

# STATE OF NEW YORK

5088--A

2021-2022 Regular Sessions

## IN ASSEMBLY

February 10, 2021

Introduced by M. of A. ABINANTI, EPSTEIN, DICKENS, THIELE, ENGLEBRIGHT, SEAWRIGHT, McDONOUGH, PAULIN, FAHY, DeSTEFANO -- read once and referred to the Committee on Governmental Employees -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to provide temporary retirement incentive for certain public employees

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

1 Section 1. This act enacts into law components of legislation that  
2 would establish an age 55/25 temporary incentive for certain public  
3 employees.

4 § 2. Legislative findings. The legislature finds and declares that the  
5 retirement benefit for certain public employees who are above age 55 and  
6 with 25 years of service provided for in this act is intended only to be  
7 temporary in nature for employees who are eligible to receive and qual-  
8 ify for the applicable benefit during the applicable time periods speci-  
9 fied in this act. Further, nothing in this act shall be construed to  
10 create an expectation of a future or continuing retirement benefit for  
11 any public employee who is not eligible to receive and qualify for the  
12 retirement benefits herein during the applicable time periods.

13 § 3. Definitions. As used in this act, unless the context clearly  
14 requires otherwise:

15 (a) "Retirement system" means the New York state and local employees'  
16 retirement system and the New York state teachers' retirement system.

17 (b) "Teachers' retirement system" means the New York state teachers'  
18 retirement system.

19 (c) "Participating employer" means an educational employer, the state-  
20 operated institutions of the state university of New York, and a commu-  
21 nity college operating under a program of the state university of New  
22 York, and which participates in a retirement system as defined in this  
23 section.

24 (d) "Educational employer" means a participating employer which is a  
25 school district, a board of cooperative educational services, a voca-

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

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1 tional education and extension board, an institution for the instruction  
2 of the deaf and of the blind as enumerated in section 4201 of the educa-  
3 tion law, or a school district as enumerated in section 1 of chapter 566  
4 of the laws of 1967, as amended; who employ members who participate in  
5 the New York state teachers' retirement system and the New York state  
6 and local employees' retirement system.

7 (e) "Eligible employee" means a person who is a member of the New York  
8 State teachers' retirement system or the New York State and local  
9 employees retirement system and who is an employee of an educational or  
10 participating employer as defined in subdivision (c) or (d) of this  
11 section.

12 (f) "Active service" means service while being paid on the payroll,  
13 provided that (i) a leave of absence with pay shall be deemed active  
14 service; (ii) other approved leave without pay not to exceed twelve  
15 weeks from February 1, 2021 and the commencement of the designated open  
16 period; and (iii) the period of time subsequent to the June 2021 school  
17 term and on or before August 31, 2021 for an eligible employee as  
18 defined in this act who is otherwise in active service on the effective  
19 date of this act shall be deemed active service.

20 (g) "Open period" means the period beginning with the commencement  
21 date as defined in subdivision (h) of this section; provided, however,  
22 for the state-operated institutions of the state university of New York  
23 and community colleges, the open period shall be as specified by the  
24 appropriate board of trustees, and shall be no less than thirty days but  
25 no longer than ninety days in length; provided however that there shall  
26 be only one such open period and any such period shall not extend beyond  
27 September 11, 2021 for educational employers and shall not extend beyond  
28 December 31, 2021 for the state-operated institutions of the state  
29 university of New York and community colleges. For the purposes of  
30 retirement pursuant to this act, a service retirement application must  
31 be filed with the appropriate retirement system not less than fourteen  
32 days prior to the effective date of the retirement, unless a shorter  
33 time period is permitted under law.

34 (h) "Commencement date" means the first day the retirement benefit  
35 mandated by this act shall be made available, which shall mean a date or  
36 dates on or after the effective date of this act to be determined by a  
37 participating employer; provided, however, that for an educational  
38 employer, the commencement date shall be June 30, 2021.

39 § 4. Notwithstanding any other provision of law, any eligible employee  
40 serving in an eligible title whose participating employer has elected to  
41 participate pursuant to section five of this act and who (a) has been  
42 continuously in the active service of a participating employer from  
43 February 1, 2021 to the date immediately prior to the commencement date  
44 of the applicable open period, (b) files an application for service  
45 retirement that is effective during the open period, and (c) is other-  
46 wise eligible for a service retirement as of the effective date of the  
47 application for retirement shall be entitled to the retirement benefit  
48 provided in section six of this act.

