

NYSSBA ESSENTIAL FISCAL REFORM PLAYBOOK

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Reform the Triborough Amendment

OBJECTIVE:

Reform New York State's Triborough Amendment so that school districts are not required to pay wage increases under an expired contract.

CURRENT LAW:

The Triborough Amendment to the state's Taylor Law requires school districts to pay salary increases in the form of "step" and "lane" increments to employees – even after a collective bargaining agreement expires. Step and lane increases are salary increases that teachers receive for accumulating another year of service or attaining additional education and are unrelated to performance.

RATIONALE:

Because teachers' pay continues to increase under an expired contract, unions have an advantage in collective bargaining and may hold out longer or reject proposals brought to the table by the board of education, especially if the district is seeking some form of contract concessions or asking employees to assume a greater share of their contract costs. School boards recognize that under the proposed amendment they will have a continuing obligation to provide base salary, pension and benefit costs, but strongly believe that employees should not receive actual pay increases under an expired labor contract.

By excluding wage increases from the Triborough Amendment, NYSSBA estimates that school districts in New York could save as much as \$113 million annually. This calculation is based on an average annual statewide salary step increase for teachers of 2.37 percent, an estimate from NYSSBA's 2011 Teacher Contract Survey. Applying this 2.37 percent estimate to total teacher salaries of \$19.1 billion in the 2009-10 school year results in a total of \$452 million that is attributable to step increases.

According to data from NYSSBA's teacher contract survey the average school district teacher contract in New York State is four years in length. Thus, in any given year, about one-quarter of teacher contracts expire, meaning one-quarter of the \$452 million in step increases in 2009-10, or \$112.9 million, would be attributable to Triborough, in which step increases would have carried on even in the absence of a successor labor agreement.

**NEW YORK STATE SENATE/ASSEMBLY
INTRODUCER'S MEMORANDUM IN SUPPORT**

submitted in accordance with Senate Rule VI. Sec I/ submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER:

SPONSOR:

TITLE OF BILL:

An act to amend the civil service law, in relation to the payment of salary increments under an expired collective bargaining agreement.

PURPOSE OR GENERAL IDEA OF BILL:

This legislation would remove the requirement that a school district or BOCES continue to pay salary increases under an expired agreement.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1: Amend section 209-a of the civil service law to provide reference to a new section of law.

Section 2: Creates a new section of law which provide an exception to the Taylor Law's Triborough Amendment (clause (e) of subdivision 1 of section 209-a of the civil service law). This exception would eliminate the requirement of school districts to pay salary increases under an expired agreement.

JUSTIFICATION:

The Triborough Amendment requires schools to continue paying "step" increases (an annual average of 2.37% on instructional salaries according to a New York State School Boards Association survey even under an expired contract. The step salary increases transpire as a matter of law whether or not the economic and market conditions dictate a sustainable condition for businesses, taxpayers or schools to viably support and extend them. The Triborough Amendment creates a disincentive for school district employee bargaining units to accept terms and conditions less costly than those allowed in the previous contract (in spite of economic realities) and it drastically hampers school districts' ability to effectively negotiate changes in terms in response to economic hardship. This stands in stark contrast to the options of salary freezes and renegotiation available to private businesses facing issues of fiscal crisis and viability. State and local taxpayers can no longer afford to underwrite the ability of public employees to ignore the fiscal realities faced by those who pay their salaries. The resulting loss of jobs has too great an impact on the state's economy and the programs and services needed by students.

LEGISLATIVE HISTORY: New bill.

FISCAL IMPLICATIONS:

EFFECTIVE DATES: Immediately.

AN ACT to amend the civil service law, in relation to the payment of salary increments under an expired contract

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

Section 1. Subdivision 1 of section 209-a of the civil service law, as amended by chapter 244 of the laws of 2007, is amended to read as follows:

1. Improper employer practices. It shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two of this article for the purpose of depriving them of such rights; (b) to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of such rights; (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization; (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees; (e) to refuse to continue all the terms, except as provided in subdivision 1-a of this section, of an expired agreement until a new agreement is negotiated, unless the employee organization which is a party to such agreement has, during such negotiations or prior to such resolution of such negotiations, engaged in conduct violative of subdivision one of section two hundred ten of this article; (f) to utilize any state funds appropriated for any purpose to train managers, supervisors or other administrative personnel regarding methods to discourage union organization or to discourage an employee from participating in a union organizing drive; or (g) to fail to permit or refuse to afford a public employee the right, upon the employee's demand, to representation by a representative of the employee organization, or the designee of such organization, which has been certified or recognized under this article when at the time of questioning by the employer of such employee it reasonably appears that he or she may be the subject of a potential disciplinary action. If representation is requested, and the employee is a potential target of disciplinary action at the time of questioning, a reasonable period of time shall be afforded to the employee to obtain such representation. It shall be an affirmative defense to any improper practice charge under paragraph (g) of this subdivision that the employee has the right, pursuant to statute, interest arbitration award, collectively negotiated agreement, policy or practice, to present to a hearing officer or arbitrator evidence of the employer's failure to provide representation and to obtain exclusion of the resulting evidence upon demonstration of such failure. Nothing in this section shall grant an employee any right to representation by the representative of an employee organization in any criminal investigation.

§ 2. Section 209-a of the civil service law is amended to add a new subdivision 1-a to read as follows:

1-a. Notwithstanding paragraph (e) of subdivision one of this section or any previously negotiated salary increments contained in such expired agreement, no school district or board of cooperative educational services (BOCES) employer shall be required to pay contractual salary increments to such school district's or BOCES' employees upon the expiration of an agreement. Salary increments shall include any increase in pay or salary contained in an expired agreement including but not limited to any step increase and/or any salary increases.

§ 3. This act shall take effect immediately.

Eliminate “Last In, First Out”

OBJECTIVE:

Allow school districts to consider factors other than seniority when making decisions regarding teacher layoffs in order to retain the most effective teachers in the classroom.

CURRENT LAW:

When schools are forced to make teacher layoffs, seniority is the sole deciding factor. The so-called “last in, first out” policy is mandated by state law.

RATIONALE:

Imposing layoffs is always a difficult choice and typically the last resort for school leaders. However, if layoffs become necessary, the guiding issue should be what is best for the students. Amending state law to allow schools to consider factors other than seniority – such as teacher performance and credentials – will give schools the ability to retain the most effective instructors when making layoff decisions.

The problem with seniority is twofold: it’s only one factor, and it offers no guarantee as to how effective a teacher is at his or her job. The state has enacted a new performance evaluation system that ties teacher evaluations in part to student achievement. Ratings under that new system could provide a basis for performance-based teacher layoffs.

Allowing school leaders to consider such measures as a teacher’s performance, as measured by the new state evaluation system being put in place by the Board of Regents, and other factors would help ensure that the best teachers remain in the classroom.

The public supports performance-based layoffs. A February 2011 Quinnipiac poll showed that 85 percent of New York State voters believe teacher layoffs should be based on performance, not seniority. Only 12 percent supported seniority as the basis for teacher layoffs. Support for performance-based teacher layoffs grows to 90 percent among parents of children in school.

Only 14 states have seniority layoff policies (Alaska, California, Hawaii, Illinois, Kentucky, Minnesota, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, West Virginia and Wisconsin). Most recently, in 2009, Arizona passed a law prohibiting seniority from being used in deciding layoffs; Colorado and Oklahoma did away with the practice in 2010; and Utah just adapted a law in March 2011 prohibiting last-in, first-out policies when reducing staff.

**NEW YORK STATE
INTRODUCER'S MEMORANDUM IN SUPPORT**

submitted in accordance with Senate Rule VI, Sec 1/ submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER:

SPONSOR:

TITLE OF BILL:

An act to amend the education law, in relation to retaining quality teachers

PURPOSE OR GENERAL IDEA OF BILL:

To remove seniority as the sole criteria for decisions relating to retention of teachers within a school district or board of cooperative educational services (BOCES).

