

# 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.

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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 exist-  
ing 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 contrib-  
ution plan. The comptroller shall select one or more financial organ-  
izations 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.