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*

April 29, 2021

**PROPOSED INT. NO. 888-A:** By Council Members Kallos, Miller, Lander, Rosenthal, Chin, Louis, Reynoso, Cabrera, Vallone, Dromm, Adams, Maisel, Ayala, Cornegy, Moya, Koo, Barron, Salamanca, Gibson and Gjonaj

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to establishing a retirement savings program for certain self-employed individuals and employees of private entities

**ADMINISTRATIVE CODE:** Amends Title 20 by adding Chapter 14

**PROPOSED INT. NO. 901-A**: By Council Members Miller, Kallos, Rosenthal, Chin, Louis, Lander, Reynoso, Vallone, Dromm, Adams, Maisel, Ayala, Cornegy, Moya, Koo, Barron, Cabrera, Salamanca, Gibson and Gjonaj

**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 certain self-employed individuals and employees of private entities, and setting forth powers of the comptroller and other provisions in relation to such program

**ADMINISTRATIVE CODE:** Amends Chapter 14 of title 20 by adding new sections 20-1402, 20-1405, 20-1406, 20-1408, 20-1410 and 20-1412

**INTRODUCTION**

 On April 29, 2021, the Committee on Civil Service and Labor, chaired by Council Member I. Daneek Miller, will hold a vote Proposed Int. No. 888-A and Proposed Int. No. 901-A. Proposed Introduction No. 888-A, sponsored by Council Member Kallos, relates to establishing a retirement savings program for certain self-employed individuals and employees of private entities. Proposed Introduction No. 901-A, sponsored by Council Member Miller, relates to establishing a retirement savings board to oversee the city’s retirement savings program for certain self-employed individuals and employees of private entities.

The Committee previously held a hearing on a former version of the legislation on September 23, 2019. Witnesses invited to testify at that hearing included 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]](#footnote-2) 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]](#footnote-3) 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]](#footnote-4)

 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 in a workplace retirement plan, down from 39 percent in 2006.[[4]](#footnote-5) 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]](#footnote-6) 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]](#footnote-7)

 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]](#footnote-8) 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]](#footnote-9) 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]](#footnote-10)

 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]](#footnote-11) 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]](#footnote-12) 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]](#footnote-13)
* 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]](#footnote-14) 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]](#footnote-15)

 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]](#footnote-16) Thus, an IRA 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]](#footnote-17)

**ANALYSIS OF LEGISLATION**

***Analysis of Proposed Int. No. 888-A***

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

 This bill would create a mandatory auto-enrollment payroll deduction IRA program for employees of private sector employers which do not offer a retirement plan and employ five or more employees. The default employee contribution rate would be 5%, which employees can adjust up or down, or opt-out of at any time, up to the annual IRA maximum of $6,000 (or $7,000 if age 50 or above). The plan would be portable so when employees switch jobs they can continue to contribute or roll over their accounts into other retirement savings plans. Employers would not contribute on behalf of employees.

The bill would take effect in 90 days, however, the retirement security board, created by Proposed Int. No. 901-A, would have up to two years after its enactment to implement the program.

Since introduction, Proposed Int. No. 888-A was amended to clarify certain definitions, the certification process, elements of the retirement savings program, and with regard to enforcement and the discontinuation of the savings program. Specifically, the definition of “covered employer” was changed from employers with no fewer than 10 employees to employers with no fewer than 5 employees. The eligible employee age was raised from 18 to 21 and only those employees who work at least 20 hours a week are now considered eligible under the new definition. There was also language added to the definitions for other eligible employers offering the program and to other eligible individuals who are not considered a covered employee.

The certification process mentioned within the original bill was modified to state that the board shall not implement the program if the state establishes a substantively similar retirement savings program or if the corporation counsel certifies there is a substantial likelihood this program conflicts with state or federal law or if the director of OMB or the Comptroller certify the program would create a material risk of substantial monetary liability for the City.

Proposed Int. 888-A also changes the elements of the retirement savings program by adjusting the default contribution rate from 3% to 5%, eliminating escrow for employees’ initial contributions, and eliminating the requirement that default investment be target date funds.

Finally, the new language modifies an eligible employees’ private right of action from 90 days of receipt of violation to within four months of receipt of violation, and authorizes the savings board to take steps to discontinue the program.

