



*New York State Assembly*  
**2011 ANNUAL REPORT**

*committee on*  
**GOVERNMENTAL  
EMPLOYEES**

*Peter J. Abbate, Jr.*  
*Chairman*



*Sheldon Silver*  
*Speaker*

**Annual Report**  
**of the**  
**Assembly Standing Committee on**  
**Governmental Employees**  
**Peter J. Abbate, Jr., Chairman**  
**Members of the Committee**

**Majority**

Jeffrion L. Aubry  
Alec Brook-Krasny  
William Colton  
Michael J. Cusick  
Michael G. DenDekker  
John J. McEneny  
David Weprin  
Kenneth Zebrowski

**Minority**

Nicole Malliotakis - Ranker  
Al Graf  
Mark Johns  
Joseph Saladino

**Committee Staff**

Jennifer Best, Assistant Secretary for Program and Policy  
Julianne Haggerty, Analyst  
Lauren Ryba, Associate Counsel  
Jonathan Lynch, Committee Assistant  
Christine Eppelmann, Committee Clerk  
Sarah Conklin, Program & Counsel Secretary



December 22, 2011

Honorable Sheldon Silver  
Speaker, New York State Assembly  
932 Legislative Office Building  
Albany, New York 12248

Dear Speaker Silver,

I am pleased to submit the 2011 Annual Report of the Assembly Committee on Governmental Employees.

My priority as Chairman of the Assembly Governmental Employees Committee has been to support legislation that improves the working conditions for our state, county and city workforces while ensuring that these benefits are provided for in a manner fiscally responsible to the taxpayers of New York.

This annual report will provide greater details on the accomplishments and report on the various other proposals the Committee considered this year.

I thank all the committee members and staff for their dedication and attention to the needs of our State's public employees. Additionally, I thank the public employee unions and their representatives and the many government officials whose input on legislation has been, and is, invaluable.

I thank you for your guidance and support which were instrumental to the accomplishments of the Committee during the 2011 Legislative Session.

Sincerely,

Peter J. Abbate, Jr.  
Member of Assembly

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## **Summary**

The Assembly Standing Committee on Governmental Employees is responsible for legislation pertaining to civil service regulations, public pensions and the public pension systems. Proposals relating to the rights of governmental employees, such as disciplinary proceedings, the right to organize collective bargaining units, and the ratification of collective bargaining agreements are examples of civil service legislation. Proposals amending the Retirement and Social Security law affect public employee pension benefits, qualifications for benefits, or the governance of the retirement systems.

During the 2011 Session, 305 legislative proposals were referred to the Committee on Governmental Employees. The Committee reported 59 bills. Of those proposals, 29 became law and 7 were vetoed.

## **2011 CHAPTERS**

### **A.0030 (Cahill) – Chapter 403**

The development of qualifications and eligibility standards for the recruitment of multiple tiers designated for the Director of Facilities I, II, & III, shall now be granted to the Department of Civil Service (DCS). This power was formerly held by local civil service commissions.

In order to increase the pool of qualified applicants, the legislation removes residency requirements on the Director of Facilities position. It also deems certain other positions to be equivalent to the Director of Facilities, thereby exempting such position-holders from a competitive exam for three years. DCS would now administer one test for positions in all school districts in the state.

### **A.1428-B (Castelli) – Chapter 152**

This bill relates to the abolition of positions occupied by public employees absent on military duty. If a public employer consolidates, abolishes, displaces, or demotes a position which is occupied by a public employee currently on active duty with the armed forces of the US, the employer must place the employee's name on a preferred eligible list, in compliance with state military law. In the event of termination of active duty, the employer must provide full reemployment rights as stated under the Federal Uniformed Services Employment and Reemployment Rights Act of 1994. These provisions do not entitle the employee to displace any person with greater seniority.

This legislation also prohibits discrimination against public employees serving in the armed forces. Public employers cannot deny employment, reemployment, or any benefit of employment to any person based on prospective, current or past commission with the armed forces of the United States.

### **A.5184 (Thiele) – Chapter 368**

Police Officers must complete twenty years of service in order to receive full pension benefits. Current law requires police officers employed by the Town of Southampton to retire at 55 years of age, regardless of whether they completed 20 years of service. This legislation allows the Town of Southampton the option of continuing an officer's term of employment beyond the age of 55, in order for an officer to reach the twenty year mark required to receive full pension benefits.

