STATE OF NEW YORK

1879--A

2021-2022 Regular Sessions

IN SENATE

January 16, 2021

Introduced by Sens. SKOUFIS, AKSHAR, BROOKS, GALLIVAN, HELMING, HINCHEY, MARTUCCI, ORTT, RITCHIE -- 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

AN ACT to amend the retirement and social security law, in relation to providing county correction officers with a special optional twenty year retirement plan

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 article 14-C to read as follows:

ARTICLE 14-C

OPTIONAL RETIREMENT PLAN FOR COUNTY CORRECTION OFFICERS OR DEPUTY SHERIFFS PERFORMING AS CORRECTION OFFICERS

Section 561. Definitions.
562. Optional twenty year retirement plan for certain members whose employer elects to provide same.
563. Additional pension benefit for members of optional twenty year retirement plan.
564. Consistent provisions.

§ 561. Definitions. For purposes of this article:

(a) "Member" shall mean a person who is employed as a county correction officer or a deputy sheriff who is engaged directly in correction officer duties that aggregate fifty per centum of their service by a county which elects by resolution or local law, duly adopted, to provide the benefits as authorized by this article.

(b) "Retirement system" shall mean the New York state and local employees' retirement system.

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

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(c) "Creditable service" shall include any and all services performed as a sheriff, undersheriff or deputy sheriff, or correction officer. Credit for service as a member or officer of the state police or as a paid fireman, policeman or officer of any organized fire department or police force or department of any county, city, village, town, fire district or police district, shall also be deemed to be creditable service and shall be included in computing years of total service for retirement pursuant to this section, provided such service was performed by the member while contributing to the retirement system pursuant to the provisions of this article or article eight of this chapter.

§ 562. Optional twenty year retirement plan for certain members whose employer elects to provide same. (a) Any member of the retirement system may elect to become a member pursuant to the provisions of this section within one year after he or she becomes a member, if his or her employer has elected to make the benefits provided by this section available to members, or within one year after his or her employer elects to make the benefits provided by this section available to its members.

(b) Elections made pursuant to this section shall be in writing and shall be duly acknowledged and filed with the comptroller. Any member who files such an election pursuant to this section may withdraw it after it has been filed for at least a year. Such withdrawal shall be by written notice duly acknowledged and filed with the comptroller.

(c) A member participating on the basis of this section at the time of retirement shall be entitled to retire after the completion of twenty years of total creditable service or upon the attainment of age sixty-two, by filing an application therefor in a manner similar to that provided in this chapter.

(i) Upon completion of twenty years of such service and upon retirement, each such member shall receive a pension sufficient to provide him or her with a retirement allowance equal to one-fortieth of his or her final average salary for each year of total creditable services for which he or she is otherwise entitled but not exceeding in the aggregate one-half of his or her final average salary.

(ii) Upon attainment of age sixty-two and upon retirement without completion of twenty years of such service, each such member shall receive a pension sufficient to provide him or her with a retirement allowance equal to one-fortieth of his or her final average salary for each year of creditable service. Every such member shall also be entitled to an additional pension equal to the pension for any other creditable service rendered as otherwise provided for in this chapter. This latter pension shall not increase the total allowance to more than one-half of his or her final average salary.

(d) The increased pensions to such members, as provided by this section, shall be paid from additional contributions made by the participating employer on account of such members. The actuary of the retirement system shall compute the additional contribution required for each member who elects to receive the special benefits provided under this section. Such additional contributions shall be computed on the basis of contributions during the prospective service of such member which will cover the liability of the retirement system for such extra pensions. Upon approval of the comptroller, such additional contributions shall be certified by him or her to the chief fiscal officer or the participating employer. The amount thereof shall be included in the annual appropriation of the participating employer. Such amount shall be paid on the warrant of the chief fiscal officer of the participating employer to the pension accumulation fund of the retirement system.

(e) In computing the twenty years of completed service of a member, full credit shall be given for military service as defined in subdivisions twenty-nine-a and thirty of section three hundred two of this chapter.

(f) Every member participating on the basis of this section shall be separated from the service on the last day of the calendar month next succeeding the calendar month in which he or she attains age sixty-two, provided, however, that such a member who attained the age of sixty-two before his or her employer elected to make the benefits provided by this section available to him or her, or who attains the age of sixty-two within one month after his or her employer makes such benefits available, to be eligible for a pension computed in accordance with the provisions of this section, shall be separated from the service within three months after his or her employer makes such benefits available.

(g) The provisions of this section shall be controlling notwithstanding any other provision of this article to the contrary.

