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

5748--A

2009-2010 Regular Sessions

I N S E N A T E

June 3, 2009

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- recommitted to the Committee on Civil Service and Pensions in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to the definition of the term final average salary as applied to members of the New York city teachers' retirement system

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

Section 1. Subdivisions b and d of section 443 of the retirement and social security law, subdivision b as added by chapter 379 of the laws of 1986 and subdivision d as added by chapter 663 of the laws of 1990, are amended to read as follows:

b. Notwithstanding the provisions of subdivision a of this section, with respect to the members of the New York state employees' retirement system [and], THE New York state [policemen's and firemen's] AND LOCAL POLICE AND FIRE retirement system AND THE NEW YORK CITY TEACHERS' 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 accumulated vacation credit, 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

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

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per centum shall be excluded from the computation of final average salary.

d. Notwithstanding the provisions of subdivisions a and b of this section, the final average salary of an employee who has been a member of the New York city employees' retirement system OR THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM for less than one year shall be the projected one year salary, with the calculation based upon a twelve month projection of the sums earned in the portion of the year worked. If a member has been employed for more than one year but less than two years, then the member's final average salary shall be the average of the first year and projected second year earnings based upon the calculation above, and if more than two years, but less than three years, then one-third the total of the first two years of employment plus the projected third year's earnings, calculated as indicated above.

S 2. Subdivisions b and c of section 512 of the retirement and social security law, subdivision b as added by chapter 379 of the laws of 1986 and subdivision c as added by chapter 663 of the laws of 1990, are amended to read as follows:

b. Notwithstanding the provisions of subdivision a of this section, with respect to members of the New York state employees' retirement system [and], THE New York state [policemen's and firemen's] AND LOCAL POLICE AND FIRE retirement system AND THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM, a member's final average salary shall be equal to one-third of the highest total wages earned during any continuous period of employment for which the member was credited with three years of service credit; provided, however, if the wages earned during any year of credited service included the period used to determine final average salary exceeds the average of the wages of the previous two years of credited service by more than ten percent, the amount in excess of ten percent shall be excluded from the computation of final average salary.

c. Notwithstanding the provisions of subdivisions a and b of this section, the final average salary of an employee who has been a member of the New York city employees' retirement system OR THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM for less than one year shall be the projected one year salary, with the calculation based upon a twelve month projection of the sums earned in the portion of the year worked. If a member has been employed for more than one year but less than two years, then the member's final average salary shall be the average of the first year and projected second year earnings based upon the calculation above, and if more than two years, but less than three years, then one-third the total of the first two years of employment plus the projected third year's earnings, calculated as indicated above.

S 3. Subdivisions b and c of section 608 of the retirement and social security law, subdivision b as added by chapter 379 of the laws of 1986 and subdivision c as added by chapter 663 of the laws of 1990, are amended to read as follows:

b. Notwithstanding the provisions of subdivision a of this section, with respect to members of the New York state employees' retirement system AND THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM, a member's final average salary shall be equal to one-third of the highest total wages earned by such member during any continuous period of employment for which the member was credited with three years of service credit; provided, however, if the wages earned during any year of credited service included in the period used to determine final average salary exceeds the average of the wages of the previous two years of credited

service by more than ten percent, the amount in excess of ten percent shall be excluded from the computation of final average salary.

c. Notwithstanding the provisions of subdivisions a and b of this section, the final average salary of an employee who has been a member of the New York city employees' retirement system OR THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM for less than one year shall be the projected one year salary, with the calculation based upon a twelve month projection of the sums earned in the portion of the year worked. If a member has been employed for more than one year but less than two years, then the member's final average salary shall be the average of the first year and projected second year earnings based upon the calculation above, and if more than two years, but less than three years, then one-third the total of the first two years of employment plus the projected third year's earnings, calculated as indicated above.

S 4. This act shall take effect immediately; provided, however, that:

(a) section one of this act shall be deemed to have been in full force and effect on and after July 1, 1973;

(b) section two of this act shall be deemed to have been in full force and effect on and after July 27, 1976; and

(c) section three of this act shall be deemed to have been in full force and effect on and after September 1, 1983.

