

# STATE OF NEW YORK

6422--A

2021-2022 Regular Sessions

## IN SENATE

April 27, 2021

Introduced by Sen. GOUNARDES -- 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 participation in certain retirement plans by active and retired members and staff of the New York city council

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

1 Section 1. Subdivision a of section 445-d of the retirement and social  
2 security law, as added by chapter 96 of the laws of 1995, is amended by  
3 adding two new paragraphs 16 and 17 to read as follows:

4 16. "Active or retired employee of the council of the city of New  
5 York" shall mean all duly sworn members of the city council as well as  
6 all salaried employees who comprise the staff of the city council on a  
7 full-time or part-time basis who are either in active service on the  
8 effective date of this paragraph or who are retired from such service.

9 17. "Retired employee of the council of the city of New York" shall  
10 mean all duly sworn members of the New York city council as well as all  
11 salaried employees who comprise the staff of the city council on a full-  
12 time or part-time basis who are retired from active service.

13 § 2. Paragraphs 1 and 6 of subdivision b of section 445-d of the  
14 retirement and social security law, as added by chapter 96 of the laws  
15 of 1995, are amended to read as follows:

16 1. Subject to the provisions of paragraphs five and six of this subdi-  
17 vision, any person who is a New York city eligible member in active  
18 service on the enactment date of the age fifty-five improved benefit  
19 retirement program may elect to become a participant in the age fifty-  
20 five improved benefit retirement program by filing, within ninety days  
21 after such enactment date, a duly executed application for such partic-  
22 ipation with the retirement system of which such person is a member,  
23 provided he or she is a New York city eligible member in active service

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

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1 on the date such application is filed. Notwithstanding this provision,  
2 a New York city eligible member in active service on the enactment date  
3 of the age fifty-five improved benefit retirement program who is an  
4 active or retired employee of the council of the city of New York may  
5 elect to participate in the age fifty-five improved benefit retirement  
6 program at any time subsequent to the enactment date of such program.

7 6. Notwithstanding any other provision of law to the contrary, any  
8 person who is eligible to elect to become a participant in the age  
9 fifty-five improved benefit retirement program pursuant to paragraph one  
10 or two of this subdivision for the full ninety-day period provided for  
11 in such applicable paragraph, and who fails to timely file a duly  
12 executed application for such participation with the appropriate retire-  
13 ment system, shall not thereafter be eligible to become a participant in  
14 such program. The provisions of this paragraph shall not bar partic-  
15 ipation in such program, however, by a New York city eligible member in  
16 active service on the enactment date of the age fifty-five improved  
17 benefit retirement program who is an active or retired employee of the  
18 council of the city of New York.

19 § 3. Paragraph 1 of subdivision c of section 445-d of the retirement  
20 and social security law, as added by chapter 96 of the laws of 1995, is  
21 amended to read as follows:

22 1. Non-physically taxing service retirement. Notwithstanding any other  
23 provision of law to the contrary, a participant in the age fifty-five  
24 improved benefit retirement program:

25 (i) who is otherwise eligible to retire for service with immediate  
26 payability of a retirement allowance pursuant to section 13-162 of the  
27 administrative code or section thirty of the BERS rules and regulations;  
28 and

29 (ii) who has completed twenty-five or more years of credited CPP qual-  
30 ifying service; and

31 (iii) who has attained age fifty-five; and

32 (iv) who, subject to the provisions of paragraph ten of subdivision d  
33 of this section, has paid, before the effective date of retirement, all  
34 additional member contributions and interest (if any) required by para-  
35 graphs one, four, five and six of subdivision d of this section, or, for  
36 a New York city eligible member in active service on the enactment date  
37 of the age fifty-five improved benefit retirement program who is an  
38 active or retired employee of the council of the city of New York, who  
39 has paid all additional member contributions pursuant to paragraph five  
40 of subdivision d of this section; and

41 (v) who shall be a participant in the age fifty-five improved benefit  
42 retirement program in active service at the time so specified for his or  
43 her retirement; shall, subject to the provisions of paragraph ten of  
44 subdivision d of this section, be permitted to retire with a minimum  
45 retirement age of fifty-five, and the benefit reduction provisions set  
46 forth in subdivision a of section four hundred forty-two of this article  
47 shall not be applied to the calculation of such participant's retirement  
48 benefit.

49 For a New York city eligible member in active service on the enactment  
50 date of the age fifty-five improved benefit retirement program who is a  
51 retired employee of the council of the city of New York, however, there  
52 shall be no requirement of active service at the time of filing for  
53 retirement provided that such employee has met the other requirements of  
54 this paragraph.

1 § 4. Subdivision a of section 604-c of the retirement and social secu-  
2 rity law, as added by chapter 96 of the laws of 1995, is amended by  
3 adding two new paragraphs 14 and 15 to read as follows:

4 14. "Active or retired employee of the council of the city of New  
5 York" shall mean all duly sworn members of the New York city council as  
6 well as all salaried employees who comprise the staff of the city coun-  
7 cil on a full-time or part-time basis who are either in active service  
8 on the effective date of this paragraph or who retired from such  
9 service.

