STATE OF NEW YORK

7193--C

2017-2018 Regular Sessions

IN ASSEMBLY

April 12, 2017

Introduced by M. of A. PERRY, SIMON, COOK, D'URSO, BLAKE, DICKENS, JONES, CRESPO, RODRIGUEZ, ORTIZ, COLTON, HYNDMAN, JEAN-PIERRE, WALKER, SEPULVEDA, VANEL -- Multi-Sponsored by -- M. of A. LENTOL -- read once and referred to the Committee on Governmental Employees -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to providing for the automatic enrollment for employees whose right to membership has been made optional by the head of the public retirement system involved

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 45 of the retirement and social security law, as added by chapter 878 of the laws of 1986, is amended to read as follows:

§ 45. Right to membership. **a.** Upon the employment of any employee whose right to membership in a public retirement system of the state, which for purposes of this section shall include any public retirement system other than the New York state teachers' retirement system, has been made optional by the head of the retirement system involved, the employer shall inform the employee in writing of the right to join the system. Each such employee shall acknowledge the receipt of such notice by signing a copy thereof and filing it with such employer; provided, however, the failure to inform such employee shall not in any way be construed to waive the requirement that membership for such an employee commences only when an application for membership is filed with the system, nor shall it be construed to waive any of the eligibility requirements for previous service credit.

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

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b. 1. Notwithstanding the provisions of subdivision a of this section, upon the employment of any employee whose right to membership in the board of education retirement system has been made optional by the head of the retirement system involved, the employer shall provide the respective automatic contribution arrangement for the employee to join the retirement system ninety days after the commencement of employment, with membership in the retirement system commencing on the ninety-first day after commencement of employment, provided that, if the employee files with the system an application to opt out of membership within ninety days after commencement of employment, the employer shall refrain from enrolling the employee in the retirement system unless and until such employee subsequently files an application for membership with the system. The automatic enrollment of optional employees as provided for in this section shall not be construed to modify the right of eligible employees to join the retirement system as of the first date of covered employment by filing an application for membership with the system. The employer shall further inform the employee in writing of the right to join the system as well as the fact that the employee shall be enrolled in the retirement system after the ninetieth day after commencement of employment, unless such employee files with the system an application to opt out of the system prior to such date. Any eligible employee who elects to opt out of membership in the retirement system within the ninety day period shall retain the right to join such system by subsequently filing an application for membership so long as such employee remains in covered employment.

2. Each employer shall enroll in the retirement system every current employee eligible for, but not enrolled in, the retirement system, on October first, two thousand eighteen, unless such employee files an application with the system to opt out of the retirement system by September thirtieth, two thousand eighteen. Automatic enrollment in the retirement system shall not be construed to waive any of the eligibility requirements for previous service credit.

3. The automatic enrollment of optional employees as provided for in this section shall not be construed to modify the rights and obligations of any employee who is a mandated member of a public retirement system under any applicable law, and such mandated members may not opt out of membership.

§ 2. This act shall take effect July 1, 2018.

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

In response to your request, this letter presents the estimated financial impact if participation is made mandatory for the Board of Education Retirement System of the City of New York (BERS).

The ultimate employer cost for this change will be determined by the number, ages, years of service, and salary of those employees that would otherwise not have elected to become member of BERS.

In order to prepare this analysis, we were supplied a file of 12,287 individuals who are not currently members of BERS but could voluntary elect to participate. This group consisted of 11,292 part-time and 995 full-time employees that was approximately 73% female with an average age of 34.9, average salary of approximately $25,500, and average past service of 2.4 years. We are also told, for calendar year 2016, employees in Payroll Codes 745, 744 and 056 are part-time and earned 0.80 years, 0.44 years and 0.72 years of service on average, respectively. Employees in Payroll Code 740 are generally full-time employees. Finally, we were told 72% of eligible employees eventually join BERS.

Based on this data and these statistics, we have estimated that the additional annual employer contribution will be $11.0 million if no prior years of service are purchased by these individuals and $18.1 million if all years of prior service eligible for buyback are purchased. These estimates assume that the fractional years of service earned in 2016 as described above remains unchanged in the future. These estimates also assume a level workforce (i.e., the number and salary, age and service characteristics of the added group remain approximately the same in future years.) Finally, for purposes of determining the portion of the annual employer contribution attributable to the buyback of prior service, we have assumed an amortization period of 15 years (14 payments under the Lag methodology used in the actuarial valuation.) All other actuarial assumptions and methods are the same as those used in the June 30, 2016 (Lag) actuarial valuation to determine the Preliminary Fiscal Year 2018 employer contributions for BERS.

If the change to mandatory participation is made prior to July 1, 2017, these new additional members would likely be included in the census data as of June 30, 2017 and if so the increase in employer contributions to BERS would first be reflected in Fiscal Year 2019.

STATEMENT OF ACTUARIAL OPINION: I, Sherry S. Chan, am the Chief Actuary for, and independent of, the New York City Pension Funds and Retirement Systems. I am a Fellow of the Society of Actuaries, a Fellow of the Conference of Consulting Actuaries and a Member of the American Academy of Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein. To the best of my knowledge, the results contained herein have been prepared in accordance with the Actuarial Standards of Practice issued by the Actuarial Standards Board.