STATE OF NEW YORK

8490

IN SENATE

February 6, 2024

Introduced by Sen. JACKSON -- 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 and the administrative code of the city of New York, in relation to the calculation of the final average salary for purposes of the calculation of a pension benefit

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 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. [~~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 average of the previous four years by more than ten percent, the amount in excess of ten percent shall be~~

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

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~~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. [~~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.~~]

§ 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 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~~] **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. [~~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.~~] 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. [~~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.~~]

§ 3. Subparagraph (ii) of paragraph 14 of subdivision e of section 13-638.4 of the administrative code of the city of New York, as amended by chapter 18 of the laws of 2012, is amended to read as follows:

(ii) Subject to the provisions of subdivision f of this section where those provisions are applicable, and notwithstanding the provisions of subdivisions a and c of section six hundred eight of the RSSL, for a tier IV member of NYCERS who is a New York city revised plan member (as defined in subdivision m of section six hundred one of the RSSL) or a tier IV member of BERS who is a New York city revised plan member, the term "final average salary", as used in article fifteen of the RSSL, shall be equal to [~~one-fifth~~] **one-third** of the highest total wages earned by such member during any continuous period of employment for which the member was credited with [~~five~~] **three** years of service credit; provided that 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 further that "wages", as used in this paragraph, shall mean the applicable provisions and limitations of the term "wages", as defined in subdivision l of section six hundred one of the RSSL.

§ 4. Subdivision a of section 1209 of the retirement and social security law, as amended by chapter 705 of the laws of 2023, is amended to read as follows:

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, beginning on or after April first, two thousand twenty-four, 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.** 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.

§ 5. Notwithstanding any other provision of law to the contrary, none of the provisions of this act shall be subject to section 25 of the retirement and social security law.

§ 6. This act shall take effect immediately.

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

This bill would provide Tier 6 members in the New York State and Local Retirement System a final average salary based on their highest salary earned over three consecutive years, where the salary earned in any year cannot exceed the average of the previous two years by more than 10%. Currently, final average salary for these members is based on their highest salary earned over five consecutive years, where the salary earned in any year cannot exceed the average of the previous four years by more than 10%. The provisions of Section 25 of the Retirement and Social Security Law shall not apply.

Insofar as this bill affects the New York State and Local Employees' Retirement System (NYSLERS), the increased costs would be shared by the State of New York and the local participating employers in the NYSLERS. If this bill were enacted during the 2024 Legislative Session, the increase in the present value of benefits would be approximately $1.17 billion.

NYSLERS	Increase in present value benefits	Increase in required contributions
Tiers 1 - 5	$0	$220 million
Tier 6	$1.17 billion	$950 million
Total	$1.17 billion	$1.17 billion

In the NYSLERS, this benefit improvement will be funded by increasing the billing rates charged annually to cover both retrospective and prospective benefit increases. The annual contribution required of all participating employers in NYSLERS is 0.4% of billable salary, or approximately $51 million to the State of New York and approximately $76 million to the local participating employers. **This permanent annual cost**

will increase as Tier 6 salary grows and will vary by employer based upon the plan coverage and salary reported in Tier 6.

Insofar as this bill affects the New York State and Local Police and Fire Retirement System (NYSLPFRS), the increased costs would be shared by the State of New York and the local participating employers in the NYSLPFRS. If this bill were enacted during the 2024 Legislative Session, the increase in the present value of benefits would be approximately $341 million.

NYSLPFRS	Increase in present value benefits	Increase in required contributions
Tiers 1 - 5	$0	$33 million
Tier 6	$341 million	$308 million
Total	$341 million	$341 million

In the NYSLPFRS, this benefit improvement will be funded by increasing the billing rates charged annually to cover both retrospective and prospective benefit increases. The annual contribution required of all participating employers in the NYSLPFRS is 0.70% of billable salary, or approximately $6.0 million to the State of New York and approximately $25 million to the local participating employers. **The permanent annual cost will increase** as Tier 6 salary grows and will vary by employer based upon the plan coverage and salary reported in Tier 6.

These estimated costs are based on 265,533 Tier 6 members in the NYSLERS and 16,599 Tier 6 members in the NYSLPFRS, with annual salary of approximately $12 billion and $1.5 billion, respectively, as of March 31, 2023.

