STATE OF NEW YORK

10538

IN ASSEMBLY

July 6, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Wallace, Buttenschon) -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to enacting the "State Police Retention act"

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

Section 1. Short title. This act shall be known and may be cited as the "State Police Retention act".

§ 2. Legislative findings. Front line public employees have faced unprecedented adverse health effects as the result of employer mandates to require state police officers to remain on-duty and physically present at their work locations during the deadly COVID-19 pandemic. These crucial public employees mandated to continue conducting crucial services to the public during the most deadly period of the COVID-19 pandemic displayed exemplary service, while often at a health detriment to the employee and their family. Prior to the state mandating worker quarantines, state police officers were already on the front lines of the pandemic transporting crucial medical supplies, test kits as well as COVID-19 samples throughout the state to laboratories established to test suspected COVID-19 submissions in order to gain an early foothold in statewide treatment protocols. Besides the strenuous work they already perform, additional duties as part of the early tracking, transporting and testing of COVID-19 samples has resulted in a large contingent of state police officers to retire earlier than expected and thus reduced overall manpower allotments that does not keep up with mandated duty requirements. This legislation offers an inducement to retain our most valued senior state police officers while affording more time to hire, train and deploy replaced public employees.

§ 3. The retirement and social security law is amended by adding a new section 381-c to read as follows:

§ 381-c. Deferred retirement option plan payable to members and officers of the division of state police. a. Deferred retirement option plan. Deferred retirement option plan, (hereinafter referred to as

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

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"DROP"), is a retirement plan under which an eligible member may elect to participate, deferring receipt of retirement benefits while continuing employment with the division of state police. For the purposes of this section, an "eligible member" is any member or officer employed by the division of state police. During the period of continued employment, the eligible member's monthly retirement benefit shall be deferred and held by the retirement system on behalf of the member plus interest at an effective rate of one and one-half percent for the specific period of participation in DROP as provided in subdivision c of this section. Upon completion of the DROP period, the eligible member shall receive the total amount of retirement benefits deferred under DROP without optional modification as permitted by subdivisions d and e of this section and shall begin to receive the previously determined normal service retirement benefit with optional modification as further provided in subdivision d of this section.

b. Participation in DROP. Any eligible member who is currently employed by the division of state police and qualifies to retire pursuant to section three hundred eighty-one-b of this title by reason of completing twenty years of creditable service may elect to participate in DROP.

c. Election in DROP. Such election shall be on a form prepared by the comptroller and may be for any period of time not less than twelve months or more than sixty months duration. Any member who elects to participate in DROP shall be considered retired on the day following the expiration of the DROP period, provided, however, that all loans and excess contributions shall be resolved by the date of entry into DROP and no additional loans or excess contributions shall be permitted after the date of entry into DROP. Upon expiration of the time period selected by the eligible member, such member's participation in DROP shall terminate.

d. Benefits payable under DROP. (1) Effective with the date of participation in DROP, the eligible member's normal service retirement benefit shall be calculated, using creditable service and final average salary as if the effective date of retirement was the date of entry into DROP. The amount deferred pursuant to DROP shall be calculated based upon the eligible member's zero option retirement allowance until such member has obtained the applicable maximum service retirement limit based upon years of service. Any additional participation in DROP after a member has obtained the maximum service retirement limit based upon years of service shall be calculated based upon sixty percent of the member's full annual retirement allowance. In addition, for the purposes of this section, the annual retirement allowance for any member electing DROP shall be calculated using a three-year final average salary as defined elsewhere in this article. The eligible member shall, however, elect his or her optional retirement benefit at the completion of the DROP period.

(2) If the eligible member dies prior to completion of the period of participation in DROP, the eligible member shall be treated as if such DROP election did not exist. In lieu of the DROP payment, a death benefit shall be payable consistent with the terms of this chapter and all salary and service reported for such eligible member during the DROP period shall be considered in calculating the eligible member's death benefit.

(3) If the eligible member is approved for disability benefits provided in this chapter during the DROP period, the eligible member shall be treated as if the DROP election did not exist. In lieu of the DROP payment, a disability retirement benefit shall be payable consist-

ent with the terms of this chapter and all salary and service reported for such eligible member during the DROP period shall be considered in calculating the eligible member's disability retirement benefit.

(4) If an eligible member otherwise fails to complete his or her period of service as elected pursuant to subdivision c of this section, the eligible member shall be treated as if such DROP election did not exist. In lieu of the DROP payment, the normal service retirement benefit shall be payable consistent with the terms of this chapter and all salary and service reported for such eligible member during the DROP period shall be considered in calculating the eligible member's service retirement benefit.

