

**GOVERNOR'S PROGRAM BILL
2011**

MEMORANDUM

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 persons joining the New York state and local retirement system, the New York state teachers' retirement system, the New York city employees' retirement system, the New York city teachers' retirement system, the New York city board of education retirement system, the New York city police pension fund, or the New York city fire pension fund on or after July 1, 2011

PURPOSE:

This bill, if enacted, would reform all pension systems that provide benefits to New York State and local government employees.

It would similarly reform all pension systems that provide benefits to employees covered by New York City's various pension systems.

Specifically, if enacted, it would establish pension benefits for newly hired State and local government employees, who first become members of the New York State and Local Employees' Retirement System ("ERS"), New York State and Local Police and Fire Retirement System ("PFRS"), the New York State Teachers' Retirement System ("TRS"), 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 ("NYCBERS"), the New York City Police Pension Fund, the New York City Fire Pension Fund or other optional retirement systems established under the Education Law on or after July 1, 2011.

SUMMARY OF PROVISIONS:

The following bill sections, if enacted, would impact members who first become members of the ERS, PFRS, TRS, NYCERS, NYCTRS, NYCBERS, New York City Police Pension Fund, the New York City Fire Pension Fund or other optional retirement systems established under the Education Law, on or after July 1, 2011:

Section 1 of the bill would amend Retirement and Social Security Law (“RSSL”) § 41 so that such members of the ERS or TRS would not be granted any additional service credit for unused sick leave.

Section 2 of the bill would amend RSSL § 376 so that members of the PFRS with less than 20 years of service would need at least 12 years of service before becoming eligible for retirement benefits and need to reach the age of 65 before receiving the vested retirement allowance. Tier 6 PFRS members would retain the right to retire upon the completion of 20 or 25 years of service, regardless of age.

Section 2-a would amend RSSL § 440 to close Tier 2 to new investigator members of NYCERS in order to give them modified Tier 3 police/fire benefits.

Sections 3 and 3-a would amend RSSL § 501 in order to give new NYC uniformed correction, uniformed sanitation and investigator members modified Tier 3 police/fire benefits. Also, Section 3 of the bill would amend RSSL § 501 (24) so that “wages” upon which retirement benefits are based for such members of the ERS and NYCERS would not include overtime, wages in excess of the annual salary paid to the Governor pursuant to joint resolution of both houses of the Legislature (\$179,000), and lump sum payments for deferred compensation, sick leave, accumulated vacation time or other credits for time not worked, as well as any termination pay and any additional compensation paid in anticipation of retirement., and to exclude overtime compensation and certain lump sum and terminal leave payments from pensionable earnings.

Section 4 of the bill would amend RSSL § 502 so that such members of the ERS would need at least 12 years of creditable service before being eligible for retirement benefits.

Section 5 of the bill would amend RSSL § 503 so that such members of the ERS would need to reach the age of 65 before becoming eligible to receive the normal service retirement benefit.

Section 6 of the bill would amend RSSL § 504 so that such members of the ERS, at normal retirement age would receive a pension equal to 1/60 of the final average salary times years of credited service not in excess of 30 years. In addition, the ability to retire prior to reaching the normal retirement age would be eliminated.

Sections 5 and 6 amend RSSL §§ 503 and 504 to give new NYCERS uniformed correction members modified tier 3 police/fire service retirement benefits rather than current tier 3 uniformed correction service retirement benefits.

Sections 6-a, 6-b and 6-c would amend RSSL §§ 504-a, 504-b and 504-d, respectively, so that new NYC uniformed correction members will get the benefits of a modified Tier 3 police/fire plan rather than the current uniformed correction plans.

Section 6-d would amend RSSL § 505 to give new NYC uniformed correction, uniformed sanitation and investigator members modified police/fire service retirement benefits.

Section 6-e would amend RSSL § 507 to give new NYC uniformed correction, uniformed sanitation and investigator members modified police/fire accident disability retirement benefits.