Summary of relevant resources:

Membership data as of March 31, 2023 was used in measuring the impact of the proposed change, the same data used in the April 1, 2023 actuarial valuation. Distributions and other statistics can be found in the 2023 Report of the Actuary and the 2023 Annual Comprehensive Financial Report.

The actuarial assumptions and methods used are described in the 2023 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, 2023 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 2, 2024, and intended for use only during the 2024 Legislative Session, is Fiscal Note No. 2024-118, prepared by the Actuary for the New York State and Local Retirement System.

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

As it relates to the New York State Teacher's Retirement System, this bill would amend subdivisions a and b of Section 608 of the Retirement and Social Security Law to change the definition of final average salary for Tier 6 members to be the same as that for Tier 3, 4 and 5 members. The final average salary for Tier 6 members would be based on any three consecutive years which produce the highest average salary. Currently, the final average salary for Tier 6 members is based on the salaries

earned during any five consecutive years which provide the highest average salary. Additionally, under the bill, as in Tier 3, 4 and 5, if the salary for any year used in the period exceeds that of the average of the prior two years by more than 10%, the amount in excess of 10% shall be excluded from the computation. Currently, under Tier 6, if the salary for any year used in the period exceeds that of the average of the prior four years by more than 10%, the amount in excess of 10% is excluded from the computation.

The annual cost to the employers of members of the New York State Teachers' Retirement System for this benefit is estimated to be $23.1 million or 0.12% of payroll if this bill is enacted.

The System's "new entrant rate", a hypothetical employer contribution rate that would occur if we started a new Retirement System without any assets, is equal to 5.31% of pay under the current Tier 6 benefit structure. This can be thought of as the long-term expected employer cost of Tier 6, based on current actuarial assumptions. For the proposed change to the Tier 6 benefit structure under this bill, this new entrant rate is estimated to increase to 5.55% of pay, an increase of 0.24% of pay.

Member data is from the System's most recent actuarial valuation files as of June 30, 2023, consisting of data provided by the employers to the Retirement System. The most recent data distributions and statistics can be found in the System's Annual Report for fiscal year ended June 30, 2023. System assets are as reported in the System's financial statements and can also be found in the System's Annual Report. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report as of June 30, 2023.

The source of this estimate is Fiscal Note 2024-17 dated February 2, 2024 prepared by the Office of the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2024 Legislative Session. I, Richard A. Young, am the Chief Actuary for the New York State Teachers' Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

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

SUMMARY: This proposed legislation, as it relates to the New York City Retirement Systems and Pension Funds (NYCRS), would increase the Final Average Salary used to calculate pension benefits for certain Tier 3 and Tier 6 members of NYCRS by reducing the number of years included in the average from five years to three years.

EXPECTED INCREASE (DECREASE) IN EMPLOYER CONTRIBUTIONS
by Fiscal Year for the first 25 years ($ in Millions)

Year	NYCERS	TRS	BERS	POLICE	FIRE	TOTAL
2025	67.2	56.2	5.7	47.8	19.4	196.3
2026	63.9	54.9	5.9	44.2	21.3	190.2
2027	68.0	57.8	6.2	49.2	23.3	204.5
2028	72.2	60.9	6.5	54.8	25.5	219.9
2029	76.5	64.2	6.9	60.2	27.8	235.6
2030	80.8	67.7	7.2	66.0	30.2	251.9
2031	85.2	71.4	7.6	71.4	32.7	268.3
2032	89.5	75.4	7.9	76.0	35.3	284.1
2033	93.9	79.6	8.3	80.5	38.0	300.3
2034	98.5	84.1	8.7	85.0	40.8	317.1
2035	103.0	88.9	9.0	89.4	43.7	334.0

2036	107.6	93.9	9.4	93.8	46.7	351.4
2037	112.2	99.2	9.8	98.4	49.8	369.4
2038	116.9	104.8	8.0	103.4	53.1	386.2
2039	121.7	110.8	8.5	108.5	56.3	405.8
2040	103.5	116.9	8.9	113.4	59.6	402.3
2041	108.2	123.3	9.3	107.4	63.0	411.2
2042	113.0	129.7	9.7	112.3	66.4	431.1
2043	117.8	136.1	10.2	117.3	64.2	445.6
2044	122.7	123.8	10.6	122.3	67.6	447.0
2045	127.6	130.1	11.1	127.4	70.9	467.1
2046	132.6	136.4	11.5	132.5	74.2	487.2
2047	137.7	142.5	12.0	137.6	77.4	507.2
2048	142.9	148.6	12.5	142.9	80.7	527.6
2049	148.1	154.8	13.0	148.4	83.9	548.2

Employer Contribution impact beyond Fiscal Year 2049 is not shown. Projected contributions include future new hires that may be impacted.

