

# STATE OF NEW YORK

5737--A

2023-2024 Regular Sessions

## IN ASSEMBLY

March 23, 2023

Introduced by M. of A. WALLACE, BUTTENSCHON -- 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 enacting the "State Police Retention act"; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "State Police Retention act".

3 § 2. The retirement and social security law is amended by adding a new  
4 section 381-c to read as follows:

5 § 381-c. Deferred retirement option plan payable to members and offi-  
6 cers of the division of state police. a. Deferred retirement option  
7 plan. Deferred retirement option plan, (hereinafter referred to as  
8 "DROP"), is a retirement plan under which an eligible member may elect  
9 to participate, deferring receipt of retirement benefits while continu-  
10 ing employment with the division of state police. For the purposes of  
11 this section, an "eligible member" is any member or officer employed by  
12 the division of state police. During the period of continued employment,  
13 the eligible member's monthly retirement benefit shall be deferred and  
14 held by the retirement system on behalf of the member plus interest at  
15 an effective rate of one and one-half percent for the specific period of  
16 participation in DROP as provided in subdivision c of this section. Upon  
17 completion of the DROP period, the eligible member shall receive the  
18 total amount of retirement benefits deferred under DROP without optional  
19 modification as permitted by subdivisions d and e of this section and  
20 shall begin to receive the previously determined normal service retire-

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

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1 ment benefit with optional modification as further provided in subdivi-  
2 sion d of this section.

3 b. Participation in DROP. Any eligible member who is currently  
4 employed by the division of state police and qualifies to retire pursu-  
5 ant to section three hundred eighty-one-b of this title by reason of  
6 completing twenty years of creditable service may elect to participate  
7 in DROP.

8 c. Election in DROP. Such election shall be on a form prepared by the  
9 comptroller and may be for any period of time not less than twelve  
10 months or more than thirty-six months duration. Any member who elects to  
11 participate in DROP shall be considered retired on the day following the  
12 expiration of the DROP period, provided, however, that all loans and  
13 excess contributions shall be resolved by the date of entry into DROP.  
14 Upon expiration of the time period selected by the eligible member, such  
15 member's participation in DROP shall terminate.

16 d. Benefits payable under DROP. (1) Effective with the date of partic-  
17 ipation in DROP, the eligible member's normal service retirement benefit  
18 shall be calculated, using creditable service and final average salary  
19 as if the effective date of retirement was the date of entry into DROP.  
20 The amount deferred pursuant to DROP shall be calculated based upon the  
21 eligible member's zero option retirement allowance until such member has  
22 obtained the applicable maximum service retirement limit based upon  
23 years of service. Any additional participation in DROP after a member  
24 has obtained the maximum service retirement limit based upon years of  
25 service shall be calculated based upon sixty percent of the member's  
26 full annual retirement allowance. In addition, for the purposes of this  
27 section, the annual retirement allowance for any member electing DROP  
28 shall be calculated using a three-year final average salary as defined  
29 elsewhere in this article. The eligible member shall, however, elect his  
30 or her optional retirement benefit at the completion of the DROP period.

31 (2) If the eligible member dies prior to completion of the period of  
32 participation in DROP, the eligible member shall be treated as if such  
33 DROP election did not exist. In lieu of the DROP payment, a death bene-  
34 fit shall be payable consistent with the terms of this chapter and all  
35 salary and service reported for such eligible member during the DROP  
36 period shall be considered in calculating the eligible member's death  
37 benefit.

38 (3) If the eligible member is approved for disability benefits  
39 provided in this chapter during the DROP period, the eligible member  
40 shall be treated as if the DROP election did not exist. In lieu of the  
41 DROP payment, a disability retirement benefit shall be payable consist-  
42 ent with the terms of this chapter and all salary and service reported  
43 for such eligible member during the DROP period shall be considered in  
44 calculating the eligible member's disability retirement benefit.

45 (4) If an eligible member otherwise fails to complete his or her peri-  
46 od of service as elected pursuant to subdivision c of this section, the  
47 eligible member shall be treated as if such DROP election did not exist.  
48 In lieu of the DROP payment, the normal service retirement benefit shall  
49 be payable consistent with the terms of this chapter and all salary and  
50 service reported for such eligible member during the DROP period shall  
51 be considered in calculating the eligible member's service retirement  
52 benefit.

53 (5) If an eligible member remains employed after his or her partic-  
54 ipation in DROP is terminated, such member shall forfeit all DROP bene-  
55 fits and continue employment as if such DROP election did not exist.

