STATE OF NEW YORK

7311

2019-2020 Regular Sessions

IN ASSEMBLY

April 22, 2019

Introduced by M. of A. ORTIZ, WEPRIN -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to a twenty-five year retirement plan for New York city probation officers

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 604-j to read as follows:

§ 604-j. Twenty-five year retirement plan for New York city probation officers. a. Definitions. The following words and phrases as used in this section shall have the following meanings unless a different meaning is plainly required by the context.

1. "Probation officer" shall mean a member (as defined in subdivision e of section six hundred one of this article) who is a peace officer employed by the New York city department of probation.

2. "Twenty-five year retirement program" shall mean all the terms and conditions of this section.

3. "Starting date of the twenty-five year retirement program" shall mean the effective date of this section, as such date is certified pursuant to section forty-one of the legislative law.

4. "Participant in the twenty-five year retirement program" shall mean any probation officer member who, under the applicable provisions of subdivision b of this section, is entitled to the rights, benefits and privileges and is subject to the obligations of the twenty-five year retirement program, as applicable to him or her.

5. "Discontinued member" shall mean a participant in the twenty-five year retirement program who, while he or she was a probation officer member, discontinued service as such a member and has a right to a deferred vested benefit under subdivision d of this section.

6. "Administrative code" shall mean the administrative code of the city of New York.

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

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b. Participation in twenty-five year retirement program. 1. Subject to the provisions of paragraphs six and seven of this subdivision, any person who is a probation officer member on the starting date of the twenty-five year retirement program and who, as such a probation officer member or otherwise, last became subject to the provisions of this article prior to such starting date, may elect to become a participant in the twenty-five year retirement program by filing, within one hundred eighty days after the starting date of the twenty-five year retirement program, a duly executed application for such participation with the retirement system of which such person is a member, provided he or she is such a probation officer member on the date such application is filed.

2. Subject to the provisions of paragraphs six and seven of this subdivision, any person who becomes a probation officer member after the starting date of the twenty-five year retirement program and who, as such a probation officer member or otherwise, last became subject to the provisions of this article prior to such starting date, may elect to become a participant in the twenty-five year retirement program by filing, within one hundred eighty days after becoming such a probation officer member, a duly executed application for such participation with the retirement system for which such person is a member, provided he or she is such a probation officer member on the date such application is filed.

3. Any election to be a participant in the twenty-five year retirement program shall be irrevocable.

4. Each probation officer member who becomes subject to any of the provisions of this article on or after the starting date of the twenty-five year retirement program shall become a participant in the twenty-five year retirement program on the date he or she becomes such a probation officer member.

5. Where any participant in the twenty-five year retirement program shall cease to be employed by the city of New York as a probation officer member, he or she shall cease to be such a participant and, during any period in which such person is not so employed, he or she shall not be a participant in the twenty-five year retirement program and shall not be eligible for the benefits of subdivision c of this section.

6. Where any participant in the twenty-five year retirement program terminates service as a probation officer member and returns to such service as a probation officer member at a later date, he or she shall again become such a participant on that date.

7. Notwithstanding any other provision of law to the contrary, any person who is eligible to elect to become a participant in the twenty-five year retirement program pursuant to paragraph one or two of this subdivision for the full one hundred eighty day period provided for in such applicable paragraph and who fails to timely file a duly executed application for such participation with the retirement system, shall not thereafter be eligible to become a participant in such program.

c. Service retirement benefits. 1. A participant in the twenty-five year retirement program:

(i) who has completed twenty-five or more years of credited service; and

(ii) who has paid, before the effective date of retirement, all additional member contributions and interest (if any) required by subdivision e of this section; and

(iii) who files with the retirement system of which he or she is a member an application for service retirement setting forth at what time,

not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired; and

(iv) who shall be a participant in the twenty-five year retirement program at the time so specified for his or her retirement; shall be retired pursuant to the provisions of this section affording early service retirement.