SUMMARY OF SPECIFIC PROVISIONS:

This bill establishes new criteria to be considered for the abolishment or reduction of a teaching position. In addition to using seniority as a basis for such decisions, a board of education may utilize criteria including annual professional performances reviews conducted under education law 3012-c, the needs of a particular school district or BOCES, and a teacher's certification. The bill also provides that a school board's authority to reappoint teachers as a result of various events or from a preferred eligibility list shall also be based partly on the new criteria.

JUSTIFICATION:

Schools cannot attempt systemic improvement if they are hindered in their ability to retain the very best instructional staff available. Seniority rules are meaningful, however, seniority rights can create a significant barrier to a school district's ability to retain staff that meets the programmatic needs of all students. Length of service should not be the lone consideration in a matter as significant as retaining our best teachers in a fiscal crisis. Teachers with unsatisfactory evaluations or teachers without permanent certification must, by necessity, be laid off prior to those who uphold the highest standards of the profession.

LEGISLATIVE HISTORY: New bill.

FISCAL IMPLICATIONS: To be determined.

LOCAL FISCAL IMPLICATIONS: To be determined.

EFFECTIVE DATES: July 1, 2012.

AN ACT to amend the education law, in relation to retaining quality teachers

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

Section 1. Section 1604 of the education law is amended by adding a new subdivision 8-a to read as follows:

8-a. Notwithstanding any other provision of law to the contrary, whenever a board of education abolishes or reduces a position or positions under this chapter, the superintendent for the school district shall recommend which teacher or teachers should be retained. Such recommendations shall be based on an evaluation of the teacher's performance and qualifications and the educational needs of the school, including but not limited to:

(i) annual professional performance reviews conducted pursuant to section three thousand twelve-c of this chapter;

(ii) the school needs for particular license areas, office or school needs, including curriculum, specialized education, degrees, licenses or areas of expertise;

(iii) failure to obtain permanent certification within the statutorily prescribed time limits;

(iv) the length of service;

provided, that the teacher's salary shall not be considered in making a lay off recommendation.

The board of education shall exercise its discretion and shall approve or reject the recommendations of the superintendent so as to minimize the adverse impact on students and the educational strength of the school district.

§ 2. Section 1709 of the education law is amended by adding a new subdivision 16-a to read as follows:

16-a. Notwithstanding any other provision of law to the contrary, whenever a board of education abolishes or reduces a position or positions under this chapter, the superintendent for the school district shall recommend which teacher or teachers should be retained. Such recommendations shall be based on an evaluation of the teacher's performance and qualifications and the educational needs of the school, including but not limited to:

(i) annual professional performance reviews conducted pursuant to section three thousand twelve-c of this chapter;

(ii) the school needs for particular license areas, office or school needs, including curriculum, specialized education, degrees, licenses or areas of expertise;

(iii) failure to obtain permanent certification within the statutorily prescribed time limits;

(iv) the length of service;

provided, that the teacher's salary shall not be considered in making a lay off recommendation.

The board of education shall exercise its discretion and shall approve or reject the recommendations of the superintendent so as to minimize the adverse impact on students and the educational strength of the school district.

§ 3. Section 1804 of the education law is amended by adding a new subdivision 13 to read as follows:

13. Notwithstanding any other provision of law to the contrary, whenever a board of education abolishes or reduces a position or positions under this chapter, the superintendent for the school district shall recommend which teacher or teachers should be retained. Such recommendations shall be based

on an evaluation of the teacher's performance and qualifications and the educational needs of the school, including but not limited to:

(i) annual professional performance reviews conducted pursuant to section three thousand twelve-c of this chapter;

(ii) the school needs for particular license areas, office or school needs, including curriculum, specialized education, degrees, licenses or areas of expertise;

(iii) failure to obtain permanent certification within the statutorily prescribed time limits;

(iv) the length of service;

provided, that the teacher's salary shall not be considered in making a lay off recommendation.

The board of education shall exercise its discretion and shall approve or reject the recommendations of the superintendent so as to minimize the adverse impact on students and the educational strength of the school district.

§ 4. A new subparagraph 1 is added to paragraph e of subdivision 4 of section 1950 of the education law to read as follows:

(1) Notwithstanding any other provision of law to the contrary, whenever a board of cooperative educational services abolishes or reduces a position or positions under this chapter, the district superintendent shall recommend which teacher or teachers should be retained. Such recommendations shall be based on an evaluation of the teacher's performance and qualifications and the educational needs of the board of cooperative educational services, including but not limited to:

(i) annual professional performance reviews conducted pursuant to section three thousand twelve-c of this chapter;

(ii) the board of cooperative educational services needs for particular license areas, office or school needs, including curriculum, specialized education, degrees, licenses or areas of expertise;

(iii) failure to obtain permanent certification within the statutorily prescribed time limits;

(iv) the length of service;

provided, that the teacher's salary shall not be considered in making a lay off recommendation.

The board of cooperative educational services shall exercise its discretion and shall approve or reject the recommendations of the superintendent so as to minimize the adverse impact on students and the educational strength of the school district.

§ 5. Subdivision 2 of section 1505-a of the education law, as added by chapter 871 of the laws of 1982, is amended to read as follows:

2. [Any] Notwithstanding any other provision of law to the contrary, any such teacher who is unable to obtain a teaching position in any such school district to which territory is added, because the number of positions needed are less than the number of teachers eligible to be considered employees pursuant to subdivision one of this section, shall, in all such school districts to which territory is added, be placed on a preferred eligible list of candidates for appointment to a vacancy that may thereafter occur in a position similar to the one such teacher filled in such former school district. The teachers on such a preferred eligible list shall be appointed to such vacancies in such corresponding or similar positions under the jurisdiction of the school district to which territory is added [in the order of their length of service in such former school district] pursuant to subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine and subdivision thirteen of section eighteen hundred four of this chapter, within seven years from the date of the dissolution of such former school district.

§ 6. Section 1917 of the education law, as added by chapter 732 of the laws of 1981, is amended to read as follows:

§ 1917. Employees; employment rights. [Teachers] Notwithstanding any other provision of law to the contrary, teachers and other staff members of component districts, except the superintendent of schools, whose services in the component districts are no longer needed because of creation of a central high school district, shall be granted employment rights in central high school districts in accordance with [length of service] subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine and subdivision thirteen of section eighteen hundred four of this chapter, in each tenure area.

§ 7. Subdivisions 1 and 4 of section 1917-a of the education law, as added by section 93 of part L of chapter 405 of the laws of 1999, are amended to read as follows:

1. [Teachers] Notwithstanding any other provision of law to the contrary, teachers and other staff members of component districts, except the superintendent of schools, whose services in the component districts are no longer needed because of the creation of a central high school district or the transference of students to an existing central high school district, shall be granted employment rights in central high school districts in accordance with the provisions of this section.

4. If the number of teaching and other positions needed to provide the educational services required by such central high school district is less than the number of teachers and other employees eligible to be considered employees of such central high school district as provided by subdivision three of this section, [the services of the] decisions regarding retention of teachers and other employees [having the least seniority] in the component district within the tenure area of the position shall be [discontinued] made pursuant to subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine and subdivision thirteen of section eighteen hundred four of this chapter. Such teachers and other employees shall be placed on a preferred eligible list of candidates for appointment to a vacancy that may thereafter occur in an office or position under the jurisdiction of the component district, the "receiving district" as defined in section three thousand fourteen-c of this chapter, from which a component district has taken back students, and the central high school district similar to the one such teacher or other employee filled in such component district. The teachers and other employees on such preferred lists shall be reinstated or appointed to such vacancies in such corresponding or similar positions under the jurisdiction of the component district or the central high school district [in the order of their length of service in such component district,] within seven years from the date of the abolition of such office or position pursuant to the criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine and subdivision thirteen of section eighteen hundred four of this chapter.

