

Committee on Civil Service and Labor
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The Council of the City of New York

COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION

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COMMITTEE ON CIVIL SERVICE AND LABOR

Hon. I. Daneek Miller, *Chair*

September 23, 2019

INT. NO. 888:

By Council Members Kallos, Miller, Lander, Rosenthal and Chin

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to establishing a retirement savings program for private-sector employees

ADMINISTRATIVE CODE:

Amends Title 20 by adding Chapter 14

INT. NO. 901:

By Council Members Miller, Kallos and Rosenthal

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to establishing a retirement savings board to oversee the city's retirement savings program for private-sector employees

ADMINISTRATIVE CODE:

Amends Chapter 14 of title 20 by adding new sections 20-1402, 20-1405, 20-1407, 20-1409, 20-1410 and 20-1411

INTRODUCTION

On September 23, 2019, the Committee on Civil Service and Labor, chaired by Council Member I. Daneek Miller, will hold a hearing on Int. No. 888 and Int. No. 901. Introduction No. 888, sponsored by Council Member Kallos, relates to establishing a retirement savings program for private-sector employees. Introduction No. 901, sponsored by Council Member Miller, relates to establishing a retirement savings board to oversee the city's retirement savings program for private sector employees. Witnesses invited to testify include the Mayor's Office of Pensions, the Law Department, retirement organizations, retirement plan providers and other interested parties.

BACKGROUND

As of July 2019, there were 4,035,800 private sector jobs in New York City.¹ This represents an increase of 83,500 or 2.1 percent in jobs since July 2018, with gains greatest in educational and health services (+40,200), professional and business services (+15,400), trade, transportation, and utilities (+11,300), and leisure and hospitality (+8,300).² Notably, the city's over-the-year private sector growth rate (+2.1%) was above the comparable rates for both New York State (+1.5%), and the nation (+1.7%).³

Although there are a significant number of private sector jobs within New York City, a large number of private sector employees lack retirement coverage, which is generally automatic for public-sector employees through public sector pensions or 401(k) retirement plans. In 2016, only 33 percent of New York City's private sector workers aged 25 to 64 years old were participating

¹ New York State Department of Labor. Labor Statistics. *Labor Statistics for the New York City Region*. Available at: <https://www.labor.ny.gov/stats/nyc/>.

² *Id.*

³ *Id.*

in a workplace retirement plan, down from 39 percent in 2006.⁴ In addition to the decrease in private sector workers participating in a workplace retirement plan, New York City workers are particularly below the national average participation rates of 37 percent.⁵ As workplace retirement plan participation rates among private sector workers in New York City declines, so does the prospects of New Yorkers remaining financially stable during their retirement years, as declining savings levels and the shift from traditional defined benefit pension plans to 401(k)-type plans threaten New Yorkers with the risk of lower standards of living or poverty in retirement.⁶

Since the 1980s, a decline in private sector pensions has occurred, partly due to the changes in the economy, but, mainly due to a series of laws—The Tax Equity and Fiscal Responsibility Act (1982), The Retirement Equity Act (1984), and The Tax Reform Act and Single Employer Pension Plan (1986), and The Pension Protection Act (2006).⁷ These laws essentially increased the volatility of the pension fund from year to year by making annual contributions to the pension plan less predictable, ultimately hurting the ability of the pension plan to recoup losses in the market and hurting the long-term sustainability of the fund.⁸ In addition, these laws increased the complexity and the scope of the regulatory burden facing private sector pension plans, which ultimately forced private companies to abandon their pensions.⁹

⁴ Ghilarducci, T., Papadopoulos M., and Webb, A. The New School: Schwartz Center for Economic Policy Analysis. *Retirement Readiness of New York City's Workers*, page 2. May 2018. Available at: https://www.economicpolicyresearch.org/images/NYC_repot_design_v4.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ Bond, Tyler. National Public Pension Coalition. *What Happened to Private Sector Pensions?* Available at: <https://protectpensions.org/2016/08/04/happened-private-sector-pensions/>.

