

# STATE OF NEW YORK

5337

2019-2020 Regular Sessions

## IN ASSEMBLY

February 11, 2019

Introduced by M. of A. FITZPATRICK, HAWLEY, BLANKENBUSH, FRIEND, DiPIETRO, TAGUE -- Multi-Sponsored by -- M. of A. CROUCH, LAWRENCE, MANKTELOW, PAULIN, THIELE -- read once and referred to the Committee on Governmental Employees

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 Inconsistent provisions of other acts superseded.

§ 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.

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 thou-

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

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1 sand twenty and make an election to join the defined contribution  
2 program established pursuant to this article pursuant to the provisions  
3 of section twelve hundred fifty-three of this article.

4 c. The terms "mandatory member" and "mandatory members" mean those  
5 elected officials who are members of a public retirement system of the  
6 state who first became members of such systems on or after April first,  
7 two thousand twenty pursuant to the provisions of section twelve hundred  
8 fifty-three of this article.

9 d. The terms "program participant" and "program participants" mean  
10 those employees electing to participate in the defined contribution  
11 program.

12 e. The term "defined contribution program" means the retirement  
13 program established pursuant to this article.

14 f. The term "wages" shall mean regular compensation earned by and paid  
15 to a member by a public employer, except that the following items shall  
16 not be included in the definition of wages: (i) overtime compensation  
17 paid under any law or policy under which employees are paid at a rate  
18 greater than their standard rate for additional hours beyond that  
19 required, including section one hundred thirty-four of the civil service  
20 law and section ninety of the general municipal law, (ii) wages in  
21 excess of the annual salary paid to the governor pursuant to section  
22 three of article four of the state constitution, (iii) lump sum payments  
23 for deferred compensation, sick leave, accumulated vacation or other  
24 credits for time not worked, (iv) any form of termination pay, and (v)  
25 any additional compensation paid in anticipation of retirement.

26 § 1251. Defined contribution programs established. There is hereby  
27 established a defined contribution program within each public retirement  
28 system of the state which shall provide for retirement benefits for or  
29 on behalf of program participants. Under such program the state, the  
30 city of New York and other participating employers and such employees  
31 shall contribute, to the extent authorized or required, to such defined  
32 contribution accounts. The programs shall be administered by the retire-  
33 ment system in which the program participant is a member. Each public  
34 retirement system of the state is authorized to promulgate all such  
35 rules and regulations as may be necessary or required to implement the  
36 defined contribution programs established pursuant to this article,  
37 including such rules and regulations as may be necessary to comply with  
38 the applicable provisions of title twenty-six of the United States Code  
39 relating to defined contribution plans and their qualification and oper-  
40 ation and all such rules and regulations as may be necessary or required  
41 regarding the collection of employer and member contributions, invest-  
42 ment of contributions, withdrawals and distribution of member accounts,  
43 nomination of beneficiaries, the assessment and collection from employ-  
44 ers of costs and expenses incurred in the establishment and operation of  
45 the plan, and all other matters pertaining thereto. Each public retire-  
46 ment system of the state is authorized to enter into such agreements  
47 with qualified providers as may be necessary or desirable for the  
48 investment of member accounts and the general administration of the  
49 plan.

50 § 1252. Rates of contribution. a. 1. The employer shall make a  
51 contribution equal to four percent of each program participant's wages.  
52 Such contributions shall be known as "basic employer contributions".

53 2. The employer shall contribute an amount equal to the contribution  
54 made by each program participant, provided however, that such additional  
55 contributions shall not exceed three percent of each program partic-

1 ipant's wages. Such contributions shall be known as "matching employer  
2 contributions".

3 b. In the case of any program participants, employees shall be allowed  
4 to contribute an amount up to the maximum allowable amount, inclusive of  
5 basic and matching employer contributions, permitted by federal law in  
6 26 U.S.C. 401 et seq. and the rules and regulations of the United States  
7 department of the treasury promulgated thereunder.

8 c. No contributions pursuant to subdivision a of this section shall be  
9 made by the employer until the program participant completes one year of  
10 service and continues in service thereafter. At the end of a program  
11 participant's initial year of service, a single contribution in an  
12 amount determined pursuant to subdivision a of this section, with inter-  
13 est at the rate of four per centum per annum, shall be made by the  
14 employer, on behalf of such program participant continued in service.

15 § 1253. Enrollment. a. Employees who first become members of a public  
16 retirement system of the state on or after April first, two thousand  
17 twenty, within thirty days of his or her entry into service, shall have  
18 the ability to elect the defined contribution program established pursu-  
19 ant to this article. Such election shall be in writing, shall be duly  
20 executed and filed with the retirement system of which he or she is a  
21 member and shall be irrevocable as long as such person is a member of a  
22 public retirement system of the state. All eligible employees who elect  
23 the defined contribution program shall not accrue credited service for  
24 any purpose under any other article of this chapter or any other appli-  
25 cable law.

26 b. All program participants enrolled in the defined contribution  
27 program shall not accrue credited service to be used for any purpose  
28 under any other article of this chapter or any other applicable law.

29 c. Any elected official or elected officials who first become members  
30 of a public retirement system of the state on or after April first, two  
31 thousand twenty, shall be a mandatory member or mandatory members,  
32 required to participate in the defined contribution program established  
33 pursuant to this article. For all such elected officials the defined  
34 contribution program shall not accrue credited service for any purpose  
35 under any other article of this chapter or any other applicable law.

36 § 1254. Death benefit. a. Program participants shall receive the  
37 following financial protection in the event of death in service: a bene-  
38 fit upon the death of a member in service equal to the member's salary  
39 upon his or her completion of one year of service, two years' salary  
40 upon completion of two years of service, and three years' salary upon  
41 completion of three years of service.

42 b. For the purposes of this section:

43 1. the death benefit payable shall be in lieu of the payment of the  
44 basic employer contributions and matching employer contributions made  
45 pursuant to this article, but shall not be less than the value of such  
46 contributions and

47 2. the value of the employee contributions shall be payable in addi-  
48 tion to the death benefit payable pursuant to this section.

49 § 1255. Inconsistent provisions of other acts superseded. Insofar as  
50 the provisions of this article are inconsistent with the provisions of  
51 any other act, general or special, the provisions of this article shall  
52 be controlling.

53 § 2. This act shall take effect April 1, 2020.

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, 2020 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, 2020. Pursuant to Chapter 18 of the Laws of 2012, participation currently 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.

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 Systems (PFRS), the significant design changes to the defined contribution 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 accumulated value of employee contributions, plus
  - the member's salary after completion of one year of service,
  - two years' salary after completion of two years service, or
  - three years' salary after completion of three years service,or, if larger, the accumulated value of all employer contributions previously 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 (includes 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. 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, 2018 actuarial valuation. Distributions and other statistics can be found in the 2018 Report of the Actuary and the 2018 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2015, 2016, 2017 and 2018 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, 2018 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 fiscal note does not constitute a legal opinion on the viability of the proposed change nor is it intended to serve as a substitute for the professional judgment of an attorney.

This estimate, dated January 10, 2019, and intended for use only during the 2019 Legislative Session, is Fiscal Note No. 2019-19, prepared by the Actuary for the New York State and Local Retirement System.