S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N A S S E M B L Y

May 6, 2011

Introduced by M. of A. JORDAN, McLAUGHLIN, MONTESANO, CROUCH, CALHOUN, HAWLEY, LOSQUADRO -- Multi-Sponsored by -- M. of A. SAYWARD -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to establishing a defined contribution retirement plan

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

Section 1. The retirement and social security law is amended by adding a new article 23 to read as follows:

ARTICLE 23

DEFINED CONTRIBUTION RETIREMENT PLAN

SECTION 1207. APPLICABILITY.
1208. DEFINITIONS.
1209. ESTABLISHMENT OF A DEFINED CONTRIBUTION PLAN.
1210. CONTRIBUTIONS TO THE DEFINED CONTRIBUTION PLAN.
1211. ESTABLISHMENT OF 403(B) PLAN FOR CERTAIN MEMBERS.
1212. OVERTIME FOR EXISTING MEMBERS.
1213. PAYMENTS UPON SEPARATION FROM EMPLOYMENT.
1214. TRANSFERABILITY UPON SEPARATION OF EMPLOYMENT.
1215. TRANSFERABILITY OF PRIOR TAX-DEFERRED ANNUITY INTO TRUST.
1216. INCOME TAX EXEMPTION FOR CERTAIN PAYMENTS.
1217. SEVERABILITY CLAUSE.

S 1207. APPLICABILITY. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE PROVISIONS OF THIS ARTICLE SHALL BE APPLICABLE TO ALL EMPLOYEES IN THE NEW YORK STATE RETIREMENT SYSTEM OR NEW YORK CITY RETIREMENT SYSTEM, AS DEFINED IN SECTION TWELVE HUNDRED EIGHT OF THIS ARTICLE, WHO FIRST JOINED SUCH SYSTEM ON OR AFTER JANUARY FIRST, TWO THOUSAND TWELVE. HOWEVER, THE PROVISIONS OF SECTION TWELVE HUNDRED TWELVE OF THIS ARTICLE SHALL BE APPLICABLE TO CURRENT MEMBERS AND EMPLOYEES WHO FIRST JOINED SUCH SYSTEM PRIOR TO JANUARY FIRST, TWO THOUSAND TWELVE. UNDER NO CIRCUMSTANCES SHALL AN EMPLOYEE WHO JOINS A NEW

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

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YORK STATE RETIREMENT SYSTEM OR A NEW YORK CITY RETIREMENT SYSTEM AFTER JANUARY FIRST, TWO THOUSAND TWELVE, BE ELIGIBLE FOR PARTICIPATION IN A DEFINED BENEFIT RETIREMENT PLAN, AS ESTABLISHED UNDER ARTICLE EIGHT, ELEVEN, FOURTEEN, FIFTEEN OR TWENTY-TWO OF THIS CHAPTER, ARTICLE ELEVEN OF THE EDUCATION LAW OR TITLE THIRTEEN OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK.

S 1208. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE THE TERMS: A. "NEW YORK STATE RETIREMENT SYSTEM" SHALL MEAN THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM, NEW YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM, AND THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM.

B. "NEW YORK CITY RETIREMENT SYSTEM" SHALL MEAN THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM, NEW YORK CITY TEACHERS' RETIREMENT SYSTEM, NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM, NEW YORK CITY POLICE DEPARTMENT PENSION FUND, AND THE NEW YORK CITY FIRE DEPARTMENT PENSION FUND.

C. "TRUSTEE" SHALL BE: (1) THE NEW YORK STATE COMPTROLLER FOR THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR THE NEW YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM;

(2) THE BOARD OF TRUSTEES FOR THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM;

(3) THE BOARD OF TRUSTEES FOR THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM;

(4) THE BOARD OF TRUSTEES FOR THE NEW YORK CITY RETIREMENT SYSTEM.

D. "EMPLOYEES' RETIREMENT SYSTEM" SHALL MEAN THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM AND THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM.

E. "TEACHERS' RETIREMENT SYSTEM" SHALL MEAN THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM, THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM AND THE NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM.

F. "PARTICIPATING EMPLOYER" SHALL MEAN AN EMPLOYER PARTICIPATING IN A NEW YORK STATE RETIREMENT SYSTEM OR A NEW YORK CITY RETIREMENT SYSTEM.