***Analysis of Proposed Int. 901-A***

*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 certain self-employed individuals and employees of private entities, and setting forth powers of the comptroller and other provisions in relation to such program*

 This bill would establish a retirement savings board to facilitate the implementation the retirement security program created by Proposed Int. No. 888-A. The board would consist of three members, who are appointed by the Mayor. The powers of the board include determining the start date of the program, entering into contracts with financial institutions and administrators, minimizing fees and costs associated with the administration of the program, creating a process for those not employed by a covered employer to participate, and conducting education and outreach to employers and employees. The board would work with the Comptroller—who is responsible for managing trust funds held by the City, such as the pension funds—to select the investment strategies and policies. The board would be required to report annually on its activities and actions.

The bill would take effect in 90 days, however, the board would have up to two years to implement the program.

 Since introduction, Proposed Int. No. 901-A has been amended to allow the retirement savings board additional responsibilities. Specifically, the amended language allows the board to phase in implementation of the program over two years from initial enrollment; to recommend an investment strategy; to establish a process by which participating employers who cease to be covered employers can discontinue participation in the program; to partner or form a consortium with other states or governmental entities; and to establish procedures to ascertain whether an employer is covered by the program. The new language also clarifies that the Comptroller may exercise their existing authority to oversee the investment of trust funds.

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Proposed Int. No. 888-A

By Council Members Kallos, Miller, Lander, Rosenthal, Chin, Louis, Reynoso, Cabrera, Vallone, Dromm, Adams, Maisel, Ayala, Cornegy, Moya, Koo, Barron, Salamanca and Gibson

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to establishing a retirement savings program for certain self-employed individuals and employees of private entities

Be it enacted by the Council:

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

**CHAPTER 14**

**SAVINGS ACCESS NEW YORK - BOARD AND PROGRAM FOR PRIVATE SECTOR EMPLOYEE RETIREMENT SAVINGS**

**§ 20-1401 Definitions.**

**§ 20-1402 Reserved.**

**§ 20-1403 Establishment of the retirement savings program.**

**§ 20-1404 Certification authorized.**

**§ 20-1405 Reserved.**

**§ 20-1406 Reserved.**

**§ 20-1407 Elements of the retirement savings program.**

**§ 20-1408 Reserved.**

**§ 20-1409 Participating employer obligations.**

**§ 20-1410 Reserved.**

**§ 20-1411 Information and disclaimers to covered employees, other eligible individuals, and participants.**

**§ 20-1412 Reserved.**

**§ 20-1413 Participating employer record retention.**

**§ 20-1414 Enforcement.**

**§ 20-1415 Discontinuation of the retirement savings program.**

**§ 20-1401 Definitions.** For purposes of this chapter, the following terms have the following definitions:

Account. The term “account” means an individual retirement savings account established by the retirement savings program.

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

Comptroller. The term “comptroller” means the comptroller of the city of New York.

Covered employee. The term “covered employee” means any employee as defined in subdivision 2 of section 190 of the labor law: (i) who is twenty-one years of age or older; (ii) who is employed for compensation by a covered employer in a position in which he or she is regularly scheduled to work at least 20 hours per week; and (iii) whose regular duties occur in the city, consistent with any rules promulgated by the retirement savings board pursuant to section 20-1408.

Covered employer. The term “covered employer” means any employer as defined in subdivision 3 of section 190 of the labor law that (i) employs no fewer than five employees whose regular duties occur in the city, consistent with any rules promulgated by the retirement savings board pursuant to section 20-1408; (ii) has employed no fewer than five such employees without interruption for the previous calendar year; (iii) has been in continuous operation for at least two years; and (iv) has not offered or maintained in the preceding two years a retirement plan, provided that an entity described in clauses (i) through (iv) in the definition of “participating employer” shall not constitute a covered employer.

IRA. The term “IRA” means either an individual retirement account or individual retirement annuity established under section 408 (traditional) or 408A (Roth) of the internal revenue code.

Other eligible employer. The term “other eligible employer” means an employer as defined in subdivision 3 of section 190 of the labor law that is authorized to offer the retirement savings program to its employees pursuant to subdivision m of section 20-1405 or any rule promulgated by the retirement savings board pursuant to section 20-1408.

