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I N   S E N A T E

May 21, 2010

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Introduced by Sens. SAVINO, BRESLIN, O. JOHNSON, MONTGOMERY, STACHOWSKI, STEWART-COUSINS, THOMPSON -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to provide a temporary retirement incentive for certain public employees (Part A); and to provide an age 55/25 years temporary retirement incentive for certain public employees (Part B)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. This act enacts into law components of legislation that  
2     would enable public employers to offer a temporary retirement incentive  
3     to their employees, as well as to provide an age 55/25 years temporary  
4     incentive for certain public employees. Each component is wholly  
5     contained within a Part identified as Parts A and B. The effective date  
6     for each particular provision contained within such Part is set forth in  
7     the last section of such part. Any provision in any section contained  
8     within a Part, including the effective date of the Part, which makes  
9     reference to a section "of this act", when used in connection with that  
10    particular component, shall be deemed to mean and refer to the corre-  
11    sponding section of the Part in which it is found, unless noted other-  
12    wise. The benefits of this act shall not be applicable to anyone who  
13    first became a member of a public retirement system of the state on or  
14    after January first, two thousand ten.

15    S 2. Legislative findings. The legislature finds and declares that the  
16    retirement benefits provided for in this act are designed to achieve  
17    cost-savings for public employers and to avoid layoffs of public employ-  
18    ees in this time of fiscal need. Therefore, the retirement incentive  
19    benefit provided for in Part A of this act and the age 55/25 years  
20    retirement benefit provided for in Part B of this act are intended only  
21    to be temporary in nature for employees who are eligible to receive and  
22    qualify for the applicable benefit during the applicable time periods  
23    specified within each Part. Further, nothing in this act shall be  
24    construed to create an expectation of a future or continuing retirement  
25    benefit for any public employee who is not eligible to receive and qual-

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

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1 ify for the retirement benefits in this act during the applicable time  
2 periods.

3 PART A

4 Section 1. Definitions. As used in this act, unless the context clear-  
5 ly requires otherwise:

6 a. "Retirement system" means the New York state and local employees'  
7 retirement system, the New York state teachers' retirement system, the  
8 New York city teachers' retirement system, the New York city board of  
9 education retirement system or the New York city employees' retirement  
10 system, exclusive of the retirement plans established pursuant to  
11 sections 13-156 and 13-157 of the administrative code of the city of New  
12 York.

13 b. "Teachers' retirement system" means the New York state teachers'  
14 retirement system or the New York city teachers' retirement system.

15 c. "Optional retirement program" means the programs established pursu-  
16 ant to the provisions of section 181, 391 or 6251 of the education law;  
17 or continued pursuant to section 3 of chapter 980 of the laws of 1962.

18 d. "State employer" means (a) the executive branch of the state, (b)  
19 the state-operated institutions of the state university of New York, (c)  
20 the statutory and contract colleges operated pursuant to section 357 of  
21 the education law, (d) the state university construction fund (herein-  
22 after referred to in this act as the "fund"), (e) a cooperative exten-  
23 sion association (hereinafter referred to in this act as the "associ-  
24 ation"), (f) the city university of New York as defined in subdivision 2  
25 of section 6202 of the education law, (g) the unified court system, (h)  
26 the senate, (i) the assembly, and (j) joint legislative employers.

27 e. (a) "Participating employer" means an employer, other than a state  
28 employer, which participates in a retirement system; such term shall  
29 include a community college operating under the program of the state  
30 university of New York.

31 (b) "Educational employer" means a participating employer which is a  
32 school district, a board of cooperative educational services, a voca-  
33 tional education and extension board, an institution for the instruction  
34 of the deaf and of the blind as enumerated in section 4201 of the educa-  
35 tion law, or a school district as enumerated in section 1 of chapter 566  
36 of the laws of 1967, as amended.

37 f. "Eligible employee" means a person who is a member of a retirement  
38 system or a participant in an optional retirement program who is an  
39 employee in the executive branch of a state employer or an employee of a  
40 state employer or a participating employer which makes an election under  
41 this section or section four of this act, but such term shall not  
42 include the following persons:

43 (a) elected officials, judges or justices appointed to or serving in a  
44 court of record and acting village justices;

45 (b) chief administrative officers of participating employers which  
46 participate in a teachers' retirement system;

47 (c) officers described in sections 4, 41-a, 46, 61, 70, 70-a, 169  
48 (including those officers whose salary is established pursuant to salary  
49 plans under subdivision 3 of section 169), 180 and subdivision 1 of  
50 section 41 of the executive law and any agency or department head  
51 appointed by the governor, comptroller or attorney general;

52 (d) appointed members of boards or commissions any of whose members  
53 are appointed by the governor or by another state officer or body;

1 (e) nonjudicial officers and employees of the unified court system  
2 unless the chief administrator of the courts elects as provided herein,  
3 which election shall cover only nonjudicial officers and employees hold-  
4 ing positions in any title in the classified service of the unified  
5 court system;

6 (f) officers or employees of the senate unless the senate adopts a  
7 resolution authorizing the temporary president to file the election as  
8 provided in this subdivision;

9 (g) officers or employees of the assembly unless the assembly adopts a  
10 resolution authorizing the speaker of the assembly to file the election  
11 as provided in this subdivision; and

12 (h) officers or employees of joint legislative employers unless:

13 (i) with respect to officers or employees of the legislative library,  
14 legislative messenger service, legislative health service, legislative  
15 ethics commission, the legislative bill drafting commission, and the  
16 joint line of the legislative task force on demographic research and  
17 reapportionment, the senate and assembly adopt a concurrent resolution  
18 authorizing the temporary president of the senate and the speaker of the  
19 assembly to jointly file an election as provided in this subdivision;

20 (ii) with respect to officers or employees of components of the senate  
21 as identified pursuant to section 90 of the legislative law, the senate  
22 adopts a resolution authorizing the temporary president to file an  
23 election for officers or employees of those components designated in  
24 such resolution; and

25 (iii) with respect to officers or employees of components of the  
26 assembly as identified pursuant to section 90 of the legislative law,  
27 the assembly adopts a resolution authorizing the speaker of the assembly  
28 to file an election for officers or employees of those components desig-  
29 nated in such resolution.

30 Any election under paragraphs (e) through (h) of this subdivision to  
31 make available the retirement incentive program provided by this act  
32 shall be in writing and filed with the state comptroller not later than  
33 ninety days after the effective date of this act. Notwithstanding any  
34 other provision of this act, each such filing shall specify the  
35 commencement date and the length of the open period. Only one open peri-  
36 od shall be made available for employees covered by elections under  
37 paragraphs (e) through (h) of this subdivision.

38 For the purposes of such paragraphs (f), (g) or (h) of this subdivi-  
39 sion, an employee of the legislature shall be as such term is defined in  
40 section 7-a, 7-b or 7-d of the legislative law or by any other provision  
41 of law which classifies employees of an entity to be legislative employ-  
42 ees for all purposes, but shall not include senators or members of the  
43 assembly. The term "joint legislative employer" shall mean legislative  
44 commissions, committees, task forces, councils or similar bodies whose  
45 membership is comprised of both senators and assembly members, or which  
46 consist of commissioners, or the majority of whose membership is  
47 appointed by one or more of the following: the temporary president of  
48 the senate, the speaker of the assembly, the minority leader of the  
49 senate, and/or the minority leader of the assembly. The temporary presi-  
50 dent of the senate and the speaker of the assembly shall be the joint  
51 legislative employer of the employees of the legislature referred to in  
52 sections 7-a and 7-b of the legislative law.

53 g. "Eligible title" means any title where a certain number of posi-  
54 tions in that title, as identified by agency, department, work location  
55 or appointing authority, college or campus, as the case may be, would  
56 otherwise be identified for layoff but for this act because of economy,

1 consolidation or abolition of functions, curtailment of activities or  
2 otherwise. However, an eligible title can also include a title as iden-  
3 tified by agency, department, work location or appointing authority in  
4 which positions would not be eliminated but into which employees in  
5 titles affected by layoff can be transferred or reassigned pursuant to  
6 the civil service law, rule or regulation. The determination of eligible  
7 titles shall be made by: (a) the appointing authority, subject to the  
8 approval of the director of state operations for titles within the exec-  
9 utive branch, (b) the board of trustees for the state university  
10 (including the association) subject to the approval of the director of  
11 state operations, the fund, the city university of New York and of each  
12 community college operating under the program of the state university,  
13 (c) the person or persons who elect under paragraphs (e) through (h) of  
14 subdivision f of this section to offer the retirement incentive provided  
15 by this act, and (d) the chief executive officer or other comparable  
16 official for participating employers other than the community colleges.

