# STATE OF NEW YORK

S. 5468 A. 7399

2019-2020 Regular Sessions

# SENATE - ASSEMBLY

May 1, 2019

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to participation by free association libraries in the New York state and local employees' retirement system

**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 section 31-g to read as follows:

**§ 31-g. Participation by free association libraries. A free association library as defined in section two hundred fifty-three of the education law and which meets the criteria set forth in this section, may by resolution adopted as provided in section seven hundred eight of the not-for-profit corporation law by its board of trustees and subject to the approval of the comptroller, elect to participate in the retirement system. Acceptance of its employees for membership in the retirement system shall be mandatory with the comptroller, who shall determine the amounts of contribution payable by such library and its employees, shall resolve questions of credit for prior service, and shall in all other respects assure that such employees share the same rights, obligations and benefits as other members of the retirement system. A free association library shall be eligible to join the retirement system under the following conditions:**

**(a) such library shall be chartered by the state board of regents;**

**(b) such library shall serve the entire population of its chartered service area;**

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

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**(c) the board of trustees of such library shall be elected by the voters of its chartered service area;**

**(d) such library's budget shall be approved by the voters of its chartered service area;**

**(e) at least fifty-one percent of such library's budget shall derive from public sources; and**

**(f) such library shall file the annual report with the comptroller as required of public libraries by section thirty of the general municipal law.**

§ 2. This act shall take effect immediately.

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

This bill would permit any free association public library which meets certain specific criteria to elect participation in the New York State and Local Employees' Retirement System (NYSLERS).

If this bill is enacted and an eligible corporation elects participation, the future annual cost would depend on the retirement plan adopted and the billable salary of the electing corporation.

As a percentage of payroll, we anticipate that the annual contributions of the affected corporation for the fiscal year ending March 31, 2020, will be as follows:

| Tier | Rate |
|---|---|
| 1 | 10.6% to 21.4% |
| 2 | 9.7% to 19.4% |
| 3 | 15.7% |
| 4 | 15.7% |
| 5 | 12.9% |
| 6 | 9.2% |

In addition to the annual contributions discussed above, there will be a deficiency cost to the affected corporation which will be payable for a 25 year period. These costs will depend on the age, service, salary, tier status and plan of the affected employees.

Internal Revenue Service (IRS) plan qualification issues: permitting participation of non-governmental employees in the NYSLERS could jeopardize the Retirement System's governmental plan status and its exemption from ERISA. This development could result in the loss of qualified status, which would mean the loss of tax benefits. This result would substantially impair the System's value to our more than one million participants.

Prior to the enactment of this legislation, we recommend that a favorable ruling be obtained from the IRS stating that these provisions would not harm the qualification status of the System. It is estimated that the costs to obtain such a ruling would be $28,000 for the services of the IRS, and $800 per hour for legal consultants.

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 April 19, 2019, and intended for use only during the 2019 Legislative Session, is Fiscal Note No. 2019-103, prepared by the Actuary for the New York State and Local Retirement System.