STATE OF NEW YORK

9812--A

IN SENATE

May 31, 2024

Introduced by Sen. SKOUFIS -- (at request of the State Comptroller) -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to authorizing beneficiaries to choose pension benefits or a death benefit in certain circumstances

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

Section 1. Subdivision a of section 70 of the retirement and social security law, as amended by chapter 375 of the laws of 2011, is amended to read as follows:

a. Any member may retire if [~~he or she~~] **such member** shall have attained at least the minimum retirement age while in service as a member, or while in federal service, or in the service of the United Nations or other international organizations of which the United States is a member, as a member continued pursuant to paragraph one of subdivision f of section forty of this article, or while entitled to make application for a vested retirement allowance pursuant to section seventy-six of this title. Any such member desiring to retire shall execute and file with the comptroller an application for retirement, which shall specify the effective date of [~~his or her~~] **such member's** retirement, which shall be not less than fifteen nor more than ninety days subsequent to such date of filing. An application for service retirement, filed hereunder in accordance with the provisions of subdivision c of section sixty-two or subdivision f of section sixty-three of this article, shall be processed in the regular manner, provided that if the application filed simultaneously therewith under either of such subdivisions is granted, then and in that event the retirement allowance granted in accordance with the provisions of this section shall be appropriately adjusted. **Notwithstanding any other provision of law, for any member who is eligible to retire, who has died while in active service, and who has filed an application for service retirement less than ninety**

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

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days prior to death, such member's designated option election beneficiary or beneficiaries, if an option election has been filed prior to death, or the beneficiary or beneficiaries designated for the death benefit, if no option election was filed prior to death, shall have the option to choose the benefit provided by service retirement rather than the death benefit, provided, however that if the designated beneficiary elects the service retirement benefit such person shall be required to choose an option as provided by law. If the member's beneficiary or beneficiaries elect the service retirement benefit, the member shall be deemed to have retired on the day before the member's date of death. If there are multiple option beneficiaries and such beneficiaries cannot agree on the choice between the death benefit or the service retirement under an agreed upon option, the service retirement benefit shall be payable under the option election form filed by the member prior to such member's death. If there are multiple death beneficiaries and such beneficiaries cannot agree on the choice between the death benefit or the service retirement under an agreed upon option, the death benefit shall be payable.

§ 2. Subdivision a of section 370 of the retirement and social security law, as amended by chapter 375 of the laws of 2011, is amended to read as follows:

a. Any member may retire if [~~he or she~~] such member shall have attained at least the minimum retirement age while in service as a member, or while in federal service, or in the service of the United Nations or other international organizations of which the United States is a member, as a member continued pursuant to paragraph one of subdivision f of section three hundred forty of this article or while entitled to make application for a vested retirement allowance pursuant to section three hundred seventy-six of this title. Any such member desiring to retire shall execute and file with the comptroller an application for retirement, which shall specify the effective date of [~~his or her~~] such member's retirement, which shall be not less than fifteen nor more than ninety days subsequent to such date of filing. An application for service retirement, filed hereunder in accordance with the provisions of subdivision c of section sixty-two or subdivision f of section sixty-three of this chapter, shall be processed in the regular manner, provided that if the application filed simultaneously therewith under either of such subdivisions is granted, then and in that event the retirement allowance granted in accordance with the provisions of this section shall be appropriately adjusted. Notwithstanding any other provision of law, for any member who is eligible to retire [~~and~~], who has died while in active service, and who has filed an application for service retirement less than [~~thirty~~] ninety days prior to death, [~~shall be deemed to have retired and~~] the member's designated option election beneficiary or beneficiaries, if an option election has been filed prior to death, or the beneficiary or beneficiaries designated for the death benefit, if no option election was filed prior to death, shall have the option to choose the benefit provided by service retirement rather than the death benefit, provided, however that if the designated beneficiary elects the service retirement benefit such person shall be required to choose an option [~~under section three hundred ninety of this article~~] as provided by law. If the member's beneficiary or beneficiaries elect the service retirement benefit, the member shall be deemed to have retired on the day before the member's date of death. If there are multiple option beneficiaries and such beneficiaries cannot agree on the choice between the death benefit or the service retirement under an agreed upon

option, the service retirement benefit shall be payable under the option election form filed by the member prior to such member's death. If there are multiple death beneficiaries and such beneficiaries cannot agree on the choice between the death benefit or the service retirement under an agreed upon option, the death benefit shall be payable.

§ 3. Notwithstanding any other provision of law to the contrary, the provisions of this act shall not be subject to section 25 of the retirement and social security law.

§ 4. This act shall take effect immediately.

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

This bill would allow a deceased member's beneficiary the ability to select between the active member death benefit or a survivor's benefit payable under any optional form of payment elected by said beneficiary, provided that the member

1) was eligible to retire as of the day immediately prior to their death,

2) has died in active service, and

3) has **filed** an application for service retirement less than ninety days prior to their death.

If an option election form was filed by the member prior to death, the beneficiary listed on such option election form shall be permitted to select between the active death benefit or a survivor's benefit. If no option election form was filed by the member prior to death, the active death beneficiary shall be permitted to select between the active death benefit or a survivor's benefit.

When the survivor's benefit is selected, the beneficiary will be permitted to file their own option election form determining the survivor's benefit payable and the member will be deemed to have retired the day prior to their death.

Insofar as this bill affects the New York State and Local Employees' Retirement System (NYSLERS), if this bill is enacted during the 2024 Legislative Session, the cost will depend upon the deceased member's age, service, salary, plan, and the optional form elected by the beneficiary. For standard options, there will be an estimated additional cost of five (5) times the salary of the deceased member, including the cost of the post-retirement death benefit. All costs arising would be shared and spread by the State of New York and all participating employers in the NYSLERS.

Insofar as this bill affects the New York State and Local Police and Fire Retirement System (NYSLPFRS), if this bill is enacted during the 2024 Legislative Session, the cost will depend upon the deceased member's age, service, salary, plan, and the optional form elected by the beneficiary. For standard options, no additional cost is expected to arise in NYSLPFRS. Any costs arising would be shared and spread by the State of New York and all participating employers in the NYSLPFRS.

The number of beneficiaries who could be affected by this legislation cannot be readily determined. However, it is estimated that more than 600 beneficiaries could benefit from this provision each year.

Summary of relevant resources:

Membership data as of March 31, 2023 was used in measuring the impact of the proposed change, the same data used in the April 1, 2023 actuarial valuation. Distributions and other statistics can be found in the 2023 Report of the Actuary and the 2023 Annual Comprehensive Financial Report.

The actuarial assumptions and methods used are described in the 2023 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, 2023 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 16, 2024, and intended for use only during the 2024 Legislative Session, is Fiscal Note No. 2024-188, prepared by the Actuary for the New York State and Local Retirement System.