STATE OF NEW YORK

7444--A

2023-2024 Regular Sessions

IN ASSEMBLY

May 19, 2023

Introduced by M. of A. McMAHON -- (at request of the New York State Teachers' Retirement System) -- read once and referred to the Committee on Governmental Employees -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, the retirement and social security law, the administrative code of the city of New York and chapter 666 of the laws of 1990, amending the administrative code of the city of New York and the education law relating to the availability of additional pension benefits for an extended second public employment to certain retirees, in relation to the transfer of reserves between public employee retirement systems of the state

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

Section 1. Subdivision 5 of section 522 of the education law, as amended by chapter 41 of the laws of 2009, is amended to read as follows:

5. Notwithstanding any other provision of law to the contrary, except for the purposes of providing the benefits, if any, of subdivision four of this section, with respect to transfers pursuant to this section which occur on or after the effective date of **the chapter of the laws of two thousand twenty-three that amended** this subdivision, no transfer of a pension reserve pursuant to subdivision one or two of this section shall be required when the member is transferring from a public [~~employee~~] retirement system of [~~this~~] **the** state [~~to any other public employee retirement system of this state~~] **with less than ten years of credited service with the transferring retirement system at the time the transfer is initiated. With respect to transfers pursuant to subdivision one or two of this section which occur on or after the effective date of the chapter of the laws of two thousand twenty-three that amended this subdivision, the transfer of a pension reserve shall be required when**

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

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the member is transferring ten or more years of credited service from a public retirement system of the state to any other public retirement system of the state, excluding any transfers within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system. For the purpose of giving the transferring member such status and crediting such service in the retirement system to which the member is transferring as such member was allowed in the retirement system from which the member has transferred, the transfer shall be deemed complete upon receipt by the transferee retirement system of (a) a statement from the transferor retirement system of the transferring member's date of membership in the transferor retirement system, tier status, service credited to the transferred membership, and such other information as the transferee retirement system may require to effectuate the transfer, [~~and~~] (b) such member's accumulated contributions from the transferor retirement system, if same had not been previously withdrawn, or notice from the transferor retirement system that such member had no accumulated contributions, or notice from the transferor retirement system that such member's accumulated contributions had been withdrawn and the amount thereof and, as applicable, receipt from such member of such member's accumulated contributions and interest, and (c) the pension reserve in the case of a member who transfers in ten or more years of credited service, except when transferring within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system.

§ 2. Subdivisions k and l of section 43 of the retirement and social security law, as amended by chapter 41 of the laws of 2009, are amended to read as follows:

k. Notwithstanding any other provision of this section, any member of the New York state and local employees' retirement system or the New York city teachers' retirement system who retired from service from either the New York city employees' retirement system or the New York city board of education retirement system as a member of the career pension plan maintained by such system and who, but for the fact that he or she retired, would be eligible for transfer and who has not, in fact, received a pension payment from such system shall be permitted to transfer his or her retirement system membership pursuant to the provisions of this section. In such event, the application for retirement shall be deemed to have been rescinded and the retirement system from which the service shall be transferred shall transfer the appropriate reserves as provided by this section, provided, however, that with respect to transfers pursuant to this subdivision which occur on or after the [~~twenty-sixth day of October, two thousand four~~] effective date of the chapter of the laws of two thousand twenty-three that amended this subdivision, except for the purposes of providing the benefits, if any, of subdivision four of section five hundred twenty-two of the education law, no determination of a reserve pursuant to subdivision c of this section or transfer thereof pursuant to the first sentence of subdivision d of this section shall be required in the case of any transfer pursuant to this subdivision with less than ten years of credited service with the transferring retirement system at the time the transfer is initiated. With respect to transfers pursuant to this section which occur on or after the effective date of the chapter of the laws of two thousand twenty-three that amended this subdivision, the transfer of a pension reserve shall be required when the member is transferring ten or more years of

credited service from a public retirement system of the state to any other public retirement system of the state, excluding any transfers within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system. Notwithstanding the provision of this subdivision or any other provision of law, an individual who transfers pursuant to this subdivision shall not be required to render any minimum period of service following transfer in order to be eligible to receive the full benefit provided hereunder. Notwithstanding the foregoing, a retiree covered by either the career pension plan or the fifty-five-year-increased-service-fraction plan who has received a pension payment or payments from such system shall be eligible for the provisions of this subdivision upon payment, to the retirement system from which the pension payment or payments were made, of an amount equal to such pension payment or payments. After such payments and the pension reserve, in the case of a member who transfers in ten or more years of credited service, except when transferring within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system, are received, such person shall be permitted to transfer his or her retirement system membership pursuant to the provisions of this section.

