

6932

2009-2010 Regular Sessions

I N A S S E M B L Y

March 17, 2009

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

AN ACT to amend the retirement and social security law, in relation to
establishing a defined contribution plan

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The retirement and social security law is amended by adding
2 a new section 618 to read as follows:
3 S 618. DEFINED CONTRIBUTION PLAN. 1. THE DEFINED CONTRIBUTION PLAN IS
4 HEREBY ESTABLISHED. THE COMPTROLLER SHALL ADOPT RULES AND REGULATIONS
5 REGARDING THE STANDARDS AND REQUIREMENTS OF THE DEFINED CONTRIBUTION
6 PLAN ESTABLISHED PURSUANT TO THIS SECTION, INCLUDING SELECTION OF FINAN-
7 CIAL ORGANIZATIONS FOR INVESTMENT PURPOSES.
8 2. A. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE DEFINED
9 CONTRIBUTION PLAN SHALL BE ESTABLISHED FOR ALL NON-CIVIL SERVICE
10 APPOINTED EMPLOYEES AND ELECTED OFFICIALS EMPLOYED BY THE STATE OF NEW
11 YORK OR ANY PUBLIC EMPLOYER WHICH HAS ELECTED TO PARTICIPATE IN THE NEW
12 YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM.
13 B. THE COMPTROLLER SHALL ENTER INTO WRITTEN AGREEMENTS WITH ONE OR
14 MORE FINANCIAL ORGANIZATIONS TO ADMINISTER THE DEFINED CONTRIBUTION PLAN
15 FOR MEMBERS AND TO INVEST FUNDS HELD PURSUANT TO SUCH PLAN.
16 C. THE RULES AND REGULATIONS PROMULGATED BY THE COMPTROLLER SHALL
17 ESTABLISH STANDARDS FOR THE SELECTION OF FINANCIAL ORGANIZATIONS,
18 AUTHORIZED TO DO BUSINESS IN THIS STATE, TO PARTICIPATE IN SUCH PLANS,
19 INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING CRITERIA: (I) RATES OF
20 COMMISSION, BROKERAGE AND OTHER FEES, ADMINISTRATIVE EXPENSES AND
21 RELATED SERVICE CHARGES IMPOSED BY THE FINANCIAL ORGANIZATION; (II)
22 VARIETY OF TYPES OF INVESTMENT OPPORTUNITIES OFFERED BY THE FINANCIAL
23 ORGANIZATION AND/OR AMONG THE FINANCIAL ORGANIZATIONS SELECTED AND THE
24 ABILITY TO TRANSFER AMONG SUCH OPPORTUNITIES; (III) THE STABILITY OF THE
25 FINANCIAL ORGANIZATION AS EVIDENCED BY EXPERIENCE, REPUTATION, ASSETS

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

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1 AND HOLDINGS, ABILITY TO GUARANTEE SPECIFIC RATES OF RETURN; (IV) ABILI-
2 TY TO COMPLY WITH REPORTING REQUIREMENTS TO THE COMPTROLLER AND TO
3 PARTICIPANTS IN SUCH A PLAN; AND (V) SUCH OTHER FACTORS WHICH WOULD BE
4 CONSIDERED BY A PRUDENT INVESTOR IN SUCH A PLAN.

5 D. THE PRESIDENT OF THE STATE CIVIL SERVICE COMMISSION, SUBJECT TO THE
6 RULES AND REGULATIONS OF THE COMPTROLLER, SHALL PROVIDE ASSISTANCE TO
7 ANY PUBLIC EMPLOYER AS IS APPROPRIATE TO THE PROVISIONS OF THIS SECTION.

8 3. A PUBLIC EMPLOYER SHALL CONTRIBUTE THREE PERCENT OF SUCH AFFECTED
9 EMPLOYEE'S ANNUAL SALARY TOWARDS SUCH DEFINED CONTRIBUTION PLAN. ALL
10 NON-CIVIL SERVICE APPOINTED EMPLOYEES AND ELECTED OFFICIALS ARE REQUIRED
11 TO CONTRIBUTE THREE PERCENT OF THEIR SALARY TOWARDS THE DEFINED CONTRIB-
12 UTION PLAN. SUCH EMPLOYEES MAY CONTRIBUTE UP TO ONE HUNDRED PERCENT,
13 NOT TO EXCEED SIXTEEN THOUSAND FIVE HUNDRED DOLLARS OF HIS OR HER SALARY
14 TOWARDS THE DEFINED CONTRIBUTION PLAN.

