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

5206--A

2013-2014 Regular Sessions

I N A S S E M B L Y

February 21, 2013

Introduced by M. of A. FITZPATRICK, GRAF, CURRAN, FRIEND, McLAUGHLIN, WALTER, CORWIN, OAKS, BLANKENBUSH, HAWLEY, TENNEY -- Multi-Sponsored by -- M. of A. CROUCH, McDONALD, McKEVITT, PAULIN, TEDISCO, THIELE -- 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 program for which elected officials are deemed mandatory members

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 article 22-A to read as follows:

ARTICLE 22-A

DEFINED CONTRIBUTION PROGRAM

SECTION 1250. DEFINITIONS.
1251. DEFINED CONTRIBUTION PROGRAMS ESTABLISHED.
1252. RATES OF CONTRIBUTION.
1253. ENROLLMENT.
1254. DEATH BENEFIT.
1255. INCONSISTENT PROVISIONS OF OTHER ACTS SUPERSEDED.

S 1250. DEFINITIONS. WHEREVER USED IN THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. THE TERM "PUBLIC RETIREMENT SYSTEM OF THE STATE" SHALL MEAN THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM, THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM, THE NEW YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM, THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM, THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM, THE NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM, THE NEW YORK CITY POLICE PENSION FUND, AND THE NEW YORK CITY FIRE PENSION FUND.

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

LBD06100-03-4

B. THE TERMS "OPTIONAL MEMBER" AND "OPTIONAL MEMBERS" MEAN THOSE EMPLOYEES WHO ARE MEMBERS OF A PUBLIC RETIREMENT SYSTEM OF THE STATE WHO FIRST BECAME MEMBERS OF SUCH SYSTEMS ON OR AFTER APRIL FIRST, TWO THOUSAND FOURTEEN AND MAKE AN ELECTION TO JOIN THE DEFINED CONTRIBUTION PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE PURSUANT TO THE PROVISIONS OF SECTION TWELVE HUNDRED FIFTY-THREE OF THIS ARTICLE.

C. THE TERMS "MANDATORY MEMBER" AND "MANDATORY MEMBERS" MEAN THOSE ELECTED OFFICIALS WHO ARE MEMBERS OF A PUBLIC RETIREMENT SYSTEM OF THE STATE WHO FIRST BECAME MEMBERS OF SUCH SYSTEMS ON OR AFTER APRIL FIRST, TWO THOUSAND FOURTEEN PURSUANT TO THE PROVISIONS OF SECTION TWELVE HUNDRED FIFTY-THREE OF THIS ARTICLE.

D. THE TERMS "PROGRAM PARTICIPANT" AND "PROGRAM PARTICIPANTS" MEAN THOSE EMPLOYEES ELECTING TO PARTICIPATE IN THE DEFINED CONTRIBUTION PROGRAM.

E. THE TERM "DEFINED CONTRIBUTION PROGRAM" MEANS THE RETIREMENT PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE.

F. THE TERM "WAGES" SHALL MEAN REGULAR COMPENSATION EARNED BY AND PAID TO A MEMBER BY A PUBLIC EMPLOYER, EXCEPT THAT THE FOLLOWING ITEMS SHALL NOT BE INCLUDED IN THE DEFINITION OF WAGES: (I) OVERTIME COMPENSATION PAID UNDER ANY LAW OR POLICY UNDER WHICH EMPLOYEES ARE PAID AT A RATE GREATER THAN THEIR STANDARD RATE FOR ADDITIONAL HOURS BEYOND THAT REQUIRED, INCLUDING SECTION ONE HUNDRED THIRTY-FOUR OF THE CIVIL SERVICE LAW AND SECTION NINETY OF THE GENERAL MUNICIPAL LAW, (II) WAGES IN EXCESS OF THE ANNUAL SALARY PAID TO THE GOVERNOR PURSUANT TO SECTION THREE OF ARTICLE FOUR OF THE STATE CONSTITUTION, (III) LUMP SUM PAYMENTS FOR DEFERRED COMPENSATION, SICK LEAVE, ACCUMULATED VACATION OR OTHER CREDITS FOR TIME NOT WORKED, (IV) ANY FORM OF TERMINATION PAY, AND (V) ANY ADDITIONAL COMPENSATION PAID IN ANTICIPATION OF RETIREMENT.