l. Notwithstanding any other provision of law to the contrary, with respect to transfers pursuant to this section which occur on or after the [~~twenty-sixth day of October, two thousand four~~] effective date of the chapter of the laws of two thousand twenty-three that amended this subdivision, except for the purposes of providing the benefits, if any, of subdivision four of section five hundred twenty-two of the education law, no determination of a reserve pursuant to subdivision c of this section or transfer thereof pursuant to the first sentence of subdivision d of this section shall be required in the case of any transfer pursuant to this section with less than ten years of credited service with the transferring retirement system at the time the transfer is initiated. With respect to transfers pursuant to this section which occur on or after the effective date of the chapter of the laws of two thousand twenty-three that amended this subdivision, the transfer of a pension reserve shall be required when the member is transferring ten or more years of credited service from a public retirement system of the state to any other public retirement system of the state, excluding any transfers within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system. For the purpose of giving the transferring member such status and crediting such service in the second retirement system as such member was allowed in the first retirement system in those cases to which this subdivision shall apply, the transfer shall be deemed complete upon receipt by the second retirement system of:

1. a statement from the first retirement system of the transferring member's date of membership in the first retirement system, tier status, service credited to such membership being transferred, and such other information as the second retirement system may require to effectuate the transfer; [~~and~~]

2. such member's accumulated contributions from the first retirement system, if same had not been previously withdrawn, or notice from the first retirement system that such member had no accumulated contributions, or notice from the first retirement system that such member's

accumulated contributions had been withdrawn and the amount thereof and, as applicable, receipt from such member of such member's accumulated contributions and interest; and

3. the pension reserve in the case of a member who transfers in ten or more years of credited service, except when transferring within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system.

§ 3. Subdivision h of section 343 of the retirement and social security law, as amended by chapter 533 of the laws of 2015, is amended to read as follows:

h. Notwithstanding any other provision of law to the contrary, with respect to transfers pursuant to this section which occur on or after the effective date of the chapter of the laws of two thousand twenty-three that amended this subdivision, no determination of a reserve pursuant to subdivision c of this section or transfer thereof pursuant to the first sentence of subdivision d of this section shall be required in the case of any transfer pursuant to this section (other than a transfer from the New York state and local police and fire retirement system to either (1) the New York city police department subchapter two pension fund, (2) the New York city fire department subchapter two pension fund or (3) the MTA police retirement program or a transfer from either (i) the New York city police department subchapter two pension fund or (ii) the New York city fire department subchapter two pension fund to either (A) the New York state and local police and fire retirement system or (B) the MTA police retirement program or a transfer from the MTA police retirement program to the New York state and local police and fire retirement system) in the case of a member with less than ten years of credited service with the transferring retirement system at the time the transfer is initiated. With respect to transfers pursuant to such subdivisions which occur on or after the effective date of the chapter of the laws of two thousand twenty-three that amended this subdivision, the transfer of a pension reserve shall be required when the member is transferring ten or more years of credited service from a public retirement system of the state to any other public retirement system of the state, excluding any transfers within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system. For the purpose of giving the transferring member such status and crediting such service in the second retirement system as such member was allowed in the first retirement system in those cases to which this subdivision shall apply, the transfer shall be deemed complete upon receipt by the second retirement system of:

1. a statement from the first retirement system of the transferring member's date of membership in the first retirement system, tier status, service credited to such membership being transferred, and such other information as the second retirement system may require to effectuate the transfer; [~~and~~]

2. such member's accumulated contributions from the first retirement system, if same had not been previously withdrawn, or notice from the first retirement system that such member had no accumulated contributions, or notice from the first retirement system that such member's accumulated contributions had been withdrawn and the amount thereof and, as applicable, receipt from such member of such member's accumulated contributions and interest; and

3. the pension reserve in the case of a member who transfers in ten or more years of credited service, except when transferring within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system.

