

STATE OF NEW YORK

4523--A

2017-2018 Regular Sessions

IN ASSEMBLY

February 2, 2017

Introduced by M. of A. FITZPATRICK, RAIA, FRIEND, OAKS, HAWLEY, LALOR, BLANKENBUSH, DiPIETRO -- Multi-Sponsored by -- M. of A. CROUCH, JOHNS, LAWRENCE, PAULIN, STEC, 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:

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

3 § 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

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

LBD00923-03-8

1 related service charges imposed by the financial organization; (ii)
2 variety of types of investment opportunities offered by the financial
3 organization and/or among the financial organizations selected and the
4 ability to transfer among such opportunities; (iii) the stability of the
5 financial organization as evidenced by experience, reputation, assets
6 and holdings, ability to guarantee specific rates of return; (iv) abili-
7 ty to comply with reporting requirements to the comptroller and to
8 participants in such a plan; and (v) such other factors which would be
9 considered by a prudent investor in such a plan.

10 d. The president of the state civil service commission, subject to the
11 rules and regulations of the comptroller, shall provide assistance to
12 any public employer as is appropriate to the provisions of this section.

13 3. A public employer shall contribute three percent of such affected
14 employee's annual salary towards such defined contribution plan. All
15 non-civil service appointed employees and elected officials are required
16 to contribute three percent of their salary towards the defined contrib-
17 ution plan. Such employees may contribute up to one hundred percent,
18 not to exceed sixteen thousand five hundred dollars of his or her salary
19 towards the defined contribution plan.

20 4. The term "financial organization" shall mean an organization
21 authorized to do business in the state of New York and (a) which is an
22 authorized fiduciary to act as a trustee pursuant to the provisions of
23 an act of congress entitled "Employee Retirement Income Security Act of
24 1974" as such provisions may be amended from time to time, or an insur-
25 ance company; and (b) (i) is licensed or chartered by the department of
26 financial services; (ii) is chartered by an agency of the federal
27 government; (iii) is subject to the jurisdiction and regulation of the
28 securities and exchange commission of the federal government; or (iv) is
29 any other entity otherwise authorized to act in this state as a trustee
30 pursuant to the provisions of an act of congress entitled "Employee
31 Retirement Income Security Act of 1974" as such provisions may be
32 amended from time to time.

33 5. The current retirement plans for non-civil service appointed
34 employees and elected officials shall be frozen as of the effective date
35 of this section. Non-civil service appointed employees and elected offi-
36 cial shall no longer contribute to their current retirement plan,
37 however, such persons shall receive the benefits they have accrued up to
38 the effective date of this section upon retirement. The membership of a
39 non-civil service appointed employee or elected official in any state
40 retirement system shall remain open if he or she becomes a member of the
41 defined contribution plan.

42 § 2. This act shall take effect on the first of the fiscal year next
43 succeeding the date on which it shall have become a law. Effective imme-
44 diately, the addition, amendment and/or repeal of any rule or regulation
45 necessary for the implementation of this act on its effective date are
46 authorized and directed to be made and completed on or before such
47 effective date.

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

This bill would change the retirement plan coverage for certain 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. Pursuant to Chapter 18 of the Laws of 2012, participation is currently optional in a defined contribution plan for non-union employees hired on or after July 1, 2013 whose salary is \$75,000 or higher.

This legislation would freeze the benefit accruals of current affected 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, and there would be a small administrative cost to the System.

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, 2017 actuarial valuation. Distributions and other statistics can be found in the 2017 Report of the Actuary and the 2017 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2015, 2016, and 2017 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, 2017 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 March 5, 2018, and intended for use only during the 2018 Legislative Session, is Fiscal Note No. 2018-69, prepared by the Actuary for the New York State and Local Retirement System.