S 1251. DEFINED CONTRIBUTION PROGRAMS ESTABLISHED. THERE IS HEREBY ESTABLISHED A DEFINED CONTRIBUTION PROGRAM WITHIN EACH PUBLIC RETIREMENT SYSTEM OF THE STATE WHICH SHALL PROVIDE FOR RETIREMENT BENEFITS FOR OR ON BEHALF OF PROGRAM PARTICIPANTS. UNDER SUCH PROGRAM THE STATE, THE CITY OF NEW YORK AND OTHER PARTICIPATING EMPLOYERS AND SUCH EMPLOYEES SHALL CONTRIBUTE, TO THE EXTENT AUTHORIZED OR REQUIRED, TO SUCH DEFINED CONTRIBUTION ACCOUNTS. THE PROGRAMS SHALL BE ADMINISTERED BY THE RETIREMENT SYSTEM IN WHICH THE PROGRAM PARTICIPANT IS A MEMBER. EACH PUBLIC RETIREMENT SYSTEM OF THE STATE IS AUTHORIZED TO PROMULGATE ALL SUCH RULES AND REGULATIONS AS MAY BE NECESSARY OR REQUIRED TO IMPLEMENT THE DEFINED CONTRIBUTION PROGRAMS ESTABLISHED PURSUANT TO THIS ARTICLE, INCLUDING SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO COMPLY WITH THE APPLICABLE PROVISIONS OF TITLE TWENTY-SIX OF THE UNITED STATES CODE RELATING TO DEFINED CONTRIBUTION PLANS AND THEIR QUALIFICATION AND OPERATION AND ALL SUCH RULES AND REGULATIONS AS MAY BE NECESSARY OR REQUIRED REGARDING THE COLLECTION OF EMPLOYER AND MEMBER CONTRIBUTIONS, INVESTMENT OF CONTRIBUTIONS, WITHDRAWALS AND DISTRIBUTION OF MEMBER ACCOUNTS, NOMINATION OF BENEFICIARIES, THE ASSESSMENT AND COLLECTION FROM EMPLOYERS OF COSTS AND EXPENSES INCURRED IN THE ESTABLISHMENT AND OPERATION OF THE PLAN, AND ALL OTHER MATTERS PERTAINING THERETO. EACH PUBLIC RETIREMENT SYSTEM OF THE STATE IS AUTHORIZED TO ENTER INTO SUCH AGREEMENTS WITH QUALIFIED PROVIDERS AS MAY BE NECESSARY OR DESIRABLE FOR THE INVESTMENT OF MEMBER ACCOUNTS AND THE GENERAL ADMINISTRATION OF THE PLAN.

S 1252. RATES OF CONTRIBUTION. A. 1. THE EMPLOYER SHALL MAKE A CONTRIBUTION EQUAL TO FOUR PERCENT OF EACH PROGRAM PARTICIPANT'S WAGES. SUCH CONTRIBUTIONS SHALL BE KNOWN AS "BASIC EMPLOYER CONTRIBUTIONS".

2. THE EMPLOYER SHALL CONTRIBUTE AN AMOUNT EQUAL TO THE CONTRIBUTION MADE BY EACH PROGRAM PARTICIPANT, PROVIDED HOWEVER, THAT SUCH ADDITIONAL CONTRIBUTIONS SHALL NOT EXCEED THREE PERCENT OF EACH PROGRAM PARTICIPANT'S WAGES. SUCH CONTRIBUTIONS SHALL BE KNOWN AS "MATCHING EMPLOYER CONTRIBUTIONS".

B. IN THE CASE OF ANY PROGRAM PARTICIPANTS, EMPLOYEES SHALL BE ALLOWED TO CONTRIBUTE AN AMOUNT UP TO THE MAXIMUM ALLOWABLE AMOUNT, INCLUSIVE OF BASIC AND MATCHING EMPLOYER CONTRIBUTIONS, PERMITTED BY FEDERAL LAW IN 26 U.S.C. 401 ET SEQ. AND THE RULES AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF THE TREASURY PROMULGATED THEREUNDER.