Other eligible individual. The term “other eligible individual” means a self-employed individual or an employee as defined in subdivision 2 of section 190 of the labor law who is not a covered employee: (i) who is twenty-one years of age or older; and (ii) who is permitted to enroll in the retirement savings program pursuant to subdivision l or m of section 20-1405 or pursuant to any rule promulgated by the retirement savings board pursuant to section 20-1408.

Participant. The term “participant” means a covered employee enrolled in the retirement savings program or any other eligible individual who is enrolled in the retirement savings program pursuant to subdivision l or m of section 20-1405 or pursuant to any rule promulgated by the retirement savings board pursuant to section 20-1408.

Participating employer. The term “participating employer” shall mean any covered employer and any other eligible employer that chooses to offer the retirement savings program to its employees pursuant to subdivision m of section 20-1405 or any rule promulgated by the retirement savings board pursuant to section 20-1408; provided that (i) the United States government, (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary, (iii) the city or any local government or municipality, or (iv) any public corporation as defined by section 65 of the general construction law shall not constitute a participating employer.

Person. The term “person” means a person as defined in subdivision ten of section 1-112.

Retirement plan. The term “retirement plan” means a qualified retirement plan under section 401(a) of the internal revenue code, section 403(a), section 403(b), section 408(k), or section 408(p) of the internal revenue code; or a savings incentive match plan for employees of small employers (SIMPLE IRA Plan or SIMPLE 401(k) plan); a simplified employee pension (SEP); a salary reduction simplified employee pension (SARSEP); a payroll deduction IRA; or the New York state secure choice savings program established pursuant to section 1301 of the general business law.

Retirement savings board. The terms “retirement savings board” or “board” mean the retirement savings board established by section 20-1402.

Retirement savings program. The terms “retirement savings program” or “program” mean the retirement savings program established pursuant to section 20-1403, which will also be called the “Savings Access New York Retirement Program.”

**§ 20-1403 Establishment of the retirement savings program.** Subject to applicable federal and state law, the board, in coordination with the comptroller with respect to the authority described in section 20-1406, shall establish a retirement savings program as set forth by this chapter, either directly or indirectly through agreement with an administrator pursuant to section 20-1405, for the purpose of promoting greater retirement savings for individuals in the New York city private sector. The program shall be designed and operated in a manner that will cause it not to constitute an employee benefit plan within the meaning of section 3(3) of the employee retirement income security act of 1974.

**§ 20-1404 Certification authorized**. Notwithstanding any inconsistent provision of this chapter, the board shall not implement a retirement savings program as set forth by this chapter if:

a. the board certifies to the mayor and speaker in writing that the state establishes a retirement savings program that requires a substantial portion of employers who would otherwise be covered employers to offer to their employees the opportunity to contribute to accounts through payroll deduction or other method of contribution; or

b. the corporation counsel certifies to the mayor and speaker in writing that there is a substantial likelihood that such program conflicts with, or is preempted by, state or federal law, including the employee retirement income security act of 1974, or constitutes an employee benefit plan under such act; or

c. the director of management and budget and the comptroller each certify to the mayor and speaker in writing that establishment and implementation of such program would create a material risk of a substantial additional monetary liability or obligation for, or an enforceable guarantee by, the city or its agencies, officers or employees, beyond the ordinary costs of administration.

**§ 20-1407 Elements of the retirement savings program.** Subject to applicable federal and state law and except as otherwise provided in this chapter, the retirement savings program shall include the following elements:

a. Allow covered employees and other eligible individuals to contribute to an IRA established under the retirement savings program through payroll deduction or any other method of contribution established by the retirement savings board.

b. Apply to all participating employers.

c. Require all participating employers to offer covered employees the opportunity to contribute to accounts established by the program through payroll deduction or any other method of contribution established by the retirement savings board.