(h) The benefits of this section shall be available only to those members whose employer elects to provide such benefits by adopting a resolution or local law to such effect and filing a certified copy thereof with the comptroller.

(i) The benefits provided by this section shall be payable to a member, unless at the date of retirement such member would otherwise be entitled to a greater benefit under other provisions of this chapter had he or she withdrawn from this section, in which event such greater benefits shall be payable.

§ 563. Additional pension benefit for members of optional twenty year retirement plan. (a) A participating employer which has elected, or which elects to provide the benefits of the optional twenty year retirement plan for its employees as specified in this article may elect to make contributions for the purpose of providing an additional pension pursuant to this section for members in its employ who are entitled to a pension pursuant to section five hundred sixty-two of this article. Every member employed by an employer which has elected the provisions of section five hundred sixty-two of this article and this section may elect to be covered by the provisions of this section by filing with the comptroller, a duly executed and acknowledged form prepared by the comptroller for that purpose.

(b) Upon retirement, each such member shall receive, for each year of service in excess of twenty, an additional pension which shall be equal to one-sixtieth of his or her final average salary; provided, however, that the total allowance payable pursuant to this section shall not exceed three-quarters of such member's final average salary.

§ 564. Consistent provisions. Nothing contained in this article shall be construed to otherwise affect the applicability of article eleven, fourteen or fifteen of this chapter. Any other provisions of this chapter relating to mandatory contribution to the retirement system based upon a member's date of membership in such system shall not be deemed to be affected by the provisions of this article, and any member who on the effective date of this article is not required to contribute shall not be required to make any contributions as a result of this section. For those members required to contribute to the retirement system, such contribution shall be treated in the same manner as specified for such members in article fourteen or fifteen of this chapter.

§ 2. Any past service payments required of a county as a result of the adoption of the benefits permitted by this act may be amortized over a period of up to ten years at the option of such county.

§ 3. This act shall take effect immediately.

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

This bill would create an Article 14-C for any county correction officers or deputy sheriffs engaged directly in correction officer duties at least 50% of their service. The retirement benefit is 50% of final average salary after 20 years of service with additional 60ths for service beyond 20 years if an employer so elects. All service rendered as a correction officer, sheriff, undersheriff, or deputy sheriff or as a fireman, policeman or officer of any organized fire department or police force is creditable. The retirement benefit is not to exceed 75% of final average salary.

If this bill is enacted during the 2022 legislative session, we anticipate that there will be increases in employer contributions, according to the following tables, on behalf of the affected members for the fiscal year ending March 31, 2023. In future years, this cost will vary as the billing rates and salaries of the affected members change.

20-year half pay plan

	Percent of salary		
Current Plan	Tier 4	Tier 5	Tier 6
A15	7.0%	7.2%	7.0%
89-e	3.4%	3.6%	3.7%
551	2.5%	2.6%	2.8%
551E	1.6%	1.5%	1.7%
551EE	0.9%	0.9%	1.2%
552	0.0%	0.0%	0.0%
553	0.0%	0.0%	0.0%
553B	0.0%	0.0%	0.0%

20-year half pay with additional 60ths

	Percent of salary		
Current Plan	Tier 4	Tier 5	Tier 6
A15	7.6%	8.0%	8.1%
89-e	4.0%	4.4%	4.8%
551	3.1%	3.4%	3.9%
551E	2.2%	2.3%	2.8%
551EE	1.5%	1.7%	2.3%
552	0.0%	0.0%	0.2%
553	0.0%	0.0%	0.0%
553B	0.0%	0.0%	0.0%

Insofar as this bill would affect the New York State and Local Employees' Retirement System, the past service cost will depend upon the member's service, salary, tier, current retirement plan and new retirement plan. Once an employer elects to provide this coverage, an exact cost would be determined.

Internal Revenue Service (IRS) plan qualification issues: granting correction officers service credit towards retirement in a 20-year plan could jeopardize the Retirement System's governmental plan status and its exemption from ERISA. This could result in the loss of qualified status, which would mean the loss of tax benefits and would substantially impair the System's value to our more than one million participants.

Prior to the enactment of this legislation, we recommend that a favorable ruling be obtained from the IRS stating that these provisions would not harm the qualification status of the System. It is estimated that

the costs to obtain such a ruling would be $28,000 for the services of the IRS, and $800 per hour for legal consultants.

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 March 29, 2022, and intended for use only during the 2022 Legislative Session, is Fiscal Note No. 2022-106, prepared by the Actuary for the New York State and Local Retirement System.