

S. 6215

A. 9174

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

October 14, 2009

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IN SENATE -- Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by M. of A. ABBATE -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the public authorities law, in relation to the suspension of certain employees of the New York city school construction authority

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

1     Section 1. Section 1738 of the public authorities law, as added by  
2 chapter 738 of the laws of 1988, is amended to read as follows:  
3     S 1738. Retirement of employees. 1. Employees of the authority shall  
4 be eligible to join the board of education retirement system as estab-  
5 lished in section twenty-five hundred seventy-five of the education law  
6 and pursuant to the usual rules of that system, provided that a new  
7 employee who upon appointment by or transfer to the authority is a  
8 member of the New York city employees retirement system may remain a  
9 member of the New York city employees retirement system if, within nine-  
10 ty days of the effective date of the transfer to or appointment by the  
11 authority, the employee exercises an election to do so. Furthermore, the  
12 retirement rights of employees of the city board employed on the effec-  
13 tive date of this title shall not be impaired by reason of the enactment  
14 of this title into law.  
15     2. A. NOTWITHSTANDING THE PROVISIONS OF ANY OTHER GENERAL OR LOCAL  
16 LAW, ADMINISTRATIVE CODE OR ORDINANCE TO THE CONTRARY, ANY EMPLOYEE OF  
17 THE AUTHORITY WHO WAS SUSPENDED ON OR AFTER DECEMBER FIRST, TWO THOUSAND  
18 TWO BECAUSE OF ECONOMY MEASURES TAKEN BY THE AUTHORITY, AND WHO RETURNED  
19 TO SUCH SERVICE PRIOR TO JANUARY EIGHTH, TWO THOUSAND EIGHT, SHALL BE  
20 DEEMED TO HAVE BEEN IN CONTINUOUS SERVICE IN DETERMINING LENGTH OF  
21 SERVICE FOR RETIREMENT PURPOSES; PROVIDED, HOWEVER, THAT FOR RETIREMENT

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

LBD14810-01-9

1 PURPOSES, A MEMBER RECEIVING SUCH SERVICE CREDIT SHALL PAY THE ADDI-  
2 TIONAL MEMBER CONTRIBUTIONS PRESCRIBED BY PARAGRAPH B OF THIS SUBDIVI-  
3 SION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A  
4 PERSON WHO OTHERWISE MEETS THE REQUIREMENTS OF THIS PARAGRAPH FOR  
5 OBTAINING RETIREMENT SERVICE CREDIT FOR SUCH PERIOD OF SUSPENSION, AND  
6 WHO, AFTER RETURNING TO SUCH SERVICE FROM SUCH PERIOD OF SUSPENSION,  
7 RETIRED FOR SERVICE OR DISABILITY FROM A POSITION WITH THE AUTHORITY  
8 PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION, MAY OBTAIN RETIREMENT  
9 SERVICE CREDIT FOR SUCH PERIOD OF SUSPENSION BY (I) FILING WITH THE  
10 RETIREMENT SYSTEM AN APPLICATION TO PURCHASE SUCH RETIREMENT SERVICE  
11 CREDIT WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS  
12 SUBDIVISION, AND (II) PAYING TO THE RETIREMENT SYSTEM THE AMOUNT  
13 REQUIRED BY PARAGRAPH B OF THIS SUBDIVISION WITHIN ONE YEAR AFTER THE  
14 EFFECTIVE DATE OF THIS SUBDIVISION.

15 B. IN ADDITION TO THE REGULAR MEMBER CONTRIBUTIONS THAT MAY BE PAYABLE  
16 FOR HIS OR HER CURRENT SERVICE, SUCH MEMBER SHALL PAY BY DEDUCTIONS FROM  
17 HIS OR HER COMPENSATION THE FOLLOWING ADDITIONAL MEMBER CONTRIBUTIONS:

18 (I) ALL REGULAR MEMBER CONTRIBUTIONS WHICH SUCH MEMBER WOULD HAVE BEEN  
19 REQUIRED TO PAY TO THE RETIREMENT SYSTEM FOR SUCH PERIOD OF SUSPENSION  
20 IF HE OR SHE HAD BEEN IN SERVICE DURING SUCH PERIOD OF SUSPENSION; AND

