STATE OF NEW YORK

6972

2021-2022 Regular Sessions

IN SENATE

May 20, 2021

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Cities 1

AN ACT to amend the administrative code of the city of New York, in relation to certain lung disabilities incurred by members of the New York city transit authority in certain cases

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

Section 1. The administrative code of the city of New York is amended by adding a new section 13-168.1 to read as follows:

§ 13-168.1 Transit authority members; presumption in certain diseases. Notwithstanding any provision of this chapter or of any general, special or local law to the contrary, and for the purposes of this chapter, any condition of impairment of health caused by diseases of the lung, resulting in total or partial disability or death to a member of the New York city transit authority, or a member of its subsidiary corporation, as defined in section twelve hundred three-a of the public authorities law, where such member successfully passed a physical examination on entry into such service or subsequent thereto, which examination failed to reveal any evidence of such condition, shall be presumptive evidence that it was incurred in the performance and discharge of duty.

§ 2. This act shall take effect immediately.

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

SUMMARY OF BILL: This proposed legislation would amend the Administrative Code of the City of New York (ACCNY) to add a new Section 13-168.1 to provide a statutory presumption to Tier 1 and Tier 2 members of the New York City Employees' Retirement System (NYCERS) who are Transit Authority employees, and who become physically incapacitated for performance of duty, or die, due to lung disease.

In determining whether qualifying lung disease was caused by employment for the Transit Authority, the diagnosis of lung disease, absent evidence of such condition upon examination at hire, would be presump-

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

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tive evidence that such disability or death was incurred in the performance and discharge of duty entitling such member, or his or her beneficiary, respectively, to an accident disability retirement or accidental death benefit. The proposed legislation does not appear to provide a mechanism for rebutting such presumption with competent evidence to the contrary.

Effective Date: Upon enactment.

FINANCIAL IMPACT - OVERVIEW: There is no data available to estimate the number of members who might develop and become disabled by or die from lung disease, 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 affected member who is diagnosed with lung disease as the result of the enactment of the proposed legislation and who would benefit from the proposed legislation.

In determining the increase in the PVFB, it has been assumed that 100% of the members who would retire with lung disease would have continued working and eventually retired for service if the proposed legislation were not passed. The increase in PVFB does not include any cost for additional death benefits since the ordinary death benefit for these members is more valuable than the accidental death benefit in most cases.

With respect to an individual member, the additional cost of this proposed legislation varies greatly.

FINANCIAL IMPACT - PRESENT VALUES: Based on the census data and the actuarial assumptions and methods described herein, the enactment of this proposed legislation would increase the PVFB and decrease the Present Value of member contributions, for a net result of an increase in the Present Value of future employer contributions ranging from $32,500 to $504,600 if one of the eight members who could benefit from the proposed legislation develops a qualifying lung disease. The average increase in the Present Value of future employer contributions for the eight members who could benefit from the proposed legislation is approximately $207,000.

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 each member.

As there is no data currently available to estimate the number of members who might be diagnosed with disabling lung disease, 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 Present Value of future employer contributions 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 Present Value of future employer contributions 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 in effect as of June 30, 2019, the enactment of this proposed legislation is estimated to increase annual employer contributions by an amount ranging from $3,800 to $59,700 if one of the eight members who could benefit from the proposed legislation develops a qualifying lung disease. The average increase in annual employer contributions for the eight members who could benefit from the proposed legislation is approximately

$24,500. With respect to the timing, increases in employer contributions would depend upon when members would retire due to lung disease but, generally, increased employer contributions will first occur the second fiscal year following approval of the accident disability or accidental death benefit.

CENSUS DATA: The estimates presented herein are based on the census data used in the Preliminary June 30, 2020 (Lag) actuarial valuation of NYCERS to determine the Preliminary Fiscal Year 2022 employer contributions.

There are eight active Tier 1 and Tier 2 Transit Authority employees who participate in NYCERS as of June 30, 2020 who could potentially benefit from the proposed legislation. These eight active Tier 1 and Tier 2 Transit Authority members had an average age of approximately 72.3 years, average service of approximately 29.8 years, and an average salary of approximately $99,200. This group consisted of three Tier 1 members, and five Tier 2 members.

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, 2019 (Lag) actuarial valuations used to determine the Preliminary Fiscal Year 2021 employer contributions of NYCERS.

The Actuary is proposing a set of changes for use beginning with the June 30, 2019 (Lag) actuarial valuations of NYCERS to determine the Final Fiscal Year 2021 Employer Contributions (2021 A&M). If the 2021 A&M is enacted, it is estimated that the Present Value of Employer Contributions and annual employer contributions will be approximately 2% smaller than the results shown above.

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, 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 2021-26 dated May 19, 2021 was prepared by the Chief Actuary for the New York City Employees' Retirement System. This estimate is intended for use only during the 2021 Legislative Session.