17 h. "College faculty" means an employee, not in the classified service,  
18 of a state employer described in paragraphs (b), (c), (d), (e) and (f)  
19 of subdivision d of this section or of a community college who is a  
20 member of a teachers' retirement system, the New York state and local  
21 employees' retirement system or a participant in an optional retirement  
22 program.

23 i. "Active service" means service while being paid on the payroll,  
24 provided that (a) a leave of absence with pay shall be deemed active  
25 service; (b) other approved leave without pay not to exceed twelve weeks  
26 from February 1, 2010 and the commencement of the designated open peri-  
27 od; and (c) the period of time subsequent to the June 2010 school term  
28 and on or before August 31, 2010 for a teacher (or other employee  
29 employed on a school-year basis) who is otherwise in active service on  
30 February 1, 2010 shall be deemed active service.

31 j. "Open period" means the period beginning with the commencement  
32 date as defined in subdivision k of this section and shall not be more  
33 than ninety days nor less than thirty days in length, as specified by  
34 the director of state operations or by a participating employer pursuant  
35 to section four of this act, by the appropriate board of trustees for  
36 the state university (including the association), the fund, the city  
37 university of New York or a community college operating under a program  
38 of the state university or by a state employer described in paragraphs  
39 (g), (h), (i) and (j) of subdivision d of this section; provided however  
40 that any such period shall not extend beyond September 30, 2010 for the  
41 executive branch of a state employer described in paragraphs (a) and (b)  
42 of subdivision d of this section (except for college faculty), not  
43 beyond December 31, 2010 for participating employers, college faculty  
44 for a state employer described in paragraph (b) of subdivision d of this  
45 section, state employers described in paragraphs (c), (d) and (e) of  
46 subdivision d of this section, not beyond January 31, 2011 for college  
47 faculty of an employer described in paragraph (f) of subdivision d of  
48 this section, and not beyond August 31, 2010 for educational employers.  
49 For the purposes of retirement pursuant to this act, a service retire-  
50 ment application must be filed with the appropriate retirement system  
51 not less than fourteen days prior to the effective date of retirement to  
52 become effective, unless a shorter period of time is permitted under  
53 law.

54 k. "Commencement date" means the first day the retirement incentive  
55 authorized by this act shall be made available, which shall mean a date  
56 on or after the effective date of this act to be determined by the

1 director of state operations for the executive branch of the state, and  
2 which date shall occur no later than thirty days before September 30,  
3 2010 or for any participating employer a date on or after the effective  
4 date of this act. For any other state employer, such term shall mean a  
5 date on or after the effective date of this act and shall occur no later  
6 than thirty days before September 30, 2010. The director of state oper-  
7 ations shall notify the head of the appropriate retirement system of the  
8 date of each open period applicable to employees of the executive branch  
9 or of a state employer prior to the commencement date.

10 S 2. The determination of whether a title shall be considered eligible  
11 shall consider whether the reduction of a specific number of positions  
12 within a title would unacceptably:

13 a. Directly result in a reduction of the level of service required or  
14 mandated to protect and care for clients of the state or a participating  
15 employer or to assure public health and safety;

16 b. Endanger the health or safety of employees of the state or a  
17 participating employer; or

18 c. Clearly result in a loss of significant revenue to the state or a  
19 participating employer or result in substantially increased overtime or  
20 contractual costs. However, upon the determination of the director of  
21 state operations, with respect to employees of the executive branch of a  
22 state employer, any titles may be determined eligible if the vacancies  
23 created can be controlled by the use of transfer or reassignment  
24 provisions of the civil service law, rules or regulations or other  
25 deployment of state employees.

26 S 3. a. Eligibility for inclusion in the retirement incentive provided  
27 by section six of this act shall be determined: (a) by seniority: for  
28 participating employers and for state employers described in paragraphs  
29 (a), (b), (c), (d), (e) and (f) of subdivision d of section one of this  
30 act, other than for college faculty; seniority shall mean the date of  
31 original permanent appointment in the civil service of the state  
32 adjusted to include veteran's credits for those entitled to receive such  
33 credits pursuant to sections 80, 80-a and 85, if applicable, of the  
34 civil service law, as established in the official records of the depart-  
35 ment of civil service, regardless of the jurisdictional classification  
36 of the position or the status of the incumbent; (b) by seniority, as  
37 applicable for the unified court system; (c) for state employers  
38 described in paragraphs (h), (i) and (j) of subdivision d of section one  
39 of this act as determined by the person or persons who make the election  
40 to offer the retirement incentive; and (d) for college faculty, by the  
41 board of trustees of the state university, city university and of each  
42 community college operating under the program of the state university.

43 b. All eligible employees serving in eligible titles desiring to avail  
44 themselves of the retirement incentive provided by section six of this  
45 act shall provide written notice to his or her employer on or before the  
46 twenty-first day preceding the end of the open period, or before the end  
47 of the applicable open period as such open period is determined by the  
48 director of state operations. Failure to provide such written notice  
49 shall render the employee ineligible for the retirement incentive  
50 provided by this act.

51 S 4. a. On or before August 31, 2010, a participating employer or a  
52 state employer described in paragraphs (b), (c), (d), (e) and (f) of  
53 subdivision d of section one of this act may elect to provide its  
54 employees the retirement incentive authorized by this act by (a) the  
55 enactment of a local law or (b) in the case of a participating employer  
56 which is not so empowered to act by local law or a state employer

1 described in paragraphs (b), (c), (d), (e) and (f) of subdivision d of  
2 section one of this act, by the adoption of a resolution of its govern-  
3 ing body; provided however, no local law or resolution enacted pursuant  
4 to this section shall in any manner supersede any local charter,  
5 provided further, that for an educational employer such election must be  
6 made by July 30, 2010. The local law or resolution shall specify the  
7 commencement date of the program and the length of the open period. For  
8 a community college operating under the program of state university of  
9 New York, such election shall be made by the board of trustees of such  
10 community college subject to the approval of its sponsor. A copy of such  
11 law or resolution shall be filed with the appropriate retirement system  
12 or systems, and, if applicable, on forms provided by such system. The  
13 local law or resolution shall be accompanied by the affidavit of the  
14 chief executive officer or other comparable official certifying to the  
15 information contained in subdivision b of this section.

16 b. Notwithstanding any other provision of law, the benefits provided  
17 by this act shall not be made available to any person who (a) has  
18 received any retirement incentive authorized by any provision of state  
19 law, or (b) who receives, has received or is eligible to receive a  
20 payment in a lump sum or in another form from a retirement incentive  
21 pursuant to the provisions of a collective bargaining agreement or by  
22 other arrangement with his or her employer, unless such person files a  
23 written statement with his or her employer, a copy of which shall be  
24 forwarded to the appropriate retirement system, that he or she agrees to  
25 waive any right to such payment. A participating employer who makes an  
26 election pursuant to this section and who offers or has offered a  
27 retirement incentive pursuant to the provisions of a collective bargain-  
28 ing agreement or by other arrangement shall prepare, and file with each  
29 retirement system, a list containing the names and social security  
30 numbers of all persons described in this subdivision. A participating  
31 employer is authorized to exempt persons in its employ from the  
32 provisions of paragraph (b) of this subdivision. Such exemption shall be  
33 made part of the election made pursuant to this section; provided,  
34 however, that such exemption shall not allow any employee who retires  
35 under the provisions of chapter 45 of the laws of 2010 to receive a  
36 retirement incentive authorized by this act.

37 c. Notwithstanding any other provision of this act to the contrary,  
38 the mayor of the city of New York may declare employees of the community  
39 colleges of the city university of New York ineligible for the retire-  
40 ment incentive provided by this act by filing such notification with the  
41 chancellor of the city university of New York, with copies to the chair  
42 of the senate finance committee, the chair of the assembly ways and  
43 means committee and the director of the budget, in writing, no later  
44 than the thirtieth day next succeeding the effective date of this act.

