

STATE OF NEW YORK

5213

2023-2024 Regular Sessions

IN ASSEMBLY

March 6, 2023

Introduced by M. of A. BUTTENSCHON, AUBRY, DeSTEFANO, DURSO, JACKSON, LUPARDO, McDONOUGH, RAMOS, TANNOUSIS, ZEBROWSKI -- read once and referred to the Committee on Governmental Employees

AN ACT in relation to enabling public employers to offer certain temporary retirement incentives for certain public employees

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

1 Section 1. Legislative findings. The legislature finds and declares
2 that the state is experiencing economic difficulties and in order to
3 avoid layoffs of public employees, a retirement incentive is necessary.
4 However, nothing in this act shall be construed to create an expectation
5 of a future or continuing retirement benefit for any public employee who
6 is not eligible to receive and qualify for the retirement benefits in
7 this act during the applicable time periods.

8 § 2. Definitions. For purposes of this act, the following terms shall
9 have the following meanings:

10 (a) "Retirement system" means the New York state and local employees'
11 retirement system, the New York state teachers' retirement system, the
12 New York city teachers' retirement system, the New York city board of
13 education retirement system or the New York city employees' retirement
14 system, exclusive of the retirement plans established pursuant to
15 sections 13-156 and 13-157 of the administrative code of the city of New
16 York.

17 (b) "State employer" means:

18 (1) the executive branch of the state;

19 (2) the state-operated institutions of the state university of New
20 York;

21 (3) the statutory and contract colleges operated pursuant to section
22 357 of the education law;

23 (4) the state university construction fund (hereinafter referred to in
24 this act as the "fund");

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

LBD05022-02-3

1 (5) a cooperative extension association (hereinafter referred to in
2 this act as the "association");

3 (6) the city university of New York as defined in subdivision 2 of
4 section 6202 of the education law;

5 (7) the unified court system;

6 (8) the senate;

7 (9) the assembly; and

8 (10) joint legislative employers.

9 (c) "Participating employer" means an employer, other than a state
10 employer, which participates in a retirement system. Such term shall
11 include a community college operating under the program of state univer-
12 sity of New York.

13 (d) "Educational employer" means a participating employer which is a
14 school district, a board of cooperative educational services, a voca-
15 tional education and extension board, an institution for the instruction
16 of the deaf and of the blind pursuant to section 4201 of the education
17 law, or a school district pursuant to section 1 of chapter 566 of the
18 laws of 1967, as amended.

19 (e) (1) "Eligible employee" means a person who is a member of a
20 retirement system who is an employee in the executive branch of a state
21 employer or an employee of a state employer or a participating employer
22 who has attained fifty years of age and has at least twenty-five years
23 of creditable service or has attained fifty-five years of age and has at
24 least ten years of creditable service in a retirement system, but such
25 term shall not include the following persons:

26 (i) elected officials, judges or justices appointed to or serving in a
27 court of record and acting village justices;

28 (ii) chief administrative officers of participating employers which
29 participate in a teachers' retirement system;

30 (iii) officers described in sections 4, 41-a, 46, 61, 70, 70-a, 169
31 (including those officers whose salary is established pursuant to salary
32 plans described in subdivision 3 of section 169), 180 and subdivision 1
33 of section 41 of the executive law and any agency or department head
34 appointed by the governor, comptroller or attorney general;

35 (iv) appointed members of boards or commissions, any of whose members
36 are appointed by the governor or by another state officer or body;

37 (v) nonjudicial officers and employees of the unified court system,
38 unless the chief administrator of the courts elects as provided herein,
39 which election shall cover only nonjudicial officers and employees hold-
40 ing positions in any title in the classified service of the unified
41 court system;

42 (vi) officers or employees of the senate unless the senate adopts a
43 resolution authorizing the temporary president to file the election as
44 provided in this subdivision;

45 (vii) officers or employees of the assembly unless the assembly adopts
46 a resolution authorizing the speaker of the assembly to file the
47 election as provided in this subdivision; and

48 (viii) officers or employees of joint legislative employers unless:

