STATE OF NEW YORK

7226

2023-2024 Regular Sessions

IN SENATE

May 18, 2023

Introduced by Sen. MANNION -- 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 establishing a deferred retirement option plan for certain employees of the department of corrections and community supervision and the office of mental health

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
DEFERRED RETIREMENT OPTION PLANS

Section 570. Deferred retirement option plan payable to certain personnel.

§ 570. Deferred retirement option plan payable to certain personnel. a. Deferred retirement option plan. The deferred retirement option plan (hereinafter referred to as "DROP") is a retirement plan under which an eligible member may elect to participate, deferring receipt of retirement benefits while continuing employment with the department of corrections and community supervision or the office of mental health. For the purposes of this section, "eligible members" shall mean any members of the security services collective bargaining unit holding a title defined in subdivision i of section eighty-nine of this chapter. Upon commencement of the DROP period, the eligible member's monthly retirement benefit without optional modification shall be calculated and fixed as if the date of retirement was the effective date of entry into the DROP. Upon completion of the DROP period, the eligible member may elect an optional form of payment and shall receive such calculated and fixed monthly retirement benefit as adjusted for optional modification

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

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if the member so chooses plus an actuarially determined lump sum benefit as provided in subdivision d of this section.

b. Participation in DROP. Any eligible member who is employed by the department of corrections and community supervision or the office of mental health and qualifies to retire by virtue of having completed twenty-five years of total creditable service without regard to age may elect to participate in DROP.

c. Election in DROP. Such election shall be made 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 in duration. Any eligible member who elects to participate in DROP pursuant to this article shall be considered retired, even if employment continues, except for retirement system purposes which shall consider the eligible member's date of retirement the day following the expiration of the DROP period. Upon expiration of the time period selected by the eligible member, such member's participation in DROP shall terminate.

d. Benefits payable under DROP. (1) Effective as of the date of participation in DROP, the eligible member's normal service retirement benefit shall be calculated and fixed, using creditable service and final average salary as if the effective date of retirement was the date of entry into DROP. In addition to such normal service retirement benefit, the eligible member shall receive an actuarially determined lump sum benefit which shall be equal to the difference between the actuarial present value of the pension benefit without optional modification which the eligible member would have received had he or she not opted to participate in DROP and retired on the date the DROP period terminated, and the actuarial present value of the pension benefit without optional modification which the eligible member would have received had he or she retired upon commencement of the DROP. The mortality and interest rates used in determining actuarial equivalence shall be those in effect for this purpose on the date the DROP period terminates. The eligible member shall, however, elect his or her actual method of payment of the lump sum benefit as provided in subdivision e of this section 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 by this chapter during the DROP period, the eligible member shall be treated as if such 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 make a DROP election 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 shall be actuarially adjusted for any benefits paid under DROP.

e. Method of payment. (1) 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:

(i) Lump sum. 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;

(ii) Direct rollover. All accrued DROP benefits, plus interest, shall be paid from the retirement system to a custodian of an 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; or

(iii) Partial lump sum. 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.

(2) The methods of payment provided by this subdivision shall comply with the minimum distribution requirements of the Internal Revenue Code.

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

§ 2. The past service costs attributable to the implementation of this act shall be paid by the state of New York and may be paid in five annual installments commencing with the fiscal year ending in 2023.

§ 3. This act shall take effect immediately.

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

This bill would allow members employed by the department of corrections and community supervision (DOCCS) or the office of mental health (OMH) who are covered under a twenty five-year retirement plan to elect to participate in a cost neutral 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 fixed at the commencement of DROP participation.

3. The New York State and Local Employees' Retirement System (NYSLERS) shall consider DROP participants active members, and annual employer contributions shall continue to be made 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. 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.

6. Upon termination from DROP, such participants shall begin to receive their previously determined pensions with optional modification. They shall also receive a lump sum payment which will be calculated as the present value of the pension which would have been payable at the **termination** of DROP had DROP not been elected, reduced by the present value of the pension which would have been payable at the **commencement** of DROP.

Section 212 of the Retirement and Social Security Law generally prevents service retirees from receiving salaries of more than $35,000 for public employment before attaining age 65. This proposal would allow members to receive a full salary and retirement benefits for up to 5 years.

If this bill is enacted during the 2023 legislative session, insofar as this proposal disrupts the usual pattern and timing of employee turnover (that is, if members retire earlier than assumed), shifts in member behavior could generate losses that increase the average billing rate in the 25-year service-based plans for DOCCS and OMH from 17.0% to 25.4%. The actual increase in billing rates for these members will depend upon member utilization, with the rates above representing an upper maximum.

Further, we anticipate administrative costs to implement the provisions of this legislation.

The number of members who could be affected by this legislation cannot be readily determined, but all 19,272 members employed by DOCCs or OMH and covered by a 25-year retirement plan would be eligible.

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.

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 18, 2023, and intended for use only during the 2023 Legislative Session, is Fiscal Note No. 2023-164, prepared by the Actuary for the New York State and Local Retirement System.