45 S 5. Notwithstanding any other provision of law, any eligible employee  
46 serving in an eligible title who:

47 a. has been continuously in the active service of a state employer or  
48 of a participating employer from February 1, 2010 to the date immedi-  
49 ately prior to the commencement date of the applicable open period;

50 b. files an application for service retirement (or files the appropri-  
51 ate application and authorization form with the optional retirement  
52 program and a duly acknowledged retirement incentive form for such  
53 program with the appropriate personnel office) that is effective during  
54 the open period; and

55 c. is otherwise eligible for a service retirement as of the effective  
56 date of the application for retirement shall be entitled to the retire-

1 ment incentive provided in section six of this act. If not otherwise  
2 eligible for a service retirement, the following person shall be deemed  
3 to satisfy the eligibility condition of this section: a person who is at  
4 least age fifty with ten or more years service as of the effective date  
5 of retirement (other than a member of a retirement plan which provides  
6 for half-pay pension upon completion of twenty-five years or less  
7 service without regard to age); a member of a retirement plan which  
8 provides for half-pay pension upon completion of twenty-five years of  
9 service without regard to age who has not accrued, excluding additional  
10 credit granted pursuant to this act, the minimum number of years of  
11 service required to retire with an allowance equal to fifty percent of  
12 final average salary under such plan, but has, with the inclusion of the  
13 additional credit provided under this act, accrued such number of years  
14 of credit; or a participant in an optional retirement plan at least  
15 fifty years of age with ten years of service on an annual salary basis  
16 with his or her employer as of the date of retirement.

17 S 6. Notwithstanding any other provision of law, an eligible employee  
18 serving in an eligible title who is:

19 a. A member of a retirement system and who is entitled to a retirement  
20 incentive pursuant to section five of this act shall receive a retire-  
21 ment incentive of one-twelfth of a year of additional retirement credit  
22 for each year of pension service credited as of the date of retirement,  
23 up to a maximum of three years of retirement service credit at the time  
24 of retirement, provided, however, that service credit provided under the  
25 provisions of sections 902 and 911 of the retirement and social security  
26 law shall not be included when calculating the additional retirement  
27 credit awarded pursuant to this act. For the New York city teachers'  
28 retirement system, the New York city employees' retirement system and  
29 the New York city board of education retirement system such incentive  
30 shall be available for all purposes, including fulfilling the qualifying  
31 service requirements of plan A and C, if applicable.

32 An eligible employee who is covered by the provisions of article 15 of  
33 the retirement and social security law shall retire under the provisions  
34 of article 15 of the retirement and social security law. The amount of  
35 such benefit for an eligible employee who is covered by article 15 of  
36 the retirement and social security law and retires under the provisions  
37 of this section (other than a member with thirty or more years of  
38 service in the New York state and local employees' retirement system or  
39 a teachers' retirement system) shall be reduced by six percent for each  
40 of the first two years by which retirement precedes age sixty-two, plus  
41 a further reduction of three percent for each year by which retirement  
42 precedes age sixty, provided, however, the foregoing reductions shall  
43 not apply: (i) in any case where an eligible employee can retire after  
44 twenty-five years of service with immediate payability prior to the age  
45 of sixty-two pursuant to section 604-b of the retirement and social  
46 security law or (ii) to any time period subsequent to the point at which  
47 an eligible employee can retire for service without reduction of his or  
48 her service retirement allowance pursuant to article 16 of the retire-  
49 ment and social security law. Such reduction shall be prorated for  
50 partial years. The amount of such benefit for an eligible employee with  
51 thirty or more years of service who is a member of the New York state  
52 and local employees' retirement system or a teachers' retirement system  
53 or an eligible employee who is a participant in the optional twenty-five  
54 year early retirement program for certain New York city members governed  
55 by section 604-c of the retirement and social security law, as added by  
56 chapter 96 of the laws of 1995 or a twenty-five year participant in the

1 age fifty-five retirement program governed by section 604-i of the  
2 retirement and social security law, with twenty-five or more years of  
3 service and who is covered by article 15 of the retirement and social  
4 security law shall be reduced by five percent for each year by which  
5 retirement pursuant to this section precedes age fifty-five. The amount  
6 of such benefit for an eligible New York city employee with five or more  
7 years of service and who is a participant in the age fifty-seven retire-  
8 ment program governed by section 604-d of the retirement and social  
9 security law shall be reduced by one-thirtieth for the first two years  
10 by which retirement precedes age fifty-seven plus a further reduction of  
11 one-twentieth for each year by which retirement precedes age fifty-five.  
12 Such reduction shall be prorated for partial years. There shall be no  
13 reduction for an eligible New York city employee in a physically taxing  
14 position with twenty-five or more years of service and who is a partic-  
15 ipant (i) in the optional twenty-five year early retirement program for  
16 certain members governed by section 604-c of the retirement and social  
17 security law, as added by chapter 96 of the laws of 1995, or (ii) in the  
18 age fifty-seven retirement program governed by section 604-d of the  
19 retirement and social security law.

20 An eligible employee serving in an eligible title who is covered by  
21 article 11 of the retirement and social security law shall retire under  
22 the provisions of such article. The amount of such benefit for an eligi-  
23 ble employee covered by article 11 of the retirement and social security  
24 law other than a member of a teachers' retirement system or a member of  
25 the New York state and local employees' retirement system with thirty or  
26 more years of service, a participant in the optional age fifty-five  
27 improved benefit retirement program for certain New York city employees  
28 governed by section 445-d of the retirement and social security law, as  
29 added by chapter 96 of the laws of 1995, with twenty-five or more years  
30 of service, or a participant in the optional age fifty-five retirement  
31 program for New York city teachers and certain other members governed by  
32 section 445-i of the retirement and social security law, with twenty-  
33 five or more years of service, shall be reduced by six percent for each  
34 of the first two years by which retirement pursuant to this section  
35 precedes age sixty-two, plus a further reduction of three percent for  
36 each year by which retirement pursuant to this section precedes age  
37 sixty, provided, however, the foregoing reductions shall not apply: (i)  
38 in any case where an eligible employee can retire pursuant to a plan  
39 which permits retirement for service with immediate payability, exclu-  
40 sive of this act, prior to the age of fifty-five or (ii) to any time  
41 period subsequent to the point at which an eligible employee can retire  
42 for service without reduction of his or her service retirement allowance  
43 pursuant to article 16 of the retirement and social security law. Such  
44 reduction shall be prorated for partial years. The amount of such bene-  
45 fit for an eligible employee who is a member of a teachers' retirement  
46 system or a member of the New York state and local employees' retirement  
47 system with thirty or more years of service, a participant in the  
48 optional age fifty-five improved benefit retirement program for certain  
49 New York city employees governed by section 445-d of the retirement and  
50 social security law, as added by chapter 96 of the laws of 1995, with  
51 twenty-five or more years of service, or a participant in the optional  
52 age fifty-five retirement program for New York city teachers and certain  
53 other members governed by section 445-i of the retirement and social  
54 security law, with twenty-five or more years of service and who is  
55 covered by article 11 of the retirement and social security law shall be  
56 reduced by five percent for each year by which retirement pursuant to



1 this section precedes age fifty-five. Such reduction shall be prorated  
2 for partial years. There shall be no reduction for an eligible New York  
3 city employee in a physically taxing position and who is a participant  
4 in the optional age fifty-five improved benefit retirement program for  
5 certain New York city employees governed by section 445-d of the retire-  
6 ment and social security law, as added by chapter 96 of the laws of  
7 1995, with twenty-five or more years of service.

8 An eligible employee serving in an eligible title who is not covered  
9 by article 11 or 15 of the retirement and social security law shall  
10 retire under the provisions of the plan by which he or she is covered.  
11 The amount of such benefit shall be reduced by five percent for each  
12 year by which retirement pursuant to this section precedes age fifty-  
13 five, provided, however, the foregoing reductions shall not apply: (i)  
14 in any case where an eligible employee can retire pursuant to a plan  
15 which permits retirement for service with immediate payability, exclu-  
16 sive of this act, prior to the age of fifty-five or (ii) to any time  
17 period subsequent to the point at which an eligible employee can retire  
18 for service without reduction of his or her service retirement allowance  
19 pursuant to article 16 of the retirement and social security law. Such  
20 reduction shall be prorated for partial years.

21 An eligible employee serving in an eligible title who participates in  
22 a retirement plan which provides for a retirement allowance equal to  
23 fifty percent of final average salary upon the completion of twenty-five  
24 years of service without regard to age and who is otherwise eligible to  
25 retire shall retire under the provisions of such plan. Such employee  
26 shall, at the time of retirement, be credited with one-twelfth of a year  
27 of additional retirement service credit for each year of service credit-  
28 ed under such plan as of the date of retirement, up to a maximum of  
29 three years of retirement service credit, subject to the provisions of  
30 subdivision b of this section. If such employee has not accrued, exclud-  
31 ing additional credit granted pursuant to this act, the minimum number  
32 of years of service required to retire with an allowance equal to fifty  
33 percent of final average salary under such plan, but has, with the  
34 inclusion of the additional credit provided under this act, accrued such  
35 number of years of credit, the benefit payable shall be the percentage  
36 of final average salary that would ordinarily be applicable to such  
37 individual upon retirement with such amount of credit (including incen-  
38 tive credit), reduced by five per centum per year for each year by which  
39 the number of years of service otherwise required to retire with an  
40 allowance equal to fifty percent of final average salary under such plan  
41 exceeds the amount of service credited to such employee under such plan  
42 at retirement (excluding the additional retirement incentive service  
43 credit provided pursuant to this act). Such reduction shall be prorated  
44 for partial years.