2. (i) Notwithstanding any other provision of law to the contrary, and subject to the provisions of paragraph six of subdivision e of this section, the early service retirement benefit for participants in the twenty-five year retirement program who retire pursuant to paragraph one of this subdivision shall be a retirement allowance consisting of:

(A) an amount, on account of the required minimum period of service, equal to fifty-five percent of his or her final average salary; plus

(B) an amount on account of credited service, or fraction thereof, beyond such required minimum period of service equal to one and seven-tenths percent of his or her final salary;

(ii) The maximum retirement allowance computed without optional modification payable pursuant to subparagraph (i) of this paragraph shall equal that payable upon completion of thirty years of service.

d. Vesting. 1. A participant in the twenty-five year retirement program:

(i) who discontinues service as such a participant, other than by death or retirement; and

(ii) in the case of a participant who is not a New York city revised plan member, who prior to such discontinuance, completed five but less than twenty-five years of credited service or, in the case of a participant who is a New York city revised plan member, who prior to such discontinuance, completed ten but less than twenty-five years of credited service; and

(iii) who, subject to the provisions of paragraph seven of subdivision e of this section, has paid, prior to such discontinuance, all additional member contributions and interest (if any) required by subdivision e of this section; and

(iv) who does not withdraw in whole or in part his or her accumulated member contributions pursuant to section six hundred thirteen of this article unless such participant thereafter returns to public service and repays the amounts so withdrawn, together with interest, pursuant to such section six hundred thirteen; shall be entitled to receive a deferred vested benefit as provided in this subdivision.

2. (i) Upon such discontinuance under the conditions and in compliance with the provisions of paragraph one of this subdivision, such deferred vested benefit shall vest automatically.

(ii) In the case of a participant who is not a New York city revised plan member, such vested benefit shall become payable on the earliest date on which such discontinued member could have retired for service if such discontinuance had not occurred or, in the case of a participant who is a New York city revised plan member, such vested benefit shall become payable at age sixty-three.

3. Subject to the provisions of paragraph seven of subdivision e of this section, such deferred vested benefit shall be a retirement allowance consisting of an amount equal to two and two-tenths percent of such discontinued member's final average salary, multiplied by the number of years of credited service.

e. Additional member contributions. 1. In addition to the member contributions required by section six hundred thirteen of this article, each participant in the twenty-five year retirement program shall

contribute to the retirement system of which he or she is a member (subject to the applicable provisions of subdivision d of section six hundred thirteen of this article) an additional six and three-quarters percent of his or her compensation earned from (i) all credited service, as a participant in the twenty-five year retirement program, rendered on or after the starting date of the twenty-five year retirement program, and (ii) all credited service after such person ceases to be a participant, but before he or she again becomes a participant pursuant to paragraph six of subdivision b of this section. The additional contributions required by this subdivision shall be in lieu of additional member contributions required by (i) subdivision d of section six hundred four-c of this article, as added by chapter ninety-six of the laws of nineteen hundred ninety-five, or (ii) subdivision f of section six hundred four-d of this article, and no member making contributions pursuant to this section shall be required to make contributions pursuant to either such subdivision d of section six hundred four-c of this article, or such subdivision f of section six hundred four-d of this article.

2. A participant in the twenty-five year retirement program shall contribute additional member contributions until the later of (i) the first anniversary of the starting date of the twenty-five year retirement program, or (ii) the date on which he or she completes thirty years of credited service as a probation officer member.

3. Commencing with the first full payroll period after each person becomes a participant in the twenty-five year retirement program, additional member contributions at the rate specified in paragraph one of this subdivision shall be deducted (subject to the applicable provisions of subdivision d of section six hundred thirteen of this article) from the compensation of such participant on each and every payroll of such participant for each and every payroll period for which he or she is such a participant.

4. (i) Each participant in the twenty-five year retirement program shall be charged with a contribution deficiency consisting of the total amounts of additional member contributions such person is required to make pursuant to paragraphs one and two of this subdivision which are not deducted from his or her compensation pursuant to paragraph three of this subdivision, if any, together with interest thereon, compounded annually, and computed in accordance with the provisions of subparagraphs (ii) and (iii) of this paragraph.

(ii) (A) The interest required to be paid on each such amount specified in subparagraph (i) of this paragraph shall accrue from the end of the payroll period for which such amount would have been deducted from compensation if he or she had been a participant at the beginning of that payroll period and such deduction had been required for such payroll period, until such amount is paid to the retirement system.

(B) The rate of interest to be applied to each such amount during the period for which interest accrues on that amount shall be equal to the rate or rates of interest required by law to be used during that same period to credit interest on the accumulated deductions of retirement system members.

(iii) Except as otherwise provided in paragraph five of this subdivision, no interest shall be due on any unpaid additional member contributions which are not attributable to a period prior to the first full payroll period referred to in paragraph three of this subdivision.

5. (i) Should any person who, pursuant to subparagraph (ii) of paragraph ten of this subdivision, has received a refund of his or her addi-

tional member contributions including any interest paid on such contributions, again become a participant in the twenty-five year retirement program pursuant to paragraph six of subdivision b of this section, an appropriate amount shall be included in such participant's contribution deficiency (including interest thereon as calculated pursuant to subparagraph (ii) of this paragraph) for any credited service for which such person received a refund of such additional member contributions (including any amount of an unpaid loan balance deemed to have been returned to such person pursuant to this subdivision), as if such additional member contributions never had been paid.

