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VETO #17

CHAPTER \_\_\_\_\_

LAWS OF 20 02

SENATE BILL 5600A

ASSEMBLY BILL \_\_\_\_\_

5600--A

2001-2002 Regular Sessions

**IN SENATE**

June 15, 2001

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

AN ACT to amend the retirement and social security law, in relation to retirement benefits for warrant and transfer officers

*A 10617 Abbate*

DATE RECEIVED BY GOVERNOR:

AUG 08 2002

ACTION MUST BE TAKEN BY:

AUG 20 2002

DATE GOVERNOR'S ACTION TAKEN:

AUG 20 2002

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SENATE VOTE      \_\_\_ Y \_\_\_ N

HOME RULE MESSAGE      \_\_\_ Y \_\_\_ N

DATE \_\_\_\_\_

ASSEMBLY VOTE      \_\_\_ Y \_\_\_ N

DATE \_\_\_\_\_

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STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 5600-A, entitled:

AUG 20 2002

**V E T O # 17** "AN ACT to amend the retirement and social security law, in relation to retirement benefits for warrant and transfer officers"

NOT APPROVED

This bill would amend the Retirement and Social Security Law to permit warrant and transfer officers in the Division of Parole to retire after 25 years of qualifying creditable service without regard to age. The bill further provides that members would not be eligible to retire unless they had a minimum of ten years of qualifying creditable service. The retirement benefit under the bill would be equal to two percent (2%) of the member's final average salary (FAS) for each year of qualifying creditable service, which shall not exceed fifty percent (50%) of FAS. It is estimated that the bill would result in a \$2,400 cost this year, 2.2% of the affected officers salaries in the future and a one-time past service cost of \$80,000. The bill would take effect immediately.

While I appreciate the dangerous and demanding nature of the job that warrant and transfer officers perform in the investigation, arrest and transportation of parole violators, I am constrained to disapprove the bill. Under current law, warrant and transfer officers, parole officers and uniformed court officers employed by the State do not have retirement plans that permit them to retire without regard to age after completing a minimum service requirement. To the contrary, these public servants may retire only after the age of 55 and their pension benefits are subject to diminution if they do not have 30 years of service, unless they retire after the age of 62. Thus, approval of this bill for warrant and transfer officers would undoubtedly lead parole officers and uniformed court officers to seek the same benefit, namely the ability to retire after 25 years of service without regard to age. The Division of the Budget estimates that such a benefit could occasion one-time past service costs to the State of approximately \$12 to \$15 million for parole officers, and approximately \$51 to \$60 million for uniformed court officers. In these times of fiscal uncertainty, I am unwilling to approve legislation that could lead to \$75 million in past service costs to the State. In addition, the bill has a technical flaw in that it could be interpreted to permit retirement regardless of age, so long as the member has at least 10 years of service. While permitting such employees an early retirement benefit was surely not intended, the presence of such a flaw is alone sufficient to require my disapproval.

The bill is disapproved.

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STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER  
Attorney General

Legislative Bureau

TO: COUNSEL TO THE GOVERNOR

Re: SENATE 5600

ASSEMBLY

Inasmuch as this bill does not appear to relate to the functions of the Department of Law, I am not commenting thereon. However, if there is a particular aspect of the bill upon which you wish comment, please advise me.

**ELIOT SPITZER  
ATTORNEY GENERAL**

Date: July 16,2002

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SENATE:  
No. 5600-A

Introduced by:  
Senator Leibell

ASSEMBLY:  
No.

Law: Retirement and Social Security

Sections: 89-w (new), 445, 603, 604

Division of the Budget recommendation on the above bill:

Approve: \_\_\_\_\_ Veto:  X  No Objection: \_\_\_\_\_ No Recommendation: \_\_\_\_\_

1. Subject and Purpose:

The bill would provide an improved retirement plan for warrant and transfer officers of the New York State Division of Parole.

2. Summary of Provisions:

Effective immediately, warrant and transfer officers of the Division of Parole would be permitted to retire after 25 years of service, regardless of age, with a pension equal to fifty percent of final average salary. The bill also appears to allow warrant and transfer officers to retire after ten years of service, regardless of age, with a retirement allowance equal to one fiftieth of the officer's final average salary for each year of service, with a maximum benefit of fifty percent of salary.

3. Legislative History:

This bill is identical to legislation introduced in 2000, S.7663 and A.11175. These bills were referred to the Senate Committee on Civil Service and Pensions and the Assembly Committee on Governmental Employees, respectively. No further action was taken on the bills.

