



Legislation Text

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Int. No. 1580

By the Public Advocate (Ms. James) and Council Members Kallos, Rosenthal, Levin, Lancman and Gentile

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 11 of title 20 of the administrative code of the city of New York is amended by adding new sections 20-938, 20-941, 20-943, 20-945, 20-946 and 20-947 to read as follows:

§ 20-938 Establishment of retirement savings board; membership.

§ 20-941 Powers of retirement savings board.

§ 20-943 Rulemaking.

§ 20-945 No guarantees permitted; potential losses.

§ 20-946 Information and disclaimers to eligible and participating employees.

§ 20-947 Annual report and audit.

§ 20-938 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.

§ 20-941 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 20-940.

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 20-940.

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.

§ 20-943 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.

§ 20-945 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.

§ 20-946 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.

§ 20-947 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 20-938, 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 **XX** for the year 2017.

§ 3. The report required by subdivision b of section 20-947 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.

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