

2438

2009-2010 Regular Sessions

I N   A S S E M B L Y

January 15, 2009

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Introduced by M. of A. ABBATE, PERALTA, SCHROEDER, PHEFFER, COLTON --  
Multi-Sponsored by -- M. of A. CUSICK, ENGLEBRIGHT, WEISENBERG -- 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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivision 1 of section 431 of the retirement and social  
2 security law, as added by chapter 503 of the laws of 1971, is amended to  
3 read as follows:  
4     1. lump sum payments for deferred compensation, sick leave, accumu-  
5 lated vacation or other credits for time not worked, PROVIDED, HOWEVER,  
6 THAT WITH RESPECT TO INDIVIDUALS WHO JOINED THE NEW YORK STATE AND LOCAL  
7 EMPLOYEES' RETIREMENT SYSTEM BEFORE JULY FIRST, NINETEEN HUNDRED SEVEN-  
8 TY-THREE, PAYMENT FOR UP TO THIRTY DAYS OF UNUSED ACCUMULATED VACATION  
9 TIME CREDITED TO SUCH MEMBER AT THE TIME OF RETIREMENT MAY BE INCLUDED  
10 IN DETERMINING FINAL AVERAGE SALARY,  
11     S 2. Subdivisions a and b of section 443 of the retirement and social  
12 security law, subdivision a as amended and subdivision b as added by  
13 chapter 379 of the laws of 1986, are amended to read as follows:  
14     a. The salary base used for the computation of benefits upon retire-  
15 ment, hereinafter called in this article final average salary, applica-  
16 ble to all members of the retirement systems who are subject to the  
17 provisions of this article, shall be the average salary earned by such a  
18 member during any three consecutive years which provide the highest  
19 average salary, exclusive of any form of termination pay (which shall  
20 include any compensation in anticipation of retirement), or any lump sum  
21 payment for deferred compensation, sick leave, or ANY accumulated vaca-  
22 tion credit IN EXCESS OF THIRTY DAYS, or any other payment for time not  
23 worked (other than compensation received while on sick leave or author-  
24 ized leave of absence); provided, however, if the salary or wages earned

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

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1 during any year included in the period used to determine final average  
2 salary exceeds that of the average of the previous two years by more  
3 than twenty percentum, the amount in excess of twenty percentum shall be  
4 excluded from the computation of final average salary. Where the period  
5 used to determine final average salary is the period which immediately  
6 precedes the date of retirement, any month or months (not in excess of  
7 twelve) which would otherwise be included in computing final average  
8 salary but during which the member was on authorized leave of absence at  
9 partial pay or without pay shall be excluded from the computation of  
10 final average salary and the month or an equal number of months imme-  
11 diately preceding such period shall be substituted in lieu thereof.

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

29 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 2008 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.