PROGRAM BILL # 3 2

GOVERNOR'S PROGRAM BILL
2012

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 employees' retirement system, the New York state and local police and fire 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 April 1, 2012; to amend the executive law, in relation to action by the people for illegal receipt or disposition of public funds or other property; and to amend the retirement and social security law, in relation to benefit enhancements

Purpose:

This bill would establish a Tier VI retirement benefit for new employees of the State and local governments thereby providing billions of dollars of fiscal relief to taxpayers, local governments and the State.

Summary of Provisions:

The following bill sections would impact members who first become members of the New York State and Local Employees' Retirement System ("ERS"), the 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"), 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 April 1, 2012:

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 to reach the age of 63 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 3 of the bill 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 4 and 5 of the bill would amend RSSL § 501 to give new NYC uniformed correction, uniformed sanitation and investigator members modified Tier 3 police/fire benefits. Also, Section 4 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. In addition, where wages were earned from three or more public employers in a 12-month period, the wages paid by the third and each consecutive employer would not be included in the base for determining retirement benefits.

Section 6 of the bill is intentionally omitted.

Section 7 of the bill would amend RSSL § 503 so that members of the ERS would need to reach the age of 63 before becoming eligible to receive the normal service retirement benefit. It would also give new NYCERS uniformed correction members modified Tier 3 police/fire service retirement benefits rather than current Tier 3 uniformed correction service retirement benefits.

Section 8 of the bill would amend RSSL § 504 so that members of the ERS, at normal retirement age would receive a pension equal to 1/60 of the final average salary multiplied by years of credited service with less than 20 years of service. Employees with more than twenty years of service would receive 1.75 percent of final average salary for the first 20 years of service and 1/50 of final average salary for each year in excess of 20 years (not in excess of 30 years). In addition, employees may retire at age 55 with a reduction of 6.5 percent per year for each year before age 63.

Sections 9, 10 and 11 of the bill would amend RSSL §§ 504-a, 504-b and 504-d, respectively, so that new NYC uniformed correction members would get the benefits of a modified Tier 3 police/fire plan rather than the current uniformed correction plans.

Section 12 of the bill would amend RSSL § 505 to give new NYC uniformed correction, uniformed sanitation and investigator members modified police/fire service retirement benefits.

Section 13 of the bill would amend RSSL § 507 to give new NYC uniformed correction, uniformed sanitation and investigator members modified police/fire accident disability retirement benefits.

Sections 14 and 15 of the bill would amend RSSL § 507-a and section 16 would amend RSSL § 507-c to give new NYC uniformed correction members Tier 3 police/fire disability benefits.

Section 17 of the bill would amend RSSL § 508 to give new NYC uniformed correction, uniformed sanitation and investigator members police/fire ordinary death benefits.

Section 18 of the bill 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 19 of the bill 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 would be applicable to new NYC uniformed sanitation and investigator members.

Section 20 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 10%, the amount in excess of 10% would be excluded from the computation of the final average salary.

Section 21 of the bill 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 22 of the bill is intentionally omitted.

Section 23 of the bill would amend RSSL § 516 so that affected employees will be entitled to a "deferred vested benefit" equal to 1/60 of their final average salary multiplied by years of credited service.

Section 24 of the bill would amend RSSL § 517 so that affected members of ERS, NYCERS, the New York City Police Pension Fund, and the New York City Fire Pension Fund would be required to contribute 3%, 3.5%, 4.5%, 5.75% or 6% of annual wages, depending on income levels, as their employee contribution. These contributions would take effect April first, two thousand thirteen. Prior to such date, affected employees would be required to contribute 3% of annual wages.

Section 25 of the bill 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 26 of the bill is intentionally omitted.

Section 27 of the bill 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 28 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. In addition, where wages were earned from three or more public employers in a 12-month period, the wages paid by the third and each consecutive employer would not be included in the base for determining retirement benefits.

Section 29 of the bill would amend RSSL § 601 to define members who join the NYCERS, NYCTRS or NYCBERS on or after April 1, 2012 as "New York City revised plan members".

Section 29-a of the bill would amend RSSL § 602 so that ten years of credited service is required for vesting.

Section 30 of the bill is intentionally omitted.

Sections 31 of the bill would amend RSSL § 603 (a) so that affected employees would need to reach the age of 63 before becoming eligible to receive the normal service retirement benefit.

