# STATE OF NEW YORK

7207

2021-2022 Regular Sessions

# IN SENATE

June 7, 2021

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

AN ACT to amend the retirement and social security law, in relation to the definition of overtime ceiling

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Subdivision l of section 601 of the retirement and social security law, as amended by chapter 368 of the laws of 2017, is amended to read as follows:

l. (a) "Wages" shall mean regular compensation earned by and paid to a member by a public employer, except that for members who first join the New York state and local employees' retirement system or the New York state teachers' retirement system on or after January first, two thousand ten, overtime compensation paid in any year in excess of the overtime ceiling, as defined by this subdivision, shall not be included in the definition of wages.

(b) "Overtime compensation" shall mean, for purposes of this section, compensation paid under any law or policy under which employees are paid at a rate greater than their standard rate for additional hours worked beyond those required, including compensation paid under section one hundred thirty-four of the civil service law and section ninety of the general municipal law.

(c) The "overtime ceiling" shall mean fifteen thousand dollars per annum on January first, two thousand ten, and shall be increased by three per cent each year thereafter, provided, however, that:

(i) for members who first become members of a public retirement system of the state on or after April first, two thousand twelve, **other than a pension authorized under section six hundred four-b of this article,** "overtime ceiling" shall mean fifteen thousand dollars per annum on April first, two thousand twelve, and shall be increased each year thereafter by a percentage to be determined annually by reference to the

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

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consumer price index (all urban consumers, CPI-U, U.S. city average, all items, 1982-84=100), published by the United States bureau of labor statistics, for each applicable calendar year. Said percentage shall equal the annual inflation as determined from the increase in the consumer price index in the one year period ending on the December thirty-first preceding the overtime ceiling adjustment effective on the ensuing April first.

(ii) Commencing January first, two thousand eighteen, and each year thereafter, the overtime ceiling percentage shall be increased by an amount equal to the annual inflation as determined from the increase in the consumer price index in the one year period ending on the September thirtieth prior to the overtime ceiling adjustment effective on the ensuing January first.

(d) For members who first join a public retirement system of the state on or after April first, two thousand twelve, the following items shall not be included in the definition of wages: 1. wages in excess of the annual salary paid to the governor pursuant to section three of article four of the state constitution, 2. lump sum payments for deferred compensation, sick leave, accumulated vacation or other credits for time not worked, 3. any form of termination pay, 4. any additional compensation paid in anticipation of retirement, and 5. in the case of employees who receive wages from three or more employers in a twelve month period, the wages paid by the third and each additional employer.

§ 2. This act shall take effect immediately.

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

SUMMARY OF BILL: The proposed legislation would amend the definition of "Wages" contained in Section 601 of the Retirement and Social Security Law (RSSL) to make inapplicable the Overtime Ceiling for Tier 6 New York City Transit Authority (NYCTA) members subject to the 25-Year and Age 55 Retirement Program contained in RSSL Section 604-b (the 55/25 NYCTA Plan).

Effective Date: Upon enactment.

CURRENT PROVISIONS: Wages, as defined in RSSL Section 601(1), is regular compensation earned by and paid to a member by a public employer. Wages, among other things, are used to determine Tier 6 contribution rates and to calculate Final Average Salary. The wages of certain members, including Tier 6 55/25 NYCTA Plan participants, are capped by an Overtime Ceiling of $15,000 as of April 1, 2012. Each year thereafter, the Overtime Ceiling is increased by a percentage determined by reference to a specifically identified Consumer Price Index (CPI). For calendar year 2020, the Overtime Ceiling is $17,067.

IMPACT ON BENEFITS: Under the proposed legislation, the Overtime Ceiling would become inapplicable to Tier 6 55/25 NYCTA Plan participants. As a result, any prospective Tier 6 55/25 NYCTA Plan participant's overtime earnings exceeding the yearly Overtime Ceiling would be included in determining Tier 6 contributions, contribution rates, and in calculating Final Average Salary. To the extent a Tier 6 55/25 NYCTA Plan participant earns overtime exceeding the applicable Overtime Ceiling and such earnings fall within the participant's Final Average Salary period, the participant may be entitled to a higher annual pension calculation.