⁸ *Id.*

⁹ *Id.*

As access to workplace retirement plans in the private sector has become less common, individual retirement accounts (IRAs) are one option for workers to begin to save for retirement. An IRA is an account set up at a financial institution that allows an individual to save for retirement with tax-free growth or on a tax-deferred basis.¹⁰ The main advantage of an IRA is that one can defer paying taxes on the earnings and growth of one's savings until the time to withdraw the money comes, however, the main disadvantage is that tax law imposes penalties if one has to withdraw any of the funds before the age of 59.5.¹¹ In choosing an IRA, there are three main types, of which each come with advantages and disadvantages:

- Traditional IRAs, allow contributions to be deducted on tax returns, with any earnings potentially being tax-deferred until withdrawal in retirement;¹²
- Roth IRAs, allow contributions with money that has been taxed, with any potential money withdrawn being tax-free in retirement, provided certain conditions are met;¹³ and
- Rollover IRAs, allow contributions with money that has been “rolled over” from a qualified retirement plan, such as 401(k) or (403(b), to be deposited in a traditional IRA.¹⁴

Financial experts estimate that an individual may need up to 85 percent of their pre-retirement income in retirement, with an employer-sponsored savings plan, such as a 401(k), not being substantial enough to accumulate the needed savings one may need in retirement.¹⁵ Thus, an IRA

¹⁰ Fidelity Investments. Planning & Advice. Building Savings. Learn About IRAs. *What is an IRA?* Available at: <https://www.fidelity.com/building-savings/learn-about-iras/what-is-an-ira>.

¹¹ Perez, W. Dotdash. The Balance. Retirement Decisions. Tax Tips. *Understanding Individuals Retirement Accounts-IRA*. Available at: <https://www.thebalance.com/individual-retirement-accounts-3193216>.

¹² Fidelity Investments. Planning & Advice. Building Savings. Learn About IRAs. *What is an IRA?* Available at: <https://www.fidelity.com/building-savings/learn-about-iras/what-is-an-ira>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

allows for one to fully or partially finance retirement savings, gain access to a wide range of investment choices, and take advantage of tax-deferred or tax-free growth.¹⁶

ANALYSIS OF INT. NO. 888

A Local Law to amend the administrative code of the city of New York, in relation to establishing a retirement savings program for private sector employees.

The bill would establish an individual retirement account (IRA) program for private-sector workers at businesses with 10 or more employees located in New York City that do not already offer retirement savings plans. Enrollment in the program is automatic, but employees may opt out. Contributions are handled through payroll deductions and set at a default rate, but employees may change their contribution rate. Savings accounts would be comprised of individual employees' savings only; neither employers nor the City would contribute to individual accounts. Covered employers would be required to distribute program information to employees. The bill also sets forth a complaint procedure and civil penalties for violations.

ANALYSIS OF INT. NO. 901

A Local Law to amend the administrative code of the city of New York, in relation to additional components of the retirement savings program for certain self-employed individuals and employees of private entities located in the city of New York.

The bill would establish a retirement savings board to facilitate the implementation of an individual retirement account (IRA) program for private-sector workers at businesses with 10 or more employees located in New York City that do not already offer retirement savings plans. The board would consist of three members, who are appointed by the Mayor. The powers of the board include directing the investment of funds contributed to the IRAs, entering into contracts with

¹⁶ *Id.*

financial institutions and administrators, minimizing fees and costs associated with the administration of the program, and conducting education and outreach to employers and employees. The board would be required to submit to the Mayor, the Speaker of the Council, the Comptroller and the Public Advocate an annual report of its activities and actions.

By Council Members Kallos, Miller, Lander, Rosenthal and Chin

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to establishing a retirement savings program for private-sector employees

Be it enacted by the Council as follows:

1 Section 1. Title 20 of the administrative code of the city of New York is amended by adding a new
2 chapter 14 to read as follows:

3 CHAPTER 14

4 RETIREMENT SAVINGS PROGRAM FOR PRIVATE-SECTOR EMPLOYEES

5 § 20-1401 Definitions.

6 § 20-1403 Establishment of retirement savings program.

7 § 20-1404 Certification required.

8 § 20-1406 Elements of retirement savings program.

9 § 20-1408 Covered employer obligations.

10 § 20-1412 Covered employer record retention.

11 § 20-1413 Enforcement.

12 § 20-1401 Definitions. For purposes of this chapter, the following terms have the following
13 meanings:

14 Account. The term “account” means an individual retirement savings account established
15 pursuant to the retirement savings program.

