

# STATE OF NEW YORK

5818

2021-2022 Regular Sessions

## IN ASSEMBLY

February 25, 2021

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

AN ACT to amend the retirement and social security law, in relation to  
calculating pension benefits for public employees

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Section 75 of the retirement and social security law is  
2 amended by adding a new subdivision e to read as follows:

3 e. For purposes of this title, all final average salaries shall be  
4 calculated exclusive of any form of overtime compensation, unused vaca-  
5 tion time, unused sick leave or unused personal time.

6 § 2. Section 375 of the retirement and social security law is amended  
7 by adding a new subdivision e to read as follows:

8 e. For purposes of this title, all final average salaries shall be  
9 calculated exclusive of any form of overtime compensation, unused vaca-  
10 tion time, unused sick leave or unused personal time.

11 § 3. This act shall take effect on the ninetieth day after it shall  
12 have become a law.

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

This bill would reduce the retirement benefits for members who retire  
from the New York State and Local Employees' Retirement System (ERS) and  
the New York State and Local Police and Fire Retirement System (PFRS) on  
or after the effective date by requiring the exclusion of any form of  
overtime compensation, unused vacation time, unused sick leave or unused  
personal time from the calculation of final average salary (FAS).

If enacted into law, this bill is likely to face a constitutional  
challenge based upon the guarantee that a member's benefits may not be  
diminished.

In addition, if enacted there will be an administrative cost to imple-  
ment the provisions of this legislation.

Summary of relevant resources:

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

LBD08072-02-1

Membership data as of March 31, 2020 was used in measuring the impact of the proposed change, the same data used in the April 1, 2020 actuarial valuation. Distributions and other statistics can be found in the 2020 Report of the Actuary and the 2020 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2020 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, 2020 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 16, 2021, and intended for use only during the 2021 Legislative Session, is Fiscal Note No. 2021-90, prepared by the Actuary for the New York State and Local Retirement System.