STATE OF NEW YORK

5231--A

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. PHEFFER AMATO, LUNSFORD, WOERNER, McDONALD, DURSO, BRABENEC, SLATER, SANTABARBARA -- 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 to amend the retirement and social security law, in relation to the calculation of past service credit for members in the title of deputy sheriff transferring between the New York state and local employees' retirement system to the New York state and local police and fire retirement system

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

Section 1. Section 43 of the retirement and social security law is amended by adding a new subdivision m to read as follows:

m. 1. Notwithstanding any other law, rule or regulation to the contrary, any member in the title of deputy sheriff transferring from the New York state and local employees' retirement system to the New York state and local police and fire retirement system after the effective date of this subdivision and any member previously in the title of deputy sheriff having made such transfer shall be entitled to a determination of the amount of service credit that is eligible on a twenty year or twenty-five year retirement plan if, within one year of the date on which he or she first became a member of the New York state and local police and fire retirement system or within one year of the effective date of this subdivision, such member elects to do so. If the member subsequently transfers back to the New York state and local employees' retirement system, the full amount of service credit earned while in the title of deputy sheriff shall be transferred back to the New York state and local employees' retirement system.

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

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2. The calculation of the amount of such service credit for a member will be determined by multiplying the eligible service credited in the New York state and local employees' retirement system plan by a salary multiplier, reflecting the rate of salary in the New York state and local employees' retirement system plan relative to the rate of salary in the New York state and local police and fire retirement system plan, and a billing rate multiplier, reflecting the actuarial long-term average billing rate in the New York state and local employees' retirement system plan relative to the actuarial long-term average billing rate in the New York state and local police and fire retirement system plan. The determination of the salary multiplier and billing rate multiplier will be determined by the actuary of the New York state and local employees' retirement system and the New York state and local police and fire retirement system. The amount of such service credited to the member in the New York state and local police and fire retirement system plan shall not exceed the amount of service credited to the member in the New York state and local employees' retirement system plan.

§ 2. Section 343 of the retirement and social security law is amended by adding a new subdivision i to read as follows:

i. 1. Notwithstanding any other law, rule or regulation to the contrary, any member in the title of deputy sheriff transferring from the New York state and local employees' retirement system to the New York state and local police and fire retirement system after the effective date of this subdivision and any member previously in the title of deputy sheriff having made such transfer shall be entitled to a determination of the amount of service credit that is eligible on a twenty year or twenty-five year retirement plan if, within one year of the date on which he or she first became a member of the New York state and local police and fire retirement system or within one year of the effective date of this subdivision, such member elects to do so. If the member subsequently transfers back to the New York state and local employees' retirement system, the full amount of service credit earned while in the title of deputy sheriff shall be transferred back to New York state and local employees' retirement system.

2. The calculation of the amount of such service credit for a member will be determined by multiplying the eligible service credited in the New York state and local employees' retirement system plan by a salary multiplier, reflecting the rate of salary in the New York state and local employees' retirement system plan relative to the rate of salary in the New York state and local police and fire retirement system plan, and a billing rate multiplier, reflecting the actuarial long-term average billing rate in the New York state and local employees' retirement system plan relative to the actuarial long-term average billing rate in the New York state and local police and fire retirement system plan. The determination of the salary multiplier and billing rate multiplier will be determined by the actuary of the New York state and local employees' retirement system and the New York state and local police and fire retirement system. The amount of such service credited to the member in the New York state and local police and fire retirement system plan shall not exceed the amount of service credited to the member in the New York state and local employees' retirement system plan.

3. If the member subsequently retires on an age based retirement plan in the New York state and local police and fire retirement system instead of a twenty year or twenty-five year plan, the full amount of service credit earned while in the title of deputy sheriff shall be granted.

4. No member who receives service credit pursuant to this subdivision shall be eligible to receive additional service credit pursuant to subdivision b of section three hundred eighty four-e of this article if his or her employer has elected to provide such service credit.

§ 3. This act shall take effect on the sixtieth day after an internal revenue service ruling stating that the transfer and crediting of deputy sheriff service credit from the New York state and local employees' retirement system into the New York state and local police and fire retirement system special retirement plan by this act is allowable and does not jeopardize such retirement system's tax-qualified status, and shall remain in full force and effect only as long as such transfer is authorized pursuant to the provisions of the internal revenue code; provided, that the state comptroller shall notify the legislative bill drafting commission upon the occurrence of such ruling and upon any change in the provisions of the internal revenue code affecting the provisions of this act 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 effecting 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:

This bill would expand the definition of creditable service under twenty-year and twenty-five-year retirement plans (special plans) in the New York State and Local Police and Fire Retirement System (NYSLPFRS) to include service credit earned in the New York State and Local Employees' Retirement System (NYSLERS) for those individuals previously employed in the title of Deputy Sheriff. To be eligible an individual must be a member of the NYSLPFRS and elect to transfer the NYSLERS service credit to the NYSLPFRS special plan within twelve months of first joining the NYSLPFRS, or within twelve months of the effective date of this bill, whichever is later. The amount of service credit granted in the NYSLPFRS special plan will be calculated by the Actuary of the New York State and Local Retirement System and will not exceed the service credited under the NYSLERS plan.

Insofar as this bill affects the NYSLPFRS, if enacted during the 2024 Legislative Session, it is estimated that the past service cost will average approximately 21 percent of an affected member's compensation for each year of additional service credit that is granted.

Internal Revenue Service (IRS) plan qualification issues: granting service credit towards retirement in a twenty-year plan in the NYSLPFRS for employment that was not rendered in the NYSLPFRS could jeopardize the governmental plan status of the Retirement System ("the System") and its exemption from the Employees Retirement Income Security Act (ERISA). This development could result in the loss of qualified status, which would mean the loss of tax benefits. This result would substantially impair the System's value to our more than one million participants.

This legislation will not become effective until the System obtains a favorable ruling from the IRS stating that these provisions would not harm the qualification status of the System. Further, the provisions of this legislation will only continue in full force and effect while authorized by the IRS. It is estimated that the costs to obtain such a ruling would be $38,000 for the services of the IRS, and $1,000 per hour for legal consultants.

In addition to the costs to obtain a ruling from the IRS stated above, if this bill is enacted, there will be an administrative cost to implement the provisions of this legislation.

All costs will be shared by the State of New York and the local participating employers in the NYSLPFRS.

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 February 15, 2024, and intended for use only during the 2024 Legislative Session, is Fiscal Note No. 2024-32, prepared by the Actuary for the New York State and Local Retirement System.