### **A.5368 (Abbate) – Chapter 553**

This bill allows Tier 3 and Tier 4 members of the NYS Teachers' Retirement System (NYSTRS), who have permanently ceased teaching, to elect to receive a refund of their accumulated member

contributions, and thereby terminate membership in NYSTRS regardless of the amount of service to their credit. The legislation requires that a retirement system in another state certify: 1) that the member seeking withdrawal is a member of that system with at least five years of teaching service; and 2) that withdrawal from NYSTRS is necessary in order for the member to obtain credit for the New York State service in the other system. Upon refund of all accumulated contributions, any and all obligations of NYSTRS to a member would cease.

**A.5369 (Abbate) – Chapter 554**

Public employee retirement systems may only invest in capital assets to the extent permitted by law. Systems generally rely upon the investment authorizations contained in §177 of the Retirement and Social Security Law - the so-called “legal list.” Over the years, the authorizations in that section have been liberalized to reflect changes and trends in institutional investment.

This bill increases the percentage of assets of the State and City Retirement Systems that may be invested in real estate, from five to ten percent. It also allows the retirement systems to classify, at the system’s election, real estate oriented funds or partnerships as real estate assets for investment purposes.

**A.5737 (Abbate) – Chapter 105**

Binding arbitration provisions governing labor disputes between the Metropolitan Transit Authority, the New York City Transit Authority, or the Triborough Bridge and Tunnel Authority and public employee organizations were enacted by Chapter 929 of the Laws of 1986. Chapter 93 of the laws of 2009 last extended these provisions.

This bill extends, from July 1, 2011 to July 1, 2013, the provisions of law that provide compulsory arbitration for the resolution of impasses during collective bargaining negotiations between the Metropolitan Transit Authority, the New York City Transit Authority, or the Triborough Bridge and Tunnel Authority and their employee organizations.

**A.5738 (Abbate) – Chapter 112**

Injunctive Relief was enacted in 1994 to provide an expedited method to resolve improper practice cases in the public sector when there is deemed to be immediate and irreparable harm. Since it took effect in 1995, it has enabled labor and management to resolve numerous issues.

The purpose of this bill is to continue to permit public employees to seek injunctive relief for unfair labor practices by extending injunctive relief provisions from June 30, 2011 to June 30, 2013.

**A.5744A (Abbate) – Chapter 514**

Members of the New York State and Local Police & Fire Retirement System have a statutorily protected pension. If a member has twenty years of service or more and is dismissed, he or she will receive their pension without an age limitation. However, police officers and firefighters enrolled in the New York City Police and Fire Pension Funds have not had the same pension protection.

The purpose of this bill is to provide parity to members of the New York City Police Pension Fund and the New York City Fire Pension Fund. Those who have twenty years or more of service would not be denied a pension benefit as a result of being terminated from their police officer or firefighter duties.

**A.6068 (Markey) – Chapter 161**

This legislation provides a 3% cost-of-living increase for fiscal year 2010-11 to the survivors of police officers and firefighters who were killed in the line of duty.

Since 1978, the Legislature has passed and the Governor has signed into law, a cost-of-living increase and a one-year escalation for all New York State widows and widowers of police officers and firefighters killed in the performance of duty. The intent of the original law was to increase their benefits to an amount that would reflect the impact of inflation. However, the law did not provide for any new cost-of-living increase after July 1, 1979.

While this legislation does not totally cover the present inflation spiral, it at least provides increased relief. As in previous legislation, there is no cost to the localities as the State would reimburse them fully for this small increase.

**A.6534 (Abbate) – Chapter 23**

This legislation relaxes residency requirements for New York City Marshals by allowing them to reside in the city of New York and the counties of Nassau, Westchester, Suffolk, Orange, Rockland and Putnam at the time of their appointment and during their term of office. The intent is to expand the pool of eligible NYC Marshals, and to provide parity with current permissible residencies for New York City civilian employees, as well as New York City deputy sheriffs.

**A.7273 (Calhoun) – Chapter 482**

This bill would allow the Town of Stony Point to amortize the cost of payments to employees upon separation of service from the town.

Specifically, this legislation permits the town of Stony Point to amortize the cost of accrued and accumulated but unused and unpaid sick leave, personal leave, holiday leave, vacation time, time allowances granted in lieu of overtime compensation, and premiums or contributions with respect to health, dental and vision care insurance plans.

