

# STATE OF NEW YORK

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4768--A

2021-2022 Regular Sessions

## IN SENATE

February 11, 2021

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Introduced by Sens. GRIFFO, AKSHAR -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to authorize members of the New York state and New York city teachers' retirement systems and the New York state and local employees' retirement system to claim retirement credit for certain private school teaching service

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

1 Section 1. Notwithstanding any other provision of law, a member of the  
2 New York state teachers' retirement system or the New York city teachers' retirement system, or any member of the New York state and local  
3 employees' retirement system who is employed by a school district, a  
4 board of cooperative educational services, a vocational education and  
5 extension board, an institution for the instruction of the deaf and  
6 blind as enumerated in section 4201 of the education law or a school  
7 district as enumerated in section 1 of chapter 566 of the laws of 1967,  
8 or who is employed by the state of New York as an institutional teacher  
9 as defined by section 136 of the civil service law, shall be entitled to  
10 obtain credit for up to five years of service rendered as a teacher  
11 employed by a private elementary or secondary school within the state of  
12 New York chartered by or registered with the board of regents, or in a  
13 private college within the state of New York authorized by the board of  
14 regents to grant degrees, which would constitute service as a teacher,  
15 had it been performed within New York state for an employer subject to  
16 the applicable provisions of law governing such retirement system.

17 § 2. The crediting of service pursuant to this act shall be in accordance with such rules and regulations as shall be adopted by the retirement board of the New York state teachers' retirement system, the retirement board of the New York city teachers' retirement system or the

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

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1 state comptroller, as appropriate, provided that such rules and regu-  
2 lations shall be substantially equivalent to the rules and regulations  
3 otherwise applicable for the crediting of service pursuant to applicable  
4 provisions of law governing each such retirement system, and provided  
5 further that if such provisions have not expired such member makes the  
6 applicable payments required pursuant to the provisions of sections 517  
7 and 613, and paragraph 2 of subdivision b of section 609 of the retire-  
8 ment and social security law.

9 § 3. The service credit granted pursuant to this act shall constitute  
10 service for the purpose of both computing the pension payable upon  
11 retirement for service and in determining the total length of service  
12 credited for the purpose of eligibility for a service retirement bene-  
13 fit, but shall not be used in computing final average salary. Provided  
14 further, no such credit shall be allowed for any service for which the  
15 person is receiving a benefit or will be entitled to receive a benefit  
16 at any future time from any other public or private retirement system or  
17 plan in this state, any other state or from the federal government.

18 § 4. This act shall take effect June 30, 2021. Effective immediately,  
19 the addition, amendment and/or repeal of any rule or regulation neces-  
20 sary for the implementation of this act on its effective date are  
21 authorized to be made and completed on or before such effective date.

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

This bill would allow members of certain public retirement systems who are currently employed by a school district, a board of cooperative educational services, a vocational education and extension board, an institution for the deaf and blind or as an institutional teacher to receive up to five years of service credit in such public retirement systems for employment as a teacher in private schools in New York State. However, credit will not be provided for any service for which the member is receiving a benefit or will be entitled to receive a benefit at any future time from any other public or private retirement system or plan in this state, any other state or from the federal government.

The additional service credit granted pursuant to this bill shall constitute service credit for the purpose of computing the pension payable upon retirement and shall be used to determine eligibility for a service benefit. For certain members, contributions will be required in order to obtain such additional service credit. Each such member will be required to make a payment of 3% (6% for Tier 6) of current compensation per year of additional service credit granted pursuant to this bill.

Insofar as it would affect the New York State and Local Employees' Retirement System (ERS), if this bill is enacted during the 2021 legislative session, it is estimated that the past service cost will average approximately 15% (12% for Tier 6) of an affected member's compensation for each year of additional service credit that is purchased.

The exact number of current members as well as future members who could be affected by this bill cannot be readily determined. Pursuant to Section 25 of the Retirement and Social Security Law, those costs arising in ERS would be borne solely by the State of New York.

Internal Revenue Service (IRS) plan qualification issues: granting service credit for employment rendered to any organization that may potentially be considered a non-governmental or private employer, such as certain types of educational institutions described in this bill, could jeopardize the Retirement System's governmental plan status and its exemption from ERISA. This development could result in the loss of qualified status, which would mean the loss of tax benefits. This result

would substantially impair the System's value to our more than one million participants.

Prior to the enactment of this bill, we recommend that a favorable ruling be obtained from the IRS stating that these provisions would not harm the qualification status of the System. It is estimated that the costs to obtain such a ruling would be \$28,000 for the services of the IRS, and \$800 per hour for legal consultants.

Summary of relevant resources:

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 19, 2021, and intended for use only during the 2021 Legislative Session, is revised Fiscal Note No. 2021-84, prepared by the Actuary for the New York State and Local Retirement System.