§ 4. Paragraph 4 of subdivision a of section 13-143 of the administrative code of the city of New York, as added by chapter 647 of the laws of 2004, is amended to read as follows:

(4) Notwithstanding the provisions of paragraph two of this subdivision, with respect to transfers pursuant to this section which occur on or after the effective date of the chapter of the laws of two thousand twenty-three that amended this paragraph, the actuary of the New York city employees' retirement system shall not be required to determine the reserve on the benefits allowable to the transferring member as the result of employer contributions, including the reserve-for-increased-take-home-pay, and the transfer of such reserve, including the reserve-for-increased-take-home-pay, from the New York city employees' retirement system to said police pension fund [~~shall not be required~~] when a member is transferring with less than ten years of credited service with the transferring retirement system at the time the transfer is initiated. With respect to transfers pursuant to this subdivision which occur on or after the effective date of the chapter of the laws of two thousand twenty-three that amended this paragraph, the transfer of a pension reserve shall be required when the member is transferring ten or more years of credited service from a public retirement system of the state to any other public retirement system of the state, excluding any transfers within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system. The New York city employees' retirement system, within one year from the date of the request for the transfer of credit, shall comply with all requirements for completing the transfer imposed on it by the provisions of this section, including the pension reserve in the case of a member who transfers ten or more years of credited service, except when transferring within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system. Nothing set forth in this paragraph shall be deemed to modify the requirement set forth in paragraph two of this subdivision that the New York city employees' retirement system transfer to said police pension fund the accumulated deductions of such member.

§ 5. Paragraph 4 of subdivision a of section 13-144 of the administrative code of the city of New York, as added by chapter 647 of the laws of 2004, is amended to read as follows:

(4) Notwithstanding the provisions of paragraph two of this subdivision, with respect to transfers pursuant to this section which occur on or after the effective date of the chapter of the laws of two thousand twenty-three that amended this paragraph, the actuary of the New York city employees' retirement system shall not be required to determine the reserve on the benefits allowable to the transferring member as the result of employer contributions, including [~~the reserve-for-increased-take-home-pay, and~~] the transfer of such reserve[~~, including~~] and the reserve-for-increased-take-home-pay[~~,~~] from the New York city employees' retirement system to said fire department pension fund [~~shall not be required~~], with less than ten years of credited service from the transferring retirement system at the time the transfer is initiated. With respect to transfers pursuant to this section which occur on or after

the effective date of the chapter of the laws of two thousand twenty-three that amended this paragraph, the transfer of a pension reserve pursuant to paragraph two of this subdivision shall be required when the member is transferring ten or more years of credited service from a public retirement system of the state to any other public retirement system of the state, excluding any transfers within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system. The New York city employees' retirement system, within one year from the date of the request for the transfer of credit, shall comply with all requirements for completing the transfer imposed on it by the provisions of this section, including the pension reserve in the case of a member who transfers ten or more years of member service credit, except when transferring within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system. Nothing set forth in this paragraph shall be deemed to modify the requirement set forth in paragraph two of this subdivision that the New York city employees' retirement system transfer to said fire department pension fund the accumulated deductions of such member.

§ 6. Subdivision d of section 3 of chapter 666 of the laws of 1990, amending the administrative code of the city of New York and the education law relating to the availability of additional pension benefits for an extended second public employment to certain retirees, as added by chapter 647 of the laws of 2004, is amended to read as follows:

d. Notwithstanding the provisions of subdivision b of this section or any other provision of law to the contrary, with respect to transfers pursuant to this section which occur on or after the effective date of the chapter of the laws of two thousand twenty-three that amended this subdivision, no determination or transfer of the reserve on the benefits allowable to the transferring member as the result of employer contributions, including the reserve-for-increased-take-home-pay, shall be required for a member with less than ten years of credited service from the transferring system at the time the transfer is initiated. With respect to transfers pursuant to this section which occur on or after the effective date of the chapter of the laws of two thousand twenty-three that amended this subdivision, the transfer of a pension reserve shall be required when the member is transferring ten or more years of credited service from a public retirement system of the state to any other public retirement system of the state, excluding any transfers within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system.