§ 8. Paragraph f of subdivision 5 of section 2218 of the education law, as added by section 83 of part L of chapter 405 of the laws of 1999, is amended to read as follows:

f. [Members] Notwithstanding any other provision of law to the contrary, members of the teaching and supervisory staff of the pre-existing school district at the time of the reorganization shall have the right to select the school district in which he or she shall be considered an employee, with the same tenure status he or she maintained in the pre-existing school district. Such selection shall be based on each teacher's seniority in the pre-existing school district, with the right of selection passing from such teachers with the most seniority to such teachers with the least seniority. Any such teacher who is unable to obtain a teaching position in the new school district because the number of positions needed is less than the number of teachers eligible to be considered employees pursuant

to this paragraph shall, in such new school district and in the remaining school district, be placed on a preferred eligible list of candidates for appointment to a vacancy that may thereafter occur in a position similar to the one such teacher filled in the pre-existing school district. Such teachers shall be appointed to vacancies in such corresponding or similar positions [in the order of their length of service in the pre-existing school district] pursuant to subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine and subdivision thirteen of section eighteen hundred four of this chapter, within seven years from the date of the reorganization pursuant to this section. For such teachers, for salary, sick leave or any other purpose, the length of service credited in the pre-existing school district shall be credited as employment time with the new school district or the remaining school district, as applicable.

§ 9. Subdivision 2 and paragraph (a) of subdivision 3 of section 2510 of the education law, subdivision 2 as added by chapter 762 of the laws of 1950 and paragraph (a) of subdivision 3 as amended by chapter 236 of the laws of 1993, are amended to read as follows:

2. [Whenever] Notwithstanding any other provision of law to the contrary, whenever a board of education abolishes a position under this chapter, [the services of the teacher having the least seniority in the system within the tenure of the position abolished] decisions regarding retention shall be [discontinued] made pursuant to criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine and subdivision thirteen of section eighteen hundred four of this chapter.

(a) If an office or position is abolished or if it is consolidated with another position without creating a new position, the person filling such position at the time of its abolishment or consolidation shall be placed upon a preferred eligible list of candidates for appointment to a vacancy that then exists or that may thereafter occur in an office or position similar to the one which such person filled without reduction in salary or increment, provided the record of such person has been one of faithful, competent service in the office or position he has filled. The persons on such preferred list shall be reinstated or appointed to such vacancies in such corresponding or similar positions [in the order of their length of service in the system at any time] within seven years from the date of abolition or consolidation of such office or position pursuant to the criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine and subdivision thirteen of section eighteen hundred four of this chapter. Notwithstanding any other provision of law to the contrary, in the event that a member of the New York state teachers' retirement system, who is receiving a disability retirement allowance, shall have such disability retirement allowance rescinded, such member shall be placed upon such preferred eligible list as of the effective date of his or her disability retirement.

§ 10. Subdivisions 3 and 4 of section 2585 of the education law, subdivision 3 as renumbered by chapter 762 of the laws of 1950 and subdivision 4 as renumbered by chapter 521 of the laws of 1976, are amended to read as follows:

3. [Whenever] Notwithstanding any provision of law to the contrary, whenever a board of education abolishes a position under this chapter, [the services of the teacher having the least seniority in the system] decisions regarding retention within the tenure of the position abolished shall be [discontinued] made pursuant to criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine and subdivision thirteen of section eighteen hundred four of this chapter.

4. If an office or position is abolished or if it is consolidated with another position without creating a new position, the person filling such position at the time of its abolishment or consolidation

shall be placed upon a preferred eligible list of candidates for appointment to a vacancy that then exists or that may thereafter occur in an office or position similar to the one which such person filled without reduction in salary or increment, provided the record of such person has been one of faithful, competent service in the office or position he or she has filled. The persons on such preferred list shall be reinstated or appointed to such corresponding or similar positions [in the order of their length of service in the system] pursuant to the criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine and subdivision thirteen of section eighteen hundred four of this chapter.

§11. Subdivision 2 and paragraph (a) of subdivision 3 of section 3013 of the education law, as added by chapter 737 of the laws of 1992, is amended to read as follows:

2. [Whenever] Notwithstanding any other provision of law to the contrary, whenever a trustee, board of trustee, board of education or board of cooperative educational services abolishes a position under this chapter, [the services of the teacher having the least seniority in the system within the tenure of the position abolished] decisions regarding retention of teachers shall be [discontinued] made pursuant to criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine, subdivision thirteen of section eighteen hundred four and subparagraph one of paragraph (e) of subdivision 4 of section nineteen hundred fifty of this chapter.

(a) If an office or position is abolished or if it is consolidated with another position without creating a new position, the person filling such position at the time of its abolishment or consolidation shall be placed upon a preferred eligible list of candidates for appointment to a vacancy that then exists or that may thereafter occur in an office or position similar to the one which such person filled without reduction in salary or increment, provided the record of such person has been one of faithful, competent service in the office or position he or she has filled. The persons on such preferred list shall be reinstated or appointed to such vacancies in such corresponding or similar positions [in the order of their length of service in the system] pursuant to the criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision eight-a of section seventeen hundred nine and subdivision thirteen of section eighteen hundred four of this chapter, at any time within seven years from the date of abolition or consolidation of such office or position.

§ 12. Subdivision 2 of section 3014-a of the education law, as amended by chapter 511 of the laws of 1998, is amended to read as follows:

2. [If] Notwithstanding any other provision of law to the contrary, if the number of teaching positions needed to provide the services required by such program by the board or boards of cooperative educational services is less than the number of teachers, teaching assistants and teacher aides eligible to be considered employees of such board or boards of cooperative educational services as provided by subdivision one of this section, [the services of the teachers, teaching assistants and teacher aides having the least seniority in the school district or school districts or county vocational education and extension board whose programs are taken over by the board or boards of cooperative educational services within the tenure area or civil service title of the position] decisions regarding layoffs and retention of such employees shall be [discontinued] made pursuant to the criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine, subdivision thirteen of section eighteen hundred four and subparagraph one of paragraph (e) of subdivision 4 of section nineteen hundred fifty of this chapter. Such teachers, teaching assistants and teacher aides shall be placed on a preferred eligible list of candidates for appointment to a vacancy that may thereafter occur in an office or position under the

jurisdiction of the board or boards of cooperative educational services similar to the one such teacher, teaching assistant and teacher aide filled in such school district or school districts or such county vocational education and extension board. The teachers, teaching assistants and teacher aides on such preferred list shall be reinstated or appointed to such vacancies in such corresponding or similar positions under the jurisdiction of the board or boards of cooperative educational services [in the order of their length of service in such school district or school districts or in such county vocational education and extension board] pursuant to the criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine, subdivision thirteen of section eighteen hundred four and subparagraph one of paragraph (e) of subdivision 4 of section nineteen hundred fifty of this chapter, within seven years from the date of the abolition of such office or position.

§ 13. Subdivisions 2 of section 3014-b of the education law, as amended by chapter 511 of the laws of 1998, is amended to read as follows:

2. [If] Notwithstanding any other provision of law to the contrary, if the number of teaching positions needed to provide the services required by such program by the school district is less than the number of teachers, teaching assistants and teacher aides eligible to be considered employees of such school district as provided by subdivision one of this section, [the services of the teachers, teaching assistants and teacher aides having the least seniority in the board of cooperative educational services whose programs are taken over by the school district within the tenure area or civil service title of the position] decisions regarding retention of such employees shall be [discontinued] made pursuant to criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine, subdivision thirteen of section eighteen hundred four and subparagraph one of paragraph (e) of subdivision 4 of section nineteen hundred fifty of this chapter. Such teachers, teaching assistants and teacher aides shall be placed on a preferred eligible list of candidates for appointment to a vacancy that may thereafter occur in an office or position under the jurisdiction of the school district similar to the one such teacher, teaching assistant and teacher aide filled in such board of cooperative educational services. The teachers, teaching assistants and teacher aides on such preferred list shall be reinstated or appointed to such vacancies in such corresponding or similar positions under the jurisdiction of the school district [in the order of their length of service in such board of cooperative educational services, within seven years from the date of the abolition of such office or position] pursuant to the criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine, subdivision thirteen of section eighteen hundred four and subparagraph one of paragraph (e) of subdivision 4 of section nineteen hundred fifty of this chapter.