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

e. Establish a default contribution rate of five percent of a covered employee’s wages, subject to any increase or decrease of such rate authorized by the board pursuant to subdivision k of section 20-1405.

f. Permit a covered employee to change his or her contribution rate and permit any other eligible individual who enrolls in the program to establish a contribution rate as a percent of his or her wages, which rate such individual may later change, or make lump-sum contributions to the program.

g. Include a process for withdrawals by, and disbursements to, participants and provide participants options for such withdrawals and disbursements, including lump-sum or periodic payments.

h. Take measures to protect the confidentiality of account and participant information.

i. Provide that employers shall not contribute to accounts of participants or endorse or otherwise promote the program in a manner that would cause the program to become an employee benefit plan under the employee retirement income security act of 1974.

j. Maintain, or require the maintenance of, separate records and accounting for each account established pursuant to this chapter.

k. Provide for reports on the status of accounts to be provided to participants no less than once per year and upon request of any participant.

l. Allow participants who have become ineligible to participate in the program to maintain or withdraw account balances or roll over such balances into other retirement accounts, subject to any applicable penalties and limitations established by federal law.

m. Allow participants to terminate participation in the program and maintain or withdraw account balances or roll over such balances into other retirement accounts, subject to any applicable penalties and limitations established by federal law.

n. Refrain from requiring any participating employer to perform any duty or offer any guarantee not otherwise authorized by this chapter. In addition, the board shall not establish any guarantee by, or duty on behalf of, the city except as otherwise required by law or authorized by this chapter.

o. Allocate administrative fees to IRAs in the program. To the extent consistent with the purpose of this chapter and practicable, all fees required for the administration of the retirement savings program shall be borne by participants or paid through funds received pursuant to subdivision j of section 20-1405.

**§ 20-1409 Participating employer obligations.** a.A covered employer shall enroll each of its covered employees in the retirement savings program established by this chapter by a date to be determined by the board.

b. A participating employer shall be required to remit funds deducted from the earnings of each participant for deposit in the retirement savings program periodically on the earliest practicable date, consistent with rules promulgated by the board pursuant to section 20-1408.

**§ 20-1411 Information and disclaimers to covered employees, other eligible individuals, and participants.** In addition to any other information or disclaimers that the board deems appropriate in furtherance of this chapter, the board shall make available to covered employees, other eligible individuals, and participants:

a. the following information in plain language and in the designated citywide languages, as defined in section 23-1101:

1. The benefits and risks associated with enrolling in the retirement savings program;

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

3. Any applicable procedures regarding increasing or decreasing the rate or amount of contribution;

4. Options and processes for withdrawing account balances;

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

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

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

8. Fund profiles, including fees, for each of the available investment options; and

b. the following disclaimers in plain language and in the designated citywide languages, as defined in section 23-1101:

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

2. The program is not an employee benefit plan under the employee retirement income security act of 1974;

3. Participating employers, the retirement savings board and its members, the comptroller, and the city and its representativesare not liable for any loss incurred by a participant, as a result of participating in the retirement savings program;

4. Participating employers, the retirement savings board and its members, the comptroller, and the city and its representatives will not monitor and are not obliged to monitor any participant’s eligibility under the internal revenue code to make contributions to an IRA; and

5. Neither the program, the principal investment, any return on investment nor any interest rate is guaranteed by participating employers, the retirement savings board or its members, the comptroller, or the city or its representatives except as otherwise required by federal or state law.

**§ 20-1413 Participating employer record retention.** Each participating employer shall retain annual records documenting such employer's compliance with the requirements of this chapter for a period of three years unless otherwise required pursuant to any other law, rule, or regulation, and shall allow the agency or agencies designated by the mayor pursuant to section 20-1402 or 20-1414 to access such records upon request, provided that such access shall be obtained in accordance with applicable law. In addition, such agency or agencies may require a participating employer to provide electronic or paper copies of records upon request.

**§ 20-1414 Enforcement.** a. Designated office or agency. The mayor shall designate an office or agency to enforce sections 20-1409 and 20-1413. For purposes of this section, such office or agency shall be referred to as the “enforcement agency.”

b. Violations and penalties. 1. A participating employer who violates subdivision a or b of section 20-1409 or any rule implementing such subdivisions shall be liable for a civil penalty of not more than $250 for such violation, provided that the civil penalty for a violation that occurs within two years of any previous violation shall be not more than $500 for the second violation, and not more than $1,000 for any subsequent violation within the two-year period. A violation constitutes a failure to comply with subdivision a or b of section 20-1409 with respect to each covered employee or other eligible individual.

2. Notwithstanding paragraph 1 of this subdivision, a participating employer who violates section 20-1413 or any rule implementing such section shall be liable for a civil penalty of $100 for each such violation. A violation constitutes a failure to comply with the requirements of such section or any rule implementing such section with respect to each covered employee or other eligible individual.