45 b. A participant in an optional retirement program who is entitled to  
46 a retirement incentive pursuant to section five of this act shall  
47 receive an additional employer contribution equal to an amount, which  
48 shall be calculated as follows: (one-twelfth for each year of service)  
49 multiplied by (fifteen percent) multiplied by (the employee's earnable  
50 annual salary rate in effect on March 1, 2010 or the effective date of  
51 this act if the employee retires prior to March 1, 2010), such amount  
52 not to exceed forty-five percent of such salary rate. Such contribution  
53 shall be made to the employee's retirement annuity under the optional  
54 retirement program up to the maximum contribution allowable under  
55 section 415 of the internal revenue code. Any contribution in excess of  
56 that limit shall be contributed by the employer to an internal revenue

1 code section 403(b) contract on behalf of the employee to the extent it  
2 can be contributed on a before-tax basis under the maximum limits  
3 allowed under the internal revenue code. Contributions in excess of that  
4 amount shall be paid in cash to the participant in three equal install-  
5 ments during a twenty-four month period commencing on such eligible  
6 employee's effective date of retirement. Provided, however, if the  
7 employee is employed by the city university of New York and in the  
8 active service of such employer on October 1, 2010 or the effective date  
9 of this act if the employee retires prior to October 1, 2010, the  
10 employee's earnable annual salary rate shall be the annual salary rate  
11 in effect on such applicable date.

12 S 7. a. An employee of a state employer, other than the city universi-  
13 ty of New York, who retires pursuant to this act may defer calculation  
14 of the value of accumulated sick leave credits, if any, and partic-  
15 ipation in the state health insurance plan.

16 b. Notwithstanding any other provision of law, any termination pay or  
17 leave arising from accrued sick leave or accrued annual leave for an  
18 eligible employee who has elected the retirement incentive provided by  
19 this act and who is a member of the New York city teachers' retirement  
20 system employed by the board of education of the city of New York shall  
21 be paid in three equal installments during a twenty-four month period  
22 commencing on such eligible employee's effective date of retirement.

23 c. An employee of the city of New York or the city university of New  
24 York, as defined in subdivision 2 of section 6202 of the education law,  
25 who retires under the retirement incentive provided by this act, who is  
26 eligible for terminal leave pursuant to an applicable collective  
27 bargaining agreement or a personnel policy or rule or retirement leave  
28 pursuant to section 3107 of the education law or who has an accrued  
29 annual leave balance on the effective date of retirement shall be paid  
30 in three equal installments two months, fourteen months and twenty-four  
31 months following such eligible employee's effective date of retirement.

32 S 8. a. With respect to employees of the executive branch of a state  
33 employer, any position, other than a position supported by special  
34 revenue funds, vacated as a result of an eligible employee in an eligi-  
35 ble title receiving the retirement incentive provided by section six of  
36 this act shall be eliminated unless such position is identified by the  
37 director of state operations as one into which another state employee  
38 can be appointed, transferred or reassigned pursuant to the civil  
39 service law, rules or regulations, in which case the former position of  
40 the state employee so appointed, transferred or reassigned shall be  
41 eliminated.

42 b. The director of state operations shall direct the department of  
43 civil service to prepare a report designating the title, grade level,  
44 salary, and classification, according to appointing authority, (i) of  
45 each position which is eliminated pursuant to subdivision a of this  
46 section, (ii) of each position into which another state employee was  
47 appointed, transferred, or reassigned and the former position of such  
48 state employee, and (iii) of each position which is eliminated as a  
49 result of an appointment, transfer or reassignment referred to in para-  
50 graph (ii) of this subdivision. Such report shall be available no later  
51 than ninety days after the last date of the open period related to such  
52 positions.

53 S 9. Notwithstanding any inconsistent provision of section eight of  
54 this act or any other provision of law:

55 a. A participating employer or a state employer described in para-  
56 graphs (b) through (e) of subdivision d of section one of this act shall

1 not be required to eliminate the positions of eligible employees in  
2 eligible titles receiving the retirement incentive provided by section  
3 six of this act if such employer can demonstrate that it will achieve a  
4 compensation savings such that the total amount of base salary paid for  
5 the two-year period subsequent to the effective date of retirement for  
6 such eligible employees in eligible titles to those new hires, if any,  
7 who otherwise would not have been hired by such employer after the  
8 effective date of this act but for the retirement incentive provided  
9 herein shall be no more than one-half of the total amount of base salary  
10 that would have been paid to such eligible employees from their date of  
11 retirement for such two-year period. Each such employer shall make  
12 available its plans for achieving these savings.

13 b. The city of New York or the city university of New York, as defined  
14 in subdivision 2 of section 6202 of the education law, shall not be  
15 required to eliminate the positions of eligible employees in eligible  
16 titles receiving the retirement incentive provided by section six of  
17 this act if such participating employer can demonstrate that it will  
18 achieve a compensation or equivalent headcount savings such that the  
19 total amount of compensation including benefits paid for the two-year  
20 period subsequent to the effective date of retirement for such eligible  
21 employees in eligible titles to those new hires, if any, who otherwise  
22 would not have been hired by such employer after the effective date of  
23 this act but for the retirement incentive provided herein shall be no  
24 more than one-half of the total amount of base salary that would have  
25 been paid to such eligible employees from their date of retirement for  
26 such two-year period. For purposes of this subdivision, the "city of New  
27 York" shall mean the city of New York or a participating employer a  
28 majority of the members of whose governing body are: (a) appointed by  
29 the mayor of the city of New York or other citywide elected official, a  
30 borough president of the city of New York, or any combination thereof;  
31 (b) designated by virtue of their city of New York office or position or  
32 their office or position with a participating employer whose governing  
33 board is described in paragraph (a) of this subdivision; or (c)  
34 appointed or designated by any combination of the foregoing. Each such  
35 employer shall make available its plans for achieving these savings.

36 c. To the extent any transfer of personnel between the state employer  
37 described in paragraph (a) of subdivision d of section one of this act  
38 and the state employer described in paragraph (b) of subdivision d of  
39 section one of this act occurs pursuant to a voluntary transfer of state  
40 personnel, or otherwise, the provisions of subdivision a of this section  
41 with respect to achieving savings shall be applicable. Nothing herein  
42 shall be construed to impair the authority of the director of state  
43 operations pursuant to subdivision g of section one or section two of  
44 this act.

45 S 10. Nothing in this act shall be used to provide benefits that shall  
46 exceed the limits contained in section 415 of the internal revenue code.  
47 Provided, however, any service retirement benefit which has been reduced  
48 because of section 415 of the internal revenue code shall be increased  
49 when (and consistent with) the dollar limits in section 415 of the  
50 internal revenue code are adjusted by the internal revenue service for  
51 cost of living increases. Such increases shall not increase the benefit  
52 in excess of the service retirement benefit otherwise payable.

53 S 11. Any eligible employee who retires pursuant to the provisions of  
54 this act and enters or reenters public service as defined in subdivision  
55 e of section 210 of the retirement and social security law and joins or  
56 rejoins any public retirement system of the state as defined in subdivi-

sion 6 of section 152 of the retirement and social security law or elects to participate in an optional retirement program shall if the additional benefit was provided pursuant to: (a) subdivision a of section six of this act, forfeit the additional benefit authorized by this act at the time of his or her subsequent retirement; or (b) subdivision b of section six of this act, repay to the state or participating employer such additional contribution together with the appropriate interest as determined by the state comptroller.

S 12. Notwithstanding any other provision of law, if the service retirement benefit of a member of a retirement system is subject to a maximum retirement benefit, the additional benefit authorized by this act will be computed by multiplying the final average salary times the number of years of service credit granted by section six of this act times the benefit fraction of the plan under which such member retires.

S 13. The provisions of section 430 of the retirement and social security law shall not apply to any benefit or benefit improvement provided by this act.

S 14. The pension benefit costs of subdivision a of section six of this act shall be paid by employers as provided by applicable law for each retirement system covered by this act over a period not to exceed five years commencing in the state fiscal year ending March 31, 2012.