49 a. with respect to officers or employees of the legislative library,
50 legislative messenger service, legislative health service, legislative
51 ethics committee, the legislative bill drafting commission, and the
52 joint line of the legislative task force on demographic research and
53 reapportionment, the senate and assembly adopt a concurrent resolution
54 authorizing the temporary president of the senate and the speaker of the
55 assembly to jointly file an election as provided in this subdivision;

1 b. with respect to officers or employees of components of the senate
2 as identified pursuant to section 90 of the legislative law, the senate
3 adopts a resolution authorizing the temporary president to file an
4 election for officers or employees of those components designated in
5 such resolution; and

6 c. with respect to officers or employees of components of the assembly
7 as identified pursuant to section 90 of the legislative law, the assem-
8 bly adopts a resolution authorizing the speaker of the assembly to file
9 an election for officers or employees of those components designated in
10 such resolution.

11 (2) Any election under subparagraphs (v) through (viii) of paragraph
12 one of this subdivision to make available the retirement incentive
13 provided by this act shall be in writing and filed with the state comp-
14 troller not later than ninety days after the effective date of this act.
15 Notwithstanding any other provision of this act, each such filing shall
16 specify the commencement date of the open period.

17 (3) For the purposes of paragraph (vi), (vii) or (viii) of paragraph
18 one of this subdivision, an employee of the legislature shall be as such
19 term is defined in section 7-a, 7-b or 7-d of the legislative law or by
20 any other provision of law which classifies employees of an entity to be
21 legislative employees for all purposes, but shall not include senators
22 or members of the assembly. The term "joint legislative employer" shall
23 mean legislative commissions, committees, task forces, councils or simi-
24 lar bodies whose membership is comprised of both senators and assembly
25 members, or which consist of commissioners, or the majority of whose
26 membership is appointed by one or more of the following: the temporary
27 president of the senate, the speaker of the assembly, the minority lead-
28 er of the senate, and/or the minority leader of the assembly. The tempo-
29 rary president of the senate and the speaker of the assembly shall be
30 the joint legislative employer of the employees of the legislature
31 referred to in sections 7-a and 7-b of the legislative law.

32 (f) "College faculty" means an employee, not in the classified
33 service, of a state employer described in paragraphs 2, 3, 4, 5 and 6 of
34 subdivision (b) of this section or of a community college who is a
35 member of a teachers' retirement system, or the New York state and local
36 employees' retirement system.

37 (g) "Active service" means service while being paid on the payroll,
38 provided that:

39 (1) a leave of absence with pay shall be deemed active service;

40 (2) other approved leave without pay not to exceed twelve weeks from
41 February 1, 2023 and the commencement of the designated open period; and

42 (3) the period of time subsequent to the June 2023 school term and on
43 or before August 31, 2023 for a teacher (or other employee employed on a
44 school-year basis) who is otherwise in active service on the effective
45 date of this act shall be deemed active service.

46 (h) "Open period" means the period beginning with the commencement
47 date as defined in subdivision (i) of this section and shall be ninety
48 days in length, provided however that there shall be only one such open
49 period and any such period shall not extend beyond September 30, 2023
50 for a state employer and December 31, 2023 for a participating employer.
51 For educational employers who make election after July 15, 2023, the
52 open period shall begin immediately after such election, and shall not
53 extend beyond October 15, 2023. For the purposes of retirement pursuant
54 to this act, a service retirement application shall be filed with the
55 appropriate retirement system not less than fourteen days prior to the

1 effective date of retirement to become effective, unless a shorter peri-
2 od of time is permitted under law.