3. Notwithstanding paragraphs 1 and 2 of this subdivision, an employer, whether participating or non-participating, found to be in violation of any requirement of this chapter not specified in paragraphs 1 and 2 of this subdivision, or of any rule implementing this chapter not specified in such paragraphs, shall be liable for a civil penalty of $100 for each such violation. A violation constitutes a failure to comply with any such requirement of this chapter or any rule implementing such requirement with respect to each covered employee or other eligible individual.

c. Enforcement. 1. Any covered employee or other eligible individual alleging a violation described in subdivision b of this section may file a complaint with the enforcement agency within one year of the date such employee learned or should have learned of the alleged violation.

2. The enforcement agency may, at any time after the filing of a complaint, resolve the complaint by any method of dispute resolution, unless such complaint is withdrawn by the complainant.

3. The enforcement agency shall keep complainants reasonably notified regarding the status of their complaint.

4. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the enforcement agency believes that a violation has occurred, it may issue a notice of violation to the participating employer. The notice of violation shall be returnable to the office of administrative trials and hearings. Such office shall have the power to impose the penalties described by subdivision b of this section, and to order any appropriate legal and equitable relief with respect to a covered employee or other eligible individual in furtherance of the purposes of this chapter, provided that the enforcement agency may reserve to itself the power to issue final decisions, determinations and orders, after receiving the recommendation of such office, on matters other than findings of fact.

5. The enforcement agency may settle a notice of violation at any time prior to the conclusion of an adjudication, provided that any complainant who opts out of such settlement may withdraw his or her complaint and exercise a private right of action pursuant to subdivision d of this section.

d. Private Right of Action. 1. Any covered employee or other eligible individual alleging a violation described in paragraph 1 or 2 of subdivision b of this section may bring a civil action or proceeding pursuant to this section against a participating employer only when:

(A) such covered employee or other eligible individual has filed a complaint with the enforcement agency pursuant to paragraph 1 of subdivision c of this section arising out of the same facts and circumstances, the enforcement agency has not, within four months, either resolved such complaint with the consent of the complainant or issued a notice of violation, and such employee or individual has withdrawn such complaint;

(B) such covered employee or other eligible individual has filed a complaint with the enforcement agency pursuant to paragraph 1 of subdivision c of this section arising out of the same facts and circumstances, has opted out of a settlement reached by such agency, and has withdrawn such complaint; or

(C) the enforcement agency has terminated the administrative proceeding prior to a decision of the office of administrative trials and hearings on the merits of the complaint.

2. The remedy in any civil action or proceeding undertaken pursuant to this subdivision may include any appropriate legal or equitable relief with respect to a covered employee or other eligible individual in furtherance of the purposes of this chapter, including recovery of costs and reasonable attorneys’ fees.

3. Where the corporation counsel has brought a civil action or proceeding pursuant to subdivision e of this section against a participating employer alleging violations described in subdivision b of this section, a covered employee or other eligible individual shall not bring a civil action or proceeding pursuant to this subdivision, arising out of the same facts and circumstances, against such employer, unless such covered employee or other eligible individual has obtained the consent of the corporation counsel.

e. The corporation counsel may bring a civil action or proceeding against any employer:

1. to impose the civil penalties authorized by subdivision b of this section and compel compliance with this chapter or restrain or prevent any violation described in such subdivision or any continuance of any such violation, and to recover costs and reasonable attorneys’ fees; and

2. to obtain any appropriate legal or equitable relief with respect to any covered employee or other eligible individual harmed by any violation described in subdivision b of this section.

**§ 20-1415 Discontinuation of the retirement savings program.** a.Notwithstanding any inconsistent provision of this chapter, in the event of the occurrence of the events described in subdivision b of this section and after reasonable advance notification to the mayor and speaker, the board and the comptroller shall take all necessary steps to discontinue the retirement savings program established pursuant to this chapter. Such steps shall include, but not be limited to, informing participants of available appropriate investment alternatives, allowing participants to transfer or roll over the balance of their accounts into such other appropriate investment accounts, or otherwise paying out account balances according to participants’ instructions, subject to possible penalties and limitations established by federal law.

b. Any of the following events shall serve as a basis for the discontinuation of the retirement savings program:

1. the board certifies to the mayor and speaker in writing that the state has established a retirement savings program that requires a substantial portion of employers who would otherwise be covered employers to offer to their employees the opportunity to contribute to accounts through payroll deduction or other method of contribution; or

2. the corporation counsel certifies to the mayor and speaker in writing that there is a substantial likelihood that such program conflicts with, or is preempted by, state or federal law, including the employee retirement income security act of 1974, or constitutes an employee benefit plan under such act; or

3. the director of management and budget and the comptroller each certify to the mayor and speaker in writing that establishment and implementation of such program would create a material risk of a substantial additional monetary liability or obligation for, or an enforceable guarantee by, the city or its agencies, officers or employees, beyond the ordinary costs of administration.