Sections 6-f and 6-g would amend RSSL § 507-a and section 6-h would amend RSSL § 507-c to give new NYC uniformed correction members Tier 3 police/fire disability benefits.

Section 6-i would amend RSSL § 508 to give new NYC uniformed correction, uniformed sanitation and investigator members police/fire ordinary death benefits.

Section 6-j would amend RSSL § 510 to give new NYC uniformed correction, uniformed sanitation and investigator members who receive a service retirement benefit after 25 years full escalation of benefits currently applicable to tier 3 police/fire members.

Section 6-k would amend RSSL § 511 to give new NYC uniformed correction members the same coordination with Social Security benefits that is applicable to current tier 3 police/fire members, and which also will be applicable to new NYC uniformed sanitation and investigator members.

Section 7 of the bill would amend RSSL § 512 so that affected members would have their “final average salary” based on the average wages earned by such member during five consecutive years which provide the highest average wage. If wages in any one such year exceed the average of the previous four years by more than 8%, the amount in excess of 8% would be excluded from the computation of the final average salary.

Section 7-a would amend RSSL § 513 to make new NYC tier 3 uniformed correction members ineligible to obtain service credit for child care leave in order to equate their benefits with tier 3 police/fire benefits.

Section 7-b would amend RSSL § 513 to prohibit new police/fire, uniformed correction, uniformed sanitation and investigator members from receiving service credit for undocumented sick leave used as terminal leave.

Section 8 of the bill would amend RSSL § 516 so that affected employees who have 12 or more years of credited service will be entitled to a “deferred vested benefit” equal to 1/60 of their final average salary times years of credited service.

Section 9 of the bill would amend RSSL § 517 so that affected employees would be required to contribute 6% of annual wages as their contribution.

Section 9-a would amend RSSL § 517-c to prohibit new NYC uniformed correction, uniformed sanitation and investigator members from borrowing on their member contributions in order to equate their benefits with Tier 3 police/fire benefits.

Section 9-b would amend RSSL § 600 to put new NYC uniformed sanitation members in tier 3 in order to give them modified Tier 3 police/fire benefits.

Section 10 of the bill would amend RSSL § 601 so that “wages” upon which retirement benefits are based for affected employees would not include overtime, wages in excess of the annual salary paid to the Governor, and lump sum payments for deferred compensation, sick leave, accumulated vacation time or other credits for time not worked, as well as any termination pay and any additional compensation paid in anticipation of retirement.

Section 10-a would amend RSSL § 601 to define members who join the NYCERS, NYCTRS or NYCBERS on or after July 1, 2011 as New York City revised plan members.

Section 11 of the bill would amend RSSL § 602 so that affected employees would need at least 12 years of creditable service before being eligible for retirement benefits.

Sections 12 of the bill would amend RSSL § 603 (a) so that affected employees would need to reach the age of 65 before becoming eligible to receive the normal service retirement benefit.

Section 13 of the bill would amend RSSL § 603 (i) by making conforming change to the law and limiting retirement benefits available under Tier 5 to employees who joined such systems before July 1, 2011.

Section 14 of the bill would amend RSSL § 603 (t) so that such members of the TRS would not be eligible for the early retirement benefit provided in Ch. 504, L. 2009 to members who retire at age 57 with at least 30 years of creditable service.

Section 15 of the bill would amend RSSL § 604 by adding a new subdivision b-1 so that affected employees would be entitled to a pension equal to 1/60 of their final average salary times years of credited service (not in excess of 30 year) plus an additional retirement allowance equal to 3/200 of the final average salary for each year of credited service in excess of 30 years.

