STATE OF NEW YORK

9119

IN SENATE

May 10, 2022

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 amend the retirement and social security law, the education law, the public authorities law and the administrative code of the city of New York, in relation to extending the coronavirus disease 2019 (COVID-19) benefit for public employee death benefits; and to amend chapter 78 of the laws of 2021, amending the retirement and social security law and other laws relating to establishing a coronavirus disease 2019 (COVID-19) benefit for public employee death benefits, in relation to the effectiveness thereof

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

Section 1. Paragraph 3 of subdivision a of section 61-b of the retirement and social security law, as added by chapter 78 of the laws of 2021, is amended to read as follows:

3. Such member died on or before December thirty-first, two thousand [~~twenty-two~~] twenty-four, and COVID-19 caused or contributed to such member's death, as documented on such member's death certificate, or as certified by a physician, nurse practitioner, or physician's assistant described in paragraph two of this subdivision who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the member's death, such member's statutory beneficiary shall receive an accidental death benefit, unless such statutory beneficiary elects to receive an ordinary death benefit.

§ 2. Paragraph 3 of subdivision a of section 361-b of the retirement and social security law, as added by chapter 78 of the laws of 2021, is amended to read as follows:

3. Such member died on or before December thirty-first, two thousand [~~twenty-two~~] twenty-four, and COVID-19 caused or contributed to such member's death, as documented on such member's death certificate, or as certified by a physician, nurse practitioner, or physician's assistant described in paragraph two of this subdivision who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the member's death, such member's statutory beneficiary shall

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

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receive an accidental death benefit, unless such statutory beneficiary elects to receive an ordinary death benefit.

§ 3. Paragraph 3 of subdivision a of section 509-a of the retirement and social security law, as added by chapter 78 of the laws of 2021, is amended to read as follows:

3. Such member died on or before December thirty-first, two thousand [~~twenty-two~~] twenty-four, and COVID-19 caused or contributed to such member's death, as documented on such member's death certificate, or as certified by a physician, nurse practitioner, or physician's assistant described in paragraph two of this subdivision who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the member's death, such member's statutory beneficiary shall receive an accidental death benefit, unless such statutory beneficiary elects to receive an ordinary death benefit.

§ 4. Paragraph 3 of subdivision a of section 607-i of the retirement and social security law, as added by chapter 78 of the laws of 2021, is amended to read as follows:

3. Such member died on or before December thirty-first, two thousand [~~twenty-two~~] twenty-four, and COVID-19 caused or contributed to such member's death, as documented on such member's death certificate, or as certified by a physician, nurse practitioner, or physician's assistant described in paragraph two of this subdivision who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the member's death, such member's statutory beneficiary shall receive an accidental death benefit, unless such statutory beneficiary elects to receive an ordinary death benefit.

§ 5. Subparagraph (C) of paragraph 1 of subdivision h of section 512 of the education law, as added by chapter 78 of the laws of 2021, is amended to read as follows:

(C) such member died on or before December thirty-first, two thousand [~~twenty-two~~] twenty-four, and COVID-19 caused or contributed to such member's death, as documented on such member's death certificate, or as certified by a physician, nurse practitioner, or physician's assistant described in subparagraph (B) of this paragraph who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the member's death, such member's statutory beneficiary shall receive an accidental death benefit, unless such statutory beneficiary elects to receive an ordinary death benefit.

§ 6. Subparagraph (iii) of paragraph (a) of subdivision 26 of section 2575 of the education law, as added by chapter 78 of the laws of 2021, is amended to read as follows:

(iii) such member died on or before December thirty-first, two thousand [~~twenty-two~~] twenty-four, and COVID-19 caused or contributed to such member's death, as documented on such member's death certificate, or as certified by a physician, nurse practitioner, or physician's assistant described in subparagraph (ii) of this paragraph who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the member's death, such member's statutory beneficiary shall receive an accidental death benefit, unless such statutory beneficiary elects to receive an ordinary death benefit.

§ 7. Subparagraph (iii) of paragraph (a) of subdivision 8 of section 1266-h of the public authorities law, as added by chapter 78 of the laws of 2021, is amended to read as follows:

(iii) Such member died on or before December thirty-first, two thousand [~~twenty-two~~] twenty-four, and COVID-19 caused or contributed to such member's death, as documented on such member's death certificate,

or as certified by a physician, nurse practitioner, or physician's assistant described in subparagraph (ii) of this paragraph who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the member's death, such member's statutory beneficiary shall receive an accidental death benefit, unless such statutory beneficiary elects to receive an ordinary death benefit.

