

STATE OF NEW YORK

9295

IN SENATE

May 10, 2024

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

AN ACT to authorize the Honorable Joseph J. Maltese to receive compen-
sation and service credit

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

1 Section 1. Under New York state law, justices over the age of 70 must
2 request certification to continue to serve. In September 2020, Justice
3 Joseph J. Maltese, who was assigned to the Appellate Division, Second
4 Department of the Supreme Court and other justices were denied certif-
5 ication by the office of court administration based on potential future
6 budget cuts that never materialized. As a result, Justice Maltese and
7 other similarly situated justices were terminated effective January 1,
8 2021. Pursuant to chapter 185 of the laws of 2023, judicial compen-
9 sation was awarded to 15 justices for the period from January 1, 2021,
10 to June 14, 2021. The legislature allocated monies to the office of
11 court administration to make those justices whole. Justice Maltese, who
12 believed he was included in that legislation was not compensated for
13 that period of time as he did not resume service at the Appellate Divi-
14 sion, Second Department until November 8, 2021, because he needed the
15 Governor's redesignation, to return to the Appellate Division, which did
16 not take effect until November 8, 2021. Justice Maltese rejoined the
17 court with the approval of the office of court administration and
18 suspended his pension benefits effective on November 8, 2021.

19 This body is in agreement with the office of court administration,
20 that in the interest of fairness, and for the purpose of remedying the
21 injury to Justice Maltese who was, through no fault of his own, denied
22 his compensation and the opportunity to continue to serve the people of
23 the state of New York, that Justice Maltese should be made whole, to the
24 extent possible, in terms of his salary and his pension.

25 § 2. Notwithstanding any other provision of law, rule, or regulation,
26 the office of court administration is authorized to pay Justice Joseph
27 J. Maltese the salary he would have earned from the period of January 1,

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

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1 2021 to November 7, 2021. In the event that Justice Maltese worked
2 full- or part-time during the period of January 1, 2021 to November 7,
3 2021, outside earnings from such employment shall be deducted from the
4 amount payable as judicial compensation, so that his total wages shall
5 not exceed the amount he would have earned as wages from New York state
6 during that period. The office of court administration is also author-
7 ized to pay to the New York state and local employees' retirement system
8 the amount that would have been deducted and paid to such retirement
9 system for the pension credit accrued by Justice Maltese during such
10 period. All such payments shall be made out of moneys appropriated
11 therefor. The New York state and local employees' retirement system is
12 authorized to reinstate Justice Maltese to the retirement system for
13 that period from January 1, 2021 to November 7, 2021 and continuing
14 until the present time nunc pro tunc, and to adjust his seniority and
15 add any additional credits since returning to the court prospectively
16 from November 8, 2021. The comptroller is authorized to waive the
17 payment of interest by Justice Maltese who received his pension during
18 the period from January 1, 2021 to November 7, 2021, and is now required
19 to repay it.

20 § 3. This act shall take effect immediately.

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

This bill would allow Justice Joseph J. Maltese, a member of the New York State and Local Employees' Retirement System (NYSLERS), who was dismissed from employment as a supreme court justice of the Unified Court System during the period beginning January 1, 2021 and ending on November 7, 2021, to obtain service credit for the duration of the period of unemployment. Additionally, Joseph J. Maltese shall be paid pensionable earnings for the period of January 1, 2021 through November 7, 2021, the date of reemployment. To be eligible for this additional service credit, Joseph J. Maltese, who retired and collected pension benefits during the period of unemployment, will be required to repay those benefits. This bill would not be consistent with the NYSLERS policy of granting service credit only when a salary has been paid for services performed.

If this bill is enacted during the 2024 Legislative Session, there will be an immediate past service cost of approximately \$51,900 which will be borne by the New York State Office of Court Administration as a one-time payment. This estimate assumes that payment will be made on March 1, 2025.

This bill will not increase the future annual contributions of the New York State Office of Court Administration.

The costs quoted above are in addition to the employer contributions required for any increase in pensionable earnings reported to the NYSLERS and are estimated to be \$48,000, which will be collected as part of the customary billing process.

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 May 8, 2024, and intended for use only during the 2024 Legislative Session, is Fiscal Note No. 2024-175, prepared by the Actuary for the New York State and Local Retirement System.