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

8053--A

2009-2010 Regular Sessions

I N A S S E M B L Y

May 1, 2009

Introduced by M. of A. McENENY, CANESTRARI, GOTTFRIED, ORTIZ -- Multi-Sponsored by -- M. of A. CLARK, COLTON, COOK, DESTITO, ENGLEBRIGHT, HOOPER, JACOBS, MILLMAN, PHEFFER, TEDISCO, TOWNS, WEISENBERG -- read once and referred to the Committee on Governmental Employees -- recommitted to the Committee on Governmental Employees in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law and the retirement and social security law, in relation to the computation of final average salary for certain members of the New York state teachers' retirement system

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

Section 1. Subdivision 11 of section 501 of the education law is amended by adding a new paragraph c to read as follows:

C. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, COMMENCING JULY FIRST, TWO THOUSAND TEN, "FINAL AVERAGE SALARY" SHALL MEAN THE GREATER OF: (1) THE AVERAGE ANNUAL COMPENSATION EARNABLE AS A TEACHER DURING THE FIVE YEARS OF SERVICE IMMEDIATELY PRECEDING HIS OR HER DATE OF RETIREMENT, OR (2) THE AVERAGE ANNUAL COMPENSATION EARNABLE AS A TEACHER DURING ANY FIVE CONSECUTIVE YEARS OF STATE SERVICE, OR (3) THE AVERAGE REGULAR COMPENSATION EARNED AS A TEACHER DURING THE THREE YEARS OF ACTUAL SERVICE IMMEDIATELY PRECEDING HIS OR HER DATE OF RETIREMENT, OR ANY OTHER THREE YEARS OF CONSECUTIVE SERVICE, WHICHEVER IS GREATER, EXCLUSIVE OF ANY LUMP SUM PAYMENTS FOR SICK LEAVE, ANNUAL LEAVE OR ANY OTHER FORM OF TERMINATION PAY, PROVIDED, HOWEVER, IF THE COMPENSATION EARNED IN ANY TWELVE MONTHS EXCEEDS THAT OF THE PREVIOUS TWELVE MONTHS BY MORE THAN TWENTY PER CENTUM, THE AMOUNT IN EXCESS OF TWENTY PER CENTUM SHALL BE EXCLUDED IN THE COMPUTATION OF FINAL AVERAGE SALARY.

S 2. 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:

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

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S 431. Salary base for computing retirement benefits. A. In any retirement or pension plan to which the state or municipality thereof contributes, the salary base for the computation of retirement benefits shall in no event include any of the following earned or received, on or after April first, nineteen hundred seventy-two:

1. lump sum payments for deferred compensation, sick leave, accumulated vacation or other credits for time not worked,

2. any form of termination pay,

3. any additional compensation paid in anticipation of retirement, or

4. that portion of compensation earned during any twelve months included in such salary base period which exceeds that of the preceding twelve months by more than twenty per centum.

B. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ON AND AFTER JULY FIRST, TWO THOUSAND TEN, THE PROVISIONS OF SUBDIVISION A OF THIS SECTION SHALL NOT BE APPLICABLE TO MEMBERS OF THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM.

S 3. Section 443 of the retirement and social security law is amended by adding a new subdivision f-2 to read as follows:

