STATE OF NEW YORK

9240--A

IN SENATE

May 12, 2022

Introduced by Sen. GAUGHRAN -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- 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 enacting the "police and fire employees retention act"

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

Section 1. Short title. This act shall be known and may be cited as the "police and fire employees retention act".

§ 2. Legislative findings. Over the past several years, increased workloads on our police and fire employees throughout the state has resulted in a large reduction in personnel resources due to retirement and separation from service. The loss of talented and experienced personnel in these important job titles further results in a structural deficit of experienced trainers for our next generation of dedicated police and fire personnel actively entering their public service lives. This legislation seeks to induce talented and experienced personnel to remain in service to the public while allowing their pension payments to be deferred during a specific period of time while they continue employment.

§ 3. The retirement and social security law is amended by adding a new section 381-c to read as follows:

§ 381-c. Deferred retirement option plan payable to members of optional twenty-year retirement plan. A participating employer which has elected or which elects, pursuant to section three hundred eighty-one or any sections under this article, who participates in a twenty-year retirement plan may provide for a deferred retirement option plan.

a. Deferred retirement option plan, (hereinafter referred to as "DROP"), is a retirement plan under which an eligible member of a participating employer may elect to participate, deferring receipt of retirement benefits while continuing employment. For the purposes of this section, an "eligible member" is any member or officer employed by the state, local, municipal, county, village, authority or division

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

LBD15442-07-2

within the state electing to provide this option. During the period of continued employment, the eligible member's monthly retirement benefit shall be deferred and held by the retirement system on behalf of the member plus interest at an effective rate of one and one-half percent for the specific period of participation in DROP as provided in subdivision c of this section. Upon completion of the DROP period, the eligible member shall receive the total amount of retirement benefits deferred under DROP without optional modification as permitted by subdivisions d and e of this section and shall begin to receive the previously determined normal service retirement benefit with optional modification as further provided in subdivision d of this section.

b. Any eligible member who is currently employed by a participating employer electing to participate under this article and who qualifies to retire pursuant to this title by reason of completing twenty years of creditable service may elect to participate in DROP.

c. Such election must be on a form supplied by the retirement system and may be for any period of time not less than twelve months or more than sixty months duration. Any eligible member who elects to participate in DROP is considered retired on the day following the expiration of the DROP period. Provided, however, that all loans and excess contributions must be resolved by the date of entry into DROP and no additional loans or excess contributions shall be permitted after the date of entry into DROP. Upon expiration of the time period selected by the eligible member, such member's participation in DROP shall terminate.

d. (1) Effective with the date of participation in DROP, the eligible member's normal service retirement benefit shall be calculated, using creditable service and final average salary as if the effective date of retirement was the date of entry into DROP. The amount deferred pursuant to DROP shall be calculated based upon the eligible member's zero option retirement allowance until such member has obtained the applicable maximum service retirement limit based upon years of service. Any additional participation in DROP after a member has obtained the maximum service retirement limit based upon years of service shall be calculated based upon sixty percent of the member's full annual retirement allowance. In addition, for the purposes of this section, the annual retirement allowance for any member electing DROP shall be calculated using a three-year final average salary as defined elsewhere in this article. The eligible member shall, however, elect his or her optional retirement benefit at the completion of the DROP period.

(2) If the eligible member dies prior to completion of the period of participation in DROP, the eligible member shall be treated as if such DROP election did not exist. In lieu of the DROP payment, a death benefit shall be payable consistent with the terms of this chapter and all salary and service reported for such eligible member during the DROP period shall be considered in calculating the eligible member's death benefit.

(3) If the eligible member is approved for disability benefits provided in this chapter during the DROP period, the eligible member shall be treated as if the DROP election did not exist. In lieu of the DROP payment, a disability retirement benefit shall be payable consistent with the terms of this chapter and all salary and service reported for such eligible member during the DROP period shall be considered in calculating the eligible member's disability retirement benefit.

(4) If an eligible member otherwise fails to complete his or her period of service as elected pursuant to subdivision c of this section, the

eligible member shall be treated as if such DROP election did not exist. In lieu of the DROP payment, the normal service retirement benefit shall be payable consistent with the terms of this chapter and all salary and service reported for such eligible member during the DROP period shall be considered in calculating the eligible member's service retirement benefit.