(ii)(A) Interest on a participant's additional member contributions included in such participant's contribution deficiency pursuant to subparagraph (i) of this paragraph shall be calculated as if such additional member contributions had never been paid by such participant, and such interest shall accrue from the end of the payroll period to which an amount of such additional member contributions is attributable, until such amount is paid to the retirement system.

(B) The rate of interest to be applied to each such amount during the period for which interest accrues on that amount shall be five percent per annum, compounded annually.

6. Where a participant who is otherwise eligible for service retirement pursuant to subdivision c of this section did not, prior to the effective date of retirement, pay the entire amount of a contribution deficiency chargeable to him or her pursuant to paragraphs four and five of this subdivision, that participant, nevertheless, shall be eligible to retire pursuant to subdivision c of this section, provided, however, that such participant's service retirement benefit calculated pursuant to paragraph two of such subdivision c shall be reduced by a life annuity (calculated in accordance with the method set forth in subdivision i of section six hundred thirteen-b of this article) which is actuarially equivalent to the amount of any unpaid contribution deficiency chargeable to such member pursuant to paragraphs four and five of this subdivision.

7. Where a participant who is otherwise eligible for a vested right to a deferred benefit pursuant to subdivision d of this section did not, prior to the date of discontinuance of service, pay the entire amount of a contribution deficiency chargeable to him or her pursuant to paragraphs four and five of this subdivision, he or she nevertheless, shall be eligible for a vested right to a deferred benefit pursuant to subdivision d of this section, provided, however, that the deferred vested benefit calculated pursuant to paragraph three of such subdivision d shall be reduced by a life annuity (calculated in accordance with the method set forth in subdivision i of section six hundred thirteen-b of this article) which is actuarially equivalent to the amount of any unpaid contribution deficiency chargeable to such member pursuant to paragraphs four and five of this subdivision.

8. The head of a retirement system which includes participants in the twenty-five year retirement program in its membership may, consistent with the provisions of this subdivision, promulgate regulations for the payment of such additional member contributions, and any interest thereon, by such participants (including the deduction of such contributions, and any interest thereon, from the participant's compensation).

9. Subject to the provisions of paragraphs six and seven of this subdivision, where a participant has not paid in full any contribution deficiency chargeable to him or her pursuant to paragraphs four and five of this subdivision, and a benefit, other than a refund of member

contributions pursuant to section six hundred thirteen of this article or a refund of additional member contributions pursuant to subparagraph (ii) of paragraph ten of this subdivision, becomes payable under this article to the participant or to his or her designated beneficiary or estate, the actuarial equivalent of any such unpaid amount shall be deducted from the benefit otherwise payable.

10. (i) Such additional member contributions (and any interest thereon) shall be paid into the contingent reserve fund of the retirement system of which the participant is a member and shall not for any purpose be deemed to be member contributions or accumulated contributions of a member under section six hundred thirteen of this article or otherwise while he or she is a participant in the twenty-five year retirement program or otherwise.

(ii) Should a participant in the twenty-five year retirement program who has rendered less than fifteen years of credited service cease to hold a position as a probation officer member for any reason whatsoever, his or her accumulated additional member contributions made pursuant to this subdivision (together with any interest thereon paid to the retirement system) may be withdrawn by him or her pursuant to procedures promulgated in regulations of the board of trustees of the retirement system, together with interest thereon at the rate of five percent per annum, compounded annually.

(iii) Notwithstanding any other provision of law to the contrary, (A) no person shall be permitted to withdraw from the retirement system any additional member contributions paid pursuant to this subdivision or any interest paid thereon, except pursuant to and in accordance with the preceding subparagraphs of this paragraph; and (B) no person, while he or she is a participant in the twenty-five year retirement program, shall be permitted to withdraw any such additional member contributions or any interest paid thereon pursuant to any of the preceding subparagraphs of this paragraph or otherwise.

11. No member of a public retirement system shall be permitted to borrow any portion of the additional member contributions (including any interest paid thereon by the participant) which are subject to this subdivision.

