

# STATE OF NEW YORK

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4913--A

2019-2020 Regular Sessions

## IN SENATE

March 29, 2019

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Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- recommitted to the Committee on Civil Service and Pensions in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to provide for the payment of the annual contributions owed and to be owed on behalf of the New York city off-track betting corporation to the New York city employees' retirement system

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Statement of legislative findings and intent. The legisla-  
2 ture hereby finds that the state has a statutory and constitutional  
3 obligation to protect and fund the pension benefits of the former  
4 employees and retirees of the defunct New York city off-track betting  
5 corporation.

6 The New York city off-track betting corporation is a public benefit  
7 corporation created pursuant to state law and is a participating employ-  
8 er in the New York city employees' retirement system. The pension bene-  
9 fits of the corporation's former employees and retirees are protected  
10 from impairment under article V, section 7 of the state constitution.

11 In 2008, the state legislatively enhanced its role with respect to the  
12 New York city off-track betting corporation due to its financial diffi-  
13 culties, thus becoming its successor for purposes of assuming the statu-  
14 tory and constitutional obligation to make pension contributions. The  
15 corporation ceased operations in 2010 and has since failed to make annu-  
16 al contributions to the New York city employees' retirement system as  
17 required under the administrative code of the city of New York.

18 Sections 13-130 and 13-638.2 of the administrative code of the city of  
19 New York provide that the employer liabilities of a public benefit  
20 corporation that participates in the New York city employees' retirement

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

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1 system, such as the New York city off-track betting corporation, are to  
2 be paid by the corporation or a successor. On March 8, 2018, the board  
3 of trustees of the New York city employees' retirement system adopted a  
4 resolution recognizing the state as a successor to the New York city  
5 off-track betting corporation and a responsible obligor with respect to  
6 its required contributions.

7 As a successor to the New York city off-track betting corporation, and  
8 in the interest of properly funding the pension benefits of its former  
9 employees and retirees in compliance with the state constitution, the  
10 state will fulfill the past, present, and future obligations of the New  
11 York city off-track betting corporation to the New York city employees'  
12 retirement system as follows:

13 § 2. Definitions. The following words and phrases as used in this act  
14 shall have the following meanings unless a different meaning is plainly  
15 required by context.

16 1. "Actuary" shall mean the actuary appointed by the board of trustees  
17 of the New York city employees' retirement system pursuant to section  
18 13-121 of the administrative code of the city of New York.

19 2. "City fiscal year" shall mean a fiscal year of the city of New York  
20 as defined in section 226 of the New York city charter.

21 3. "Executive director" shall mean the executive director appointed by  
22 the board of trustees of the New York city employees' retirement system  
23 pursuant to paragraph 2 of subdivision a of section 13-103 of the admin-  
24 istrative code of the city of New York.

25 4. "Interest" shall mean the rate per centum per annum of interest  
26 specified in paragraph 2 of subdivision b of section 13-638.2 of the  
27 administrative code of the city of New York.

28 5. "NYC administrative code" shall mean the administrative code of the  
29 city of New York.

30 6. "NYCERS" shall mean the New York city employees' retirement system,  
31 as established by chapter 427 of the laws of 1920.

32 7. "NYCOTB" shall mean the New York city off-track betting corpo-  
33 ration, as established by chapter 144 of the laws of 1970 and continued  
34 pursuant to article 6 of the racing, pari-mutuel wagering and breeding  
35 law.

36 8. "State fiscal year" shall mean a fiscal year of the state as  
37 defined in section 3 of the state finance law.

38 § 3. Payment of the future annual contributions to be owed by NYCOTB  
39 to NYCERS. Notwithstanding the provisions of any general or special  
40 state law or local law to the contrary, in state fiscal year 2022 and in  
41 each state fiscal year thereafter, the department of audit and control  
42 shall take actions necessary to pay in full, subject to appropriation,  
43 the annual contribution determined to be owed by NYCOTB to NYCERS under  
44 the provisions of the NYC administrative code, including but not limited  
45 to sections 13-127, 13-130, 13-133, and 13-638.2 thereof, for the corre-  
46 sponding city fiscal year. On or prior to the date specified in section  
47 13-133 of the NYC administrative code for the payment of annual contrib-  
48 utions by NYCOTB, such moneys, to the extent of such appropriation,  
49 shall be payable to NYCERS on the audit and warrant of the comptroller  
50 of the state of New York on vouchers certified or approved by the execu-  
51 tive director of NYCERS in the manner prescribed by law. Notwithstand-  
52 ing the provisions of any general or special state law or local law to  
53 the contrary, an annual contribution determined and paid under this  
54 section shall not include any amount attributable to any annual contrib-  
55 ution previously determined to be owed by NYCOTB to NYCERS for any city

1 fiscal year prior to the 2022 city fiscal year and not yet paid by  
2 NYCOTB or the state.

3 § 4. Payment of overdue annual contributions owed by NYCOTB to NYCERS.

4 a. Notwithstanding the provisions of any general or special state law or  
5 local law to the contrary, on or before January 2, 2021, the actuary  
6 shall determine the sum of all annual contributions previously deter-  
7 mined to be owed by NYCOTB to NYCERS for any city fiscal year prior to  
8 the 2022 city fiscal year and not yet paid by NYCOTB, with interest.  
9 Such interest, compounded annually, shall be computed on each such over-  
10 due annual contribution from the date such contribution was required to  
11 be paid pursuant to section 13-133 of the NYC administrative code  
12 through January 1, 2021. This sum shall be known as the "amount to be  
13 amortized".

14 b. Notwithstanding the provisions of any general or special state law  
15 or local law to the contrary, on or before January 2, 2021, the actuary  
16 shall further determine an amount that if paid in fifteen equal annual  
17 installments beginning on January 1, 2022, would be sufficient to pay in  
18 full the amount to be amortized with interest, compounded annually,  
19 computed from January 2, 2021, to January 1, 2036. This amount shall be  
20 known as the "annual amortization payment". Any annual amortization  
21 payment subsequent to the initial annual amortization payment payable on  
22 January 1, 2022, shall include the unpaid balance of any prior annual  
23 amortization payment, with interest, compounded annually, computed from  
24 the date such prior annual amortization payment was required to be paid  
25 to the date that such subsequent annual authorization payment is  
26 required to be paid.

27 c. Notwithstanding the provisions of any general or special state law  
28 or local law to the contrary, in state fiscal year 2022 and in each  
29 state fiscal year thereafter until the amount to be amortized, with  
30 interest, is paid in full, the department of audit and control shall  
31 take actions necessary to pay in full the annual amortization payment,  
32 subject to appropriation. On or prior to January 1st of each such state  
33 fiscal year, such moneys, to the extent of such appropriation shall be  
34 payable to NYCERS on the audit and warrant of the comptroller of the  
35 state of New York on vouchers certified or approved by the executive  
36 director of NYCERS in the manner prescribed by law.

37 § 5. Deposit of moneys. NYCERS shall deposit all moneys received  
38 pursuant to this act in the contingent reserve fund specified in section  
39 13-127 of the NYC administrative code.

40 § 6. This act shall take effect immediately.