§ 2. This local law takes effect 90 days after it becomes law, provided that the mayor, the comptroller, the retirement security board, and all other affected agencies may take all actions necessary for the implementation of chapter 14 of title 20 of the administrative code of the city of New York, as added by this local law, prior to such effective date.

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

LS #3281/Int. 1574-2017

NEW LS # 250

4/21/21 5:55PM

Proposed Int. No. 901-A

By Council Members Miller, Kallos, Rosenthal, Chin, Louis, Lander, Reynoso, Vallone, Dromm, Adams, Maisel, Ayala, Cornegy, Moya, Koo, Barron, Cabrera, Salamanca and Gibson

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 certain self-employed individuals and employees of private entities, and setting forth powers of the comptroller and other provisions in relation to such program

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, as added by a local law for the year 2021 amending the administrative code of the city of New York, relating to establishing a retirement savings program for certain self-employed individuals and employees of private entities, is amended by adding new sections 20-1402, 20-1405, 20-1406, 20-1408, 20-1410, and 20-1412 to read as follows:

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

**§ 20-1405 Powers of retirement savings board.**

**§ 20-1406 Powers of the comptroller**

**§ 20-1408 Rulemaking.**

**§ 20-1410 No guarantees permitted; potential losses.**

**§ 20-1412 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. The members of the board shall be appointed by the mayor.

b. In making such appointments, the mayor may consider factors, including, but not limited to, the following:

1. Experience in the field of retirement plan administration;

2. Actuarial or demographics experience;

3. Representation of covered employees, other eligible individuals, or participants; and

4. Representation of covered employers, other eligible employers, or participating employers.

c. The mayor shall designate one member of the board to act as the chair.

d. Board members shall serve at the pleasure of the mayor and shall not receive compensation for work on such board.

e. The board shall meet not less than once every quarter and whenever deemed necessary by at least two members of the board.

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

g. 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 f of this section.

**§ 20-1405 Powers of the retirement savings board**. Subject to applicable federal and state law, including its duties as a fiduciary, the board may:

a. After consultation with the comptroller, determine the date upon which the program established pursuant to this chapter shall become operational and begin accepting contributions from participants, provided that such date shall be no later than two calendar years after the effective date of this chapter, unless the board determines that a further delay is reasonably necessary to ensure the effective operation of the program. The board shall provide notice of such determination to delay the program to the mayor, comptroller, and speaker no later than 90 days prior to two calendar years after the effective date of this chapter and shall indicate what conditions contribute to such determination and an approximation of the additional time required to ensure effective operation of the program, provided, however, that such time shall not be longer than six calendar months or an additional notice shall be required prior to the end of such time indicating the present circumstances and providing an updated date for the program to become operational.

b. Delay implementation of the obligation imposed by subdivision a of section 20-1409 upon a covered employer, provided that:

1. such delay shall not exceed two years from the initial enrollment of covered employees;

2. such delay shall be based upon the practicability of implementation using the following criteria:

i. the number of covered employees;

ii. the size of the covered employer; or

iii. the sector or industry of the covered employer; and

3. the board shall provide to the mayor and speaker and post on its website, the identity of any covered employer for whom implementation is delayed and the length of the delay granted.

c. Enter into contracts, agreements, or arrangements with one or more administrators allowing such administrators to perform any functions of the board. Under any such contract, agreement, or arrangement, the board: (i) shall require an administrator to exercise the duties of a fiduciary in the administration of the program established by this chapter, (ii) shall require an administrator to comply with any standards concerning the receipt and safekeeping of such funds as may be issued by the comptroller pursuant to section 20-1406, (iii) shall require an administrator to incorporate and offer the investments selected by the comptroller pursuant to section 20-1406, and (iv) may require an administrator to assume legal responsibility and liability pursuant to this chapter for functions to be performed by an administrator.

