# STATE OF NEW YORK

8461

# IN SENATE

March 3, 2022

Introduced by Sen. RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the retirement and social security law, in relation to permitting wages earned through shared services agreements to be included in the computation of final average salaries

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

Section 1. Subdivisions a and b of section 512 of the retirement and social security law, subdivision a as amended by chapter 298 of the laws of 2016 and subdivision b as amended by chapter 18 of the laws of 2012, are amended and a new subdivision e is added to read as follows:

a. A member's final average salary shall be the average wages earned by such a member during any three consecutive years which provide the highest average wage; provided, however, if the wages earned during any year included in the period used to determine final average salary exceeds that of the average of the previous two years by more than ten percent, the amount in excess of ten percent shall be excluded from the computation of final average salary**; provided however if the amount in excess of ten percent was earned while working under a shared services agreement, such excess shall be included in the computation of the final average salary**. Notwithstanding the preceding provisions of this subdivision to the contrary, for a member who first becomes a member of the New York state and local employees' retirement system on or after April first, two thousand twelve, or for a New York city police/fire revised plan member, a New York city enhanced plan member who receives the ordinary disability benefit provided for in subdivision c-1 of section five hundred six of this article or the accidental disability benefit provided for in paragraph three of subdivision c of section five hundred seven of this article, a New York city uniformed correction/sanitation revised plan member or an investigator revised plan member, a member's final average salary shall be the average wages earned by such a member during any five consecutive years which provide the highest average wage; provided, however, if the wages earned during any year included in the period used to determine final average salary exceeds that of the

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

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average of the previous four years by more than ten percent, the amount in excess of ten percent shall be excluded from the computation of final average salary. In determining final average salary pursuant to any provision of this subdivision, where the period used to determine final average salary is the period which immediately precedes the date of retirement, any month or months (not in excess of twelve) which would otherwise be included in computing final average salary but during which the member was on authorized leave of absence at partial pay or without pay shall be excluded from the computation of final average salary and the month or an equal number of months immediately preceding such period shall be substituted in lieu thereof.

b. Notwithstanding the provisions of subdivision a of this section, with respect to members of the New York state employees' retirement system who first become members of the New York state and local employees' retirement system before April first, two thousand twelve, the New York state 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**; provided however if the amount in excess of ten percent was earned while working under a shared services agreement, such excess shall be included in the computation of the final average salary**. For members who first become a member of the New York state and local employees' retirement system on or after April first, two thousand twelve, with respect to members of the New York state and local employees' retirement system, a member's final average salary shall be equal to one-fifth of the highest total wages earned during any continuous period of employment for which the member was credited with five 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 four 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**; provided however if the amount in excess of ten percent was earned while working under a shared services agreement, such excess shall be included in the computation of the final average salary**.

**e. For the purposes of this section "shared services agreement" shall mean an agreement entered into between two or more municipalities, libraries, or public or quasi-public organizations participating in the retirement system, whereby such participating entities agree to share services described in such agreement.**

§ 2. Subdivisions a and b of section 608 of the retirement and social security law, as amended by chapter 18 of the laws of 2012, are amended and a new subdivision f is added to read as follows:

a. For members who first become members of a public retirement system of the state before April first, two thousand twelve, a member's final average salary shall be the average wages earned by such a member during any three consecutive years which provide the highest average wage; provided, however, if the wages earned during any year included in the period used to determine final average salary exceeds that of the average of the previous two years by more than ten percent, the amount in

excess of ten percent shall be excluded from the computation of final average salary**; provided however if the amount in excess of ten percent was earned while working under a shared services agreement, such excess shall be included in the computation of the final average salary**. For members who first become members of the New York state and local employees' retirement system or the New York state teachers' retirement system on or after April first, two thousand twelve, a member's final average salary shall be the average wages earned by such member during any five consecutive years which provide the highest average wage; provided, however, if the wages earned during any year included in the period used to determine final average salary exceeds that of the average of the previous four years by more than ten percent, the amount in excess of ten percent shall be excluded from the computation of final average salary**; provided however if the amount in excess of ten percent was earned while working under a shared services agreement, such excess shall be included in the computation of the final average salary**. Where the period used to determine final average salary is the period which immediately precedes the date of retirement, any month or months (not in excess of twelve) which would otherwise be included in computing final average salary but during which the member was on authorized leave of absence at partial pay or without pay shall be excluded from the computation of final average salary and the month or an equal number of months immediately preceding such period shall be substituted in lieu thereof.

