S T A T E   O F   N E W   Y O R K

9041

2009-2010 Regular Sessions

I N A S S E M B L Y

June 22, 2009

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

AN ACT to establish the "retirement for advanced career teachers" program; provides temporary retirement incentive to certain retirement systems

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

Section 1. This act enacts into law components of legislation that are intended to provide public educational employers and educational employees with the tools necessary to address short-term economic hardships, to remediate the need for layoffs in certain educational institutions and to deal with long-term demographic trends relative to the impending retirement of senior educational staff and the attraction of new, qualified teachers and other school-related professionals. Each component is wholly contained within a part identified as parts A and B. The effective date for each particular provision contained within such part is set forth in the last section of such part. Any provision in any section contained within a part, including the effective date of the part, which makes reference to a section "of this act," when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the part in which it is found, unless noted otherwise.

S 2. Legislative findings. The legislature finds and declares that the retirement incentive provided for in this act is specifically designed to achieve immediate cost savings for public educational employers and taxpayers, to mitigate the need for layoffs of public school teachers and other school-related professionals, to maintain the continuity of quality educational services and programs for students and to address long-term demographic trends by attracting younger, lower salaried educators and other school-related professionals into the public school system. Therefore, the retirement benefit provided for in this act is

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

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intended only to be temporary in nature for certain educational employees and school-related professionals who are eligible to receive and qualify for the applicable benefit during the applicable time period specified herein. Further, nothing in this act shall be construed to create an expectation of a future or continuing retirement benefit for any educational employee who is not eligible to receive and qualify for the retirement benefits herein during the applicable time period.

PART A

Section 1. Definitions. As used in this act, unless the context clearly requires otherwise:

a. "Retirement system" means the New York state and local employees' retirement system, the New York state teachers' retirement system, the New York city teachers' retirement system, the New York city employees' retirement system or the New York city board of education retirement system.

b. "Educational employer" means an employer which is a school district, a board of cooperative educational services, a vocational education and extension board, an institution for the instruction of the deaf and of the blind as enumerated in section 4201 of the education law, or a school district as enumerated in section 1 of chapter 566 of the laws of 1967, as amended, the state university of New York, the city university of New York or a community college.

c. "Educational employee" means a person who is a member of a retirement system and who is an employee of an educational employer.

d. "Open period" means the period beginning on July 1, 2009 and ending on August 31, 2009. For the purposes of retirement pursuant to this act, a service retirement application must be filed with the appropriate retirement system not less than fourteen days prior to the effective date of retirement to become effective.

e. "Eligible employee" means an educational employee who (1) has attained age fifty-five and whose age and years of creditable service combined equals eighty or more and is otherwise eligible for service retirement as of the effective date of the application for retirement, (2) has been continuously in active service of an educational employer from February 2, 2009 to the date immediately prior to the start of the open period, (3) files an application for service retirement that is effective during the open period shall be entitled to the retirement incentive provided in section four of part B of this act.

f. "Active service" means being paid on the payroll, provided that (1) a leave of absence with pay shall be deemed active service; (2) other approved leave without pay not to exceed twelve weeks from January 1, 2009 and the start of the open period; and (3) the time period subsequent to the June 2009 school term for a teacher (or other employee employed on a school-year basis) who is otherwise in active service on the effective date of this act shall be deemed in active service.

S 2. Notwithstanding any other provision of law, any eligible employee who is a member of a retirement system may retire pursuant to the provisions of article 11 or 15 of the retirement and social security law, whichever is applicable, without the reduction of his or her retirement benefit that would otherwise be imposed by such article provided (1) such eligible employee is age fifty-five or older and whose age and years of creditable service combined equal eighty or more as of the effective date of the application for retirement; and (2) such educational employee's effective date of retirement is during the open period.

S 3. This act shall take effect immediately and shall be deemed to be in full force and effect on and after June 30, 2009, provided, however, that the cost of this benefit shall be borne as a constant percentage of payroll over a five year period beginning in fiscal year ending 2011 by all educational employers as defined in subdivision b of section one of this act.

PART B

Section 1. Definitions. As used in this act, unless the context clearly requires otherwise:

a. "Optional retirement program" means the programs established pursuant to the provisions of section 181, 391 or 6251 of the education law; or continued pursuant to section 3 of chapter 980 of the laws of 1962.

b. "Campus employer" means (1) the state-operated institutions of the state university of New York, (2) the statutory and contract colleges operated pursuant to section 357 of the education law, (3) the state university construction fund ("fund"), (4) a cooperative extension association ("association"), (5) the city university of New York as defined in subdivision 2 of section 6202 of the education law and (6) community colleges operating under the program of the state university of New York.

c. "Eligible employee" means a person who is a participant in an optional retirement program and whose combined age and years of service equate to eighty or more.

d. "College faculty" means an employee, not in the classified service, of a campus employer described in subdivision b of this section who is a participant in an optional retirement program.

e. "Active service" means service while (1) being paid on the payroll, (2) on an approved leave of absence with pay, (3) on other approved leave without pay provided such leave began on or after February 2, 2009, and (4) for a teacher or other employee employed on a school year basis the time subsequent to the June 2009 school term.

f. "Open period" means the period beginning July 1, 2009 and ending on August 31, 2009. For the purposes of the program established pursuant to this act, a service retirement application must be filed with the campus employer prior to the effective date of retirement to become effective unless a shorter period is provided by applicable statute.

g. "Commencement date" shall mean July 1, 2009.