16 Administrator. The term “administrator” means a person that has entered an agreement
17 with the retirement savings board to implement and maintain a retirement savings program or
18 components of such program. More than one person may perform the functions of the
19 administrator, and duties applicable to the administrator also apply to persons with whom the
20 administrator contracts to implement such program or components.

21 Board. The term “board” means the retirement savings board, as defined in this section.

1 Covered employer. The term “covered employer” means any entity, whether for profit or
2 otherwise, with a physical location in the city where such entity (i) currently employs no fewer
3 than 10 employees and has employed no fewer than 10 employees without interruption for the
4 previous calendar year; (ii) has been in continuous operation for at least two years; (iii) has not
5 offered, in the preceding two years, to its employees who satisfy the definition of “eligible
6 employee” in this section, a retirement plan, as defined in this section; and (iv) has satisfied any
7 other criteria established by the board necessary to prevent the termination of other retirement
8 plans by covered employers.

9 Eligible employee. The term “eligible employee” means any employee: (i) who is 18 years
10 of age or older; (ii) who is employed either part-time or full-time for compensation in the city by
11 a covered employer; and (iii) to whom a retirement plan has not been offered by the covered
12 employer in the preceding two years.

13 Participating employee. The term “participating employee” means an eligible employee
14 that is enrolled in the retirement savings program.

15 Program. The term “program” means the retirement savings program, as defined in this
16 section.

17 Retirement plan. The term “retirement plan” means a qualified retirement plan under
18 subsection (a) of section 401 of the internal revenue code, subsection (a) or (b) of section 403 of
19 such code, or subsection (k) or (p) of section 408 of such code; or a savings incentive match plan
20 for employees of small employers (SIMPLE IRA or SIMPLE 401(k)) plan; a simplified employee
21 pension (SEP) plan; a salary reduction simplified employee pension (SARSEP) plan; a payroll
22 deduction IRA (individual retirement account or individual retirement annuity) under subsection
23 (a) or (b) of section 408 of the internal revenue code; or a Keogh plan.

1 Retirement savings board. The term “retirement savings board” means the retirement
2 savings board established by section 20-1402.

3 Retirement savings program. The term “retirement savings program” means the retirement savings
4 program established pursuant to section 20-1403, which may also be known as the “Savings
5 Access New York Retirement Program.”

6 § 20-1403 Establishment of retirement savings program. Subject to applicable federal and
7 state law, the board shall establish a retirement savings program as set forth in this chapter, either
8 directly or indirectly through agreement with an administrator. To the extent permitted by law, the
9 agreement between the board and an administrator shall allow the administrator to perform any
10 functions of the board. Such program shall be a defined contribution individual retirement account
11 program. The board shall require the administrator to exercise the care that persons of prudence,
12 discretion and intelligence exercise in the administration of the program established by this
13 chapter, and may require the administrator to assume legal responsibility and liability pursuant to
14 this chapter for functions to be performed by the administrator, provided, however, that nothing in
15 this chapter shall be construed as limiting the city’s responsibility for the security of payroll
16 deductions and employee savings under the program to the extent that assumption of such
17 responsibility is required to ensure that the program is not an “employee pension benefit plan” or
18 a “pension plan” for purposes of the employee retirement income security act of 1974.

19 § 20-1404 Certification required. Notwithstanding any inconsistent provision of this
20 chapter, the board shall not establish a retirement savings program under this chapter until both
21 the director of management and budget and the corporation counsel have jointly certified to the
22 following:

1 a. The program is within the scope of a regulatory exemption defining the coverage of the
2 terms “employee pension benefit plan” and “pension plan” established by a regulation of the
3 United States department of labor pursuant to title I of the employee retirement income security
4 act of 1974, or would fall within such scope with variations not inconsistent with the overall
5 purpose and policy of this chapter; and

6 b. Establishment and implementation of such program would not create additional material
7 monetary liability or obligation for, or an enforceable guarantee by, the city or its agencies, officers
8 or employees, except to the extent that assumption of such liability is required to ensure that the
9 program is not an “employee pension benefit plan” or a “pension plan” for purposes of the
10 employee retirement income security act of 1974.

11 § 20-1406 Elements of the retirement savings program. Subject to applicable federal and
12 state law and except as otherwise provided in this chapter, the retirement savings program shall
13 include all of the following elements. The program shall:

14 a. Allow eligible employees to contribute to an account established under the retirement
15 savings program through payroll deduction or any other method of contribution established by the
16 retirement savings board.