S 15. Where an employee is eligible to receive the benefit authorized under section six and the retirement benefit provided for under section five of part B of the chapter of the laws of 2010 which added this part, such employee may elect a section under which he or she will participate. Any other provision of this act or any other law to the contrary notwithstanding, an employee eligible for the retirement benefit under chapter 45 of the laws of 2010 and otherwise eligible to receive the benefit provided under section six of this act shall not be eligible to receive the benefit authorized under section six of this act unless such employee elects to receive such benefit in lieu of the benefit under chapter 45 of the laws of 2010. In no event shall the benefits provided for in section six of this act be received by any employee in conjunction with the benefits of section five of part B of this act or the benefits of chapter 45 of the laws of 2010.

S 16. This act shall take effect immediately.

## PART B

Section 1. Definitions. As used in this act, unless the context clearly requires otherwise:

a. "Retirement system" means the New York state and local employees' retirement system, the New York state teachers' retirement system, the New York city teachers' retirement system, the New York city board of education retirement system or the New York city employees' retirement system, exclusive of the retirement plans established pursuant to sections 13-156 and 13-157 of the administrative code of the city of New York.

b. "Teachers' retirement system" means the New York state teachers' retirement system or the New York city teachers' retirement system.

c. "State employer" means (a) the executive branch of the state, (b) the state-operated institutions of the state university of New York, (c) the statutory and contract colleges operated pursuant to section 357 of the education law, (d) the state university construction fund (hereinafter referred to in this act as the "fund"), (e) a cooperative extension association (hereinafter referred to in this act as the "associ-

1 ation"), and (f) the city university of New York as defined in  
2 subdivision 2 of section 6202 of the education law, (g) the unified  
3 court system, (h) the senate, (i) the assembly, and (j) joint legisla-  
4 tive employers.

5 d. (a) "Participating employer" means an employer, other than a state  
6 employer, which participates in a retirement system; such term shall  
7 include a community college operating under the program of state univer-  
8 sity of New York.

9 (b) "Educational employer" means a participating employer which is a  
10 school district, a board of cooperative educational services, a voca-  
11 tional education and extension board, an institution for the instruction  
12 of the deaf and of the blind as enumerated in section 4201 of the educa-  
13 tion law, or a school district as enumerated in section 1 of chapter 566  
14 of the laws of 1967, as amended.

15 e. "Eligible employee" means a person who is a member of a retirement  
16 system who is an employee in the executive branch of a state employer or  
17 an employee of a state employer or a participating employer who has  
18 attained age fifty-five and has at least twenty-five years of creditable  
19 service in a retirement system, but such term shall not include the  
20 following persons:

21 (a) elected officials, judges or justices appointed to or serving in  
22 court of record and acting village justices;

23 (b) chief administrative officers of participating employers which  
24 participate in a teachers' retirement system;

25 (c) officers described in sections 4, 41-a, 46, 61, 70, 70-a, 169  
26 (including those officers whose salary is established pursuant to salary  
27 plans under subdivision 3 of section 169), 180 and subdivision 1 of  
28 section 41 of the executive law and any agency or department head  
29 appointed by the governor, comptroller or attorney general;

30 (d) appointed members of boards or commissions any of whose members  
31 are appointed by the governor or by another state officer or body;

32 (e) nonjudicial officers and employees of the unified court system  
33 unless the chief administrator of the courts elects as provided herein,  
34 which election shall cover only nonjudicial officers and employees hold-  
35 ing positions in any title in the classified service of the unified  
36 court system;

37 (f) officers or employees of the senate unless the senate adopts a  
38 resolution authorizing the temporary president to file the election as  
39 provided in this subdivision;

40 (g) officers or employees of the assembly unless the assembly adopts a  
41 resolution authorizing the speaker of the assembly to file the election  
42 as provided in this subdivision; and

43 (h) officers or employees of joint legislative employers unless:

44 (i) with respect to officers or employees of the legislative library,  
45 legislative messenger service, legislative health service, legislative  
46 ethics committee, the legislative bill drafting commission, and the  
47 joint line of the legislative task force on demographic research and  
48 reapportionment, the senate and assembly adopt a concurrent resolution  
49 authorizing the temporary president of the senate and the speaker of the  
50 assembly to jointly file an election as provided in this subdivision;

51 (ii) with respect to officers or employees of components of the senate  
52 as identified pursuant to section 90 of the legislative law, the senate  
53 adopts a resolution authorizing the temporary president to file an  
54 election for officers or employees of those components designated in  
55 such resolution; and

1 (iii) with respect to officers or employees of components of the  
2 assembly as identified pursuant to section 90 of the legislative law,  
3 the assembly adopts a resolution authorizing the speaker of the assembly  
4 to file an election for officers or employees of those components desig-  
5 nated in such resolution.

6 Any election under paragraphs (e) through (h) of this subdivision to  
7 make available the retirement incentive provided by this act shall be in  
8 writing and filed with the state comptroller not later than ninety days  
9 after the effective date of this act. Notwithstanding any other  
10 provision of this act, each such filing shall specify the commencement  
11 date of the open period.

12 For the purposes of such paragraph (f), (g) or (h) of this subdivi-  
13 sion, an employee of the legislature shall be as such term is defined in  
14 section 7-a, 7-b or 7-d of the legislative law or by any other provision  
15 of law which classifies employees of an entity to be legislative employ-  
16 ees for all purposes, but shall not include senators or members of the  
17 assembly. The term "joint legislative employer" shall mean legislative  
18 commissions, committees, task forces, councils or similar bodies whose  
19 membership is comprised of both senators and assembly members, or which  
20 consist of commissioners, or the majority of whose membership is  
21 appointed by one or more of the following: the temporary president of  
22 the senate, the speaker of the assembly, the minority leader of the  
23 senate, and/or the minority leader of the assembly. The temporary presi-  
24 dent of the senate and the speaker of the assembly shall be the joint  
25 legislative employer of the employees of the legislature referred to in  
26 sections 7-a and 7-b of the legislative law.

27 f. "College faculty" means an employee, not in the classified service,  
28 of a state employer described in paragraphs (b), (c), (d), (e) and (f)  
29 of subdivision c of this section or of a community college who is a  
30 member of a teachers' retirement system, or the New York state and local  
31 employees' retirement system.

32 g. "Active service" means service while being paid on the payroll,  
33 provided that (a) a leave of absence with pay shall be deemed active  
34 service; (b) other approved leave without pay not to exceed twelve weeks  
35 from February 1, 2010 and the commencement of the designated open peri-  
36 od; and (c) the period of time subsequent to the June 2010 school term  
37 and on or before August 31, 2010 for a teacher (or other employee  
38 employed on a school-year basis) who is otherwise in active service on  
39 the effective date of this act shall be deemed active service.

40 h. "Open period" means the period beginning with the commencement date  
41 as defined in subdivision i of this section and shall be ninety days in  
42 length; provided however that there shall be only one such open period  
43 and any such period shall not extend beyond September 30, 2010 for a  
44 state employer and December 31, 2010 for a participating employer. For  
45 educational employers who make election after June 1, 2010, the open  
46 period shall begin immediately after such election, and shall not extend  
47 beyond August 31, 2010. For the purposes of retirement pursuant to this  
48 act, a service retirement application must be filed with the appropriate  
49 retirement system not less than fourteen days prior to the effective  
50 date of retirement to become effective, unless a shorter period of time  
51 is permitted under law.

52 i. "Commencement date" means the first day the retirement benefit  
53 mandated by this act shall be made available, which shall mean a date or  
54 dates on or after the effective date of this act to be determined by the  
55 director of state operations for the executive branch of the state, or  
56 for any other state employer or any participating employer which elects

1 to participate pursuant to section three of this act a date on or after  
2 the effective date of this act; provided, however, that for an educa-  
3 tional employer which elects to participate pursuant to section three of  
4 this act, the commencement date shall be June 1, 2010; or immediately  
5 after election of the retirement incentive for educational employers who  
6 elect after June 1, 2010 and provided, further that for participating  
7 employers which elect to participate pursuant to section three of this  
8 act, except the city of New York and participating employers which are  
9 not empowered to act by local law, the commencement date shall be Octo-  
10 ber 1, 2010. The director of state operations shall notify the head of  
11 the appropriate retirement system of the date of the open period appli-  
12 cable to employees of the executive branch or of a state employer prior  
13 to the commencement date.

