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CHAPTER 28

LAWS OF 20 09

SENATE BILL 1406

ASSEMBLY BILL _____

STATE OF NEW YORK

1406

2009-2010 Regular Sessions

IN SENATE

January 29, 2009

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the civil service law, in relation to extending the effectiveness of provisions establishing dispute resolution during collective negotiations

A3425 Abbate (ms)

DATE RECEIVED BY GOVERNOR:

APR 30 2009

ACTION MUST BE TAKEN BY:

MAY 12 2009

DATE GOVERNOR'S ACTION TAKEN:

MAY 12 2009

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SENATE VOTE 128 Y 2 N

HOME RULE MESSAGE Y N

DATE 3/2/09

ASSEMBLY VOTE 61 Y 0 N

DATE 2/25/09

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S1406 SAVINO
 03/02/09 S1406
 02/25/09 S1406

Same as A 3425 Abbate (MS)
 Assembly Vote
 Senate Vote

Yes: 128 No : 2
 Aye: 61 Nay: 0

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03/02/09 S1406 Assembly Vote Yes: 128 No : 2

Yes Abbate	ER Alessi	Yes Alfano	Yes Amedore
Yes Arroyo	Yes Aubry	Yes Bacalles	Yes Ball
Yes Barclay	Yes Barra	Yes Barron	Yes Benedetto
Yes Benjamin	Yes Bing	ER Boyland	Yes Boyle
Yes Bradley	Yes Brennan	Yes Brodsky	Yes Brook-Krasny
Yes Burling	Yes Butler	Yes Cahill	Yes Calhoun
Yes Camara	Yes Canestrari	ER Carrozza	Yes Castro
Yes Christensen	Yes Clark	Yes Colton	Yes Conte
Yes Cook	No Corwin	ER Crouch	Yes Cusick
Yes Cymbrowitz	Yes DelMonte	Yes DenDekker	Yes Destito
ER Diaz	Yes Dinowitz	Yes Duprey	ER Eddington
ER Englebright	Yes Errigo	Yes Espaillat	Yes Farrell
Yes Fields	ER Finch	No Fitzpatrick	Yes Gabryszak
Yes Galef	Yes Gantt	Yes Gianaris	Yes Giglio
Yes Glick	Yes Gordon	Yes Gottfried	Yes Greene
Yes Gunther A	Yes Hawley	Yes Hayes	ER Heastie
Yes Hevesi	Yes Hikind	Yes Hooper	Yes Hoyt
Yes Hyer-Spencer	Yes Jacobs	Yes Jaffee	Yes Jeffries
Yes John	Yes Jordan	Yes Kavanagh	Yes Kellner
Yes Kolb	Yes Koon	Yes Lancman	Yes Latimer
Yes Lavine	ER Lentol	Yes Lifton	Yes Lopez P
ER Lopez V	Yes Lupardo	Yes Magee	Yes Magnarelli
Yes Maisel	ER Markey	ER Mayersohn	Yes McDonough
Yes McEneny	Yes McKevitt	Yes Meng	Yes Miller
Yes Millman	ER Molinaro	Yes Morelle	Yes Nolan
Yes Oaks	Yes O'Donnell	Yes O'Mara	Yes Ortiz
Yes Parment	Yes Paulin	Yes Peoples	Yes Peralta
ER Perry	Yes Pheffer	Yes Powell	Yes Pretlow
Yes Quinn	Yes Rabbitt	Yes Raia	ER Ramos
Yes Reilich	Yes Reilly	Yes Rivera J	Yes Rivera N
ER Rivera P	Yes Robinson	Yes Rosenthal	Yes Russell
ER Saladino	Yes Sayward	Yes Scarborough	Yes Schimel
Yes Schimminger	Yes Schroeder	Yes Scozzafava	Yes Seminerio
Yes Skartados	Yes Spano	Yes Stirpe	Yes Sweeney
ER Tedisco	Yes Thiele	Yes Titone	Yes Titus
ER Tobacco	Yes Towns	Yes Townsend	Yes Walker
Yes Weinstein	Yes Weisenberg	Yes Weprin	Yes Wright
Yes Zebrowski K	Yes Mr. Speaker		

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02/25/09 S1406 Senate Vote Aye: 61 Nay: 0

Aye Adams	Aye Addabbo	Aye Alesi	Aye Aubertine
Aye Bonacic	Aye Breslin	Aye DeFrancisco	Aye Diaz
Aye Dilan	Aye Duane	Aye Espada	Aye Farley

Exc Flanagan	Aye Foley	Aye Fuschillo	Aye Golden
Aye Griffo	Aye Hannon	Aye Hassell- Thompson	Aye Huntley
Aye Johnson C	Aye Johnson O	Aye Klein	Aye Krueger
Aye Kruger	Aye Lanza	Aye Larkin	Aye LaValle
Aye Leibell	Aye Libous	Aye Little	Aye Marcellino
Aye Maziarz	Aye McDonald	Aye Monserrate	Aye Montgomery
Aye Morahan	Aye Nozzolio	Aye Onorato	Aye Oppenheimer
Aye Padavan	Aye Parker	Aye Perkins	Aye Ranzenhofer
Aye Robach	Aye Saland	Aye Sampson	Aye Savino
Aye Schneiderman	Aye Serrano	Aye Seward	Aye Skelos
Aye Smith	Aye Squadron	Aye Stachowski	Aye Stavisky
Aye Stewart-Cousins	Aye Thompson	Aye Valesky	Aye Volker
Aye Winner	Aye Young		

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TRANSPORTATION

THE SENATE
STATE OF NEW YORK



DIANE J. SAVINO
SENATOR, 23RD DISTRICT

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March 27, 2009

Honorable David A. Paterson
Governor
State of New York
Executive Chamber
State Capitol
Albany, New York 12224

RE: S.1406/A.3425 - Extends for an additional two years the effectiveness of provisions establishing dispute resolution during collective negotiations.