10 15. "Retired employee of the council of the city of New York" shall  
11 mean all duly sworn members of the New York city council as well as all  
12 salaried employees who comprise the staff of the city council on a full-  
13 time or part-time basis who are retired from active service.

14 § 5. Paragraphs 1 and 7 of subdivision b of section 604-c of the  
15 retirement and social security law, as added by chapter 96 of the laws  
16 of 1995, are amended to read as follows:

17 1. Subject to the provisions of paragraphs five, six and seven of this  
18 subdivision, any person who is employed in a New York city eligible  
19 position on the enactment date of the twenty-five-year early retirement  
20 program, and who is a New York city eligible member in active service on  
21 such enactment date, may elect to become a participant in the twenty-  
22 five-year early retirement program by filing, within ninety days after  
23 the enactment date of the twenty-five-year early retirement program, a  
24 duly executed application for such participation with the retirement  
25 system of which such person is a member, provided he or she is a New  
26 York city eligible member in active service on the date such application  
27 is filed. Notwithstanding this provision, a New York city eligible  
28 member in active service on the enactment date of the twenty-five-year  
29 early retirement program who is an active or retired employee of the  
30 council of the city of New York may elect to participate in the twenty-  
31 five-year early retirement program at any time subsequent to the enact-  
32 ment date of such program.

33 7. Notwithstanding any other provision of law to the contrary, any  
34 person who is eligible to elect to become a participant in the twenty-  
35 five-year early retirement program pursuant to paragraph one or two of  
36 this subdivision for the full ninety-day period provided for in such  
37 applicable subparagraph, and who fails to timely file a duly executed  
38 application for such participation with the appropriate retirement  
39 system, shall not thereafter be eligible to become a participant in such  
40 program. The provisions of this paragraph shall not bar participation in  
41 such program, however, by a New York city eligible member in active  
42 service on the enactment date of the twenty-five-year early retirement  
43 program who is an active or retired employee of the council of the city  
44 of New York.

45 § 6. Paragraph 1 of subdivision c of section 604-c of the retirement  
46 and social security law, as added by chapter 96 of the laws of 1995,  
47 is amended to read as follows:

48 1. Non-physically taxing service retirement. A participant in the  
49 twenty-five year early retirement program:

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

52 (ii) who has attained age fifty-five; and

53 (iii) who, subject to the provisions of paragraph ten of subdivision d  
54 of this section, has paid, before the effective date of retirement, all  
55 additional member contributions and interest (if any) required by para-  
56 graphs one, four, five and six of subdivision d of this section, or, for

1 a New York city eligible member in active service on the enactment date  
2 of the twenty-five-year early retirement program who is an active or  
3 retired employee of the council of the city of New York, who has paid  
4 all additional member contributions pursuant to paragraph five of subdi-  
5 vision d of this section; and

6 (iv) who files with the retirement system of which he or she is a  
7 member an application for service retirement setting forth at what time  
8 he or she desires to be retired, or, for a New York city eligible member  
9 in active service on the enactment date of the twenty-five-year early  
10 retirement program who is a retired employee of the council of the city  
11 of New York, who files an application for participation in the retire-  
12 ment plan described by this section; and

13 (v) who shall be a participant in the twenty-five-year early retire-  
14 ment program in active service at the time so specified for his or her  
15 retirement; shall be retired pursuant to the provisions of this para-  
16 graph affording early service retirement.

17 For a New York city eligible member in active service on the enactment  
18 date of the twenty-five-year early retirement program who is a retired  
19 employee of the council of the city of New York, however, there shall be  
20 no requirement of active service at the time of filing for retirement  
21 provided that such employee has met the other requirements of this para-  
22 graph.

23 § 7. Notwithstanding any other provision of law to the contrary, none  
24 of the provisions of this act shall be subject to the appropriation  
25 requirement of section 25 of the retirement and social security law.

26 § 8. This act shall take effect on the ninetieth day after it shall  
27 have become a law. The board of trustees of the New York city employees'  
28 retirement system shall prescribe rules or regulations before the effec-  
29 tive date of this act to provide that any New York city eligible member  
30 in active service on the enactment date of the age fifty-five improved  
31 benefit retirement program or the twenty-five-year early retirement  
32 program who is an active or retired employee of the council of the city  
33 of New York, as defined in sections 445-d and 604-c of the retirement  
34 and social security law, shall be given an application to join the age  
35 fifty-five improved benefit retirement program or the twenty-five-year  
36 early retirement program, as applicable and as established by such  
37 sections, if such member is made newly eligible by this act.

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

SUMMARY OF BILL: This proposed legislation would amend provisions of  
the Retirement and Social Security Law (RSSL) to reopen the 55/25 Plans  
for active or retired Tier 2 and Tier 4 City Council employees who were  
New York City Employees' Retirement System (NYCERS) members and employed  
in such position as of June 28, 1995.

Effective Date: The 90th day after enactment.