**A.7298 (Thiele) – Chapter 477**

Over the past four years, the Town of East Hampton has operated under deficit budgets as indicated in an audit conducted by the Office of the State Comptroller. The audit also indicates that the Town should incorporate cost-saving measures in subsequent budgets in order to return to a sound financial condition.

One such cost-saving measure involves the consolidation of government services and the implementation of a voluntary separation incentive program for eligible employees. This bill allows payments to employees by the Town to be spread over a ten-year period.

**A.7561-B (Abbate) – Chapter 171**

Currently, Tier 5 members of the New York State and Local Employees' Retirement System members are able to borrow up to 75% of their balance, to be repaid within 5 years. Language granting this opportunity to Tier 5 members of the New York State and Local Police & Fire Retirement System was inadvertently excluded from the enacted law. This legislation extends borrowing privileges to uniformed personnel by adding the necessary authorizing language to Retirement and Social Security Law.

**A.7605A (Abbate) – Chapter 525**

Participating employers in the New York State and Local Employees' Retirement System are required to "pick up" the 3% pension contributions required of Tier 5 members by reducing the salary of each such member by the amount he or she is required to contribute. When Tier 5 was created, an oversight in the drafting process omitted members of the New York State and Local Police & Fire Retirement System from the enacted language. This bill corrects the omission thereby bringing these members into compliance with federal Internal Revenue Code for the purpose of tax exemption.

**A.7834 (Abbate) – Chapter 375**

The purpose of this legislation is to decrease, from 30 days to 15 days, the minimum amount of time within which the filing of a service retirement may take effect for a prospective retiree of the New York State and Local Employees' Retirement System or the New York State and Local Police & Fire Retirement System. Decreasing the processing time frame helps members who are no longer on the state pay roll to receive their pension in a more timely fashion.

**A.7835-B (Abbate) – Chapter 582**

Chapter 105 of the Laws of 2005 amended the death benefit provisions of the Retirement and Social Security Law to provide coverage for members who died while serving on 'active duty, other than for training purposes, pursuant to Title 10 of the United States Code, with the Armed Forces of the United States.' Unfortunately, this coverage excludes some situations that would constitute 'qualified military service' under The Federal Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act").

This legislation brings the NYS Retirement Systems into compliance with the "HEART Act" by the December 31, 2012 deadline, so that they remain qualified governmental pension plans within the meaning of the Internal Revenue Code.

**A.7911-A (Abbate) – Chapter 206**

The Retirement and Social Security Law places limits on the amount that may be earned by a retiree upon returning to public employment. The Comptroller and the New York State and Local Employees' Retirement System have a fiduciary obligation to suspend the payment of retirement benefits to retirees who re-enter the public workforce and whose salaries exceed the earnings limitations.

This legislation permits the Office of the State Comptroller to access the wage reporting system administered by the Department of Taxation and Finance. Such information will be used to verify the income of a retired public employee who returns to public employment and who is also receiving a pension from a state or local pension plan. This information could result in the partial recovery of the pensions of those who earn in excess of the legal limits.

**A.8012 (Abbate) – Chapter 180**

The 8% annual rate of interest used to compute the amount of employer contributions owed to the New York State and Local Employees' Retirement System, the New York City Teachers' Retirement System, the Police Pension Fund, the Fire Pension Fund, and the Board of Education Retirement Systems, will be extended for a one-year period ending on June 30, 2012.

This legislation also extends the 8.25% annual rate used to calculate the amount of interest credited on accumulated members contributions and increased take-home-pay (ITHP) reserves of Tier 1 and Tier 2 members of those retirement systems. This one-year extension would give all concerned officials an



opportunity to determine the most suitable rates for a five-year period and arrive at the result which will best serve the retirement systems and the public interest.

**A.8109-A (Abbate) – Chapter 447**

This legislation clarifies under what circumstances disabled deputy sheriffs can receive disability retirement benefits. The application for disability retirement will not be disapproved if the deputy sheriff has failed to engage directly in criminal enforcement activities that aggregate fifty percent of service time preceding the filing of the application, provided the failure to do so was the result of the disability alleged in the application.

**Pension Legislation for Individuals**

The following laws permit special privileges to members of the Retirement Systems who, through no fault of their own, were not included in certain plans. The employers indicated below will be responsible for all costs associated with the re-opening of the retirement plan.