Dear Governor Paterson:

The above referenced legislation will shortly be before you for executive action. This bill would extend for two years the provisions of §209, subdivision 4 of the Civil Service Law that provides for compulsory binding arbitration when an impasse has been declared in collective negotiations between a governmental employer and certain employee organizations. Since 1977, this law has been extended every two years after being passed on a three year experimental basis for members of local police and fire departments in 1974.

Binding Arbitration is an effective dispute resolution technique that ensures the uninterrupted provision of critical police and fire services. Since its enactment, New York State has not seen a strike by members of any union representing employees covered under §209.4.

The covered employee organizations include: local police and fire personnel; district attorneys' offices detective-investigators (outside NYC); Troopers; Officers and Investigators in the Division of State Police; Correction Officers employed by the Department of Correctional Services; Police officers of the Agency Law Enforcement Services unit; and certain Deputy Sheriffs.

Binding Arbitration provides finality to negotiations and contributes to labor peace in New York. For the above reasons, I respectfully submit this legislation for favorable executive action.

Sincerely,

Diane J. Savino
Senator

DJS:bmo

000005

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S1406

SPONSOR: SAVINO

TITLE OF BILL:

An act to amend the civil service law, in relation to extending the effectiveness of provisions establishing dispute resolution during collective negotiations

PURPOSE OR GENERAL IDEA OF BILL:

The purpose of this legislation is to amend paragraph d, 4, Section 209 of the Civil Service Law, as amended by Chapter 57 of the Laws of 2003 to read: The provisions of this subdivision shall expire 30 years from July first, 1977 rather than 28 years from that date.

SUMMARY OF SPECIFIC PROVISIONS:

Paragraph d of subdivision 4, Section 209 of the Civil Service Law, as amended by Chapter 57 of the Laws of 2003 is amended to extend the expiration date of the provisions for an additional two years or until July 1, 2011.

JUSTIFICATION:

Compulsory arbitration has allowed the people of New York to enjoy uninterrupted fire and police protection since 1973. All evaluations of the effects of this law have been positive and have advocated the continued use of this process. There have been no significant increases or decreases in settlements due to the use of arbitration as opposed to settling prior to the issue of an arbitration award. In other words, there is no advantage for either party in carrying the process to its final end.

This legislation is necessary to extend binding arbitration for an additional two years to continue to provide for peaceful settlement of disputes.

PRIOR LEGISLATIVE HISTORY:

Chapter 130 of the Laws of 1993

Chapter 123 of the Laws of 1995

Chapter 149 of the Laws of 1997

Chapter 141 of the Laws of 1999

Chapter 58 of the Laws of 2001

Chapter 57 of the Laws of 2003

Chapter 30 of the Laws of 2005

Chapter 12 of the Laws of 2007

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This act shall take effect immediately.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A3425

SPONSOR: Abbate (MS)

TITLE OF BILL: An act to amend the civil service law, in relation to extending the effectiveness of provisions establishing dispute resolution during collective negotiations

PURPOSE OR GENERAL IDEA OF BILL: The purpose of this legislation is to amend paragraph d, 4, Section 209 of the Civil Service Law, as amended by Chapter 57 of the Laws of 2003 to read: The provisions of this subdivision shall expire 30 years from July first, 1977 rather than 28 years from that date.

SUMMARY OF SPECIFIC PROVISIONS: Paragraph d of subdivision 4, Section 209 of the Civil Service Law, as amended by Chapter 57 of the Laws of 2003 is amended to extend the expiration date of the provisions for an additional two years or until July 1, 2009.

JUSTIFICATION: Compulsory arbitration has allowed the people of New York to enjoy uninterrupted fire and police protection since 1973. All evaluations of the effects of this law have been positive and have advocated the continued use of this process. There have been no significant increases or decreases in settlements due to the use of arbitration as opposed to settling prior to the issue of an arbitration award. In other words, there is no advantage for either party in carrying the process to its final end.

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Chapter 123 of the Laws of 1995

Chapter 149 of the Laws of 1997

Chapter 141 of the Laws of 1999

Chapter 58 of the Laws of 2001

Chapter 57 of the Laws of 2003

Chapter 30 of the Laws of 2005 Chapter 12 of the Laws of 2007

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: This act shall take effect immediately.

DIVISION OF THE BUDGET BILL MEMORANDUM

Session Year 2009

SENATE:
No. 1406

ASSEMBLY:
No.

Primary Sponsor: Savino

Law: Civil Service Law

Sections: 209, Subd.4, Para (d)

Division of the Budget recommendation on the above bill

APPROVE: VETO: NO OBJECTION:

1&2. Subject, Purpose and Summary of Provisions:

Effective immediately, this bill would extend for two years the provisions of section 209, subdivision 4 of the Civil Service Law that provides for compulsory binding arbitration when an impasse has been declared in collective negotiations between a governmental employer and certain employee organizations. Such employee organizations include: local police and fire personnel; detective-investigators or criminal investigators employed in district attorney offices (outside of New York City); members of the collective negotiating units consisting of Troopers, Commissioned and Non-Commissioned Officers and Investigators, Senior Investigators and Investigative Specialists in the Division of State Police; members of the Security Services and Security Supervisors collective negotiating units who are police officers or who are employed by the Department of Correctional Services as peace officers (e.g., Corrections Officers); members of the collective negotiating unit designated as the Agency Law Enforcement Services unit who are police officers; and organized units of Deputy Sheriffs who spend at least fifty percent of their service engaged directly in criminal law enforcement activities.

