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

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I N S E N A T E

February 23, 2016

Introduced by Sen. MARCELLINO -- (at request of the New York State Teachers' Retirement System) -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the education law, in relation to a retirement contribution reserve fund for the purposes of the New York state teachers' retirement system

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

Section 1. The education law is amended by adding a new section 3653 to read as follows:

S 3653. RETIREMENT CONTRIBUTION RESERVE FUND. 1. THE BOARD OF EDUCATION OR TRUSTEES OF A PARTICIPATING EMPLOYER MAY, BY RESOLUTION, ESTABLISH A RETIREMENT CONTRIBUTION RESERVE FUND FOR THE PURPOSE OF OFFSETTING EMPLOYER CONTRIBUTIONS TO THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM AND PAYABLE PURSUANT TO THIS CHAPTER.

2. THERE MAY BE PAID INTO A RETIREMENT CONTRIBUTION RESERVE FUND:

A. SUCH AMOUNTS AS MAY BE PROVIDED THEREFOR BY BUDGETARY APPROPRIATION OR RAISED BY TAX THEREFOR;

B. SUCH REVENUES AS ARE NOT REQUIRED BY LAW TO BE PAID INTO ANY OTHER FUND OR ACCOUNT;

C. SUCH OTHER FUNDS AS MAY BE LEGALLY APPROPRIATED; AND

D. NOTWITHSTANDING ANY LAW TO THE CONTRARY, SUCH AMOUNTS AS MAY BE TRANSFERRED FROM A RESERVE FUND ESTABLISHED PURSUANT TO SECTION SIX-C, SIX-D, SIX-E, SIX-F OR SIX-G OF THE GENERAL MUNICIPAL LAW COMPRISED OF MONEYS RAISED FROM THE SAME TAX BASE AS THE MONEYS IN THE RETIREMENT CONTRIBUTION RESERVE FUND, OR A RESERVE FUND ESTABLISHED PURSUANT TO SECTION THIRTY-SIX HUNDRED FIFTY-ONE OF THIS ARTICLE, PROVIDED THAT ANY SUCH TRANSFER SHALL ONLY BE MADE BY RESOLUTION OF THE BOARD OF EDUCATION OR TRUSTEES OF SUCH EMPLOYER ADOPTED AFTER A PUBLIC HEARING HELD ON AT LEAST FIFTEEN DAYS PRIOR PUBLISHED NOTICE IN AT LEAST ONE NEWSPAPER HAVING GENERAL CIRCULATION IN THE SCHOOL DISTRICT OF THE EMPLOYER.

3. FOR PURPOSES OF THIS SECTION:

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

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A. "RETIREMENT CONTRIBUTION" SHALL MEAN ALL OR ANY PORTION OF THE EMPLOYER CONTRIBUTION PAYABLE BY A PARTICIPATING EMPLOYER TO THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM PURSUANT TO ARTICLE ELEVEN OF THIS CHAPTER; AND

B. "EMPLOYER" SHALL MEAN THE STATE OF NEW YORK, THE CITY, THE VILLAGE, SCHOOL DISTRICT BOARD OR TRUSTEE, OR OTHER AGENCY OF AND WITHIN THE STATE BY WHICH A TEACHER IS PAID.

4. THE MONEYS IN THE RETIREMENT CONTRIBUTION RESERVE FUND SHALL BE DEPOSITED AND SECURED IN THE MANNER PROVIDED BY SECTION TEN OF THE GENERAL MUNICIPAL LAW. THE BOARD OF EDUCATION OR TRUSTEES, OR CHIEF ADMINISTRATIVE OFFICER OR HIS OR HER DESIGNEE THEREOF IF THE BOARD OR TRUSTEES SHALL DELEGATE SUCH DUTY TO HIM OR HER, MAY INVEST THE MONEYS IN SUCH FUND IN THE MANNER PROVIDED BY SECTION ELEVEN OF THE GENERAL MUNICIPAL LAW. ANY INTEREST EARNED OR CAPITAL GAIN REALIZED ON THE MONEY SO DEPOSITED OR INVESTED SHALL ACCRUE TO AND BECOME PART OF SUCH FUND.

5. THE BOARD OF EDUCATION OR TRUSTEES OF SUCH EMPLOYER MAY, BY RESOLUTION, AUTHORIZE EXPENDITURES FROM THE RETIREMENT CONTRIBUTION RESERVE FUND. EXCEPT AS OTHERWISE PROVIDED BY LAW, MONEYS IN A RETIREMENT CONTRIBUTION RESERVE FUND MAY ONLY BE EXPENDED TO OFFSET THE EMPLOYER CONTRIBUTIONS PAYABLE IN ACCORDANCE WITH ARTICLE ELEVEN OF THIS CHAPTER.

6. THE BOARD OF EDUCATION OR TRUSTEES OF SUCH EMPLOYER MAY, BY RESOLUTION, AUTHORIZE THE TRANSFER OF A PORTION OF THE MONEYS IN A RETIREMENT CONTRIBUTION RESERVE FUND TO A RESERVE FUND OF THE EMPLOYER ESTABLISHED PURSUANT TO SECTION SIX-C, SIX-D, SIX-E, SIX-F OR SIX-G OF THE GENERAL MUNICIPAL LAW COMPRISED OF MONEYS RAISED FROM THE SAME TAX BASE AS THE MONEYS IN THE RETIREMENT CONTRIBUTION RESERVE FUND, OR A RESERVE FUND ESTABLISHED PURSUANT TO SECTION THIRTY-SIX HUNDRED FIFTY-ONE OF THIS ARTICLE, PROVIDED, THAT ANY TRANSFER SHALL ONLY BE MADE BY RESOLUTION OF THE BOARD OF EDUCATION OR TRUSTEES OF SUCH EMPLOYER ADOPTED AFTER A PUBLIC HEARING HELD ON AT LEAST FIFTEEN DAYS PRIOR PUBLISHED NOTICE IN AT LEAST ONE NEWSPAPER HAVING GENERAL CIRCULATION IN THE SCHOOL DISTRICT OF THE EMPLOYER.

