

STATE OF NEW YORK

7668

2023-2024 Regular Sessions

IN ASSEMBLY

June 1, 2023

Introduced by M. of A. PHEFFER AMATO -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to updating certain death benefit provisions of the New York city employees' retirement system, the New York city teachers' retirement system, and the board of education retirement system of New York city to ensure continued compliance with the federal older workers' benefit protection act

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

1 Section 1. The closing paragraph of paragraph 2 of subdivision a of
2 section 448 of the retirement and social security law, as amended by
3 chapter 720 of the laws of 2022, is amended to read as follows:
4 In the case of a member of the New York state teachers' retirement
5 system, commencing upon attainment of age sixty-two if such member's
6 date of membership is prior to April first, two thousand twelve or
7 attainment of age sixty-three if such member's date of membership is on
8 or after April first, two thousand twelve, the benefit otherwise
9 provided pursuant to this paragraph shall be reduced while the member is
10 in service to ninety-six per centum of the benefit otherwise payable and
11 each year thereafter the benefit payable shall be reduced by an amount
12 equal to four per centum per year of the original benefit otherwise
13 payable, but not below sixty per centum of the original benefit other-
14 wise payable. In the case of a member of the New York city employees'
15 retirement system, the New York city board of education retirement
16 system or the New York city teachers' retirement system, commencing upon
17 attainment of age sixty-one, the benefit otherwise provided pursuant to
18 this paragraph shall be reduced while the member is in service to [~~nine-~~
19 ~~ty-five~~] ninety-seven per centum of the benefit otherwise payable and
20 each year thereafter the benefit payable shall be reduced by an amount
21 equal to [~~five~~] three per centum per year of the original benefit other-

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

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wise payable, but not below [~~fifty~~] seventy per centum of the original benefit otherwise payable. In the case of any member of the New York state and local employees' retirement system who is permitted to retire without regard to age or a member of the New York state and local police and fire retirement system, commencing upon attainment of age sixty-two if such member's date of membership is prior to April first, two thousand twelve or attainment of age sixty-three if such member's date of membership is on or after April first, two thousand twelve, the benefit otherwise provided pursuant to this paragraph shall be reduced while the member is in service to ninety-seven per centum of the benefit otherwise payable, and each year thereafter the benefit payable shall be reduced by an amount equal to three per centum per year of the original benefit otherwise payable, but not below seventy per centum of the original benefit otherwise payable. In the case of any other member of the New York state and local employees' retirement system, commencing upon attainment of age sixty-two if such member's date of membership is prior to April first, two thousand twelve or attainment of age sixty-three if such member's date of membership is on or after April first, two thousand twelve, the benefit otherwise provided pursuant to this paragraph shall be reduced while the member is in service to ninety-six per centum of the benefit otherwise payable, and each year thereafter the benefit payable shall be reduced by an amount equal to four per centum per year of the original benefit otherwise payable, but not below sixty per centum of the original benefit otherwise payable. Upon retirement from any retirement system, the benefit in force shall be reduced by fifty per centum; upon completion of the first year of retirement, the benefit in force at the time of retirement shall be reduced by an additional twenty-five per centum, and upon commencement of the third year of retirement, the benefit shall be ten per centum of the benefit in force at age sixty, if any, or at the time of retirement if retirement preceded such age; provided, however, the benefit in retirement shall not be reduced below ten per centum of the benefit in force at age sixty, if any, or at the time of retirement if retirement preceded such age. Notwithstanding any other provision of this paragraph to the contrary, the benefit for a retiree from the New York state and local employees' retirement system [~~and~~], the New York state teachers' retirement system, the New York city employees' retirement system, the New York city board of education retirement system or the New York city teachers' retirement system shall not be reduced below ten per centum of the benefit in force at the time of retirement.