3. Legislative History:

This bill would result in the seventeenth extension of a law originally passed on a three year experimental basis for members of local police and fire departments (Chapters 724 and 725 of the Laws of 1974). Since 1977, this law has been extended every two years; most recently by Chapter 12 of the Laws of 2007. Additionally:

- o Chapter 432 of the Laws of 1995 and Chapter 587 of the Laws of 2001 extended binding arbitration to certain members of the Division of State Police for compensation and non-compensation matters, respectively.
- o Chapter 586 of the Laws of 2001 provided binding arbitration, for compensation issues only, to all members of the Security Services and Security Supervisors collective bargaining units. However, Chapter 220 of the Laws of 2002 limited binding arbitration to positions designated as police officers in the Security Services and Security Supervisor collective negotiating units and peace officers in the Department of

Correctional Services.

- Chapter 641 of the Laws of 2003 granted binding arbitration in compensation matters for members of the Agency Law Enforcement Services unit who are police officers.
- Chapter 696 of the laws of 2003 granted binding arbitration to organized units of deputy sheriffs who spend at least fifty percent of their service engaged directly in criminal law enforcement activities. Chapter 63 of the Laws of 2004 (technical amendment made by Chapter 286 of the Laws of 2004) limited such binding arbitration to compensation matters.
- Chapter 693 of the Laws of 2006 granted police officer status and binding arbitration to Forest Ranger 1, 2 and 3 titles.

4. Arguments in Support:

It could be argued that binding arbitration is an effective dispute resolution technique that ensures the uninterrupted provision of critical police and fire services.

5. Arguments in Opposition:

- Currently, section 209 of the Civil Service Law prescribes four factors which binding arbitration panels must consider when developing arbitration award decisions: 1) comparable wages and compensation paid to similar employees in other jurisdictions; 2) the financial ability of the public employer to pay; 3) comparable peculiarities such as job hazards and physical qualifications; and 4) past terms of collective bargaining agreements negotiated between the public employer and the applicable union.

Unfortunately, historical experience suggests that binding arbitration panels have given inadequate consideration to governmental fiscal concerns and instead have interpreted the existing ability to pay factor in the most extreme terms. Case law has rendered "the financial ability of the public employer to pay" provisions meaningless through the following rationale: since employers can raise unlimited funds through their ability to tax, a public employer's ability to pay is unlimited. This "unlimited capacity" theory has led to awards that have the potential to be very disruptive to the employer's finances and operations. This has occurred many times in the case of local governments.

- Reform to the binding arbitration provisions in section 209 has been proposed in the past to accord first priority to the financial ability of a governmental employer to pay an arbitration award. For example, in 2003 and in 2005, legislation was advanced that would require arbitrators to consider, above all other factors, the public employer's financial ability to pay without the need for new or increased taxes. The Legislature failed to enact this reform.
- Of particular concern in the current statute is the arbitration status of Corrections Officers in the Department of Correctional Services, who unlike all other binding arbitration eligible titles with the State, are not police officers but instead are peace officers. By maintaining binding arbitration status for Corrections Officers, it could very likely lead to the proliferation of binding arbitration treatment for other public employees. In addition, the increases granted to DOCS peace officers in their first binding arbitration award in 2006 were far beyond those

gained for other unions through collective bargaining.

- Other arguments against the extension of compulsory binding arbitration include:
 - It is inappropriate to permit a third party arbitrator, who may be unfamiliar with the day-to-day operations of the public employer, to make determinations about work rules, wages and benefits.
 - Binding arbitration encourages parties to rigidly hold to their original positions (which are often unreasonable) throughout the bargaining process, the result being that arbitrators are given an unrealistic set of parameters within which to determine a settlement. Although the State settled contracts with almost all of the non-uniformed services unions which do not have binding arbitration provisions, several of the uniformed services unions which do have binding arbitration provisions are either engaged in arbitration or are awaiting arbitration decisions. It is apparent that the availability of arbitration deters good faith collective bargaining by the parties and has resulted in settlements that are delayed, inequitable and exorbitant.
 - The exorbitant settlements that are awarded through binding arbitration results in salary compression between those employees whose positions are arbitration eligible and the employees' supervisors, who are often Management/Confidential. This salary compression makes it unlikely that the unionized employees will accept promotions out of the union ranks and creates an untenable situation where managers may earn far less than their subordinates. The Budget Division has approved "Occupational Pay Differentials" in certain cases to try to correct this inequity, which results in more cost to the State.
- Finally, this bill is objectionable because it would perpetuate a significant technical flaw in Section 209, subdivision 2 of the Civil Service Law, which was created by the passage of Chapter 696 of the Laws of 2003 (i.e., the initial Sheriffs' Binding Arbitration Bill). Pursuant to Chapter 485 of the Laws of 1990, as amended, the effective date of Subdivision 2 of Section 209 is controlled by the effective date of Subdivision 4 of Section 209, which would be amended by this bill. Accordingly, the enactment of this bill would extend both subdivision 2 and subdivision 4 provisions to July 1, 2011.

The passage of Chapter 696 created a second competing subdivision 2 in the Civil Service Law (i.e., there are two subdivision 2's in the law). This second subdivision, which should be eliminated, identifies a partial list of the covered employees eligible for binding arbitration and excludes local police and fire personnel in New York City. The first (original) subdivision, which should remain in the law if binding arbitration is to be extended, identifies all the covered employee groups eligible for binding arbitration, including local police and fire personnel in New York City. The legislative intent since 1998 has been to provide New York City local police with binding arbitration. Therefore, the second subdivision has convoluted the intent of the law. We recommend that a Chapter amendment be done to correct this flaw by repealing the undesirable subdivision 2.

6. Other State Agencies Interested:

The Public Employment Relations Board supports passage of the bill as it provides finality in negotiations. The Governor's Office of Employee Relations does not object to the bill but notes a need for reevaluation of the provisions of binding arbitration (including the employer's "ability to pay") before the extender is signed. Other interested agencies include the Division of State Police, the Department of Correctional Services, the Department of Environmental Conservation, the Office of Parks, Recreation and Historic Preservation, and the State University of New York.

7. Other Interested Groups:

The New York State Conference of Mayors and Municipal Officials, the New York State Association of Towns, and the New York State Association of Counties oppose this legislation. These organizations were supportive of previous reform legislation.