14 S 2. a. A state employer which elects to participate pursuant to  
15 section three of this act, participating employer which is not empowered  
16 to act by local law which elects to participate pursuant to section  
17 three of this act, or the city of New York, if it elects to participate  
18 pursuant to section three of this act shall establish a commencement  
19 date for the retirement benefit established under section five of this  
20 act in the following manner: (a) for the executive branch, the director  
21 of state operations shall establish the commencement date in writing to  
22 the appropriate retirement system; (b) for state employers described in  
23 paragraphs (b), (c), (d), (e) and (f) of subdivision c of section one of  
24 this act and participating employers that are not empowered to act by  
25 local law, its governing body shall adopt a resolution establishing a  
26 commencement date; (c) for state employers described in paragraphs (g),  
27 (h), (i) and (j) of subdivision c of section one of this act, the person  
28 or persons who make the election to offer the retirement incentive  
29 pursuant to part A of the chapter of the laws of 2010 which added this  
30 part shall establish a commencement date in writing to the appropriate  
31 retirement system; and (d) for the city of New York, the chief executive  
32 officer shall issue an executive order establishing the commencement  
33 date, provided, however, no executive order, in the case of the city of  
34 New York issued pursuant to this section, shall in any manner supersede  
35 any local charter. A copy of any such resolution or executive order in  
36 the case of the city of New York establishing a commencement date shall  
37 be filed with the appropriate retirement system or systems, and, if  
38 applicable, on forms provided by such system. The resolution or execu-  
39 tive order in the case of the city of New York shall be accompanied by  
40 the affidavit of the chief executive officer or other comparable offi-  
41 cial certifying the commencement date.

42 b. A state employer, participating employer which is not empowered to  
43 act by local law which elects to participate pursuant to section three  
44 of this act, or the city of New York if it elects to participate pursu-  
45 ant to section three of this act shall be required to establish a  
46 commencement date under paragraph a of this subdivision for the retire-  
47 ment benefit established under section five of this act. In the event  
48 that a state employer, participating employer which is not empowered to  
49 act by local law which elects to participate pursuant to section three  
50 of this act, or the city of New York if it elects to participate pursu-  
51 ant to section three of this act fails to establish a commencement date  
52 for the retirement benefit established under section five of this act,  
53 the commencement date for the eligible employees of a state employer  
54 shall be July 1, 2010. The commencement date for the eligible employees  
55 of all other employers referenced in this subdivision shall be September  
56 1, 2010.

1 S 3. On or before September 1, 2010, a participating employer or a  
2 state employer described in paragraphs (b), (c), (d), (e) and (f) of  
3 subdivision c of section one of this act may elect to provide its  
4 employees the retirement incentive authorized by this act by (a) the  
5 enactment of a local law or (b) in the case of a participating employer  
6 which is not so empowered to act by local law or a state employer  
7 described in paragraphs (b), (c), (d), (e) and (f) of subdivision c of  
8 section one of this act, by the adoption of a resolution of its govern-  
9 ing body; provided however, no local law or resolution enacted pursuant  
10 to this section shall in any manner supersede any local charter,  
11 provided further, that for an educational employer such election must be  
12 made by July 1, 2010. For a community college operating under the  
13 program of state university of New York, such election shall be made by  
14 the board of trustees of such community college subject to the approval  
15 of its sponsor. A copy of such law or resolution shall be filed with the  
16 appropriate retirement system or systems, and, if applicable, on forms  
17 provided by such system. The local law or resolution shall be accompa-  
18 nied by the affidavit of the chief executive officer or other comparable  
19 official certifying the validity of such local law or resolution. The  
20 executive branch of the state shall be deemed to have made an election  
21 under this section upon its enactment.

22 S 4. Notwithstanding any other provision of law, any eligible employee  
23 who (a) has been continuously in the active service of a state employer  
24 or of a participating employer from February 1, 2010 to the date imme-  
25 diately prior to the commencement date of the applicable open period,  
26 (b) files an application for service retirement that is effective during  
27 the open period, and (c) is otherwise eligible for a service retirement  
28 as of the effective date of the application for retirement shall be  
29 entitled to the retirement benefit provided in section five of this act.

30 S 5. a. Notwithstanding any other provision of law, an eligible  
31 employee who is: (a) a member of a retirement system and (b) who is  
32 entitled to a retirement benefit pursuant to section four of this act  
33 may retire during the open period without the reduction of his or her  
34 retirement benefit that would otherwise be imposed by article 11 or 15  
35 of the retirement and social security law if he or she has attained the  
36 age of fifty-five and has completed at least twenty-five or more years  
37 of creditable service. An eligible employee who is covered by the  
38 provisions of articles 11 and 15 of the retirement and social security  
39 law shall retire under the provisions of articles 11 and 15 of the  
40 retirement and social security law.

41 b. The director of state operations, the chief executive officer of  
42 the city of New York, or chief executive officer or governing board, as  
43 appropriate, of the participating employer may deny participation in the  
44 retirement benefit provided by subdivision a of this section if the  
45 director of state operations, the chief executive officer of New York  
46 city or the chief executive officer or governing board of the partic-  
47 ipating employer makes a determination that the employee holds a posi-  
48 tion that is deemed critical to the maintenance of public health and  
49 safety.

50 c. Where an employee is eligible for the retirement benefit under this  
51 section and the retirement incentive authorized pursuant to section six  
52 of part A of the chapter of the laws of 2010 which added this part, such  
53 employee shall elect a section under which he or she will participate.  
54 The benefits provided by subdivision a of this section shall not be  
55 conditioned upon a state or participating employer making the benefits  
56 of section six of part A of this act available to employees in their



1 employ. Further, the benefits provided by subdivision a of this section  
2 shall not be available in conjunction with the benefits of section six  
3 of part A of the chapter of the laws of 2010 which added this part.

4 d. The action of the director of state operations, the chief executive  
5 officer of the city of New York, or chief executive officer or governing  
6 board, as appropriate, of the participating employer in denying the  
7 retirement benefit provided for in subdivision a of this section to any  
8 individual shall be subject to review in the manner provided for in  
9 article 78 of the civil practice law and rules. Such action for review  
10 pursuant to article seventy-eight of the civil practice law and rules  
11 shall only be commenced by the individual that was denied the retirement  
12 benefit provided by subdivision a of this section.

13 e. After making any such determination under subdivision b of this  
14 section, the director of state operations, the chief executive officer  
15 of the city of New York and the chief executive officer or governing  
16 board, as appropriate, of the participating employer shall notify the  
17 appropriate retirement system or teachers' retirement system of its  
18 determination.

19 S 6. The pension benefit costs of section five of this act shall be  
20 paid by employers as provided by applicable law for each retirement  
21 system covered by this act over a period not to exceed five years  
22 commencing in the state fiscal year ending March 31, 2012.

23 S 7. This act shall take effect immediately.

24 S 3. Severability clause. If any clause, sentence, paragraph, subdivi-  
25 sion, section or part of this act shall be adjudged by any court of  
26 competent jurisdiction to be invalid, such judgment shall not affect,  
27 impair, or invalidate the remainder thereof, but shall be confined in  
28 its operation to the clause, sentence, paragraph, subdivision, section  
29 or part thereof directly involved in the controversy in which such judg-  
30 ment shall have been rendered. It is hereby declared to be the intent of  
31 the legislature that this act would have been enacted even if such  
32 invalid provisions had not been included herein.

33 S 4. This act shall take effect immediately; provided, however, that  
34 the applicable effective date of Parts A and B of this act shall be as  
35 specifically set forth in the last section of such Parts.

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

This bill would provide additional service credit (one-twelfth of a year for each year of non-sick leave, non-Article 19 service credited as of the date of retirement, up to a maximum of three years) for certain members of the New York State and Local Employees' Retirement System, New York State Teachers' Retirement System, New York City Teachers' Retirement System, New York City Board of Education and the New York City Employees' Retirement System. Further, for certain members who are not otherwise eligible for a service retirement benefit, this bill would provide the ability to retire with reductions. This benefit would be available to only targeted positions.

In addition, this bill would eliminate the early retirement reductions at 25 years of service instead of at 30 years of service for retirement during a specified 90 day period for Tier 2, 3 and 4 members of the New York State and Local Employees' Retirement System, New York State Teachers' Retirement System, New York City Teachers' Retirement System, New York City Board of Education and the New York City Employees' Retirement System. Employers electing this provision can declare health and safety positions to be ineligible.

Retiring members may not receive both the additional service credit and the elimination of the early retirement reductions at 25 years of service instead of at 30 years of service.

If this bill is enacted, insofar as it affects the New York State and Local Employees' Retirement System (ERS), the additional cost for each member who receives these benefits will vary depending on the member's age, years of service, plans and final average salary.

