

STATE OF NEW YORK

7444

2023-2024 Regular Sessions

IN ASSEMBLY

May 19, 2023

Introduced by M. of A. McMAHON -- (at request of the New York State Teachers' Retirement System) -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the education law, the retirement and social security law, the administrative code of the city of New York and chapter 666 of the laws of 1990, amending the administrative code of the city of New York and the education law relating to the availability of additional pension benefits for an extended second public employment to certain retirees, in relation to the transfer of reserves between public employee retirement systems of the state

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

1 Section 1. Subdivision 5 of section 522 of the education law, as
2 amended by chapter 41 of the laws of 2009, is amended to read as
3 follows:
4 5. Notwithstanding any other provision of law to the contrary, except
5 for the purposes of providing the benefits, if any, of subdivision four
6 of this section, with respect to transfers pursuant to this section
7 which occur on or after the effective date of the chapter of the laws of
8 two thousand twenty-three that amended this subdivision, no transfer of
9 a pension reserve pursuant to subdivision one or two of this section
10 shall be required when the member is transferring from a public [~~employ-~~
11 ~~ee~~] retirement system of [~~this~~] the state [~~to any other public employee~~
12 ~~retirement system of this state~~] with less than ten years of credited
13 service with the transferring retirement system at the time the transfer
14 is initiated. With respect to transfers pursuant to subdivision one or
15 two of this section which occur on or after the effective date of the
16 chapter of the laws of two thousand twenty-three that amended this
17 subdivision, the transfer of a pension reserve shall be required when
18 the member is transferring ten or more years of credited service from a
19 public retirement system of the state to any other public retirement

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

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system of the state, excluding any transfers within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system.

For the purpose of giving the transferring member such status and crediting such service in the retirement system to which the member is transferring as such member was allowed in the retirement system from which the member has transferred, the transfer shall be deemed complete upon receipt by the transferee retirement system of (a) a statement from the transferor retirement system of the transferring member's date of membership in the transferor retirement system, tier status, service credited to the transferred membership, and such other information as the transferee retirement system may require to effectuate the transfer, ~~and~~ (b) such member's accumulated contributions from the transferor retirement system, if same had not been previously withdrawn, or notice from the transferor retirement system that such member had no accumulated contributions, or notice from the transferor retirement system that such member's accumulated contributions had been withdrawn and the amount thereof and, as applicable, receipt from such member of such member's accumulated contributions and interest, and (c) the pension reserve in the case of a member who transfers in ten or more years of credited service, except when transferring within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system.

§ 2. Subdivisions k and l of section 43 of the retirement and social security law, as amended by chapter 41 of the laws of 2009, are amended to read as follows:

k. Notwithstanding any other provision of this section, any member of the New York state and local employees' retirement system or the New York city teachers' retirement system who retired from service from either the New York city employees' retirement system or the New York city board of education retirement system as a member of the career pension plan maintained by such system and who, but for the fact that he or she retired, would be eligible for transfer and who has not, in fact, received a pension payment from such system shall be permitted to transfer his or her retirement system membership pursuant to the provisions of this section. In such event, the application for retirement shall be deemed to have been rescinded and the retirement system from which the service shall be transferred shall transfer the appropriate reserves as provided by this section, provided, however, that with respect to transfers pursuant to this subdivision which occur on or after the ~~[twenty-sixth day of October, two thousand four]~~ effective date of the chapter of the laws of two thousand twenty-three that amended this subdivision, except for the purposes of providing the benefits, if any, of subdivision four of section five hundred twenty-two of the education law, no determination of a reserve pursuant to subdivision c of this section or transfer thereof pursuant to the first sentence of subdivision d of this section shall be required in the case of any transfer pursuant to this subdivision with less than ten years of credited service with the transferring retirement system at the time the transfer is initiated. With respect to transfers pursuant to this section which occur on or after the effective date of the chapter of the laws of two thousand twenty-three that amended this subdivision, the transfer of a pension reserve shall be required when the member is transferring ten or more years of credited service from a public retirement system of the state to any other public retirement system of the state, excluding any transfers

1 within and between the New York city employees' retirement system, the
2 New York city teachers' retirement system and the New York city board of
3 education retirement system. Notwithstanding the provision of this
4 subdivision or any other provision of law, an individual who transfers
5 pursuant to this subdivision shall not be required to render any minimum
6 period of service following transfer in order to be eligible to receive
7 the full benefit provided hereunder. Notwithstanding the foregoing, a
8 retiree covered by either the career pension plan or the fifty-five-
9 year-increased-service-fraction plan who has received a pension payment
10 or payments from such system shall be eligible for the provisions of
11 this subdivision upon payment, to the retirement system from which the
12 pension payment or payments were made, of an amount equal to such
13 pension payment or payments. After such payments and the pension
14 reserve, in the case of a member who transfers in ten or more years of
15 credited service, except when transferring within and between the New
16 York city employees' retirement system, the New York city teachers'
17 retirement system and the New York city board of education retirement
18 system, are received, such person shall be permitted to transfer his or
19 her retirement system membership pursuant to the provisions of this
20 section.