§ 2. The closing paragraph of paragraph 2 of subdivision a of section 508 of the retirement and social security law, as amended by chapter 720 of the laws of 2022, is amended to read as follows:

Notwithstanding any other provision of this paragraph, in the case of a member of the New York state teachers' retirement system, commencing upon attainment of age sixty-two if such member's date of membership is prior to April first, two thousand twelve or attainment of age sixty-three if such member's date of membership is on or after April first, two thousand twelve, the benefit otherwise provided pursuant to this paragraph shall be reduced while the member is in service to ninety-six per centum of the benefit otherwise payable, and each year thereafter the benefit payable shall be reduced by an amount equal to four per centum per year of the original benefit otherwise payable, but not below sixty per centum of the original benefit otherwise payable. In the case of a member of the New York city employees' retirement system, the New York city board of education retirement system or the New York city

1 teachers' retirement system, commencing upon attainment of age sixty-
2 one, the benefit otherwise provided pursuant to this paragraph shall be
3 reduced while the member is in service to [~~ninety-five~~] ninety-seven per
4 centum of the benefit otherwise payable and each year thereafter the
5 benefit payable shall be reduced by an amount equal to [~~five~~] three per
6 centum per year of the original benefit otherwise payable, but not below
7 [~~fifty~~] seventy per centum of the original benefit otherwise payable. In
8 the case of any member of the New York state and local employees'
9 retirement system who is permitted to retire without regard to age,
10 commencing upon attainment of age sixty-two if such member's date of
11 membership is prior to April first, two thousand twelve or attainment of
12 age sixty-three if such member's date of membership is on or after April
13 first, two thousand twelve, the benefit otherwise provided pursuant to
14 this paragraph shall be reduced while the member is in service to nine-
15 ty-seven per centum of the benefit otherwise payable, and each year
16 thereafter the benefit payable shall be reduced by an amount equal to
17 three per centum per year of the original benefit otherwise payable, but
18 not below seventy per centum of the original benefit otherwise payable.
19 In the case of any other member of the New York state and local employ-
20 ees' retirement system, commencing upon attainment of age sixty-two if
21 such member's date of membership is prior to April first, two thousand
22 twelve or attainment of age sixty-three if such member's date of member-
23 ship is on or after April first, two thousand twelve, the benefit other-
24 wise provided pursuant to this paragraph shall be reduced while the
25 member is in service to ninety-six per centum of the benefit otherwise
26 payable, and each year thereafter the benefit payable shall be reduced
27 by an amount equal to four per centum per year of the original benefit
28 otherwise payable, but not below sixty per centum of the original bene-
29 fit otherwise payable. Upon retirement from any retirement system, the
30 benefit in force shall be reduced by fifty per centum; upon completion
31 of the first year of retirement, the benefit in force at the time of
32 retirement shall be reduced by an additional twenty-five per centum, and
33 upon commencement of the third year of retirement, the benefit shall be
34 ten per centum of the benefit in force at age sixty, if any, or at the
35 time of retirement if retirement preceded such age; provided, however,
36 the benefit in retirement shall not be reduced below ten per centum of
37 the benefit in force at age sixty, if any, or at the time of retirement
38 if retirement preceded such age. Notwithstanding any other provision of
39 this paragraph to the contrary, the benefit for a retiree from the New
40 York state and local employees' retirement system [~~and~~], the New York
41 state teachers' retirement system, the New York city employees' retire-
42 ment system, the New York city board of education retirement system or
43 the New York city teachers' retirement system shall not be reduced below
44 ten per centum of the benefit in force at the time of retirement.

45 § 3. The closing paragraph of paragraph 2 of subdivision a of section
46 606 of the retirement and social security law, as amended by chapter 720
47 of the laws of 2022, is amended to read as follows:

48 In the case of a member of the New York state teachers' retirement
49 system, commencing upon attainment of age sixty-two if such member's
50 date of membership is prior to April first, two thousand twelve or
51 attainment of age sixty-three if such member's date of membership is on
52 or after April first, two thousand twelve, the benefit otherwise
53 provided pursuant to this paragraph shall be reduced while the member is
54 in service to ninety-six per centum of the benefit otherwise payable,
55 and each year thereafter the benefit payable shall be reduced by an
56 amount equal to four per centum per year of the original benefit other-

