# STATE OF NEW YORK

5809--B

2023-2024 Regular Sessions

# IN SENATE

March 16, 2023

Introduced by Sens. GOUNARDES, HARCKHAM, THOMAS, WEIK -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, the education law and the administrative code of the city of New York, in relation to providing cost-of-living adjustments

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

Section 1. Subdivision g of section 78-a of the retirement and social security law, as added by chapter 125 of the laws of 2000, is amended to read as follows:

g. Notwithstanding any other provision of law, **effective the first day of September, two thousand twenty-four,** the surviving spouse of a deceased retired member who retired under an option which provides that benefits are to be continued for life to the surviving spouse after the death of the retired member, shall be entitled to receive benefits pursuant to this section. Said benefits shall be [~~fifty~~] **one hundred** percent of the monthly benefits which the pensioner would be receiving pursuant to this section if living, and shall commence (i) with a payment for the month of September, two thousand **twenty-four**, or (ii) the month following the death of the deceased retired member, whichever is later.

§ 2. Subdivision g of section 378-a of the retirement and social security law, as added by chapter 125 of the laws of 2000, is amended to read as follows:

g. Notwithstanding any other provision of law, **effective the first day of September, two thousand twenty-four,** the surviving spouse of a deceased retired member who retired under an option which provides that

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

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benefits are to be continued for life to the surviving spouse after the death of the retired member, shall be entitled to receive benefits pursuant to this section. Said benefits shall be [~~fifty~~] **one hundred** percent of the monthly benefits which the pensioner would be receiving pursuant to this section if living, and shall commence (i) with a payment for the month of September, two thousand **twenty-four**, or (ii) the month following the death of the deceased retired member, whichever is later.

§ 3. Subdivision g of section 532-a of the education law, as added by chapter 125 of the laws of 2000, is amended to read as follows:

g. Notwithstanding any other provision of law, **effective the first day of September, two thousand twenty-four,** the surviving spouse of a deceased retired member who retired under an option which provides that benefits are to be continued for life to the surviving spouse after the death of the retired member, shall be entitled to receive benefits pursuant to this section. Said benefits shall be [~~fifty~~] **one hundred** percent of the monthly benefits which the pensioner would be receiving pursuant to this section if living, and shall commence (i) with a payment for the month of September, two thousand **twenty-four**, or (ii) the month following the death of the deceased retired member, whichever is later.

§ 4. Subdivision g of section 13-696 of the administrative code of the city of New York, as added by chapter 125 of the laws of 2000, is amended to read as follows:

g. Notwithstanding any other provision of law, **effective the first day of September, two thousand twenty-four,** the surviving spouse of a deceased retired member of the New York city employees' retirement system, the New York city teachers' retirement system, the New York city police pension fund, the New York city fire department pension fund or the New York city board of education retirement system who retired under an option which provides that benefits are to be continued for life to the surviving spouse after the death of the member, shall be entitled to receive a benefit pursuant to this section. Said benefit shall be [~~fifty~~] **one hundred** percent of the monthly benefit which the pensioner would be receiving if living, and shall commence (i) with a payment for the month of September, two thousand **twenty-four**, or (ii) the month following the death of the deceased retired member, whichever is later.

§ 5. This act shall take effect immediately.

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

As it relates to the New York State Teachers' Retirement System, this bill would amend subdivision g of Section 532-a of the Education Law to increase the cost-of-living adjustment (COLA) benefit to surviving spouse beneficiaries of deceased retirees who elected an option which provides a lifetime benefit to their surviving spouse. The COLA survivor benefit would be equal to 100% of the monthly benefit which the retiree would be receiving if alive. The current COLA survivor benefit is equal to 50% of the benefit the retiree would be receiving if alive. This increase in spousal survivor benefit would also be applicable to the "catch-up" supplementation provided under subdivision f to eligible retirees who retired before January 1, 1997. This benefit improvement would be effective in September of 2024.

The annual cost to the employers of members of NYSTRS for this benefit is estimated to be $39.3 million or 0.21% of payroll if this bill is enacted.