21 (II) IF SUCH MEMBER IS A PARTICIPANT IN A SPECIAL PLAN, THE ADDITIONAL  
22 MEMBER CONTRIBUTIONS ATTRIBUTABLE TO PARTICIPATION IN SUCH SPECIAL PLAN  
23 WHICH HE OR SHE WOULD HAVE BEEN REQUIRED TO PAY TO THE RETIREMENT SYSTEM  
24 FOR SUCH PERIOD OF SUSPENSION IF HE OR SHE HAD BEEN IN SERVICE DURING  
25 SUCH PERIOD OF SUSPENSION; AND

26 (III) AN AMOUNT EQUIVALENT TO THE ADDITIONAL COSTS TO THE EMPLOYER OF  
27 PROVIDING RETIREMENT SERVICE CREDIT TO SUCH MEMBER FOR SUCH PERIOD OF  
28 SUSPENSION, AS DETERMINED BY THE ACTUARY FOR THE RETIREMENT SYSTEM.

29 C. THE DEDUCTIONS FOR THE ADDITIONAL MEMBER CONTRIBUTIONS REFERRED TO  
30 IN PARAGRAPH B OF THIS SUBDIVISION SHALL BE MADE IN ACCORDANCE WITH SUCH  
31 EQUITABLE METHOD AND OVER SUCH EQUITABLE PERIOD OF TIME AS SHALL BE  
32 PRESCRIBED BY THE EXECUTIVE DIRECTOR OF THE MEMBER'S RETIREMENT SYSTEM  
33 WITH THE APPROVAL OF THE BOARD OF TRUSTEES.

34 D. THE ADDITIONAL MEMBER CONTRIBUTIONS REFERRED TO IN SUBPARAGRAPH (I)  
35 OF PARAGRAPH B OF THIS SUBDIVISION SHALL BE PAID INTO THE ACCOUNT ESTAB-  
36 LISHED BY THE RETIREMENT SYSTEM FOR THE DEPOSIT AND ACCUMULATION OF SUCH  
37 MEMBER'S REGULAR MEMBER CONTRIBUTIONS. THE ADDITIONAL MEMBER CONTRIB-  
38 UTIONS REFERRED TO IN SUBPARAGRAPH (II) OF PARAGRAPH B OF THIS SUBDIVI-  
39 SION SHALL BE PAID INTO THE CONTINGENT RESERVE FUND OF SUCH RETIREMENT  
40 SYSTEM AND SHALL BE SUBJECT TO THE PROVISIONS OF LAW WHICH GOVERN ADDI-  
41 TIONAL MEMBER CONTRIBUTIONS IN THE SPECIAL PLAN IN WHICH SUCH MEMBER IS  
42 A PARTICIPANT. THE ADDITIONAL MEMBER CONTRIBUTIONS REFERRED TO IN  
43 SUBPARAGRAPH (III) OF PARAGRAPH B OF THIS SUBDIVISION SHALL BE PAID INTO  
44 THE CONTINGENT RESERVE FUND OF SUCH RETIREMENT SYSTEM AND SHALL NOT BE  
45 SUBJECT TO ANY RETIREMENT SYSTEM RIGHT OR PRIVILEGE OF SUCH MEMBER,  
46 UNLESS SUCH RIGHT OR PRIVILEGE IS GRANTED BY OTHER PROVISIONS OF LAW  
47 WHICH SPECIFICALLY REFER TO ADDITIONAL MEMBER CONTRIBUTIONS MADE PURSU-  
48 ANT TO SUBPARAGRAPH (III) OF PARAGRAPH B OF THIS SUBDIVISION.

49 E. AT ANY TIME PRIOR TO COMPLETION OF THE DEDUCTIONS FOR THE ADDI-  
50 TIONAL MEMBER CONTRIBUTIONS REFERRED TO IN PARAGRAPH B OF THIS SUBDIVI-  
51 SION, PAYMENT OF THE REMAINDER OF THE TOTAL OF SUCH ADDITIONAL CONTRIB-  
52 UTIONS REQUIRED BY SUCH PARAGRAPH MAY BE MADE IN A LUMP SUM.

53 S 2. This act shall take effect immediately.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50: This proposed legislation would amend Public Authorities Law Section 1738 to provide certain employees of the New York City School Construction Authority

("SCA") an opportunity to buy back service credit for time while suspended for economy measures on and after December 1, 2002 until their return to such service prior to January 8, 2008.

It is the understanding of the Actuary that the opportunity to buy back service credit would be voluntary and this Fiscal Note reflects that understanding.

