# STATE OF NEW YORK

5136

2023-2024 Regular Sessions

# IN ASSEMBLY

March 2, 2023

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

AN ACT to amend the retirement and social security law, in relation to the calculation of final average salary for certain members of the New York state and local police and fire retirement system

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

Section 1. 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. 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. Notwithstanding subdivision a of this section, 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, and who retire from an employer which, prior to April first, two thousand twelve, elected by the adoption, filing and approval of a resolution in the manner provided by section three hundred thirty of this chapter to**

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

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**provide that final average salary shall mean the regular compensation earned from such participating employer by a member during the twelve months of actual service immediately preceding the date of such member's retirement pursuant to subdivision f of section four hundred forty-three of this chapter, shall continue to have his or her final average salary computed with such twelve month final average salary unless such member would otherwise be entitled to a greater benefit under subdivision a of this section, in which case such greater benefit shall be payable.**

§ 2. This act shall take effect immediately.

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

This bill would change the calculation of final average salary (FAS) for Tier 6 members of the New York State and Local Police and Fire Retirement System (NYSLPFRS) whose employer previously elected to provide the one-year FAS benefit to members of Tiers 2 and 5 under Retirement and Social Security Law Section 443-f. Currently, a Tier 6 member's FAS is defined as the average wages earned over five consecutive years, with wages earned during any year limited to the average of the prior four years' wages increased by 10%. If this bill is enacted, a Tier 6 member's FAS will be defined as the earnings reported over the 12 months preceding their date of retirement. Wages exceeding the annual salary paid to the governor will continue to be excluded.

If this bill is enacted during the 2023 legislative session, we anticipate that there will be an increase of approximately $3.9 million in the annual contributions of the affected employers for the fiscal year ending March 31, 2024. In future years, this cost will vary as the billing rates and salary of the affected members change. As a percentage of payroll, we anticipate that the annual contributions of the affected employers will increase as follows:

| Plan | Rate Increase |
|---|---|
| Age-55 | 1.6% |
| 25-Year | 1.9% |
| 25-Year w/ Additional 60ths | 2.1% |
| 20-Year | 2.3% |
| 20-Year w/ Additional 60ths | 2.4% |

In addition to the annual contributions discussed above, there will be an immediate past service cost of approximately $23.4 million, calculated as of February 1, 2024, which will be shared by the State of New York and all the participating employers in the NYSLPFRS, including those participating employers whose employees do not benefit from this proposal.

These estimated costs are based on 1,817 affected members employed by various participating employers in the NYSLPFRS, with annual salary of approximately $152 million as of March 31, 2022.

Summary of relevant resources:

Membership data as of March 31, 2022 was used in measuring the impact of the proposed change, the same data used in the April 1, 2022 actuarial valuation. Distributions and other statistics can be found in the 2022 Report of the Actuary and the 2022 Annual Comprehensive Financial Report.

The actuarial assumptions and methods used are described in the 2020, 2021, and 2022 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, 2022 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 3, 2023, and intended for use only during the 2023 Legislative Session, is Fiscal Note No. 2023-41, prepared by the Actuary for the New York State and Local Retirement System.