STATE OF NEW YORK

5744

2023-2024 Regular Sessions

IN SENATE

March 15, 2023

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the retirement and social security law, in relation to participation in certain retirement plans by active and retired members and staff of the New York city council

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

Section 1. Subdivision a of section 445-d of the retirement and social security law, as added by chapter 96 of the laws of 1995, is amended by adding two new paragraphs 16 and 17 to read as follows:

16. "Active or retired employee of the council of the city of New York" shall mean all duly sworn members of the city council as well as all salaried employees who comprise the staff of the city council on a full-time or part-time basis who are either in active service on the effective date of this paragraph or who are retired from such service.

17. "Retired employee of the council of the city of New York" shall mean all duly sworn members of the New York city council as well as all salaried employees who comprise the staff of the city council on a full-time or part-time basis who are retired from active service.

§ 2. Paragraphs 1 and 6 of subdivision b of section 445-d of the retirement and social security law, as added by chapter 96 of the laws of 1995, are amended to read as follows:

1. Subject to the provisions of paragraphs five and six of this subdivision, any person who is a New York city eligible member in active service on the enactment date of the age fifty-five improved benefit retirement program may elect to become a participant in the age fifty-five improved benefit retirement program by filing, within ninety days after such enactment date, a duly executed application for such participation with the retirement system of which such person is a member, provided he or she is a New York city eligible member in active service on the date such application is filed. **Notwithstanding this provision,**

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

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a New York city eligible member in active service on the enactment date of the age fifty-five improved benefit retirement program who is an active or retired employee of the council of the city of New York may elect to participate in the age fifty-five improved benefit retirement program at any time subsequent to the enactment date of such program.

6. Notwithstanding any other provision of law to the contrary, any person who is eligible to elect to become a participant in the age fifty-five improved benefit retirement program pursuant to paragraph one or two of this subdivision for the full ninety-day period provided for in such applicable paragraph, and who fails to timely file a duly executed application for such participation with the appropriate retirement system, shall not thereafter be eligible to become a participant in such program. **The provisions of this paragraph shall not bar participation in such program, however, by a New York city eligible member in active service on the enactment date of the age fifty-five improved benefit retirement program who is an active or retired employee of the council of the city of New York.**

§ 3. Paragraph 1 of subdivision c of section 445-d of the retirement and social security law, as added by chapter 96 of the laws of 1995, is amended to read as follows:

1. Non-physically taxing service retirement. Notwithstanding any other provision of law to the contrary, a participant in the age fifty-five improved benefit retirement program:

(i) who is otherwise eligible to retire for service with immediate payability of a retirement allowance pursuant to section 13-162 of the administrative code or section thirty of the BERS rules and regulations; and

(ii) who has completed twenty-five or more years of credited CPP qualifying service; and

(iii) who has attained age fifty-five; and

(iv) who, subject to the provisions of paragraph ten of subdivision d of this section, has paid, before the effective date of retirement, all additional member contributions and interest (if any) required by paragraphs one, four, five and six of subdivision d of this section**, or, for a New York city eligible member in active service on the enactment date of the age fifty-five improved benefit retirement program who is an active or retired employee of the council of the city of New York, who has paid all additional member contributions pursuant to paragraph five of subdivision d of this section**; and

(v) who shall be a participant in the age fifty-five improved benefit retirement program in active service at the time so specified for his or her retirement; shall, subject to the provisions of paragraph ten of subdivision d of this section, be permitted to retire with a minimum retirement age of fifty-five, and the benefit reduction provisions set forth in subdivision a of section four hundred forty-two of this article shall not be applied to the calculation of such participant's retirement benefit.

For a New York city eligible member in active service on the enactment date of the age fifty-five improved benefit retirement program who is a retired employee of the council of the city of New York, however, there shall be no requirement of active service at the time of filing for retirement provided that such employee has met the other requirements of this paragraph.

§ 4. Subdivision a of section 604-c of the retirement and social security law, as added by chapter 96 of the laws of 1995, is amended by adding two new paragraphs 14 and 15 to read as follows:

14. "Active or retired employee of the council of the city of New York" shall mean all duly sworn members of the New York city council as well as all salaried employees who comprise the staff of the city council on a full-time or part-time basis who are either in active service on the effective date of this paragraph or who retired from such service.