d. Enter into any contracts, agreements, or arrangements with any person deemed qualified by the board and create any written instruments necessary, including, but not limited to, trust agreements, to create IRAs for participants in compliance with the internal revenue code. Under any such contracts, agreements, arrangements, or written instruments, the assets of IRAs established for participants: shall be combined for the purpose of making investments directed by the comptroller pursuant to section 20-1406; shall be managed and administered for the exclusive purposes of providing benefits to participants and defraying reasonable expenses of administering, maintaining, and managing such investments of the program, including, but not limited to, the expenses of the board and the comptroller; shall at all times be preserved, invested, and expended solely for the purposes of the program and no property rights therein shall exist in favor of the city or any participating employer; shall be received and held in compliance with standards concerning the receipt and safekeeping of such assets as may be issued by the comptroller pursuant to section 20-1406; shall not be transferred or used by the city for any purposes other than the purposes of the program or funding the expenses of operating the program; shall not constitute property of the city; and shall not be commingled with city funds, and the city shall have no claim to or against, or interest in, the trust assets. The board and any such person shall be fiduciaries with respect to the IRAs established and maintained under the program to the extent required by applicable law or any such contract, agreement, arrangement, or written instrument.

e. Enter into any other contracts, agreements, or arrangements for, and retain or employ, the services of any other person deemed qualified by the board to carry out the purposes of this chapter, subject to the authority of the comptroller pursuant to section 20-1406.

f. Allow participants to allocate assets of their IRAs among investment options and designate an investment option as a default investment for the IRAs of covered employees who do not make an investment choice.

g. Establish a default type of IRA, Roth or traditional, for covered employees and identify the types of IRA that any other eligible individual who enrolls in the program will be permitted to select.

h. Maintain fees and costs to participants at a level determined by the board to be reasonable, consistent with the purpose of this chapter.

i. Educate and provide outreach to covered employers, other eligible employers, covered employees, and other eligible individuals.

j. 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.

k. Implement escalation or reduction of participants’ default contribution rates, where applicable, from time to time, provided that the board shall notify participants at least 45 days in advance of such escalation or reduction. If such escalation or reduction is adopted, the board shall permit affected participants to opt out of such escalation or reduction.

l. Establish a process by which a covered employee or other eligible individual may voluntarily enroll in and contribute to the program.

m. Establish a process by which an employer that is not a covered employer may voluntarily offer the program to its employees and allow those employees to enroll in and contribute to the program.

n. 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.

o. Establish a process by which participating employers who cease to be covered employers, for example, by offering the New York State Secure Choice Program to their employees, may discontinue their participation in the program.

p. To the extent consistent with law and the authority of the comptroller under section 20-1406, establish and maintain the program by: contracting, partnering, or forming a consortium with one or more states, local governments, or organizations of governmental entities, in which certain aspects of each such entity’s program are combined for administrative convenience and efficiency, provided that in any such case, the auto-IRA program used, the joint program or the consortium otherwise satisfies the requirements of this chapter.

q. Establish procedures and requirements, which may apply to participating employers and any other employer as defined in subdivision 3 of section 190 of the labor law, to enable the board, or the enforcement agency designated pursuant to section 20-1414, to ascertain whether such an employer is subject to the provisions of this chapter.

r. Approve an investment strategy and policy, which shall define one or more investment options that participants may choose to invest in, and any modifications to such strategy and policy pursuant to subdivision a of section 20-1406.

s. Take all other actions consistent with this chapter that are necessary and appropriate to carry out its purposes.