1 Such member shall then be eligible to elect DROP consistent with the  
2 terms of this section.

3 (6) If an eligible member is approved for disability benefits after  
4 benefits payable pursuant to DROP have been paid, the eligible member  
5 may elect to receive the disability benefits in lieu of DROP benefits,  
6 but such disability benefits shall be actuarially adjusted for any bene-  
7 fits paid under DROP.

8 e. Method of payment. At the conclusion of the member's participation  
9 in DROP, the retirement system shall pay the deferred service retirement  
10 benefits in one of the following methods as elected by the member:

11 (1) Lump sum: All accrued DROP benefits, plus interest, less withhold-  
12 ing as required by the internal revenue service, shall be paid to the  
13 DROP participant or eligible beneficiary or as otherwise determined by  
14 operation of law;

15 (2) Direct rollover: All accrued DROP benefits, plus interest, shall  
16 be paid from the retirement system to a custodian of the eligible  
17 retirement plan or other eligible plan or account as provided pursuant  
18 to the internal revenue code as directed by the member or eligible bene-  
19 ficiary;

20 (3) Partial lump sum: A portion of the DROP benefits shall be paid to  
21 the DROP participant or eligible beneficiary, less withholding required  
22 by the internal revenue service and the remaining DROP benefits may be  
23 rolled over as otherwise permitted by the internal revenue code.

24 For purposes of this subdivision, the term "eligible beneficiary" is  
25 one who qualifies to rollover benefits from a qualified benefit plan or  
26 account as provided by the internal revenue code. The forms of payment  
27 provided by this subdivision shall comply with the minimum distribution  
28 requirements of the internal revenue code.

29 f. Regulations. The comptroller shall prescribe such rules and regu-  
30 lations as may be necessary for the effective administration and imple-  
31 mentation of the provisions of this section.

32 § 3. This act shall take effect immediately and shall expire five  
33 years after it shall have become a law when upon such date the  
34 provisions of this act shall be deemed repealed; provided, however, that  
35 the expiration of this act shall not prevent a member who has duly  
36 elected to participate in DROP pursuant to the provisions of this act  
37 from completing the full period of DROP selected.

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

This bill would allow police officers employed by the New York State Division of State Police to elect to participate in a Deferred Retirement Option Plan (DROP), deferring receipt of retirement benefits while continuing their current employment. The main 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 the single life allowance determined based on the service and final average salary at the commencement of DROP participation. However, once a member's total service credit (including service during the DROP period) exceeds 32 years, the monthly payment into the DROP account will be limited to 60% of the single life allowance.

3. The New York State and Local Police and Fire Retirement System (NYSLPFRS) shall consider DROP participants active members, and annual employer contributions shall continue to be made by the State of New York to the NYSLPFRS on behalf of such members. All loans and excess contributions shall be resolved by the date of entry into DROP.

4. The length of participation in the DROP must be specified at the time of election, and may not be less than one year, nor exceed three 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. During the DROP period, the monthly pension of such affected members will be deferred and held by the NYSLPFRS on their behalf and shall accrue interest at 1.5%. Such account, with interest accumulation, must be distributed in full at the end of the specified DROP period.

6. 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.

7. Upon termination from DROP, such affected members shall receive their deferred payments, and shall also begin to receive their previously determined pensions.

8. This legislation will expire five years after the date it becomes a law with the provision that all members who entered into DROP before that date will be allowed to finish their elected DROP period.

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 simultaneously for up to three years.

The Partial Lump Sum program currently allows NYSLPFRS members to receive lump sums up to 25% of the present value of their pensions. In combination with this proposal, an affected member could potentially receive a lump sum exceeding 50% of the present value of their pension. This significantly reduces the value of ongoing pension payments over the member's remaining lifetime.

If this bill is enacted during the 2024 Legislative Session, we anticipate that there will be past service costs which would depend on the current salary, age, and length of service of the affected members. It is estimated that the past service cost per member would average approximately 100% of salary for the affected members. This past service cost of approximately \$392 million will be borne by the State of New York as a one-time payment and assumes that payment will be made on March 1, 2025.

If the anticipated retirement experience of members who are eligible for this benefit changes significantly in the future, there would be additional increases in employer costs.

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

These estimated costs are based on 2,274 affected members employed by the New York State Division of State Police, with annual salary of approximately \$373 million as of March 31, 2023.

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 3, 2024, and intended for use only during the 2024 Legislative Session, is Fiscal Note No. 2024-132, prepared by the Actuary for the New York State and Local Retirement System.