1 wise payable, but not below sixty per centum of the original benefit
2 otherwise payable. In the case of a member of the New York city employ-
3 ees' retirement system, the New York city board of education retirement
4 system or the New York city teachers' retirement system, commencing upon
5 attainment of age sixty-one, the benefit otherwise provided pursuant to
6 this paragraph shall be reduced while the member is in service to [~~nine-~~
7 ~~ty-five~~] ninety-seven per centum of the benefit otherwise payable and
8 each year thereafter the benefit payable shall be reduced by an amount
9 equal to [~~five~~] three per centum per year of the original benefit other-
10 wise payable, but not below [~~fifty~~] seventy per centum of the original
11 benefit otherwise payable. In the case of any member of the New York
12 state and local employees' retirement system who is permitted to retire
13 without regard to age, commencing upon attainment of age sixty-two if
14 such member's date of membership is prior to April first, two thousand
15 twelve or attainment of age sixty-three if such member's date of member-
16 ship is on or after April first, two thousand twelve, the benefit other-
17 wise provided pursuant to this paragraph shall be reduced while the
18 member is in service to ninety-seven per centum of the benefit otherwise
19 payable, and each year thereafter the benefit payable shall be reduced
20 by an amount equal to three per centum per year of the original benefit
21 otherwise payable, but not below seventy per centum of the original
22 benefit otherwise payable. In the case of any other member of the New
23 York state and local employees' retirement system, commencing upon
24 attainment of age sixty-two if such member's date of membership is prior
25 to April first, two thousand twelve or attainment of age sixty-three if
26 such member's date of membership is on or after April first, two thou-
27 sand twelve, the benefit otherwise provided pursuant to this paragraph
28 shall be reduced while the member is in service to ninety-six per centum
29 of the benefit otherwise payable, and each year thereafter the benefit
30 payable shall be reduced by an amount equal to four per centum per year
31 of the original benefit otherwise payable, but not below sixty per
32 centum of the original benefit otherwise payable. Upon retirement, from
33 any retirement system, the benefit in force shall be reduced by fifty
34 per centum; upon completion of the first year of retirement, the benefit
35 in force at the time of retirement shall be reduced by an additional
36 twenty-five per centum, and upon commencement of the third year of
37 retirement, the benefit shall be ten per centum of the benefit in force
38 at age sixty, if any, or at the time of retirement if retirement
39 preceded such age; provided, however, the benefit in retirement shall
40 not be reduced below ten per centum of the benefit in force at age
41 sixty, if any, or at the time of retirement if retirement preceded such
42 age. Notwithstanding any other provision of this paragraph to the
43 contrary, the benefit for a retiree from the New York state and local
44 employees' retirement system [~~and~~], the New York state teachers' retire-
45 ment system, the New York city employees' retirement system, the New
46 York city board of education retirement system or the New York city
47 teachers' retirement system shall not be reduced below ten per centum of
48 the benefit in force at the time of retirement.

49 § 4. This act shall take effect immediately and shall be deemed to
50 have been in full force and effect on and after July 1, 2021, provided
51 that this act shall not apply to the payment of any death benefit based
52 upon a member's death which occurred prior to July 1, 2021.

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

SUMMARY OF BILL: This proposed legislation (see Appendix) would amend certain death benefit provisions to ensure continued compliance with the requirements of the Federal Older Workers' Benefit Protection Act,

Public Law 101-433 (OWBPA). In general, with respect to the New York City Employees' Retirement System (NYCERS), the New York City Teachers' Retirement System (NYCTRS), and the New York City Board of Education Retirement System (BERS), the bill would amend the Tier 2, 3, and 4/6 ordinary death benefit provisions set forth in Retirement and Social Security Law (RSSL) Articles 11, 14, and 15, respectively, to ensure that, on an actuarial basis, the costs of providing such benefits to older members are no less than the costs of providing such benefits to younger members.

Effective Date: This bill would be effective immediately and be deemed to have been in force since July 1, 2021.

IMPACT ON BENEFITS: Under the proposed legislation, if enacted, the Pre-retirement Ordinary Death Benefit for Active and Deferred Vested Members, and the Post-retirement Death Benefit for Tier 2, 3, and 4/6 NYCERS, NYCTRS, and BERS members, would be updated.

