STATE OF NEW YORK

4913--B

2019-2020 Regular Sessions

IN SENATE

March 29, 2019

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- recommitted to the Committee on Civil Service and Pensions in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to provide for the payment of the annual contributions owed and to be owed on behalf of the New York city off-track betting corporation to the New York city employees' retirement system

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

Section 1. Statement of legislative findings and intent. The legislature hereby finds that the state has a statutory and constitutional obligation to protect and fund the pension benefits of the former employees and retirees of the defunct New York city off-track betting corporation.

The New York city off-track betting corporation is a public benefit corporation created pursuant to state law and is a participating employer in the New York city employees' retirement system. The pension benefits of the corporation's former employees and retirees are protected from impairment under article V, section 7 of the state constitution.

In 2008, the state legislatively enhanced its role with respect to the New York city off-track betting corporation due to its financial difficulties, thus becoming its successor for purposes of assuming the statutory and constitutional obligation to make pension contributions. The corporation ceased operations in 2010 and has since failed to make annual contributions to the New York city employees' retirement system as required under the administrative code of the city of New York.

Sections 13-130 and 13-638.2 of the administrative code of the city of New York provide that the employer liabilities of a public benefit

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

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corporation that participates in the New York city employees' retirement system, such as the New York city off-track betting corporation, are to be paid by the corporation or a successor. On March 8, 2018, the board of trustees of the New York city employees' retirement system adopted a resolution recognizing the state as a successor to the New York city off-track betting corporation and a responsible obligor with respect to its required contributions.

As a successor to the New York city off-track betting corporation, and in the interest of properly funding the pension benefits of its former employees and retirees in compliance with the state constitution, the state will fulfill the past, present, and future obligations of the New York city off-track betting corporation to the New York city employees' retirement system as follows:

§ 2. Definitions. The following words and phrases as used in this act shall have the following meanings unless a different meaning is plainly required by context.

1. "Actuary" shall mean the actuary appointed by the board of trustees of the New York city employees' retirement system pursuant to section 13-121 of the administrative code of the city of New York.

2. "City fiscal year" shall mean a fiscal year of the city of New York as defined in section 226 of the New York city charter.

3. "Executive director" shall mean the executive director appointed by the board of trustees of the New York city employees' retirement system pursuant to paragraph 2 of subdivision a of section 13-103 of the administrative code of the city of New York.

4. "Interest" shall mean the rate per centum per annum of interest specified in paragraph 2 of subdivision b of section 13-638.2 of the administrative code of the city of New York.

5. "NYC administrative code" shall mean the administrative code of the city of New York.

6. "NYCERS" shall mean the New York city employees' retirement system, as established by chapter 427 of the laws of 1920.

7. "NYCOTB" shall mean the New York city off-track betting corporation, as established by chapter 144 of the laws of 1970 and continued pursuant to article 6 of the racing, pari-mutuel wagering and breeding law.

8. "State fiscal year" shall mean a fiscal year of the state as defined in section 3 of the state finance law.

§ 3. Payment of the future annual contributions to be owed by NYCOTB to NYCERS. Notwithstanding the provisions of any general or special state law or local law to the contrary, in state fiscal year 2022 and in each state fiscal year thereafter, the department of audit and control shall take actions necessary to pay in full, subject to appropriation, the annual contribution determined to be owed by NYCOTB to NYCERS under the provisions of the NYC administrative code, including but not limited to sections 13-127, 13-130, 13-133, and 13-638.2 thereof, for the corresponding city fiscal year. On or prior to the date specified in section 13-133 of the NYC administrative code for the payment of annual contributions by NYCOTB, such moneys, to the extent of such appropriation, shall be payable to NYCERS on the audit and warrant of the comptroller of the state of New York on vouchers certified or approved by the executive director of NYCERS in the manner prescribed by law. Notwithstanding the provisions of any general or special state law or local law to the contrary, an annual contribution determined and paid under this section shall not include any amount attributable to any annual contribution previously determined to be owed by NYCOTB to NYCERS for any city

fiscal year prior to the 2022 city fiscal year and not yet paid by NYCOTB or the state.

§ 4. Payment of overdue annual contributions owed by NYCOTB to NYCERS. a. Notwithstanding the provisions of any general or special state law or local law to the contrary, on or before January 2, 2021, the actuary shall determine the sum of all annual contributions previously determined to be owed by NYCOTB to NYCERS for any city fiscal year prior to the 2022 city fiscal year and not yet paid by NYCOTB, with interest. Such interest, compounded annually, shall be computed on each such overdue annual contribution from the date such contribution was required to be paid pursuant to section 13-133 of the NYC administrative code through January 1, 2021. This sum shall be known as the "amount to be amortized".

b. Notwithstanding the provisions of any general or special state law or local law to the contrary, on or before January 2, 2021, the actuary shall further determine an amount that if paid in fifteen equal annual installments beginning on January 1, 2022, would be sufficient to pay in full the amount to be amortized with interest, compounded annually, computed from January 2, 2021, to January 1, 2036. This amount shall be known as the "annual amortization payment". Any annual amortization payment subsequent to the initial annual amortization payment payable on January 1, 2022, shall include the unpaid balance of any prior annual amortization payment, with interest, compounded annually, computed from the date such prior annual amortization payment was required to be paid to the date that such subsequent annual authorization payment is required to be paid.

c. Notwithstanding the provisions of any general or special state law or local law to the contrary, in state fiscal year 2022 and in each state fiscal year thereafter until the amount to be amortized, with interest, is paid in full, the department of audit and control shall take actions necessary to pay in full the annual amortization payment, subject to appropriation. On or prior to January 1st of each such state fiscal year, such moneys, to the extent of such appropriation shall be payable to NYCERS on the audit and warrant of the comptroller of the state of New York on vouchers certified or approved by the executive director of NYCERS in the manner prescribed by law.