49 § 5. On or before June 30, 2021, a participating employer as defined  
50 in section three of this act, may elect to provide its employees the  
51 retirement incentive authorized by this act by (a) the enactment of a  
52 local law or (b) in the case of a participating or educational employer  
53 which is not empowered to act by local law, by resolution of its govern-  
54 ing body, provided however, no state or local law or resolution enacted  
55 pursuant to this section shall in any manner supersede any local char-  
56 ter, provided further, that for an educational employer such election

1 must be made by June 30, 2021. For a community college operating under  
2 the program of the state university of New York, such election shall be  
3 made by the board of trustees of such community college subject to the  
4 approval of its sponsor. A copy of such local law or resolution shall be  
5 filed with the appropriate retirement system or systems, and if applica-  
6 ble, on forms provided by such system. The local law or resolution shall  
7 be accompanied by the affidavit of the chief executive officer or the  
8 comparable executive branch of the state shall be deemed to have made  
9 election under this section upon its enactment.

10 § 6. Notwithstanding any other provision of law, an eligible employee  
11 who is: (a) a member of a retirement system, and (b) entitled to a  
12 retirement benefit pursuant to section four of this act may retire  
13 during the open period without the reduction of his or her retirement  
14 benefit that would otherwise be imposed by article 11 or 15 of the  
15 retirement and social security law if he or she has attained the age of  
16 55 and has completed at least 25 or more years of creditable service. An  
17 eligible employee who is covered by the provisions of articles 11 and 15  
18 of the retirement and social security law shall retire under the  
19 provisions of articles 11 and 15 of the retirement and social security  
20 law.

21 § 7. Notwithstanding any other provision of law, this act shall have  
22 no impact on retirement incentives, options or inducements offered as  
23 part of a contractual agreement between an eligible employee and eligi-  
24 ble employer which were negotiated prior to the effective date of this  
25 act.

26 § 8. The pension benefit costs of section six of this act shall be  
27 paid by the participating employers as provided by applicable law for  
28 each retirement system covered by this act over a period not to exceed  
29 five years commencing in state fiscal year ending March 31, 2023.

30 § 9. Severability clause. If any clause, sentence, paragraph, subdivi-  
31 sion, section or part of this act shall be adjudged by any court of  
32 competent jurisdiction to be invalid, such judgment shall not affect,  
33 impair, or invalidate the remainder thereof, but shall be confined in  
34 its operation to the clause, sentence, paragraph, subdivision, section  
35 or part thereof directly involved in the controversy in which such judg-  
36 ment shall have been rendered. It is hereby declared to be the intent of  
37 the legislature that this act would have been enacted even if such  
38 invalid provisions had not been included herein.

39 § 10. This act shall take effect immediately.

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

This bill would eliminate the early retirement reductions for Tier 2,  
3, 4, 5 and 6 members of the New York State and Local Employees' Retirement  
System (ERS) and the New York State Teachers Retirement System who  
have attained age 55 and have accrued 25 years of creditable service,  
who are employed by educational institutions and who retire within their  
employer's 90 day open election period, which may not extend beyond  
December 31, 2021.

If this bill is enacted, insofar as it affects the New York State and  
Local Employees' Retirement System (ERS), the additional cost for each  
member who receives these benefits will vary depending on the member's  
age, years of service, plans and final average salary. We estimate that  
the per-member cost could average approximately 120% of a member's final  
average salary.

The exact number of members who would be affected by this cannot be  
readily determined.

These costs would be borne entirely by the State of New York. A precise cost cannot be determined until each member is approved for retirement under the incentive. After the election deadline, a cost will be calculated (and billed to the State) based on those benefiting from this provision.

Summary of relevant resources:

Membership data as of March 31, 2020 was used in measuring the impact of the proposed change, the same data used in the April 1, 2020 actuarial valuation. Distributions and other statistics can be found in the 2020 Report of the Actuary and the 2020 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2020 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes, Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2020 New York State and Local Retirement System Financial Statements and Supplementary Information.

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

This fiscal note does not constitute a legal opinion on the viability of the proposed change nor is it intended to serve as a substitute for the professional judgment of an attorney.

This estimate, dated January 8, 2021, and intended for use only during the 2021 Legislative Session, is Fiscal Note No. 2021-8, prepared by the Actuary for the New York State and Local Retirement System.

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

This bill would provide a temporary retirement incentive during fiscal year 2021-2022. This incentive would permit eligible members of an educational employer to retire without an early retirement reduction upon attainment of at least age 55 with 25 years of service. Currently 30 years of service are required in order to retire without reduction. In order to receive this benefit, a member must retire during the designated open period, beginning on June 30, 2021 and not extending beyond September 11, 2021. The cost of this incentive will be socialized across all employers.

The annual cost to the employers of members of the New York State Teachers' Retirement System for this benefit is estimated to be \$46.7 million or .27% of payroll if this bill is enacted.

Member data is from the System's most recent actuarial valuation files, consisting of data provided by the employers to the Retirement System. Data distributions and statistics can be found in the System's Comprehensive Annual Financial Report (CAFR). System assets are as reported in the System's financial statements, and can also be found in the CAFR. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report except rates of retirement have been modified to reflect participation in the incentive.

The source of this estimate is Fiscal Note 2021-10 dated February 3, 2021 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2021 Legislative Session. I, Richard A. Young, am the Actuary for the New York State Teachers' Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.