§ 14. Subdivision 3 of section 3014-c of the education law, as added by chapter 706 of the laws of 1989, is amended to read as follows:

3. [If] Notwithstanding any other provision of law to the contrary, if the number of teaching positions needed to provide the educational services required by such sending district is less than the number of teachers eligible to be considered employees of such sending district as provided by subdivision two of this section, [the services of the teachers having the least seniority in the receiving district whose students are taken back by the sending district within the tenure area of the position] decisions regarding retention of teachers shall be [discontinued] made pursuant to the criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine and subdivision thirteen of section eighteen hundred four of this chapter. Such teachers shall be placed on a preferred eligible list of candidates for appointment to a vacancy that

may thereafter occur in an office or position under the jurisdiction of the sending district and the receiving district similar to the one such teacher filled in such receiving district. The teachers on such preferred list shall be reinstated or appointed to such vacancies in such corresponding or similar positions under the jurisdiction of the sending district or the receiving district [in the order of their length of service in such receiving district, within seven years from the date of the abolition of such office or position] pursuant to the criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine and subdivision thirteen of section eighteen hundred four of this chapter.

§ 15. Subdivision 3 of section 3014-d of the education law, as added by chapter 706 of the laws of 1989, is amended to read as follows:

3. [If] Notwithstanding any other provision of law to the contrary, if the number of teaching positions needed to provide the educational services required by such receiving district is less than the number of teachers eligible to be considered employees of such receiving district as provided by subdivision two of this section, [the services of the teachers having the least seniority in the sending district within the tenure area of the position] decisions regarding retention shall be [discontinued] made pursuant to the criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine and subdivision thirteen of section eighteen hundred four of this chapter. Such teachers shall be placed on a preferred eligible list of candidates for appointment to a vacancy that may thereafter occur in an office or position under the jurisdiction of the sending district and the receiving district similar to the one such teacher filled in such sending district. The teachers on such preferred list shall be reinstated or appointed to such vacancies in such corresponding or similar positions under the jurisdiction of the sending district or the receiving district [in the order of their length of service in such sending district] pursuant to the criteria outlined in subdivision eight-a of section sixteen hundred four, subdivision sixteen-a of section seventeen hundred nine and subdivision thirteen of section eighteen hundred four of this chapter, within seven years from the date of the abolition of such office or position.

§ 16 . This act shall take effect on the July 1 of the year in which the legislation is enacted.

Streamline Teacher Disciplinary Procedures (3020-a)

OBJECTIVE:

Streamline the tenured teacher disciplinary process to make it less time-consuming and less expensive by (a) having the State Education Department (SED) appoint hearing officers and hear appeals in disciplinary cases, and (b) providing for the automatic removal of teachers who have been convicted of child abuse or certain felonies, had their license to teach revoked, or do not obtain permanent certification in the time required by law.

CURRENT LAW:

Under Section 3020-a of state Education Law, tenured teachers are entitled to a disciplinary hearing before an independent contractor hearing officer. If charged with pedagogical incompetence, a tenured teacher can demand that a three-member panel hear the case. During this process, school districts incur tremendous legal expenses as well as salary and benefit expenses for the suspended employee and substitute teachers.

Under current state law, a tenured teacher or administrator may be removed without a 3020-a hearing only if he or she is convicted of a sex offense that requires him/her to register as a sex offender or if he or she has been convicted of defrauding the school district.

RATIONALE:

NYSSBA supports a system of due process for tenured teachers. However, the current process is too time-consuming and costly. Between 2004 and 2008, it took an average of 502 days and a cost of \$216,588 to conclude a full 3020-a hearing from the date charges were levied to the date a decision was issued by a hearing officer or panel.

The current process acts as a deterrent to removing teachers who do not belong in the classroom. According to a NYSSBA survey, 32 percent of districts considered bringing 3020-a charges against a teacher but decided not to do so because the process was either too cumbersome or too expensive.

Having SED appoint a hearing officer would allow cases to be decided more quickly, enabling districts to return the teacher to the classroom or hire a permanent replacement in a timely manner. Allowing schools to automatically remove teachers who have been convicted of child abuse or certain felonies, have had their teaching license revoked, or did not timely obtain permanent certification, would ensure that these individuals are removed from the classroom without going through the time-consuming and expensive 3020-a process. Instead, in the first two situations, the individuals in question would have achieved due process through a court proceeding or SED hearing. In the latter situation (i.e., failing to timely achieve permanent certification), the individual would have failed to meet basic qualifications for work as a teacher.

**NEW YORK STATE SENATE/ASSEMBLY
INTRODUCER'S MEMORANDUM IN SUPPORT**

submitted in accordance with Senate Rule VI, Sec I/ submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER:

SPONSOR:

TITLE OF BILL:

An act to amend the education law, in relation to tenured teacher discipline.

PURPOSE OR GENERAL IDEA OF THE BILL:

Streamlines and improves the hearing process for discipline of tenured teachers and administrators to reduce cost and increase efficiency. Allows for the immediate dismissal of tenured employees who have been convicted of certain felonies.

SUMMARY OF PROVISIONS:

Section 1: Amends existing law to cap the salary of tenured employees awaiting resolution of their disciplinary hearings at 120 days of paid leave.

Section 2: Amends existing law to:

- Alter the selection process for hearing officers to provide for automatic appointment by the commissioner of education;
- Require training to ensure that all hearing officers overseeing 3020-a hearings in New York State are experienced and familiar with New York State law;
- Require all employees to provide reciprocal discovery during the 3020-a disciplinary process;
- Require employees to cooperate in the investigatory process;
- Require all substantive motions and rulings to be placed in the official record of the hearing;
- Establish the Tenured Teachers and Administrators Disciplinary Review Panel, to hear initial appeals of hearing officer's decisions;
- Require that all decisions be published;
- Establishes that decisions of the panel shall be binding; and
- Alter the current standard for appeal of the review panel's decisions from section 75 to section 78 of the CPLR.

Section 3: Creates a new section of law:

- To allow for the immediate termination of tenured teachers and administrators who have been convicted of felonies that affect the operation of a school district, child abuse cases or upon the revocation of their certification of license;
- To allow districts the option to terminate tenured teachers and administrators who fail to timely receive their certification or license; and
- To allow employees subject to dismissal under this section five days to document that they are not the same individual reference in the action triggering the dismissal.

Section 4: Establishes the Tenured Teachers and Administrators Disciplinary Review Panel.

Section 5: Establishes the effective date of the bill.

JUSTIFICATION:

In New York State (excluding the City of New York which has an alternative disciplinary process) tenured teachers and administrators may only be disciplined under the provisions of section 3020-a of the Education Law, or, if a teacher agrees, to a collectively negotiated alternative procedure but very few district have such an alternative procedure. 3020-a establishes extensive administrative hearing procedures that must be followed before a school district can take any disciplinary action against any such tenured staff. These rights extend regardless of circumstance; even individuals without proper professional certification and those who have been convicted of a crime are entitled to hearings before school districts may terminate their employment.

In order to address the prohibitive costs and shorten the duration of that process, this bill proposes much needed statutory reforms. Capping paid suspensions and empowering districts to immediately terminate, without a hearing, teachers and administrators who have already been convicted of certain crimes, who have lost their certification, or who have failed to obtain proper certification would help to control the most costly aspects of the process. Additionally, amending the law to provide for prompt selection of hearing officers to hear cases would immediately shorten the process by eliminating the delay inherent in waiting for a hearing officer “acceptable” to the two parties. The current statutory timelines are frequently ignored; forcing adherence will help shorten hearings from the current statewide average of 502 days. Finally, requiring reciprocal discovery and mutual cooperation, prior to and during hearings, would also shorten the process and reduce costs.