§ 8. Paragraph (c) of subdivision 1 of section 13-149.1 of the administrative code of the city of New York, as added by chapter 78 of the laws of 2021, is amended to read as follows:

(c) Such member died on or before December thirty-first, two thousand [~~twenty-two~~] twenty-four, and COVID-19 caused or contributed to such member's death, as documented on such member's death certificate, or as certified by a physician, nurse practitioner, or physician's assistant described in paragraph (b) of this subdivision who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the member's death, such member's statutory beneficiary shall receive an accidental death benefit, unless such statutory beneficiary elects to receive an ordinary death benefit.

§ 9. Paragraph (c) of subdivision 1 of section 13-244.1 of the administrative code of the city of New York, as added by chapter 78 of the laws of 2021, is amended to read as follows:

(c) Such member died on or before December thirty-first, two thousand [~~twenty-two~~] twenty-four, and COVID-19 caused or contributed to such member's death, as documented on such member's death certificate, or as certified by a physician, nurse practitioner, or physician's assistant described in paragraph (b) of this subdivision who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the member's death, such member's statutory beneficiary shall receive an accidental death benefit, unless such statutory beneficiary elects to receive an ordinary death benefit.

§ 10. Paragraph (c) of subdivision 1 of section 13-347.1 of the administrative code of the city of New York, as added by chapter 78 of the laws of 2021, is amended to read as follows:

(c) Such member died on or before December thirty-first, two thousand [~~twenty-two~~] twenty-four, and COVID-19 caused or contributed to such member's death, as documented on such member's death certificate, or as certified by a physician, nurse practitioner, or physician's assistant described in paragraph (b) of this subdivision who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the member's death, such member's statutory beneficiary shall receive an accidental death benefit, unless such statutory beneficiary elects to receive an ordinary death benefit.

§ 11. Paragraph (c) of subdivision 1 of section 13-544.1 of the administrative code of the city of New York, as added by chapter 78 of the laws of 2021, is amended to read as follows:

(c) Such member died on or before December thirty-first, two thousand [~~twenty-two~~] twenty-four, and COVID-19 caused or contributed to such member's death, as documented on such member's death certificate, or as certified by a physician, nurse practitioner, or physician's assistant described in paragraph (b) of this subdivision who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the member's death, such member's statutory beneficiary shall receive an accidental death benefit, unless such statutory beneficiary elects to receive an ordinary death benefit.

§ 12. Section 14 of chapter 78 of the laws of 2021, amending the retirement and social security law and other laws relating to establish-

ing a coronavirus disease 2019 (COVID-19) benefit for public employee death benefits, is amended to read as follows:

§ 14. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after March 1, 2020; provided that the provisions of this act shall expire and be deemed repealed on December 31, [~~2022~~] **2024**.

§ 13. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after March 1, 2020.

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

SUMMARY OF BILL: This proposed legislation, as it relates to the New York City Retirement Systems and Pension Funds (NYCRS), would amend Sections of the Retirement and Social Security Law (RSSL), the Administrative Code of the City of New York (ACCNY), and the Education Law to extend Accidental Death Benefits, less other statutory benefits paid or payable, to beneficiaries of certain members of the New York City Employees' Retirement System (NYCERS), the New York City Teachers' Retirement System (TRS), the New York City Board of Education Retirement System (BERS), the New York City Police Pension Fund (POLICE), and the New York City Fire Pension Fund (FIRE) who physically reported to non-home work sites on and after March 1, 2020 and died on or before December 31, 2024 due to Coronavirus Disease 2019 (COVID-19) that was contracted within 45 days of such reporting to work.

This proposed legislation extends certain provisions contained in Chapter 78 of the Laws of 2021 that was set to expire on December 31, 2022.

Effective Date: Upon enactment, and retroactive to March 1, 2020, except that the provisions shall expire and be deemed repealed on December 31, 2024.

IMPACT ON BENEFITS PAYABLE: Under the proposed legislation, the benefits payable to beneficiaries of active members of NYCRS who die due to COVID-19 between January 1, 2023 and December 31, 2024 would be revised from a lump sum Ordinary Death Benefit generally equal to three times a member's last salary to a lifetime Accidental Death Benefit equal to 50% of a member's wages earned during the last year of service plus, if applicable, the Special Accidental Death Benefit payable under General Municipal Law section 208-f.

In determining whether Accidental Death Benefits should be awarded, a deceased member must have a positive lab test for COVID-19 within 45 days of reporting to such work assignment, or have been diagnosed with such condition, within the same period, from a qualified medical provider, either before or after the member's death. The beneficiary of such Actuary Fiscal Note 2022-23 for LBDC 14502-01-2 Page 1 deceased member would also have to show that COVID-19 was the cause or contributing factor in the member's death, as documented by a death certificate or by a qualified health care provider.

