STATE OF NEW YORK

5493

2023-2024 Regular Sessions

IN SENATE

March 6, 2023

Introduced by Sen. JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the administrative code of the city of New York, in relation to establishing a variable supplements fund for sanitation members of the New York city employees' retirement system

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

Section 1. Section 13-101 of the administrative code of the city of New York is amended by adding a new subdivision 97 to read as follows:

97. "Sanitation variable supplements fund." The sanitation variable supplements fund established by section 13-197 of this chapter.

§ 2. The administrative code of the city of New York is amended by adding a new section 13-197 to read as follows:

§ 13-197 Sanitation variable supplements fund. 1. As used in this section, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

(a) "Association". The uniformed sanitationmen's association and the sanitation officers' association.

(b) "Variable supplements board". The board of trustees provided for in subdivision three of this section.

(c) "Beneficiary". Any person who (1) receives a retirement allowance by reason of having retired from service as a sanitation member, or (2) receives a benefit by reason of election of an option by such sanitation member.

(d) "Variable supplement". Any sum authorized to be paid to a beneficiary by the variable supplements board pursuant to the provisions of this section.

2. (a) There is hereby established a fund, to be known as the sanitation variable supplements fund. Such fund shall consist of such monies as may be paid thereto from the retirement system pursuant to the

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

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provisions of section 13-198 of this chapter and all other monies received by such fund from any other source pursuant to law.

(b) It is hereby declared by the legislature that the sanitation variable supplements fund shall not be, and shall not be construed to constitute, a pension or retirement system or fund, and that it shall function as a means whereby payments, not constituting a pension or retirement allowance, may be made at the discretion of the variable supplements board, in accordance with the provisions of this section, to eligible beneficiaries, as a supplement to benefits received by them pursuant to this title. The legislature hereby reserves to the state and itself the right and power to amend, modify or repeal any or all of the provisions of this section.

3. (a) The sanitation variable supplements fund shall be administered by a board of trustees which shall, subject to applicable provisions of law, from time to time establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof.

(b) Such variable supplements board shall consist of:

(1) The representative of the mayor who is a member of the board of trustees of the retirement system, who shall be entitled to cast one vote. The mayor may, by instrument in writing filed in his or her office with the variable supplements board, designate one or more members of his or her office to act in the place of such representative at meetings of the board, in the event of such representative's absence therefrom.

(2) The comptroller of the city, who shall be entitled to cast one vote. Any deputy comptroller authorized, pursuant to subdivision b of section ninety-four of the New York city charter, to act in the place of the comptroller as a member of the board of trustees of the retirement system, may be authorized by the comptroller, in accordance with the provisions of such subdivision, to act in the place of the comptroller as a member of the variable supplements board.

(3) One member of the uniformed sanitationmen's association and one member of the sanitation officers' association designated by them, who shall be entitled to cast one vote. The members so designated shall be officers of the associations. Each such designee may at any time, by written authorization filed with the variable supplements board, authorize any other officer of the association to act in his or her place as a member of the board in the event of such designee's absence from any meeting thereof; provided that the bylaws or constitution of the association provide for the designation of a representative for such purposes.

(c) Every act of the variable supplements board shall be by a resolution adopted by the votes of not less than three members of such board, except as otherwise provided in paragraph (d) of this subdivision.

(d)(1) In the event that the votes of at least three members of such board are not cast in favor of any resolution proposed, such dispute shall be promptly referred to the arbitrator designated for the purpose of resolving such disputes, in the collective bargaining agreement then in effect, between the city of New York and the associations. Such arbitrator shall determine such dispute as expeditiously as possible and his or her determination shall be adopted by the board.

(2) If the arbitrator designated in such agreement is unwilling or unable to serve, or if there be no such agreement then in effect, and the votes of at least three members of the variable supplements board are not cast in favor of a resolution designating another arbitrator, an arbitrator shall be appointed by the supreme court, on application of any member of such board. The determination of the arbitrator made

pursuant to the provisions of this subparagraph shall be adopted by the board.

(3) The cost of any arbitration pursuant to the foregoing provisions of this paragraph shall be paid by the sanitation variable supplements fund.

(e) The actuary appointed by the board of the retirement system shall be the technical advisor of the variable supplements board.

(f) The retirement system shall assign to the variable supplements board such number of clerical and other assistants as may be necessary for the performance of its functions.

4. (a) The variable supplements board may in its discretion authorize payments from the sanitation variable supplements fund to beneficiaries pursuant to the provisions of this section. Subject to the provisions of paragraph (b) of this subdivision, such payments may be made in such form, in such amount and in such cases as the variable supplements board may in its discretion determine; provided, however, that the board, in so exercising its discretion, shall give consideration to equity, fairness and principles of prudent management.

(b) (1) No beneficiary shall have a right to receive variable supplements except to the extent, in the manner and for the period authorized by the variable supplements board in the exercise of its discretion pursuant to this section and any such supplements granted may at any time be discontinued by the variable supplements board in the exercise of such discretion.

(2) The legislature hereby declares that the variable supplements authorized by this section and the granting and receipt thereof:

(i) shall not create or constitute membership in a pension or retirement system and shall not create or constitute a contract with any beneficiary or with any sanitation member; and

(ii) shall not constitute a pension or retirement allowance or benefit under the retirement system or otherwise.

(3) Except as otherwise provided in section 13-198 of this chapter, nothing contained in this section shall create or impose any obligation on the part of the retirement system, or the funds or monies thereof, or authorize such funds or monies to be appropriated or used for any payment under this section or for any purpose thereof.