G. "FINANCIAL ORGANIZATION" SHALL MEAN AN ORGANIZATION AUTHORIZED TO DO BUSINESS IN THE STATE OF NEW YORK AND:

(1) IS AN AUTHORIZED FIDUCIARY TO ACT AS A TRUSTEE PURSUANT TO THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974" AS SUCH PROVISIONS MAY BE AMENDED FROM TIME TO TIME, OR AN INSURANCE COMPANY; AND

(2)(A) IS LICENSED OR CHARTERED BY THE STATE INSURANCE DEPARTMENT; (B) IS LICENSED OR CHARTERED BY THE STATE BANKING DEPARTMENT; (C) IS CHARTERED BY AN AGENCY OF THE FEDERAL GOVERNMENT; (D) IS SUBJECT TO THE JURISDICTION AND REGULATION OF THE SECURITIES AND EXCHANGE COMMISSION OF THE FEDERAL GOVERNMENT; OR (E) IS ANY OTHER ENTITY OTHERWISE AUTHORIZED TO ACT IN THIS STATE AS A TRUSTEE PURSUANT TO THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974" AS SUCH PROVISIONS MAY BE AMENDED FROM TIME TO TIME.

S 1209. ESTABLISHMENT OF A DEFINED CONTRIBUTION PLAN. A. FOR EACH EMPLOYEE WHO JOINS A NEW YORK STATE RETIREMENT SYSTEM OR A NEW YORK CITY RETIREMENT SYSTEM ON OR AFTER JANUARY FIRST, TWO THOUSAND TWELVE, THE TRUSTEE OF SUCH SYSTEM SHALL ESTABLISH A TRUST PURSUANT TO SECTION 457(B) OF TITLE 26 OF THE UNITED STATES CODE, PROVIDED THAT SUCH EMPLOYEE ELECTS TO CONTRIBUTE TO SUCH TRUST. THE TRUSTEE SHALL PROMULGATE THE RULES AND REGULATIONS BY WHICH AN EMPLOYEE CAN ELECT TO PARTICIPATE OR DECLINE TO PARTICIPATE IN A SECTION 457(B) PLAN, INCLUDING THE FORM BY WHICH THE ELECTION MUST BE MADE, PROVIDED THAT THE RULES AND REGULATIONS

REMAIN CONSISTENT WITH SECTION 457 OF THE UNITED STATES CODE AND THIS ARTICLE.

B. THE TRUSTEE OF THE RETIREMENT SYSTEM SHALL ESTABLISH A LIST OF INVESTMENT FUNDS MANAGED BY APPROVED FINANCIAL ORGANIZATIONS IN WHICH THE EMPLOYEE CAN CHOOSE TO INVEST CONTRIBUTIONS MADE PURSUANT TO SECTION TWELVE HUNDRED TEN OF THIS ARTICLE.

(1) THE TRUSTEE SHALL PROMULGATE THE RULES AND REGULATIONS THAT SHALL ESTABLISH STANDARDS FOR THE SELECTION OF FINANCIAL ORGANIZATIONS, AUTHORIZED TO DO BUSINESS IN THIS STATE, TO PARTICIPATE IN SUCH PLANS, INCLUDING BUT NOT LIMITED TO, THE FOLLOWING CRITERIA: (A) RATES OF COMMISSION, BROKERAGE AND OTHER FEES, ADMINISTRATIVE EXPENSES AND RELATED SERVICE CHARGES IMPOSED BY THE FINANCIAL ORGANIZATION; (B) VARIETY OF TYPES OF INVESTMENT OPPORTUNITIES OFFERED BY THE FINANCIAL ORGANIZATION AND/OR AMONG THE FINANCIAL ORGANIZATIONS SELECTED AND THE ABILITY TO TRANSFER AMONG SUCH OPPORTUNITIES; (C) THE STABILITY OF THE FINANCIAL ORGANIZATION AS EVIDENCED BY EXPERIENCE, REPUTATION, ASSETS AND HOLDINGS, ABILITY TO GUARANTEE SPECIFIC RATES OF RETURN; (D) ABILITY TO COMPLY WITH REPORTING REQUIREMENTS TO THE COMPTROLLER AND TO PARTICIPATES IN SUCH A PLAN; AND (E) SUCH OTHER FACTORS WHICH WOULD BE CONSIDERED BY A PRUDENT INVESTOR IN SUCH A PLAN.

