STATE OF NEW YORK

5213--A

2023-2024 Regular Sessions

IN ASSEMBLY

March 6, 2023

Introduced by M. of A. BUTTENSCHON, AUBRY, DeSTEFANO, DURSO, JACKSON, LUPARDO, McDONOUGH, RAMOS, TANNOUSIS, ZEBROWSKI, SILLITTI, REILLY, HEVESI, COLTON, BRABENEC, NORRIS, WEPRIN, FALL -- read once and referred to the Committee on Governmental Employees -- recommitted to the Committee on Governmental Employees in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT in relation to enabling public employers to offer certain temporary retirement incentives for certain public employees

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

Section 1. Legislative findings. The legislature finds and declares that the state is experiencing economic difficulties and in order to avoid layoffs of public employees, a retirement incentive is necessary. However, nothing in this act shall be construed to create an expectation of a future or continuing retirement benefit for any public employee who is not eligible to receive and qualify for the retirement benefits in this act during the applicable time periods.

§ 2. Definitions. For purposes of this act, the following terms shall have the following meanings:

(a) "Retirement system" means the New York state and local employees' retirement system, the New York state teachers' retirement system, the New York city teachers' retirement system, the New York city board of education retirement system or the New York city employees' retirement system, exclusive of the retirement plans established pursuant to sections 13-156 and 13-157 of the administrative code of the city of New York.

(b) "State employer" means:

(1) the executive branch of the state;

(2) the state-operated institutions of the state university of New York;

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

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(3) the statutory and contract colleges operated pursuant to section 357 of the education law;

(4) the state university construction fund (hereinafter referred to in this act as the "fund");

(5) a cooperative extension association (hereinafter referred to in this act as the "association");

(6) the city university of New York as defined in subdivision 2 of section 6202 of the education law;

(7) the unified court system;

(8) the senate;

(9) the assembly; and

(10) joint legislative employers.

(c) "Participating employer" means an employer, other than a state employer, which participates in a retirement system. Such term shall include a community college operating under the program of state university of New York.

(d) "Educational employer" means a participating employer which is a school district, a board of cooperative educational services, a vocational education and extension board, an institution for the instruction of the deaf and of the blind pursuant to section 4201 of the education law, or a school district pursuant to section 1 of chapter 566 of the laws of 1967, as amended.

(e) (1) "Eligible employee" means a person who is a member of a retirement system who is an employee in the executive branch of a state employer or an employee of a state employer or a participating employer who has attained fifty years of age and has at least twenty-five years of creditable service or has attained fifty-five years of age and has at least ten years of creditable service in a retirement system, but such term shall not include the following persons:

(i) elected officials, judges or justices appointed to or serving in a court of record and acting village justices;

(ii) chief administrative officers of participating employers which participate in a teachers' retirement system;

(iii) officers described in sections 4, 41-a, 46, 61, 70, 70-a, 169 (including those officers whose salary is established pursuant to salary plans described in subdivision 3 of section 169), 180 and subdivision 1 of section 41 of the executive law and any agency or department head appointed by the governor, comptroller or attorney general;

(iv) appointed members of boards or commissions, any of whose members are appointed by the governor or by another state officer or body;

(v) nonjudicial officers and employees of the unified court system, unless the chief administrator of the courts elects as provided herein, which election shall cover only nonjudicial officers and employees holding positions in any title in the classified service of the unified court system;

(vi) officers or employees of the senate unless the senate adopts a resolution authorizing the temporary president to file the election as provided in this subdivision;

(vii) officers or employees of the assembly unless the assembly adopts a resolution authorizing the speaker of the assembly to file the election as provided in this subdivision; and

(viii) officers or employees of joint legislative employers unless:

a. with respect to officers or employees of the legislative library, legislative messenger service, legislative health service, legislative ethics committee, the legislative bill drafting commission, and the joint line of the legislative task force on demographic research and

reapportionment, the senate and assembly adopt a concurrent resolution authorizing the temporary president of the senate and the speaker of the assembly to jointly file an election as provided in this subdivision;

b. with respect to officers or employees of components of the senate as identified pursuant to section 90 of the legislative law, the senate adopts a resolution authorizing the temporary president to file an election for officers or employees of those components designated in such resolution; and

c. with respect to officers or employees of components of the assembly as identified pursuant to section 90 of the legislative law, the assembly adopts a resolution authorizing the speaker of the assembly to file an election for officers or employees of those components designated in such resolution.

(2) Any election under subparagraphs (v) through (viii) of paragraph one of this subdivision to make available the retirement incentive provided by this act shall be in writing and filed with the state comptroller not later than ninety days after the effective date of this act. Notwithstanding any other provision of this act, each such filing shall specify the commencement date of the open period.

