,780
2019	7,398	3,382	10,780

* Total active members included in the projections assume a level work force based on the June 30, 2015 (Lag) actuarial valuation census data.

STATEMENT OF ACTUARIAL OPINION: I, Sherry S. Chan, am the Chief Actuary for, and independent of, the New York City Pension Funds and Retirement Systems. I am an Associate of the Society of Actuaries, a Fellow of the Conference of Consulting Actuaries and a Member of the American Academy of Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

FISCAL NOTE IDENTIFICATION: This estimate is intended for use only during the 2016 Legislative Session. It is Fiscal Note 2016-33, dated June 3, 2016 prepared by the Chief Actuary for the New York Fire Department Pension Fund.