We anticipate that the per-member cost (at retirement) of the additional service credit benefit will average approximately 60% of a member's final average salary. This cost will be borne by each employer electing the incentive over a five-year period commencing with a payment in the State fiscal year 2011-2012.

We anticipate that the per-member cost (at retirement) of the elimination of the early retirement reductions at 25 years of service instead of at 30 years of service will average approximately 110% of a member's final average salary. This cost will be borne by each employer electing the incentive over a five-year period commencing with a payment in the State fiscal year 2011-2012.

This estimate, dated April 30, 2010, and intended for use only during the 2010 Legislative Session, is Fiscal Note No. 2010-157 prepared by the Actuary for the New York State and Local Employees' Retirement System.

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

This bill would provide a temporary retirement incentive for fiscal year 2010-2011. In Part A of the retirement incentive, employers who elect to participate would provide certain eligible employees a retirement incentive of one-twelfth of a year of additional service credit per year of accrued service credit up to a maximum of three additional years. To be eligible, a member must have attained age 50 or greater, with at least ten years of service. Members not subject to an early retirement reduction and less than age 55 at retirement will have their benefit reduced by five percent for each year their age precedes 55.

Part B of the retirement incentive would permit eligible Tier 2, 3 and 4 members of employers who elect to participate to retire without early retirement reductions upon attainment of at least age 55 with 25 years of service. Currently 30 years of service are required. In order to receive either the Part A or Part B benefit, an eligible member of an employer who has elected to participate must retire during the employer's designated open period. For Part A, such period shall be at least 30, but not more than 90 days in length, and for educational employers, shall not extend beyond August 31, 2010. For Part B, the open period for educational employers shall begin upon the later of June 1, 2010 or the date elected by the employer, and shall not extend beyond August 31, 2010. Members may not receive a benefit under both Part A and Part B, or Part A and the retirement incentive provided under Chapter 45 of the Laws of 2010. Employers participating in Part A or Part B (or both) would pay the cost of the retirement incentive over a period not to exceed five years, beginning in the state fiscal year ending March 31, 2012.

It is not possible to accurately forecast the total cost to the New York State Teachers' Retirement System employers electing to participate in this retirement incentive because the number of eligible members electing to retire under the incentive, their ages and the amount of service credited cannot be readily estimated. The Part A cost, measured as the increase in the present value of benefit per participating member, however, will range from 5% to more than 100% of final average

salary, averaging between 50% and 75% of final average salary, depending on the member's age, years of service, and tier at retirement. The Part B cost per participating member will range from 3% to more than 100% of final average salary, depending on the member's age, years of service, and tier at retirement. The potential number of members eligible to benefit under Part A is much greater than under Part B.

The source of this estimate is Fiscal Note 2010-54 dated May 18, 2010 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2010 Legislative Session.

FISCAL NOTE: PROVISIONS OF PROPOSED LEGISLATION: With respect to certain New York City Retirement Systems ("NYCRS"), this proposed legislation would provide for a temporary Early Retirement Incentive Program ("ERI Program") to allow certain NYCRS members to elect immediate retirement with enhanced benefits. This proposed legislation consists of two components, each wholly contained within a part, identified as Part A and Part B.

\* Part A: Additional Service Credit of 1/12 per year of service, to a maximum of three years, if at least age 50 with 10 or more years of service, or

\* Part B: Unreduced Benefit on Account of Age, if at least age 55 with 25 or more years of service.

A NYCRS member eligible for Part B would be permitted to elect Part A (if eligible for Part A) but would not be permitted to combine the benefits of Part A and Part B.

In addition, to be eligible, a member of a NYCRS must be the employee of an employer participating in a NYCRS ("Obligor") who elects to participate in the ERI Program.

Additional requirements and details are set forth under the Terms of Early Retirement Incentive section that follows.

The Effective Date of the proposed legislation would be the date of enactment.

TERMS OF EARLY RETIREMENT INCENTIVE PROGRAM: Under the proposed legislation, with respect to the NYCRS, and ERI Program would be made available if elected by a participating employer, including New York City (the "City"), by enactment of a local law or resolution. Such local law or resolution would specify for employees the applicable "Open Period," anywhere from 30 to 90 days, during which time eligible NYCRS members would be permitted to elect and retire, but not beyond August 31, 2010 for educational employees and not beyond December 31, 2010 for all others.

The Mayor of the City may declare employees of the Community Colleges of the City University of New York ("CUNY") to be ineligible for Part A of the ERI Program. It is also the understanding of the Actuary that the Mayor may determine such employees to be ineligible for Part B.

This proposed legislation also provides that employers who elect Part A of the ERI Program should demonstrate certain compensation savings over the two-year period following the effective dates of retirement of those employees who participate in Part A of the ERI Program.

NYCRS RETIREMENT SYSTEMS IMPACTED: The proposed legislation would impact the following NYCRS:

- \* New York City Employees' Retirement System ("NYCERS"),
- \* New York City Teachers' Retirement System ("NYCTRS"), and
- \* New York City Board of Education Retirement System ("BERS").

PART A

If an employer elects to participate in Part A of the ERI Program, then an employee must meet the following criteria in order to retire under the ERI:

Eligibility - Part A: A NYCRS member must be a member of NYCERS, NYCTRS or BERS and is required to:

1. Be in Active Service - paid on payroll, or
  - On leave of absence with pay, or
  - Approved leave of absence without pay but not more than 12 weeks prior to the "Open Period," or
  - A teacher on payroll as of February 1, 2010 which would include the period between the end of the June 2010 term and on or before August 31, 2010, and
2. Be in an Eligible Title.
  - Those positions otherwise identified for layoff,
  - Those positions that could be transferred or reassigned under Civil Service Law, and
3. Be eligible for Service Retirement if the ERI service credit is applied or have at least attained age 50 with 10 or more years of service, and
4. Be in Active Service between February 1, 2010 and the commencement date specified in the Open Period, and
5. File an application for Service Retirement that is effective during the Open Period, and
6. File written notification with the employer of the member on or before the 21st day prior to the end of the Open Period.

Benefits - Part A: For those NYCRS members who participate in Part A, the members would receive an ERI of:

- 1/12 of additional retirement service credit per year of pension service, up to a maximum of three years.

Such retirement service credit would be usable for both inclusion in the applicable benefit formula and for meeting eligibility requirements to retire.

Generally, there would be reductions to the retirement benefit if the eligible employee retired before a plan's normal retirement age.

In addition, for an eligible employee who participates in a retirement plan which provides for a retirement allowance equal to 50% of FAS upon the completion of 25 years without regard to age, the proposed legislation sets forth the reductions to the retirement allowance otherwise payable if the eligible employee has not accrued, excluding the additional credit granted under the proposed legislation, the minimum number of years needed to retire with such allowance.

However, the proposed legislation does not address the situation where an eligible employee is in a plan where 25 years of service is needed to retire with 55% of FAS.

It is the understanding of the Actuary that the same reductions described in the proposed legislation for plans providing 50% of FAS after 25 years of service would apply to plans providing 55% of FAS after 25 years of service.

Optional Retirement Program - Part A: For those NYCRS members who participate in an Optional Retirement Program (i.e., Internal Revenue Code ("IRC") Section 403(b) Plan or "403(b) Plan") as specified in Education Law Section 6251, there is a special Part A benefit.

A member of a 403(b) Plan would, if the member elected to retire under the Part A provisions, be entitled to an additional employer contribution equal to:  $1/12 \times \text{years of service} \times 15\% \times \text{member's annual salary}$

rate as of March 1, 2010, such amount could not exceed 45% of such salary rate (i.e., no more than 36 years of service would be included).

#### PART B

If an employer elects to participate in Part B of the ERI Program, then the employees must meet the following criteria in order to retire under the ERI:

**Eligibility - Part B:** To be eligible for Part B, members must have attained age 55 and have completed 25 or more years of creditable service as of the effective date of retirement.

**Benefits - Part B:** For those NYCERS members who are eligible for Part B, such members would be entitled to receive the retirement allowance accrued under the plan in which the member participates based on the amount of credited service such member would have at retirement, but such retirement allowance would be payable without reduction for early commencement.

**Note:** If eligible under Part A, a NYCERS member eligible for Part B would be permitted to elect to receive the benefits under Part A in lieu of the benefits under Part B.

#### PART A AND PART B

Any additional benefits payable under Part A or Part B would be limited to the extent that the total benefit payable were to exceed the Internal Revenue Code ("IRC") Section 415 limits.

**Note:** Under Chapter 623 of the Laws of 2004, the NYCERS now have Excess Benefit Plans that permit benefits in excess of the IRC Section 415 limits but the ERI Program does not recognize the availability of these Excess Benefit Plans.