15. "Retired employee of the council of the city of New York" shall mean all duly sworn members of the New York city council as well as all salaried employees who comprise the staff of the city council on a full-time or part-time basis who are retired from active service.

§ 5. Paragraphs 1 and 7 of subdivision b of section 604-c of the retirement and social security law, as added by chapter 96 of the laws of 1995, are amended to read as follows:

1. Subject to the provisions of paragraphs five, six and seven of this subdivision, any person who is employed in a New York city eligible position on the enactment date of the twenty-five-year early retirement program, and who is a New York city eligible member in active service on such enactment date, may elect to become a participant in the twenty-five-year early retirement program by filing, within ninety days after the enactment date of the twenty-five-year early retirement program, a duly executed application for such participation with the retirement system of which such person is a member, provided he or she is a New York city eligible member in active service on the date such application is filed. **Notwithstanding this provision, a New York city eligible member in active service on the enactment date of the twenty-five-year early retirement program who is an active or retired employee of the council of the city of New York may elect to participate in the twenty-five-year early retirement program at any time subsequent to the enactment date of such program.**

7. Notwithstanding any other provision of law to the contrary, any person who is eligible to elect to become a participant in the twenty-five-year early retirement program pursuant to paragraph one or two of this subdivision for the full ninety-day period provided for in such applicable subparagraph, and who fails to timely file a duly executed application for such participation with the appropriate retirement system, shall not thereafter be eligible to become a participant in such program. **The provisions of this paragraph shall not bar participation in such program, however, by a New York city eligible member in active service on the enactment date of the twenty-five-year early retirement program who is an active or retired employee of the council of the city of New York.**

§ 6. Paragraph 1 of subdivision c of section 604-c of the retirement and social security law, as added by chapter 96 of the laws of 1995, is amended to read as follows:

1. Non-physically taxing service retirement. A participant in the twenty-five year early retirement program:

(i) who has completed twenty-five or more years of credited service; and

(ii) who has attained age fifty-five; and

(iii) who, subject to the provisions of paragraph ten of subdivision d of this section, has paid, before the effective date of retirement, all additional member contributions and interest (if any) required by paragraphs one, four, five and six of subdivision d of this section**, or, for a New York city eligible member in active service on the enactment date of the twenty-five-year early retirement program who is an active or retired employee of the council of the city of New York, who has paid**

all additional member contributions pursuant to paragraph five of subdivision d of this section; and

(iv) who files with the retirement system of which he or she is a member an application for service retirement setting forth at what time he or she desires to be retired**, or, for a New York city eligible member in active service on the enactment date of the twenty-five-year early retirement program who is a retired employee of the council of the city of New York, who files an application for participation in the retirement plan described by this section**; and

(v) who shall be a participant in the twenty-five-year early retirement program in active service at the time so specified for his or her retirement; shall be retired pursuant to the provisions of this paragraph affording early service retirement.

For a New York city eligible member in active service on the enactment date of the twenty-five-year early retirement program who is a retired employee of the council of the city of New York, however, there shall be no requirement of active service at the time of filing for retirement provided that such employee has met the other requirements of this paragraph.

§ 7. Notwithstanding any other provision of law to the contrary, none of the provisions of this act shall be subject to the appropriation requirement of section 25 of the retirement and social security law.

§ 8. This act shall take effect on the ninetieth day after it shall have become a law. The board of trustees of the New York city employees' retirement system shall prescribe rules or regulations before the effective date of this act to provide that any New York city eligible member in active service on the enactment date of the age fifty-five improved benefit retirement program or the twenty-five-year early retirement program who is an active or retired employee of the council of the city of New York, as defined in sections 445-d and 604-c of the retirement and social security law, shall be given an application to join the age fifty-five improved benefit retirement program or the twenty-five-year early retirement program, as applicable and as established by such sections, if such member is made newly eligible by this act.

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

SUMMARY OF BILL: This proposed legislation would amend provisions of the Retirement and Social Security Law (RSSL) to reopen the 55/25 Plans for active or retired Tier 2 and Tier 4 City Council employees who were New York City Employees' Retirement System (NYCERS) members and employed in such position as of June 28, 1995.

Effective Date: The 90th day after enactment.