§ 2. Subdivision a of section 603 of the retirement and social security law, as amended by chapter 18 of the laws of 2012, is amended to read as follows:

a. The service retirement benefit specified in section six hundred four of this article shall be payable to members who have met the minimum service requirements upon retirement and attainment of age sixty-two, other than members who are eligible for early service retirement pursuant to subdivision c of section six hundred four-b of this article, subdivision c of section six hundred four-c of this article, subdivision d of section six hundred four-d of this article, subdivision c of section six hundred four-e of this article, subdivision c of section six hundred four-f of this article, subdivision c of section six hundred four-g of this article, subdivision c of section six hundred four-h of this article [~~or~~], subdivision c of section six hundred four-i of this article or subdivision d of section six hundred four-j of this article, provided, however, a member of a teachers' retirement system or the New York state and local employees' retirement system who first joins such system before January first, two thousand ten or a member who is a uniformed court officer or peace officer employed by the unified court system who first becomes a member of the New York state and local employees' retirement system before April first, two thousand twelve may

retire without reduction of his or her retirement benefit upon attainment of at least fifty-five years of age and completion of thirty or more years of service, provided, however, that a uniformed court officer or peace officer employed by the unified court system who first becomes a member of the New York state and local employees' retirement system on or after January first, two thousand ten and retires without reduction of his or her retirement benefit upon attainment of at least fifty-five years of age and completion of thirty or more years of service pursuant to this section shall be required to make the member contributions required by subdivision f of section six hundred thirteen of this article for all years of credited and creditable service, provided further that the [~~the~~] preceding provisions of this subdivision shall not apply to a New York city revised plan member.

§ 3. Subdivision a of section 603 of the retirement and social security law, as amended by chapter 19 of the laws of 2008, is amended to read as follows:

a. The service retirement benefit specified in section six hundred four of this article shall be payable to members who have met the minimum service requirements upon retirement and attainment of age sixty-two, other than members who are eligible for early service retirement pursuant to subdivision c of section six hundred four-b of this article, subdivision c of section six hundred four-c of this article, subdivision d of section six hundred four-d of this article, subdivision c of section six hundred four-e of this article, subdivision c of section six hundred four-f of this article, subdivision c of section six hundred four-g of this article, subdivision c of section six hundred four-h of this article [~~or~~], subdivision c of section six hundred four-i of this article **or subdivision d of section six hundred four-j of this article** provided, however, a member who is a peace officer employed by the unified court system or a member of a teachers' retirement system or the New York state and local employees' retirement system may retire without reduction of his or her retirement benefit upon attainment of at least fifty-five years of age and completion of thirty or more years of service.

§ 4. This act shall take effect January 1, 2020, provided that the amendments to subdivision a of section 603 of the retirement and social security law made by section two of this act shall not affect the expiration and reversion of such subdivision pursuant to subdivision (b) of section 13 of chapter 682 of the laws of 2003, as amended, when upon such date the provisions of section three of this act shall take effect.

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

SUMMARY OF BILL: This proposed legislation would amend certain provisions of the Retirement and Social Security Law (RSSL) to establish a 25-Year Retirement Program for Tier 4 and Tier 6 New York City Employees' Retirement System (NYCERS) members who are employed in the title of Probation Officers (Probation 25-Year Plan).

Effective Date: January 1, 2020.

MEMBERS ELIGIBLE TO JOIN: NYCERS members who are employed as Probation Officers (peace officers with the New York City Department of Probation).

Participation in the Probation 25-Year Plan is optional for anyone who is eligible to participate in the Plan on the date of enactment, and for anyone who is a member of NYCERS on the date of enactment and subsequently becomes eligible to participate in the plan by becoming a Probation Officer, by filing an election form within 180 days of enactment for existing Probation Officers or within 180 days of becoming a

Probation Officer for existing NYCERS members. Once an election is made to participate in the Plan, the election is irrevocable.

Any Probation Officer who becomes a Tier 6 NYCERS member after the date of enactment would be mandated into the Probation 25-Year Plan.

IMPACT ON BENEFITS: Currently, Probation Officers are generally eligible to participate in one of the NYCERS general plans (i.e. basic Tier 4 62/5 Plan, Tier 6 63/10 Plan, or Improved Tier 4 57/5, 55/25 Plans).

The proposed legislation would provide the following benefits to Probation Officers who participate in the Probation 25-Year Plan:

* Service retirement benefit:
* 55% of Final Average Salary (FAS) for the first 25 years of any NYCERS credited service, plus
* 1.7% of FAS for each additional year of credited service, or fraction thereof, exceeding 25 years up to a maximum of 30 years of such service.
* Final Average Salary:
* Tier 4 - Three Year Average (FAS3)
* Tier 6 - Five Year Average (FAS5)
* Vested benefit:
* Eligibility:
* Tier 4 - At least five, but less than 25, years of credited service
* Tier 6 - At least 10, but less than 25, years of credited service
* Payable at:
* Tier 4 - The date the member would have completed 25 years of credited service
* Tier 6 - Age 63
* Amount:
* 2.2% of FAS for each year of credited service
* Other benefits: Members of the proposed Probation 25-Year Plan are entitled to the same disability and death benefits as other Tier 4 and Tier 6 members under the respective basic plans.