(2) THE TRUSTEE SHALL PROVIDE SUCH INFORMATION ABOUT EACH APPROVED FINANCIAL ORGANIZATION TO ALL MEMBERS FOR WHOM A TRUST IS ESTABLISHED PURSUANT TO THIS ARTICLE UPON THE ESTABLISHMENT OF THE TRUST AND ON A YEARLY BASIS THEREAFTER.

C. THE EMPLOYEE SHALL HAVE THE AUTHORITY TO DIRECT THE MANAGEMENT OF ALL CONTRIBUTIONS MADE TO HIS OR HER TRUST BY ONE OR ALL OF THE FINANCIAL ORGANIZATIONS APPROVED BY THE TRUSTEE OR THE EMPLOYEE CAN DESIGNATE THE TRUSTEE TO DIRECT SUCH CONTRIBUTIONS ON BEHALF OF THE EMPLOYEE. IN THE EVENT THE TRUSTEE IS DESIGNATED TO DIRECT CONTRIBUTIONS ON THE EMPLOYEE'S BEHALF, SUCH INVESTMENTS SHALL BE MADE WITH THE LEVEL OF RISK THE TRUSTEE DEEMS APPROPRIATE CONSIDERING THE EMPLOYEE'S EXPECTED AGE OF RETIREMENT. IN THE EVENT THE EMPLOYEE DESIGNATES THE TRUSTEE TO INVEST SUCH CONTRIBUTIONS AND FAILS TO PROVIDE AN EXPECTED AGE OF RETIREMENT, THE TRUSTEE SHALL ASSUME THE EXPECTED RETIREMENT AGE IS SIXTY YEARS OF AGE.

D. UNDER NO CIRCUMSTANCE, EXCEPT WHERE A COURT OF COMPETENT JURISDICTION DETERMINES THAT THE TRUSTEE ACTED IN BAD FAITH, SHALL THE TRUSTEE BE HELD LIABLE FOR ANY LOSSES INCURRED IN THE TRUST.

S 1210. CONTRIBUTIONS TO THE DEFINED CONTRIBUTION PLAN. A. FOR EACH EMPLOYEE ON BEHALF OF WHOM A TRUST IS ESTABLISHED PURSUANT TO SECTION TWELVE HUNDRED NINE OF THIS ARTICLE, THE EMPLOYER SHALL CONTRIBUTE AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF THE EMPLOYEE'S CONTRIBUTION UP TO THREE PERCENT OF THE EMPLOYEE'S TOTAL COMPENSATION IN THE PAY PERIOD FOR WHICH CONTRIBUTIONS ARE BEING MADE.

B. THE EMPLOYEE CAN CHOOSE, BUT NOT BE REQUIRED, TO CONTRIBUTE UP TO ONE HUNDRED PERCENT OF THEIR TOTAL COMPENSATION TO THE TRUST.

C. IN THE EVENT THE CONTRIBUTIONS MADE PURSUANT TO THIS SECTION WOULD EXCEED THE LIMITATIONS IMPOSED BY SECTION 457(B) OF TITLE 26 OF THE UNITED STATES CODE, THE EMPLOYEE'S CONTRIBUTION SHALL BE REDUCED UNTIL THE SUM OF THE EMPLOYEE'S CONTRIBUTION AND THE EMPLOYER'S CONTRIBUTION MEET SUCH LIMITATIONS. IN THE EVENT THE EMPLOYER'S CONTRIBUTION IS LESS THAN THREE PERCENT OF THE EMPLOYEE'S TOTAL COMPENSATION AND THE EMPLOYEE CONTRIBUTES TO A SECTION 403(B) TRUST PURSUANT TO SECTION TWELVE HUNDRED ELEVEN OF THIS ARTICLE, THE DIFFERENCE BETWEEN THREE PERCENT AND THE EMPLOYER'S CONTRIBUTION TO THE EMPLOYEE'S SECTION 457(B) TRUST SHALL BE

CONTRIBUTED TO THE EMPLOYEE'S SECTION 403(B) TRUST, PROVIDED THAT THE EMPLOYEE'S CONTRIBUTION EQUALS OR EXCEEDS SUCH CONTRIBUTION.