8. Budget Implications:

The State and localities would incur increased costs to the extent that arbitrators impose wage or benefit increases, or significant changes in work conditions to which employers might not otherwise agree. An analysis of the projected cost of an arbitration award for the unsettled State unions is at least \$17.8 million for every one percent increase. Therefore, on a statewide basis, the impact of binding arbitration can be tens of millions of dollars annually. The aggregate impact across the various local government units is even greater.

9. Recommendation:

This bill would extend for an additional two years compulsory binding arbitration for local police and fire personnel; detective-investigators employed in district attorney offices (outside of New York City); Troopers, Officers and Investigators in the Division of State Police; Police Officers in the Security units and the Agency Law Enforcement Services Unit; Correction Officers; and certain Deputy Sheriffs.

The availability of binding arbitration for resolution of unsuccessful collective bargaining efforts has often had the adverse impact of leading the parties to develop and maintain extreme positions in the collective bargaining process. This has resulted in arbitration awards which are much more costly than those which might otherwise have been agreed to in bargaining. As noted above, the issue of extending arbitration is especially troubling as regards State Corrections Officers who do not have police officer status and who received an arbitration award much greater than increases received by other unionized non-police officer employees through collective bargaining negotiations.

Additionally, it can be effectively argued that under the current binding arbitration statute arbitrators do not give sufficient consideration to a public employer's ability to pay.

Further, as currently drafted, this bill is objectionable because it would perpetuate a technical flaw in Section 209, subdivision 2 of the Civil Service Law. Accordingly, we recommend that

this bill be vetoed.

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STATE OF NEW YORK

DAVID A. PATERSON
GOVERNOR

PETER J. KIERNAN
COUNSEL TO THE GOVERNOR

March 9, 2009

Honorable Diane J. Savino
New York State Senate
Legislative Office Building – Room 406
Albany, New York 12247

Honorable Peter J. Abbate, Jr.
New York State Assembly
Legislative Office Building – Room 839
Albany, New York 12248

Dear Senator Savino and Assemblyman Abbate:

As you know, legislation that you have sponsored (S.1406/A.3425) has now passed both houses of the Legislature, and will soon be sent to the Governor for action.

In order to assist the Governor in reviewing this legislation and deciding whether it should be signed into law, we would greatly appreciate receiving any relevant documents or information that you have on this bill. In particular, we would very much like to receive:

- copies of the sponsor's memorandum in support of this bill;
- copies of any comment letters in support of or in opposition to this bill that you received from outside organizations, individuals or other third parties;
- if hearings were held on the bill, copies of the transcripts of those hearings; and
- any other documents or information that you believe should be considered by the Governor.

The State Constitution gives the Governor only 10 days to act on bills after they have been forwarded by the Legislature, and we therefore would appreciate receiving

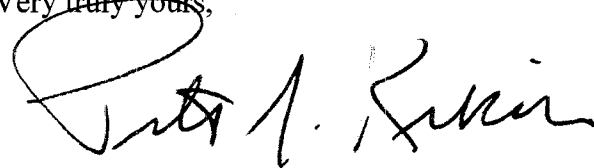
the above information at your earliest convenience. Please send any materials you have to:

Kristin Ross
Legislative Secretary's Office
Executive Chamber
State Capitol – Room 225
Albany, New York 12224

Any information that you provide will be included in the bill jacket that is maintained by the State Archives and constitutes the legislative history of bills that have been signed into law.

Thank you for your consideration and assistance, and please feel free to contact this office if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter J. Kiernan". The signature is written in a cursive style with a large, looping initial "P".

Peter J. Kiernan
Counsel to the Governor

cc: K. Ross



STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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JEROME LEFKOWITZ
CHAIRMAN

WILLIAM A. HERBERT
DEPUTY CHAIR AND COUNSEL

MEMORANDUM

March 5, 2009

TO: Hon. Peter J. Kiernan, Counsel to the Governor

FROM: William A. Herbert

RE: S-1406

Recommendation: Approval

Introduced By: Sen. Savino

Statute Involved: Civil Service Law

Effective Date: Immediately

Discussion:

This bill would extend the compulsory interest arbitration provisions of the Public Employees' Fair Employment Act (Act) until July 1, 2011.

The interest arbitration provisions, contained in §209 of the Act, were originally enacted in 1974 and have been extended for two-year periods since 1977. Interest arbitration has proven to be an effective dispute resolution procedure for police, fire and other public safety and law enforcement personnel, which has contributed to the orderly and uninterrupted operations and functions of government.

At the May 2008 statewide conference commemorating the Taylor Law's 40th anniversary, Prof. Thomas A. Kochan from MIT's Sloan School of Management presented a paper concluding that interest arbitration awards for police and fire personnel have not resulted in higher wage increases than increases obtained by other public employees through negotiations and other impasse procedures under the Act. However, critics of interest arbitration, who have studied the issue, have reached a contrary conclusion finding that interest arbitration does result in higher percentage increases.

While there is a cost associated with the process, for both labor and public employers, compulsory interest arbitration provides finality to negotiations disputes and contributes to labor peace in the State of New York. Therefore, PERB recommends approval of this bill.

WAH:cmh

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State of New York
Governor's Office of Employee Relations
Counsel's Office
2 Empire State Plaza, Suite 1201, Albany, New York 12223
(518) 474-4090 • (518) 486-7304 (Facsimile)

David A. Paterson
Governor

Gary Johnson
Director

M E M O R A N D U M

March 9, 2009

TO: Peter J. Kiernan
FROM: Michael N. Volforte
SUBJECT: S.1406

The instant legislation extends a section of the Taylor Law (CSL Section 209.4) which provides interest arbitration, often referred to as "binding arbitration", as the negotiations impasse resolution process for certain classes of public employees. Initially enacted in 1975 (to expire on July 1, 1977 and extended every two years since) interest arbitration was limited to be the impasse resolution process for police and firefighters statewide but not for those employed by New York State. In 1995, the Law was amended to include New York State Police titles. In 2001 and 2002, amendments added other New York State employed police titles and certain peace officers employed by the Department of Corrections (Corrections Officers). Finally, in 2005 deputy sheriffs involved in law enforcement employed by counties across the State were added.