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

PROVISIONS OF PROPOSED LEGISLATION: This proposed legislation would amend Retirement and Social Security Law ("RSSL") Sections 443.b, 443.d, 512.b, 512.c, 608.b and 608.c to modify the definition of Final Average Salary ("FAS") for certain members of the New York City Teachers' Retirement System ("NYCTRS").

Different sections of the proposed legislation would have different retroactive Effective Dates as follows:

RSSL Section	Retroactive Effective Date
443.b	July 1, 1973
443.d	July 1, 1973
512.b	July 27, 1976
512.c	July 27, 1976
608.b	September 1, 1983
608.c	September 1, 1983

In general, the modifications in the calculations of FAS would impact a very limited number of retirees and would generally define those current and future calculations to be consistent with current administrative practice.

If not enacted, significant issues would arise regarding identifying and then recalculating reduced benefits for some existing retirees.

IMPACT ON FAS CALCULATIONS: Computation of FAS for Tier II, Tier III and Tier IV NYCTRS members is generally based on an average of any three consecutive years of salary preceding retirement date which produces the greatest average.

The yearly salaries that are used to compute this average cannot exceed the "Kingston Limit" applicable for that Tier. The Kingston Limit does not permit that portion of an annual salary that exceeds the average of the immediate two preceding salaries by a percentage ("Kingston Limit Percentage") to be used in an FAS calculation.

For Tier II members the Kingston Limit Percentage is 20%.

For Tier III and Tier IV members the Kingston Limit Percentage is 10%.

In actuality, FAS for a Tier II, Tier III or Tier IV NYCTRS member is generally calculated on the basis of any consecutive 36-month period that produces the greatest average.

Under current law, if a Tier II, Tier III or Tier IV NYCTRS member were to have a period of service interrupted by a Leave of Absence ("LOA") (with partial pay or without pay) of less than or equal to 12 months in the 36-month period preceding retirement date, then an equal number of months of earned salary preceding the interruption would be substituted for these months to compute the greatest FAS. Thus, as much as a 48-month period preceding retirement could be used for FAS purposes.

Under current law, if the time period on a LOA (with partial pay or without pay) within the 36 months preceding retirement date were to exceed 12 months, then only the earned salary during the 48 months preceding retirement would be used and the NYCTRS member would have a lesser FAS.

Note: If greater, FAS may also be based on any three consecutive years of service, not necessarily the final three years of active employment.

Under current administrative practice, however, FAS is computed to be equal to one-third of the total earnings for the continuous employment period preceding retirement date for which a NYCTRS member receives three years of service credit, subject to the Kingston Limits.

Under the proposed legislation, which would codify current administrative practice, there would be no limit as to how long a Tier II, Tier III or Tier IV NYCTRS member could be on a LOA (with partial pay or without pay) provided the entire span of time used to measure the FAS constituted a continuous period of employment for which the NYCTRS member received three years of service credit, subject to the Kingston Limits.

IMPACT OF BENEFITS: This proposed legislation would define FAS to be generally consistent with current administrative practice. It would directly impact the retirement benefits computed based on FAS for Tier II, Tier III and Tier IV NYCTRS members whose employment was interrupted for a LOA (with partial pay or without pay) of more than 12 months without the 36 months preceding retirement date.

Thus, for certain NYCTRS members the proposed legislation could impact the calculation of certain benefits, including:

Service Retirement Benefits,

Disability Retirement Benefits, and

Vested Deferred Retirement Benefits.

FINANCIAL IMPACT - ADDITIONAL ACTUARIAL PRESENT VALUES: The additional Actuarial Present Values ("APV") would depend on the number, salaries, ages and lengths of service of impacted Tier II, Tier III and Tier IV NYCTRS members whose employment near retirement was interrupted by periods of LOA (with partial pay or without pay) that exceeds 12 months.

Based on the actuarial assumptions and methods noted herein, the APV of future benefits ("APVB") would increase by approximately $11.0 million as of June 30, 2009.

FINANCIAL IMPACT - EMPLOYER COST: The ultimate cost of a pension plan is the benefits it pays. The financing of that ultimate cost depends upon the actuarial assumptions and methods employed.

In the case of this proposed legislation, the real cost may more accurately be described as the cost of benefits not otherwise reduced.

If the additional APVB is amortized over the working lifetimes of members, then the additional employer costs would equal approximately $1.1 million per year.

