STATE OF NEW YORK

5013

2023-2024 Regular Sessions

IN ASSEMBLY

February 27, 2023

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

AN ACT to amend the retirement and social security law, in relation to providing state 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 STATE CORRECTION OFFICERS

Section 561. Definitions.
562. Optional twenty year retirement plan for certain state correction officers.
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 state correction officer or other state employee who is engaged directly in correction officer duties.

(b) "Retirement system" shall mean the New York state and local employees' retirement system.

(c) "Creditable service" shall include any and all services performed as a state correction officer. Credit for service as a member or officer of the state police or as a paid firefighter, police officer or officer of any organized fire department or police force or department of any county, city, village, town, fire district or police district, shall also be deemed to be creditable service and shall be included in computing years of total service for retirement pursuant to this section, provided such service was performed by the member while contributing to

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

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the retirement system pursuant to the provisions of this article or article eight of this chapter.

§ 562. Optional twenty year retirement plan for certain state correction officers. (a) Any member of the retirement system may elect to become a member pursuant to the provisions of this section within one year after the effective date of this article or within one year after he or she becomes a member.

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

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

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

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

(d) The increased pensions to such members, as provided by this section, shall be paid from additional contributions made by the state on account of such members. The actuary of the retirement system shall compute the additional contribution required for each member who elects to receive the special benefits provided under this section. Such additional contributions shall be computed on the basis of contributions during the prospective service of such member which will cover the liability of the retirement system for such extra pensions. Upon approval of the comptroller, such additional contributions shall be certified by him or her. The amount thereof shall be included in the annual appropriation of the state. Such amount shall be paid on the warrant of the comptroller to the pension accumulation fund of the retirement system.

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

(f) Every member participating on the basis of this section shall be separated from the service on the last day of the calendar month next succeeding the calendar month in which he or she attains age sixty-two, provided, however, that such a member who attained the age of sixty-two before the effective date of this article, to be eligible for a pension computed in accordance with the provisions of this section, shall be separated from the service within three months of such effective date.

(g) The provisions of this section shall be controlling notwithstanding any other provision of this article to the contrary.

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

§ 563. Additional pension benefit for members of optional twenty year retirement plan. (a) The legislature may elect to make contributions for the purpose of providing an additional pension pursuant to this section for members in its employ who are entitled to a pension pursuant to section five hundred sixty-two of this article. Every member employed by the state may elect to be covered by the provisions of this section by filing with the comptroller, a duly executed and acknowledged form prepared by the comptroller for that purpose.

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

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

§ 2. This act shall take effect immediately.

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

This bill would create Article 14-C in the New York State (State) Retirement and Social Security Law, covering any State correction officer or State employee engaged directly in correction officer duties, which provides a retirement benefit equal to 50% of final average salary after 20 years of service. If the legislature elects, members would become eligible for additional 60ths for service beyond 20 years. All service rendered as a State correction officer, a member or officer of the State police, a paid firefighter, a police officer, or an 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 2023 legislative session, we anticipate that there will be an increase in the annual contributions of the State of New York of approximately $48 million for the 20-year plan or $61 million for the 20-year plan with additional 60ths for the fiscal year ending March 31, 2024. In future years, this cost will vary as the billing rates and salary of the affected members change.

In addition to the annual contributions discussed above, there will be an immediate past service cost of approximately $697 million for the 20-year plan or $1.29 billion for the 20-plan with additional 60ths which will be borne by the State of New York as a one-time payment. This estimate assumes that payment will be made on March 1, 2024.

These estimated costs are based on 18,387 affected members employed by the State of New York, with annual salary of approximately $1.6 billion as of March 31, 2022.

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 Retirement 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 Retirement System. It is estimated that the costs to obtain such a ruling would be $38,000 for the services of the IRS, and $1,000 per hour for legal consultants.

Summary of relevant resources:

Membership data as of March 31, 2022 was used in measuring the impact of the proposed change, the same data used in the April 1, 2022 actuarial valuation. Distributions and other statistics can be found in the 2022 Report of the Actuary and the 2022 Annual Comprehensive Financial Report.

The actuarial assumptions and methods used are described in the 2020, 2021, and 2022 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, 2022 New York State and Local Retirement System Financial Statements and Supplementary Information.

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 February 15, 2023, and intended for use only during the 2023 Legislative Session, is Fiscal Note No. 2023-54, prepared by the Actuary for the New York State and Local Retirement System.