17 b. Apply to all covered employers.

18 c. Require a covered employer to offer its eligible employees the opportunity to contribute
19 to accounts established by the program through payroll deduction or any other method of
20 contribution established by the retirement savings board, unless such covered employer offers all
21 of its eligible employees a retirement plan.

22 d. Provide for the automatic enrollment of eligible employees and allow such employees
23 to opt out of the program.

- 1 e. Establish a default contribution rate of three percent of an eligible employee's income,
2 subject to any escalation or reduction of such rate authorized by the board pursuant to subdivision
3 i of section 20-1405.
- 4 f. Permit an eligible or participating employee to change his or her contribution rate or
5 discontinue making contributions.
- 6 g. Provide that individual retirement accounts established pursuant to this chapter are by
7 default Roth IRAs as defined in section 408A of the internal revenue code but shall allow
8 participating employees to, upon request, opt in to individual retirement accounts, as defined in
9 subsection (a) of section 408 of the internal revenue code.
- 10 h. Include (i) a default option for the placement by the program of eligible employees'
11 initial contributions to the retirement savings program in escrow for a fixed short-term time frame
12 to allow such employees to opt out of the program without incurring withdrawal penalties on those
13 initial contributions, and (ii) an option to opt out of such escrow arrangement.
- 14 i. Include a process for withdrawals by, and disbursements to, participating employees and
15 provide such employees options including lump-sum or annuitized payments.
- 16 j. Establish a default investment plan based on target dates while allowing eligible and
17 participating employees to select investment plans from other options provided by the board.
- 18 k. Take measures to protect the confidentiality of account and participating employee
19 information.
- 20 l. Provide that employers shall not contribute to accounts of employees.
- 21 m. Maintain, or require the maintenance of, separate records and accounting for each
22 account established pursuant to this chapter.

1 n. Provide for reports on the status of accounts to be given to participating employees no
2 less than once per year and upon request of any participating employee.

3 o. Allow previously eligible employees to maintain account savings or to roll over funds
4 into other retirement accounts.

5 p. Allow participating employees to terminate participation in the program and withdraw
6 all or part of the balances in their accounts, subject to possible penalties and limitations established
7 by federal law.

8 q. Provide that the city and covered employers have no proprietary interest in the
9 contributions or earnings of money contributed to accounts established pursuant to this chapter.

10 r. Provide that amounts deposited in the retirement savings program shall not be
11 commingled with funds belonging to or managed by the city.

12 s. Refrain from requiring any employer to perform any duty or offer any guarantee not
13 otherwise authorized by this chapter. The board shall not establish any guarantee by, or duty on
14 behalf of, the city except as otherwise required by law or authorized by this chapter.

15 t. Allocate administrative fees to individual retirement accounts in the program on a pro
16 rata basis. To the extent practicable, all fees required for the administration of the retirement
17 savings program shall be borne by participating employees or paid through funds received pursuant
18 to subdivision h of section 20-1405.

19 u. Require an annual audit as described in section 20-1411, which shall be performed by
20 an independent auditor.

21 § 20-1408 Covered employer obligations. a. Except as provided in subdivision d of this
22 section, a covered employer shall enroll each eligible employee who works for such covered
23 employer in the retirement savings program by a date to be determined by the board.

1 b. A covered employer shall be required to remit funds deducted from the earnings of each
2 participating employee for deposit in the retirement savings program on the earliest date on which
3 such contributions can reasonably be segregated from a covered employer’s general assets but in
4 no event later than the last business day of the calendar month following the month in which such
5 amounts would have otherwise been payable to the participating employee in cash.
6 Notwithstanding the preceding sentence, if the board promulgates rules in accordance with
7 subdivision h of section 20-1406, a covered employer shall remit funds in accordance with such
8 rules.

9 c. A covered employer shall not be permitted to endorse or contribute to the program.

10 d. A covered employer shall be required to distribute to its employees program information
11 provided by the board or the administrator and otherwise to allow the board to publicize the
12 program to employees.