S 2. The determination of whether a title shall be considered eligible shall consider whether the reduction of a specific number of positions within a title would unacceptably:

a. directly result in a reduction of the level of service required or mandated to protect and care for clients of the state or a campus employer or to assure public health and safety;

b. endanger the health or safety of employees of the state or a campus employer; or

c. clearly result in a loss of significant revenue to the state or a campus employer or result in substantially increased overtime or contractual costs.

S 3. a. Eligibility for inclusion in the retirement incentive provided by section four of this act shall be determined by the board of trustees of the state university (including the association), the fund, the city university of New York and each community college operating under the program of the state university.

b. All eligible employees desiring to avail themselves of the benefits provided by section four of this act shall provide written notice to his or her employer on or before December 31, 2009. Failure to provide such written notice shall render the employee ineligible for the retirement incentive provided by this act.

S 4. Notwithstanding any other provision of law, an eligible employee serving in an eligible title who is a participant in an optional retirement program who is entitled to the benefits pursuant to this act shall receive an additional employer contribution equal to an amount, which shall be calculated as follows: (one-twelfth for each year of service) multiplied by (fifteen percent) multiplied by (the employee's earnable annual salary rate in effect on March 1, 2009 or the effective date of this act if the employee retires prior to December 31, 2009), such amount not to exceed forty-five percent of such salary rate. Such contribution shall be made to the employee's retirement annuity under the optional retirement program up to the maximum contribution allowable under section 415 of the internal revenue code. Any contribution in excess of that limit shall be contributed by the employer to an internal revenue code section 403(b) contract on behalf of the employee to the extent it can be contributed on a before-tax basis under the maximum limits allowed under the internal revenue code. Contributions in excess of that amount shall be paid in cash to the participant in three equal installments during a twenty-four month period commencing on such eligible employee's effective date of retirement. Provided, however, if the employee is employed by the city university of New York and in the active service of such employer in October in the year preceding the effective date of this act if the employee retires prior to September 1, 2009, respectively, then the employee's earnable annual salary rate shall be the annual salary rate in effect on such applicable date.

S 5. a. An employee of a campus employer, other than the city university of New York, who retires pursuant to this act may defer calculation of the value of accumulated sick leave credits, if any, and participation in the state health insurance plan.

b. Where there is an agreement in accordance with article 14 of the civil service law, an employee of a campus employer described in paragraph (1) of subdivision b of section 1 of this act, who retires pursuant to this act, shall be eligible for any lump sum longevity performance award or other lump sum payments due and owing to such employee pursuant to such agreement, if any, had he or she remained in active service through March 31, 2009.

c. An employee of the city of New York or the city university of New York, as defined in subdivision 2 of section 6202 of the education law, who retires under the retirement incentive provided by this act, who is eligible for terminal leave pursuant to an applicable collective bargaining agreement or a personnel policy or rule or retirement leave pursuant to section 3107 of the education law or who has an accrued annual leave balance on the effective date of retirement shall be paid in three equal installments two months, fourteen months and twenty-four months following such eligible employee's effective date of retirement.

S 6. The pension benefit costs of section four of this act shall be paid by campus employers as provided by applicable law over a period not to exceed five years commencing in the state fiscal year ending March 31, 2012.

S 7. This act shall take effect immediately and shall be deemed in full force and effect on and after June 30, 2009.

S 3. The provisions of section 430 of the retirement and social security law shall not apply to any benefit or benefit improvement provided by this act.

S 4. The pension benefit costs of this act shall be paid as provided by applicable law for each retirement system covered by this act.

S 5. The retirement systems of this state shall inform educational employers and educational employees of their eligibility for the benefits provided by this act.

S 6. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 7. This act shall take effect immediately, provided, however, that the retirement systems of this state shall establish any rules, regulations and procedures necessary for the timely implementation of this act as provided herein.

FISCAL NOTE.--This bill would provide a temporary retirement incentive in which eligible Tier 2, 3 and 4 members of the New York State Teachers' Retirement System would be permitted to retire without penalty upon the attainment of at least age 55 and where their age and years of creditable service combined equals eighty or more as of their effective date of retirement. An eligible member's effective date of retirement must occur during the open period beginning on July 1, 2009 and ending on August 31, 2009. Currently age 55 with 30 years of service or age 62 with five years of service, are required in order to retire without reductions.

The annual cost to the employers of members of the New York State Teachers' Retirement System for this benefit is estimated to be $15.5 million or .11% of payroll if this bill is enacted.

The source of this estimate is Fiscal Note 2009-67 dated May 21, 2009 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2009 Legislative Session.

FISCAL NOTE.--This bill would eliminate the early retirement reductions for Tier 2, 3 and 4 members of the New York State and Local Employees' Retirement System (ERS), New York State Teachers' Retirement System, the New York City Teachers' Retirement System, New York City Board of Education Retirement System and the New York City Employees' Retirement System who are employed by educational institutions and who retire between July 1, 2009 and August 31, 2009.

If this bill is enacted, insofar as it affects ERS, the additional cost will be shared by all educational employers over five year period, with the first payment due in the fiscal year ending March 31, 2011. We expect the annual cost to be up to .2% of annual payroll of educational employers.

This estimate, dated May 7, 2009, and intended for use only during the 2009 Legislative Session, is Fiscal Note No. 2009-237, prepared by the Actuary for the New York State and Local Employees' Retirement System.