Interest arbitration places resolution of collective bargaining agreements in the hands of third party neutrals. While an arbitration panel may be a tri-partite panel (a member from the union, a member from the employer and a third party neutral) in essence, the third party neutral controls the establishment of the terms and conditions of employment and can bind the parties.

Section 209.4 was established as a quicker and more definitive alternative to the impasse resolution process experienced by other non-uniformed public employees. It

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was provided because the employees so covered were deemed to serve in positions essential to public safety. Since its enactment, New York State has not seen a strike by members of any union representing employees covered under section 209.4. (It should be noted however that the short-lived NYC Transit strike in 2006 involved employees covered by similar interest arbitration provisions of CSL 209.5.)

While this Office has no objection to extending the provisions of section 209.4, we do note that affording the rights to interest arbitration to those state employees who currently enjoy them has served as a disincentive to resolution of contract negotiations via the usual way, i.e., negotiations. Since 1995, when the three State Police units became eligible for interest arbitration only three contracts with these three units have been negotiated. All others went to interest arbitration.

Interest arbitration was extended to the State Police because of a perceived disparity in their pay compared to other police in New York State and the state police in contiguous states (which had interest arbitration). At that time New York State Police salaries ranked a low fourth compared with New Jersey, Connecticut, Massachusetts and Vermont. They now rank a very close second to New Jersey and perhaps interest arbitration has served that need. However, it has impacted the State salary structure. Since 1995, the salaries and other compensation of New York State Police covered by interest arbitration have increased significantly as compared to the compensation of state employees not covered by interest arbitration, i.e. CSEA and PEF members.

While this Office is not privy to the statistics, we believe that the disincentive for unions to negotiate a contract that we have experienced since 1995 must surely apply to across the state. Such statistics may reside with PERB.

While this Office has no objection to this bill, we strongly recommend that any message attached to the Governor's action on this bill condition any further extension of these provisions on the re-evaluation of the interest arbitration provisions including issues like "the employer's ability to pay" (which is a Division of Budget issue) and the previously noted disincentive to negotiate.

Thank you for the opportunity to comment on this legislation.

MNV/kmg

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DAVID A. PATERSON
GOVERNOR

STATE OF NEW YORK
DEPARTMENT OF CIVIL SERVICE
ALFRED E. SMITH STATE OFFICE BUILDING
ALBANY, NEW YORK 12239
www.cs.state.ny.us

NANCY G. GROENWEGEN
COMMISSIONER

MEMORANDUM

TO: Peter J. Kiernan
Counsel to the Governor

FROM: Judith I. Ratner
Deputy Commissioner and Counsel

SUBJECT: **S. 1406 (Savino) / A. 3425 (Abbate)**

DATE: March 20, 2009

STATUTE INVOLVED: Civil Service Law § 209(4)(d)

EFFECTIVE DATE: Immediately.

RECOMMENDATION: **Disapproval.**

DISCUSSION:

This bill extends a provision of the Civil Service Law establishing compulsory interest arbitration for an additional two years. The current provision will sunset on July 1, 2009. Interest arbitration was originally established in 1974 as a three year experiment for police and firefighters. This section of the Taylor Law has been regularly extended every two years since 1977, and expanded in scope to include other employee groups, e.g. District Attorney investigators, state troopers and security services and security supervisors who are police officers or forest ranger captains or employed by the State Department of Correctional Services (DOCS) and designated as peace officers. Of immediate concern to the Department is the extension of compulsory interest arbitration to certain law enforcement titles in the classified civil service. The inclusion of these classified State employees causes problems and inequities.

The extension of interest arbitration to security services and security supervisors who are police officers, forest ranger captains or persons employed by DOCS and designated as peace officers, or members of the agency law enforcement services unit who are police officers or

forest rangers, all of which are titles in the classified service of the State, negatively impacts compensation administration and management. Arbitration panel awards frustrate the ability of local and State governments to manage their financial obligations. The panels are not required to consider the State or the municipality's fiscal situation yet the State or municipality must find methods to pay for an arbitration panel's award.

At the State government level, the "equal pay for equal work" policy of the State has been severely hampered by interest arbitration awards. Pursuant to Civil Service Law section 118, titles and positions within the classified service are allocated to established grade levels, with appropriate compensation, within the State pay plan based on extensive and detailed comparisons of qualifications, duties and responsibilities of specific occupational categories within the State's classified system. These comparisons ensure that positions and titles in the State plan are compensated on equal footing, with fair and equal pay for work of similar caliber and worth. Conversely, arbitrators make comparisons between public and private sector employees performing similar services in comparable communities or municipalities. The arbitration panel's use of external occupational comparisons and non-classified service data in the decision process results in compensation awards significantly outside the framework of the statewide classification and pay plan. For positions within the State service, it is extremely difficult and costly for the State to maintain equal pay for equal work when arbitration panel awards do not consider the State's classified system.

These inequities are evidenced by substantial salary discrepancies between arbitration eligible and non-arbitration eligible titles within the same bargaining unit. For instance, Chapter 220 of the Laws of 2002 provided some employees in the Security Supervisors Unit with interest arbitration. Within that unit, the title of Correction Lieutenant, Salary Grade 20, is the only arbitration eligible title. Numerous other unit titles allocated to the same salary grade are not eligible for interest arbitration and thus do not receive the same benefits. This differential treatment also results in large salary discrepancies among similarly allocated titles in the unit. The same discrepancies can be found in the Security Services Unit.

