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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

OSC No. 39R-1

MEMORANDUM  
RE  
AN ACT

to amend the retirement and social security law, in relation to the form of a membership application (Part A); and to amend the state finance law, in relation to the tobacco revenue guarantee fund (Part B); to amend the state finance law, in relation to The New York state teen health education fund (Part C); to amend the abandoned property law, in relation to payment technologies (Part D); and to amend the county law, in relation to filing an annual report regarding certain expenditures for indigent legal services (Part E)

PURPOSE: To make technical changes relating to removing the requirement that an application for membership in the New York State and Local Employees' Retirement System or the New York State and Local Police and Fire Retirement System be notarized (acknowledged); to correctly categorize certain funds as joint custody; to authorize regulations for new payment technologies; and to eliminate the filing of an annual report regarding certain expenditures for indigent legal services with the State Comptroller.

SUMMARY OF PROVISIONS:

Part A:

Section 1 of Part A amends the opening Paragraph of Subdivision a of Section 40 of the Retirement and Social Security Law by deleting language requiring the acknowledgement of a membership application for the New York State and Local Employees' Retirement System.

Section 2 of Part A amends the opening Paragraph of Subdivision a of Section 340 of the Retirement and Social Security Law by deleting language requiring the acknowledgement of a membership application for the New York State and Local Police and Fire Retirement System.

Section 3 of Part A sets forth an immediate effective date.

Part B:

Section 1 of Part B amends Section 97-cccc of the State Finance Law to correctly categorize the Tobacco Revenue Guarantee Fund as a joint custody fund held by the Commissioner of Taxation and Finance and the State Comptroller.

Section 2 of Part B sets forth an immediate effective date.

Part C:

Section 1 of Part C amends Section 99-u of the State Finance Law to correctly categorize the New York State Teen Health Fund as a joint custody fund held by the Commissioner of Taxation and Finance and the State Comptroller.

Section 2 of Part C sets forth an immediate effective date.

Part D:

Section 1 of Part D amends Section 1414 of the abandoned property law to include within the general authorization for the state comptroller to promulgate rules and regulations to enforce the provisions of the abandoned property law express authorization to promulgate rules and regulations relating to the inclusion of new payment technologies within the definition of abandoned property.

Section 2 sets forth an immediate effective date.

Part E:

Section 1 of Part E amends Section 722-f of the County Law to conform language relating to the filing annual report regarding certain expenditures for indigent legal services with the Office of Indigent Legal Services.

Section 2 sets forth an immediate effective date.

JUSTIFICATION: Part A of this proposal removes the requirement that an application for membership in the New York State and Local Employees' Retirement System or the New York State and Local Police and Fire Retirement System be notarized (acknowledged).

Courts have consistently have found that a defective notarization or even the total absence of a notarization does not necessarily invalidate an otherwise valid act, the requirement on a membership application is simply an unnecessary burden. (See In re Matter of Roberta Venet v. The Teachers' Ret. Sys. of the City of New York, et.al., 552 N.Y.S.2d 275 (1st Dep't. 1990) and Estate of Prospect v. N.Y. State Teachers' Ret. Sys. 13 A.D.3d 699, 785 N.Y.S.2d 774 (3rd Dep't 2004)).

Parts B and C of this proposal correct the improper designation of the Tobacco Revenue Guarantee Fund and the New York State Teen Health Fund as sole custody funds. Monies in the Treasury of the State of New York are held in the joint custody of the Commissioner of Taxation and Finance and the State Comptroller.

Part D of this proposal authorizes the State Comptroller to promulgate rules and regulations relating to the inclusion of new payment technologies within the definition of abandoned property. This change is in recognition that the appearance of new technological advances are ongoing. In the twenty-first century, the pace of technological advancement is rapid and the need to maintain such pace with respect to new and diverse methods of payment is critical. As new innovations are developed for the transfer of monies, it is necessary for the State Comptroller in his capacity as the custodian of the Abandoned Property Fund, to collect any such monies that are deemed abandoned in furtherance of the policy of the state which is, while protecting the interest of the owners thereof, to utilize escheated lands and unclaimed property for the benefit of all the people of the state.

Part E of this proposal conforms the reporting requirement in County Law § 722-f with the statutory changes made in 2010 with the creation of the Office of Indigent Legal Services and Indigent Legal Services Board ("Board"). As part of the 2010 enactment, portions of former State Finance Law § 98-b were repealed, including the provisions that moneys from the Indigent Legal Services Fund be distributed at the direction of the State Comptroller upon demonstration of the "maintenance of effort" provision shown as part of a municipality's annual report. The Office of Indigent Legal Services, along with its Board, is now responsible for determining the distribution of funds and grants to be provided pursuant to the ILSF (L 2010, Ch 56).

County Law § 722-f, however, was not amended in 2010 to reflect the statutory changes in responsibilities to State Finance Law § 98-b. This amendment will conform the reporting requirement in County Law § 722-f with the statutory changes made in 2010 by providing that the Office of Indigent Legal Services, instead of the State Comptroller, develop and receive the annual report.

The Comptroller urges the passage of this legislation.

PRIOR LEGISLATIVE HISTORY: New Bill

FISCAL IMPLICATIONS: None to the State.

EFFECTIVE DATE: This act shall take effect immediately.