BACKGROUND: Tier 2 or Tier 4 members who were employed in an Eligible Position on June 28, 1995 had an option, pursuant to Chapter 96 of the Laws of 1995, to join the 55/25 Plans by filing an election form with NYCERS within 90 days. Eligible Members who failed to elect the 55/25 Plans, or other plans enacted by Chapter 96, generally participate in a Basic 62/5 Plan.

Under the proposed legislation, active and retired members who were City Council employees on June 28, 1995 would be allowed to join the 55/25 Plans at any time after the Effective Date of the proposed legislation. Such members would be required to pay any additional member contributions required by the 55/25 Plans.

IMPACT ON PAYABILITY: Currently, members in a Basic 62/5 Plan can begin collecting an unreduced pension at age 62 with at least five years of service, or as early as age 55 with benefit reductions depending on their age of retirement. Electing the 55/25 Plans would allow such

members to begin collecting an unreduced pension, assuming at least 25 years of service, at age 55.

Members who have already retired with at least 25 years of service at retirement but whose benefit was reduced due to their age at retirement, would be able to elect to join the 55/25 Plans and have their benefits recalculated. They would also receive a retroactive payment equal to the difference between their current benefit and revised benefit as of their retirement date.

MEMBER CONTRIBUTIONS: Members of the 55/25 Plans are required to make, in addition to the Basic Member Contributions (BMCs) of 3%, Additional Member Contributions (AMCs) ranging from 1.85% to 4.35% (depending on the dates of service rendered) until the attainment of 25 or 30 years of credited service, depending on Tier. Active and retired members who join the Plans through this legislation will be required to contribute any AMCs, with interest, they would have had to make had they joined the plans in 1995. It has been assumed that interest on such AMCs would cease accruing on the earlier of the date of payment or retirement date.

FINANCIAL IMPACT - PRESENT VALUES: Based on the anticipated group of members electing to join the 55/25 Plans and the actuarial assumptions and methods described herein, the enactment of this proposed legislation would result in an increase in the present value of future employer contributions of approximately $536,000.

This net increase is a result of an increase in the Present Value of Future Benefits (PVFB) of approximately $1.6 million and an increase in the present value of member contributions of approximately $1.1 million which includes the required retroactive AMCs.

Under the Entry Age Normal cost method used to determine the employer contributions to NYCERS, there would be an increase in the Unfunded Accrued Liability (UAL) of approximately $884,000 offset by a decrease in the present value of future employer Normal Cost of approximately $348,000.

FINANCIAL IMPACT - ANNUAL EMPLOYER CONTRIBUTIONS: The enactment of this proposed legislation would result in an increase in annual employer contributions over the next five years of approximately $359,000 in the first year and $167,000 in years two through five.

New UAL attributable to benefit changes are generally amortized over the remaining working lifetime of those impacted by the benefit changes. The remaining working lifetime for active members of this group is approximately six years and the increase in UAL for actives was therefore amortized over a six-year period (five payments under the One-Year Lag Methodology) using level dollar payments.

For members who would benefit that are retired, and therefore have no remaining working lifetime, the entire increase in UAL would be recognized immediately.

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

The 16 NYCERS City Council members assumed to elect the 55/25 Plans as of June 30, 2022 include 13 active members and three retirees. The active members had an average age of approximately 53.9 years, average service of approximately 30.6 years, and an average salary of approximately $109,200. The three retired members had an average age of approximately 65.7 years, and an average annual benefit of approximately $43,400.

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 NYCERS.

To determine the impact of the elective nature of the proposed legislation, a subgroup of NYCERS City Council members was developed based on who is assumed to benefit actuarially by comparing the net present value of future employer costs of each member's benefit under their current plan and under the 55/25 Plan.

For the purposes of this Fiscal Note, it is assumed that the changes would be reflected for the first time in the June 30, 2022 actuarial valuation of NYCERS used to determine employer contributions for Fiscal Year 2024.

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, additional administrative costs to implement the proposed legislation.

* The impact of this proposed legislation on Other Postemployment Benefit costs.

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 2023-10 dated March 14, 2023 was prepared by the Chief Actuary for the New York City Employees' Retirement System. This estimate is intended for use only during the 2023 Legislative Session.