

# STATE OF NEW YORK

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5088--B

2021-2022 Regular Sessions

## IN ASSEMBLY

February 10, 2021

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Introduced by M. of A. ABINANTI, EPSTEIN, DICKENS, THIELE, ENGLEBRIGHT, SEAWRIGHT, McDONOUGH, PAULIN, FAHY, DeSTEFANO, BUTTENSCHON, SILLITTI, JACOBSON, MORINELLO, M. MILLER, GANDOLFO, MIKULIN, SALKA, TAGUE, ANGELINO -- read once and referred to the Committee on Governmental Employees -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to provide temporary retirement incentive for certain public employees

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

1 Section 1. This act enacts into law components of legislation that  
2 would establish an age 55/25 temporary incentive for certain public  
3 employees.  
4 § 2. Legislative findings. The legislature finds and declares that the  
5 retirement benefit for certain public employees who are above age 55 and  
6 with 25 years of service provided for in this act is intended only to be  
7 temporary in nature for employees who are eligible to receive and qual-  
8 ify for the applicable benefit during the applicable time periods speci-  
9 fied in this act. Further, nothing in this act shall be construed to  
10 create an expectation of a future or continuing retirement benefit for  
11 any public employee who is not eligible to receive and qualify for the  
12 retirement benefits herein during the applicable time periods.  
13 § 3. Definitions. As used in this act, unless the context clearly  
14 requires otherwise:  
15 (a) "Retirement system" means the New York state and local employees'  
16 retirement system and the New York state teachers' retirement system.  
17 (b) "Teachers' retirement system" means the New York state teachers'  
18 retirement system.

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

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1 (c) "Participating employer" means an educational employer, the state-  
2 operated institutions of the state university of New York, and a commu-  
3 nity college operating under a program of the state university of New  
4 York, and which participates in a retirement system as defined in this  
5 section.

6 (d) "Educational employer" means a participating employer which is a  
7 school district, a board of cooperative educational services, a voca-  
8 tional education and extension board, an institution for the instruction  
9 of the deaf and of the blind as enumerated in section 4201 of the educa-  
10 tion law, or a school district as enumerated in section 1 of chapter 566  
11 of the laws of 1967, as amended; who employ members who participate in  
12 the New York state teachers' retirement system and the New York state  
13 and local employees' retirement system.

14 (e) "Eligible employee" means a person who is a member of the New York  
15 State teachers' retirement system or the New York State and local  
16 employees retirement system and who is an employee of an educational or  
17 participating employer as defined in subdivision (c) or (d) of this  
18 section.

19 (f) "Active service" means service while being paid on the payroll,  
20 provided that (i) a leave of absence with pay shall be deemed active  
21 service; (ii) other approved leave without pay not to exceed twelve  
22 weeks from February 1, 2021 and the commencement of the designated open  
23 period; and (iii) the period of time subsequent to the June 2021 school  
24 term and on or before August 31, 2021 for an eligible employee as  
25 defined in this act who is otherwise in active service on the effective  
26 date of this act shall be deemed active service.

27 (g) "Open period" means the period beginning with the commencement  
28 date as defined in subdivision (h) of this section; provided, however,  
29 for the state-operated institutions of the state university of New York  
30 and community colleges, the open period shall be as specified by the  
31 appropriate board of trustees, and shall be no less than thirty days but  
32 no longer than ninety days in length; provided however that there shall  
33 be only one such open period and any such period shall not extend beyond  
34 September 11, 2021 for educational employers and shall not extend beyond  
35 December 31, 2021 for the state-operated institutions of the state  
36 university of New York and community colleges. For the purposes of  
37 retirement pursuant to this act, a service retirement application must  
38 be filed with the appropriate retirement system not less than fourteen  
39 days prior to the effective date of the retirement, unless a shorter  
40 time period is permitted under law.

41 (h) "Commencement date" means the first day the retirement benefit  
42 mandated by this act shall be made available, which shall mean a date or  
43 dates on or after the effective date of this act to be determined by a  
44 participating employer; provided, however, that for an educational  
45 employer, the commencement date shall be June 30, 2021.

46 § 4. Notwithstanding any other provision of law, any eligible employee  
47 serving in an eligible title whose participating employer has elected to  
48 participate pursuant to section five of this act and who (a) has been  
49 continuously in the active service of a participating employer from  
50 February 1, 2021 to the date immediately prior to the commencement date  
51 of the applicable open period, (b) files an application for service  
52 retirement that is effective during the open period, and (c) is other-  
53 wise eligible for a service retirement as of the effective date of the  
54 application for retirement shall be entitled to the retirement benefit  
55 provided in section six of this act.

