

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

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

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

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

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

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

43 (d) The increased pensions to such members, as provided by this  
44 section, shall be paid from additional contributions made by the partic-  
45 ipating employer on account of such members. The actuary of the retire-  
46 ment system shall compute the additional contribution required for each  
47 member who elects to receive the special benefits provided under this  
48 section. Such additional contributions shall be computed on the basis of  
49 contributions during the prospective service of such member which will  
50 cover the liability of the retirement system for such extra pensions.  
51 Upon approval of the comptroller, such additional contributions shall be  
52 certified by him or her to the chief fiscal officer or the participating  
53 employer. The amount thereof shall be included in the annual appropri-  
54 ation of the participating employer. Such amount shall be paid on the  
55 warrant of the chief fiscal officer of the participating employer to the  
56 pension accumulation fund of the retirement system.

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

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

15 (g) The provisions of this section shall be controlling notwithstand-  
16 ing any other provision of this article to the contrary.

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

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

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

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

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

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

1 § 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.