b. Notwithstanding the provisions of subdivision a of this section, with respect to members who first became members of the New York state and local employees' retirement system and the New York city teachers' retirement system before April first, two thousand twelve, 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**; provided however if the amount in excess of ten percent was earned while working under a shared services agreement, such excess shall be included in the computation of the final average salary**. With respect to members who first become members of the New York state and local employees' retirement system and the New York city teachers' retirement system on or after April first, two thousand twelve, a member's final average salary shall be equal to one-fifth of the highest total wages earned by such member during any continuous period of employment for which the member was credited with five 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 four 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**; provided however if the amount in excess of ten percent was earned while working under a shared services agreement, such excess shall be included in the computation of the final average salary**.

**f. For the purposes of this section "shared services agreement" shall mean an agreement entered into between two or more municipalities, libraries, or public or quasi-public organizations participating in the**

**retirement system, whereby such participating entities agree to share services described in such agreement.**

§ 3. Section 1209 of the retirement and social security law, as added by chapter 18 of the laws of 2012, is amended to read as follows:

§ 1209. Final average salary. **a.** For members who first become members of the New York state and local police and fire retirement system on or after April first, two thousand twelve, a member's final average salary shall be equal to one-fifth of the highest total wages earned by such member during any continuous period of employment for which the member was credited with five 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 four 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**; provided however if the amount in excess of ten percent was earned while working under a shared services agreement, such excess shall be included in the computation of the final average salary**. Wages in excess of the annual salary paid to the governor pursuant to section three of article four of the state constitution shall be excluded from the computation of final average salary for members who first become members of the New York state and local police and fire retirement system on or after April first, two thousand twelve.

**b. For the purposes of this section "shared services agreement" shall mean an agreement entered into between two or more municipalities, libraries, or public or quasi-public organizations participating in the retirement system, whereby such participating entities agree to share services described in such agreement.**

§ 4. All costs associated with implementing the provisions of this act shall be borne by the entities involved in such shared services agreements and shall not be subject to the provisions of section twenty-five of the retirement and social security law.

§ 5. This act shall take effect immediately.

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

This bill would allow earnings while working under a shared services agreement in excess of the ten percent limitation to be included in the computation of final average salary for tiers 3 through 6. Currently, earnings in any year used in computation of the final average salary cannot exceed the average of the previous two years (four years for tier 6) by more than ten percent. A shared services agreement is an agreement between two municipalities, libraries or public or quasi-public organizations participating in the retirement system which agree to share services.

The exact number of current members as well as future members who could be affected by this legislation cannot be readily determined. In all likelihood, very few members would be affected. However, if a large number of members earn salary under these shared services agreements there could be significant additional annual costs.

If this bill is enacted, insofar as this proposal affects the New York State and Local Employees' Retirement System (NYSLERS), any costs arising from this legislation would be shared by the State of New York and the participating employers in the NYSLERS.

Insofar as this proposal affects the New York State and Local Police and Fire Retirement System (NYSLPFRS), any costs arising from this legislation would be shared by the State of New York and the participating employers in the NYSLPFRS.

Summary of relevant resources:

Membership data as of March 31, 2021 was used in measuring the impact of the proposed change, the same data used in the April 1, 2021 actuarial valuation. Distributions and other statistics can be found in the 2021 Report of the Actuary and the 2021 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2020 and 2021 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes, Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2021 New York State and Local Retirement System Financial Statements and Supplementary Information.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This fiscal note does not constitute a legal opinion on the viability of the proposed change nor is it intended to serve as a substitute for the professional judgment of an attorney.

This estimate, dated February 18, 2022, and intended for use only during the 2022 Legislative Session, is Fiscal Note No. 2022-66, prepared by the Actuary for the New York State and Local Retirement System.