Sections 15-a and 15-b would amend RSSL § 604-b (transit operating age 55/25-year plan); sections 15-d and 15-e would amend RSSL § 604-c, as added by Chapter 472 of the Laws of 1995 (TBTA 20-year/age 50 plan); sections 15-g and 15-h would amend RSSL § 604-e, as amended by Chapter 576 of the Laws of 2000 (dispatchers 25-year plan); sections 15-i and 15-j would amend RSSL § 604-e, as added by Chapter 577 of the Laws of 2000 (EMT 25-year plan); sections 15-k and 15-l would amend RSSL § 604-f, as added by Chapter 559 of the Laws of 2001 (deputy sheriff 25-year plan); sections 15-m and 15-n would amend RSSL § 604-f, as added by Chapter 582 of the Laws of 2001 (special officers

25-year plan); sections 15-o and 15-p would amend RSSL § 604-g (automotive members 25-year/age 50 plan); and sections 15-q and 15-r would amend RSSL § 604-h (police communications members 25-year plan) to provide 12-year vesting, payable at age 65, for new members of such special plans who do not reach the required service thresholds of their retirement plan. New members reaching 20 or 25 years of service retain the right to retire with an unreduced pension benefit, regardless of age. The benefits for all members in these plans would be calculated using the service fractions applicable to such plans under current law, and the 5-year final average salary provisions proposed in this bill. All participants in such plans would also contribute 6% of salary for all years of service, as proposed in this bill, plus the rates of additional member contributions established under current law.

Section 15-c would amend RSSL § 604-c, as added by Chapter 96 of the Laws of 1995, to make the age 55/25-year plan inapplicable to new members of NYCERS and BERS; section 15-f would amend RSSL § 604-d to make the age 57/5-year plan inapplicable to new members of NYCERS and BERS; and section 15-s would amend RSSL § 604-i to make the age 55/27-year plan inapplicable to new members of NYCTRS and BERS. It is necessary to make new members ineligible for those special plans so that new non-uniformed members (other than those eligible for the other special plans discussed above) will have payability of service retirement and vested benefits at age 65. The only benefit of those special plans is to permit participants to retire early with an unreduced benefit.

Section 16 of the bill would amend RSSL § 608 so that affected employees would have their “final average salary” based on the average wages earned during the five consecutive years which provide the highest average wage. If wages in any one such year exceed the average of the previous 4 years by more than 8%, the amount in excess of 8% would be excluded from the computation of the final average salary.

Section 17 of the bill would amend RSSL § 609 so that affected employees could obtain credit for previous service in Tier VI by paying 6% of wages earned for service which predate entry into the system with interest at the rate of 5% per annum compounded annually.

Section 17-a would amend RSSL § 609 to prohibit new NYCERS non-uniformed members from receiving service credit for undocumented sick leave used as terminal leave.

Section 18 of the bill would amend RSSL § 612 so that affected employees who have 12 or more years of creditable service upon termination would be entitled to a “deferred vested benefit” after reaching the age of 65 pursuant to the benefit set forth in new RSSL § 604.

Section 19 of the bill would amend RSSL § 613 so that affected employees would be required to contribute 6% of annual wages as their contribution. It would also bar affect employees from withdrawing contributions if they have accrued at least 12 years of creditable service.

Section 19-a would amend RSSL § 650 to make new Triborough Bridge and Tunnel Authority (“TBTA”) members ineligible for early retirement with immediate payability. This amendment does not affect the right of new TBTA members to participate in the 20-year/age 50 TBTA plan discussed above.

Sections 19-b and 19-c would amend RSSL § 911 to eliminate the 10-year cutoff of basic member contributions for new non-uniformed members of NYCERS, NYCTRS and BERS, so that such new members will be required to contribute 6% of salary for all credited service.

Section 20 of the bill would amend RSSL § 1000 by adding a new subdivision (10) so that affected employees could obtain credit for military service by paying into such funds a sum equal to the product of the number of years of military service being claimed and 6% of such member’s contribution earned during the 12 months of credited service immediately preceding the date that the member applied for credit pursuant to this section.