BACKGROUND: Currently, Tier 2 or Tier 4 members who were employed in  
an Eligible Position on June 28, 1995 had an option, pursuant to Chapter  
96 of the Laws of 1995, to join the 55/25 Plans by filing an election  
form with NYCERS within 90 days. Eligible Members who failed to elect  
the 55/25 Plans, or other plans enacted by Chapter 96, are generally  
participants in a Basic 62/5 Plan.

Under the proposed legislation, if enacted, active and retired members  
who were City Council employees on June 28, 1995 would be allowed to  
join the 55/25 Plans at any time after the Effective Date of the  
proposed legislation. Such members would be required to pay any addi-  
tional member contributions required by the 55/25 Plans.

IMPACT ON PAYABILITY: Currently, members in a Basic 62/5 Plan can begin collecting an unreduced pension at age 62 with at least five years of service, or as early as age 55 with benefit reductions depending on their age of retirement. Electing the 55/25 Plans would allow such members to begin collecting an unreduced pension, assuming at least 25 years of service, at age 55.

Members who have already retired with at least 25 years of service at retirement but whose benefit was reduced due to their age at retirement, would be able to elect to join the 55/25 Plans and have their benefits recalculated. They would also receive a retroactive payment equal to the difference between their current benefit and revised benefit as of their retirement date.

ADDITIONAL MEMBER CONTRIBUTIONS: Members of the 55/25 Plans are required to make, in addition to the Basic Member Contributions (BMCs) of 3%, Additional Member Contributions (AMCs) ranging from 1.85% to 4.35% (depending on the dates of service rendered) until the attainment of 25 or 30 years of credited service, depending on Tier. Active and retired members who join the Plans through this legislation will be required to contribute any AMCs, with interest, they would have had to make had they joined the plans in 1995. It has been assumed that interest on such AMCs would cease accruing on the earlier of the date of payment or retirement date.

FINANCIAL IMPACT - PRESENT VALUES: Based on the anticipated group of members electing to join the 55/25 Plans 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 \$2.0 million, and increase the Present Value of member contributions by approximately \$1.3 million after taking into account the required retroactive AMCs. The net result is an increase in the Present Value of future employer contributions of approximately \$0.7 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 \$1.2 million offset by a decrease in the Present Value of future employer Normal Cost of \$0.5 million.

FINANCIAL IMPACT - ANNUAL EMPLOYER CONTRIBUTIONS: In accordance with Section 13-638.2(k-2) of the Administrative Code of the City of New York (ACCNYS), new UAL attributable to benefit changes are to be amortized as determined by the Actuary but are generally amortized over the remaining working lifetime of those impacted by the benefit changes. As of June 30, 2021, the remaining working lifetime of the active NYCERS City Council members assumed to elect the 55/25 Plans is approximately six years.

For the purposes of this Fiscal Note, the increase in UAL for active members was amortized over a six-year period (five payments under the One-Year Lag Methodology (OYLM)) using level dollar payments. For members who would benefit that are retired, and therefore have no remaining working lifetime, the entire increase in UAL would be recognized immediately. These payments offset by the decrease in the Normal Cost results in an increase in annual employer contributions of approximately \$430,000 in the first year. Employer contributions after the first year are estimated to increase by approximately \$242,000 per year.

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 Final June 30, 2021 actuarial valuation of NYCERS. In accordance with the OYLM used to determine employer contributions,

the increase in employer contributions would first be reflected in Fiscal Year 2023.

**CENSUS DATA:** The estimates presented herein are based on the census data used in the Preliminary June 30, 2021 (Lag) actuarial valuation of NYCERS to determine the Preliminary Fiscal Year 2023 employer contributions. This was supplemented by historical census data used to identify the population of eligible members.

The 20 NYCERS City Council members assumed to elect the 55/25 Plans as of June 30, 2021 include 17 active members, and three retirees. The active members had an average age of approximately 53.9 years, average service of approximately 30.0 years, and an average salary of approximately \$104,000. The three retired members had an average age of approximately 64.7 years, and an average annual benefit of approximately \$43,300.

**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 Preliminary June 30, 2021 (Lag) actuarial valuations used to determine the Preliminary Fiscal Year 2023 employer contributions of NYCERS.

To determine the impact of the elective nature of the proposed legislation, a subgroup of NYCERS City Council members was developed based on who could potentially benefit actuarially. The net Present Value of future employer 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 55/25 Plan. If the net Present Value of future employer cost under the 55/25 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.

**RISK AND UNCERTAINTY:** The costs presented in this Fiscal Note depend highly on the realization of the actuarial assumptions used, as well as certain demographic characteristics of NYCERS and other exogenous factors such as investment, 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.

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.

**STATEMENT OF ACTUARIAL OPINION:** I, Michael J. Samet, am the Interim Chief Actuary for, and independent of, the New York City Retirement Systems and Pension Funds. I am a Fellow of the Society of Actuaries and a Member of the American Academy of 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 2022-51 dated May 12, 2022 was prepared by the Chief Actuary for the New York City Employees' Retirement System. This estimate is intended for use only during the 2022 Legislative Session.