§ 5. On or before June 30, 2021, a participating employer as defined in section three of this act, may elect to provide its employees the retirement incentive authorized by this act by (a) the enactment of a local law or (b) in the case of a participating or educational employer which is not empowered to act by local law, by resolution of its governing body, provided however, no state or local law or resolution enacted pursuant to this section shall in any manner supersede any local charter, provided further, that for an educational employer such election must be made by June 30, 2021. For a community college operating under the program of the state university of New York, such election shall be made by the board of trustees of such community college subject to the approval of its sponsor. A copy of such local law or resolution shall be filed with the appropriate retirement system or systems, and if applicable, on forms provided by such system. The local law or resolution shall be accompanied by the affidavit of the chief executive officer or the comparable executive branch of the state shall be deemed to have made election under this section upon its enactment.

§ 6. Notwithstanding any other provision of law, an eligible employee who is: (a) a member of a retirement system, and (b) entitled to a retirement benefit pursuant to section four of this act may retire during the open period without the reduction of his or her retirement benefit that would otherwise be imposed by article 11 or 15 of the retirement and social security law if he or she has attained the age of 55 and has completed at least 25 or more years of creditable service. An eligible employee who is covered by the provisions of articles 11 and 15 of the retirement and social security law shall retire under the provisions of articles 11 and 15 of the retirement and social security law.

§ 7. Notwithstanding any other provision of law, this act shall have no impact on retirement incentives, options or inducements offered as part of a contractual agreement between an eligible employee and eligible employer which were negotiated prior to the effective date of this act.

§ 8. The pension benefit costs of section six of this act shall be paid by the participating employers as provided by applicable law for each retirement system covered by this act over a period not to exceed five years commencing in state fiscal year ending March 31, 2023.

§ 9. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 10. This act shall take effect immediately.

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

This bill (A5088-A) would provide a temporary retirement incentive during fiscal year 2021-2022. This incentive would permit eligible members of a participating educational employer to retire without an early retirement reduction upon attainment of at least age 55 with 25 years of service. Currently 30 years of service are required in order to retire without reduction. In order to receive this benefit, a member must retire during the designated open period, beginning on June 30, 2021 and not extending beyond September 11, 2021. Employers who elect to

participate would pay the cost of the retirement incentive over a period not to exceed five years, beginning in the state fiscal year ending March 31, 2023.

The annual cost, over a five-year period, to the participating employers of members of the New York State Teachers' Retirement System for this benefit is estimated to be \$69.4 million or .40% of payroll if this bill is enacted.

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 except rates of retirement have been modified to reflect participation in the incentive.

The source of this estimate is Fiscal Note 2021-53 dated May 14, 2021 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2021 Legislative Session. I, Richard A. Young, am the 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.

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

This bill would temporarily allow Tier 2, 3, 4, 5 and 6 members of the New York State and Local Employees' Retirement System (ERS) and the New York State Teachers' Retirement System who are employed by educational institutions to retire without early age reduction at age 55 with 25 years of service. The eligible members must retire within their employer's open election period, which shall be no less than thirty days but no longer than ninety days and may not extend beyond December 31, 2021. The cost shall be paid over a period not to exceed five years commencing in state fiscal year ending March 31, 2023.

If this bill is enacted, insofar as it affects the ERS, the additional cost for each member who receives these benefits will vary depending on the member's age, years of service, plan and final average salary. We estimate that the per-member cost could average approximately 120% of a member's final average salary.

The exact number of members who would be affected by this cannot be readily determined.

These costs would be borne entirely by the State of New York. A precise cost cannot be determined until each member is approved for retirement under the incentive. After the election deadline, a cost will be calculated (and billed to the State) based on those benefiting from this provision.

Summary of relevant resources:

Membership data as of March 31, 2020 was used in measuring the impact of the proposed change, the same data used in the April 1, 2020 actuarial valuation. Distributions and other statistics can be found in the 2020 Report of the Actuary and the 2020 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2020 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, 2020 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 18, 2021, and intended for use only during the 2021 Legislative Session, is Fiscal Note No. 2021-141, prepared by the Actuary for the New York State and Local Retirement System.