

STATE OF NEW YORK

5737

2023-2024 Regular Sessions

IN ASSEMBLY

March 23, 2023

Introduced by M. of A. WALLACE, BUTTENSCHON -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to enacting the "State Police Retention act"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "State Police Retention act".

3 § 2. Legislative findings. Front line public employees have faced
4 unprecedented adverse health effects as the result of employer mandates
5 to require state police officers to remain on-duty and physically pres-
6 ent at their work locations during the deadly COVID-19 pandemic. These
7 crucial public employees mandated to continue conducting crucial
8 services to the public during the most deadly period of the COVID-19
9 pandemic displayed exemplary service, while often at a health detriment
10 to the employee and their family. Prior to the state mandating worker
11 quarantines, state police officers were already on the front lines of
12 the pandemic transporting crucial medical supplies, test kits as well as
13 COVID-19 samples throughout the state to laboratories established to
14 test suspected COVID-19 submissions in order to gain an early foothold
15 in statewide treatment protocols. Besides the strenuous work they
16 already perform, additional duties as part of the early tracking, trans-
17 porting and testing of COVID-19 samples has resulted in a large contin-
18 gent of state police officers to retire earlier than expected and thus
19 reduced overall manpower allotments that does not keep up with mandated
20 duty requirements. This legislation offers an inducement to retain our
21 most valued senior state police officers while affording more time to
22 hire, train and deploy replaced public employees.

23 § 3. The retirement and social security law is amended by adding a new
24 section 381-c to read as follows:

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

LBD01299-02-3

1 § 381-c. Deferred retirement option plan payable to members and offi-
2 cers of the division of state police. a. Deferred retirement option
3 plan. Deferred retirement option plan, (hereinafter referred to as
4 "DROP"), is a retirement plan under which an eligible member may elect
5 to participate, deferring receipt of retirement benefits while continu-
6 ing employment with the division of state police. For the purposes of
7 this section, an "eligible member" is any member or officer employed by
8 the division of state police. During the period of continued employment,
9 the eligible member's monthly retirement benefit shall be deferred and
10 held by the retirement system on behalf of the member plus interest at
11 an effective rate of one and one-half percent for the specific period of
12 participation in DROP as provided in subdivision c of this section. Upon
13 completion of the DROP period, the eligible member shall receive the
14 total amount of retirement benefits deferred under DROP without optional
15 modification as permitted by subdivisions d and e of this section and
16 shall begin to receive the previously determined normal service retire-
17 ment benefit with optional modification as further provided in subdivi-
18 sion d of this section.

19 b. Participation in DROP. Any eligible member who is currently
20 employed by the division of state police and qualifies to retire pursu-
21 ant to section three hundred eighty-one-b of this title by reason of
22 completing twenty years of creditable service may elect to participate
23 in DROP.

24 c. Election in DROP. Such election shall be on a form prepared by the
25 comptroller and may be for any period of time not less than twelve
26 months or more than sixty months duration. Any member who elects to
27 participate in DROP shall be considered retired on the day following the
28 expiration of the DROP period, provided, however, that all loans and
29 excess contributions shall be resolved by the date of entry into DROP
30 and no additional loans or excess contributions shall be permitted after
31 the date of entry into DROP. Upon expiration of the time period selected
32 by the eligible member, such member's participation in DROP shall termi-
33 nate.

34 d. Benefits payable under DROP. (1) Effective with the date of partic-
35 ipation in DROP, the eligible member's normal service retirement benefit
36 shall be calculated, using creditable service and final average salary
37 as if the effective date of retirement was the date of entry into DROP.
38 The amount deferred pursuant to DROP shall be calculated based upon the
39 eligible member's zero option retirement allowance until such member has
40 obtained the applicable maximum service retirement limit based upon
41 years of service. Any additional participation in DROP after a member
42 has obtained the maximum service retirement limit based upon years of
43 service shall be calculated based upon sixty percent of the member's
44 full annual retirement allowance. In addition, for the purposes of this
45 section, the annual retirement allowance for any member electing DROP
46 shall be calculated using a three-year final average salary as defined
47 elsewhere in this article. The eligible member shall, however, elect his
48 or her optional retirement benefit at the completion of the DROP period.

49 (2) If the eligible member dies prior to completion of the period of
50 participation in DROP, the eligible member shall be treated as if such
51 DROP election did not exist. In lieu of the DROP payment, a death bene-
52 fit shall be payable consistent with the terms of this chapter and all
53 salary and service reported for such eligible member during the DROP
54 period shall be considered in calculating the eligible member's death
55 benefit.

1 (3) If the eligible member is approved for disability benefits
2 provided in this chapter during the DROP period, the eligible member
3 shall be treated as if the DROP election did not exist. In lieu of the
4 DROP payment, a disability retirement benefit shall be payable consist-
5 ent with the terms of this chapter and all salary and service reported
6 for such eligible member during the DROP period shall be considered in
7 calculating the eligible member's disability retirement benefit.