3 (i) "Commencement date" means the first day the retirement benefit
4 mandated by this act shall be made available, which shall mean a date or
5 dates on or after the effective date of this act to be determined by the
6 director of state operations for the executive branch of the state, or
7 for any other state employer or any participating employer which elects
8 to participate pursuant to section four of this act, a date on or after
9 the effective date of this act, provided, however, that for an educa-
10 tional employer which elects to participate pursuant to subdivision (d)
11 of this section, the commencement date shall be July 15, 2023 or imme-
12 diately after election of the retirement incentive for educational
13 employers who elect after July 15, 2023 and provided, further that for
14 participating employers which elect to participate pursuant to section
15 four of this act, except the city of New York and participating employ-
16 ers which are not empowered to act by local law, the commencement date
17 shall be November 1, 2023. The director of state operations shall notify
18 the head of the appropriate retirement system of the date of the open
19 period applicable to employees of the executive branch or of a state
20 employer prior to the commencement date.

21 § 3. (a) A state employer which elects to participate pursuant to
22 section four of this act, a participating employer which is not
23 empowered to act by local law which elects to participate pursuant to
24 section four of this act, or the city of New York, if it elects to
25 participate pursuant to section four of this act shall establish a
26 commencement date for the retirement benefit established under section
27 six of this act in the following manner:

28 (1) for the executive branch, the director of state operations shall
29 establish the commencement date in writing to the appropriate retirement
30 system;

31 (2) for state employers described in paragraphs 2, 3, 4, 5 and 6 of
32 subdivision (b) of section two of this act and participating employers
33 that are not empowered to act by local law, its governing body shall
34 adopt a resolution establishing a commencement date;

35 (3) for state employers described in paragraphs 7, 8, 9 and 10 of
36 subdivision (b) of section two of this act, the person or persons who
37 make the election to offer the retirement incentive shall establish a
38 commencement date in writing to the appropriate retirement system; and

39 (4) for the city of New York, the chief executive officer shall issue
40 an executive order establishing the commencement date, provided, howev-
41 er, no executive order, in the case of the city of New York issued
42 pursuant to this section, shall in any manner supersede any local char-
43 ter. A copy of any such resolution or executive order in the case of
44 the city of New York establishing a commencement date shall be filed
45 with the appropriate retirement system or systems, and, if applicable,
46 on forms provided by such system. The resolution or executive order in
47 the case of the city of New York shall be accompanied by the affidavit
48 of the chief executive officer or other comparable official certifying
49 the commencement date.

50 (b) A state employer, participating employer which is not empowered to
51 act by local law which elects to participate pursuant to section four of
52 this act, or the city of New York if it elects to participate pursuant
53 to section four of this act shall be required to establish a commence-
54 ment date under subdivision (a) of this section for the retirement bene-
55 fit established under section six of this act. In the event that a state
56 employer, a participating employer which is not empowered to act by

1 local law which elects to participate pursuant to section four of this
2 act, or the city of New York if it elects to participate pursuant to
3 section four of this act fails to establish a commencement date for the
4 retirement benefit established under section six of this act, the
5 commencement date for the eligible employees of a state employer shall
6 be July 15, 2023. The commencement date for the eligible employees of
7 all other employers referenced in this subdivision shall be September 1,
8 2023.

9 § 4. On or before September 1, 2023, a participating employer or a
10 state employer described in paragraphs 2, 3, 4, 5 and 6 of subdivision
11 (b) of section two of this act may elect to provide its employees the
12 retirement incentive authorized by this act by:

13 (a) the enactment of a local law; or

14 (b) in the case of a participating employer which is not so empowered
15 to act by local law or a state employer described in paragraphs 2, 3, 4,
16 5 and 6 of subdivision (b) of section two of this act, by the adoption
17 of a resolution of its governing body, provided however, no local law or
18 resolution enacted pursuant to this section shall in any manner super-
19 sede any local charter, provided further, that for an educational
20 employer such election shall be made thirty days after the effective
21 date of this act. For a community college operating under the program
22 of state university of New York, such election shall be made by the
23 board of trustees of such community college subject to the approval of
24 its sponsor. A copy of such law or resolution shall be filed with the
25 appropriate retirement system or systems, and, if applicable, on forms
26 provided by such system. The local law or resolution shall be accompa-
27 nied by the affidavit of the chief executive officer or other comparable
28 official certifying the validity of such local law or resolution. The
29 executive branch of the state shall be deemed to have made an election
30 under this section upon its enactment.