(3) For the purposes of paragraph (vi), (vii) or (viii) of paragraph one of this subdivision, an employee of the legislature shall be as such term is defined in section 7-a, 7-b or 7-d of the legislative law or by any other provision of law which classifies employees of an entity to be legislative employees for all purposes, but shall not include senators or members of the assembly. The term "joint legislative employer" shall mean legislative commissions, committees, task forces, councils or similar bodies whose membership is comprised of both senators and assembly members, or which consist of commissioners, or the majority of whose membership is appointed by one or more of the following: the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, and/or the minority leader of the assembly. The temporary president of the senate and the speaker of the assembly shall be the joint legislative employer of the employees of the legislature referred to in sections 7-a and 7-b of the legislative law.

(f) "College faculty" means an employee, not in the classified service, of a state employer described in paragraphs 2, 3, 4, 5 and 6 of subdivision (b) of this section or of a community college who is a member of a teachers' retirement system, or the New York state and local employees' retirement system.

(g) "Active service" means service while being paid on the payroll, provided that:

(1) a leave of absence with pay shall be deemed active service;

(2) other approved leave without pay not to exceed twelve weeks from February 1, 2025 and the commencement of the designated open period; and

(3) the period of time subsequent to the June 2025 school term and on or before August 31, 2025 for a teacher (or other employee employed on a school-year basis) who is otherwise in active service on the effective date of this act shall be deemed active service.

(h) "Open period" means the period beginning with the commencement date as defined in subdivision (i) of this section and shall be ninety days in length, provided however that there shall be only one such open period and any such period shall not extend beyond September 30, 2025 for a state employer and December 31, 2025 for a participating employer. For educational employers who make election after July 15, 2025, the open period shall begin immediately after such election, and shall not extend beyond October 15, 2025. For the purposes of retirement pursuant

to this act, a service retirement application shall be filed with the appropriate retirement system not less than fourteen days prior to the effective date of retirement to become effective, unless a shorter period of time is permitted under law.

(i) "Commencement date" means the first day the retirement benefit mandated by this act shall be made available, which shall mean a date or dates on or after the effective date of this act to be determined by the director of state operations for the executive branch of the state, or for any other state employer or any participating employer which elects to participate pursuant to section four of this act, a date on or after the effective date of this act, provided, however, that for an educational employer which elects to participate pursuant to subdivision (d) of this section, the commencement date shall be July 15, 2025 or immediately after election of the retirement incentive for educational employers who elect after July 15, 2025 and provided, further that for participating employers which elect to participate pursuant to section four of this act, except the city of New York and participating employers which are not empowered to act by local law, the commencement date shall be November 1, 2025. The director of state operations shall notify the head of the appropriate retirement system of the date of the open period applicable to employees of the executive branch or of a state employer prior to the commencement date.

§ 3. (a) A state employer which elects to participate pursuant to section four of this act, a participating employer which is not empowered to act by local law which elects to participate pursuant to section four of this act, or the city of New York, if it elects to participate pursuant to section four of this act shall establish a commencement date for the retirement benefit established under section six of this act in the following manner:

(1) for the executive branch, the director of state operations shall establish the commencement date in writing to the appropriate retirement system;

(2) for state employers described in paragraphs 2, 3, 4, 5 and 6 of subdivision (b) of section two of this act and participating employers that are not empowered to act by local law, its governing body shall adopt a resolution establishing a commencement date;

(3) for state employers described in paragraphs 7, 8, 9 and 10 of subdivision (b) of section two of this act, the person or persons who make the election to offer the retirement incentive shall establish a commencement date in writing to the appropriate retirement system; and

(4) for the city of New York, the chief executive officer shall issue an executive order establishing the commencement date, provided, however, no executive order, in the case of the city of New York issued pursuant to this section, shall in any manner supersede any local charter. A copy of any such resolution or executive order in the case of the city of New York establishing a commencement date shall be filed with the appropriate retirement system or systems, and, if applicable, on forms provided by such system. The resolution or executive order in the case of the city of New York shall be accompanied by the affidavit of the chief executive officer or other comparable official certifying the commencement date.

(b) A state employer, participating employer which is not empowered to act by local law which elects to participate pursuant to section four of this act, or the city of New York if it elects to participate pursuant to section four of this act shall be required to establish a commencement date under subdivision (a) of this section for the retirement bene-

fit established under section six of this act. In the event that a state employer, a participating employer which is not empowered to act by local law which elects to participate pursuant to section four of this act, or the city of New York if it elects to participate pursuant to section four of this act fails to establish a commencement date for the retirement benefit established under section six of this act, the commencement date for the eligible employees of a state employer shall be July 15, 2025. The commencement date for the eligible employees of all other employers referenced in this subdivision shall be September 1, 2025.