8 (4) If an eligible member otherwise fails to complete his or her peri-
9 od of service as elected pursuant to subdivision c of this section, the
10 eligible member shall be treated as if such DROP election did not exist.
11 In lieu of the DROP payment, the normal service retirement benefit shall
12 be payable consistent with the terms of this chapter and all salary and
13 service reported for such eligible member during the DROP period shall
14 be considered in calculating the eligible member's service retirement
15 benefit.

16 (5) If an eligible member remains employed after his or her partic-
17 ipation in DROP is terminated, such member shall forfeit all DROP bene-
18 fits and continue employment as if such DROP election did not exist.
19 Such member shall then be eligible to elect DROP consistent with the
20 terms of this section.

21 (6) If an eligible member is approved for disability benefits after
22 benefits payable pursuant to DROP have been paid, the eligible member
23 may elect to receive the disability benefits in lieu of DROP benefits,
24 but such disability benefits shall be actuarially adjusted for any bene-
25 fits paid under DROP.

26 e. Method of payment. At the conclusion of the member's participation
27 in DROP, the retirement system shall pay the deferred service retirement
28 benefits in one of the following methods as elected by the member:

29 (1) Lump sum: All accrued DROP benefits, plus interest, less withhold-
30 ing as required by the internal revenue service, shall be paid to the
31 DROP participant or eligible beneficiary or as otherwise determined by
32 operation of law;

33 (2) Direct rollover: All accrued DROP benefits, plus interest, shall
34 be paid from the retirement system to a custodian of the eligible
35 retirement plan or other eligible plan or account as provided pursuant
36 to the internal revenue code as directed by the member or eligible bene-
37 ficiary;

38 (3) Partial lump sum: A portion of the DROP benefits shall be paid to
39 the DROP participant or eligible beneficiary, less withholding required
40 by the internal revenue service and the remaining DROP benefits may be
41 rolled over as otherwise permitted by the internal revenue code.

42 For purposes of this subdivision, the term "eligible beneficiary" is
43 one who qualifies to rollover benefits from a qualified benefit plan or
44 account as provided by the internal revenue code. The forms of payment
45 provided by this subdivision shall comply with the minimum distribution
46 requirements of the internal revenue code.

47 f. Regulations. The comptroller shall prescribe such rules and regu-
48 lations as may be necessary for the effective administration and imple-
49 mentation of the provisions of this section.

50 § 4. This act shall take effect immediately.

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

This bill would allow police officers employed by the New York State Division of State Police to elect to participate in a Deferred Retirement Option Plan (DROP), deferring receipt of retirement benefits while continuing their current employment. The features of this DROP are:

1. Members may elect to participate in the DROP upon the attainment of retirement eligibility.

2. The service retirement benefit shall be the single life allowance determined based on the service and final average salary at the commencement of DROP participation. However, once a member's total service credit (including service during the DROP period) exceeds 32 years, the monthly payment into the DROP account will be limited to 60% of the single life allowance.

3. The New York State Police and Fire Retirement System (PFRS) shall consider DROP participants active members, and annual employer contributions shall continue to be made by the State of New York to the PFRS on behalf of such members.

4. The length of participation in the DROP must be specified at the time of election, and may not be less than 1 year, nor exceed 5 years. However, if the affected member should leave employment before or after the scheduled DROP termination date, such member shall forfeit all DROP benefits, and shall be treated as though there were no DROP election.

5. During the DROP period, the monthly pensions of such affected members will be deferred and held by the PFRS on their behalf and shall accrue interest at 1.5%. Such account, with interest accumulation, must be distributed in full at the end of the specified DROP period.

6. If an affected member should die or become disabled during the DROP period, such member would be treated as though there were no DROP election.

7. Upon termination from DROP, such affected members shall receive their deferred payments, and shall also begin to receive their previously determined pensions.

Section 212 of the Retirement and Social Security Law generally prevents service retirees from receiving salaries of more than \$35,000 for public employment before attaining age 65. This proposal would allow members to receive a full salary and retirement benefits simultaneously for up to 5 years.

The Partial Lump Sum program currently allows PFRS members to receive lump sums up to 25% of the present value of their pensions. In combination with this proposal, an affected member could potentially receive a lump sum exceeding 65% of the present value of their pension. This significantly reduces the value of ongoing pension payments over the member's remaining lifetime.

If this bill is enacted during the 2023 legislative session, it is estimated there would be an increase in the annual contributions for the State of New York of approximately 1.4% of salary for the police officers employed by the New York State Division of State Police.

In addition to the annual contributions discussed above, there would be past service costs which would depend on the current salary, age, and length of service of the affected members. It is estimated that the past service cost per member would average approximately 75% of salary for the affected members. This past service cost of approximately \$510 million will be borne by the State of New York as a one-time payment. This estimate assumes that payment will be made on March 1, 2024.

If the anticipated retirement experience of members who are eligible for this benefit changes significantly in the future, there would be additional increases in employer costs.

This cost is based on 4,671 police officers employed by the New York State Division of State Police with an estimated total active salary for fiscal year ending 2023 of \$680 million.

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.

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 March 1, 2023, and intended for use only during the 2023 Legislative Session, is Fiscal Note No. 2023-34, prepared by the Actuary for the New York State and Local Retirement System.