§ 7. This act shall take effect immediately and shall apply to any covered membership transfer initiated on or after such effective date; provided, however, that no provision of this act shall affect (a) the transfer of reserves required with respect to transfers between any two of the New York state and local police and fire retirement system, the New York city police department subchapter two pension fund and the New York city fire department subchapter two pension fund and with respect to transfers from the New York state and local police and fire retirement system to the metropolitan transportation authority police pension fund; and (b) the transfer of reserves with respect to transfers within and between the New York city employees' retirement system, the New York city teachers' retirement system and the New York city board of education retirement system.

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

This bill would amend Section 522 of the Education Law and various sections of the Retirement and Social Security Law and the Administrative Code of the City of New York to require the transfer of pension reserves between retirement systems in cases in which a member of the New York State Teachers' Retirement System (NYSTRS) or any Retirement System of the State or City of New York transfers a membership with ten or more years of credited service at the time the transfer is initiated. This act shall take effect immediately and shall apply to any membership transfer initiated on or after the effective date of this act. No transfer of reserves will be required for transfers within and between the NYC Retirement Systems. The current transfer of reserves that occurs due to transfers between the police and fire systems shall not be disturbed.

It is estimated that there will be no additional annual cost to the employers of members of the NYSTRS if this bill is enacted. In fact, this bill will greatly increase equity between the retirement systems of the state by ensuring that a member who transfers with a significant liability will bring with him or her the pension reserve accumulated by the prior retirement system to offset the liability assumed by the new retirement system.

Member data is from the System's most recent actuarial valuation files, consisting of data provided by the employers to the Retirement System. Data distributions and statistics can be found in the System's Annual Report. System assets are as reported in the System's financial statements and can also be found in the System's Annual Report. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report.

The source of this estimate is Fiscal Note 2023-1 dated October 14, 2022 prepared by the Office of the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2023 Legislative Session. I, Richard A. Young, am the Chief Actuary for the New York State Teachers' Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

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

This bill would amend sections 43 and 343 of the Retirement and Social Security Law and various sections of the Education Law and the Administrative Code of the City of New York to reinstate the calculation and transfer of a pension reserve for a member transferring between the public retirement systems in New York State, provided such member is transferring ten (10) or more years of service credit.

Insofar as this bill affects the New York State and Local Employees' Retirement System (NYSLERS) and the New York State and Local Police and Fire Retirement System (NYSLPFRS), if this legislation is enacted during the 2023 legislative session, there would be some ongoing administrative costs to implement the provisions of this legislation.

The actuarial gains and losses arising from the transfer of reserves is expected to net to zero over the long term, making the proposal cost neutral.

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 January 3, 2023, and intended for use only during the 2023 Legislative Session, is Fiscal Note No. 2023-005, prepared by the Actuary for the New York State and Local Retirement System.

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

SUMMARY OF BILL: This proposed legislation (see Appendix) would amend Sections 43 and 343 of the Retirement and Social Security Law (RSSL), Sections 13-143 and 13-144 of the Administrative Code of the City of New York (ACCNY), Section 522 of the Education Law, and Chapter 666 of the laws of 1990 to reinstate the transfer of reserves between certain New York City and State retirement systems.

Effective Date: Upon enactment.

BACKGROUND: Chapter 647 of the Laws of 2004, for purposes of streamlining transfers between certain public retirement systems and alleviating the administrative burden of reserve calculations and transfers, eliminated the transfer of reserves as a required step in completing the transfer of memberships between certain public retirement systems within New York. This proposed legislation would repeal parts of Chapter 647 and eliminate the administrative efficiencies created by such law.