§ 4. On or before September 1, 2025, a participating employer or a state employer described in paragraphs 2, 3, 4, 5 and 6 of subdivision (b) of section two of this act may elect to provide its employees the retirement incentive authorized by this act by:

(a) the enactment of a local law; or

(b) in the case of a participating employer which is not so empowered to act by local law or a state employer described in paragraphs 2, 3, 4, 5 and 6 of subdivision (b) of section two of this act, by the adoption of a resolution of its governing body, provided however, no local law or resolution enacted pursuant to this section shall in any manner supersede any local charter, provided further, that for an educational employer such election shall be made thirty days after the effective date of this act. For a community college operating under the program of state university of New York, such election shall be made by the board of trustees of such community college subject to the approval of its sponsor. A copy of such law or resolution shall be filed with the appropriate retirement system or systems, and, if applicable, on forms provided by such system. The local law or resolution shall be accompanied by the affidavit of the chief executive officer or other comparable official certifying the validity of such local law or resolution. The executive branch of the state shall be deemed to have made an election under this section upon its enactment.

§ 5. Notwithstanding any other provision of law, any eligible employee who has been continuously in the active service of a state employer or of a participating employer from February 1, 2025 to the date immediately prior to the commencement date of the applicable open period, files an application for service retirement that is effective during the open period, and is eligible for a service retirement pursuant to this act because he or she has attained the age of fifty and has at least twenty-five years of creditable service or has attained the age of fifty-five and has at least ten years of creditable service, as of the effective date of the application for retirement shall be entitled to the retirement benefit provided in section six of this act.

§ 6. (a) Notwithstanding any other provision of law, an eligible employee who is a member of a retirement system and who is entitled to a retirement benefit pursuant to section five of this act may retire during the open period without the reduction of his or her retirement benefit that would otherwise be imposed by article 11 or 15 of the retirement and social security law if he or she has attained the age of fifty and has completed at least twenty-five years of creditable service or has attained the age of fifty-five and has completed at least ten years of creditable service. An eligible employee who is covered by the provisions of articles 11 and 15 of the retirement and social security law shall retire under the provisions of articles 11 and 15 of the retirement and social security law.

(b) The director of state operations, the chief executive officer of the city of New York, or chief executive officer or governing board, as appropriate, of the participating employer may deny participation in the retirement benefit provided by subdivision (a) of this section if the director of state operations, the chief executive officer of New York city or the chief executive officer or governing board of the participating employer makes a determination that the employee holds a position that is deemed critical to the maintenance of public health and safety.

(c) The action of the director of state operations, the chief executive officer of the city of New York, or chief executive officer or governing board, as appropriate, of the participating employer in denying the retirement benefit provided for in subdivision (a) of this section to any individual shall be subject to review in the manner provided for in article 78 of the civil practice law and rules. Such action for review pursuant to article 78 of the civil practice law and rules shall only be commenced by the individual that was denied the retirement benefit provided by subdivision (a) of this section.

(d) After making any such determination under subdivision (b) of this section, the director of state operations, the chief executive officer of the city of New York and the chief executive officer or governing board, as appropriate, of the participating employer shall notify the appropriate retirement system or teachers' retirement system of its determination.

§ 7. The pension benefit costs of section six of this act shall be paid by employers as provided by applicable law for each retirement system covered by this act over a period not to exceed five years commencing in the state fiscal year ending March 31, 2026.

§ 8. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 9. This act shall take effect immediately.

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

This bill would allow employers to elect to provide a retirement incentive. Upon the employer's election, certain members of the New York State and Local Employees' Retirement System (NYSLERS) will be permitted to retire without regard to early retirement reductions (1) at age 50 with at least 25 years of creditable service, or (2) at age 55 with at least 10 years of creditable service. Currently, members are not permitted to retire before age 55 and are subject to early retirement reductions before attaining normal retirement age.

Insofar as this bill affects the NYSLERS, if this bill is enacted during the 2024 Legislative Session, the additional cost for each member who receives these benefits will vary depending on the member's age, years of service, plan and final average salary.

Extending retirement eligibility to members who have attained age 50 with at least 25 years of service credit is estimated to cost (on average for the group) 200% of the member's final average salary. Eliminating the early age reductions for members retiring after attaining age 55

with at least 10 years of service credit is estimated to cost (on average for the group) 140% of the member's final average salary.

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

The exact number of members who could be affected by this legislation cannot be readily determined. Prior to electing to provide these benefits, an eligible employer would be required to submit a roster of individuals in covered titles to the New York State and Local Retirement System. This roster would be used to develop an exact cost for the individual employer electing to provide the incentive benefits.

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 April 10, 2024, and intended for use only during the 2024 Legislative Session, is Fiscal Note No. 2024-134, prepared by the Actuary for the New York State and Local Retirement System.