STATE OF NEW YORK

8351

2021-2022 Regular Sessions

IN ASSEMBLY

October 20, 2021

Introduced by M. of A. PERRY -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the education law, in relation to providing for the automatic enrollment of employees of the city of New York eligible to join the New York city board of education retirement system

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

Section 1. Paragraph (b) of subdivision 18 of section 2575 of the education law, as added by chapter 536 of the laws of 1986, is amended to read as follows:

(b) (1) Notwithstanding the provisions of paragraph (a) of subdivision one of this section or any provision of the rules and regulations or any other provision of law to the contrary, membership in the board of education retirement system shall include any provisional employee in education service who elects to become a member in the manner prescribed by the applicable provisions of subparagraph two [~~or~~], subparagraph three **or subparagraph four** of this paragraph.

(2) Any such provisional employee who is not a member of the New York city employees' retirement system at the time he or she elects to become a member of the board of education retirement system may make such an election of membership by filing with the board of education retirement system a duly executed and acknowledged application for membership.

(3) Any such provisional employee who is a member of the New York city employees' retirement system at the time he or she elects to become a member of the board of education retirement system may make such an election of membership by filing simultaneously with the board of education retirement system a duly executed and acknowledged application for membership and a duly executed and acknowledged request that his or her membership and service credit in the New York city employees' retirement system be transferred to the board of education retirement system.

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

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(4)(i) Beginning July first, two thousand twenty-two, upon the entry into employment of any employee eligible to elect membership in the retirement system pursuant to subparagraphs one, two and three of this paragraph or any other applicable provision of law, and provided such employee is not a member in the retirement system or any other public retirement system of the city or state of New York as of such entry date in covered employment, such employee shall be enrolled in the retirement system effective ninety-one days after the commencement of employment. Notwithstanding the preceding, if such employee files with the retirement system an application to opt out of membership within ninety days after commencement of employment, the retirement system shall refrain from enrolling such employee unless and until such employee subsequently files an application for membership with the retirement system, or is otherwise subsequently mandated to enroll by the rules and regulations of the retirement system or any applicable law. The employer and the applicable union for the retirement system shall jointly provide written notice to the employee informing the employee that he or she has the option to opt-out of the automatic enrollment program. Such notice shall be provided to the employee on three occasions: on or before the thirtieth day, the sixtieth day and the ninetieth day prior to automatic enrollment in the retirement system. The automatic enrollment of eligible employees as provided for in this subparagraph shall not be construed to modify the right of eligible employees to join the retirement system as of the first date of covered employment by filing an application for membership with the retirement system. The employer shall inform the employee in writing of the right to join the system as well as the fact that the employee shall be enrolled in the retirement system on the ninety-first day after commencement of employment, unless such employee files with the retirement system an application to opt out of membership prior to such date. Any eligible employee who elects to opt out of membership in the retirement system within the ninety day period shall retain the right to join such system by subsequently filing an application for membership so long as such employee remains in covered employment.

(ii) Every current employee who is eligible for membership in the retirement system on July first, two thousand twenty-two, and who is not a member in the retirement system or any other public retirement system of the city or state of New York, shall be enrolled in the retirement system effective October first, two thousand twenty-two, unless such employee files with the retirement system an application to opt out of membership before October first, two thousand twenty-two. Such automatic enrollment in the retirement system shall not be construed to waive any of the eligibility requirements for previous service credit.

(iii) The automatic enrollment of eligible employees as provided for in this subparagraph shall not be construed to modify the rights and obligations of any employee whose participation in the retirement system is mandated by the rules and regulations of the retirement system or any applicable law, and such mandated members may not opt out of membership.

(iv) If an employee who is automatically enrolled in the retirement system pursuant to the provisions of this paragraph is a member of a union, the retirement system shall provide written notice to the union of the employee's enrollment within thirty days of the employee's enrollment in the retirement system.

(v) The provisions of this subparagraph shall apply to full-time employees and part-time employees. The provisions of this subparagraph shall not apply to provisional employees.

§ 2. Paragraph (f) of subdivision 18 of section 2575 of the education law, as added by chapter 749 of the laws of 1992, is amended to read as follows:

(f) Notwithstanding the provisions of paragraph (a) of subdivision one of this section or any provision of the rules and regulations or any other provision of law to the contrary, membership in the board of education retirement system shall include any person employed by the New York city police department in the title of school crossing guard who becomes a member in the manner prescribed by the provisions of subdivision g of section 13-638.4 of the administrative code of the city of New York **or by the provisions of subparagraph four of paragraph (b) of this subdivision**.

§ 3. This act shall take effect July 1, 2022. Effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.

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

SUMMARY OF BILL: This proposed legislation would amend Section 2575 of the Education Law to require certain new and existing New York City Board of Education Retirement System (BERS) eligible employees, who are non-provisional, not currently mandated to join BERS, and who are not otherwise already a member in a public retirement system within the State, to be enrolled into BERS membership within stated time periods unless the employees timely opt out of such membership.

