STATE OF NEW YORK

6339

2023-2024 Regular Sessions

IN SENATE

April 17, 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 modifying the retirement program for Triborough bridge and tunnel members; to amend the criminal procedure law, in relation to clarifying the statutory peace officer designation of certain employees of the Triborough bridge and tunnel authority; and providing for the repeal of certain provisions

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

Section 1. Section 604-c of the retirement and social security law, as added by chapter 472 of the laws of 1995, paragraph 2 of subdivision c and paragraph 7-a of subdivision e as amended by chapter 693 of the laws of 2003, paragraph 1 and subparagraph (ii) of paragraph 2 of subdivision d as amended by chapter 18 of the laws of 2012, subparagraph (ii) of paragraph 1 of subdivision d as amended by section 6 of part TT of chapter 56 of the laws of 2022, paragraph 1 of subdivision e as amended by chapter 661 of the laws of 2002, subparagraph (iv) of paragraph 3 of subdivision e as added by chapter 365 of the laws of 1999, subparagraph (i) of paragraph 8 of subdivision e as amended by chapter 448 of the laws of 2018 and paragraph 9 of subdivision e as amended by chapter 664 of the laws of 1996, is amended to read as follows:

§ 604-c. [~~Twenty-year/age fifty~~] **Twenty-year** retirement program for Triborough bridge and tunnel members. a. Definitions. The following words and phrases as used in this section shall have the following meanings unless a different meaning is plainly required by the context.

1. "Triborough bridge and tunnel member" shall mean a member (as defined in subdivision e of section six hundred one of this article) who is employed by the Triborough bridge and tunnel authority as a bridge and tunnel officer, sergeant, or lieutenant in a non-managerial position.

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

LBD08581-02-3

2. [~~"Twenty-year/age fifty~~] "Twenty-year retirement program" shall mean all the terms and conditions of this section.

3. "Starting date of the [~~twenty-year/age fifty~~] twenty-year retirement program" shall mean the date of enactment of the act which added this section, as such date is certified pursuant to section forty-one of the legislative law.

4. "Participant in the [~~twenty-year/age fifty~~] twenty-year retirement program" shall mean any Triborough bridge and tunnel member who, under the applicable provisions of subdivision b of this section, is entitled to the rights, benefits and privileges and is subject to the obligations of the [~~twenty-year/age fifty~~] twenty-year retirement program, as applicable to him or her.

5. "Discontinued member" shall mean a participant in the [~~twenty-year/age fifty~~] twenty-year retirement program who, while he or she was a Triborough bridge and tunnel member, discontinued service as such a member and has a right to a deferred vested benefit under subdivision d of this section.

6. "Administrative code" shall mean the administrative code of the city of New York.

b. Participation in [~~twenty-year/age fifty~~] twenty-year retirement program. 1. Subject to the provisions of paragraph six of this subdivision, any person who is a Triborough bridge and tunnel member on the starting date of the [~~twenty-year/age fifty~~] twenty-year retirement program and who, as such a bridge and tunnel member or otherwise, last became subject to the provisions of this article prior to such starting date, may elect to become a participant in the [~~twenty-year/age fifty~~] twenty-year retirement program by filing, within one hundred eighty days after the starting date of the [~~twenty-year/age fifty~~] twenty-year 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 such a bridge and tunnel member on the date such application is filed.

2. Subject to the provisions of paragraph six of this subdivision, any person who becomes a Triborough bridge and tunnel member after the starting date of the [~~twenty-year/age fifty~~] twenty-year retirement program and who, as such a bridge and tunnel member or otherwise, last became subject to the provisions of this article prior to such starting date, may elect to become a participant in the [~~twenty-year/age fifty~~] twenty-year retirement program by filing, within one hundred eighty days after becoming such a bridge and tunnel member, a duly executed application for such participation with the retirement system of which such person is a member, provided he or she is such a bridge and tunnel member on the date such application is filed.

3. Any election to be a participant in the [~~twenty-year/age fifty~~] twenty-year retirement program shall be irrevocable.

4. Each Triborough bridge and tunnel member who becomes subject to the provisions of this article on or after the starting date of the [~~twenty-year/age fifty~~] twenty-year retirement program shall become a participant in the [~~twenty-year/age fifty~~] twenty-year retirement program on the date he or she becomes such a bridge and tunnel member.