The Department recognizes that compulsory interest arbitration is an important facet of the Taylor Law, but its extension to State classified service titles presents serious problems for the State and its municipalities. For the reasons stated above, the Department recommends disapproval of this legislation.

JIR/JEE:tph



**Memorandum in
OPPOSITION
ON CALENDAR
NYCOM Priority**

February 27, 2009

A. 3425, by M. of A. Abbate

S. 1406, by Sen. Savino

AN ACT to amend the civil service law, in relation to extending the effectiveness of provisions establishing dispute resolution during collective negotiations

This bill would extend the interest arbitration provisions of the Taylor Law for an additional two years. This law is used to resolve an impasse in labor negotiations which might occur between police or firefighter bargaining units in municipalities. This law has been renewed biennially and represents a direct financial mandate upon municipalities. Our members have historically opposed this statute and its extensions.

The experience of municipalities with interest arbitration awards continues to reflect an inflationary spiral for wages and fringe benefits. These awards have an impact upon other bargaining units within the same municipality in which an award is made and upon police and firefighter bargaining units in other jurisdictions. Settlements are reached which are higher than would otherwise be the case, a circumstance which has developed to avoid having an impasse be resolved by an arbitration panel.

While our members oppose this bill, it could be supported if several provisions were to be added to the section of law which allows police and firefighter impasses to be resolved in compulsory arbitration. There should be a meaningful definition of a municipality's ability to pay. Compulsory arbitration should not be allowed to resolve an impasse which has arisen in the first contract negotiations between a municipality and a union. To deter any attempt to bypass collective negotiations and rush to arbitration, the statute should provide that arbitration should not be available for several months after an impasse has been declared. But, most importantly, any extension of the compulsory arbitration statute should contain the same restrictions that are placed on other bargaining units which are allowed to petition for compulsory arbitration in order to resolve an impasse in negotiations. For unions representing State troopers and certain deputy sheriffs, a bargaining demand that relates to discipline, work scheduling, deployment, and job security cannot be pursued before a compulsory arbitration panel. In addition, deputies cannot pursue non-compensation demands before a panel. There is no reason why cities and villages should not be treated the same.

If such conditions were to be included in this bill, it could be supported. However, as presently drafted, it cannot be.

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ASSOCIATION OF TOWNS OF THE STATE OF NEW YORK

G. JEFFREY HABER
EXECUTIVE DIRECTOR

150 State Street Albany New York 12207
Phone: (518) 465-7933 • Fax: (518) 465-0724

Serving Towns Since 1933

May 6, 2009

Honorable Peter Kiernan
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Recommendation of Disapproval

S1406 Introduced by Senator Savino
A 3425 Introduced by M. of A. Abbate

AN ACT to amend the civil service law, in relation to extending the effectiveness of provisions establishing dispute resolution during collective negotiations

Dear Sir:

This bill amends section 209 of the Civil Service Law to provide the seventeenth two-year extension for compulsory binding arbitration to resolve contract disputes between municipal employers and paid police and fire union representatives. What was heralded as a temporary experiment in the 1970's to impart fairness into what was perceived to be an unfair system has instead resulted in a permanent unanticipated, unforeseen, unfairness of its own: a costly burden to the taxpayers.

One judicious way to level the playing field would be to amend the statute to require an arbitration panel to first and foremost consider the taxpayers ability to pay. In addition, the legislature should consider setting forth statutory criteria to guide arbitrators in the process to fairly determine the taxpayer's ability to pay. The Association of Towns membership historically has urged the Legislature and the Governor to revise this costly state mandate so that a town's ability to pay would be given the highest priority and accorded substantial weight by arbitration panels when determining the appropriate level of wages and benefits. Added focus on the ability to pay would mean that the compensation practices of those local governments with the resources to do so would continue unaffected. Their ability to continue funding public safety at the highest levels should not, however, force other governments less able to pay to reduce staffing levels, make budget cuts in other critical areas of public service in order to fund lavish arbitration awards imposed by an unaccountable arbitrator (See Gallagher, "Salary Arbitration Puts Taxpayers In A Bind" The Journal News, June 17, 2004).

Allowing arbitration panels to decide important budget and employment decisions without setting forth a statutory framework to require them to first and foremost consider the taxpayers' ability to pay essentially amounts to taxation without representation. The Association of Towns has historically opposed the concept of shifting responsibility from the accountable to the unaccountable. Binding arbitration transfers crucial budget decisions from those elected by the taxpayers to represent their interests to an unaccountable arbitrator who may or may not

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be familiar with local issues. In making budgetary appropriations the town board takes into consideration the various needs and priorities of the town on the basis of the ability of the taxpayers to bear the tax burden. An unaccountable arbitration panel is not bound by the same fiduciary duty to the taxpayer as the elected and accountable town board.

Binding arbitration awards in New York State do not adequately consider the taxpayers' ability to pay. As noted in The Public Policy Institute 1999 report, *The \$163 Light bulb: How Albany's Mandates Drive Up Your Local Taxes*, arbitration panel wage and benefit awards often out pace inflation and private sector practices. Public sector payroll expenditures are a major component of most local government budgets. Its no surprise that real property taxes have become the most loathed tax in the East as reported by the Gannett News Service in "Property tax cited as least favorite" April 21, 2003. Unfunded mandates, such as binding arbitration, are a contributing factor to escalating real property taxes. On April 27, 2009 Governor Paterson issued Executive Order Number 17 in which he recognized the burden that unfunded mandates place on local property taxes and the role the state legislation, regulation and policy plays in this arena. Vetoing this legislation with an eye towards reforming binding arbitration with an emphasis on the taxpayers' ability to pay will help to lower real property taxes.