S 1211. ESTABLISHMENT OF 403(B) PLAN FOR CERTAIN MEMBERS. A. EMPLOYEES WHO ARE MEMBERS OF A TEACHERS' RETIREMENT SYSTEM OR EMPLOYEES' RETIREMENT SYSTEM MAY CHOOSE TO HAVE AN ADDITIONAL TRUST ESTABLISHED PURSUANT TO SECTION 403(B) OF TITLE 26 OF THE UNITED STATES CODE IF THE FOLLOWING CRITERIA ARE MET:

(1) SUCH EMPLOYEE IS ELIGIBLE FOR PARTICIPATION IN BOTH A SECTION 457(B) PLAN AND A SECTION 403(B) PLAN.

(2) THE EMPLOYER'S CONTRIBUTION TO THE SECTION 457(B) PLAN MEETS THE MAXIMUM LIMITATIONS IMPOSED BY SECTION 457(B) OF TITLE 26 OF THE UNITED STATES CODE, OR THE SUM OF THE EMPLOYER'S AND EMPLOYEE'S CONTRIBUTION MEETS THE MAXIMUM LIMITATIONS IMPOSED BY THE CODE.

(3) THE EMPLOYEE FILES WRITTEN NOTIFICATION TO HIS OR HER RETIREMENT SYSTEM IN A FORM TO BE DETERMINED BY THE TRUSTEE OF THE SYSTEM STATING THAT HE OR SHE CHOOSES TO PARTICIPATE IN A SECTION 403(B) PLAN.

B. AN EMPLOYEE ON WHOSE BEHALF A TRUST IS ESTABLISHED PURSUANT TO THIS SECTION MAY CONTRIBUTE UP TO ONE HUNDRED PERCENT OF THEIR TOTAL COMPENSATION, SUBJECT TO THE LIMITATIONS OF SECTION 403(B) OF TITLE 26 OF THE UNITED STATES CODE.

C. UNDER NO CIRCUMSTANCES, EXCEPT FOR THOSE PROVIDED IN SECTION TWELVE HUNDRED TEN OF THIS ARTICLE, SHALL AN EMPLOYER MAKE ANY CONTRIBUTIONS TO A TRUST ESTABLISHED PURSUANT TO THIS SECTION.

D. ANY TRUST ESTABLISHED PURSUANT TO THIS SECTION SHALL OTHERWISE BE GOVERNED PURSUANT TO THE PROVISIONS OF SECTION TWELVE HUNDRED NINE OF THIS ARTICLE.

S 1212. OVERTIME FOR EXISTING MEMBERS. A. THE TRUSTEE OF EACH NEW YORK STATE RETIREMENT SYSTEM AND NEW YORK CITY RETIREMENT SYSTEM SHALL ESTABLISH A TRUST PURSUANT TO SECTION 457(B) OF TITLE 26 OF THE UNITED STATES CODE FOR EACH EMPLOYEE WHO BECAME A MEMBER OF SUCH SYSTEM BEFORE JANUARY FIRST, TWO THOUSAND TWELVE, WHO IS ELIGIBLE TO RECEIVE OVERTIME COMPENSATION, AND WHO ELECTS TO CONTRIBUTE TO SUCH TRUST.

(1) THE TRUSTEE SHALL PROMULGATE THE RULES AND REGULATIONS BY WHICH AN EMPLOYEE CAN ELECT TO PARTICIPATE OR DECLINE TO PARTICIPATE IN A SECTION 457(B) PLAN, INCLUDING THE FORM BY WHICH THE ELECTION MUST BE MADE, PROVIDED THAT THE RULES AND REGULATIONS REMAIN CONSISTENT WITH SECTION 457 OF THE UNITED STATES CODE AND THIS ARTICLE.

(2) IN THE CASE IN WHICH AN EMPLOYEE ELECTS TO MAKE CONTRIBUTIONS, IT SHALL BE THE RESPONSIBILITY OF THE EMPLOYER TO DETERMINE AND TO REPORT TO THE TRUSTEE, THE AMOUNT OF SUCH EMPLOYEE'S WAGES THAT ARE PAID AS OVERTIME COMPENSATION IN THE PAY PERIOD FOR WHICH CONTRIBUTIONS ARE BEING MADE.