13 e. The retirement savings board may delay implementation of the employer obligation
14 required by subdivision a of this section for covered employers, provided that such delay shall not
15 exceed three years from the initial enrollment of eligible employees, and provided further, that
16 such delay shall be based on the practicability of implementation using the following criteria:

- 17 1. The number of eligible employees;
- 18 2. The size of the covered employer; or
- 19 3. The sector or industry of the covered employer.

20 § 20-1412 Covered employer record retention. Each covered employer shall retain annual
21 records documenting such employer’s compliance with the requirements of this chapter for a
22 period of three years, unless otherwise required pursuant to any other law, rule or regulation, and
23 shall allow the agency or agencies designated by the mayor pursuant to section 20-1402 to access

1 such records upon request. In addition, such agency or agencies may require a covered employer
2 to provide electronic or paper copies of records upon request.

3 § 20-1413 Enforcement. a. The agency or agencies designated by the mayor pursuant to
4 subdivision j of section 20-1402 shall enforce sections 20-1408 and 20-1412.

5 b. In undertaking such enforcement, such agency or agencies shall establish a procedure to
6 allow individuals to submit complaints concerning non-compliance by covered employers with the
7 provisions of this chapter.

8 c. After notice and an opportunity to be heard, a covered employer who violates subdivision
9 a or b of section 20-1408 is liable for a civil penalty of \$250 per violation.

10 d. Each failure to comply with subdivision a or b of section 20-1408 with respect to each
11 eligible employee of a covered employer constitutes a separate violation. Where failure to comply
12 with subdivision a or b of section 20-1408 is ongoing, each two-week period of noncompliance
13 constitutes a separate violation with respect to each affected eligible employee, except that a
14 covered employer shall not be held liable for more than 26 weeks' worth of violations unless the
15 prosecuting agency demonstrates that the covered employer had actual notice of the requirements
16 of this chapter.

17 e. In addition to the penalties provided by subdivision c of this section, after notice and an
18 opportunity to be heard a covered employer that violates section 20-1412 by failing to retain annual
19 records is liable for a civil penalty of \$100 for each employee for which such covered employer
20 has failed to retain annual records. A covered employer that violates section 20-1412 by preventing
21 the agency or agencies designated by the mayor pursuant to section 20-1402 to access records for
22 which access is required under section 20-1412 is liable for a civil penalty of \$1,000 for each such
23 violation.

1 f. The agency or agencies designated by the mayor pursuant to subdivision j of section 20-
2 1402 may commence a proceeding to recover any civil penalty authorized by subdivision c or e of
3 this section by filing a petition returnable to the office of administrative trials and hearings, which
4 may impose the civil penalties prescribed by subdivisions c and e of this section. Such civil
5 penalties may, in the alternative, be recovered in a civil action brought by the corporation counsel
6 in a court of competent jurisdiction.

7 g. The corporation counsel may bring an action on behalf of the city to restrain or prevent
8 any violation of this chapter or a continuation of any such violation.

9 h. Pursuant to a written request by an eligible employee, the corporation counsel may also
10 bring an action on behalf of any eligible employee where such employee's covered employer has
11 failed to enroll such employee or has failed to remit such employee's contributions in accordance
12 with subdivision a or b of section 20-1408 to obtain any appropriate legal or equitable relief on
13 behalf of such eligible employee in furtherance of the purposes of this chapter.

14 i. An eligible employee who has not made a request of the corporation counsel pursuant to
15 subdivision h or who has made such a request upon which the corporation counsel has not acted
16 after 90 days from receipt of such request or upon which the corporation counsel has declined to
17 act, may bring an action in a court of competent jurisdiction for violation of subdivision a or b of
18 section 20-1408 to obtain any appropriate legal or equitable relief in furtherance of the purposes
19 of this chapter.

20 § 2. This local law takes effect 180 days after it becomes law.

KC/WCJ/MWC/HB (2017)/MMB (2018)

LS #3281/Int. 1574-2017

NEW LS # 250

5/3/18; 5:08 p.m.

By Council Members Miller, Kallos, Rosenthal and Chin

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to establishing a retirement savings board to oversee the city's retirement savings program for private-sector employees

Be it enacted by the Council as follows:

Section 1. Chapter 14 of title 20 of the administrative code of the city of New York is amended by adding new sections 20-1402, 20-1405, 20-1407, 20-1409, 20-1410 and 20-1411 to read as follows:

§ 20-1402 Establishment of retirement savings board; membership.