Section 21 of the bill would amend RSSL § 1202 so that such members of the PFRS would need at least 12 years of creditable service before being eligible for retirement benefits. Further, the vested retirement allowance payable without modification could not be less than the actuarial equivalent of the total of the member’s contributions accumulated with interest at 5% per annum compounded annually.

Section 22 of the bill would amend RSSL § 1204 so that such members of the PFRS would be required to contribute 6% of annual wages as their contribution.

Section 23 of the bill would amend the RSSL by adding a new § 1207 so that such members of the PFRS would have their “final average salary” based on 1/5 of the highest total wages during any continuous period of employment for which the member was credited with 5 years of service credit. If wages in any one such year exceed the average of the previous 4 years by more than 8%, the amount in excess of 8% would be excluded from the computation of the final average salary. Moreover, any wages in excess of the annual salary paid to the Governor would be excluded from the computation of final average salary.

Section 24 of the bill would amend the RSSL by adding a new § 1208 so that “wages” upon which retirement benefits are based for such members of the PFRS would not include overtime, wages in excess of the annual salary paid to the Governor, and lump sum payments for deferred compensation, sick leave, accumulated vacation time or other credits for time not worked, as well as any termination pay and any additional compensation paid in anticipation of retirement.

Section 25 of the bill would amend the Education Law (“Ed. L.”) § 182 so that for such members of the Education Department Optional Retirement Program (“ORP”), the State would make contributions at the rate of 4% of salary earned. For members of the ORP who so elected, the State would match the contribution of the member in an amount

not exceeding 3% of such member's wages. In addition, employee contributions would no longer be required, although employees could elect to contribute up to the amounts authorized in federal law.

Section 26 of the bill would amend Ed. L. § 392 with respect to such employees who would be eligible for membership in the "optional retirement program" established pursuant to Article 8-B of the Ed. L. ("State University Optional Retirement Program"), and would require the State (with respect to employees of the state university system) and "electing employers" (with respect to employees of community colleges) to make contributions at the rate of 4% of salary earned. For members who so elected, the State would match the contribution of such member in an amount not exceeding 3% of such member's wages. In addition, employee contributions would no longer be required, although employees could elect to contribute up to the amounts authorized in federal law.

Section 27 of the bill would amend Ed. L. § 6252 with respect to such employees who would be eligible for membership in the "optional retirement program" established pursuant to Article 125-A of the Ed. L. ("Board of Higher Education Optional Retirement Program"), and would require the employer with respect to employees of the colleges administered by the Board of Higher Education of the City of New York to make contributions at the rate of 4% of salary earned. For members who so elected, the employer would match the contribution of such member in an amount not exceeding 3% of such member's wages. In addition, employee contributions would no longer be required, although employees could elect to contribute up to the amounts authorized in federal law.

Sections 27-a, 27-b and 27-c would amend New York City ("NYC") Administrative Code § 13-101 subdivisions 86, 87 and 89 to make conforming amendments to permit new uniformed sanitation members, who will be in Tier 3 under the bill, to pay their member contributions of a pre-tax basis in accordance with section 414 (h) of the Internal Revenue Code.

Section 27-d would amend NYC Administrative Code § 13-638.4 (e)(14) to provide a 5-year final average salary for new members of NYCERS and BERS.

Section 27-e would provide that the benefits conferred by sections 27-a, 27-b and 27-c of the bill, if enacted, are completely contingent upon the existence of benefits contained in the Internal Revenue Code.

