S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. McENENY, CANESTRARI, WEISENBERG, BRODSKY -- Multi-Sponsored by -- M. of A. CAHILL, CLARK, COLTON, CYMBROWITZ, DelMONTE, GREENE, JACOBS, JOHN, MAGEE, ORTIZ, PHEFFER, J. RIVERA -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to the computation of final average salary

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivisions a and b of section 443 of the retirement and social security law, subdivision a as amended and subdivision b as added by chapter 379 of the laws of 1986, are amended to read as follows:

a. The salary base used for the computation of benefits upon retirement, hereinafter called in this article final average salary, applicable to all members of the retirement systems who are subject to the provisions of this article, shall be the average salary earned by such a member during any three consecutive years which provide the highest average salary, exclusive of any form of termination pay (which shall include any compensation in anticipation of retirement), or any lump sum payment for deferred compensation, sick leave, or ANY accumulated vacation credit IN EXCESS OF THIRTY DAYS, or any other payment for time not worked (other than compensation received while on sick leave or authorized leave of absence); provided, however, if the salary or wages earned during any year included in the period used to determine final average salary exceeds that of the average of the previous two years by more than twenty [percentum] PER CENTUM, the amount in excess of twenty [percentum] PER CENTUM shall be excluded from the computation of final average salary. Where the period used to determine final average salary is the period which immediately precedes the date of retirement, any month or months (not in excess of twelve) which would otherwise be included in computing final average salary but during which the member was on authorized leave of absence at partial pay or without pay shall

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

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be excluded from the computation of final average salary and the month or an equal number of months immediately preceding such period shall be substituted in lieu thereof.

b. Notwithstanding the provisions of subdivision a of this section, with respect to the members of the New York state AND LOCAL employees' retirement system and New York state [policemen's and firemen's] AND LOCAL POLICE AND FIRE retirement system, the final average salary, shall be equal to one-third of the highest total salary earned during any continuous period of employment for which the member was credited with three years of service credit, exclusive of any form of termination pay (which shall include any compensation in anticipation of retirement), any lump sum payment for deferred compensation, sick leave, or ANY accumulated vacation credit IN EXCESS OF THIRTY DAYS, or any other payment for time not worked (other than compensation received while on sick leave or authorized leave of absence); provided, however, if the salary earned during any year of credited service included in the period used to determine final average salary exceeds the average of the salaries of the previous two years of credited service by more than twenty per centum, the amount in excess of twenty per centum shall be excluded from the computation of final average salary.

S 2. Subdivision 1 of section 431 of the retirement and social security law, as added by chapter 503 of the laws of 1971, is amended to read as follows:

1. lump sum payments for deferred compensation, sick leave, ANY accumulated vacation IN EXCESS OF THIRTY DAYS or other credits for time not worked,

S 3. This act shall take effect immediately.

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

This bill will allow Tier 1 members with membership dates on or after April 1, 1972, and all Tier 2 members of the New York State and Local Employees' Retirement System (NYSLERS) or the New York State and Local Police and Fire Retirement System (NYSLPFRS) to receive credit for up to thirty (30) days of unused accumulated vacation time in the calculation of their final average salary.

Insofar as this bill will affect employers in the NYSLERS, if this bill is enacted, there will be an estimated increase in the annual contributions of the State of New York of approximately $12 million and $17 million to the participating employers in the NYSLERS. Insofar as this bill would affect the NYSLPFRS, there will also be an estimated increase in the annual contributions of approximately $8.1 million to the State of New York and $37 million to the participating employers in the NYSLPFRS.

This estimate, dated December 1, 2008 and intended for use only during the 2009 Legislative Session, is Fiscal Note No. 2009-5, prepared by the Actuary for the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.