

4706

2013-2014 Regular Sessions

I N S E N A T E

April 18, 2013

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

AN ACT to amend the retirement and social security law, in relation to establishing a defined contribution plan

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The retirement and social security law is amended by adding
2 a new section 618 to read as follows:
3 S 618. DEFINED CONTRIBUTION PLAN. 1. THE DEFINED CONTRIBUTION PLAN IS
4 HEREBY ESTABLISHED. THE COMPTROLLER SHALL ADOPT RULES AND REGULATIONS
5 REGARDING THE STANDARDS AND REQUIREMENTS OF THE DEFINED CONTRIBUTION
6 PLAN ESTABLISHED PURSUANT TO THIS SECTION, INCLUDING SELECTION OF FINAN-
7 CIAL ORGANIZATIONS FOR INVESTMENT PURPOSES.
8 2. A. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE DEFINED
9 CONTRIBUTION PLAN SHALL BE ESTABLISHED FOR ALL NON-CIVIL SERVICE
10 APPOINTED EMPLOYEES AND ELECTED OFFICIALS EMPLOYED BY THE STATE OF NEW
11 YORK OR ANY PUBLIC EMPLOYER WHICH HAS ELECTED TO PARTICIPATE IN THE NEW
12 YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM.
13 B. THE COMPTROLLER SHALL ENTER INTO WRITTEN AGREEMENTS WITH ONE OR
14 MORE FINANCIAL ORGANIZATIONS TO ADMINISTER THE DEFINED CONTRIBUTION PLAN
15 FOR MEMBERS AND TO INVEST FUNDS HELD PURSUANT TO SUCH PLAN.
16 C. THE RULES AND REGULATIONS PROMULGATED BY THE COMPTROLLER SHALL
17 ESTABLISH STANDARDS FOR THE SELECTION OF FINANCIAL ORGANIZATIONS,
18 AUTHORIZED TO DO BUSINESS IN THIS STATE, TO PARTICIPATE IN SUCH PLANS,
19 INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING CRITERIA: (I) RATES OF
20 COMMISSION, BROKERAGE AND OTHER FEES, ADMINISTRATIVE EXPENSES AND
21 RELATED SERVICE CHARGES IMPOSED BY THE FINANCIAL ORGANIZATION; (II)
22 VARIETY OF TYPES OF INVESTMENT OPPORTUNITIES OFFERED BY THE FINANCIAL
23 ORGANIZATION AND/OR AMONG THE FINANCIAL ORGANIZATIONS SELECTED AND THE
24 ABILITY TO TRANSFER AMONG SUCH OPPORTUNITIES; (III) THE STABILITY OF THE
25 FINANCIAL ORGANIZATION AS EVIDENCED BY EXPERIENCE, REPUTATION, ASSETS

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

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1 AND HOLDINGS, ABILITY TO GUARANTEE SPECIFIC RATES OF RETURN; (IV) ABILI-
2 TY TO COMPLY WITH REPORTING REQUIREMENTS TO THE COMPTROLLER AND TO
3 PARTICIPANTS IN SUCH A PLAN; AND (V) SUCH OTHER FACTORS WHICH WOULD BE
4 CONSIDERED BY A PRUDENT INVESTOR IN SUCH A PLAN.

5 D. THE PRESIDENT OF THE STATE CIVIL SERVICE COMMISSION, SUBJECT TO THE
6 RULES AND REGULATIONS OF THE COMPTROLLER, SHALL PROVIDE ASSISTANCE TO
7 ANY PUBLIC EMPLOYER AS IS APPROPRIATE TO THE PROVISIONS OF THIS SECTION.

8 3. A PUBLIC EMPLOYER SHALL CONTRIBUTE THREE PERCENT OF SUCH AFFECTED
9 EMPLOYEE'S ANNUAL SALARY TOWARDS SUCH DEFINED CONTRIBUTION PLAN. ALL
10 NON-CIVIL SERVICE APPOINTED EMPLOYEES AND ELECTED OFFICIALS ARE REQUIRED
11 TO CONTRIBUTE THREE PERCENT OF THEIR SALARY TOWARDS THE DEFINED CONTRIB-
12 UTION PLAN. SUCH EMPLOYEES MAY CONTRIBUTE UP TO ONE HUNDRED PERCENT,
13 NOT TO EXCEED SIXTEEN THOUSAND FIVE HUNDRED DOLLARS OF HIS OR HER SALARY
14 TOWARDS THE DEFINED CONTRIBUTION PLAN.