FINANCIAL IMPACT - OVERVIEW: There is very limited data available to estimate the number of members who might die due to COVID-19 and potentially benefit from this proposed legislation. Therefore, the estimated financial impact has been calculated on a per event basis equal to the increase in the Present Value of Future Benefits (PVFB) for an average member who dies from COVID-19 and would benefit from the proposed legislation.

With respect to an individual member, the additional cost of this proposed legislation could vary greatly depending on the member's length of service, age, and salary history.

FINANCIAL IMPACT - PRESENT VALUES: Based on the census data and the actuarial assumptions and methods described herein, the enactment of this proposed legislation would result in an increase in PVFB. A break-down of the PVFB by NYCRS on average for each occurrence of death is shown in the table below.

Estimated Additional Present Value of Future Benefits due to COVID-19 Death

	NYCERS	TRS	BERS
Age < 40	$ 543,100	$ 338,100	$ 264,700
40<=Age<60	422,700	318,400	183,900
Age >= 60	229,400	202,200	112,100
All Ages	$ 421,200	$ 312,700	$ 180,200

	POLICE	FIRE	All Systems
Age < 40	$ 1,947,200	$ 2,018,800	$ 750,700
40<=Age<60	2,292,300	2,305,900	549,400
Age >= 60	1,670,500	1,613,700	217,800
All Ages	$ 2,078,600	$ 2,158,300	$ 569,600

FINANCIAL IMPACT - ANNUAL EMPLOYER CONTRIBUTIONS: Enactment of this proposed legislation would increase employer contributions, where such amount would depend on the number of members affected as well as other characteristics including the age, years of service, and salary history of the member.

As there is very limited data currently available to estimate the number of members who might die from COVID-19, the financial impact would be recognized at the time of event. Consequently, changes in employer contributions have been estimated assuming that the increase in the PVFB will be financed over the same time period used for actuarial losses in accordance with Section 13-638.2(k-2) of the ACCNY. Using this approach, the additional PVFB would be amortized over a closed 15-year period (14 payments under the One-Year Lag Methodology) using level dollar payments.

Based on the Actuary's actuarial assumptions and methods described herein, the enactment of this proposed legislation is estimated to increase first-year annual employer contributions on average for each death benefit due to COVID-19 as shown in the table below.

Estimated Additional First-Year Annual Employer Contributions due to COVID-19 Death

	NYCERS	TRS	BERS
Age < 40	$ 64,200	$ 40,000	$ 31,300
40<=Age<60	50,000	37,700	21,800
Age >= 60	27,100	23,900	13,300
All Ages	$ 49,800	$ 37,000	$ 21,300
New York City	$ 62,400	$ 37,300	$ 20,700
Non-City Obligors	$ 34,300	$ 29,200	$ 41,800

	POLICE	FIRE	All Systems
Age < 40	$ 230,300	$ 238,800	$ 88,800
40<=Age<60	271,100	272,700	65,000
Age >= 60	197,600	190,900	25,800

All Ages	$ 245,900	$ 255,300	$ 67,400
New York City	$ 245,900	$ 255,300	$ 77,400
Non-City Obligors	N/A	N/A	$ 34,100

With respect to the timing, increases in employer contributions would depend upon when members die due to COVID-19 but, generally, increased employer contributions will first occur the second fiscal year following approval of the performance of duty death benefit.

CENSUS DATA: The estimates presented herein are based on the census data used in the Preliminary June 30, 2021 (Lag) actuarial valuations of NYCRS to determine the Preliminary Fiscal Year 2023 employer contributions.

Counts	NYCERS	TRS	BERS
Age < 40	50,381	45,938	5,022
40<=Age<60	102,522	63,424	15,465
Age >= 60	32,829	13,849	7,069
All Ages	185,732	123,211	27,556

	POLICE	FIRE	All Systems
Age < 40	21,379	4,951	127,671
40<=Age<60	13,463	5,594	200,468
Age >= 60	164	248	54,159
All Ages	35,006	10,793	382,298

Average Age	NYCERS	TRS	BERS
Age < 40	33.3	33.0	33.5
40<=Age<60	49.9	48.6	50.6
Age >= 60	64.2	64.4	64.8
All Ages	47.9	44.6	51.1

	POLICE	FIRE	All Systems
Age < 40	32.2	33.3	33.0
40<=Age<60	45.6	47.2	49.2
Age >= 60	61.9	61.9	64.3
All Ages	37.5	41.2	45.9

Average Service	NYCERS	TRS	BERS
Age < 40	5.0	6.2	3.9
40<=Age<60	13.4	15.5	9.3
Age >= 60	19.8	20.1	13.7
All Ages	12.2	12.5	9.4

	POLICE	FIRE	All Systems
Age < 40	7.1	7.0	5.8
40<=Age<60	18.1	20.2	14.2
Age >= 60	32.1	34.5	19.2
All ages	11.4	14.5	12.1

