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

3902

2011-2012 Regular Sessions

I N A S S E M B L Y

January 28, 2011

Introduced by M. of A. McENENY, CANESTRARI, V. LOPEZ, CYMBROWITZ, COOK -- Multi-Sponsored by -- M. of A. CAHILL, CLARK, COLTON, ENGLEBRIGHT, GLICK, JACOBS, MAGEE, ORTIZ, TOWNS -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to participation by certain not-for-profit corporations in the New York state and local employees' retirement system

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

Section 1. The retirement and social security law is amended by adding a new section 31-g to read as follows:

S 31-G. PARTICIPATION BY CERTAIN NOT-FOR-PROFIT CORPORATIONS. A. ANY NOT-FOR-PROFIT CORPORATION, AS DEFINED IN SUBPARAGRAPH FIVE OF PARAGRAPH (A) OF SECTION ONE HUNDRED TWO OF THE NOT-FOR-PROFIT CORPORATION LAW, WHICH RECEIVES FORTY PERCENT OR MORE OF ITS GROSS REVENUES THROUGH GOVERNMENT FUNDING, BY RESOLUTION LEGALLY ADOPTED BY ITS BOARD OF DIRECTORS AND APPROVED BY THE COMPTROLLER, MAY ELECT TO BECOME A PARTICIPATING EMPLOYER IN THE RETIREMENT SYSTEM. ACCEPTANCE OF ANY SUCH NOT-FOR-PROFIT CORPORATION AS A PARTICIPATING EMPLOYER IN THE RETIREMENT SYSTEM SHALL BE OPTIONAL WITH THE COMPTROLLER, WHO SHALL DETERMINE THE AMOUNTS OF CONTRIBUTION PAYABLE BY SUCH CORPORATION AND ITS EMPLOYEES, SHALL RESOLVE QUESTIONS OF CREDIT FOR PRIOR SERVICE, AND SHALL IN ALL OTHER RESPECTS ASSURE THAT SUCH EMPLOYEES SHARE THE SAME RIGHTS, OBLIGATIONS AND BENEFITS AS OTHER MEMBERS OF THE RETIREMENT SYSTEM.

B. THE OFFICERS AND EMPLOYEES OF SUCH QUALIFYING NOT-FOR-PROFIT CORPORATION SHALL BE CREDITED WITH SUCH PERIODS OF PRIOR SERVICE AS SHALL BE CERTIFIED BY SUCH NOT-FOR-PROFIT CORPORATION FOR SERVICE RENDERED TO IT, OR THE STATE, OR IN ANY OTHER CAPACITY APPROVED BY SUCH NOT-FOR-PROFIT CORPORATION AND THE COMPTROLLER. SERVICE FOR SUCH NOT-FOR-PROFIT CORPORATION AFTER THE DATE ON WHICH IT COMMENCES TO PARTICIPATE IN THE RETIREMENT SYSTEM SHALL BE CONSIDERED MEMBER SERVICE. AN OFFICER OR

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

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EMPLOYEE OF SUCH NOT-FOR-PROFIT CORPORATION WHO, AS OF THE DATE HE OR SHE IS SO APPROVED FOR MEMBERSHIP IN THE RETIREMENT SYSTEM, IS ALREADY A MEMBER THEREOF, SHALL NOT HAVE HIS OR HER TOTAL CREDIT REDUCED BY SUCH APPROVAL. ANY RESERVE HELD ON ACCOUNT OF ANY SUCH OFFICER OR EMPLOYEE IN THE PENSION ACCUMULATION FUND SHALL BE USED AS AN OFFSET AGAINST THE DEFICIENCY CONTRIBUTION PAYABLE THEREAFTER BY SUCH NOT-FOR-PROFIT CORPORATION ON ACCOUNT OF SUCH OFFICER OR EMPLOYEE FOR ANY PRIOR SERVICE CREDIT AND ANY SUCH PREVIOUS CREDIT.

S 2. This act shall take effect immediately.

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

This bill would permit any not-for-profit corporation which receives forty percent of more of its gross revenues from government funding to elect participation in the New York State and Local Employees' Retirement System.

Participation by employees or members of an organization that may potentially be considered a non-governmental or private employer, such as a not-for-profit corporation as described in this bill, could jeopardize the Retirement System's governmental plan status and its exemption from ERISA. This development could result in the loss of qualified status, which would mean the loss of tax benefits. This result would substantially impair the System's value to our approximately one million participants.

If this bill is enacted and an eligible not-for-profit corporation elects participation, the future annual cost would depend on the retirement plan adopted.

As a percentage of payroll, we anticipate that the annual contributions of the affected corporation for the fiscal year ending March 31, 2012, will be as follows:

Tier 1	10.5% to 21.3%
Tier 2	9.8% to 19.5%
Tier 3	15.6%
Tier 4	15.6%
Tier 5	12.6%

In addition to the annual contributions discussed above, there will be a deficiency cost to the affected corporation which will be payable for a 25 year period. These costs will depend on the age, service, salary, tier status and plan of the affected employees.

This estimate, dated December 28, 2010, and intended for use only during the 2011 Legislative Session, is Fiscal Note No. 2011-76, prepared by the Actuary for the New York State and Local Employees' Retirement System.