21 l. Notwithstanding any other provision of law to the contrary, with
22 respect to transfers pursuant to this section which occur on or after
23 the [~~twenty-sixth day of October, two thousand four~~] effective date of
24 the chapter of the laws of two thousand twenty-three that amended this
25 subdivision, except for the purposes of providing the benefits, if any,
26 of subdivision four of section five hundred twenty-two of the education
27 law, no determination of a reserve pursuant to subdivision c of this
28 section or transfer thereof pursuant to the first sentence of subdivi-
29 sion d of this section shall be required in the case of any transfer
30 pursuant to this section with less than ten years of credited service
31 with the transferring retirement system at the time the transfer is
32 initiated. With respect to transfers pursuant to this section which
33 occur on or after the effective date of the chapter of the laws of two
34 thousand twenty-three that amended this subdivision, the transfer of a
35 pension reserve shall be required when the member is transferring ten or
36 more years of credited service from a public retirement system of the
37 state to any other public retirement system of the state, excluding any
38 transfers within and between the New York city employees' retirement
39 system, the New York city teachers' retirement system and the New York
40 city board of education retirement system. For the purpose of giving
41 the transferring member such status and crediting such service in the
42 second retirement system as such member was allowed in the first retire-
43 ment system in those cases to which this subdivision shall apply, the
44 transfer shall be deemed complete upon receipt by the second retirement
45 system of:

46 1. a statement from the first retirement system of the transferring
47 member's date of membership in the first retirement system, tier status,
48 service credited to such membership being transferred, and such other
49 information as the second retirement system may require to effectuate
50 the transfer; [~~and~~]

51 2. such member's accumulated contributions from the first retirement
52 system, if same had not been previously withdrawn, or notice from the
53 first retirement system that such member had no accumulated contrib-
54 utions, or notice from the first retirement system that such member's
55 accumulated contributions had been withdrawn and the amount thereof and,

1 as applicable, receipt from such member of such member's accumulated
2 contributions and interest; and

3 3. the pension reserve in the case of a member who transfers in ten or
4 more years of credited service, except when transferring within and
5 between the New York city employees' retirement system, the New York
6 city teachers' retirement system and the New York city board of educa-
7 tion retirement system.

8 § 3. Subdivision h of section 343 of the retirement and social securi-
9 ty law, as amended by chapter 533 of the laws of 2015, is amended to
10 read as follows:

11 h. Notwithstanding any other provision of law to the contrary, with
12 respect to transfers pursuant to this section which occur on or after
13 the effective date of the chapter of the laws of two thousand twenty-
14 three that amended this subdivision, no determination of a reserve
15 pursuant to subdivision c of this section or transfer thereof pursuant
16 to the first sentence of subdivision d of this section shall be required
17 in the case of any transfer pursuant to this section (other than a
18 transfer from the New York state and local police and fire retirement
19 system to either (1) the New York city police department subchapter two
20 pension fund, (2) the New York city fire department subchapter two
21 pension fund or (3) the MTA police retirement program or a transfer from
22 either (i) the New York city police department subchapter two pension
23 fund or (ii) the New York city fire department subchapter two pension
24 fund to either (A) the New York state and local police and fire retire-
25 ment system or (B) the MTA police retirement program or a transfer from
26 the MTA police retirement program to the New York state and local police
27 and fire retirement system) in the case of a member with less than ten
28 years of credited service with the transferring retirement system at the
29 time the transfer is initiated. With respect to transfers pursuant to
30 such subdivisions which occur on or after the effective date of the
31 chapter of the laws of two thousand twenty-three that amended this
32 subdivision, the transfer of a pension reserve shall be required when
33 the member is transferring ten or more years of credited service from a
34 public retirement system of the state to any other public retirement
35 system of the state, excluding any transfers within and between the New
36 York city employees' retirement system, the New York city teachers'
37 retirement system and the New York city board of education retirement
38 system. For the purpose of giving the transferring member such status
39 and crediting such service in the second retirement system as such
40 member was allowed in the first retirement system in those cases to
41 which this subdivision shall apply, the transfer shall be deemed
42 complete upon receipt by the second retirement system of:

43 1. a statement from the first retirement system of the transferring
44 member's date of membership in the first retirement system, tier status,
45 service credited to such membership being transferred, and such other
46 information as the second retirement system may require to effectuate
47 the transfer; [and]

48 2. such member's accumulated contributions from the first retirement
49 system, if same had not been previously withdrawn, or notice from the
50 first retirement system that such member had no accumulated contrib-
51 utions, or notice from the first retirement system that such member's
52 accumulated contributions had been withdrawn and the amount thereof and,
53 as applicable, receipt from such member of such member's accumulated
54 contributions and interest; and

55 3. the pension reserve in the case of a member who transfers in ten or
56 more years of credited service, except when transferring within and

1 between the New York city employees' retirement system, the New York
2 city teachers' retirement system and the New York city board of educa-
3 tion retirement system.