Section 32 of the bill would amend RSSL § 603 (i) by making conforming changes and limiting retirement benefits available under Tier 5 to New York City transit employees who joined such systems before April 1, 2012.

Section 33 of the bill would amend RSSL § 603 (t) so that 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 33-a of the bill would amend RSSL § 604 so that affected employees would need to reach the age of 63 before becoming eligible for the normal service retirement benefit.

Section 34 of the bill would amend RSSL § 604 by adding a new subdivision b-1 so that affected employees with less than twenty years of credit service would be entitled to a pension equal to 1/60 of their final average salary multiplied by years of credited service. Employees with more than twenty years of service would receive 1.75 percent of final average salary for the first 20 years of service and 1/50 of final average salary for each year of service in excess of 20 years. In addition, employees may retire at age 55 with a reduction of 6.5 percent per year for each year before age 63.

Sections 35 and 36 of the bill would amend RSSL § 604-b (transit operating age 55/25-year plan); sections 37 and 38 would amend RSSL § 604-c, as added by Chapter 472 of the Laws of 1995 (TBTA 20-year/age 50 plan); sections 41 and 42 would amend RSSL § 604-e, as amended by Chapter 576 of the Laws of 2000 (dispatchers 25-year plan); sections 43 and 44 would amend RSSL § 604-e, as added by Chapter 577 of the Laws of 2000 (EMT 25-year plan); sections 45 and 46 would amend RSSL § 604-f, as added by Chapter 559 of the Laws of 2001 (deputy sheriff 25-year plan); sections 47 and 48 would amend RSSL § 604-f, as added by Chapter 582 of the Laws of 2001 (special officers 25-year plan); sections 49 and 50 would amend RSSL § 604-g (automotive members 25-year/age 50 plan); and sections 51 and 52 would amend RSSL § 604-h (police communications members 25-year plan) to provide benefits, payable at age 63, for new members of such special plans who do not reach the required service thresholds of their retirement plan.

Section 39 of the bill would amend RSSL § 604-c, as added by Chapter 472 of the Laws of 1995, to make the age 55/25-year plan inapplicable to new members of NYCERS and BERS; section 40 would amend RSSL § 604-d to make the age 57/5-year plan inapplicable to new members of NYCERS and BERS; and section 53 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 63. The only benefit of such special plans is to permit participants to retire early with an unreduced benefit.

Section 54 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 10%, the amount in excess of 10% would be excluded from the computation of the final average salary.

Section 55 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 56 of the bill would amend RSSL § 609 to prohibit new NYCERS non-uniformed members from receiving service credit for undocumented sick leave used as terminal leave.

Section 57 of the bill would amend RSSL § 612 so that affected employees would be entitled to a "deferred vested benefit" after reaching the age of 63 pursuant to the benefit set forth in new RSSL § 604.

Section 58 of the bill would amend RSSL § 613 so that affected members of ERS, TRS, NYCERS, NYCTERS, and NYCBERS would be required to contribute 3%, 3.5%, 4.5%, 5.75% or

6% of annual wages, depending on income levels, as their employee contribution. These contributions would take effect April first, two thousand thirteen. Prior to such date, affected employees would be required to contribute 3% of annual wages.

Section 59 of the bill is intentionally omitted.

Section 60 of the bill 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 61 and 62 of the bill 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 would be required to contribute 3%, 3.5%, 4.5%, 5.75% or 6% of annual wages, depending on income levels, as their employee contribution. These contributions would take effect April first, two thousand thirteen. Prior to such date, affected employees would be required to contribute 3% of annual wages.

Section 63 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 64 of the bill would amend RSSL § 1202 so that 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 65 of the bill would amend RSSL § 1204 so that PFRS members would be required to contribute 3%, 3.5%, 4.5%, 5.75% or 6% of annual wages, depending on income levels, as their employee contribution. These contributions would take effect April first, two thousand thirteen. Prior to such date, affected employees would be required to contribute 3% of annual wages.

Section 66 of the bill is intentionally omitted.

Section 67 of the bill would amend the RSSL by adding a new § 1209 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 10%, the amount in excess of 10% 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 68 of the bill would amend the RSSL by adding a new § 1210 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. In addition, where wages were earned from three or more public employers in a 12-month period, the wages paid by the third and each consecutive employer would not be included in the base for determining retirement benefits.