Under current law, certain BERS eligible employees, including provisional employees in competitive or labor class titles and employees in non-competitive and exempt class titles, have the option of joining BERS by filing an application for membership at any time during employment with a BERS participating employer. Permanent employees in the competitive or labor class, who are employed in BERS eligible positions, are currently mandated into BERS membership.

The proposed legislation would require BERS to enroll new non-provisional and nonpermanent eligible employees (e.g. non-competitive and exempt class titles) into BERS membership, within 90 days of employment, unless the employee files an application with BERS to opt out of membership within the 90-day period. An existing non-provisional and nonpermanent eligible employee who is not already a BERS member will be enrolled as a BERS member on October 1, 2022, unless such employee files an application with BERS to opt out of membership by September 30, 2022.

A BERS eligible employee who timely opts out of BERS automatic enrollment may still join BERS at any time during employment with a participating employer upon the filing of an application. A BERS eligible employee who would be subject to automatic enrollment may voluntarily join BERS prior to the automatic enrollment date. The proposed legislation would have no effect on employees who are, under existing provisions of law, required to become BERS members.

The proposed legislation also requires BERS participating employers and affected unions to provide multiple scheduled written notices of the applicable provisions to new employees and requires BERS to provide written notice to the employee's union within 30 days of the employee's enrollment into BERS.

Effective Date: July 1, 2022.

FINANCIAL IMPACT - ANNUAL EMPLOYER CONTRIBUTIONS: If enacted into law, the ultimate employer cost for this proposed legislation would be based on the number, ages, years of service, and salary of those employees that would have otherwise not elected to become members of BERS.

Based on the data and these statistics herein, and assuming no BERS eligible employee opts out of participation, the Office of the Actuary (OA) has estimated the following costs for this legislation:

* The additional annual employer contribution will be $12.4 million if no prior years of service are purchased by these individuals.

* The additional annual employer contribution will be $19.1 million if all years of prior service eligible for buyback are purchased by these individuals.

Note that the first year's additional annual employer contribution will likely be significantly larger than these amounts due to the acceleration of membership for certain individuals. However, the present value of the future liabilities for each of these respective contribution streams does not change.

Finally, for purposes of determining the portion of the annual employer contribution attributable to the buyback of prior service, we have assumed an amortization period of 15 years (14 payments under the One-Year Lag Methodology used in the actuarial valuation).

CONTRIBUTION TIMING: For the purposes of this Fiscal Note, it is assumed that since the proposed legislation requires BERS to enroll all existing eligible employees (who are not already members and who do not opt out) into BERS on October 1, 2022, the increase in employer contributions for BERS could first be reflected as early as in Fiscal Year 2024.

CENSUS DATA: The estimates presented herein are based on information provided by BERS for 19,834 individuals who are non-provisional and not currently members of BERS, but could voluntarily elect to participate. This group consists of 18,455 part-time and 1,379 full-time employees, is 71% female, and has an average age of 36.6 years, average annual salary of approximately $31,800, and average service since date of hire of 4.5 years.

The OA was advised that employees in Payroll Codes 056, 744, 745, 746, and 747 work part-time and earned 0.67 years, 0.28 years, 0.78 years, 0.68 years, and 0.05 years of service per year on average, respectively. Employees in Payroll Codes 740 and 742 are generally full-time employees.

Finally, the OA was advised that approximately 55% of eligible employees who are not currently BERS members are assumed to eventually join BERS. These assumptions are reflected in the OA's calculations.

ACTUARIAL ASSUMPTIONS AND METHODS: The changes in the annual employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the June 30, 2019 (Lag) actuarial valuations used to determine the Preliminary Fiscal Year 2021 employer contributions of BERS.

These estimates assume that the fractional years of service as described above remains unchanged in the future. These estimates also assume a level workforce (i.e. the number, salary, age, and service characteristics of the added group remain approximately the same in future years).

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 BERS 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 potential savings to other New York City Retirement Systems and Pension Funds (NYCRS) as the result of these employees becoming members in BERS instead of another NYCRS.

* The initial, additional administrative costs of BERS and other New York City agencies to implement the proposed legislation.

* The impact of this proposed legislation on Other Postemployment Benefit (OPEB) costs.

* The cost of potential Tax-Deferred Annuity (TDA) plan participation and benefits.

STATEMENT OF ACTUARIAL OPINION: I, Sherry S. Chan, am the Chief Actuary for, and independent of, the New York City Retirement Systems and Pension Funds. I am a Fellow of the Society of Actuaries, an Enrolled Actuary under the Employee Retirement Income and Security Act of 1974, a Member of the American Academy of Actuaries, and a Fellow of the Conference of Consulting 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 2021-56 dated August 26, 2021 was prepared by the Chief Actuary for the New York City Board of Education Retirement System. This estimate is intended for use only during the 2021 Legislative Session.