5. Where any participant in the [~~twenty-year/age fifty~~] twenty-year retirement program shall cease to be employed by the Triborough bridge and tunnel authority as a bridge and tunnel member, he or she shall cease to be such a participant and, during any period in which such person is not so employed, he or she shall not be a participant in the

[~~twenty-year/age fifty~~] twenty-year retirement program and shall not be eligible for the benefits of subdivision c of this section.

6. Where any participant in the [~~twenty-year/age fifty~~] twenty-year retirement program terminates service as a Triborough bridge and tunnel member and returns to such service as a Triborough bridge and tunnel member at a later date, he or she shall again become such a participant on that date.

c. Service retirement benefits. 1. A participant in the [~~twenty-year/age fifty~~] twenty-year retirement program:

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

(ii) [~~who has attained age fifty; and~~

~~(iii)~~] who has paid, before the effective date of retirement, all additional member contributions and interest (if any) required by subdivision e of this section; and

[~~(iv)~~] (iii) 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; and

[~~(v)~~] (iv) who shall be a participant in the [~~twenty-year/age fifty~~] twenty-year retirement program at the time so specified for his or her retirement; shall be retired pursuant to the provisions of this section affording early service retirement.

2. (i) Notwithstanding any other provision of law to the contrary, the early service retirement benefit for participants in the [~~twenty-year/age fifty~~] twenty-year retirement program who retire pursuant to paragraph one of this subdivision shall be a pension consisting of:

(A) an amount, on account of the required minimum period of service, equal to one-half of his or her final average salary; plus

(B) an amount of credited service, or fraction thereof, beyond such required minimum period of service equal to one and one-half percent of his or her final average salary.

(ii) The maximum pension computed without optional modification payable pursuant to subparagraph (i) of this paragraph shall equal that payable upon completion of thirty years of service.

d. Vesting. 1. A participant in the [~~twenty-year/age fifty~~] twenty-year retirement program [~~who~~] shall be entitled to receive a deferred vested benefit as provided in this subdivision if such participant:

(i) discontinues service as a Triborough bridge and tunnel member, other than by death or retirement; and

(ii) prior to such discontinuance, completed five but less than twenty years of credited service; and

(iii) has paid, prior to such discontinuance, all additional member contributions and interest (if any) required by subdivision e of this section; and

(iv) does not withdraw in whole or in part his or her accumulated member contributions pursuant to section six hundred thirteen of this article unless such participant thereafter returns to public service and repays the amounts so withdrawn, together with interest, pursuant to such section six hundred thirteen[~~; shall be entitled to receive a deferred vested benefit as provided in this subdivision~~].

2. (i) Upon such discontinuance under the conditions and in compliance with the provisions of paragraph one of this subdivision, such deferred vested benefit shall vest automatically.

(ii) In the case of a participant who is not a New York city revised plan member, such vested benefit shall become payable on the earliest date on which such discontinued member could have retired for service if such discontinuance had not occurred or, in the case of a participant

who is a New York city revised plan member, such vested benefit shall become payable at age sixty-three.

3. Such deferred vested benefit shall be a pension consisting of an amount equal to two and one-half percent of such discontinued member's final average salary, multiplied by the number of years of credited service.

e. Additional member contributions. 1. In addition to the member contributions required by section six hundred thirteen of this article, each participant in the [~~twenty-year/age-fifty~~] twenty-year retirement program in the rank of bridge and tunnel officer shall contribute to the retirement system of which he or she is a member (subject to the applicable provisions of subdivision d of section six hundred thirteen of this article) an additional five and fifty one-hundredths percent of his or her compensation and each participant in the [~~twenty-year/age-fifty~~] twenty-year retirement program in the rank of sergeant or lieutenant shall contribute to the retirement system an additional six percent of his or her compensation earned from all allowable service as a Triborough bridge and tunnel member rendered on and after the date which is one hundred eighty days prior to the starting date of the [~~twenty-year/age-fifty~~] twenty-year retirement program. A participant in the [~~twenty-year/age-fifty~~] twenty-year retirement program shall contribute additional member contributions until the later of (i) the date as of which he or she has twenty years of credited service as a bridge and tunnel officer, or (ii) the third anniversary of the date that he or she last became a participant in the [~~twenty-year/age-fifty~~] twenty-year retirement program.

2. Commencing with the first full payroll period after each person becomes a participant in the [~~twenty-year/age-fifty~~] twenty-year retirement program, additional member contributions at the rate specified in paragraph one of this subdivision shall be deducted (subject to the applicable provisions of subdivision d of section six hundred thirteen of this article) from the compensation of such participant on each and every payroll of such participant for each and every payroll period.