(5) If an eligible member remains employed after his or her participation in DROP is terminated, such member shall forfeit all DROP benefits and continue employment as if such DROP election did not exist. Such member shall then be eligible to elect DROP consistent with the terms of this section.

(6) If an eligible member is approved for disability benefits after benefits payable pursuant to DROP have been paid, the eligible member may elect to receive the disability benefits in lieu of DROP benefits, but such disability benefits shall be actuarially adjusted for any benefits paid under DROP.

e. Method of payment. At the conclusion of the member's participation in DROP, the retirement system shall pay the deferred service retirement benefits in one of the following methods as elected by the member:

(1) Lump sum: All accrued DROP benefits, plus interest, less withholding as required by the internal revenue service, shall be paid to the DROP participant or eligible beneficiary or as otherwise determined by operation of law;

(2) Direct rollover: All accrued DROP benefits, plus interest, shall be paid from the retirement system to a custodian of the eligible retirement plan or other eligible plan or account as provided pursuant to the internal revenue code as directed by the member or eligible beneficiary;

(3) Partial lump sum: A portion of the DROP benefits shall be paid to the DROP participant or eligible beneficiary, less withholding required by the internal revenue service and the remaining DROP benefits may be rolled over as otherwise permitted by the internal revenue code.

For purposes of this subdivision, the term "eligible beneficiary" is one who qualifies to rollover benefits from a qualified benefit plan or account as provided by the internal revenue code. The forms of payment provided by this subdivision shall comply with the minimum distribution requirements of the internal revenue code.

f. Regulations. The comptroller shall prescribe such rules and regulations as may be necessary for the effective administration and implementation of the provisions of this section.

§ 4. This act shall take effect immediately.

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

This bill would allow police officers employed by the division of state police to elect to participate in a Deferred Retirement Option Plan (DROP), deferring receipt of retirement benefits while continuing their current employment. The features of this DROP are:

1. Members may elect to participate in the DROP upon the attainment of retirement eligibility.

2. The service retirement benefit shall be the option zero allowance determined based on the service and final average salary at the commencement of DROP participation. However, once a member's total

service credit (including service during the DROP period) exceeds 32 years, the monthly payment into the DROP account will be limited to 60% of the option zero allowance.

3. The Police and Fire Retirement System (PFRS) shall consider DROP participants active members, and annual employer contributions shall continue to be made by the State of New York to the PFRS on behalf of such members.

4. The length of participation in the DROP must be specified at the time of election, and may not be less than 1 year, nor exceed 5 years. However, if the affected member should leave employment before or after the scheduled DROP termination date, such member shall forfeit all DROP benefits, and shall be treated as though there were no DROP election.

5. During the DROP period, the monthly pensions of such participants will be deferred and held by the PFRS on their behalf and shall accrue interest at 1.5%. Such account, with interest accumulation, must be distributed in full at the end of the specified DROP period.

6. If an affected member should die or become disabled during the DROP period, such member would be treated as though there were no DROP election.

7. Upon termination from DROP, such participants shall receive their deferred payments, and shall also begin to receive their previously determined pensions.

Section 212 of the Retirement and Social Security Law generally requires the immediate suspension of the service retirement benefit in the event a retiree under age 65 returns to public employment and earns in any calendar year an amount greater than $35,000. This proposal would allow members to receive both their full salary and retirement benefits for up to a 5-year period.

The Partial Lump Sum (PLS) program currently allows PFRS members to receive lump sums equal to 25% of the present value of their pensions. Under this proposal, certain members could receive lump sums which would exceed 40% of the present value of their pensions, in addition to the PLS lump sums.

If this bill is enacted, there would be past service costs which would depend on the current salary, age and length of service of the affected members. It is estimated that the past service cost per member would average approximately 100% of salary. This cost would be billed to the State of New York when a state police officer receives their DROP payout.

If the anticipated retirement experience of members who are eligible for this benefit changes significantly in the future, there would be additional increases in employer costs.

Summary of relevant resources:

Membership data as of March 31, 2021 was used in measuring the impact of the proposed change, the same data used in the April 1, 2021 actuarial valuation. Distributions and other statistics can be found in the 2021 Report of the Actuary and the 2021 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2020 and 2021 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, 2021 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 May 12, 2022, and intended for use only during the 2022 Legislative Session, is Fiscal Note No. 2022-132, prepared by the Actuary for the New York State and Local Retirement System.