

STATE OF NEW YORK

7226--A

2023-2024 Regular Sessions

IN SENATE

May 18, 2023

Introduced by Sens. MANNION, GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- recommitted to the Committee on Civil Service and Pensions in accordance with Senate Rule 6, sec. 8 -- 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 establishing a deferred retirement option plan for certain employees of the department of corrections and community supervision and the office of mental health

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

1 Section 1. The retirement and social security law is amended by adding
2 a new article 14-C to read as follows:

ARTICLE 14-C

DEFERRED RETIREMENT OPTION PLANS

3
4 Section 570. Deferred retirement option plan payable to certain person-
5 nel.

6
7 § 570. Deferred retirement option plan payable to certain personnel.
8 a. Deferred retirement option plan. The deferred retirement option plan
9 (hereinafter referred to as "DROP") is a retirement plan under which an
10 eligible member may elect to participate, deferring receipt of retire-
11 ment benefits while continuing employment with the department of
12 corrections and community supervision or the office of mental health.
13 For the purposes of this section, "eligible members" shall mean any
14 members of the security services collective bargaining unit holding a
15 title defined in subdivision i of section eighty-nine of this chapter.
16 Upon commencement of the DROP period, the eligible member's monthly
17 retirement benefit without optional modification shall be calculated and
18 fixed as if the date of retirement was the effective date of entry into

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

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1 the DROP. Upon completion of the DROP period, the eligible member may
2 elect an optional form of payment and shall receive such calculated and
3 fixed monthly retirement benefit as adjusted for optional modification
4 if the member so chooses plus an actuarially determined lump sum benefit
5 as provided in subdivision d of this section.

6 b. Participation in DROP. Any eligible member who is employed by the
7 department of corrections and community supervision or the office of
8 mental health and qualifies to retire by virtue of having completed
9 twenty-five years of total creditable service without regard to age may
10 elect to participate in DROP.

11 c. Election in DROP. Such election shall be made on a form supplied by
12 the retirement system and may be for any period of time not less than
13 twelve months or more than sixty months in duration. Any eligible member
14 who elects to participate in DROP pursuant to this article shall be
15 considered retired, even if employment continues, except for retirement
16 system purposes which shall consider the eligible member's date of
17 retirement the day following the expiration of the DROP period. Upon
18 expiration of the time period selected by the eligible member, such
19 member's participation in DROP shall terminate.

20 d. Benefits payable under DROP. (1) Effective as of the date of
21 participation in DROP, the eligible member's normal service retirement
22 benefit shall be calculated and fixed, using creditable service and
23 final average salary as if the effective date of retirement was the date
24 of entry into DROP. In addition to such normal service retirement bene-
25 fit, the eligible member shall receive an actuarially determined lump
26 sum benefit which shall be equal to the difference between the actuarial
27 present value of the pension benefit without optional modification which
28 the eligible member would have received had such member not opted to
29 participate in DROP and retired on the date the DROP period terminated,
30 and the actuarial present value of the pension benefit without optional
31 modification which the eligible member would have received had such
32 member retired upon commencement of the DROP. The mortality and interest
33 rates used in determining actuarial equivalence shall be those in effect
34 for this purpose on the date the DROP period terminates. The eligible
35 member shall, however, elect at such member's choosing the actual method
36 of payment of the lump sum benefit as provided in subdivision e of this
37 section at the completion of the DROP period.

38 (2) If the eligible member dies prior to completion of the period of
39 participation in DROP, the eligible member shall be treated as if such
40 DROP election did not exist. In lieu of the DROP payment, a death bene-
41 fit shall be payable consistent with the terms of this chapter and all
42 salary and service reported for such eligible member during the DROP
43 period shall be considered in calculating the eligible member's death
44 benefit.

45 (3) If the eligible member is approved for disability benefits
46 provided by this chapter during the DROP period, the eligible member
47 shall be treated as if such DROP election did not exist. In lieu of the
48 DROP payment, a disability retirement benefit shall be payable consist-
49 ent with the terms of this chapter and all salary and service reported
50 for such eligible member during the DROP period shall be considered in
51 calculating the eligible member's disability retirement benefit.