(5) If an eligible member remains employed after his or her participation in DROP is terminated, such member shall forfeit all DROP benefits and continue employment as if such DROP election did not exist. Such member shall then be eligible to elect DROP consistent with the terms of this section.

(6) If an eligible member is approved for disability benefits after benefits payable pursuant to DROP have been paid, the eligible member may elect to receive the disability benefits in lieu of DROP benefits, but such disability benefits must be actuarially adjusted for any benefits paid under DROP.

e. At the conclusion of the member's participation in DROP, the retirement system shall pay the deferred service retirement benefits in one of the following methods as elected by the member:

(1) All accrued DROP benefits, plus interest, less withholding as required by the internal revenue service, shall be paid to the DROP participant or eligible beneficiary or as otherwise determined by operation of law;

(2) All accrued DROP benefits, plus interest, shall be paid from the retirement system to a custodian of the eligible retirement plan or other eligible plan or account as provided pursuant to the internal revenue code as directed by the member or eligible beneficiary;

(3) A portion of the DROP benefits shall be paid to the DROP participant or eligible beneficiary, less withholding required by the internal revenue service and the remaining DROP benefits may be rolled over as otherwise permitted by the internal revenue code. For purposes of this subdivision, the term "eligible beneficiary" is one who qualifies to rollover benefits from a qualified benefit plan or account as provided by the internal revenue code.

The DROP benefit cost contained in this subdivision shall be paid by any participating employer, for all eligible members specific to such employer, that has elected to provide this benefit.

The forms of payment provided by this subdivision must comply with the minimum distribution requirements of the internal revenue code.

f. The comptroller shall prescribe such regulations as may be required for the effective administration and implementation of the provisions of this section.

§ 4. This act shall take effect immediately.

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

This bill would allow employers in the New York State and Local Police and Fire Retirement System (PFRS) who participate in twenty-year retirement plans to provide their members with the option to elect to participate in a Deferred Retirement Option Plan (DROP), deferring receipt of retirement benefits while continuing their current employment. The features of this DROP are:

1. Members may elect to participate in the DROP upon the attainment of retirement eligibility.

2. The service retirement benefit shall be the option zero allowance determined based on the service and final average salary at the commencement of DROP participation. However, once a member's total service credit (including service during the DROP period) exceeds 32

years, the monthly payment into the DROP account will be limited to 60% of the option zero allowance.

3. The PFRS shall consider DROP participants active members, and annual employer contributions shall continue to be made by the participating employers to the PFRS on behalf of such members.

4. The length of participation in the DROP must be specified at the time of election, and may not be less than 1 year, nor exceed 5 years. However, if the affected member should leave employment before or after the scheduled DROP termination date, such member shall forfeit all DROP benefits, and shall be treated as though there were no DROP election.

5. During the DROP period, the monthly pensions of such participants will be deferred and held by the PFRS on their behalf and shall accrue interest at 1.5%. Such account, with interest accumulation, must be distributed in full at the end of the specified DROP period.

6. If an affected member should die or become disabled during the DROP period, such member would be treated as though there were no DROP election.

7. Upon termination from DROP, such participants shall receive their deferred payments, and shall also begin to receive their previously determined pensions.

Section 212 of the Retirement and Social Security Law generally requires the immediate suspension of the service retirement benefit in the event a retiree under age 65 returns to public employment and earns in any calendar year an amount greater than $35,000. This proposal would allow members to receive both their full salary and retirement benefits for up to a 5-year period.

The Partial Lump Sum (PLS) program currently allows PFRS members to receive lump sums equal to 25% of the present value of their pensions. Under this proposal, certain members could receive lump sums which would exceed 40% of the present value of their pensions, in addition to the PLS lump sums.

If this bill is enacted, there would be past service costs which would depend on the current salary, age and length of service of the affected members. It is estimated that the past service cost per member would average approximately 150% of salary for those in a 20-year plan and approximately 100% of salary for those in a 20-year plan with additional 60ths. This cost would be billed to each employer for their affected members when the member receives their DROP payout.

If the anticipated retirement experience of members who are eligible for this benefit changes significantly in the future, there would be additional increases in employer costs.

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 May 24, 2022, and intended for use only during the 2022 Legislative Session, is Fiscal Note No. 2022-133, prepared by the Actuary for the New York State and Local Retirement System.