4 § 4. Paragraph 4 of subdivision a of section 13-143 of the administra-
5 tive code of the city of New York, as added by chapter 647 of the laws
6 of 2004, is amended to read as follows:

7 (4) Notwithstanding the provisions of paragraph two of this subdivi-
8 sion, with respect to transfers pursuant to this section which occur on
9 or after the effective date of the chapter of the laws of two thousand
10 twenty-three that amended this paragraph, the actuary of the New York
11 city employees' retirement system shall not be required to determine the
12 reserve on the benefits allowable to the transferring member as the
13 result of employer contributions, including the reserve-for-increased-
14 take-home-pay, and the transfer of such reserve, including the reserve-
15 for-increased-take-home-pay, from the New York city employees' retire-
16 ment system to said police pension fund [~~shall not be required~~] when a
17 member is transferring with less than ten years of credited service with
18 the transferring retirement system at the time the transfer is initi-
19 ated. With respect to transfers pursuant to this subdivision which occur
20 on or after the effective date of the chapter of the laws of two thou-
21 sand twenty-three that amended this paragraph, the transfer of a pension
22 reserve shall be required when the member is transferring ten or more
23 years of credited service from a public retirement system of the state
24 to any other public retirement system of the state, excluding any trans-
25 fers within and between the New York city employees' retirement system,
26 the New York city teachers' retirement system and the New York city
27 board of education retirement system. The New York city employees'
28 retirement system, within one year from the date of the request for the
29 transfer of credit, shall comply with all requirements for completing
30 the transfer imposed on it by the provisions of this section, including
31 the pension reserve in the case of a member who transfers ten or more
32 years of credited service, except when transferring within and between
33 the New York city employees' retirement system, the New York city teach-
34 ers' retirement system and the New York city board of education retire-
35 ment system. The New York city employees' retirement system, within one
36 year from the date of the request for the transfer of credit, shall
37 comply with all requirements for completing the transfer imposed on it
38 by the provisions of this section, including the pension reserve in the
39 case of a member who transfers ten or more years of credited service,
40 except when transferring within and between the New York city employees'
41 retirement system, the New York city teachers' retirement system and the
42 New York city board of education retirement system. Nothing set forth
43 in this paragraph shall be deemed to modify the requirement set forth in
44 paragraph two of this subdivision that the New York city employees'
45 retirement system transfer to said police pension fund the accumulated
46 deductions of such member.

47 § 5. Paragraph 4 of subdivision a of section 13-144 of the administra-
48 tive code of the city of New York, as added by chapter 647 of the laws
49 of 2004, is amended to read as follows:

50 (4) Notwithstanding the provisions of paragraph two of this subdivi-
51 sion, with respect to transfers pursuant to this section which occur on
52 or after the effective date of the chapter of the laws of two thousand
53 twenty-three that amended this paragraph, the actuary of the New York
54 city employees' retirement system shall not be required to determine the
55 reserve on the benefits allowable to the transferring member as the
56 result of employer contributions, including [~~the reserve for increased-~~

1 ~~take-home pay, and~~ the transfer of such reserve~~[, including]~~ and the
2 reserve-for-increased-take-home-pay~~[,]~~ from the New York city employees'
3 retirement system to said fire department pension fund ~~[shall not be~~
4 ~~required]~~, with less than ten years of credited service from the trans-
5 ferring retirement system at the time the transfer is initiated. With
6 respect to transfers pursuant to this section which occur on or after
7 the effective date of the chapter of the laws of two thousand twenty-
8 three that amended this paragraph, the transfer of a pension reserve
9 pursuant to paragraph two of this subdivision shall be required when the
10 member is transferring ten or more years of credited service from a
11 public retirement system of the state to any other public retirement
12 system of the state, excluding any transfers within and between the New
13 York city employees' retirement system, the New York city teachers'
14 retirement system and the New York city board of education retirement
15 system. The New York city employees' retirement system, within one year
16 from the date of the request for the transfer of credit, shall comply
17 with all requirements for completing the transfer imposed on it by the
18 provisions of this section, including the pension reserve in the case of
19 a member who transfers ten or more years of member service credit,
20 except when transferring within and between the New York city employees'
21 retirement system, the New York city teachers' retirement system and the
22 New York city board of education retirement system. The New York city
23 employees' retirement system, within one year from the date of the
24 request for the transfer of credit, shall comply with all requirements
25 for completing the transfer imposed on it by the provisions of this
26 section, including the pension reserve in the case of a member who
27 transfers ten or more years of member service credit, except when trans-
28 ferring within and between the New York city employees' retirement
29 system, the New York city teachers' retirement system and the New York
30 city board of education retirement system. Nothing set forth in this
31 paragraph shall be deemed to modify the requirement set forth in para-
32 graph two of this subdivision that the New York city employees' retire-
33 ment system transfer to said fire department pension fund the accumu-
34 lated deductions of such member.