F-2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, COMMENCING JULY FIRST, TWO THOUSAND TEN FOR MEMBERS OF A TEACHERS' RETIREMENT SYSTEM AS DEFINED IN SECTION FIVE HUNDRED TWO OF THE EDUCATION LAW, "FINAL AVERAGE SALARY" SHALL MEAN THE GREATER OF: (1) THE AVERAGE ANNUAL COMPENSATION EARNABLE AS A TEACHER DURING THE FIVE YEARS OF SERVICE IMMEDIATELY PRECEDING HIS OR HER DATE OF RETIREMENT, OR (2) THE AVERAGE ANNUAL COMPENSATION EARNABLE AS A TEACHER DURING ANY FIVE CONSECUTIVE YEARS OF STATE SERVICE, OR (3) THE AVERAGE REGULAR COMPENSATION EARNED AS A TEACHER DURING THE THREE YEARS OF ACTUAL SERVICE IMMEDIATELY PRECEDING HIS OR HER DATE OF RETIREMENT, OR ANY OTHER THREE YEARS OF CONSECUTIVE SERVICE, WHICHEVER IS GREATER, EXCLUSIVE OF ANY LUMP SUM PAYMENTS FOR SICK LEAVE, ANNUAL LEAVE OR ANY OTHER FORM OF TERMINATION PAY, PROVIDED, HOWEVER, IF THE COMPENSATION EARNED IN ANY TWELVE MONTHS EXCEEDS THAT OF THE PREVIOUS TWELVE MONTHS BY MORE THAN TWENTY PER CENTUM, THE AMOUNT IN EXCESS OF TWENTY PER CENTUM SHALL BE EXCLUDED IN THE COMPUTATION OF FINAL AVERAGE SALARY.

S 4. Section 608 of the retirement and social security law is amended by adding a new subdivision f to read as follows:

F. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, COMMENCING JULY FIRST, TWO THOUSAND TEN FOR MEMBERS OF A TEACHERS' RETIREMENT SYSTEM AS DEFINED IN SECTION FIVE HUNDRED TWO OF THE EDUCATION LAW, "FINAL AVERAGE SALARY" SHALL MEAN THE GREATER OF: (1) THE AVERAGE ANNUAL COMPENSATION EARNABLE AS A TEACHER DURING THE FIVE YEARS OF SERVICE IMMEDIATELY PRECEDING HIS OR HER DATE OF RETIREMENT, OR (2) THE AVERAGE ANNUAL COMPENSATION EARNABLE AS A TEACHER DURING ANY FIVE CONSECUTIVE YEARS OF STATE SERVICE, OR (3) THE AVERAGE REGULAR COMPENSATION EARNED AS A TEACHER DURING THE THREE YEARS OF ACTUAL SERVICE IMMEDIATELY PRECEDING HIS OR HER DATE OF RETIREMENT, OR ANY OTHER THREE YEARS OF CONSECUTIVE SERVICE, WHICHEVER IS GREATER, EXCLUSIVE OF ANY LUMP SUM PAYMENTS FOR SICK LEAVE, ANNUAL LEAVE OR ANY OTHER FORM OF TERMINATION PAY, PROVIDED, HOWEVER, IF THE COMPENSATION EARNED IN ANY TWELVE MONTHS EXCEEDS THAT OF THE PREVIOUS TWELVE MONTHS BY MORE THAN TWENTY PER CENTUM, THE AMOUNT IN EXCESS OF TWENTY PER CENTUM SHALL BE EXCLUDED IN THE COMPUTATION OF FINAL AVERAGE SALARY.

S 5. This act shall take effect June 30, 2010; provided, however, if this act shall become a law after such date it shall take effect immediately and shall be deemed to have been in full force and effect on and after June 30, 2010.

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

This bill would amend section 501 of the Education Law and sections 431, 443, and 608 of the Retirement and Social Security Law to change the definition of final average salary (FAS) for all members of the New York State Teachers' Retirement System with a date of membership (DOM) on or after June 17, 1971 and a date of retirement on or after July 1, 2010. Their FAS would be calculated in the same manner as members whose DOM is prior to June 17, 1971, and would be defined as the greater of a five year or a three year average salary. Termination pay, retirement bonuses, and pay for unused sick leave or accumulated vacation may be included in the five year FAS only. Additionally, for the three year FAS, any compensation earned in a twelve month period that exceeds that of the previous twelve month period by more than 20 percent would be excluded.

The annual cost to the employers of members of the New York State Teachers' Retirement System for this benefit is estimated to be $273.9 million or 1.77% of payroll if this bill is enacted.

The source of this estimate is Fiscal Note 2010-46 dated April 28, 2010 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2010 Legislative Session.