With respect to the Optional Retirement Program, for any additional employer contribution made under a 403(b) Plan, such additional employer contribution would not be permitted to exceed the IRC Section 415 limits. If it were to exceed those limits, then the portion in excess of the limit would either be contributed to the employee in a separate IRC Section 403(b) contract to the extent it can be contributed on a before-tax basis under the limit or paid to the employee over a 24-month period in three equal installments.

**Note:** It is also the understanding of the Actuary that Part A, Section 10 (i.e., IRC Section 415 limits) and Part A, Section 13 (i.e., provisions of RSSL Section 430) would be applicable to both Part A and Part B of the proposed legislation.

**FINANCIAL IMPACT - OVERVIEW:** If enacted into the law, the ultimate employer cost of this proposed legislation would be determined by the number of members of the NYCERS who participate in the ERI Program and the amount of additional benefits paid.

**FINANCIAL IMPACT - ACTUARIAL PRESENT VALUES:** Based on the census data and the actuarial assumptions and methods described herein, the enactment of this proposed legislation would increase the Actuarial Present Value of Benefits ("APVB") and increase employer contributions to NYCERS, NYCTRS and BERS based on the number of members who participate in the ERI Program and the amounts of benefits that are paid.

The following Table 1 presents, based on assumptions set forth herein by the Actuary, a Hypothetical Scenario of the financial impact to provide the ERI Program for the NYCERS:

Table 1

Hypothetical Scenario of Financial Impact to Provide an  
Early Retirement Incentive for Certain NYCERS Members\*  
(\$ Millions)

Retirement	Additional	Estimated Additional
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System	APVB**	Employer Contributions#
NYCERS	\$ 76.8	\$20.0
NYCTRS	34.2	8.9
BERS	4.9	1.3
	-----	-----
TOTAL	\$115.9	\$30.2

\* Based on Hypothetical Scenario developed by the Actuary assuming employers were to elect to participate in the ERI Program and members were to elect to participate as set forth in Actuarial Assumptions and Methods section of this Fiscal Note.

\*\* Estimated amounts as of June 30, 2010 based on the actuarial assumptions and methods described herein.

# The amounts shown would be payable annually over five Fiscal Years beginning Fiscal Year 2012.

FINANCIAL IMPACT - EMPLOYER CONTRIBUTIONS: Based on the census data and the actuarial assumptions and methods described herein as a Hypothetical Scenario, the enactment of this proposed legislation would increase annual employer contributions by approximately \$20.0 million for NYCERS, \$8.9 million for NYCTRS and \$1.3 million for BERS, or a total of \$30.2 million per year for the five fiscal years beginning Fiscal Year 2012.

FINANCIAL IMPACT - TIMING OF EMPLOYER CONTRIBUTIONS: The increased employer contributions to NYCERS, NYCTRS and BERS attributable to this proposed legislation would be paid over a period of not more than five years commencing with the fiscal year beginning during the New York State fiscal year ending March 31, 2012 (e.g. as applicable to most participating employers of the NYCERS, beginning with the fiscal year ending June 30, 2012).

FINANCIAL IMPACT - OTHER: The Actuary is expecting to propose revised actuarial assumptions and methods to be effective on or after Fiscal Year 2010.

The estimated financial impact of proposed legislation incorporating those revised actuarial assumptions and methods is expected to differ, possibly significantly, from the financial impact computed using the actuarial assumptions and methods continued from Fiscal Year 2010.

Further, the near certainty of payment of benefits from the NYCERS (due to the substantive level of funding and New York State Constitutional Protection of benefits), suggests that it may be appropriate to also consider a more economic-based, market-related estimate of the value of those benefits (i.e., a Financial Value estimate). Such value of benefits would likely be based on an expected pattern of benefits payments determined using discount rates consistent with those derived from default-free securities of similar duration.

Under current economic conditions, the APVB, employer cost and employer contributions determined under Financial Value concepts would be greater than those shown herein.

OTHER COSTS: Most significantly, not measured herein is any potential reduction in employer payrolls attributable to members who retire under the ERI Program.

Also not measured in this Fiscal Note is the impact of this proposed legislation on administrative costs of NYCERS, NYCTRS and BERS and their participating employers.

In addition, and potentially significant, no account has been taken of the impact of the expected increase in costs attributable to Other Post Employment Benefits ("OPEB").

CENSUS DATA: The census data used for the estimates of additional APVB and employer contributions presented herein was the active data used in the June 30, 2009 (Lag) actuarial valuations of NYCERS, NYCTRS and BERS used to determine Preliminary Fiscal Year 2011 employer contributions.

Active members as of June 30, 2009 were grouped by individual ages and services for the members who could potentially meet the age and service requirements for the ERI Program and are shown in Table 2.

Note: This slightly overstates the number of potentially eligible members as some members may have left employment after June 30, 2009.

Table 2

Active Members on June 30, 2009 Potentially Eligible for  
ERI Program as of June 30, 2010\*

(\$ Millions)

Retirement System	ERI-Part A		ERI-Part B	
	Number	Salaries	Number	Salaries
NYCERS	61,682	\$4,279.5	3,662	\$241.9
NYCTRS	32,752	2,788.9	382	\$38.4
BERS	6,160	270.4	232	\$17.4
TOTAL	100,594	\$7,338.8	4,276	\$297.7

\* Assumes NYCERS members as of June 30, 2009 remain in active service through June 30, 2010 and then meet the age and service requirements for the ERI Program as of June 30, 2010.

The following Table 3 presents the estimated number and salaries for those potential members assumed to participate in the ERI Program under the Hypothetical Scenario.

ACTUARIAL ASSUMPTIONS AND METHODS: The additional APVB and employer contributions presented herein have been calculated, with certain additional Hypothetical Scenario assumptions, based on the actuarial assumptions and methods used for NYCERS, NYCTRS and BERS in the June 30, 2009 (Lag) actuarial valuations used to determine Preliminary Fiscal Year 2011 employer contributions to the NYCERS.

These actuarial assumptions were adopted by the Boards of Trustees of the NYCERS during Fiscal Year 2006 and are part of an overall package of actuarial assumptions and methods used to determine employer contributions to the NYCERS that includes an Actuarial Interest Rate ("AIR") assumption of 8.0% per annum.

Table 3

Active Members Assumed to Participate in ERI Program under  
Hypothetical Scenario\*

Retirement System	ERI-Part A		ERI-Part B	
	Number	Salaries	Number	Salaries
NYCERS	996	\$ 71.1	732	\$48.4
NYCTRS	701	66.2	76	7.7
BERS	54	3.6	46	3.5
Total	1,751	\$140.9	854	\$59.6

\* Based on assumptions that 20% of all potentially eligible ERI - Part B members, and that of the 25% of ERI - Part A members who are assumed to be targeted employees, 20% would elect to participate in the ERI Program.

For purposes of determining those active members who would be potentially eligible (and likely to consider Part B), it was assumed that those active members who meet the Part B eligibility conditions would prefer this Part B versus Part A if they were under attained age 61 and were not otherwise eligible to retire immediately with an unreduced benefit (excluding teacher members with 30 or more years of credited

service). The balance of the potentially eligible NYCERS members were assumed to potentially participate in Part A.

For the purposes of the Hypothetical Scenario, the following additional assumptions were used to determine the additional APVB and annual employer contributions:

\* Part A

- \*\* Obligators to NYCERS choose to participate in Part A, and
- \*\* Obligators target 25% of all Eligible Employees in Eligible Titles ("Targeted Employees"), and
- \*\* Only Targeted Employees with the following characteristics elect to take ERI ("Part A Eligible Employees"):
  - \*\*\* Age 55 and greater
  - \*\*\* 20 or more years of service, and
- \*\* 20% of Part A Eligible Employees elect to take the ERI

\* Part B

- \*\* All Obligators to NYCERS choose to participate in Part B, and
- \*\* 20% of Part B Eligible Employees elect to take the ERI

Employer contributions have been developed under the terms of the proposed legislation that require that the APVB of such ERI be spread over five years in the fiscal year beginning in the New York State fiscal year ending March 31, 2012.

STATEMENT OF ACTUARIAL OPINION: I, Robert C. North, Jr., am the Chief Actuary for the New York City Retirement Systems. I am a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

FISCAL NOTE IDENTIFICATION: This estimate is intended for use only during the 2010 Legislative Session. It is Fiscal Note 2010-14, dated May 17, 2010 prepared by the Chief Actuary for the New York City Employees' Retirement System, the New York City Teachers' Retirement System and the New York City Board of Education Retirement System.