§ 20-1405 Powers of retirement savings board.

§ 20-1407 Rulemaking.

§ 20-1409 No guarantees permitted; potential losses.

§ 20-1410 Information and disclaimers to eligible and participating employees.

§ 20-1411 Annual report and audit.

§ 20-1402 Establishment of the retirement savings board; membership. a. There shall be a retirement savings board, which shall consist of three members.

b. The mayor shall appoint the members of the board. In making such appointments, the mayor shall consider factors including but not limited to the following:

1. Experience in the field of retirement savings plan administration or investment;

2. Actuarial or demographics experience;

3. Representation of an association of eligible employees or a representative of participating employees; and

4. Representation of covered employers, such as by a local chamber of commerce.

c. At its first meeting, the board shall select a chairperson from among its members by a majority vote of such board.

d. There shall be an advisory committee to the retirement savings board, the members of which shall be appointed as follows:

1. The speaker of the council shall appoint one member;

2. The comptroller shall appoint one member; and

3. The public advocate shall appoint one member.

e. Members of the advisory committee shall be appointed for three-year terms.

f. Board members shall serve at the pleasure of their appointing official.

g. Board and advisory committee members shall not receive compensation for work on such board or committee.

h. In the event of a vacancy on the board or the advisory committee during the term of office of a member by reason of removal, death, resignation, or otherwise, a successor shall be chosen in the same manner as the original appointment. A member appointed to fill a vacancy on the advisory committee shall serve for the balance of the unexpired term.

i. The board shall meet not less than once every quarter and whenever deemed necessary by a member of the board.

j. The mayor may designate one or more agencies to provide staffing and other administrative support to the board.

k. Within appropriations therefor, the board may appoint one or more employees, including an executive director who may assign and supervise board staff. The board may delegate powers and functions to such employees, or to staff of agencies designated by the mayor pursuant to subdivision j of this section.

§ 20-1405 Powers of the retirement savings board. Subject to applicable federal and state law, the board:

a. Shall direct the investment of funds contributed to accounts established in the retirement savings program pursuant to this chapter, in accordance with the objectives of such program and to the extent consistent with applicable provisions of the charter and administrative code.

b. Shall minimize all applicable fees and costs while maintaining prudent and proper management of the program to ensure minimal costs for participating employees.

c. May enter into contracts, agreements or arrangements for, and retain or employ, the services of private and public financial institutions, depositories, consultants, investment advisers, custodians, investment managers, program managers, third-party administrators, and other persons to carry out the purposes of this chapter.

d. Shall use any contributions paid by participating employees into the program exclusively for the purpose of paying benefits to such participating employees, for the cost of administration of the program, and for investments made for the benefit of participating employees.

e. Shall establish a plan to promote the retention of the services of minority- and women-owned business enterprise asset managers, financial institutions and professional service firms.

f. Shall educate and provide outreach to covered employers and eligible employees.

g. Shall consider and may make recommendations to the mayor and the council regarding the establishment of a distinct retirement savings program consistent with the employee retirement income security act of 1974 that would permit employer contributions.

h. Shall seek loans, grants or other contributions to offset or finance fees or costs for the administration of the retirement savings program on an ongoing basis from financial firms, institutions or government entities.

i. May implement escalation or reduction of participating employees' default contribution rates from time to time, provided that the board shall notify eligible employees at least 45 days in

advance of such escalation or reduction. If such an escalation or reduction is adopted, the board shall permit eligible and participating employees to opt out of such escalation or reduction.

j. May establish a process by which an individual may voluntarily enroll in and contribute to the program, provided that such enrollment and contributions are not inconsistent with the certifications required by section 20-1404.

k. May establish a process by which an employer that is not a covered employer may voluntarily enroll its employees in the program and allow those employees to contribute to the program, provided that such enrollment and contributions are not inconsistent with the certifications required by section 20-1404.

l. Shall establish a process by which a covered employer may seek a hardship exemption from this chapter, which may be obtained by demonstrating to the board's satisfaction that participation would be unduly burdensome for the employer.

m. Shall take all other actions necessary and appropriate to carry out the provisions of this chapter.