ADDITIONAL EMPLOYER CONTRIBUTIONS - GENERAL: In general, the real cost of the enactment of this proposed legislation would be the additional benefits paid.

However, the timing and amount of additional employer contributions attributable to the enactment of this proposed legislation depends most upon three factors:

First, the point in time when the Actuary revises actuarial assumptions and methods to reflect estimated LOA in excess of 12 months of active members who are expected to retire with service, disability or vested deferred benefits.

This level of refinement to actuarial assumptions and methods used in the actuarial valuations of NYCTRS is unlikely ever to occur.

Second, the point in time when the Actuary creates actuarial assumptions to reflect increased expectations of certain active members retiring with LOA (with partial pay or without pay) in excess of 12 months.

This also is so immaterial as to be unlikely for the Actuary to develop any such actuarial assumptions.

Third, the impact on employer contributions of any actuarial gains or losses attributable to retirement allowances being computed on the modified FAS computation basis.

This is the most likely form of implementation and would result in the amortization of the difference in value of benefits over the working lifetimes of active members of NYCTRS.

FINANCIAL IMPACT - ADDITIONAL EMPLOYER CONTRIBUTIONS - FISCAL YEAR 2010: If this proposed legislation is enacted during the current Legislative Session before June 30, 2010, there would be no increase in employer contributions to NYCTRS for Fiscal Year 2010.

FINANCIAL IMPACT - ADDITIONAL EMPLOYER CONTRIBUTIONS - FISCAL YEARS 2011 AND LATER: If this proposed legislation is enacted during the current Legislative Session after June 30, 2010 and before June 30, 2011, the Actuary anticipates no change in employer contributions to NYCTRS for Fiscal Year 2011.

For Fiscal Years 2012 and later, employer contributions would increase by approximately 10.1% of the additional APVB attributable to the value of modified increased benefits that result from the methodology to compute FAS of certain NYCTRS members whose benefits are determined during the second preceding Fiscal Year (reflects the One-Year Lag methodology). In effect, the additional APVB would be amortized over the future working lifetimes of active members of NYCTRS.

Additional annual employer contributions for this proposed legislation would eventually tend to approximate the estimated additional annual employer costs.

OTHER COSTS: Not measured in this Fiscal Note is the impact on administrative costs that would be significantly greater if the current administrative procedures must be modified (i.e., administrative costs would increase if this proposed legislation is not enacted).

CENSUS DATA: The census data used for the estimates of APVB and employer costs presented herein include 1,344 active Tier II members with salaries of approximately $139.0 million and 108,292 active Tier IV members with salaries of approximately $7,503.1 million included in the June 30, 2008 (Lag) actuarial valuation of NYCTRS who could be potentially impacted by this proposed legislation.

In addition, approximately 19,146 Tier II and Tier IV retired members receiving retirement allowances of approximately $443.8 million were included from the June 30, 2008 (Lag) actuarial valuation of NYCTRS for such purposes.

ACTUARIAL ASSUMPTIONS AND METHODS: Additional APVB and employer costs are based on the results of the June 30, 2008 (Lag) actuarial valuation of NYCTRS using the actuarial assumptions and methods in effect as of June 30, 2008, including the One-Year Lag methodology.

Additional APVB was estimated as of June 30, 2008 based upon the reduction in benefits determined under the proposed legislation for a sample of current retirees. For current retirees, additional APVB is based on the assumption that approximately 1.0% of these current retirees would be impacted and the difference in their benefits would be approximately 5.0%.

With respect to the active members of the NYCTRS, it has been assumed that approximately 0.5% of future retirees would be impacted and the difference in their benefits would be approximately 5.0%.

Additional employer costs have been estimated assuming the additional APV of employer costs are financed through future normal contributions.

Additional APVB and additional employer costs were rolled-forward to June 30, 2009 on an interest-only basis.

STATEMENT OF ACTUARIAL OPINION: I, Robert C. North, Jr., am the Chief Actuary for the New York City Retirement Systems. I am a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

FISCAL NOTE IDENTIFICATION: This estimate is intended for use only during the 2010 Legislative Session. It is Fiscal Note 2010-05, dated February 3, 2010 prepared by the Chief Actuary for the New York City Teachers' Retirement System.