C. NO CONTRIBUTIONS PURSUANT TO SUBDIVISION A OF THIS SECTION SHALL BE MADE BY THE EMPLOYER UNTIL THE PROGRAM PARTICIPANT COMPLETES ONE YEAR OF SERVICE AND CONTINUES IN SERVICE THEREAFTER. AT THE END OF A PROGRAM PARTICIPANT'S INITIAL YEAR OF SERVICE, A SINGLE CONTRIBUTION IN AN AMOUNT DETERMINED PURSUANT TO SUBDIVISION A OF THIS SECTION, WITH INTEREST AT THE RATE OF FOUR PER CENTUM PER ANNUM, SHALL BE MADE BY THE EMPLOYER, ON BEHALF OF SUCH PROGRAM PARTICIPANT CONTINUED IN SERVICE.

S 1253. ENROLLMENT. A. EMPLOYEES WHO FIRST BECOME MEMBERS OF A PUBLIC RETIREMENT SYSTEM OF THE STATE ON OR AFTER APRIL FIRST, TWO THOUSAND FOURTEEN, WITHIN THIRTY DAYS OF HIS OR HER ENTRY INTO SERVICE, SHALL HAVE THE ABILITY TO ELECT THE DEFINED CONTRIBUTION PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE. SUCH ELECTION SHALL BE IN WRITING, SHALL BE DULY EXECUTED AND FILED WITH THE RETIREMENT SYSTEM OF WHICH HE OR SHE IS A MEMBER AND SHALL BE IRREVOCABLE AS LONG AS SUCH PERSON IS A MEMBER OF A PUBLIC RETIREMENT SYSTEM OF THE STATE. ALL ELIGIBLE EMPLOYEES WHO ELECT THE DEFINED CONTRIBUTION PROGRAM SHALL NOT ACCRUE CREDITED SERVICE FOR ANY PURPOSE UNDER ANY OTHER ARTICLE OF THIS CHAPTER OR ANY OTHER APPLICABLE LAW.

B. ALL PROGRAM PARTICIPANTS ENROLLED IN THE DEFINED CONTRIBUTION PROGRAM SHALL NOT ACCRUE CREDITED SERVICE TO BE USED FOR ANY PURPOSE UNDER ANY OTHER ARTICLE OF THIS CHAPTER OR ANY OTHER APPLICABLE LAW.

C. ANY ELECTED OFFICIAL OR ELECTED OFFICIALS WHO FIRST BECOME MEMBERS OF A PUBLIC RETIREMENT SYSTEM OF THE STATE ON OR AFTER APRIL FIRST, TWO THOUSAND FOURTEEN, SHALL BE A MANDATORY MEMBER OR MANDATORY MEMBERS, REQUIRED TO PARTICIPATE IN THE DEFINED CONTRIBUTION PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE. FOR ALL SUCH ELECTED OFFICIALS THE DEFINED CONTRIBUTION PROGRAM SHALL NOT ACCRUE CREDITED SERVICE FOR ANY PURPOSE UNDER ANY OTHER ARTICLE OF THIS CHAPTER OR ANY OTHER APPLICABLE LAW.

S 1254. DEATH BENEFIT. A. PROGRAM PARTICIPANTS SHALL RECEIVE THE FOLLOWING FINANCIAL PROTECTION IN THE EVENT OF DEATH IN SERVICE: A BENEFIT UPON THE DEATH OF A MEMBER IN SERVICE EQUAL TO THE MEMBER'S SALARY UPON HIS OR HER COMPLETION OF ONE YEAR OF SERVICE, TWO YEARS' SALARY UPON COMPLETION OF TWO YEARS OF SERVICE, AND THREE YEARS' SALARY UPON COMPLETION OF THREE YEARS OF SERVICE.