Section 28 of the bill would provide that members of an employee organization that are eligible to join a special retirement plan pursuant to a collectively negotiated agreement with any State or local employer, would be able to continue to enroll in that special plan after the enactment of this bill, until the date on which such agreement terminates. Upon the expiration of such collective bargaining agreements, not including the period after the expiration of such agreement in which its provisions continue to be in effect, pursuant to Civil Service Law 209-a (1)(e), the full provisions contained within this bill shall take effect. It would add a proviso to the language in that section of the bill so that it will not be construed to permit new NYCERS members to participate in the current

Tier 3 uniformed correction 20-year plans, the Tier 4 uniformed sanitation 20-year plan, the Tier 2 investigator member 20-year and 25-year plans, the NYCERS and BERS age 55/25-year and age 57/5-year plans or the TRS and BERS age 55/27-year plan. As discussed above, it is necessary to make new NYCERS members ineligible for such plans because (1) new uniformed correction members, uniformed sanitation members and investigator members will be getting Tier 3 police/fire benefits so that they will not receive greater benefits than new NYC police officers and firefighters, and (2) new NYCERS non-uniformed members are to receive payability of service retirement and vested benefits at age 65, and it would be inequitable to charge them additional member contributions under the special plans when they would not be allowed to retire early. As explained above, all other NYCERS special plans would remain open to new NYCERS members.

Section 29 of the bill provides that no enhancements, increases, or changes to the bill's benefit structure shall be authorized.

Section 30 of the bill is the severability clause.

Section 31 of the bill provides for an effective date of July 1, 2011 and would add a proviso to the effective date provisions of that section to provide that the provisions of sections 27-a, 27-b and 27-c shall remain in force only so long as member contributions picked up under such sections are not includable as gross income under federal tax law provisions.

EXISTING LAW:

Chapter 504 of the Laws of 2009 implemented the retirement benefits commonly known as Tier 5. This legislation would implement a different set of benefits for employees hired after July 1, 2011.

JUSTIFICATION:

Pension costs are one of the fastest growing expenses for both the State and local governments. The recent pension reforms creating Tier 5 for new employees were a step in the right direction, but did not go far enough. This legislation, if enacted, will substantially stabilize local property taxes and provide significant mandate relief to local governments, taxpayers and the State of New York.

In addition, under current law, in many areas it is routine for employees near retirement to dramatically increase retirement benefits by manipulating overtime schedules. The proposed Tier 6 would control such "padding" by excluding overtime, as well as special lump sum payments for sick leave and accumulated vacation credits for time not worked from the computation of final retirement benefits.

It would also increase the employee contributions to the pension system from 3% to 6% and requires that an employee be employed for 12 rather than 10 years before having a

vested pension benefit. Moreover, full benefits would not become available until a member until retirement and attainment of age 65 rather than 62.

These reforms, if enacted, would keep pension costs affordable for the State and local governments, school districts, and other public employers by lessening this onerous burden, help drive down property taxes, reward hardworking government employees and maintain the fiscal integrity of localities and the State.

LEGISLATIVE HISTORY:

This is a new bill.

BUDGET IMPLICATIONS:

According to the fiscal note provided by the Office of the State Comptroller, the enactment of this bill would result in a reduction in the long term expected annual employer contribution rate in the Employees' Retirement System from 8.7% under Tier 5 to 3.6% under Tier 6. The expected annual employer contribution rate for Tier 4 employees is 11.0%.

The fiscal note also shows that this proposal will cause a reduction in the long term expected annual employer contribution rate for most employers in the Police and Fire Retirement System from 14.8%-15.1% under Tier 5 to approximately 10.0% under Tier 6. The expected annual employer contribution rate for employees hired prior to the enactment of Tier 5 is 18.5%-19.0% for most employers.

The fiscal note from the New York State Teachers' Retirement System estimates the long-term expected cost of the Tier 6 benefit to be 3.4% of salary, compared to 8.8% under Tier 5. The expected annual employer contribution rate for Tier 4 employees is 11.8%.

If this bill were to be enacted, the State and other public employers outside of New York City would save more than \$93 billion in pension costs over a 30 year period.

Furthermore, if enacted, New York City would save approximately \$30 billion in pension costs over a 30 year period.

EFFECTIVE DATE:

This bill would take effect on July 1, 2011, and apply to individuals who become members of an impacted retirement system on or after that date.