**§ 20-1406 Powers of the comptroller.** Subject to applicable federal and state law, including the comptroller’s duties as a fiduciary to the extent required by applicable law, the comptroller shall:

a. Establish an investment strategy and policy, provided that such strategy and policy shall be subject to the approval of the board. The underlying investments or investment funds selected or authorized pursuant to this section to implement such strategy, policy, and investment options shall be diversified by the comptroller consistent with such strategy and policy so as to minimize the risk of large losses under the circumstances. The comptroller may, at any time, modify such strategy, policy, and investment options, subject to the approval of the board.

b. Direct the underlying investments or investment funds implementing the investment policy and strategy and investment options established pursuant to subdivision a of this section. Such underlying investments may include, without limitation, shares of mutual funds and exchange-traded funds, publicly-traded equity and fixed-income securities, and other investments available for investment by the program. When selecting and authorizing such investments, the comptroller shall consult with the board and any person retained by the board pursuant to section 20-1405 and shall, not less than once every quarter and prior to any meeting of the board that may be scheduled during such quarter pursuant to subdivision e of section 20-1402, issue a report to the board describing its activities undertaken pursuant to this section and the performance of the investments or investment funds selected or authorized pursuant to this section. The comptroller shall respond within a reasonable time to any questions raised by the board about such report.

c. Enter into any contracts, agreements, or arrangements, as the comptroller may deem appropriate, with any person deemed qualified by the comptroller to assist in the selection and authorization of investments or to provide such investments or investment management services. Under any such contract, agreement or arrangement, the comptroller shall require such person to exercise the duties of a fiduciary with respect to the selection and authorization of such investments and may require such person to assume legal responsibility and liability pursuant to this chapter for functions to be performed by such person.

d. Issue standards, as the comptroller may deem appropriate, concerning the receipt and safekeeping of any funds of participants held by the board or any person retained by the board pursuant to section 20-1405.

e. Establish, consistent with applicable law, a plan to promote the retention of the services of minority- and women-owned business enterprises for the program.

f. Conduct the annual financial audit of the retirement savings program required by subdivision a of section 20-1412 or enter into any contracts, agreements, or arrangements with any person deemed qualified by the comptroller to conduct such audit, provided that the comptroller shall take such action as may be necessary to ensure that any audit concerning subdivisions a, b, c, d, or e of this section shall be undertaken by a person independent of the comptroller.

**§ 20-1408 Rulemaking.** The board and the comptroller may each promulgate rules to implement the provisions of this chapter concerning their respective powers.

a. Such rules may establish variations from the requirements otherwise established by this chapter in order to ensure that this program does not conflict with, and is not otherwise preempted by, state or federal law, including the employee retirement income security act of 1974, and to ensure that this program does not constitute an employee benefit plan under such act, provided that such variations are not inconsistent with the overall purpose and policy of this chapter.

b. Such rules may include any provisions necessary to ensure exemption from the employee retirement income security act of 1974.

**§ 20-1410 No guarantees permitted; potential losses.** Except as otherwise required by federal or state law,no person including, but not limited to, a participating employer, any person retained by the board pursuant to section 20-1405, a member of the retirement savings board, the board itself, the comptroller, any person retained by the comptroller pursuant to section 20-1406, 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 participating employers, the board, its members, the comptroller, nor the city or any representative of the board, its members or the city shall be liable for any loss incurred by a participant, or any other individual or corporation, as a result of participating in the retirement savings program; further, any liability of an administrator for any such loss shall be confined to the liability defined by this chapter or by the agreement between the board and an administrator.

**§ 20-1412 Annual report and audit.** a. The retirement savings program shall undergo an annual financial audit by or at the direction of the comptroller.

b. No later than three months after the end of a calendar year and annually thereafter, the board, in consultation with the comptroller, shall make available on the city’s website an annual report that shall describe and summarize the activities of the board and the comptroller. That report shall include but not be limited to:

1. the total number of participants;

2. the total number of covered employees and other eligible individuals in the city;

3. the total number of participants enrolled during the previous year;

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

5. the number of covered employees who opted out of the retirement savings program during the subject year;

6. the number and type of civil penalties imposed by the enforcement agency pursuant to section 20-1414, for violating the requirements of this chapter;

7. the total assets under management in the retirement savings program;

8. fund profiles, investment objectives, assets under management and performance measures, such as rates of return, for each of the investment options provided by the retirement savings 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 for the year 2021 amending the administrative code of the city of New York, relating to a retirement savings program for certain self-employed individuals and employees of private entities, as proposed in introduction number 888-A, takes effect.

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

LS #2180.1/Int. 1580-2017

NEW LS # 1207

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3. *Id.* [↑](#footnote-ref-4)
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6. *Id.* [↑](#footnote-ref-7)
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14. *Id.* [↑](#footnote-ref-15)
15. *Id.* [↑](#footnote-ref-16)
16. *Id.* [↑](#footnote-ref-17)