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

5141--A

2011-2012 Regular Sessions

I N A S S E M B L Y

February 14, 2011

Introduced by M. of A. FITZPATRICK, KELLNER, AMEDORE, SAYWARD, JORDAN, BOYLE, MURRAY, LATIMER, CALHOUN, CERETTO, RAIA, FRIEND, TENNEY, D. MILLER, TEDISCO, OAKS -- Multi-Sponsored by -- M. of A. CONTE, CORWIN, CROUCH, McLAUGHLIN, PAULIN, WALTER -- read once and referred to the Committee on Governmental Employees -- recommitted to the Committee on Governmental Employees in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The retirement and social security law is amended by adding a new section 618 to read as follows:

S 618. DEFINED CONTRIBUTION PLAN. 1. THE DEFINED CONTRIBUTION PLAN IS HEREBY ESTABLISHED. THE COMPTROLLER SHALL ADOPT RULES AND REGULATIONS REGARDING THE STANDARDS AND REQUIREMENTS OF THE DEFINED CONTRIBUTION PLAN ESTABLISHED PURSUANT TO THIS SECTION, INCLUDING SELECTION OF FINANCIAL ORGANIZATIONS FOR INVESTMENT PURPOSES.

2. A. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE DEFINED CONTRIBUTION PLAN SHALL BE ESTABLISHED FOR ALL NON-CIVIL SERVICE APPOINTED EMPLOYEES AND ELECTED OFFICIALS EMPLOYED BY THE STATE OF NEW YORK OR ANY PUBLIC EMPLOYER WHICH HAS ELECTED TO PARTICIPATE IN THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM.

B. THE COMPTROLLER SHALL ENTER INTO WRITTEN AGREEMENTS WITH ONE OR MORE FINANCIAL ORGANIZATIONS TO ADMINISTER THE DEFINED CONTRIBUTION PLAN FOR MEMBERS AND TO INVEST FUNDS HELD PURSUANT TO SUCH PLAN.

C. THE RULES AND REGULATIONS PROMULGATED BY THE COMPTROLLER SHALL ESTABLISH STANDARDS FOR THE SELECTION OF FINANCIAL ORGANIZATIONS, AUTHORIZED TO DO BUSINESS IN THIS STATE, TO PARTICIPATE IN SUCH PLANS, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING CRITERIA: (I) RATES OF

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

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COMMISSION, BROKERAGE AND OTHER FEES, ADMINISTRATIVE EXPENSES AND RELATED SERVICE CHARGES IMPOSED BY THE FINANCIAL ORGANIZATION; (II) VARIETY OF TYPES OF INVESTMENT OPPORTUNITIES OFFERED BY THE FINANCIAL ORGANIZATION AND/OR AMONG THE FINANCIAL ORGANIZATIONS SELECTED AND THE ABILITY TO TRANSFER AMONG SUCH OPPORTUNITIES; (III) THE STABILITY OF THE FINANCIAL ORGANIZATION AS EVIDENCED BY EXPERIENCE, REPUTATION, ASSETS AND HOLDINGS, ABILITY TO GUARANTEE SPECIFIC RATES OF RETURN; (IV) ABILITY TO COMPLY WITH REPORTING REQUIREMENTS TO THE COMPTROLLER AND TO PARTICIPANTS IN SUCH A PLAN; AND (V) SUCH OTHER FACTORS WHICH WOULD BE CONSIDERED BY A PRUDENT INVESTOR IN SUCH A PLAN.

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

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

4. THE TERM "FINANCIAL ORGANIZATION" SHALL MEAN AN ORGANIZATION AUTHORIZED TO DO BUSINESS IN THE STATE OF NEW YORK AND (A) WHICH IS AN AUTHORIZED FIDUCIARY TO ACT AS A TRUSTEE PURSUANT TO THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974" AS SUCH PROVISIONS MAY BE AMENDED FROM TIME TO TIME, OR AN INSURANCE COMPANY; AND (B) (I) IS LICENSED OR CHARTERED BY THE STATE INSURANCE DEPARTMENT; (II) IS LICENSED OR CHARTERED BY THE STATE BANKING DEPARTMENT; (III) IS CHARTERED BY AN AGENCY OF THE FEDERAL GOVERNMENT; (IV) IS SUBJECT TO THE JURISDICTION AND REGULATION OF THE SECURITIES AND EXCHANGE COMMISSION OF THE FEDERAL GOVERNMENT; OR (V) IS ANY OTHER ENTITY OTHERWISE AUTHORIZED TO ACT IN THIS STATE AS A TRUSTEE PURSUANT TO THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974" AS SUCH PROVISIONS MAY BE AMENDED FROM TIME TO TIME.

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

S 2. This act shall take effect on the first of the fiscal year next succeeding the date on which it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such 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 legislation would freeze the benefit accruals of current members in the NYS&LERS as of the effective date. 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.

Summary of relevant resources:

Data: March 31, 2011 Actuarial Year End File with distributions of membership and other statistics displayed in the 2011 Report of the Actuary and 2011 Comprehensive Annual Financial Report.

Assumptions and Methods: 2010 and 2011 Annual Report to the Comptroller on Actuarial Assumptions, Codes Rules and Regulations of the State of New York: Audit and Control.

Market Assets and GASB Disclosures: March 31, 2011 New York State and Local Retirement System Financial Statements and Supplementary Information.

Valuations of Benefit Liabilities and Actuarial Assets: summarized in the 2011 Actuarial Valuations Report.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This estimate, dated February 27, 2012, and intended for use only during the 2012 Legislative Session, is Fiscal Note No. 2012-100 prepared by the Actuary for the New York State and Local Employees' Retirement System.