B. FOR THE PURPOSES OF THIS SECTION:

1. THE DEATH BENEFIT PAYABLE SHALL BE IN LIEU OF THE PAYMENT OF THE BASIC EMPLOYER CONTRIBUTIONS AND MATCHING EMPLOYER CONTRIBUTIONS MADE PURSUANT TO THIS ARTICLE, BUT SHALL NOT BE LESS THAN THE VALUE OF SUCH CONTRIBUTIONS AND

2. THE VALUE OF THE EMPLOYEE CONTRIBUTIONS SHALL BE PAYABLE IN ADDITION TO THE DEATH BENEFIT PAYABLE PURSUANT TO THIS SECTION.

S 1255. INCONSISTENT PROVISIONS OF OTHER ACTS SUPERSEDED. INSOFAR AS THE PROVISIONS OF THIS ARTICLE ARE INCONSISTENT WITH THE PROVISIONS OF ANY OTHER ACT, GENERAL OR SPECIAL, THE PROVISIONS OF THIS ARTICLE SHALL BE CONTROLLING.

S 2. This act shall take effect April 1, 2014.

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

This bill would provide new members who first join public retirement systems in New York State on or after April 1, 2014 the option to become covered under the provisions of a new defined contribution plan in lieu of the defined benefit plan. This plan would be mandatory for elected officials who first join public retirement systems in New York State on or after April 1, 2014. Pursuant to Chapter 18 of the Laws of 2012, participation is optional in a defined contribution plan for non-union employees hired on or after July 1, 2013 whose salary is $75,000 or higher.

The proposal does not appear to provide sufficient time for the provisions to be implemented by April 1, 2014.

Insofar as this bill would affect the New York State and Local Employees Retirement System (ERS) and the New York State and Local Police and Fire Retirement System (PFRS), the significant design changes to the defined benefit plan include:

1. Mandatory employer contributions of 4% of wages.

2. Matching employer contributions for voluntary employee contributions of up to 3% of wages.

3. Employee and employer contributions are subject to limits in Federal Law.

4. A death benefit equal to

- the member's salary after completion of one year of service,
- two year's salary after completion of two year's service, and
- three year's salary after completion of three year's service,

reduced by the employer contributions already made to the employee's defined contribution account.

5. There is no disability benefit.

6. Members may not opt out of the defined contribution plan once they have opted in.

7. The defined contribution plan is to be administered by the New York State and Local Retirement System, which may enter into agreements with qualified providers for investment of member accounts and general administration of the plan.

Assuming that employees contribute 3% or more to maximize the employer match, the long term expected total annual employer contribution rate for all members who choose the defined contribution plan (including the death benefit and the ongoing administrative rate) would be approximately 7.7% of payroll.

There would also be additional NYSLRS administrative expenses to establish the new defined contribution plan. Such expenses would include legal costs to draft and submit plan documents for review by the Internal Revenue Service, drafting and promulgating such rules and regulations as may be necessary or required to implement the defined contribution program, entering into general agreements with qualified providers for the investment of member accounts and general administration of the plan, informing employers and new members of the new plan provisions, and establishing the DC death benefit. These establishment expenses are currently estimated at $3 to 10 million.

Additionally, the state and participating employers will incur costs to modify their payroll systems and procedures in order to collect employee contributions and remit them along with mandatory employer contributions shortly after each payroll. Such costs are estimated to be $1 million for changes to the state payroll system related to the defined benefit and defined contribution plans. Remittance of employer contributions on a payroll schedule, rather than annually under the

defined benefit plan, will affect employers' cash management. It also seems extremely unlikely that such a plan could be implemented by April 1, 2014. Further, the bill contains no appropriation to support the additional payroll administrative expense to the Office of the State Comptroller or the implementation and ongoing expenses of NYSLRS related to the new plan.

In addition, employees will incur management and investment expenses for their defined contribution accounts estimated to average 0.5% of the account balance annually.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2013 actuarial valuation. Distributions and other statistics can be found in the 2013 Report of the Actuary and the 2013 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2010, 2011, 2012 and 2013 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2013 New York State and Local Retirement System Financial Statements and Supplementary Information.

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 January 23, 2014, and intended for use only during the 2014 Legislative Session, is Fiscal Note No. 2014-65, prepared by the Actuary for the ERS and PFRS.