Member data is from the System's most recent actuarial valuation files, consisting of data provided by the employers to the Retirement

System. Data distributions and statistics can be found in the System's Annual Report. System assets are as reported in the System's financial statements and can also be found in the System's Annual Report. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report.

The source of this estimate is Fiscal Note 2023-20 dated March 13, 2023 prepared by the Office of the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2023 Legislative Session. I, Richard A. Young, am the Chief Actuary for the New York State Teachers' Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

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

This bill would bill would provide an increase in the defined benefit cost-of-living adjustment (COLA) for New York public retirement systems. Starting with a payment in September 2024, the cost-of-living benefit payable to a surviving spouse who is eligible for COLA will be increased from fifty percent to one hundred percent of the benefit that the pensioner would have received.

Insofar as this bill affects the New York State and Local Employees' Retirement System (NYSLERS), pursuant to Section 25 of the Retirement and Social Security Law, the increased costs would be borne entirely by the State of New York and would require an itemized appropriation sufficient to pay the cost of the provision. If this bill were enacted during the 2023 legislative session, the increase in the present value of benefits would be approximately $1.5 billion.

In the NYSLERS, this benefit improvement will be funded by (1) billing a past service cost to cover retrospective benefit increases and (2) increasing the billing rates charged annually to cover prospective benefit increases, as follows:

(1) To fund retrospective costs, the State of New York will be required to pay $1.60 billion (including interest) as of March 1, 2024.

(2) To fund prospective costs, the annual contribution required of all participating employers in the NYSLERS is 0.04% of billable salary, or approximately $4.5 million to the State of New York and approximately $6.5 million to local participating employers in the fiscal year ending March 31, 2025. This **permanent annual cost** will vary in subsequent billing cycles with changes in the billing rate and salary of the affected members.

Insofar as this bill affects the New York State and Local Police and Fire Retirement System (NYSLPFRS), the increased costs would be shared by the State of New York and the local participating employers in the NYSLPFRS. If this bill were enacted during the 2023 legislative session, the increase in the present value of benefits would be approximately $158 million.

| NYSLPFRS | Increase in present value benefits | Increase in future contributions |
|---|---|---|
| Tiers 1-5 | $152 million | $85 million |
| Tier 6 | $6 million | $73 million |
| Total | $158 million | $158 million |

In the NYSLPFRS, this benefit improvement will be funded by increasing the billing rates charged annually to cover both retrospective and prospective benefit increases. The annual contribution required of all

participating employers in NYSLPFRS is 0.4% of billable salary, or approximately $3.4 million to the State of New York and approximately $14 million to the local participating employers in the fiscal year ending March 31, 2025. This **permanent annual cost** will vary in subsequent billing cycles with changes in the billing rate and salary of the affected members.

Summary of relevant resources:

Membership data as of March 31, 2022 was used in measuring the impact of the proposed change, the same data used in the April 1, 2022 actuarial valuation. Distributions and other statistics can be found in the 2022 Report of the Actuary and the 2022 Annual Comprehensive Financial Report.

The actuarial assumptions and methods used are described in the 2020, 2021, and 2022 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, 2022 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 March 30, 2023, and intended for use only during the 2023 Legislative Session, is Fiscal Note No. 2023-79, prepared by the Actuary for the New York State and Local Retirement System.

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

SUMMARY OF BILL: This proposed legislation, as it relates to the New York City Retirement Systems and Pension Funds (NYCRS), would amend Section 13-696 of the Administrative Code of the City of New York to increase the Cost-of-Living Adjustment (COLA), effective September 1, 2024, to an eligible surviving spouse from 50% to 100% of the COLA the pensioner would be receiving if still alive for the New York City Employees' Retirement System (NYCERS), the New York City Teachers' Retirement System (NYCTRS), the New York City Board of Education Retirement System (BERS), the New York City Police Pension Fund (POLICE), and the New York City Fire Pension Fund (FIRE).

Effective Date: Upon enactment.