ADDITIONAL MEMBER CONTRIBUTIONS: Members of the Probation 25-Year Plan are required to make, in addition to the Tier 4 Basic Member Contributions (BMC) of 3% and the Tier 6 BMC ranging from 3% to 6% depending on defined salary scales, Additional Member Contributions equal to 6.75% of compensation for all service as a Plan participant on and after the starting date of the Plan until the later of January 1, 2021 or 30 years of credited service.

FINANCIAL IMPACT - PRESENT VALUES: Based on the anticipated group of members joining the Probation 25-Year Plan and the actuarial assumptions and methods described herein, the enactment of this proposed legislation would increase the Present Value of Future Benefits (PVFB) by approximately $25.8 million, and increase the Present Value of member contributions of approximately $6.4 million. The net result is an increase in the Present Value of future employer contributions of approximately $19.4 million.

Under the Entry Age Normal cost method used to determine the employer contributions to NYCERS, there would be an increase in the Unfunded Accrued Liability (UAL) of approximately $21.6 million offset by a decrease in the Present Value of future employer Normal Cost of $2.2 million.

FINANCIAL IMPACT - ANNUAL EMPLOYER CONTRIBUTIONS: In accordance with Administrative Code of the City of New York (ACCNY) Section 13-638.2(k-2), new UAL attributable to benefit changes are to be amortized as determined by the Actuary but generally over the remaining working lifetime of those impacted by the benefit changes. As of June

30, 2018, the remaining working lifetime of the Probation 25-Year Plan is approximately six years.

For the purposes of this Fiscal Note, the increase in UAL was amortized over a six-year period (five payments under the One-Year Lag Methodology) using level dollar payments. This payment plus the increase in the Normal Cost results in an increase in annual employer contributions of approximately $6.6 million each year.

OTHER COSTS: Not measured in this Fiscal Note are the following:

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

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

CONTRIBUTION TIMING: For the purposes of this Fiscal Note, it is assumed that the changes in the Present Value of future employer contributions and annual employer contributions would be reflected for the first time in the June 30, 2020 actuarial valuation of NYCERS. In accordance with the One-Year Lag Methodology (OYLM) used to determine employer contributions, the increase in employer contributions would first be reflected in the Fiscal Year 2022.

CENSUS DATA: The estimates presented herein are based on the census data used in the Preliminary June 30, 2018 (Lag) actuarial valuation of NYCERS to determine the Preliminary Fiscal Year 2020 employer contributions.

The 426 NYCERS Probation Officers as of June 30, 2018 assumed to join the Probation 25-year Plan had an average age of approximately 53.5 years, average service of approximately 24.3 years, and an average salary of approximately $80,300.

ACTUARIAL ASSUMPTIONS AND METHODS: The changes in the Present Value of future employer contributions and annual employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the June 30, 2018 (Lag) actuarial valuations used to determine the Preliminary Fiscal Year 2020 employer contributions of NYCERS.

To determine the impact of the elective nature of the proposed legislation, a subgroup of NYCERS Probation Officers was developed based on who could potentially benefit actuarially. The net Present Value of future employers costs (i.e. the PVFB less the Present Value of future member contributions) of each member's benefit was determined under their current plan and under the Probation 25-Year Plan. If the net Present Value of future employer cost under the Probation 25-Year Plan was greater than or equal to the Present Value of future employer cost under the member's current plan, the member was deemed to benefit actuarially.

Based on this analysis, it was determined that those members who are mandated into the Probation 25-Year Plan in the future will generally not benefit under the Plan (i.e. they will have a decrease in Present Value of future employer costs as compared to the Tier 6 63/10 Plan they would otherwise participate in, absent this proposed legislation), and therefore the costs presented in this Fiscal Note are borne only from current NYCERS members who are assumed to benefit from, and thus opt to join, the Probation 25-Year Plan.

RISK AND UNCERTAINTY: The costs presented in this Fiscal Note depend highly on the actuarial assumptions and methods used and are subject to change based on the realization of potential investment, demographic, 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.

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 2019-07 dated April 15, 2019 was prepared by the Chief Actuary for the New York City Employees' Retirement System. This estimate is intended for use only during the 2019 Legislative Session.