Currently, members of the New York City Employees' Retirement System (NYCERS), the New York City Teachers' Retirement System (NYCTRS), or the New York City Board of Education Retirement System (BERS) who accept another position that entitles them to membership in another New York public retirement system may choose to transfer their membership. Upon successful application for such transfer, certain member accumulated contributions (with accrued interest) are generally transferred, but additional employer paid reserves are not.

Under the proposed legislation, if enacted, when members with a minimum of 10 years of Credited Service transfer their membership to another retirement system, the originating system would be required to calculate and pay such member's pension reserve, net of any accumulated salary deductions otherwise transferred, to the destination retirement system. Such transfers of reserves would not be required for members transferring wholly between NYCERS, NYCTRS, and BERS.

FINANCIAL IMPACT - OVERVIEW: It is not possible to accurately estimate the number of New York City Retirement System or Pension Fund (NYCRS) members with at least 10 years of service who would potentially transfer between affected City and State retirement systems in the future. Therefore, the estimated financial impact has been calculated on a per event basis equal to the increase in Unfunded Accrued Liability (UAL) for an average NYCERS, NYCTRS, and BERS member with at least 10 years of service. This increase in UAL consists of the reserve required to be transferred to the State system, net of any member contributions that would otherwise be transferred.

With respect to an individual member, the additional cost of this proposed legislation could vary greatly depending on the member's length of service, age, and salary history.

These costs would be offset by any reserves reciprocally transferred from a State system to a City system. Transfers between affected City systems would not be expected to materially impact these costs.

FINANCIAL IMPACT - SUMMARY: The enactment of this proposed legislation would not be expected to result in any material changes in the ultimate costs of the NYCRS but is expected to increase administrative burdens and potentially delay member transfers.

Enactment of this proposed legislation would, on transfers from a City system to a State system, 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 the member. A breakdown of the financial impact by System is shown in the table below.

NYCRS	Average Increase in UAL per Transfer	Average Increase in Annual Employer Contributions per Transfer
NYCERS	$307,000	$36,300
NYCTRS	$396,000	$46,800
BERS	$178,600	$21,100

As there is no data currently available to accurately estimate the number and demographic characteristics of members who may transfer to the State, 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 UAL will be recognized as an actuarial loss and financed over a closed 15-year period (14 payments under the One-Year Lag Methodology) using level dollar payments.

With respect to the timing, increases in employer contributions would depend upon when eligible members file their application to transfer their NYCRS membership to the State but, generally, increased employer contributions will first occur the second fiscal year following the transfer of reserves to the State.

CENSUS DATA: The estimates presented herein are based on the census data to be used in the June 30, 2022 actuarial valuation of NYCRS to determine the Preliminary Fiscal Year 2024 employer contributions.

The table below contains a summary of the census data for the members in NYCERS, NYCTRS, and BERS who have at least 10 years of service as of June 30, 2022.

NYCRS	Active Count	Average Age	Average Service	Average Salary
NYCERS	91,970	53.5	19.4	$ 94,600
NYCTRS	67,261	49.9	18.7	$111,600
BERS	10,934	56.4	16.9	$ 64,100

ACTUARIAL ASSUMPTIONS AND METHODS: The estimates presented herein have been calculated based on the actuarial assumptions and methods used for the Preliminary Fiscal Year 2024 employer contributions of NYCRS.

RISK AND UNCERTAINTY: The costs presented in this Fiscal Note depend highly on the realization of the actuarial assumptions used, demographics of the impacted population and other 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 and ongoing, additional administrative costs to implement the proposed legislation.

STATEMENT OF ACTUARIAL OPINION: I, Marek Tyszkiewicz, am the Chief Actuary for, and independent of, the New York City Retirement Systems and Pension Funds. I am an Associate of the Society of Actuaries and a Member of the American Academy of Actuaries. I am a member of NYCERS but do not believe it impairs my objectivity and 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 2023-09 dated March 10, 2023 was prepared by the Chief Actuary for the New York City Retirement Systems and Pension Funds. This estimate is intended for use only during the 2023 Legislative Session.