4. Arguments in Support:

- a. Since warrant and transfer officers are peace officers, sponsors of the legislation argue that they should be eligible for a retirement benefits package based upon years of service, rather than the employee's age, like other law enforcement personnel.
- b. Sponsors believe that the enhanced retirement allowance provided by this legislation is suitable compensation for the difficult job these officers perform. Warrant and transfer officers' duties include the investigation, arrest, and transportation of parole violators. Daily contact with parolees creates a high level of stress for the officers.
- c. It may also be argued that this legislation would prove valuable in efforts to recruit younger individuals to these positions and to retain the existing officers.

5. Arguments in Opposition:

- a. Providing an enhanced retirement benefit to a small subset of Division of Parole employees would be inequitable in its treatment of other peace officers within the Division, namely parole officers, who do not have a 25-year retirement program.
- b. This legislation would set an expensive precedent to provide the same benefits to other peace officers employed by the State. Parole officers and other peace officers would likely request a comparable retirement benefit. Extending this benefit to all peace officers within the Division of Parole would cost the State \$12 million. The cost of providing this benefit to peace officers employed by the Office of Court Administration would be \$51 million.
- c. The bill authorizes a benefit for warrant and transfer officers that is more generous than the pension plan available to State correction officers and other law enforcement personnel, which creates further equity and precedent problems. The proposed legislation would allow a warrant and transfer officer to retire prior to attaining 25 years of service, regardless of age. Other 25-year retirement programs, like the plan offered to State correction officers, include a minimum age requirement for employees retiring with less than 25 years of service.
- d. The Division of Parole indicates that there is no problems with recruitment and retention of warrant and transfer officers.

6. Other State Agencies Interested:

The Governor's Office of Employee Relations and the Division of Parole oppose the bill.

7. Other Interested Groups:

The New York State Correctional Officers and Police Benevolent Association supports the bill.

8. Budget Implications:

According to the actuary for the New York State and Local Retirement Systems, the fiscal impact of the legislation upon the State would be an immediate \$80,000 for past service costs and an increase of \$2,400 in annual costs to the State. These annual costs could eventually increase to 2.2% of the affected members' salaries, which is approximately \$20,000 based on current salary levels.

9. Recommendation: Veto.

This bill would authorize a 25-year retirement plan for warrant and transfer officers employed by the Division of Parole. The proposal is intended to provide warrant and transfer officers a pension comparable to other law enforcement personnel. While these employees perform important security services to the State, the Division of the Budget is compelled to recommend disapproval of the proposed benefit improvement because it would create benefit inequities with other peace officers employed by the State. The cost of providing this same benefit to other State peace officers is \$63 million. In addition, the bill appears to allow for retirement with less than 25 years of service regardless of age, which is a benefit that is not granted in any other 25-year retirement plan.

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H.CARL McCALL  
STATE COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236-0001

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

MEMORANDUM

**To:** James M. McGuire  
Counsel to the Governor

**Date:** August 19, 2002

**From:** Dixie Hathaway  
Assistant Deputy Counsel

**Subject:** S.5600-A

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Thank you for requesting our comments regarding the above-captioned bill. We have reviewed this measure and have no objection to its enactment.

DAH:mev

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S 5600

STATE OF NEW YORK  
GOVERNOR'S OFFICE OF  
EMPLOYEE RELATIONS

Legal Division  
2 Empire State Plaza, 13th Floor  
Albany, New York 12223-1250  
518/473-4596  
www.goer.state.ny.us

MEMORANDUM

George H. Madison, Director

July 24, 2002

TO: Hon. James M. McGuire  
FROM: Walter J. Pellegrini  
SUBJECT: S. 5600-A

This Bill would allow warrant and transfer officers in the Division of Parole to be covered by the provisions of a special 25 year, half-pay retirement plan. According to the fiscal note attached to the bill, approximately 14 individuals would qualify for this new benefit.

While the intent of this bill is laudable in its attempt to compensate warrant and transfer officers for the physical dangers and hazards they face in their jobs on a daily basis, the Office of Employee Relations must object to this proposal. First, there is no argument that there is a shortage of such employees and that this bill is needed to either recruit or retain employees. Absent such an argument, the state's current financial condition weighs against the enactment of any new retirement benefits at this time.

For the above reasons, the Office of Employee Relations objects to this bill.