**Chapter 365 – A.4737 (Thiele) / S.3034 (Lavalle)** - Provides police officer Theodore Raffel, Jr. with a 20-year retirement plan by allowing the village of Southampton to elect to re-open the provisions of the plan.

**Chapter 414 – A.5665 (Canestrari) / S.3550 (McDonald)** - Provides police officers Kate Anslow, Joseph Farrell, Lisa Giddings-Fumarola, Michael Merola, Randy Pastore, Douglas Pinzer and Clifford Ruschmeyer with a 20-year retirement plan by allowing the town of North Greenbush to elect to re-open the provisions of the plan.

**Chapter 369 – A.6043 (Calhoun) / S.3505 (Larkin)** - Provides police officer Michael E. Maresca with a 20-year retirement plan by allowing the village of Maybrook to elect to re-open the provisions of the plan.

**Chapter 483 – A.6747A (Lifton) / S.5413 (O’Mara)** - Provides police officer Michael P. Koval with a 20-year retirement plan by allowing the village of Watkins Glen to elect to re-open the provisions of the plan.

**Chapter 374 – A.7362 (Canestrari) / S.5072 (McDonald)** - Provides police officer Edward A. Miano with a 20-year retirement plan by allowing the town of East Greenbush to elect to re-open the provisions of the plan.

**Chapter 434 – A.7441 (Kirwan) / S.2953A (Larkin)** - Provides police officers Daniel Cameron, Lorenzo D' Angelico, John Jenerose, Matthew M. Kirwan, and Kevin Romero, and firefighters Robert Bain Jr., Mark Bethea, and William Wiseman with a 20-year retirement plan by allowing the city of Newburgh to elect to re-open the provisions of the plan.

**Chapter 539 – A.8270 (Galef) / S.5668 (Ball)** - Provides police officer Jerry R. Raneri with a 20-year retirement plan by allowing the town of Kent to elect to re-open the provisions of the plan.

**Chapter 587 – A.8424 (Crouch) / S.5719A (Libous)** - Provides deputy sheriffs Richard Merrell and Frederick Akshar with a 20-year retirement plan by allowing the county of Broome to elect to re-open the provisions of the plan.

**Chapter 372 – A. 6335-A (Raia) / S.4048-A (Johnson)** - Grants Michelle Merlino retroactive Tier 4 membership in the New York State and Local Employees' Retirement System by changing her effective membership date in the System from March 18, 2010 to November 14, 2008. The late filing was due to a clerical error on the part of the school district and not due to an error on the part of Ms. Merlino.

**Chapter 378 – A.8201 (Abbate) / S.5588 (Farley)** - This bill grants retroactive Tier 4 membership in the New York State and Local Employees' Retirement System to Randy Prock, an employee of the Department of Tax and Finance. Due to an administrative error, his application was not processed in the usual manner and therefore missed the Tier 4 deadline. This legislation was necessary to correct the administrative error.

### **PUBLIC HEARING ON PAY EQUITY IN NYS**

Research has shown that the more an occupation is dominated by women or racial minorities, the less it pays. Many believe that Pay Equity or a system of compensation based on “comparable worth” - evaluating and compensating jobs across titles based on skill, effort, responsibility and working conditions, regardless of the gender and race of those working in them- is a solution to closing the wage gap.

In 1985, New York State performed a study to determine the cause of pay inequities for jobs held by state workers. Based on the findings, comparable worth adjustments were made to several hundred state civil service job titles. Significant progress has been made to close the wage gap in civil service, however studies suggest that gender and racial bias across job titles have reemerged or continue to exist. Around the country, other states and local governments have made similar efforts in the public sector. In New York, there are currently several legislative initiatives to address pay equity concerns in both public and private sector workplaces.

The purpose of the public hearing was to seek comment on: the nature and scope of pay inequity in New York; the adequacy of the response of State government; the status of current pay equity legislation; and to determine if other potential solutions exist. Testimony from the NYS Pay Equity Coalition, the League of Women Voters of NYS, New York State United Teachers, the New York State Bar Association Committee on Women in the Law, and others witnesses confirmed the need to pass a legislative remedy to wage inequities.