BACKGROUND: The COLA currently provides for an annual increase equal to a percentage of the annual retirement allowance otherwise payable, computed without optional modification on the first $18,000 of retirement allowance. That percentage is equal to 50% of the increase in the consumer price index (CPI) in the one-year period ending on the March 31 prior to the COLA effective on the ensuing September 1. The percentage is rounded to the next higher one-tenth of one percent and shall not be less than 1% nor more than 3%.

The surviving spouse of a deceased retired member who retired under an option which provides that benefits are to be continued for life to the surviving spouse after the death of the retired member is currently entitled to receive a COLA equal to 50% of the COLA the pensioner would be receiving if living. This proposed legislation would change from 50% to 100% the percentage of COLA a surviving spouse receives after the death of the retired member.

FINANCIAL IMPACT: The estimated financial impact to NYCRS is an increase in Present Value of Future Benefits of approximately $658.3

million and an increase in Fiscal Year 2024 annual employer contributions of approximately $634.3 million.

The increase in Fiscal Year 2024 annual employer contributions of $634.3 million is estimated to be $421.5 million for New York City and $212.8 million for the other obligors of NYCRS. A breakdown of the financial impact by System is shown in the table below.

| NYCRS | Additional Present Value of Future Benefits ($ Millions) | Additional First Year Annual Employer Contributions* ($ Millions) |
|---|---|---|
| NYCERS | $402.6 | $382.8 |
| NYCTRS | 183.8 | 180.9 |
| BERS | 19.4 | 18.9 |
| POLICE | 40.3 | 40.1 |
| FIRE | 12.2 | 11.6 |
| Total | $658.3 | $634.3 |

* Total additional employer contributions after the first year are estimated to be approximately $12.2 million per year.

New Unfunded Accrued Liability (UAL) attributable to benefit changes are generally amortized over the remaining working lifetime of those impacted by the benefit changes. For purposes of this Fiscal Note, it has been assumed that increases in UAL attributable to current retirees would be recognized immediately and that increases in UAL attributable to active members would be amortized over periods ranging from 12 to 15 years depending on the System (11 to 14 payments under One-Year Lag Methodology) using level dollar payments.

CENSUS DATA: The estimates presented herein are based on the census data used in the June 30, 2022 actuarial valuations of NYCRS to determine the Preliminary Fiscal Year 2024 employer contributions.

ACTUARIAL ASSUMPTIONS AND METHODS: The estimates presented herein have been calculated based on the actuarial assumptions and methods used for the Preliminary Fiscal Year 2024 employer contributions of NYCRS. Also, assumptions for active members electing a form of pension at retirement that would continue a payment to a surviving spouse (ranging from 15% to 30%) were made based on the distribution of current elections and an estimate of future elections.

For the purposes of this Fiscal Note, it is assumed that the changes would be reflected for the first time in the June 30, 2022 actuarial valuations of NYCRS used to determine employer contributions for Fiscal Year 2024.

RISK AND UNCERTAINTY: The costs presented in this Fiscal Note depend highly on the realization of the actuarial assumptions used, demographics of the impacted population, and other factors such as investment, contribution, and other risks. If actual experience deviates from actuarial assumptions, the actual costs could differ from those presented herein.

Costs are also dependent on the actuarial methods used, and therefore different actuarial methods could produce different results. Quantifying these risks is beyond the scope of this Fiscal Note.

Not measured in this Fiscal Note are the following:

* The initial additional administrative costs to implement the proposed legislation.

STATEMENT OF ACTUARIAL OPINION: I, Marek Tyszkiewicz, am the Chief Actuary for, and independent of, the New York City Retirement Systems

and Pension Funds. I am an Associate of the Society of Actuaries and a Member of the American Academy of Actuaries. I am a member of NYCERS but do not believe it impairs my objectivity and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein. To the best of my knowledge, the results contained herein have been prepared in accordance with generally accepted actuarial principles and procedures and with the Actuarial Standards of Practice issued by the Actuarial Standards Board.

FISCAL NOTE IDENTIFICATION: This Fiscal Note 2023-71 dated June 2, 2023 was prepared by the Chief Actuary for the New York City Retirement Systems and Pension Funds. This estimate is intended for use only during the 2023 Legislative Session.