15 4. THE TERM "FINANCIAL ORGANIZATION" SHALL MEAN AN ORGANIZATION
16 AUTHORIZED TO DO BUSINESS IN THE STATE OF NEW YORK AND (A) WHICH IS AN
17 AUTHORIZED FIDUCIARY TO ACT AS A TRUSTEE PURSUANT TO THE PROVISIONS OF
18 AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF
19 1974" AS SUCH PROVISIONS MAY BE AMENDED FROM TIME TO TIME, OR AN INSUR-
20 ANCE COMPANY; AND (B) (I) IS LICENSED OR CHARTERED BY THE DEPARTMENT OF
21 FINANCIAL SERVICES; (II) IS CHARTERED BY AN AGENCY OF THE FEDERAL
22 GOVERNMENT; (III) IS SUBJECT TO THE JURISDICTION AND REGULATION OF THE
23 SECURITIES AND EXCHANGE COMMISSION OF THE FEDERAL GOVERNMENT; OR (IV) IS
24 ANY OTHER ENTITY OTHERWISE AUTHORIZED TO ACT IN THIS STATE AS A TRUSTEE
25 PURSUANT TO THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE
26 RETIREMENT INCOME SECURITY ACT OF 1974" AS SUCH PROVISIONS MAY BE
27 AMENDED FROM TIME TO TIME.

28 5. THE CURRENT RETIREMENT PLANS FOR NON-CIVIL SERVICE APPOINTED
29 EMPLOYEES AND ELECTED OFFICIALS SHALL BE FROZEN AS OF THE EFFECTIVE DATE
30 OF THIS SECTION. NON-CIVIL SERVICE APPOINTED EMPLOYEES AND ELECTED OFFI-
31 CIALS SHALL NO LONGER CONTRIBUTE TO THEIR CURRENT RETIREMENT PLAN,
32 HOWEVER, SUCH PERSONS SHALL RECEIVE THE BENEFITS THEY HAVE ACCRUED UP TO
33 THE EFFECTIVE DATE OF THIS SECTION UPON RETIREMENT. THE MEMBERSHIP OF A
34 NON-CIVIL SERVICE APPOINTED EMPLOYEE OR ELECTED OFFICIAL IN ANY STATE
35 RETIREMENT SYSTEM SHALL REMAIN OPEN IF HE OR SHE BECOMES A MEMBER OF THE
36 DEFINED CONTRIBUTION PLAN.

37 S 2. This act shall take effect on the first of the fiscal year next
38 succeeding the date on which it shall have become a law. Effective imme-
39 diately, the addition, amendment and/or repeal of any rule or regulation
40 necessary for the implementation of this act on its effective date are
41 authorized and directed to be made and completed on or before such
42 effective date.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill would change the retirement plan coverage for certain exist-
ing and future elected officials and non-civil service appointees who
are employed by the State of New York or any public employer which
participates in the New York State and Local Employees' Retirement
System (NYS&LERS). Affected employees and their employers would be
REQUIRED to contribute 3% of annual compensation to a defined contrib-
ution plan. The Comptroller shall select one or more financial organiza-
tions to administer the plan and to invest the funds held pursuant to
such plan. Pursuant to Chapter 18 of the Laws of 2012, participation is
OPTIONAL in a defined contribution plan for non-union employees hired on
or after July 1, 2013 whose salary is \$75,000 or higher.

This legislation would freeze the benefit accruals of current members
in the NYS&LERS as of the effective date. If this becomes law, this bill

is likely to face a constitutional challenge based upon the guarantee that a member's benefits may not be diminished.

If this bill is enacted, relatively few members would be affected. There will not be a cost to the State or the participating employers in the NYS&LERS.

Summary of relevant resources:

Data: March 31, 2012 Actuarial Year End File with distributions of membership and other statistics displayed in the 2012 Report of the Actuary and 2012 Comprehensive Annual Financial Report.

Assumptions and Methods: 2010, 2011 and 2012 Annual Report to the Comptroller on Actuarial Assumptions, Codes Rules and Regulations of the State of New York: Audit and Control.

Market Assets and GASB Disclosures: March 31, 2012 New York State and Local Retirement System Financial Statements and Supplementary Information.

Valuations of Benefit Liabilities and Actuarial Assets: summarized in the 2012 Actuarial Valuations report.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This estimate, dated February 1, 2013 and intended for use only during the 2013 Legislative Session, is Fiscal Note No. 2013-76, prepared by the Actuary for the New York State and Local Police and Fire Retirement System.