If binding arbitration is to be renewed, the ability to pay must be addressed. Indeed, one commentator, noting the importance of this factor, has stated that 'responsible evaluation of the Government's 'ability to pay' may determine the future of compulsory arbitration in the public sector.' *Caso v. Coffey*, 83 Misc.2d 614, 372 N.Y.S.2d 892, 90 L.R.R.M. (BNA) 2813 (Supreme Court, Nassau County [1975]) citing Barr: *The Public Arbitration Panel as an Administrative Agency: Can Compulsory Interest Arbitration Be an Acceptable Dispute Resolution Method in the Public Sector?* 39 Albany Law Review 377, p. 389). Binding arbitration was supposed to be an experimental solution to a perceived problem that existed 30 years ago. After 30 years of binding arbitration it appears that this experiment has gone awry. Vetoing this legislation will provide an opportunity for adoption of reform bills that look at ways to control cost.

Added focus on the ability to pay would mean that the compensation practices of those local governments with the resources to do so would continue unaffected. In an era of increased homeland security concerns, local governments should not have to consider staff reductions in order to accommodate escalating payroll costs.

Town governments need the requisite authority from the State Legislature to control local expenditures. Property taxpayers deserve it. We therefore urge the Governor not to approve this legislation.

Respectfully submitted,

/s/ G. Jeffrey Haber

G. Jeffrey Haber
Executive Director

000024



New York State Conference of Mayors and Municipal Officials

119 Washington Avenue, Albany, New York 12210 (518) 463-1185
Toll free number for NYCOM members 1-800-446-9266
Fax # (518) 463-1190

May 14, 2009

Hon. Peter Kiernan
Counsel to the Governor
State Capitol – Room 225
Albany, NY 12244

Re: S. 1406
Veto recommended

Dear Mr. Kiernan:

This bill would extend the interest arbitration provisions of the Taylor Law for an additional two years. This law is used to resolve an impasse in labor negotiations which might occur between police or firefighter bargaining units in municipalities. This law has been renewed biennially and represents a direct financial mandate upon municipalities. Our members have historically opposed this statute and its extensions.

The experience of municipalities with interest arbitration awards continues to reflect an inflationary spiral for wages and fringe benefits. These awards have an impact upon other bargaining units within the same municipality in which an award is made and upon police and firefighter bargaining units in other jurisdictions. Settlements are reached which are higher than would otherwise be the case, a circumstance which has developed to avoid having an impasse be resolved by an arbitration panel.

While our members oppose this bill, it could be supported if several provisions were to be added to the section of law which allows police and firefighter impasses to be resolved in compulsory arbitration. There should be a meaningful definition of a municipality's ability to pay. Compulsory arbitration should not be allowed to resolve an impasse which has arisen in the first contract negotiations between a municipality and a union. To deter any attempt to bypass collective negotiations and rush to arbitration, the statute should provide that arbitration should not be available for several months after an impasse has been declared. But, most importantly, any extension of the compulsory arbitration statute should contain the same restrictions that are placed on other bargaining units which are allowed to petition for compulsory arbitration in order to resolve an impasse in negotiations. For unions representing State troopers and certain deputy sheriffs, a bargaining demand that relates to discipline, work scheduling, deployment, and job security cannot be pursued before a compulsory arbitration panel. In addition, deputies cannot pursue non-compensation demands before a panel. There is no reason why cities and villages should not be treated the same.

Sincerely,

Peter A. Baynes
Executive Director

000025



NYSAC

NEW YORK STATE
ASSOCIATION OF COUNTIES

540 Broadway, 5th Floor, Albany, New York 12207 | Phone: (518) 465-1473 | Fax: (518) 465-0506 | www.nysac.org

President: Sarah Purdy, Yates County | Executive Director: Stephen J. Acquario, Esq.

March 3, 2009

Peter J. Kiernan, Esq.
Counsel to the Governor
Attn: Legislative Office, Room 225
Executive Chamber
State Capitol
Albany, New York 12224

Re: Legislation before the Governor
Bill Number: **S.1406 (Savino)**

Dear Mr. Kiernan:

The New York State Association of Counties (NYSAC) has reviewed the above referenced legislation and **opposes** it's enactment into law.

This bill will amend the civil service law in relation to extending the effectiveness of provisions establishing dispute resolution during collective negotiations. This bill will be the 16th extension of binding arbitration authority since its initial enactment, extending its effectiveness for 2 additional years; through 2011.

The use of binding arbitration has a direct impact on taxpayers at the local government level. Permitting a third party arbitrator who is not necessarily required to have knowledge of law or local government conditions to make final and binding decisions that affect both public employer and employees is bad public policy.

NYSAC believes that contract disputes involving compensation issues and the terms and conditions of employment, should be resolved at the bargaining table, not through the intervention of individuals not necessarily knowledgeable of local conditions or accountable to the voting public. As NYSAC has cautioned for the last decade, this type of legislation continues to have serious local repercussions and establishes a bad precedent of interference with the time-honored process of give and take during the collective bargaining process.

In Approval Memorandum Number 2 concerning Chapter 57 of the laws of 2003 which extended binding arbitration authority, then Governor Pataki cited the serious concerns raised by NYSAC, counties and other local governments that the awards made by third party arbitrators may be unaffordable given the dire fiscal conditions of local governments. Local governments continue to face these same fiscal challenges and can no longer afford the costs imposed by arbitration awards made without regard to local financial conditions.

The enactment of Chapter 63 of the laws of 2004 extending binding arbitration authority to sheriff's deputies has further expanded this mandate, threatening additional adverse fiscal impacts on county governments. Since this chapter was enacted, few contracts have been settled between counties and sheriff's deputies, with binding arbitration being the apparent preferred avenue for contract settlement by the collective bargaining agents.

Committed to counties since 1925

Albany, Allegany, Broome, Broome, Cattaraugus, Cayuga, Chautauque, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Otsego, Otsego, Putnam, Rensselaer, Queens, Richmond, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, Yates

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NYSAC has long supported proposals advanced to require an arbitrator to first consider the employer's ability to pay an award without a resulting tax increase, before rendering an arbitration award decision. This common sense provision is not included in this bill and should be added before further progression of this legislation.