§ 5. Deposit of moneys. NYCERS shall deposit all moneys received pursuant to this act in the contingent reserve fund specified in section 13-127 of the NYC administrative code.

§ 6. This act shall take effect immediately.

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

SUMMARY OF BILL: The proposed legislation provides a funding mechanism, through unconsolidated provisions of law, for the State of New York (State), as a successor obligor, to appropriate funds to pay past, present, and future New York City Off-Track Betting Corporation (NYCOTB) employer contributions, with applicable interest, to the New York City Employees' Retirement System (NYCERS) on behalf of former and retired NYCOTB employees.

Effective Date: Upon enactment.

BACKGROUND: NYCOTB is a defunct public benefit corporation and is a participating employer in NYCERS. NYCOTB retirees currently receive full retirement benefits from NYCERS even though NYCOTB last made partial employer contributions to NYCERS in fiscal years 2010 and 2011 and completely ceased making employer contributions thereafter. Unpaid past and future annual employer contributions, with applicable interest, continue to accrue.

FINANCIAL IMPACT - ANNUAL EMPLOYER CONTRIBUTIONS: The proposed legislation would require the Actuary of the City of New York (Actuary) to calculate the cumulative owed past and current NYCOTB employer contributions, with applicable interest, through and inclusive of fiscal year 2021 (the Amount to be Amortized), on or before January 2, 2021, and amortize such cumulative Amount in fifteen equal installments, with applicable interest, to be paid by the State Comptroller, subject to appropriation, commencing on or before January 1, 2022 and ending by January 1, 2036 (the Annual Amortization Payment). The proposed legislation would further require the calculation and, subject to State appropriation, annual payment of future annual NYCOTB employer contributions in accordance with applicable provisions of the Administrative Code of the City of New York (ACCNY).

FINANCIAL IMPACT - SUMMARY: Based on the actuarial assumptions and methods described herein, the enactment of this proposed legislation would, assuming full and timely payment, result in a potential total present value cost to the State of approximately $290.7 million as of January 1, 2022. Any amount appropriated and paid by the State to NYCERS would be applied as an NYCOTB employer contribution and relieve any potential additional successor or guarantor of paying such amounts.

The following Table presents an estimate of the annual cost, as of January 1, 2022, for Fiscal Years 2022 through 2026.

Fiscal Year	Cost Attributable to Employer Contributions for Fiscal Years Prior to 2022*	Cost Attributable to Employer Contributions for Fiscal Years Subsequent to 2021**	Total
2022	$19,377,800	$11,827,215	$31,205,015
2023	$19,377,800	$12,171,170	$31,548,970
2024	$19,377,800	$12,526,059	$31,903,859
2025	$19,377,800	$12,891,594	$32,269,394
2026	$19,377,800	$13,268,096	$32,645,896

* Equal to a 15-year amortization of $188,845,726 as of January 1, 2022.

** Estimates of future employer contributions for NYCOTB based on the actuarial assumptions and methods in effect for the June 30, 2019 (Lag) actuarial valuation, including an assumed investment return of 7.0% per annum.

CENSUS DATA: The estimates presented herein are based on the census data used in the Preliminary June 30, 2019 (Lag) actuarial valuation of NYCERS to determine the Preliminary Fiscal Year 2021 employer contributions.

As of June 30, 2019 NYCOTB had 1,152 retirees with an average age of approximately 74.9 years, 329 terminated vested members with an average age of approximately 53.6 years, and 99 active off payroll members with an average age of approximately 46.8 years.

ACTUARIAL ASSUMPTIONS AND METHODS: The estimates of annual employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the June 30, 2019 (Lag) actuarial valuations used to determine the Preliminary Fiscal Year 2021 employer contributions of NYCERS.

RISK AND UNCERTAINTY: The costs presented in this Fiscal Note depend highly on the realization of the actuarial assumptions used, as well as certain demographic characteristics of NYCERS and other exogenous factors such as investment, contribution, and other risks. If actual

experience deviates from actuarial assumptions, the actual costs could differ from those presented herein. Costs are also dependent on the actuarial methods used, and therefore different actuarial methods could produce different results. Quantifying these risks is beyond the scope of this Fiscal Note.

Not measured in this Fiscal Note are the following:

o The initial, additional administrative costs of NYCERS, other New York City agencies and the State to implement the proposed legislation.

o The impact of this proposed legislation on Other Postemployment Benefit (OPEB) costs.

STATEMENT OF ACTUARIAL OPINION: I, Sherry S. Chan, am the Chief Actuary for, and independent of, the New York City Retirement Systems and Pension Funds. I am a Fellow of the Society of Actuaries, an Enrolled Actuary under the Employee Retirement Income and Security Act of 1974, a Member of the American Academy of Actuaries, and a Fellow of the Conference of Consulting 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 generally accepted actuarial principles and procedures and with the Actuarial Standards of Practice issued by the Actuarial Standards Board.

FISCAL NOTE IDENTIFICATION: This Fiscal Note 2020-12 dated March 10, 2020 was prepared by the Chief Actuary for the New York City Employees' Retirement System. This estimate is intended for use only during the 2020 Legislative Session.