With the high standards for school district performance accountability set by New York State and federal laws, undue delays and prohibitive costs must not be allowed to impede a district’s ability to effectively and efficiently remove unfit or incompetent staff from schools.

LEGISLATIVE HISTORY:

A.8338 of 2009/S.7224 of 2009

A.11337 of 2008

FISCAL IMPLICATIONS:

EFFECTIVE DATES: Immediately.

AN ACT to amend the education law, in relation to tenured teacher discipline

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

Section 1. Paragraph (b) of subdivision 2 of section 3020-a of the education law, as separately amended by chapters 296 and 325 of the laws of 2008, is amended to read as follows:

(b) The employee may be suspended pending a hearing on the charges and the final determination thereof. The suspension shall be with pay for a period of one hundred twenty days, except the employee may be suspended without pay immediately if the employee has entered a guilty plea to or has been convicted of a felony crime concerning the criminal sale or possession of a controlled substance, a precursor of a controlled substance, or drug paraphernalia as defined in article two hundred twenty or two hundred twenty-one of the penal law; or a felony crime involving the physical abuse of a minor or student. The employee shall be terminated without a hearing, as provided for in this section, upon conviction of a sex offense, as defined in subparagraph two of paragraph b of subdivision seven-a of section three hundred five of this chapter. To the extent this section applies to an employee acting as a school administrator or supervisor, as defined in subparagraph three of paragraph b of subdivision seven-b of section three hundred five of this chapter, such employee shall be terminated without a hearing, as provided for in this section, upon conviction of a felony offense defined in subparagraph two of paragraph b of subdivision seven-b of section three hundred five of this chapter.

§ 2. Subdivisions 3, 4 and 5 of section 3020-a of the education law, as amended by chapter 691 of the laws of 1994 and paragraph a of subdivision 3 as amended and subparagraph (i-a) of paragraph c of subdivision 3 as added by chapter 103 of the laws of 2010, are amended to read as follows:

3. Hearings. a. Notice of hearing. Upon receipt of a request for a hearing in accordance with subdivision two of this section, the commissioner shall forthwith notify the American Arbitration Association (hereinafter "association") of the need for a hearing and shall request the association to provide to the commissioner forthwith a list of names of persons [chosen by the association] from the association's panel of labor arbitrators to potentially serve as hearing officers together with relevant biographical information on each arbitrator. Upon receipt of said list and biographical information, the commissioner shall [forthwith send a copy of both simultaneously] within ten business days appoint a hearing officer from said list of names provided by the association. Upon appointment, the commissioner shall immediately send notification of the hearing officer appointed to the employing board and the employee. The commissioner shall also simultaneously notify both the employing board and the employee of each potential hearing officer's record in the last five cases of commencing and completing hearings within the time periods prescribed in this section.

b. Appointment. Appointment from such list shall be made on a sequential basis beginning with the first name appearing on such list. Should that hearing officer decline appointment, or if, within forty-eight hours, the hearing officer fails to respond or is unreachable after reasonable efforts by the commissioner, each successive hearing officer whose name next appears on the list shall be offered an appointment, until such appointment is accepted. Arbitrators may not accept an appointment unless they are available to commence and complete the hearing within the time frames specified in this section. An arbitrator's unexcused failure to comply with the time frames specified in this section shall be deemed good and sufficient grounds for disqualifying him or her from consideration for appointment from such list specified in paragraph a of this subdivision. If, after commencement of a hearing and by mutual agreement of the parties, the hearing officer is deemed incapacitated or otherwise unavailable or unwilling to continue the hearing or issue the decision, the commissioner shall rescind the appointment of the hearing officer and appoint a new hearing officer in accordance

with the procedures as set forth in this subdivision, and the new hearing officer shall resume and continue the hearing at the point at which it was interrupted.

c. Training program. (i) The commissioner shall establish a training program which shall be completed to the satisfaction of the commissioner as a condition for eligibility for inclusion on the list of names of persons from the association's panel of labor arbitrators to potentially serve as hearing officers under this section.

(ii) Effective six months from the effective date of this subparagraph, as a condition for eligibility for inclusion on the list of names of persons chosen by the association from the association's panel of labor arbitrators to potentially serve as a hearing officer, an arbitrator shall:

(A) have successfully completed a training program pursuant to subparagraph (i) of this paragraph;

(B) attend such periodic update programs as may be scheduled by the commissioner;

(C) possess knowledge of, and the ability to understand, the provisions of applicable law and regulations pertaining to the discipline of tenured employees under this section and administrative and judicial interpretations of such law and regulations;

(D) possess knowledge of the procedures involved in conducting a hearing, and in reaching and writing a decision and the ability to conduct hearings in accordance with appropriate, standard legal practice; and

(E) annually submit, in a format and by a date prescribed by the commissioner, a certification that the hearing officer meets the requirements of this subdivision.

(iii) The commissioner shall establish standards allowing arbitrators to document their qualification to be immediately eligible for appointment from such list specified in paragraph a of this subdivision.

[(i)] d. Hearing officers. All hearings pursuant to this section shall be conducted before and by a single hearing officer selected as provided for in this section. A hearing officer shall not be eligible to serve as such if he or she is a resident of the school district, other than the city of New York, under the jurisdiction of the employing board, an employee, agent or representative of the employing board or of any labor organization representing employees of such employing board, has served as such agent or representative within two years of the date of the scheduled hearing, or if he or she is then serving as a mediator or fact finder in the same school district. Notwithstanding any other provision of law, the hearing officer shall be compensated by the department with the customary fee paid for service as an arbitrator under the auspices of the association for each day of actual service plus necessary travel and other reasonable expenses incurred in the performance of his or her duties. All other expenses of the disciplinary proceedings shall be paid in accordance with rules promulgated by the commissioner [of education].

[(ii) Not later than ten days after the date the commissioner mails to the employing board and the employee the list of potential hearing officers and biographies provided to the commissioner by the association, the employing board and the employee, individually or through their agents or representatives, shall by mutual agreement select a hearing officer from said list to conduct the hearing and shall notify the commissioner of their selection.

(iii) If the employing board and the employee fail to agree on an arbitrator to serve as a hearing officer from said list and so notify the commissioner within ten days after receiving the list from the commissioner, the commissioner shall request the association to appoint a hearing officer from said list.

(iv) In those cases in which the employee elects to have the charges heard by a hearing panel, the hearing panel shall consist of the hearing officer, selected in accordance with this subdivision, and two additional persons, one selected by the employee and one selected by the employing board, from a list maintained for such purpose by the commissioner of education. The list shall be composed of

professional personnel with administrative or supervisory responsibility, professional personnel without administrative or supervisory responsibility, chief school administrators, members of employing boards and others selected from lists of nominees submitted to the commissioner by statewide organizations representing teachers, school administrators and supervisors and the employing boards. Hearing panel members other than the hearing officer shall be compensated by the department of education at the rate of one hundred dollars for each day of actual service plus necessary travel and subsistence expenses. The hearing officer shall be compensated as set forth in this subdivision. The hearing officer shall be the chairman of the hearing panel.

c.] e. Hearing procedures. (i) The commissioner [of education] shall have the power to establish necessary rules and procedures for the conduct of hearings under this section. Such rules shall not require compliance with technical rules of evidence. Hearings shall be conducted by the hearing officer [selected] appointed pursuant to [paragraph] paragraphs a and b of this subdivision with full and fair disclosure of [the nature of the case and evidence against the employee] all material relevant to the prosecution or defense of this action by the [employing board] parties ten business days prior to the first hearing date and shall be public or private at the discretion of the employee. The employee shall have a reasonable opportunity to defend himself or herself and an opportunity to testify in his or her own behalf. The employee shall not be required to testify, however, this right shall not be construed to mean that the employee may refuse to cooperate in the employing school district's investigation of allegations of misconduct or incompetence raised against him or her. Each party shall have the right to be represented by counsel, to subpoena witnesses, and to cross-examine witnesses. All testimony taken shall be under oath which the hearing officer is hereby authorized to administer. A competent stenographer, designated by the commissioner [of education] and compensated by the [state education] department, shall keep and transcribe a record of the proceedings at each such hearing. A copy of the transcript of the hearings shall, upon request, be furnished without charge to the employee and the board of education involved.