7. THE CHIEF ADMINISTRATIVE OFFICER, OR HIS OR HER DESIGNEE, OF SUCH EMPLOYER SHALL ACCOUNT FOR A RETIREMENT CONTRIBUTION RESERVE FUND SEPARATE AND APART FROM ALL OTHER FUNDS OF THE EMPLOYER. SUCH ACCOUNTING SHALL SHOW: THE SOURCE, DATE AND AMOUNT OF EACH SUM PAID INTO THE FUND; THE INTEREST EARNED BY SUCH FUND, CAPITAL GAINS OR LOSSES RESULTING FROM THE SALE OF INVESTMENTS OF THIS FUND; THE ORDER, PURPOSE THEREOF, DATE AND AMOUNT OF EACH PAYMENT FROM THIS FUND; THE ASSETS OF THE FUND, INDICATING CASH BALANCE AND A SCHEDULE OF INVESTMENTS. THE CHIEF ADMINISTRATIVE OFFICER, OR HIS OR HER DESIGNEE, WITHIN SIXTY DAYS AFTER THE CLOSE OF EACH FISCAL YEAR, SHALL FURNISH A DETAILED REPORT OF THE OPERATION AND CONDITION OF THIS FUND TO THE BOARD OF EDUCATION OR TRUSTEES.

8. THE MEMBERS OF THE BOARD OF EDUCATION OR TRUSTEES OF SUCH EMPLOYER ARE HEREBY DECLARED TRUSTEES OF A RETIREMENT CONTRIBUTION RESERVE FUND AND SHALL BE SUBJECT TO ALL THE DUTIES AND RESPONSIBILITIES IMPOSED BY LAW ON TRUSTEES, AND SUCH DUTIES AND RESPONSIBILITIES MAY BE ENFORCED BY THE EMPLOYER, AS THE CASE MAY BE, OR BY ANY OFFICER OR TAXPAYER THEREOF.

9. NO MEMBER OF THE BOARD OF EDUCATION OR TRUSTEES OF SUCH EMPLOYER SHALL:

A. AUTHORIZE A WITHDRAWAL FROM A RETIREMENT CONTRIBUTION RESERVE FUND FOR ANY PURPOSE EXCEPT AS PROVIDED IN THIS SECTION; OR

B. EXPEND ANY MONEY WITHDRAWN FROM SUCH FUND FOR A PURPOSE OTHER THAN AS PROVIDED IN THIS SECTION.

ANY MEMBER OF THE BOARD OF EDUCATION OR ANY TRUSTEE WHO VIOLATES THE PROVISIONS OF THIS SUBDIVISION SHALL BE GUILTY OF A MISDEMEANOR.

10. THE BOARD OF EDUCATION OR TRUSTEES OF SUCH EMPLOYER MAY, BY RESOLUTION, DETERMINE A RETIREMENT CONTRIBUTION RESERVE FUND IS NO LONGER NEEDED AND MAY TERMINATE SUCH FUND. SUCH RESOLUTION SHALL TRANSFER ANY MONEYS REMAINING IN SUCH FUND TO ONE OR MORE RESERVE FUNDS OF THE EMPLOYER AS ESTABLISHED PURSUANT TO SECTION SIX-C, SIX-D, SIX-E, SIX-F OR SIX-G OF THE GENERAL MUNICIPAL LAW COMPRISED OF MONEYS RAISED FROM THE SAME TAX BASE AS THE MONEYS IN THE RETIREMENT CONTRIBUTION RESERVE FUND, OR ONE OR MORE RESERVE FUNDS ESTABLISHED PURSUANT TO SECTION THIRTY-SIX HUNDRED FIFTY-ONE OF THIS CHAPTER.

S 2. This act shall take effect on the first of July next succeeding the date on which it shall have become a law.

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

This bill would add a new Section 3653 to the Education Law to permit the board of education or trustees of a participating employer of the New York State Teachers' Retirement System (NYSTRS) to establish a retirement contribution reserve fund for the purpose of offsetting future required employer contributions. The money that may be paid into a retirement contribution reserve fund shall consist of amounts provided for by budgetary appropriation, revenues that are not required by law to be paid into any other fund or account, such other funds as may be legally appropriated, and transfers from other reserve funds.

The moneys in the retirement contribution reserve fund shall be deposited and secured in the manner provided by Section 10 of the General Municipal Law, and may be invested in the manner provided by Section 11 of the General Municipal Law. Any interest earned or capital gain realized shall accrue to and become part of the retirement contribution reserve fund.

Except as otherwise provided by law, the moneys in the retirement contribution reserve fund may only be expended to offset required employer contributions payable in accordance with Article 11 of the Education Law.

This act shall take effect on the first day of July next succeeding the date on which it shall have become a law.

It is estimated that there will be no annual cost to the employers of members of the New York State Teachers' Retirement System if this bill is enacted.

Employee data is from the System's most recent actuarial valuation files, consisting of data provided by the employers to the Retirement System. Data distributions and statistics can be found in the System's Comprehensive Annual Financial Report (CAFR). System assets are as reported in the System's financial statements, and can also be found in the CAFR. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report.

The source of this estimate is Fiscal Note 2016-2 dated October 9, 2015 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2016 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.