3. (i) Subject to the provisions of subparagraph (ii) of this paragraph, where any additional member contributions required by paragraph one of this subdivision are not paid by deductions from a participant's compensation pursuant to paragraph two of this subdivision:

(A) that participant shall be charged with a contribution deficiency consisting of such unpaid amounts, together with interest thereon at the rate of five percent per annum, compounded annually; and

(B) such interest on each amount of undeducted contributions shall accrue from the end of the payroll period for which such amount would have been deducted from compensation if he or she had been a participant at the beginning of that payroll period, until such amount is paid to the retirement system.

(ii) Except as provided in subparagraph (iii) of this paragraph, no interest shall be due on any such unpaid additional contributions which are not attributable to the period prior to the first full payroll period referred to in paragraph two of this subdivision.

(iii) Should any person who, pursuant to paragraph eight of this subdivision, has withdrawn any additional member contributions (and any interest paid thereon) again become a participant in the [~~twenty-year/age-fifty~~] twenty-year retirement program pursuant to paragraph six of subdivision b of this section, an appropriate amount shall be included in such participant's contribution deficiency (including inter-

est thereon as calculated pursuant to subparagraph (i) of this paragraph) as if such additional contributions had never been made.

(iv) Notwithstanding any other provisions of this paragraph, no participant shall be charged interest for any period prior to March twenty-fifth, nineteen hundred ninety-eight with respect to any contributions owed with respect to any payroll period beginning prior to such date.

4. The head of a retirement system which includes participants in the [~~twenty-year/age fifty~~] twenty-year retirement program in its membership may, consistent with the provisions of this subdivision, promulgate regulations for the payment of such additional member contributions, and any interest thereon, by such participants (including the deduction of such contributions, and any interest thereon, from the participant's compensation).

5. Where a contribution deficiency chargeable to a participant pursuant to paragraph three of this subdivision has not been paid in full before the effective date of retirement, that participant shall not be eligible to retire pursuant to subdivision c of this section.

6. Where a contribution deficiency chargeable to a participant pursuant to paragraph three of this subdivision has not been paid in full before the date of discontinuance of service, that participant shall not be entitled to a deferred vested benefit pursuant to subdivision d of this section.

7. Where a participant has not paid in full any contribution deficiency chargeable to him or her pursuant to paragraph three of this subdivision, and a benefit, other than a refund of member contributions pursuant to section six hundred thirteen of this article or a refund of additional member contributions pursuant to paragraph eight of this subdivision, becomes payable under this article to the participant or to his or her designated beneficiary or estate, the actuarial equivalent of any such unpaid amount shall be deducted from the benefit otherwise payable.

7-a. Notwithstanding paragraph six or seven of this subdivision, where a deficiency chargeable to a participant pursuant to paragraph three of this subdivision has not been paid in full while the participant is a Triborough bridge and tunnel member and such participant retires prior to July first, two thousand eleven, such participant may elect to be covered by this paragraph. Such participant shall be entitled to the benefits provided in subdivision c of this section provided that participant authorizes the retirement system to deduct from such benefits an amount which will result in the deficiency, plus associated interest to date of final payment, being paid in full no later than July first, two thousand eleven or such earlier date as agreed to by the participant. Such amount will be deducted in equal installments on a monthly basis. Nothing in this paragraph shall prevent the participant from making a partial payment of the amount of the deficiency at the time of retirement so as to reduce the monthly payment nor to make a lump sum payment equal to the amount of the total unpaid balance at any time during the period of repayment.

8. (i) Such additional member contributions (and any interest thereon) shall be paid into the contingent reserve fund of the retirement system of which the participant is a member and shall not for any purpose be deemed to be member contributions or accumulated contributions of a member under section six hundred thirteen of this article or otherwise while he or she is a participant in the [~~twenty-year/age fifty~~] twenty-year retirement program or otherwise, except that, a surplus of such

additional member contributions that are paid into the retirement system's contingent reserve fund may be used for the sole purpose of offsetting a deficit of basic member contributions.