(i-a)(A) Where charges of incompetence are brought based solely upon a pattern of ineffective teaching or performance of a classroom teacher or principal, as defined in section three thousand twelve-c of this article, the hearing shall be conducted before and by a single hearing officer in an expedited hearing, which shall commence within seven days after the pre-hearing conference and shall be completed within sixty days after the pre-hearing conference. The hearing officer shall establish a hearing schedule at the pre-hearing conference to ensure that the expedited hearing is completed within the required timeframes and to ensure an equitable distribution of days between the employing board and the charged employee. Notwithstanding any other law, rule or regulation to the contrary, no adjournments may be granted that would extend the hearing beyond such sixty days, except as authorized in this subparagraph. A hearing officer, upon request, may grant a limited and time specific adjournment that would extend the hearing beyond such sixty days if the hearing officer determines that the delay is

attributable to a circumstance or occurrence substantially beyond the control of the requesting party and an injustice would result if the adjournment were not granted.

(B) Such charges shall allege that the employing board has developed and substantially implemented a teacher or principal improvement plan in accordance with subdivision four of section three thousand twelve-c of this article for the employee following the first evaluation in which the employee was rated ineffective, and the immediately preceding evaluation if the employee was rated developing. Notwithstanding any other provision of law to the contrary, a pattern of ineffective teaching or performance as defined in section three thousand twelve-c of this article shall constitute very significant evidence of incompetence for purposes of this section. Nothing in this subparagraph shall be construed to limit the defenses which the employee may place before the hearing officer in challenging the allegation of a pattern of ineffective teaching or performance.

(C) The commissioner shall annually inform all hearing officers who have heard cases pursuant to this section during the preceding year that the time periods prescribed in this subparagraph for conducting expedited hearings are to be strictly followed. A record of continued failure to commence and complete expedited hearings within the time periods prescribed in this subparagraph shall be considered grounds for the commissioner to exclude such individual from the list of potential hearing officers sent to the employing board and the employee for such expedited hearings.

(ii) The hearing officer [selected] appointed to conduct a hearing under this section shall, within ten to fifteen days of agreeing to serve as such, hold a pre-hearing conference which shall be held in the school district or county seat of the county, or any county, wherein the employing School board is located. The pre-hearing conference shall be limited in length to one day except that the hearing officer, in his or her discretion, may allow one additional day for good cause shown.

(iii) At the pre-hearing conference the hearing officer shall have the power to:

(A) issue subpoenas;

(B) hear and decide all motions, including but not limited to motions to dismiss the charges;

(C) hear and decide all applications for bills of particular or requests for production of materials or information, including, but not limited to, any witness statement (or statements), investigatory statement (or statements) or note (notes), exculpatory evidence or any other evidence, including district or student records, relevant and material to the employee's defense.

(iv) Any pre-hearing motion or application relative to the sufficiency of the charges, application or amendment thereof, or any preliminary matters shall be made upon written notice to the hearing officer and the adverse party no less than five days prior to the date of the pre-hearing conference. Any pre-hearing motions or applications not made as provided for herein shall be deemed waived except for good cause as determined by the hearing officer.

(v) [In the event that at the pre-hearing conference the employing board presents Evidence that the professional license of the employee has been revoked and all judicial and administrative remedies have been exhausted or foreclosed, the hearing officer shall schedule the date, time and place for an expedited hearing, which hearing shall commence not more than seven days after the pre-hearing conference and which shall be limited to one day. The expedited hearing shall be held in the local school district or county seat of the county or any county, wherein the said employing board is located. The expedited hearing shall not be postponed except upon the request of a party and then only for good cause as determined by the hearing officer. At such hearing, each party shall have equal time in which to present its case] All rulings on substantive motions shall be placed on the record with a full explanation of the hearing officer's reasoning.

(vi) During the pre-hearing conference, the hearing officer shall determine the reasonable amount of time necessary for a final hearing on the charge or charges and shall schedule the location, time(s) and date(s) for the final hearing. The final hearing shall be held in the local school district or county seat of the county, or any county, wherein the said employing school board is located. In the event that the hearing officer determines that the nature of the case requires the final hearing to last more than one day, the days that are scheduled for the final hearing shall be consecutive. The day or days scheduled for the final hearing shall not be postponed except upon the request of a party and then only for good cause shown as determined by the hearing officer. In all cases, the final hearing shall be completed no later than sixty days after the pre-hearing conference unless the hearing officer determines that extraordinary circumstances warrant a limited extension.

4. Post hearing procedures. (a) The hearing officer shall render a written decision within thirty days of the last day of the final hearing, or in the case of an expedited hearing within ten days of such expedited hearing, and shall forthwith forward a copy thereof to the commissioner [of education] who shall immediately forward copies of the decision to the employee and to the clerk or secretary of

the employing board. The written decision shall include the hearing officer's findings of fact on each charge, his or her conclusions with regard to each charge based on said findings and shall state what penalty or other action, if any, shall be taken by the employing board. At the request of the employee, in determining what, if any, penalty or other action shall be imposed, the hearing officer shall consider the extent to which the employing board made efforts towards correcting the behavior of the employee which resulted in charges being brought under this section through means including but not limited to: remediation, peer intervention or an employee assistance plan. In those cases where a penalty is imposed, such penalty may be a written reprimand, a fine, suspension for a fixed time without pay, or dismissal. In addition to or in lieu of the aforementioned penalties, the hearing officer, where he or she deems appropriate, may impose upon the employee remedial action including but not limited to leaves of absence with or without pay, continuing education and/or study, a requirement that the employee seek counseling or medical treatment or that the employee engage in any other remedial or combination of remedial actions.

(b) Within fifteen days of receipt of the hearing officer's decision the employing board shall implement the decision. If the employee is acquitted he or she shall be restored to his or her position with full pay for any period of suspension without pay and the charges expunged from the employment record. If an employee who was convicted of a felony crime specified in paragraph (b) of subdivision two of this section, has said conviction reversed, the employee, upon application, shall be entitled to have his or her pay and other emoluments restored, for the period from the date of his or her suspension to the date of the decision.

(c) The hearing officer shall indicate in the decision whether any of the charges brought by the employing board were frivolous as defined in section eight thousand three hundred three-a of the civil practice law and rules. If the hearing [officers] officer finds that all of the charges brought against the employee were frivolous, the hearing officer shall order the employing board to reimburse the ~~[state education]~~ department the reasonable costs [said] the department incurred as a result of the proceeding and to reimburse the employee the reasonable costs, including but not limited to reasonable attorneys' fees, the employee incurred in defending the charges. If the hearing officer finds that some but not all of the charges brought against the employee were frivolous, the hearing officer shall order the employing board to reimburse the [state education] department a portion, in the discretion of the hearing officer, of the reasonable costs said department incurred as a result of the proceeding and to reimburse the employee a portion, in the discretion of the hearing officer, of the reasonable costs, including but not limited to reasonable attorneys' fees, the employee incurred in defending the charges.

5. Appeal. (a) Not later than ten days after receipt of the hearing officer's decision, the employee or the employing board may make an application for review of the hearing officer's decision to the state Tenured Teachers and Administrators Disciplinary Review Panel, (hereafter referred to as "the review panel"), established for that purpose within the department in accordance with subdivision forty-two of section three hundred five of this chapter, and the rules and regulations promulgated by the commissioner. The review panel may modify or reverse the decision of a hearing officer as appropriate to properly effectuate the purposes of this section. The decisions of the review panel shall constitute binding decisional law until modified or reversed on appeal by either party by a state supreme court or by an appellate court on further appeal. Review panel decisions shall be published pursuant to rules and regulations promulgated by the commissioner and in the same manner as administrative decisions from other state agencies.