§ 20-1407 Rulemaking. a. The board may promulgate rules to implement the provisions of this chapter.

b. Such rules may establish variations from the requirements otherwise established by this chapter in order to conform to the scope of a regulatory exemption defining the coverage of the terms "employee pension benefit plan" and "pension plan" established by regulation of the United States department of labor pursuant to title I of the employee retirement income security act of 1974, provided that such variations are not inconsistent with the overall purpose and policy of this chapter.

c. Such rules may include any provisions necessary to ensure the program's exemption from the federal employee retirement income security act of 1974.

§ 20-1409 No guarantees permitted; potential losses. Except as otherwise required by federal or state law, no person including, but not limited to, a covered employer, the administrator, a member of the retirement savings board, the board itself, the city or any representative of any of the preceding shall guarantee a rate of return or interest for any contribution made to the retirement savings program. In addition, neither the board, its members, nor the city or any representative of the board, its members or the city shall be liable for any loss incurred by a participating employee, or any other individual or corporation, as a result of participating in the retirement savings program. Any liability of the administrator shall be confined to the liability defined by this chapter or by the agreement between the board and the administrator.

§ 20-1410 Information and disclaimers to eligible and participating employees. a. In addition to any other information that the board deems appropriate in furtherance of this chapter, the board shall make the following information available to eligible and participating employees in plain language:

1. The benefits and risks associated with making contributions to the retirement savings program;

2. Any applicable procedures regarding contributions to the retirement savings program and procedures for opting out of such program;

3. Any applicable procedures regarding escalating or reducing the rate of contribution;

4. Options and processes for withdrawing retirement savings;

5. Any applicable procedures for obtaining additional information about the retirement savings program;

6. Any applicable procedures for making complaints about non-compliance by covered employers or other concerns regarding the program; and

7. Information about the right of eligible and participating employees to seek financial advice concerning retirement savings from financial advisers, tax advisers or other qualified individuals.

b. In addition to any other disclaimers that the board deems appropriate in furtherance of this chapter, the board shall make the following disclaimers available to eligible and participating employees in plain language:

1. Covered employers, the retirement savings board and its members, and the city and its representatives are not authorized to provide financial advice;

2. The program is not an employer-sponsored retirement plan;

3. Covered employers, the retirement savings board and its members, and the city and its representatives are not liable for the investment decisions of eligible employees; and

4. Neither the existence of the program, the principal investment, any return on investment nor any interest rate is guaranteed by a covered employer, the retirement savings board or its members, or the city or its representatives, except as otherwise required by federal or state law.

§ 20-1411 Annual report and audit. a. The retirement savings program shall undergo an annual financial audit by an independent auditor.

b. No later than three months after the end of each calendar year, the board shall issue to the mayor, the speaker of the council, the comptroller and the public advocate, and publish on the city's website, an annual report that shall describe the board's activities and summarize its actions during the preceding calendar year. That report shall include:

1. The total number of participating employees;

2. The total number of eligible employees in the city;

3. The total number of participating employees enrolled in the program during the subject year;

4. The demographics and income levels of program participants, to the extent reasonably ascertainable;

5. The number of eligible employees that opted out of the program during the subject year;

6. The number and type of fines and civil penalties imposed by the agency or agencies designated by the mayor pursuant to section 20-1402, or any other relevant agency, for violating the requirements of this chapter;

7. The total assets under management in the program;

8. Rates of return of each of the investment options provided by the program for the subject year; and

9. The total cost of administering the program during the subject year.

c. The data required to be included in this annual report will also be made available on the city's website in a non-proprietary format that permits automated processing.

§ 2. This local law takes effect on the same date as a local law to amend the administrative code of the city of New York relating to establishing a retirement savings program for private-sector employees takes effect, as proposed in introduction number {__} for the year {__}, takes effect.

§ 3. The report required by subdivision b of section 20-1411 of the administrative code of the city of New York, as added by section one of this local law, need only include information pertaining to the period that this local law has been in effect.

§ 4. No later than 180 days after the effective date of this local law, the public advocate, in conjunction with the mayor, the speaker of the council, the comptroller, and the relevant borough

president may hold one or more public fora in each borough to provide information to, and address questions and concerns of, residents of the city regarding the retirement savings program for private-sector employees.

KC/WCJ/MWC/HB (2017)/MMB (2018)
LS #2180.1/Int. 1580-2017
NEW LS # 1207
5/3/18; 11:15 a.m.