

STATE OF NEW YORK

S. 5179

A. 5824

2021-2022 Regular Sessions

SENATE - ASSEMBLY

February 25, 2021

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

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to participation by free association libraries in the New York state and local employees' retirement system.

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 section 31-g to read as follows:

3 § 31-g. Participation by free association libraries. A free associ-
4 ation library as defined in section two hundred fifty-three of the
5 education law and which meets the criteria set forth in this section,
6 may by resolution adopted as provided in section seven hundred eight of
7 the not-for-profit corporation law by its board of trustees and subject
8 to the approval of the comptroller, elect to participate in the retire-
9 ment system. Acceptance of its employees for membership in the retire-
10 ment system shall be mandatory with the comptroller, who shall determine
11 the amounts of contribution payable by such library and its employees,
12 shall resolve questions of credit for prior service, and shall in all
13 other respects assure that such employees share the same rights, obli-
14 gations and benefits as other members of the retirement system. A free
15 association library shall be eligible to join the retirement system
16 under the following conditions:

17 (a) such library shall be chartered by the state board of regents;

18 (b) such library shall serve the entire population of its chartered
19 service area;

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

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1 (c) the board of trustees of such library shall be elected by the
2 voters of its chartered service area;

3 (d) such library's budget shall be approved by the voters of its char-
4 tered service area;

5 (e) at least fifty-one percent of such library's budget shall derive
6 from public sources; and

7 (f) such library shall file the annual report with the comptroller as
8 required of public libraries by section thirty of the general municipal
9 law.

10 § 2. This act shall take effect immediately.

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

This bill would permit any free association public library which meets certain specific criteria to elect participation in the New York State and Local Employees' Retirement System (NYSLERS).

If this bill is enacted during the 2021 legislative session and an eligible corporation elects participation, the future annual cost would depend on the retirement plan adopted and the billable salary of the electing corporation.

As a percentage of payroll, we anticipate that the annual contributions of the affected corporation for the fiscal year ending March 31, 2022, will be as follows:

Tier	Rate
1	12.2% to 25.0%
2	11.3% to 22.8%
3	18.0%
4	18.0%
5	15.0%
6	10.5%

In addition to the annual contributions discussed above, there will be a deficiency cost to the affected corporation which will be payable for a 25 year period. These costs will depend on the age, service, salary, tier status and plan of the affected employees.

Internal Revenue Service (IRS) plan qualification issues: permitting participation of non-governmental employees in the NYSLERS could jeopardize the Retirement System's governmental plan status and its exemption from ERISA. This development could result in the loss of qualified status, which would mean the loss of tax benefits. This result would substantially impair the System's value to our more than one million participants.

Prior to the enactment of this legislation, we recommend that a favorable ruling be obtained from the IRS stating that these provisions would not harm the qualification status of the System. It is estimated that the costs to obtain such a ruling would be \$28,000 for the services of the IRS, and \$800 per hour for legal consultants

Summary of relevant resources:

Membership data as of March 31, 2020 was used in measuring the impact of the proposed change, the same data used in the April 1, 2020 actuarial valuation. Distributions and other statistics can be found in the 2020 Report of the Actuary and the 2020 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2020 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, 2020 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 January 13, 2021, and intended for use only during the 2021 Legislative Session, is Fiscal Note No. 2021-35, prepared by the Actuary for the New York State and Local Retirement System.

BILL NUMBER: A5824

SPONSOR: Thiele

PURPOSE:

The bill would allow additional free association libraries to participate in the State retirement system, providing their librarians and other employees' equity with those free association libraries, which are currently in the retirement system, as well as with public libraries operating under other forms of governance.

SUMMARY OF PROVISIONS:

Section 1. Adds a new section 31-g to the retirement and social security law allowing free association libraries, which meet enumerated standards, to join the retirement system and providing for administration of the process. To be eligible, libraries must be chartered by the State Board of Regents, receive the majority of their revenues from public sources, provide for public voting on both their budgets and their trustees and file appropriate reports with the State Comptroller.

Section 2. Provides the effective date.

JUSTIFICATION:

Public libraries in New York generally operate under one of four types of governance. Some are agencies or departments of a municipality so the library staff are employees of the municipality and are thus members of the retirement system. Others are special districts created by special State legislation and their retirement system participation may be established by their enabling legislation. Others are voter established "school district public libraries" , which are eligible to participate in the State retirement system pursuant to section 31-a of the retirement and social security law.

The fourth type of public library governance is the free association library. Free association libraries are subject to the same rights and responsibilities pursuant to the education law as are public libraries operating under other types of governance. Funding for these libraries typically is provided by the municipality (or municipalities) in which they serve. These libraries receive the same state and federal aid as other public libraries. The largest and most well known free association library is the research library of the New York Public Library which is actually owned by the Astor, Lenox and Tilden Foundations. This free association library is specifically made eligible to participate in the retirement system by section 32 of the retirement and social security law. There are also other free association libraries across the State covered by the provisions of the retirement and social security law which allows for participation in the retirement system.

Those remaining free association libraries, which currently are not eligible to participate in the retirement system, are hampered in their ability to recruit and retain librarians and other staff. Experienced staff currently working on other libraries may be reluctant to accept employment which does not count toward their retirement, while entry level staff are likely to move to jobs at other libraries or other local government agencies which participate in the retirement system. Permitting the participation by these remaining libraries in the retirement

system will 'level the playing field' and ensure high quality library services for citizens in all parts of the State.

LEGISLATIVE HISTORY:

2020: S.5468/A.7399; 2017-18 S.5134A/A.6548A2011 A.574; 2010 A.10012

FISCAL IMPLICATIONS:

This bill would permit any free association public library which meets certain specific criteria to elect participation in the New York State and Local Employees' Retirement System (NYSLERS). If this bill is enacted during 2021 legislative session and an eligible corporation

elects participation, the future annual cost would depend on the retirement plan adopted and the billable salary of the election corporation. As a percentage of payroll, we anticipate that the annual contributions of the affected corporation for the fiscal year ending March 31, 2022, will be as follows:

Tier 1 12.2% to 25.0%
Tier 2 11.3% to 22.8%
Tier 3 18.0% Tier 4 18.0%
Tier 5 15.0% Tier 6 10.5%

In addition to the annual contributions discussed above, there will be a deficiency cost to the affected corporation which will be payable for a 25 year period. These costs will depend on the age, service, salary tier status and plan of the affected employees. Internal Revenue Service (IRS) plan qualification issues: permitting participation of non-governmental employees in the NYSLERS could jeopardize the Retirement System's governmental plan status and its exemption from ERISA. This development could result in the loss of qualified status, which would mean the loss of tax benefits. This result would substantially impair the System's value to our more than one million participants.

EFFECTIVE DATE:
Immediately.