Recommended improvements to existing pay equity legislation include: the establishment of a job evaluation system by which comparable worth might be measured and enforced; and the inclusion of gender, race and national origin in the determination of which job titles are eligible for comparable worth adjustments. There was also substantial testimony regarding how poverty in NYS could be reduced by enacting equal pay for comparable worth legislation. Proponents urge further examination of the issue through a new large-scale study and/or the creation of a Task Force on pay equity.

**APPENDIX A**

**ALL BILLS VETOED BY THE GOVERNOR IN 2011**

A.4954 Abbate	Would provide continued health insurance coverage to spouses or dependents of public employees who are injured or made ill as a result of duty.	Veto 60
A.5389 Abbate	Would provide procedures for resolution of disputes between a public employer and Suffolk County Probation Officers.	Veto 73
A.5785 Abbate	Would provide health insurance and supplemental benefits to former employees of the New York City Off-track Betting Corporation.	Veto 62
A.6309A Abbate	Would allow school districts the option of amortizing future payments to the New York State Teachers' Retirement System.	Veto 23
A.7480A DenDekker	Would require an annual report detailing the cost of employing temporary employees to perform the jobs of State employees.	Veto 63
A.8290A Lifton	Would allow certain service retirement benefits for persons engaged in criminal law enforcement and employed in the office of district attorney in Tompkins County.	Veto 48
A.8335 Abbate	Would permit Triborough bridge and tunnel members of the twenty year/age fifty retirement plan, who have incurred contribution deficiencies, to defer full repayment until 2015.	Veto 26

## APPENDIX B

### ALL BILLS THAT PASSED THE ASSEMBLY ONLY IN 2011

A.1780 Rosenthal	Would establish policy of equal pay for both sexes and comparability of value of work and directs the taking of corrective action.
A.5125 Abbate	Would ensure port authority of New York and New Jersey police officers who become ill or injured in the performance of their duties receive full wages.
A.6191 Pretlow	Would authorize the city of Mount Vernon to offer certain retirement options to Paul D'Amore, Christopher Grieco, Wendell Griffin, Erin Holly, Thomas Joy, Patsy Leone and Jeremy Villanueva.
A.6448 Jaffee	Would make it a discriminatory practice for public employers to compensate employees of different sexes differently for work that is of comparable worth.
A.6535 Abbate	Would provide health insurance coverage for surviving spouses or domestic partners of members of the metropolitan transportation authority.
A.7761 Abbate	Would allow employers to suspend a police officer without pay pending disciplinary charges.
A.7780B Abbate	Would provide displacement (“bumping”) rights to members of the labor class of New York State civil service upon the abolition or reduction of positions.
A.7914 Abbate	Would provide that investigators within the division of state police who completed three continuous years or more shall not be demoted without a hearing.
A.7935 Abbate	Would provide binding arbitration rights to certain members of the Triborough Bridge and Tunnel Authority.
A.8110 Abbate	Would allow a former labor class employee, who has been promoted via civil service exam, to retreat back to their previously held position.
A.8291 Abbate	Would provide equal reduction in force and recall provisions to permanently appointed employees appointed to all classes and levels of State and local government.

**2011 SUMMARY SHEET**

<b><u>FINAL ACTION</u></b>	<b><u>ASSEMBLY BILLS</u></b>	<b><u>SENATE BILLS</u></b>	<b><u>TOTAL BILLS</u></b>
<b><u>Bills Reported With or Without Amendment</u></b>			
To Floor; not returning to Committee	7	0	7
To Ways and Means	40	0	40
To Codes	7	0	7
To Rules	5		5
To Judiciary			
<b>Total</b>	59	0	59
<b><u>Bills having Committee Reference Changed</u></b>			
To Transportation	1	0	1
To Codes	1	0	1
To Ways and Means	4	0	4
<b>Total</b>	6	0	6
<b><u>Senate Bills Substituted or Recalled</u></b>			
Substituted		2	2
Recalled		1	1
<b>Total</b>		3	3
<b><u>Bills Defeated in Committee</u></b>	0	0	0
<b><u>Bills Never Reported, Held in Committee</u></b>	222	2	224
<b><u>Bills Never Reported, Died in Committee</u></b>			
<b><u>Bills Having Enacting Clauses Stricken</u></b>	13	0	13
<b><u>Motion to Discharge Lost</u></b>	0	0	0
<b>TOTAL BILLS IN COMMITTEE</b>	300	5	305
<b>Total Number of Committee Meetings Held</b>	5		