For the above referenced reasons NYSAC opposes the Governor signing this bill into law.

Respectfully,



Kenneth A. Crannell
Legislative Director

KC/pjs

Committed to counties since 1925

Albany, Allegany, Bronx, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Rensselaer, Queens, Richmond, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, Yates

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CSEA has no position on S1406



Police Benevolent Association
Metropolitan Transportation Authority

76 South Central Avenue, 1-D
Valley Stream, New York 11580
email: mail@mtapba.com
Tel: 516-823-8930 • Fax: 516-823-8937

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May 7, 2009

Honorable David A. Paterson
Governor of the State of New York
Executive Chamber, The State Capitol
Albany, New York 12224

Re: **Letter in Support:**
S1406 – Introduced by Member of the Senate Savino
A3425 – Introduced by Member of the Assembly Abbate

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General Counsel

The Metropolitan Transportation Police Benevolent Association which represents the approximately 700 police officers, detectives, sergeants and lieutenants of the MTA Police in New York State, strongly supports this legislation which would amend paragraph d, 4, Section 209 of the Civil Service Law, as amended to extend the expiration date of the provisions for an additional two years or until July 1, 2011.

Compulsory arbitration has allowed the people of New York to enjoy uninterrupted fire and police protection since 1973. All evaluations of the effects of this law have been positive and have advocated the continued use of this process. There have been no significant increases or decreases in settlements as a result of the use of arbitration as opposed to settling prior to the issue of an arbitration award. In other words, there is no advantage for either party in carrying the process to its final end.

This legislation is necessary to extend binding arbitration for an additional two years to continue to provide for peaceful settlement of disputes.

We strongly urge you to sign this bill into law.

Respectfully submitted,

Michael O'Meara
Executive Vice President
MTA PBA

Affiliated with
New York State Association of P.B.A.'s
Affiliated Police Association of Westchester, Inc.
N.Y.S. Public Employees Conference
National Association of Police Organizations, Inc.
Police Conference of New York.

"ONE UNION ONE VOICE"

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UNIFORMED
FIRE DEPARTMENT, CITY OF NEW YORK
FIRE OFFICERS
LOCAL 854, INTERNATIONAL ASSN. OF FIREFIGHTERS, AFL-CIO
ASSOCIATION

225 BROADWAY * NEW YORK, N. Y. 10007 * SUITE 401
TEL: (212) 293 - 9300 * FAX: (212) 292 - 1560

To: David A. Paterson, Governor of the State of New York
From: John Dunne, UFOA Legislative Director
Subject: A.3425, S.1406
Date: May 7, 2009

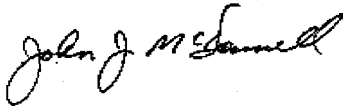
Memorandum of Support

Dear Governor Paterson,

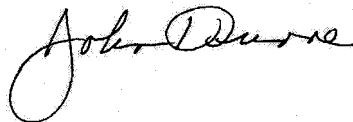
Regarding A.3425, S.1406, which extends the binding arbitration provisions, the Uniformed Fire Officers Association, representing close to 2500 superior officers of the New York City Fire Department, respectfully requests that you approve this legislation.

Thank you.

Sincerely,



John J. McDonnell, President



John Dunne, Legislative Committee Chairman

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Jeanne Engwer

From: Carol Gerstl [cgerstl@uft.org]
Sent: Tuesday, May 05, 2009 4:35 PM
To: Jeanne Engwer
Subject: Senate bills S1406, S1407 & S2342

Please be advised that the United Federation of Teachers, Local 2 AFT, AFL-CIO strongly supports S1406, S1407 and S2342 and urges the Governor to sign all of the bills into law.

Carol Gerstl
Counsel
United Federation of Teachers

NYCPBA

**PATROLMEN'S
BENEVOLENT
ASSOCIATION
Of the City of New York, Incorporated**

OFFICE OF THE PRESIDENT

May 6, 2009

Honorable Peter J. Kiernan
Counsel to the Governor
State Capitol
Executive Chamber
Albany, New York 12224

Re: S 1406; A 3425

Dear Mr. Kiernan:

On behalf of the New York City Patrolmen's Benevolent Association, I am writing to urge that the Governor sign into law the above-entitled legislation which would amend the Civil Service Law, in relation to extending the effectiveness of provisions establishing dispute resolution during collective negotiations.

Compulsory arbitration has allowed the people of New York to enjoy uninterrupted fire and police protection since 1973. All evaluations of the effects of this law have been positive and have advocated the continued use of this process. There have been no significant increases or decreases in settlements due to the use of arbitration as opposed to settling prior to the issue of an arbitration award. In other words, there is no advantage for either party in carrying the process to its final end.

This legislation is necessary to extend binding arbitration for an additional two years to continue to provide peaceful settlement of disputes.

Since this bill amends the Civil Service Law to extend the expiration date of the provisions for an additional two years or until July 1, 2011, we urge that the Governor sign this important legislation into law.

Respectfully,

John J. Poklemba
Legislative Counsel

JJP:p
cc: Patrick J. Lynch

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STATE OF NEW YORK

1406

2009-2010 Regular Sessions

IN SENATE

January 29, 2009

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the civil service law, in relation to extending the effectiveness of provisions establishing dispute resolution during collective negotiations

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

1 Section 1. Paragraph (d) of subdivision 4 of section 209 of the civil
2 service law, as amended by chapter 12 of the laws of 2007, is amended to
3 read as follows:

4 (d) The provisions of this subdivision shall expire [~~thirty-two~~ thir-
5 ty-four years from July first, nineteen hundred seventy-seven.

6 § 2. This act shall take effect immediately; provided, however, that
7 the amendment to paragraph (d) of subdivision 4 of section 209 of the
8 civil service law made by section one of this act shall expire on the
9 same date as such subdivision expires.

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

LBD06290-01-9