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

7704

2015-2016 Regular Sessions

I N A S S E M B L Y

May 22, 2015

Introduced by M. of A. BUCHWALD, MORELLE, BARRETT, BRINDISI, FAHY, GALEF, KAMINSKY, LAVINE, LUPARDO, McDONALD, OTIS, RUSSELL, SEPULVEDA, SKOUFIS, STIRPE, ZEBROWSKI, PAULIN, WOERNER -- read once and referred to the Committee on Governmental Operations

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 COMMITTED IN DIRECT CONNECTION WITH SERVICE AS A PUBLIC OFFICER, MAY BE REDUCED OR REVOKED, FOLLOWING NOTICE AND A HEARING BY AN APPROPRIATE COURT, AS PROVIDED BY LAW. SUCH REDUCTION OR REVOCATION MAY ONLY BE OF THE PENSION OWED TO THE PUBLIC OFFICER FROM THE RETIREMENT SYSTEM THAT SUCH OFFICER WAS A MEMBER OF AT THE TIME OF THE COMMISSION OF SUCH FELONY. 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 THE PENSION TO SUCH CRIME, AND WHEN A COURT ISSUES AN ORDER TO REDUCE OR REVOKE SUCH PENSION, THE COURT SHALL ORDER: (I) PAYMENT OF A PORTION OF SUCH PENSION TO THE INNOCENT SPOUSE, INNOCENT MINOR CHILDREN AND OTHER DEPENDENTS PURSUANT TO LAW OF SUCH OFFICER AFTER CONSIDERATION OF THE FINANCIAL NEEDS AND RESOURCES OF SUCH SPOUSE, CHILDREN AND DEPENDENTS AND OTHER FACTORS AS PROVIDED BY LAW; AND (II) THAT CONTRIBUTIONS PAID INTO THE RELEVANT RETIREMENT SYSTEM BY SUCH OFFICER BE RETURNED TO HIM OR HER, EXCEPT THAT THE LEGISLATURE MAY PROVIDE THAT SUCH RETURN BE CONDITIONED ON THE OFFICER'S

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

LBD89101-01-5

COMPLIANCE WITH OR SATISFACTION OF ANY JUDGMENTS OR ORDERS FOR THE PAYMENT OF RESTITUTION TO THE STATE OR A MUNICIPALITY FOR LOSSES INCURRED AS A RESULT OF SUCH FELONY RELATED TO PUBLIC OFFICE. 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 WITHIN THE STATE; (II) A HOLDER OF OFFICE FILLED BY 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, RULE, REGULATION, POLICY, OR JUDICIAL DECISION-MAKING AND WHO IS DESIGNATED AS A POLICYMAKER AS DEFINED BY LAW OR AS AUTHORIZED BY LAW.

(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 AMENDMENTS TO THE CONSTITUTION THAT ADDED THIS PARAGRAPH, PROVIDED, HOWEVER, THAT NOTHING IN SUBDIVISIONS (B), (C) OR THIS SUBDIVISION OF THIS SECTION SHALL BE READ TO ABROGATE THE APPLICATION OF ANY EXISTING STATUTORY PROVISIONS RELATED TO THE REDUCTION OR REVOCATION OF A PUBLIC PENSION OR RETIREMENT SYSTEM BENEFIT TO ANY PARTICIPANTS WHO BECAME MEMBERS OF SUCH PENSION OR RETIREMENT SYSTEM AFTER THE EFFECTIVE DATE OF SUCH STATUTORY PROVISIONS.

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.