52 (4) If an eligible member otherwise fails to complete such member's
53 period of service as elected pursuant to subdivision c of this section,
54 the eligible member shall be treated as if such DROP election did not
55 exist. In lieu of the DROP payment, the normal service retirement bene-
56 fit shall be payable consistent with the terms of this chapter and all

1 salary and service reported for such eligible member during the DROP
2 period shall be considered in calculating the eligible member's service
3 retirement benefit.

4 (5) If an eligible member remains employed after such member's partic-
5 ipation in DROP is terminated, such member shall forfeit all DROP bene-
6 fits and continue employment as if such DROP election did not exist.
7 Such member shall then be eligible to make a DROP election consistent
8 with the terms of this section.

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

14 e. Method of payment. (1) At the conclusion of the member's partic-
15 ipation in DROP, the retirement system shall pay the deferred service
16 retirement benefits in one of the following methods as elected by the
17 member:

18 (i) Lump sum. All accrued DROP benefits, plus interest, less withhold-
19 ing as required by the Internal Revenue Service, shall be paid to the
20 DROP participant or eligible beneficiary or as otherwise determined by
21 operation of law;

22 (ii) Direct rollover. All accrued DROP benefits, plus interest, shall
23 be paid from the retirement system to a custodian of an eligible retire-
24 ment plan or other eligible plan or account as provided pursuant to the
25 Internal Revenue Code as directed by the member or eligible beneficiary;
26 or

27 (iii) Partial lump sum. A portion of the DROP benefits shall be paid
28 to the DROP participant or eligible beneficiary, less withholding
29 required by the Internal Revenue Service and the remaining DROP benefits
30 may be rolled over as otherwise permitted by the Internal Revenue Code.

31 (2) The methods of payment provided by this subdivision shall comply
32 with the minimum distribution requirements of the Internal Revenue Code.

33 f. Regulations. The comptroller shall prescribe such regulations as
34 may be required for the effective administration and implementation of
35 the provisions of this section.

36 § 2. The past service costs attributable to the implementation of this
37 act shall be paid by the state of New York and may be paid in five annu-
38 al installments commencing with the fiscal year ending in 2024.

39 § 3. This act shall take effect immediately.

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

This bill would allow members employed by the Department of Corrections and Community Supervision (DOCCS) or the Office of Mental Health (OMH) who are covered under a twenty five-year retirement plan to elect to participate in a cost neutral Deferred Retirement Option Plan (DROP), deferring receipt of retirement benefits while continuing their current employment. The 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 fixed at the commencement of DROP participation.

3. The New York State and Local Employees' Retirement System (NYSLERS) shall consider DROP participants active members, and annual employer contributions shall continue to be made on behalf of such members.

4. The length of participation in the DROP must be specified at the time of election, and may not be less than 1 year, nor exceed 5 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. 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.

6. Upon termination from DROP, such participants shall begin to receive their previously determined pensions with optional modification. They shall also receive a lump sum payment which will be calculated as the present value of the pension which would have been payable at the termination of DROP had DROP not been elected, reduced by the present value of the pension which would have been payable at the commencement of DROP.

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 for up to 5 years.

If this bill is enacted during the 2024 Legislative Session, insofar as this proposal disrupts the usual pattern and timing of employee turnover (that is, if members retire earlier than assumed and participating employers hire a retiree instead of a new billable member), shifts in member behavior could generate losses that increase the average billing rate in the 25-year service-based plans for DOCCS and OMH from 20.4% to 27.3%. The actual increase in billing rates for these members will depend upon member utilization, with the rates above representing an upper maximum.

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

The number of members who could be affected by this legislation cannot be readily determined, but all 17,956 members employed by DOCCs or OMH and covered by a 25-year retirement plan would be eligible.

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 March 29, 2024, and intended for use only during the 2024 Legislative Session, is Fiscal Note No. 2024-152, prepared by the Actuary for the New York State and Local Retirement System.