STATE OF NEW YORK

6343--A

2023-2024 Regular Sessions

IN SENATE

April 17, 2023

Introduced by Sens. GOUNARDES, ADDABBO, CHU, GALLIVAN, MAYER, RHOADS -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- recommitted to the Committee on Civil Service and Pensions in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to the limitation of overtime compensation in final average salary calculations

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

Section 1. Section 1203 of the retirement and social security law, as added by section 1 of part A of chapter 504 of the laws of 2009, is amended to read as follows:

§ 1203. Overtime. A member's final average salary shall be calculated in accordance with such provisions of article eight or article eleven of this chapter as govern the member's benefits **including overtime**, except that earnings classified as overtime compensation in an amount in excess of [~~fifteen~~] **thirty** percent of a member's annual wages not classified as overtime compensation shall be excluded from such calculation. "Overtime compensation" shall mean, for purposes of this section, compensation paid under any law or policy under which employees are paid at a rate greater than their standard rate for additional hours worked beyond those required, including compensation paid under section one hundred thirty-four of the civil service law and section ninety of the general municipal law.

§ 2. This act shall take effect immediately.

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

This bill would increase the allowable overtime compensation included in the final average salary calculation to 30 percent of a member's annual wages for Tier 5 and Tier 6 members in the New York State and

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

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Local Police and Fire Retirement System (NYSLPFRS). The current limit is 15 percent.

Insofar as this bill affects the 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 $493 million.

NYSLPFRS	Increase in present value benefits	Increase in required contributions
Tiers 1-5	$31 million	$75 million
Tier 6	$462 million	$418 million
Total	$493 million	$493 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 NYSLPFRS is 1.0% of billable salary, or approximately $8.6 million to the State of New York and approximately $35 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.

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 16, 2024, and intended for use only during the 2024 Legislative Session, is Fiscal Note No. 2024-42, prepared by the Actuary for the New York State and Local Retirement System.