The Effective Date of the proposed legislation would be the date of enactment.

**IMPACT ON MEMBERSHIP:** The proposed legislation would cover those Tier IV members of the New York City Employees' Retirement System ("NYCERS") and the New York City Board of Education Retirement System ("BERS") employed by SCA who were suspended on or after December 1, 2002 and who returned to such service prior to January 8, 2008, including those who may have retired prior to the Effective Date (collectively, "Returning Furloughed Members").

The Returning Furloughed Members participate in one of the following plans:

Basic Plan - Unreduced Service Retirement at attainment of age 62 and completion of five years of credited service or Reduced Service Retirement after attainment of age 55 and completion of five years of credited service, or

55/25 Early Retirement Program - Unreduced Service Retirement at attainment of age 55 and completion of 25 years of credited service, or

57/5 Program - Unreduced Service Retirement at attainment of age 57 and completion of 5 years of credited service.

**IMPACT ON MEMBER CONTRIBUTIONS:** Returning Furloughed Members of NYCERS and BERS would be permitted to voluntarily buy back service credit for their periods of suspension. It is the understanding of the Actuary that this would be permitted at any time prior to retirement for active employees.

Those Returning Furloughed Members who retired, subsequent to reemployment, for Service Retirement or for Disability Retirement, would be permitted to voluntarily buy back service credit for their periods of suspension prior to retirement by filing within 120 days of the Effective Date.

The following amounts would be required to be paid by each Returning Furloughed Member for each period of suspension, including accrued interest at a rate of 5.0% per annum:

Basic Member Contributions ("BMC"):

A rate of 3.0% of salary per year, during the first 10 years of membership or to the date of 10 years of credited service, if earlier.

Additional Member Contributions ("AMC"):

For those participating in the 55/25 Early Retirement Program or the 57/5 Program, a rate of 1.85% of salary per year not to exceed 30 years.

Extra Member Contributions ("EMC"):

An amount, as determined by the Actuary, equivalent to the additional costs to the employer of providing retirement service credit for the period of suspension.

For active employees, the method of payment, including the amount of periodic deduction from payroll and the time period needed to purchase the suspension time, would be prescribed by the respective Executive Director and approved by the Board of Trustees for each of NYCERS and BERS.

For retirees who voluntarily elect to purchase service credits for their suspension time, the time period needed to purchase such service credits would be within one year of election.

The proposed legislation would also permit Returning Furloughed Members to make a lump sum payment equal to the balance owed on any BMC, AMC, and EMC to fully purchase such service credits.

EMC contributions would be considered employer contributions and would not be available for loan or refund.

**IMPACT ON BENEFITS:** The proposed legislation, if enacted, would permit Returning Furloughed Members to voluntarily acquire service credits for their periods of suspension.

Once acquired, these additional service credits would result in a Returning Furloughed Member having a greater retirement allowance and possibly an earlier vesting date, an earlier retirement date and other advantages.

In the event a Returning Furloughed Member were to terminate employment prior to completing the purchase of service credits for the entire suspension period, then the amount of service credited for such suspension period would be prorated based on the amount of layoff time considered purchased.

**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 amounts deposited by the employer and employee, the investment return and the actuarial assumptions and methods employed.

Under the proposed legislation any additional retirement benefit costs to purchase service credits for suspension time are intended to be borne by the members.

Thus, the enactment of the proposed legislation would be expected to be cost neutral to the City of New York and would not be expected to increase employer costs to NYCERS or BERS.

Thus, any increase in benefits after crediting service for suspension time would be paid for in full by the BMC, AMC and EMC of Returning Furloughed Members.

**FINANCIAL IMPACT - EMPLOYER CONTRIBUTIONS:** If the proposed legislation were enacted during the 2009 Legislative Session after June 30, 2009 and prior to June 30, 2010, there would be no expected change in employer contributions to NYCERS or to BERS for Fiscal Year 2010 or after.

**OTHER COSTS:** Not measured in this Fiscal Note are any other possible non-retirement benefit costs such as increased administrative costs or additional medical costs or increases in the costs of certain Other Post-Employment Benefits ("OPEB") attributable to the potential earlier retirements of Returning Furloughed Members.

**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 2009 Legislative Session. It is Fiscal Note 2009-15, dated August 12, 2009, prepared by the Chief Actuary for the New York City Employees' Retirement System and the New York City Board of Education Retirement System.