(c) Beneficiaries shall be eligible to receive variable supplements pursuant to this section, notwithstanding any other provision of law to the contrary.

(d) (1) The variable supplements board shall not grant any variable supplement pursuant to this section unless the sanitation variable supplements fund, at the time of the making of such grant, has in its possession monies or assets which are sufficient to provide such supplement and which have not been encumbered by any other grant of any such supplement.

(2) Upon the making of any such grant, the monies or assets encumbered thereby shall be set aside and shall not be used for any other purpose, except that they may be invested as authorized by subdivision six of this section.

5. The sanitation variable supplements fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

6. The members of the variable supplements board shall be the trustees of the monies received by or belonging to the sanitation variable

supplements fund pursuant to this section and shall have full power to invest same, subject to the terms, conditions, limitations and restrictions imposed by the law upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of such monies shall have been invested as well as the proceeds of such investments and of any monies belonging to such fund.

7. The variable supplements board shall publish annually in the City Record a report for the preceding year showing the assets of the sanitation variable supplements fund and a statement as to the accumulated cash and securities of such fund as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as the board may deem pertinent.

8. The comptroller shall be custodian of the monies and assets of the sanitation variable supplements fund. All such monies and assets included in such fund or which shall hereafter accrue to such fund shall be in his or her custody for the purposes of this section subject to the direction, control and approval of such board as to disposition, investment, management and report. All payments from such fund shall be made by the comptroller upon a voucher signed by the secretary of the variable supplements board.

9. Except as provided in this section, the trustees and employees assigned to the variable supplements board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the sanitation variable supplements fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board.

10. (a) The sanitation variable supplements fund shall not make any payments to beneficiaries unless a plan setting forth the basis and amounts of such payments and the qualifications for receipt thereof is first filed with the superintendent of financial services and approved by him or her as consistent with the provisions of this section.

(b) The superintendent of financial services may examine the affairs of the sanitation variable supplements fund with the same powers and jurisdiction as are applicable in the case of an examination of a life insurance company by such superintendent under article three of the insurance law.

§ 3. Subdivision a of section 13-133 of the administrative code of the city of New York, as amended by chapter 255 of the laws of 2000, is amended to read as follows:

a. Regular interest, charges payable, the creation and maintenance of reserves in the contingent reserve fund and the pension fund and the maintenance of annuity reserves, pension reserves and reserves-for-increased-take-home-pay as provided for in this chapter and the payment of all pensions, pensions-providing-for-increased-take-home-pay, annuities, retirement allowances, refunds, death benefits and any other benefits granted under the provisions of this chapter, are hereby made obligations of the city. All income, interest and dividends derived from deposits and investments authorized by this chapter shall be used and disposed of in the manner prescribed by subdivision b of this section. Upon the basis of each actuarial determination and appraisal provided

for in this chapter, the board shall prepare and submit to the director of management and budget an itemized estimate of the amounts necessary to be appropriated by the city to the various funds to provide for payment in full during the ensuing fiscal year of all such obligations of the city accruing during the ensuing fiscal year. There shall be included annually in the budget a sum sufficient to provide for such obligations of the city. The comptroller shall pay the sums so provided into the various funds provided for by this chapter, subject to the provisions of subdivision b of this section. Nothing contained in this section shall be construed as preventing the payments, if any, required to be made pursuant to sections 13-193 (relating to the transit police variable supplements funds), 13-193 (relating to the housing police variable supplements funds), 13-193.2, 13-193.3, 13-193.4, 13-193.5, 13-193.7, 13-193.6, 13-195 [~~and~~], 13-195.1 **and 13-198** of this chapter.

§ 4. The administrative code of the city of New York is amended by adding a new section 13-198 to read as follows:

§ 13-198 Payments to sanitation variable supplements fund. 1. As used in this section, the following terms shall mean and include:

(a) "Base fiscal year". Any fiscal year of the city beginning on or after July first, two thousand twenty-two with respect to which fiscal year a determination is required to be made as to whether the retirement system is required to make a payment, pursuant to the provisions of this section, to the sanitation variable supplements fund.

(b) "Current fiscal year". The fiscal year of the city next succeeding the base fiscal year.

(c) "Transferable earnings". The total amount obtained in a base fiscal year with respect to the New York city employees' retirement system by following the procedure described in paragraph twelve of subdivision a of section 13-232 of this title.

(d) "Amount of assets of the retirement system". With respect to any base fiscal year, the aggregate amount of all assets of the retirement system on June thirtieth of such fiscal year.

(e) "Amount of sanitation assets". The amount obtained by multiplying the total assets of the retirement system as of June thirtieth of such base fiscal year by (i) the total salaries of sanitation members of the retirement system as of such June thirtieth and dividing the product by (ii) the total salaries of members of the retirement system as of such June thirtieth.

(f) "Allocation to the sanitation variable supplements fund". With respect to any base fiscal year, the amount obtained:

(i) by multiplying the transferable earnings, if any, with respect to such base fiscal year by the amount of sanitation assets with respect to such base fiscal year; and

(ii) by dividing the amount computed pursuant to subparagraph (i) of this paragraph by the amount of assets of the retirement system with respect to such base fiscal year.

2. As soon as practicable after the close of each base fiscal year, but not later than August thirty-first of the current fiscal year, the board of the retirement system shall determine, in the manner provided in paragraph (f) of subdivision one of this section, whether there is an allocation to the sanitation variable supplements fund with respect to such base fiscal year, and pay such allocation from the contingent reserve fund to the sanitation variable supplements fund.

§ 5. This act shall take effect immediately.