Pre-retirement Ordinary Death Benefit

The Tier 2, 3 and 4/6 Ordinary Death Benefit (for all members except police officers, firefighters, correction officers, or sanitation workers) is a lump sum payment equal to current pay multiplied by completed years of service (up to three years) and further reduced by a percentage based on age at date of death.

Currently, the reduction is 0% for ages 60 and younger, and increases by 5% for every age over 60, up to the ultimate rate of 50% for ages 70 and older.

Under the proposed legislation the reduction would remain 0% for ages 60 and younger, and increase by 3% for every age over age 60 up to the ultimate reduction of 30% for ages 70 and older.

Post-retirement death benefit

The changes to the reductions described above would also apply to the calculation of the post-retirement death benefit. In addition, the post-retirement death benefit in the third year of retirement and thereafter would be changed as follows:

Current provision: 10% of the Pre-retirement death benefit that would have been payable had the member died on the earlier of (1) the day before they retired and (2) age 60.

Proposed provision: Greater of the benefit payable under the current provision and 10% of the death benefit payable had the member died the day before they retired.

FINANCIAL IMPACT: The increase in annual employer contributions associated with this proposed legislation has already been accounted for beginning with the June 30, 2020 actuarial valuations used to determine the Final Fiscal Year 2022 employer contributions of NYCERS, NYCTRS, and BERS.

The estimated financial impact of updating ordinary death benefits to maintain compliance with OWBPA as described above is an increase in Present Value of Future Benefits of approximately \$223.7 million, and an initial increase in the FY 2022 annual employer contributions of approximately \$40.0 million (\$26.8 million for New York City and \$13.2 million for the other obligors). A breakdown of the FY 2022 annual contribution impact by System is shown in the table below.

System	Impact on FY 2022
	Annual Employer Contributions
	(\$ Millions)
NYCERS	\$ 22.9

NYCTRS	12.5	
BERS	4.6	
Total		\$ 40.0

Long-term annual costs (after the initial increase in unfunded accrued liability is fully amortized in seven to eight years) are estimated to be less than \$10 million for all three Systems combined.

New Unfunded Accrued Liability (UAL) attributable to benefit changes are generally amortized over the remaining working lifetime of those impacted by the benefit changes. For purposes of this Fiscal Note, it had been assumed that increases in UAL would be amortized over periods ranging from seven to eight years depending on the System (six to seven payments under the One-Year Lag Methodology) using level dollar payments.

CENSUS DATA: The estimates presented herein are based on the census data used in the June 30, 2020 actuarial valuations of NYCERS, NYCTRS, and BERS to determine the Fiscal Year 2022 employer contributions.

ACTUARIAL ASSUMPTIONS AND METHODS: The estimates presented herein have been calculated based on the actuarial assumptions and methods used for the Fiscal Year 2022 employer contributions of NYCERS, NYCTRS, and BERS.

RISK AND UNCERTAINTY: The costs presented in this Fiscal Note depend highly on the realization of the actuarial assumptions used, demographics of the impacted population, and other factors such as investment, contribution, and other risks. If actual experience deviates from actuarial assumptions, the actual costs could differ from those presented herein.

Costs are also dependent on the actuarial methods used, and therefore different actuarial methods could produce different results. Quantifying these risks is beyond the scope of this Fiscal Note.

Not measured in this Fiscal Note are the following:

- * The initial additional administrative costs to implement the proposed legislation.

STATEMENT OF ACTUARIAL OPINION: I, Marek Tyszkiewicz, am the Chief Actuary for, and independent of, the New York City Retirement Systems and Pension Funds. I am an Associate of the Society of Actuaries and a Member of the American Academy of Actuaries. I am a member of NYCERS but do not believe it impairs my objectivity and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein. To the best of my knowledge, the results contained herein have been prepared in accordance with generally accepted actuarial principles and procedures and with the Actuarial Standards of Practice issued by the Actuarial Standards Board.

FISCAL NOTE IDENTIFICATION: This Fiscal Note 2023-55 dated May 22, 2023 was prepared by the Chief Actuary for the New York City Employees' Retirement System, the New York City Teachers' Retirement System, and the New York City Board of Education Retirement System. This estimate is intended for use only during the 2023 Legislative Session.