Average Salary	NYCERS	TRS	BERS
Age < 40	$ 73,300	$ 82,400	$ 58,800
40<=Age<60	85,800	101,200	55,300

Age >= 60	85,400	91,600	47,300
All Ages	$ 82,300	$ 93,100	$ 53,900

	POLICE	FIRE	All Systems
Age < 40	$ 106,000	$ 107,100	$ 82,800
40<=Age<60	146,200	148,500	94,100
Age >= 60	170,700	164,100	82,600
All Ages	$ 121,800	$ 129,800	$ 88,700

ACTUARIAL ASSUMPTIONS AND METHODS: The changes in the PVFB and annual employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the June 30, 2021 (Lag) actuarial valuations used to determine the Preliminary Fiscal Year 2023 employer contributions of NYCRS.

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 NYCRS 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:

o The initial, additional administrative costs to implement the proposed legislation. o 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 2022-23 dated April 18, 2022 was prepared by the Interim Chief Actuary for the five New York City Retirement Systems and Pension Funds. This estimate is intended for use only during the 2022 Legislative Session.

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

This bill would allow a beneficiary of any member of a public retirement system to be paid an accidental death benefit, as if the member died in the performance and discharge of duty, provided that the member

a) physically reported for work on or after March 1, 2020,

b) contracted COVID-19 within 45 days from such work date, and

c) died from such disease on or before December 31, 2024.

In addition to the first two criteria state above, Chapter 78 of the Laws of 2021 currently requires a member to have died from COVID-19 on or before December 31, 2022.

A positive test result, death certificate citing COVID-19, or certification by certain medical personnel is sufficient to establish contraction and death from COVID-19.

The accidental death benefit would be based on the member's plan coverage. This bill also would create benefits payable under the Public Authorities Law.

Insofar as this bill would affect the New York State and Local Employees' Retirement System (ERS) and the New York State and Local Police and Fire Retirement System (PFRS), qualifying COVID-19 deaths which currently are considered ordinary deaths will be treated as accidental deaths. The cost of the proposed benefit will depend upon the applicant's age, service, salary, plan, and benefit type otherwise payable.

Service Retirement Eligible:	Yes	No
PFRS Benefit Increase/Cost:	10 times salary	15 times salary
ERS Benefit Increase/Cost:	4.5 times salary	4.5 times salary

The number of members and retirees who could be affected by this legislation cannot be readily determined. However, all ERS and PFRS members will be covered and eligible for these benefits, including new hires through the expiration of the coverage provided under this legislation. All costs incurred in the PFRS will be shared by the State of New York and all the participating employers in the PFRS. All costs incurred in the ERS will be shared by the State of New York and all the participating employers in the ERS.

In addition to these per person costs, there would be annual increases in administrative and legal costs to implement the provisions of this legislation.

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 February 10, 2022, and intended for use only during the 2022 Legislative Session, is Fiscal Note No. 2022-73, prepared by the Actuary for the New York State and Local Retirement System.

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

This bill would extend the provisions of the COVID-19 enhanced death benefit provided under Chapter 78 of the Laws of 2021 until December 31, 2024 on account of eligible active members of the New York State Teachers' Retirement System (NYSTRS) who die due to contracting COVID-19. The current expiration date is December 31, 2022. Chapter 78 of the Laws of 2021 provides a member's statutory beneficiary with the accidental death benefit, consisting of a lifetime annuity of 50% of the member's most recent year's salary. Under current law the death benefit on account of an active member who dies in service not due to COVID-19 with three or more years of active service is a lump-sum benefit equal to three times

the member's most recent year's salary. An active member must have reported to work on or after March 1, 2020, and contracted COVID-19 within 45 days of reporting to work, and then died either due to COVID-19, or had COVID-19 as a contributing factor in the member's death.

The overall cost of this bill cannot be readily determined as the ultimate number of COVID-19 deaths cannot be determined at this time. It is estimated that it will provide on average an additional cost per affected member of 3 to 4 times salary. The average cost per individual member impacted in terms of the additional present value of liability, is estimated as follows:

Member age 30: $230,000
Member age 40: $310,000
Member age 50: $320,000

The actual cost per member would be dependent on the member and beneficiary's age, tier, years of service, and salary. The costs above are determined based on averages, so the actual cost for a member could be higher or lower.

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 Annual Report. System assets are as reported in the System's financial statements and can also be found in the System's Annual Report. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report and the 2021 Actuarial Assumptions Report.

The source of this estimate is Fiscal Note 2022-15 dated March 30, 2022 prepared by the Office of the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2022 Legislative Session. I, Richard A. Young, am the Chief 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.