FINANCIAL IMPACT - SUMMARY: The financial impact will increase as the impacted population (Tier 6 NYCTA members of the New York City Employees' Retirement System (NYCERS)) increases over time. The estimated financial impact of removing the Overtime Ceiling as described above results in an increase in the Present Value of Future Benefits (PVFB) and an increase in the Present Value of member contributions. The net

result is an increase in the Present Value of future employer contributions. The estimate of these increases for Fiscal Years 2022 through 2026 based on the applicable actuarial assumptions and methods noted herein, are shown in the table below.

| Fiscal Year | Increase in Present Value of Future Employer Contributions ($ Millions) | Increase in Employer Contributions ($ Millions) |
|---|---|---|
| 2022 | $ 66.5 | $ 5.6 |
| 2023 | 71.8 | 6.1 |
| 2024 | 77.0 | 6.6 |
| 2025 | 83.8 | 7.2 |
| 2026 | 90.9 | 7.9 |

In accordance with Section 13-638.2(k-2) of the Administrative Code of the City of New York (ACCNY), new Unfunded Accrued Liability (UAL) attributable to benefit changes are to be amortized as determined by the Actuary, but are generally amortized over the remaining working lifetime of those impacted by the benefit changes. As of June 30, 2020, the remaining working lifetime of the Tier 6 55/25 NYCTA Plan participants is approximately 18 years.

For the purposes of this Fiscal Note, the increase in UAL was amortized over an 18-year period (17 payments under the One-Year Lag Methodology (OYLM)) using level dollar payments. This payment plus the increase in the Normal Cost results in an increase in annual employer contributions.

CONTRIBUTION TIMING: For the purposes of this Fiscal Note, it is assumed that the changes in the Present Value of future employer contributions and annual employer contributions would be reflected for the first time in the June 30, 2020 actuarial valuation of NYCERS. In accordance with the OYLM used to determine employer contributions, the increase in employer contributions would first be reflected in Fiscal Year 2022.

CENSUS DATA: The estimates presented herein are based on the census data used in the June 30, 2020 (Lag) actuarial valuation of NYCERS to determine the Preliminary Fiscal Year 2022 employer contributions.

The 15,178 Tier 6 55/25 NYCTA Plan members as of June 30, 2020 had an average age of approximately 41.9 years, average service of approximately 3.8 years, and an average salary of approximately $76,000.

ACTUARIAL ASSUMPTIONS AND METHODS: The changes in the Present Value of future employer contributions and annual employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the June 30, 2019 (Lag) actuarial valuations used to determine the Preliminary Fiscal Year 2021 employer contributions of NYCERS.

New entrants were projected to replace the members expected to leave the active population to maintain a steady-state population. New entrant demographics and future salary increases are consistent with those used in projections for the New York City Office of Management and Budget in April 2020 (Preliminary Projections).

The table below presents the total number of active Tier 6 55/25 NYCTA Plan participants used in the projections, assuming a level work force, and the cumulative number (i.e. net of withdrawals) of such participants as of each June 30 from 2020 through 2024.

| June 30 | Tier 1, 2, 4 & Tier 6 (non 55/25 plan) | Tier 6 (55/25 Plan) | Total |
|---|---|---|---|
| 2020 | 23,942 | 15,178 | 39,120 |
| 2021 | 22,290 | 16,830 | 39,120 |
| 2022 | 20,730 | 18,390 | 39,120 |
| 2023 | 19,229 | 19,891 | 39,120 |
| 2024 | 17,760 | 21,360 | 39,120 |

The Actuary is proposing a set of changes for use beginning with the June 30, 2019 (Lag) actuarial valuations of NYCERS to determine the Final Fiscal Year 2021 Employer Contributions (2021 A&M). If the 2021 A&M is enacted, it is estimated that it would produce increases in the Present Value of future employer contributions that are approximately 2% larger than the results shown above and annual employer contributions that are approximately 1% larger than the results shown above.

RISK AND UNCERTAINTY: The costs presented in this Fiscal Note depend highly on the realization of the actuarial assumptions used, as well as certain demographic characteristics of NYCERS and other exogenous factors such as investment, contribution, and other risks. If actual experience deviates from actuarial assumptions, the actual costs could differ from those presented herein. Costs are also dependent on the actuarial methods used, and therefore different actuarial methods could produce different results. Quantifying these risks is beyond the scope of this Fiscal Note.

Not measured in this Fiscal Note are the following:

* The initial, additional administrative costs of NYCERS and other New York City agencies to implement the proposed legislation.

* Pension costs for future members of NYCERS hired on or after 7/1/2024.

* The impact of this proposed legislation on Other Postemployment Benefit (OPEB) costs.

STATEMENT OF ACTUARIAL OPINION: I, Sherry S. Chan, am the Chief Actuary for, and independent of, the New York City Retirement Systems and Pension Funds. I am a Fellow of the Society of Actuaries, an Enrolled Actuary under the Employee Retirement Income and Security Act of 1974, a Member of the American Academy of Actuaries, and a Fellow of the Conference of Consulting Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein. To the best of my knowledge, the results contained herein have been prepared in accordance with generally accepted actuarial principles and procedures and with the Actuarial Standards of Practice issued by the Actuarial Standards Board.

FISCAL NOTE IDENTIFICATION: This Fiscal Note 2021-31 dated May 24, 2021 was prepared by the Chief Actuary for the New York City Employees' Retirement System. This estimate is intended for use only during the 2021 Legislative Session.