B. FOR EACH EMPLOYEE ON BEHALF OF WHOM A TRUST IS ESTABLISHED PURSUANT TO THIS SECTION THE EMPLOYER SHALL CONTRIBUTE AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF THE EMPLOYEE'S CONTRIBUTION UP TO THREE PERCENT OF THE EMPLOYEE'S TOTAL OVERTIME COMPENSATION IN THE PAY PERIOD FOR WHICH CONTRIBUTIONS ARE BEING MADE.

C. THE EMPLOYEE CAN CHOOSE, BUT NOT BE REQUIRED, TO CONTRIBUTE UP TO ONE HUNDRED PERCENT OF THEIR TOTAL OVERTIME COMPENSATION TO THE TRUST.

D. IN THE EVENT THE CONTRIBUTIONS MADE PURSUANT TO THIS SECTION WOULD EXCEED THE LIMITATIONS IMPOSED BY SECTION 457(B) OF TITLE 26 OF THE UNITED STATES CODE, THE EMPLOYEE'S CONTRIBUTION SHALL BE REDUCED UNTIL THE SUM OF THE EMPLOYEE'S CONTRIBUTION AND THE EMPLOYER'S CONTRIBUTION MEET SUCH LIMITATIONS.

E. ANY TRUST ESTABLISHED PURSUANT TO THIS SECTION SHALL OTHERWISE BE GOVERNED ACCORDING TO THE PROVISIONS OF SECTION TWELVE HUNDRED NINE OF THIS ARTICLE.

F. UNDER NO CIRCUMSTANCES SHALL OVERTIME COMPENSATION, FOR SERVICES PERFORMED BY AN EMPLOYEE ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, BE REPORTABLE AS WAGES TO THE TRUSTEE OF SUCH SYSTEM FOR THE PURPOSE OF DETERMINING AN EMPLOYEE'S CONTRIBUTION TO THEIR DEFINED BENEFIT PLAN OR FOR THE INCLUSION OF SUCH WAGES IN THE COMPUTATION OF THE EMPLOYEE'S FINAL AVERAGE SALARY OR FINAL COMPENSATION FOR DETERMINING SUCH EMPLOYEE'S PENSION BENEFIT.

S 1213. PAYMENTS UPON SEPARATION FROM EMPLOYMENT. A. UPON THE SEPARATION FROM EMPLOYMENT OF AN EMPLOYEE FOR WHOM A TRUST IS ESTABLISHED, ONE HUNDRED AND THREE PERCENT OF THE CURRENT VALUE OF ALL ACCRUED VACATION TIME SHALL BE CONTRIBUTED BY THE EMPLOYER INTO A TRUST ESTABLISHED ON BEHALF OF THE EMPLOYEE, PROVIDED THAT THE TOTAL AMOUNT OF ACCRUED VACATION TIME IS NOT TO EXCEED THIRTY DAYS. SUCH CONTRIBUTIONS SHALL BE SUBJECT TO THE LIMITATIONS IMPOSED BY SECTION 457(B) OF TITLE 26 OF THE UNITED STATES CODE, AND IN THE CASE OF AN EMPLOYEE FOR WHOM AN ADDITIONAL TRUST IS ESTABLISHED PURSUANT TO SECTION TWELVE HUNDRED ELEVEN OF THIS ARTICLE, SUCH CONTRIBUTION SHALL BE SUBJECT TO THE LIMITATIONS IMPOSED BY SECTION 403(B) OF TITLE 26 OF THE UNITED STATES CODE.

B. AN EMPLOYEE MAY CHOOSE TO RECEIVE A LUMP-SUM PAYMENT OF ACCRUED VACATION TIME OR ANY PROPORTION OF ACCRUED VACATION TIME OWED TO THE EMPLOYEE PURSUANT TO SUBDIVISION A OF THIS SECTION IN LIEU OF A CONTRIBUTION OF THE VALUE OF SUCH TIME TO THE TRUST ESTABLISHED ON BEHALF OF THE EMPLOYEE. SUCH OPTION IS TO BE CHOSEN BY WRITTEN AFFIRMATION TO THE EMPLOYER. IN THE EVENT THE EMPLOYEE DOES NOT PROVIDE SUCH AFFIRMATION, THE PAYMENT OF ACCRUED VACATION TIME SHALL BE MADE PURSUANT TO SUBDIVISION A OF THIS SECTION.