(b) Not later than ten days after receipt of the decision of the review panel, the employee or the employing board may make an application to the New York state supreme court to vacate or modify the decision of the [hearing officer] review panel pursuant to section seven thousand [five] eight hundred [eleven] of the civil practice law and rules. [The court's review shall be limited to the

grounds set forth in such section.] The [hearing] review panel's determination shall be deemed to be final for the purpose of such proceeding.

(c) In no case shall the filing or the pendency of an [appeal] application for review by the state review panel or an appeal to the courts delay the implementation of the decision of the hearing officer.

§ 3. Section 3020-a of the education law is amended by adding a new subdivision 6 to read as follows:

6. Immediate removal. (a) Notwithstanding any other provision of law, a person enjoying the benefits of tenure as provided in subdivision three of section eleven hundred two, or section twenty-five hundred nine, twenty-five hundred seventy-three, twenty-five hundred ninety-j, three thousand twelve or three thousand fourteen of this chapter shall lose such benefits and shall be immediately removed from employment by the employing board of education upon conviction of any offense related to child abuse; child abuse in an educational setting as defined in section eleven hundred twenty-five of this chapter; or any other felony offense that affects the operation of a school district; or, upon revocation of a professional certificate pursuant to subdivision seven of section three hundred five of this chapter.

(b) Notwithstanding any other provision of law, no person enjoying the benefits of tenure as provided in subdivision three of section eleven hundred two, or section twenty-five hundred nine, twenty-five hundred seventy-three, twenty-five hundred ninety-j, three thousand twelve or three thousand fourteen of this chapter who fails to receive a professional certificate within the statutory timeframe as required by section three thousand four of this article shall retain such benefits and may be immediately removed from employment by a board of education.

(c) Any employee of a school district subject to immediate termination under the provisions of this section shall have five business days from the notice of termination in which to provide documentary evidence establishing to the satisfaction of the employing board that he or she is not the same individual referenced in the action triggering his or her removal.

§ 4. Section 305 of the education law is amended by adding a new subdivision 42 to read as follows:

42. (a) The commissioner shall establish the state Tenured Teachers and Administrators Disciplinary Review Panel, (hereafter referred to as "the review panel"). The panel shall consist of no less than three members appointed by the commissioner. Panel members shall be employed by the department and their salary shall be determined and paid by the department.

(b) Panel members shall:

(i) successfully complete a training program established by the commissioner and attend such additional training programs as may be required by the commissioner;

(ii) possess knowledge of and the ability to understand the provisions of applicable law and regulations pertaining to the discipline of tenured employees under this section, and administrative and judicial interpretations of such laws and regulations;

(iii) possess knowledge of the procedures involved in conducting a hearing under this section;
and

(iv) possess the ability to render and write decisions in accordance with appropriate standard legal practice.

§ 5. This act shall take effect immediately.

Establish Maximum Healthcare Contributions

OBJECTIVE:

Reduce the public cost to schools of providing employee and retiree health insurance coverage by establishing statewide maximum health care contributions for school districts and Boards of Cooperative Educational Services (BOCES).

CURRENT LAW:

Health insurance coverage is collectively bargained between school officials and their employee bargaining units. However, health insurance rate increases are outpacing the gains achievable at the bargaining table when a school board is attempting to negotiate a higher employee contribution rate. Moreover, existing law makes it difficult for schools to negotiate health insurance packages that take into account economic realities or include higher employee contribution rates. As a result, a new state law is needed to set maximum percentages for employer contributions to employee health care plans.

RATIONALE:

School districts experienced double-digit increases in health insurance costs in both 2010 and 2011, and average annual increases in employer-provided health care benefit costs nationwide are projected to increase in 2012 by about 10 percent.

The contributions that school districts make to their employees' health insurance premiums vary among school districts. However, schools contributed an average of 89 percent toward individual insurance plans of newly hired teachers in 2010-11 and about 87.5 percent toward family coverage, based on data from a 2011 NYSSBA survey of school districts. Putting in place a statewide maximum employer contribution rate of 85 percent for individual coverage and 75 percent for family coverage would set the floor for negotiations with employee bargaining units and allow districts to reduce health insurance contributions. It would also bring New York schools closer to the national average for employer contributions in all industries of 81 percent for single coverage and 70 percent for family coverage, according to the Kaiser Family Foundation. This change could save school districts as much as \$2,300 per active employee, depending on the type of plan.

According to NYSSBA's 2011 Teacher Contract Survey, three-quarters of school districts contributed more than 85 percent toward the cost of an individual health insurance premium in the 2010-11 school year. Nearly all school districts (97 percent) contributed more than NYSSBA's mandatory maximum of 75 percent for family coverage.

**NEW YORK STATE SENATE/ASSEMBLY
INTRODUCER'S MEMORANDUM IN SUPPORT**

submitted in accordance with Senate Rule VI, Sec 1/ submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER:

SPONSOR:

TITLE OF BILL:

An act to amend the education law, in relation to adding a new health care premium contribution section.

PURPOSE OR GENERAL IDEA OF BILL:

To require employers and employees to more equitably share the contribution of health care premium costs.

SUMMARY OF SPECIFIC PROVISIONS:

This legislation adds a new section 1527-a to Article 31 of the education law. Section 1527-a places a maximum on the contribution rate that school district and BOCES employers must pay for health care premiums for their employees and retirees. The maximum is set at 85% for individual employees or retirees and 75% for family coverage for employees or retirees. The employee or retiree would be responsible to pay the remainder of the total premium.

JUSTIFICATION:

In order to align state employee health care costs with other states and the private sector, this new legislation will cap employer healthcare premium contributions and require employees and retirees to pay the remainder of the total premium. These changes could save as much as \$2,300 per teacher depending on the type of plan and with 222,000 teachers in New York State, the savings would be significant.

LEGISLATIVE HISTORY: New bill.

FISCAL IMPLICATIONS:

EFFECTIVE DATES: Immediately.

AN ACT to amend the education law, in relation to adding a new health care premium contribution section

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

Section 1. A new section 1527-a is added to article 31 of the education law to read as follows:

§1527-a. Health care premium contribution. 1. The following terms used in this article shall have the following meanings:

a. "Employer" shall mean the school district or board of cooperative educational service (BOCES) by which the employee is paid.

b. "Employee" shall mean any individual instructional or non-instruction staff employed by a school district or board of cooperative educational services.

c. "Retiree" shall mean any former employee who has retired from a school district or board of cooperative educational services.

d. "Health care premium" shall mean the total cost of any employee or retiree health care benefit plan which provides for payment or reimbursement of health care expenses, health care services, disability payments, or any other benefits under a policy of insurance or contract with an individual or group.

2. Notwithstanding any provisions or law to the contrary, in collectively bargaining agreements entered into on or after the effective date of this chapter, the contribution amount to be due and payable by each employer shall not exceed eighty-five percent of the total health care benefit premium for an individual employee and shall not exceed seventy-five percent of the total health care benefit premium for an employee electing family coverage. The remainder of the total health care premium shall be paid by the employee or retiree.

§ 2. This act shall take effect immediately; provided, that this act shall apply to contracts entered into, issued, renewed, modified, altered, or amended on or after such effective date.

Rebuild Special Education

OBJECTIVE:

Reduce the costs of special education by eliminating state mandates that exceed federal Individuals with Disabilities Education Act (IDEA) requirements.

CURRENT LAW:

New York State has more than 200 special education mandates layered on top of federal mandates, according to the New York State Commission on Property Tax Relief. While many of these requirements are well-intentioned, they add considerable cost to school districts.