31 § 5. Notwithstanding any other provision of law, any eligible employee
32 who has been continuously in the active service of a state employer or
33 of a participating employer from February 1, 2023 to the date immediat-
34 ely prior to the commencement date of the applicable open period, files
35 an application for service retirement that is effective during the open
36 period, and is eligible for a service retirement pursuant to this act
37 because he or she has attained the age of fifty and has at least twen-
38 ty-five years of creditable service or has attained the age of fifty-
39 five and has at least ten years of creditable service, as of the effec-
40 tive date of the application for retirement shall be entitled to the
41 retirement benefit provided in section six of this act.

42 § 6. (a) Notwithstanding any other provision of law, an eligible
43 employee who is a member of a retirement system and who is entitled to a
44 retirement benefit pursuant to section five of this act may retire
45 during the open period without the reduction of his or her retirement
46 benefit that would otherwise be imposed by article 11 or 15 of the
47 retirement and social security law if he or she has attained the age of
48 fifty and has completed at least twenty-five years of creditable service
49 or has attained the age of fifty-five and has completed at least ten
50 years of creditable service. An eligible employee who is covered by the
51 provisions of articles 11 and 15 of the retirement and social security
52 law shall retire under the provisions of articles 11 and 15 of the
53 retirement and social security law.

54 (b) The director of state operations, the chief executive officer of
55 the city of New York, or chief executive officer or governing board, as
56 appropriate, of the participating employer may deny participation in the

1 retirement benefit provided by subdivision (a) of this section if the
2 director of state operations, the chief executive officer of New York
3 city or the chief executive officer or governing board of the partic-
4 ipating employer makes a determination that the employee holds a posi-
5 tion that is deemed critical to the maintenance of public health and
6 safety.

7 (c) The action of the director of state operations, the chief execu-
8 tive officer of the city of New York, or chief executive officer or
9 governing board, as appropriate, of the participating employer in deny-
10 ing the retirement benefit provided for in subdivision (a) of this
11 section to any individual shall be subject to review in the manner
12 provided for in article 78 of the civil practice law and rules. Such
13 action for review pursuant to article 78 of the civil practice law and
14 rules shall only be commenced by the individual that was denied the
15 retirement benefit provided by subdivision (a) of this section.

16 (d) After making any such determination under subdivision (b) of this
17 section, the director of state operations, the chief executive officer
18 of the city of New York and the chief executive officer or governing
19 board, as appropriate, of the participating employer shall notify the
20 appropriate retirement system or teachers' retirement system of its
21 determination.

22 § 7. The pension benefit costs of section six of this act shall be
23 paid by employers as provided by applicable law for each retirement
24 system covered by this act over a period not to exceed five years
25 commencing in the state fiscal year ending March 31, 2025.

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

35 § 9. This act shall take effect immediately.

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

This bill would allow retirement at age 50 for certain members of the New York State and Local Employees' Retirement System (NYSLERS) who have accrued at least 25 years of creditable service. It would also eliminate the early retirement reductions for members who have attained age 55 and have accrued at least 10 years of creditable service.

Insofar as this bill affects the NYSLERS, if this bill is enacted during the 2023 legislative session, 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. Eliminating the early age reductions for members retiring after attaining age 55 with at least 10 years of service credit is estimated to cost (on average for the group) 180% of the member's final average salary. Extending retirement eligibility to members who have attained age 50 with at least 25 years of service credit is estimated to cost (on average for the group) 180% of the member's final average salary. The final costs will be borne by each employer electing the incentive.

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

Summary of relevant resources:

Membership data as of March 31, 2022 was used in measuring the impact of the proposed change, the same data used in the April 1, 2022 actuarial valuation. Distributions and other statistics can be found in the 2022 Report of the Actuary and the 2022 Annual Comprehensive Financial Report.

The actuarial assumptions and methods used are described in the 2020, 2021, and 2022 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, 2022 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 February 24, 2023, and intended for use only during the 2023 Legislative Session, is Fiscal Note No. 2023-67, prepared by the Actuary for the New York State and Local Retirement System.