STATE OF NEW YORK

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2019-2020 Regular Sessions

IN SENATE

February 11, 2019

Introduced by Sens. GOUNARDES, KAMINSKY, KAPLAN -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- reported favorably from said committee and committed to the Committee on Finance -- 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 amend the retirement and social security law, in relation to allowing retired public employees who participated in World Trade Center rescue, recovery or cleanup operations to seek subsequent employment with the state or a municipal corporation without diminution of retirement benefits

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

Section 1. Section 211 of the retirement and social security law is amended by adding a new subdivision 9 to read as follows:

9. Notwithstanding any other law, rule or regulation to the contrary, any person who, prior to the effective date of this subdivision, filed a notice of participation in World Trade Center rescue, recovery or clean-up operations, as defined in section two of this chapter, who has retired from public employment, is entitled to receive a retirement allowance from a public retirement system and seeks subsequent employment with the state or a municipal corporation shall automatically be deemed to have been granted a waiver of the retirement earnings limitation established by this section and may be employed by the state or a municipal corporation without loss, suspension or diminution of his or her retirement allowance; provided, however, the provisions of this subdivision shall not apply to a person who retired as an accidental or ordinary disability retirement.

§ 2. Section 212 of the retirement and social security law is amended by adding a new subdivision 4 to read as follows:

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

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4. Notwithstanding the provisions of subdivisions one and two of this section, the earning limitations established by this section shall not apply to any person who, prior to the effective date of this subdivision, filed a notice of participation in World Trade Center rescue, recovery or cleanup operations, as defined in section two of this chapter, has retired from public employment, receives a retirement allowance from such public retirement system and seeks subsequent employment with the state or a municipal corporation; provided, however, the provisions of this subdivision shall not apply to a person who retired as an accidental or ordinary disability retirement.

§ 3. This act shall take effect immediately.

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

This bill would add Subdivision 9 of Section 211 and Subdivision 4 of Section 212 of the Retirement and Social Security Law to waive the earnings limitation for retired members who filed notice of having participated in the World Trade Center rescue, recover or cleanup operations prior to the effective date of these subdivisions. Such members achieving subsequent employment with the state or a municipal corporation would be able to retire without diminution of their benefits. However, provisions of these subdivisions would not apply to members retired for accidental or ordinary disability. This act shall take effect immediately.

The annual cost to the employers of members of the New York State Teachers' Retirement System is estimated to be negligible if this bill is enacted.

Member data is from the System's most recent actuarial valuation files, consisting of data provided by the employers to the Retirement System. Data distributions and statistics can be found in the System's Comprehensive Annual Financial Report (CAFR). System assets are as reported in the System's financial statements, and can also be found in the CAFR. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report.

The source of this estimate is Fiscal Note 2019-14 dated February 4, 2019 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2019 Legislative Session. I, Richard A. Young, am the Actuary for the New York State Teachers' Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

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

SUMMARY OF BILL: This proposed legislation would amend Retirement and Social Security Law (RSSL) Sections 211 and 212 to permit service retirees of any public retirement system in New York State who filed a World Trade Center (WTC) Notice of Participation (NOP) prior to the effective date of the bill to become reemployed with a public employer without a post-retirement reduction or suspension of pension benefits by way of an automatic post-retirement earnings waiver.

EFFECTIVE DATE: UPON ENACTMENT.

IMPACT ON PENSION PAYMENTS: Currently, retirees of public pension funds and retirement systems who return to public service within New York, and do not rejoin the applicable public fund or system, are generally subject to various post-retirement earnings restrictions. New York City Retirement Systems (NYCRS) retirees are subject to, among other things, post-retirement earnings restrictions as provided in New York City Charter Section 1117 and RSSL Sections 211 and 212.