15 4. THE TERM "FINANCIAL ORGANIZATION" SHALL MEAN AN ORGANIZATION
16 AUTHORIZED TO DO BUSINESS IN THE STATE OF NEW YORK AND (A) WHICH IS AN
17 AUTHORIZED FIDUCIARY TO ACT AS A TRUSTEE PURSUANT TO THE PROVISIONS OF
18 AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF
19 1974" AS SUCH PROVISIONS MAY BE AMENDED FROM TIME TO TIME, OR AN INSUR-
20 ANCE COMPANY; AND (B) (I) IS LICENSED OR CHARTERED BY THE STATE INSUR-
21 ANCE DEPARTMENT; (II) IS LICENSED OR CHARTERED BY THE STATE BANKING
22 DEPARTMENT; (III) IS CHARTERED BY AN AGENCY OF THE FEDERAL GOVERNMENT;
23 (IV) IS SUBJECT TO THE JURISDICTION AND REGULATION OF THE SECURITIES AND
24 EXCHANGE COMMISSION OF THE FEDERAL GOVERNMENT; OR (V) IS ANY OTHER ENTI-
25 TY OTHERWISE AUTHORIZED TO ACT IN THIS STATE AS A TRUSTEE PURSUANT TO
26 THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT
27 INCOME SECURITY ACT OF 1974" AS SUCH PROVISIONS MAY BE AMENDED FROM TIME
28 TO TIME.

29 5. THE CURRENT RETIREMENT PLANS FOR NON-CIVIL SERVICE APPOINTED
30 EMPLOYEES AND ELECTED OFFICIALS SHALL BE FROZEN AS OF THE EFFECTIVE DATE
31 OF THIS SECTION. NON-CIVIL SERVICE APPOINTED EMPLOYEES AND ELECTED OFFI-
32 CIALS SHALL NO LONGER CONTRIBUTE TO THEIR CURRENT RETIREMENT PLAN,
33 HOWEVER, SUCH PERSONS SHALL RECEIVE THE BENEFITS THEY HAVE ACCRUED UP TO
34 THE EFFECTIVE DATE OF THIS SECTION UPON RETIREMENT. THE MEMBERSHIP OF A
35 NON-CIVIL SERVICE APPOINTED EMPLOYEE OR ELECTED OFFICIAL IN ANY STATE
36 RETIREMENT SYSTEM SHALL REMAIN OPEN IF HE OR SHE BECOMES A MEMBER OF THE
37 DEFINED CONTRIBUTION PLAN.

38 S 2. This act shall take effect on the first of the fiscal year next
39 succeeding the date on which it shall have become a law; provided,
40 however, that the amendments made to article 15 of the retirement and
41 social security law by this act shall expire on the same date as such
42 article expires pursuant to section 615 of such law. Effective imme-
43 diately, the addition, amendment and/or repeal of any rule or regulation
44 necessary for the implementation of this act on its effective date are
45 authorized and directed to be made and completed on or before such
46 effective date.

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

This bill would change the retirement plan coverage for existing and future elected officials and non-civil service appointees who are employed by the State of New York or any public employer which participates in the New York State and Local Employees' Retirement System (NYS&LERS). Affected employees and their employers would be required to contribute 3% of annual compensation to a defined contribution plan. The Comptroller shall select one or more financial organizations to administer the plan and to invest the funds held pursuant to such plan.

This proposal would freeze the benefit accruals in the NYS&LERS as of the effective date for current members. If this becomes law, this bill is likely to face a constitutional challenge based upon the guarantee that a member's benefits may not be diminished.

If this bill is enacted, relatively few members would be affected. There will not be a cost to the State or the participating employers in the NYS&LERS.

This estimate, dated March 11, 2009, and intended for use only during the 2009 Legislative Session, is Fiscal Note No. 2009-151, prepared by the Actuary for the New York State and Local Employees' Retirement System.