(ii) Should a participant in the [~~twenty-year/age fifty~~] twenty-year retirement program who has rendered less than fifteen years of allowable service as a Triborough bridge and tunnel member cease to hold a position as a Triborough bridge and tunnel member for any reason whatsoever, his or her accumulated additional member contributions made pursuant to this subdivision (together with any interest thereon paid to the retirement system) may be withdrawn by him or her pursuant to procedures promulgated in regulations of the board of trustees of the retirement system, together with interest thereon at the rate of five percent per annum, compounded annually.

(iii) Except as provided in subparagraph (ii) of this paragraph, no member, while he or she is a participant or otherwise, shall have a right to withdraw such additional member contributions or any interest thereon from the retirement system.

9. A member who has made the additional contributions specified by this subdivision may borrow a portion of such contributions, pursuant to the provisions of section six hundred thirteen-b of this article.

§ 2. Subdivision 20 of section 2.10 of the criminal procedure law, as added by chapter 843 of the laws of 1980, is amended to read as follows:

20. Bridge and tunnel officers, sergeants [~~and~~], lieutenants, captains, inspectors, deputy chiefs, assistant chiefs, and chiefs of the Triborough bridge and tunnel authority.

§ 3. This act shall take effect immediately; provided, however, that:

(a) section one of this act shall take effect on the one hundred twentieth day after it shall have become a law, provided that the Triborough bridge and tunnel authority has elected prior to such effective date to provide its employees the retirement incentive authorized by this act by resolution of its governing body specifying which titles and/or ranks are covered by such election as amongst those titles and/or ranks already covered by section 604-c of the retirement and social security law; provided, however, if the Triborough bridge and tunnel authority shall not elect by resolution to provide its employees the retirement incentive authorized by this act during the time period required by this subdivision, section one of this act shall be deemed repealed; and

(b) the Triborough bridge and tunnel authority shall notify the legislative bill drafting commission on whether it has elected by resolution to provide its employees the retirement incentive authorized by this act within the time period required by subdivision (a) of this section in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.

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

SUMMARY OF BILL: This proposed legislation, as it relates to Tier 4 and Tier 6 members of the New York City Employees' Retirement System (NYCERS) who are members of the respective TBTA 20/50 Plans, would amend Section 604-c of the Retirement and Social Security Law (RSSL) to remove age 50 as an eligibility requirement for service retirement.

Effective Date: Upon enactment, provided, however, that it shall become effective on the 120th day after enactment in the event the TBTA elects by resolution to provide to its employees the retirement incentive authorized by the bill within such 120-day period.

IMPACT ON BENEFITS: Currently, members of the Tier 4 and Tier 6 TBTA 20/50 Plans are eligible to receive a service retirement benefit upon attaining 20 or more years of credited service and age 50. Tier 4 members who leave employment with at least five, but less than 20 years of service, are eligible to receive a vested retirement benefit payable on the date they would have attained 20 years of credited service and age 50. Tier 6 members who leave employment with at least five, but less than 20 years of credited service are eligible to receive a vested retirement benefit payable at age 63.

Under the proposed legislation, if enacted, affected members of the TBTA 20/50 Plans would be eligible to receive a service retirement benefit upon attaining 20 years of credited service, without regard to age. Tier 4 members who leave employment with at least five, but less than 20 years of credited service, would be eligible to receive a vested retirement benefit payable on the date the member would have completed 20 years of credited service, without regard to age. Tier 6 members who leave employment with at least five, but less than 20 years of credited service would continue to be eligible to receive a vested retirement benefit payable at age 63.

FINANCIAL IMPACT - PRESENT VALUES: Based on the anticipated group of members benefiting from the change in the eligibility requirement and the actuarial assumptions and methods described herein, the enactment of this proposed legislation would increase the Present Value of Future Benefits (PVFB) by approximately $5.6 million for TBTA.

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 $7.0 million offset by a decrease in the Present Value of future employer Normal Cost of $1.4 million.

FINANCIAL IMPACT - ANNUAL EMPLOYER CONTRIBUTIONS: The enactment of this proposed legislation would result in an initial increase in annual employer contributions for TBTA of approximately $1.7 million which is the result of an increase in the Normal Cost in addition to the UAL payment.

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 92 NYCERS Tier 4 members as of June 30, 2022 who could potentially benefit from the change in the eligibility requirement for retirement had an average age of approximately 42.5 years, average service of approximately 16.8 years, and an average salary of approximately $115,400. As of June 30, 2022, there are no active members in the Tier 6 TBTA 20/50 Plan.

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

* The amendment to include enumerated titles in the Criminal Procedural law.

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 2023-30 dated April 13, 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.