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New York State Governor's Office of Employee Relations  
Over 30 Years of Service through Labor Relations Excellence

Veto 17

**HINMAN  
STRAUB**   
ATTORNEYS AT LAW

121 STATE STREET  
ALBANY, NEW YORK 12207-1693  
TEL: 518-436-0751  
FAX: 518-436-4751  
E-MAIL: RECEPTION@HSPM.COM

August 16, 2002

James McGuire, Esq.  
Counsel to the Governor  
Executive Chamber  
New York State Capitol  
Albany, NY 12224

Re: S.5600-A/A.10617

Dear Mr. McGuire:

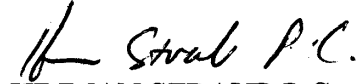
A question has been raised with respect to a portion of the language of S.5600-A/A.10617, legislation introduced at the request of the New York State Correctional Officers and Police Benevolent Association, Inc. ("NYSCOPBA") which would establish an alternative 25-year, half-pay retirement plan for warrant and transfer officers employed by the Division of Parole. The language at issue is found in subdivision b, paragraph 2 of the bill, which reads in pertinent part, "[a]ny such qualifying member shall be entitled to retire after the completion of twenty-five years of qualifying creditable service...provided, however, no such member shall be eligible to retire until he or she has a minimum of ten years of qualifying creditable service."

Apparently, there is some concern that this language purports to allow a member to retire upon completing 10 years of creditable service, regardless of age. Upon reviewing the sponsor's memorandum associated with this bill, it is clear that allowing for retirement after completing 10 years of service, without regard to age, is not the intent of the Legislature; nor was it the intent of NYSCOPBA when the union sought introduction of this bill. In fact, the bill's provisions were tailored after an existing, effective statute – § 89-t of the Retirement and Social Security Law (alternative retirement benefits for safety officers). Section 89-t, which provides a 25-year, half-pay retirement benefit for NYSCOPBA's safety and security officers, has never been interpreted to authorize early retirement without regard to age. As such, there is no precedent for interpreting S.5600-A/A.10617 to allow for early retirement.

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If you have any questions or comments, or would like to discuss this matter further, please contact us.

Respectfully submitted,



HINMAN STRAUB P.C.

Legislative Counsel for New York State Correctional Officers  
and Police Benevolent Association, Inc.

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**HINMAN  
STRAUB**  
ATTORNEYS AT LAW

121 STATE STREET  
ALBANY, NEW YORK 12207-1693  
TEL: 518-436-0751  
FAX: 518-436-4751  
E-MAIL: RECEPTION@HSPM.COM

August 13, 2002

James McGuire, Esq.  
Counsel to the Governor  
Executive Chamber  
New York State Capitol  
Albany, NY 12224

Re: S.5600-A/A.10617

Dear Mr. McGuire:

On behalf of the New York State Correctional Officers and Police Benevolent Association, Inc. ("NYSCOPBA"), which represents more than 25,000 members from various state law enforcement titles, including warrant and transfer officers, we respectfully request that the Governor sign into law the above-referenced legislation which would establish an alternative 25-year one-half pay retirement plan for these NYSCOPBA members.

Warrant and transfer officers, employed within the Division of Parole, serve as a crucial link between the state's police agencies and its correctional departments. These law enforcement officers are responsible for the investigation and arrest of parole violators. They are required to apprehend parole violators, regardless of where these absconders are located. As a result, warrant and transfer officers must oftentimes travel to other states to make their arrests. Once a parole violator is apprehended and is in the custody of these law enforcement personnel, it is the responsibility of the warrant and transfer officers to return the individual to a designated New York State correctional institution, planning the safest and most secure route for return.

Moreover, unlike parole officers who are not required to have any law enforcement background prior to their appointment, warrant and transfer officers must have prior experience in the law enforcement field. According to the Civil Service Department's examination announcement in January of 2001 for the warrant and transfer officer position, all applicants "must have two years of municipal, State or Federal law enforcement experience with primary responsibility for the transportation, custody and care of individuals convicted of criminal activity and under the supervision of a criminal justice agency. Experience limited to routine police patrol work is NOT qualifying." This additional qualification is logical since parole officers primarily deal with

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parolees who are properly following the terms and conditions of their parole, while warrant and transfer officers deal only with those individuals who have violated a condition or conditions of their parole. As such, a greater law enforcement expertise is needed to adequately perform the warrant and transfer officer's job duties.

Despite providing a critical law enforcement function to the State of New York, these law enforcement officers, unlike the vast majority of police officers and correctional officers employed within New York, do not have a service-based retirement plan. Rather, they are subject to the general provisions of the employees' retirement system allowing them to retire and receive full benefits when they reach the age of 62, unless they have 30 years of service.

The very nature of their work requires warrant and transfer officers to encounter some of the most dangerous and unstable individuals in society. Like other law enforcement personnel, they deserve a retirement program based on their years of service, a program which recognizes the inherent danger and stress level of the warrant and transfer officer title. This legislation not only provides such recognition, but it also ensures that a young and vigorous workforce is maintained in the warrant and transfer officer position.

For these reasons, on behalf of NYSCOPBA, we strongly support the enactment of this legislation.

Respectfully submitted,



HINMAN STRAUB P.C.

Legislative Counsel for New York State Correctional Officers  
and Police Benevolent Association, Inc.

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