C. FOR AN EMPLOYEE WHO RE-ENTERS PUBLIC EMPLOYMENT AFTER HAVING RECEIVED PAYMENTS OR CONTRIBUTIONS UNDER THIS SECTION, ANY FUTURE PAYMENT OR CONTRIBUTION MADE UNDER THIS SECTION SHALL BE REDUCED BY ONE HUNDRED PERCENT OF ALL PAYMENTS OR CONTRIBUTIONS PREVIOUSLY RECEIVED. IN THE EVENT THAT PRIOR PAYMENTS OR CONTRIBUTIONS EQUAL OR EXCEED THE AMOUNT OF ANY SUBSEQUENT PAYMENT OR CONTRIBUTION THE EMPLOYEE SHALL BE INELIGIBLE FOR A PAYMENT OR CONTRIBUTION UNDER THIS SECTION.

D. SUBDIVISIONS A, B AND C OF THIS SECTION SHALL NOT APPLY TO ANY EMPLOYEE FOR WHOM A TRUST IS ESTABLISHED PURSUANT TO SECTION TWELVE HUNDRED TWELVE OF THE ARTICLE.

E. UNDER NO CIRCUMSTANCE SHALL AN EMPLOYEE BE ELIGIBLE FOR COMPENSATION OR FOR A CONTRIBUTION TOWARDS ANY TRUST FOR ANY ACCRUED TIME THAT IS NOT AUTHORIZED BY THIS SECTION.

S 1214. TRANSFERABILITY UPON SEPARATION OF EMPLOYMENT. A. UPON THE SEPARATION OF EMPLOYMENT WITH A PARTICIPATING EMPLOYER, AN EMPLOYEE FOR WHOM A TRUST IS ESTABLISHED SHALL BE PERMITTED TO TRANSFER THE ASSETS OF THEIR TRUST IN ANY MANNER CONSISTENT WITH SECTION 457(B) OF TITLE 26 OF THE UNITED STATES CODE, OR IN THE CASE OF A TRUST ESTABLISHED PURSUANT TO SECTION TWELVE HUNDRED ELEVEN OF THIS ARTICLE, ANY MANNER CONSISTENT WITH SECTION 403(B) OF TITLE 26 OF THE UNITED STATES CODE. THE TRUSTEE OF THE RETIREMENT SYSTEM OF WHICH THE EMPLOYEE IS A MEMBER SHALL PROMULGATE THE RULES AND REGULATIONS GOVERNING THE TRANSFER OF SUCH ASSETS.

B. UPON THE TRANSFER OF SUCH ASSETS TO ANY PERSON OR TRUST THAT IS NOT GOVERNED BY THE PROVISIONS OF THIS ARTICLE ANY OBLIGATIONS OF THE TRUSTEE TO THE EMPLOYEE SHALL CEASE.

S 1215. TRANSFERABILITY OF PRIOR TAX-DEFERRED ANNUITY INTO TRUST. THE TRUSTEE OF THE RETIREMENT SYSTEM SHALL ACCEPT INTO A TRUST ESTABLISHED

PURSUANT TO THIS ARTICLE ALL ASSETS OF A TAX-DEFERRED ANNUITY ESTABLISHED BY A PRIOR NON-PARTICIPATING EMPLOYER UPON THE ELECTION OF THE EMPLOYEE, PROVIDED THAT SUCH TRANSFER REMAINS CONSISTENT WITH SECTION 457(B) OF TITLE 26 OF THE UNITED STATES CODE OR IN THE CASE OF A TRUST ESTABLISHED PURSUANT TO SECTION TWELVE HUNDRED ELEVEN OF THIS ARTICLE, SUCH TRANSFER REMAINS CONSISTENT WITH SECTION 403(B) OF TITLE 26 OF THE UNITED STATES CODE.

A. AN EMPLOYEE SHALL ONLY BE PERMITTED TO MAKE A TRANSFER OF ASSETS UNDER THIS SECTION ONCE DURING EACH PERIOD OF EMPLOYMENT WITH A PARTICIPATING EMPLOYER.