Sections 69, 70 and 71 of the bill are intentionally omitted.

Section 72 of the bill would amend Education Law ("Ed. L.") § 182 so that members of the Education Department Optional Retirement Program (ORP), would make contributions at the rate of 3%, 3.5%, 4.5%, 5.75% or 6% of annual wages, depending on income levels. These contributions would take effect April first, two thousand thirteen. Prior to such date, affected employees would be required to contribute 3% of annual wages.

Sections 72-a and 72-b of the bill would amend Ed. L §§ 390 and 392 to broaden the eligibility of "eligible employees," as newly defined in statute, to participate in the optional retirement program administered by SUNY and established under the Education Law.

Section 73 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 employees to make contributions at the rate of 3%, 3.5%, 4.5%, 5.75% or 6% of salary earned. Employers would contribute 8% of salary for the first seven years of service and 10% of salary for all years thereafter. These contributions would take effect April first, two thousand thirteen. Prior to such date, affected employees would be required to contribute 3% of annual wages.

Section 74 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 employees of the colleges administered by the Board of Higher Education of the City of New York to make contributions at the rate of 3%, 3.5%, 4.5%, 5.75% or 6% of salary earned. Employers would contribute 8% of salary for the first seven years of service and 10% of salary for all years thereafter. These contributions would take effect April first, two thousand thirteen. Prior to such date, affected employees would be required to contribute 3% of annual wages.

Sections 75, 76 and 77 of the bill 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 on a pre-tax basis in accordance with section 414 (h) of the Internal Revenue Code.

Section 78 of the bill 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 78 of the bill would amend the Executive Law§63-c to require the Attorney General to deposit into the public pension fund impacted all monies received in connection with the investigation, commencement or settlement of an action involving that fund arising out of its management, operation, investments or otherwise. This would include all actions commenced under New York's Martin Act.

Section 79 of the bill would provide that the benefits conferred by sections 75, 76 and 77 of the bill, if enacted, are completely contingent upon the existence of benefits contained in the Internal Revenue Code.

Section 80 of the bill would provide that rights accruing to employees pursuant to a collective bargaining agreement for the unexpired term of such agreement would not be limited by this bill and members of an employee organization who 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.

Section 81 of the bill provides that no enhancements, increases, or changes to the bill's benefit structure shall be authorized.

Sections 81-a of the bill would mandate that the State prepay the costs of any so-called pension "sweeteners." Such mandate shall not apply to bills which provide benefits to a specific public employer. It shall also not apply to benefits that must be elected by a public employer.

Section 81-b of the bill would add new Articles 23, 24, and 25 to permit members of the various retirement systems to request from the public employer an early retirement incentive funded by additional member contributions.

Section 82 of the bill is the severability clause.

Section 83 of the bill provides for an effective date.

Statement in Support:

Pension costs are one of the fastest growing expenses for both State and local governments. This bill would stabilize local property taxes and provide significant mandate relief to public employers - including school districts, counties, cities, towns and villages - saving billions to taxpayers over time.

The proposed Tier VI for new employees includes fair and equitable reform by: increasing employee contributions in a progressive fashion based on salary, raising the retirement age, decreasing the pension multiplier, excluding overtime and other payments from the formula used to calculate final average salary for pension allowances, and by broadening participation in the SUNY Optional Retirement Program. In addition, the intent of this legislation confirms that uniformed members covered by Article 14 of the RSSL are not covered by an Increased Take Home Pay program.

These reforms would save billions of dollars and 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.

Budget Implications:

The enactment of this bill would significantly reduce the long-term expected annual employer contribution rate in the ERS from 11.6% under Tier 4 and 9.4% under Tier 5 to 6.4% This proposal will also cause a similar reduction in the long-term expected annual employer contribution rate for most employers in the PFRS from 18.5%-19.0% under Tier 4,14.8%-15.1% under Tier 5 to 10.5% to 11.1%. For newly hired members of the NYSTRS, the long-term expected cost will fall significantly below the 11.8% rate for Tier 4 employees, and the 8.9% rate for Tier 5 employees to 4.6%.

This bill would save the State and public employers outside of New York City more than $60 billion in pension costs over a 30-year period. Furthermore, New York City would realize additional savings over a 30-year period.

Effective Date:

This bill takes effect on April 1, 2012, and would apply to individuals who become members of an impacted retirement system on or after that date.