The initial increase in employer contributions of $196.3 million is estimated to be $163.2 million for New York City and $33.1 million for the other obligors of NYCRS.

INITIAL INCREASE (DECREASE) IN ACTUARIAL LIABILITIES
as of June 30, 2023 ($ in Millions)

Present Value (PV)	NYCERS	TRS	BERS	POLICE	FIRE
PV of Benefits:	633.8	666.9	53.3	570.7	279.6
PV of Employee Contributions:	0.0	0.0	0.0	0.0	0.0
PV of Employer Contributions:	633.8	666.9	53.3	570.7	279.6
Unfunded Accrued Liabilities:	207.9	189.6	17.8	105.3	53.8

AMORTIZATION OF UNFUNDED ACCRUED LIABILITY

	NYCERS	TRS	BERS	POLICE	FIRE
Number of Payments:	15	19	13	16	18
Fiscal Year of Last Payment:	2039	2043	2037	2040	2042
Amortization Payment:	22.9 M	18.6 M	2.2 M	10.8 M	5.5 M
Additional One-time Payment:	7.0 M	4.0 M	0.0 M	7.5 M	0.0 M

Unfunded Accrued Liability (UAL) increases for active members were amortized over the expected remaining working lifetime of those impacted by the benefit changes using level dollar payments. UAL attributable to terminated vested members was recognized in the first year.

CENSUS DATA: The estimates presented herein are based on preliminary census data collected as of June 30, 2023. The census data for the impacted population is summarized below.

	NYCERS	TRS	BERS	POLICE	FIRE
Active Members					
- Number Count:	92,737	60,663	12,932	20,089	5,030
- Average Age:	42.1	38.1	46.9	32.7	33.5
- Average Service:	4.6	5.0	4.0	6.1	5.5
- Average Salary:	80,600	80,000	56,200	107,400	112,400
Term. Vested Members					

- Number Count:	4,274	3,999	397	887	9
- Average Age:	41.5	37.9	44.6	34.6	37.6

IMPACT ON MEMBER BENEFITS: Currently, Final Average Salary (FAS) is based on a five-year average, with each year's salary limited to 110% of the average of the prior four year's salaries for the following groups:

* Tier 3 and Tier 6 members who joined NYCRS on or after April 1, 2012, and

* Tier 3 enhanced members of POLICE and FIRE who retire for disability.

Under the proposed legislation, the FAS for such members would be based on a three-year average, with each year's salary limited to 110% of the average of the prior two year's salaries (prior four year's salaries for NYCERS and BERS).

The five-year FAS for enhanced disability benefits for Corrections and Sanitation members of NYCERS is provided as part of an agreement under Retirement and Social Security Law Article 25 and is assumed to remain unchanged by this proposed legislation.

ASSUMPTIONS AND METHODS: The estimates presented herein have been calculated based on the Revised 2021 Actuarial Assumptions and Methods of the impacted retirement systems. In addition:

* New entrants were assumed to replace exiting members so that total payroll increases by 3% each year for impacted groups. New entrant demographics were developed based on data for recent new hires and actuarial judgement.

RISK AND UNCERTAINTY: The costs presented in this Fiscal Note depend highly on the actuarial assumptions, methods, and models used, demographics of the impacted population, and other factors such as investment, contribution, and other risks. If actual experience deviates from actuarial assumptions, the actual costs could differ from those presented herein. Quantifying these risks is beyond the scope of this Fiscal Note.

This Fiscal Note is intended to measure pension-related impacts and does not include other potential costs (e.g., administrative and Other Postemployment Benefits).

STATEMENT OF ACTUARIAL OPINION: Marek Tyszkiewicz and Gregory Zelikovsky are members of the Society of Actuaries and the American Academy of Actuaries. We are members of NYCERS but do not believe it impairs our objectivity and we meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein. To the best of our 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 2024-10 dated February 2, 2024 was prepared by the Chief Actuary for the New York City Retirement Systems and Pension Funds. This estimate is intended for use only during the 2024 Legislative Session.