B. THE TRUSTEE OF THE RETIREMENT SYSTEM OF WHICH THE EMPLOYEE IS A MEMBER SHALL PROMULGATE THE RULES AND REGULATIONS GOVERNING THE TRANSFER OF SUCH ASSETS.

S 1216. INCOME TAX EXEMPTION FOR CERTAIN PAYMENTS. A. NO PAYMENT MADE FROM A TAX-DEFERRED ANNUITY TO A RETIREE PREVIOUSLY EMPLOYED FOR AT LEAST FIVE YEARS WITH A PARTICIPATING EMPLOYER OR PARTICIPATING EMPLOYERS SHALL BE CONSIDERED TAXABLE INCOME FOR THE PURPOSES OF ARTICLE TWENTY-TWO OF THE TAX LAW, PROVIDED THAT SUCH PAYMENT IS MADE FROM CONTRIBUTIONS AND INTEREST ON CONTRIBUTIONS MADE PURSUANT TO SECTIONS TWELVE HUNDRED TEN, TWELVE HUNDRED ELEVEN AND TWELVE HUNDRED TWELVE OF THIS ARTICLE AND THAT SUCH PAYMENT IS MADE ON OR AFTER THE EMPLOYEE REACHES SIXTY YEARS OF AGE.

B. IN THE EVENT A RETIREE'S TAX DEFERRED ANNUITY CONTAINS CONTRIBUTIONS MADE DURING PERIODS OF EMPLOYMENT WITH EMPLOYERS NOT PART OF A PARTICIPATING RETIREMENT SYSTEM THE ACTUARY OF THE PARTICIPATING RETIREMENT SYSTEM IN WHICH THE EMPLOYEE LAST PARTICIPATED SHALL DETERMINE THE PROPORTION OF ASSETS IN THE RETIREE'S ANNUITY THAT ARE SUBJECT TO THE PROVISIONS OF SUBDIVISION A OF THIS SECTION. SUCH DETERMINATION SHALL BE MADE ON THE ACTUAL PROPORTION OF ASSETS AND INTEREST ON ASSETS THAT CAN BE ATTRIBUTED TO CONTRIBUTIONS MADE BY THE EMPLOYEE AND THE EMPLOYER DURING PERIODS OF EMPLOYMENT WITH A PARTICIPATING EMPLOYER.

S 1217. SEVERABILITY CLAUSE. IF ANY CLAUSE, SENTENCE, PARAGRAPH OR PART OF THIS ARTICLE OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCES, SHALL, FOR ANY REASON, BE ADJUDGED BY A COURT OF COMPETENT JURISDICTION TO BE INVALID, SUCH JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER OF THIS ARTICLE.

S 2. This act shall take effect immediately, provided, however, that section 1212 of the retirement and social security law, as added by section one of this act, shall take effect on the sixtieth day after it shall have become a law.

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

This bill would change the retirement plan coverage for future members of public retirement systems by requiring that they and their employers each contribute 3% of the members' annual compensation into a defined contribution plan pursuant to Section 457-b on the Internal Revenue Code. Members would be allowed to contribute up to the limit provided in Internal Revenue Code Section 457(b), which is currently $16,500. Members must select whether the funds will be invested by the Trustee or by an approved financial organization selected from a list of approved investment funds provided by the Trustee.

For current members in the defined benefit plan, this bill would also require that overtime pay be excluded from the definition of wages.

If this becomes law, the overtime provision of this bill is likely to face a constitutional challenge based upon the guarantee that a current member's benefits may not be diminished.

If this bill is enacted, insofar as it would affect the New York State and Local Employees' Retirement System (ERS) and the New York State and Local Police and Fire Retirement System (PFRS), there would be decreases in the average long term expected annual contribution rate for future members of approximately 6.4% and 15.0% of payroll for ERS and PFRS, respectively.

If this bill withstands any constitutional challenges regarding the inclusion of overtime pay in the definition of wages, there would be further decreases in the average long term expected annual contribution rates for current members of approximately 0.1% and 0.7% of payroll for ERS and PFRS, respectively.

Finally, there would be significant administrative costs to implement and maintain the defined contribution plan. The legislation does not identify who will pay these costs.

This estimate, dated April 26, 2011, and intended for use only during the 2011 Legislative Session, is Fiscal Note No. 2011-152, prepared by the Actuary for the ERS and the PFRS.