

STATE OF NEW YORK

4913

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

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:

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

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

11 In 2008, the state legislatively enhanced its role with respect to the
12 New York city off-track betting corporation due to its financial diffi-
13 culties, thus becoming its successor for purposes of assuming the statu-
14 tory and constitutional obligation to make pension contributions. The
15 corporation ceased operations in 2010 and has since failed to make annu-
16 al contributions to the New York city employees' retirement system as
17 required under the administrative code of the city of New York.

18 Sections 13-130 and 13-638.2 of the administrative code of the city of
19 New York provide that the employer liabilities of a public benefit
20 corporation that participates in the New York city employees' retirement
21 system, such as the New York city off-track betting corporation, are to
22 be paid by the corporation or a successor. On March 8, 2018, the board
23 of trustees of the New York city employees' retirement system adopted a
24 resolution recognizing the state as a successor to the New York city

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

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1 off-track betting corporation and a responsible obligor with respect to
2 its required contributions.

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

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

12 1. "Actuary" shall mean the actuary appointed by the board of trustees
13 of the New York city employees' retirement system pursuant to section
14 13-121 of the administrative code of the city of New York.

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

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

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

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

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

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

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

34 § 3. Payment of the future annual contributions to be owed by NYCOTB
35 to NYCERS. Notwithstanding the provisions of any general or special
36 state law or local law to the contrary, in state fiscal year 2021 and in
37 each state fiscal year thereafter, the department of audit and control
38 shall take actions necessary to pay in full, subject to appropriation,
39 the annual contribution determined to be owed by NYCOTB to NYCERS under
40 the provisions of the NYC administrative code, including but not limited
41 to sections 13-127, 13-130, 13-133, and 13-638.2 thereof, for the corre-
42 sponding city fiscal year. On or prior to the date specified in section
43 13-133 of the NYC administrative code for the payment of annual contrib-
44 utions by NYCOTB, such moneys, to the extent of such appropriation,
45 shall be payable to NYCERS on the audit and warrant of the comptroller
46 of the state of New York on vouchers certified or approved by the execu-
47 tive director of NYCERS in the manner prescribed by law. Notwithstand-
48 ing the provisions of any general or special state law or local law to
49 the contrary, an annual contribution determined and paid under this
50 section shall not include any amount attributable to any annual contrib-
51 ution previously determined to be owed by NYCOTB to NYCERS for any city
52 fiscal year prior to the 2021 city fiscal year and not yet paid by
53 NYCOTB or the state.

54 § 4. Payment of overdue annual contributions owed by NYCOTB to NYCERS.

55 a. Notwithstanding the provisions of any general or special state law or
56 local law to the contrary, on or before January 2, 2020, the actuary

1 shall determine the sum of all annual contributions previously deter-
2 mined to be owed by NYCOTB to NYCERS for any city fiscal year prior to
3 the 2021 city fiscal year and not yet paid by NYCOTB, with interest.
4 Such interest, compounded annually, shall be computed on each such over-
5 due annual contribution from the date such contribution was required to
6 be paid pursuant to section 13-133 of the NYC administrative code
7 through January 1, 2020. This sum shall be known as the "amount to be
8 amortized".

9 b. Notwithstanding the provisions of any general or special state law
10 or local law to the contrary, on or before January 2, 2020, the actuary
11 shall further determine an amount that if paid in fifteen equal annual
12 installments beginning on January 1, 2021, would be sufficient to pay in
13 full the amount to be amortized with interest, compounded annually,
14 computed from January 2, 2020, to January 1, 2035. This amount shall be
15 known as the "annual amortization payment". Any annual amortization
16 payment subsequent to the initial annual amortization payment payable on
17 January 1, 2021, shall include the unpaid balance of any prior annual
18 amortization payment, with interest, compounded annually, computed from
19 the date such prior annual amortization payment was required to be paid
20 to the date that such subsequent annual authorization payment is
21 required to be paid.

22 c. Notwithstanding the provisions of any general or special state law
23 or local law to the contrary, in state fiscal year 2021 and in each
24 state fiscal year thereafter until the amount to be amortized, with
25 interest, is paid in full, the department of audit and control shall
26 take actions necessary to pay in full the annual amortization payment,
27 subject to appropriation. On or prior to January 1st of each such state
28 fiscal year, such moneys, to the extent of such appropriation shall be
29 payable to NYCERS on the audit and warrant of the comptroller of the
30 state of New York on vouchers certified or approved by the executive
31 director of NYCERS in the manner prescribed by law.

32 § 5. Deposit of moneys. NYCERS shall deposit all moneys received
33 pursuant to this act in the contingent reserve fund specified in section
34 13-127 of the NYC administrative code.

35 § 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 2020 (the Amount to be Amortized), on or before January 2, 2020, 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, 2021 and ending by January 1, 2035 (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 \$289.9 million as of January 1, 2021. Any amount appropriated and paid by the State to NYCERS would be applied as a credit to NYCOTB and relieve any potential additional successor or any potential guarantor of such amounts paid.

The following Table presents an estimate of the annual cost for Fiscal Years 2021 through 2025 as of January 1, 2021.

Fiscal Year	Cost Attributable to Employer Contributions for Fiscal Years Prior to 2021*	Cost Attributable to Employer Contributions for Fiscal Years Subsequent to 2020**	Total
2021	\$16,933,668	\$13,378,824	\$30,312,492
2022	\$16,933,668	\$13,715,186	\$30,648,854
2023	\$16,933,668	\$14,060,844	\$30,994,512
2024	\$16,933,668	\$14,417,094	\$31,350,762
2025	\$16,933,668	\$14,783,804	\$31,717,472

* Equal to a 15-year amortization of \$165,026,521 as of January 1, 2021.

** Estimates of future employer contributions for OTB based on the actuarial assumptions and methods in effect for the June 30, 2018 (Lag) actuarial valuation, including an assumed investment return of 7.0% per annum.

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

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

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

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.

As of June 30, 2018, OTB had 1,187 retirees with an average age of approximately 74.5 years, 370 terminated vested members with an average age of approximately 52.7 years, and 81 active off payroll members with an average age of approximately 45.0 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, 2018 (Lag) actuarial valuations used to determine the Preliminary Fiscal Year 2020 employer contributions of NYCERS.

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 actu-

arial 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 2019-03 dated March 21, 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.