Those who elect to be covered under the provisions of RSSL Section 212 are permitted to earn post-retirement earnings from a public employer in an amount not exceeding a specific dollar limit in each calendar year without loss, suspension, or diminution of their retirement allowances. Once this dollar limit is reached, the retiree's retirement allowance is suspended for the remainder of that calendar year. Generally, there are no earnings limitations in, or following, the calendar year in which the retiree attains age 65. Currently, the RSSL Section 212 post-retirement earnings limitation in effect for calendar year 2007 and each year thereafter is $30,000.

When certain exigent criteria are met and approval is given to the employer by a specially designated entity, a waiver pursuant to RSSL Section 211 may be granted, for a two-year period. Under RSSL Section 211, there is no salary restriction for reemployment with a public entity that is not the former employer.

Under the proposed legislation, if enacted, the RSSL Sections 211 and 212 post-retirement public service earnings waivers would be automatically granted and NYCRS retirees who filed a WTC NOP prior to the effective date of the bill would not be subject to any post-retirement earnings limitation.

For illustrative purposes only, the table below presents the estimated additional retirement allowances paid if RSSL Section 211 waivers are granted in lieu of applying RSSL Section 212 post-retirement earnings limitation for various sample combinations of post-retirement annual earnings and annual retirement allowance amounts.

Annual Retirement Allowance	Annual Post-Retirement Earnings in Calendar Year		
	$40,000	$50,000	$60,000
$30,000	$7,500	$12,000	$15,000
$40,000	$10,000	$16,000	$20,000
$50,000	$12,500	$20,000	$25,000
$60,000	$15,000	$24,000	$30,000
$70,000	$17,500	$28,000	$35,000

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. However, since changes in the applicable retirement allowances paid to NYCRS retirees under this proposed legislation are not known in advance, the increase in pension payments due to this legislation would be treated as an actuarial loss. These actuarial losses would be amortized over a 15-year period (14 payments under the One-Year Lag Methodology (OLYM)) using level dollar payments.

The number of NYCRS retirees who could potentially be impacted by this proposed legislation cannot be readily determined. However, the Actuary believes the increase in pension payments, if the proposed legislation is enacted, would be approximately $1.5 million to $2.0 million per year for each 100 NYCRS service retirees. This would result in an increase in annual employer contributions of $180,000 to $240,000 compounded each year (e.g. $240,000 in the first year, $480,000 in the second year, $720,000 in the third year, etc.) for 14 years and then will remain level thereafter, assuming 100 such retirees are employed each year. Future years' costs would depend on factors such as, but not limited to,

the number of retirees that benefit under the legislation and the amount of their earnings and retirement allowances.

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

* The initial, additional administrative costs of NYCRS 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 annual employer contributions would be reflected for the first time in the June 30, 2020 actuarial valuations of the NYCRS. In accordance with the OYLM used to determine employer contributions, the increase in employer contributions would first be reflected in Fiscal Year 2022.

CENSUS DATA: For purposes of analyzing the impact of the proposed legislation, illustrative examples with various salary and retirement allowance amounts have been provided above.

ACTUARIAL ASSUMPTIONS AND METHODS: The changes in the 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 the NYCRS.

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 2019-27 dated May 30, 2019 was prepared by the Chief Actuary for the New York City Retirement Systems and Pension Funds, Sherry S. Chan. This estimate is intended for use only during the 2019 Legislative Session.

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

This bill will allow service retirees who previously filed and received approval for notice of participation in World Trade Center rescue, recovery or cleanup operations and become subsequently employed with the state or a municipal corporation to be exempt from the earnings limitations set forth in section two hundred twelve. These provisions shall not apply to disability retirees.

If this bill is enacted, we expect few retirees to be affected. There would be negligible additional annual costs. However, if large numbers of retirees are hired into such positions, there would be additional annual costs which would be shared by the state of New York and all of the participating employers in 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, 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 March 5, 2019, and intended for use only during the 2019 Legislative Session, is Fiscal Note No. 2019-49, prepared by the Actuary for the New York State and Local Retirement System.