RATIONALE:

New York State superimposes a host of duplicative and excessive procedures onto the fully-functioning federal IDEA requirements. New York State spent \$26,888 per special education pupil in 2009-10, compared with \$11,105 on general education peers. In fact, New York ranks first in the nation in per-pupil special education instructional expense. In 2009-10, special education accounted for 27 percent of all instructional expense. In 2010-11 13 percent of all pupils were in special education, according to the State Education Department. New York State's student-teacher staffing ratio was nearly 56 percent higher than the national average in 2005 (about 9:1 versus 14:1 nationally). Overall, special education accounts for about a third of total school costs.

NYSSBA has long recommended reforms to bring New York more into line with federal law. These include placing the burden of proof in an impartial due process hearing on the plaintiff rather than with school districts, which would save a tremendous amount of litigation preparation costs. Reducing the statute of limitations on the commencement of an impartial hearing from two years to one year would also be a cost-saver for schools.

Other initiatives include reforming the law that entitles home-schooled students to a range of special education services as well as the state's "dual enrollment" law, which considers students with disabilities enrolled in nonpublic schools to be dually enrolled in the public schools for the purposes of being entitled to a range of special education services. Both state requirements exceed federal law. These are examples of the state's laws and regulations that must be reviewed to determine their justification and viability, given the current fiscal conditions.

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

BILL NUMBER:

SPONSOR:

TITLE OF BILL:

An act authorizing the state of New York to provide special education programs or services to students with disabilities at the same level of programs and services required by the federal government.

PURPOSE OR GENERAL IDEA OF BILL:

This legislation would authorize school districts to provide the level of service and program to students with disabilities required by the federal government.

SUMMARY OF SPECIFIC PROVISIONS:

This legislation provides an unconsolidated section of law that would change the level of service and program required for special education students in New York State to be the same as the level required by the federal government.

This legislation also establishes an advisory committee to review state laws and regulations and make recommendations as to which state laws and/or regulations relating to special education programs and/or services should be continued above the federal level.

JUSTIFICATION:

Although New York State may have had the best intentions when defining its own special education laws and regulations that go above and beyond those of the federal government, the state's system has become outdated, overly complex, costly beyond comparison with other states and overly burdensome. Such an effort would recognize school districts' dual role of providing excellent educational services to all students and that of making the best use of steadily declining state, local and federal financial resources.

LEGISLATIVE HISTORY: New bill.

FISCAL IMPLICATIONS: To be determined.

LOCAL FISCAL IMPLICATIONS: To be determined.

EFFECTIVE DATES: July 1, 2012.

AN ACT authorizing the state of New York to provide special education programs or services to students with disabilities at the same level as required by the federal government

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

Section 1. Notwithstanding any other provisions of law, rule or regulation to the contrary, all school districts shall be required to conform with all federal laws and regulations relating to special education programs and services to be provided to students with disabilities. No state law or regulation shall impose any additional mandate or procedural requirement for special education students on school districts except as provided in section two of this chapter.

§ 2. There shall be an advisory committee established to review the current laws and regulations of the state of New York relating to special education. The advisory committee shall consist of representatives of parents, teachers, principals, superintendents of schools, school boards, school district and board of cooperative educational services officials and other interested parties, as determined by the commissioner of education. The advisory committee shall review New York state laws and regulations relating to special education which are in effect on the date upon which this chapter is signed into law. The advisory committee shall consider the programmatic impact, educational impact, financial impact and other impacts as the committee deems necessary of each law and regulation relating to special education. The advisory committee shall take into account the impacts of such laws and regulations to make an evaluation of each state law and regulation above the federal level and recommend which laws and/or regulations should remain in effect after July 1, 2013. Upon such recommendation, the department of education shall submit to the legislature on or before January 1, 2013, a report outlining the laws recommended by the advisory committee to remain in effect above the level required by the federal government. The legislature shall take action to exempt such laws from section one of this chapter. Any such state law relating to special education programs and services to be provided to students with disabilities not renewed by the legislature on or before June 30, 2011 shall be deemed repealed subject to section one of this chapter. The addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the advisory committee's recommendations are authorized and directed to be made and completed by the commissioner of education on or before June 30, 2011.

§ 3. Section 2 of this act shall take effect immediately and section 1 of this act shall take effect on July 1, 2013.

Allow “Piggyback” Purchasing

OBJECTIVE:

Give schools the ability to leverage the aggregate purchasing power of large, national procurement cooperatives and contracts entered into by other states and local governments.

CURRENT LAW:

School districts, along with all other municipalities, must engage in competitive bidding over a threshold amount. They may use the state contract as an alternative, based on the premise that the state has pre-authorized the vendors on the list as qualifying and as being a good bargain. New York is said to be one of only two states (New Jersey is the other) that do not allow or authorize the use of out-of-state or national cooperative contracts by schools and local governments as another purchasing alternative.

RATIONALE:

Authorizing school districts and local governments to “piggyback” on contracts entered into by other states and localities, along with allowing the option to purchase through national purchasing cooperatives and contracts, would provide an immediate cost-saving option for schools and local governments. According to an analysis performed by the National Association of Counties (NaCO), savings resulting from cooperative purchasing ranged from 7 percent in larger agencies to as high as 30 percent savings for smaller entities. On average, municipal organizations and entities saved about 10 percent by purchasing through national cooperative contracts. These national programs offer all of the competitive bidding and public policy protections provided by New York State’s current policies, while affording significant savings and an expanded market.

What could savings look like for New York State schools? About 10 to 14 percent of total school expenditures of \$55.6 billion in 2009-10 would have been eligible for cooperative purchasing – or between \$5.6 billion and \$7.8 billion. Based on a conservative 10 percent savings in the areas of school expenditures that could potentially be saved, procurement reform could yield potential savings of \$556 to \$778 million to New York State schools.

**NEW YORK STATE SENATE/ASSEMBLY
INTRODUCER'S MEMORANDUM IN SUPPORT**

submitted in accordance with Senate Rule VI, Sec 1/ submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER:

SPONSOR:

TITLE OF BILL:

An act to amend the general municipal law, in relation to allowing certain shared purchasing contracts among political subdivisions.

PURPOSE OR GENERAL IDEA OF BILL:

This legislation would authorize political subdivisions to enter into, or "piggy-back" onto, purchasing contracts and contracts for services with another state or political subdivision without relieving such entities of applicable Minority and Women Business Enterprises (MWBE) requirements.

SUMMARY OF SPECIFIC PROVISIONS:

This legislation amends section 103 of the General Municipal law by adding a new subdivision 16. Subdivision 16 would permit cooperative purchasing by political subdivisions and any district for materials, equipment and supplies, as well as for contracts for services. Subdivision 16 further requires political subdivisions to continue observing applicable MBWE requirements.

JUSTIFICATION:

The bill provides political subdivisions and any district with the opportunity to save on costs by allowing them use of the best contractual purchasing conditions available. The bill does not require local governments to use cooperative purchasing contracts.

New York is currently one of only two states where out-of-state cooperative contract use is restricted. The other is New Jersey.

LEGISLATIVE HISTORY: New bill.

FISCAL IMPLICATIONS:

EFFECTIVE DATES: Immediately.

AN ACT to amend the general municipal law, in relation to providing local governments greater contract flexibility and cost savings by permitting certain shared purchasing among political subdivisions

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

Section 1. Section 103 of the general municipal law is amended by adding a new subdivision 16 to read as follows:

16. Notwithstanding any other provision of law, rule or regulation to the contrary, any officer, board or agency of a political subdivision or of any district therein authorized to make purchases of materials, equipment or supplies, or to contract for services, may make such purchases or may contract for services, as may be required by such political subdivision or any district therein through the use of a contract let by any other state or political subdivision if such contract was let in accordance with competitive bidding requirements that are consistent with this section and with the intent of extending the use to other governmental entities. Furthermore, the authority provided to political subdivisions and districts therein under this subdivision shall not relieve any obligation of such political subdivision or district therein to comply with any applicable minority and women-owned business enterprise program mandates.

§ 2. This act shall take effect immediately.