35 § 6. Subdivision d of section 3 of chapter 666 of the laws of 1990,
36 amending the administrative code of the city of New York and the educa-
37 tion law relating to the availability of additional pension benefits for
38 an extended second public employment to certain retirees, as added by
39 chapter 647 of the laws of 2004, is amended to read as follows:

40 d. Notwithstanding the provisions of subdivision b of this section or
41 any other provision of law to the contrary, with respect to transfers
42 pursuant to this section which occur on or after the effective date of
43 the chapter of the laws of two thousand twenty-three that amended
44 subdivision, no determination or transfer of the reserve on the benefits
45 allowable to the transferring member as the result of employer contrib-
46 utions, including the reserve-for-increased-take-home-pay, shall be
47 required for a member with less than ten years of credited service from
48 the transferring system at the time the transfer is initiated. With
49 respect to transfers pursuant to this section which occur on or after
50 the effective date of the chapter of the laws of two thousand twenty-
51 three that amended this subdivision, the transfer of a pension reserve
52 shall be required when the member is transferring ten or more years of
53 credited service from a public retirement system of the state to any
54 other public retirement system of the state, excluding any transfers
55 within and between the New York city employees' retirement system, the

New York city teachers' retirement system and the New York city board of education retirement system.

§ 7. This act shall take effect immediately and shall apply to any covered membership transfer initiated on or after such effective date; provided, however, that no provision of this act shall affect (a) the transfer of reserves required with respect to transfers between any two of the New York state and local police and fire retirement system, the New York city police department subchapter two pension fund and the New York city fire department subchapter two pension fund and with respect to transfers from the New York state and local police and fire retirement system to the metropolitan transportation authority police pension fund; and (b) the transfer of reserves with respect to transfers within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system.

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

This bill would amend Section 522 of the Education Law and various sections of the Retirement and Social Security Law and the Administrative Code of the City of New York to require the transfer of pension reserves between retirement systems in cases in which a member of the New York State Teachers' Retirement System (NYSTRS) or any Retirement System of the State or City of New York transfers a membership with ten or more years of credited service at the time the transfer is initiated. This act shall take effect immediately and shall apply to any membership transfer initiated on or after the effective date of this act. No transfer of reserves will be required for transfers within and between the NYC Retirement Systems. The current transfer of reserves that occurs due to transfers between the police and fire systems shall not be disturbed.

It is estimated that there will be no additional annual cost to the employers of members of the NYSTRS if this bill is enacted. In fact, this bill will greatly increase equity between the retirement systems of the state by ensuring that a member who transfers with a significant liability will bring with him or her the pension reserve accumulated by the prior retirement system to offset the liability assumed by the new retirement system.

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 Annual Report. System assets are as reported in the System's financial statements and can also be found in the System's Annual Report. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report.

The source of this estimate is Fiscal Note 2023-1 dated October 14, 2022 prepared by the Office of the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2023 Legislative Session. I, Richard A. Young, am the Chief 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.

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

This bill would amend sections 43 and 343 of the Retirement and Social Security Law and various sections of the Education Law and the Administrative Code of the City of New York to reinstate the calculation and transfer of a pension reserve for a member transferring between the

public retirement systems in New York State, provided such member is transferring ten (10) or more years of service credit.

Insofar as this bill affects the New York State and Local Employees' Retirement System (NYSLERS) and the New York State and Local Police and Fire Retirement System (NYSLPFRS), if this legislation is enacted during the 2023 legislative session, there would be some ongoing administrative costs to implement the provisions of this legislation.

The actuarial gains and losses arising from the transfer of reserves is expected to net to zero over the long term, making the proposal cost neutral.

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 January 3, 2023, and intended for use only during the 2023 Legislative Session, is Fiscal Note No. 2023-005, prepared by the Actuary for the New York State and Local Retirement System.