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

4524--A

2011-2012 Regular Sessions

I N S E N A T E

April 11, 2011

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

AN ACT to amend the general municipal law, the education law and the retirement and social security law, in relation to establishing an optional retirement program for employees of municipalities, local governments and schools

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

Section 1. The general municipal law is amended by adding a new article 8-A to read as follows:

ARTICLE 8-A

AUTHORIZATION OF OPTIONAL RETIREMENT SYSTEMS FOR MUNICIPALITIES AND LOCAL GOVERNMENT

SECTION 170. DEFINITIONS.
171. OPTIONAL RETIREMENT PROGRAM AUTHORIZED.
172. RATES OF CONTRIBUTION.
173. ELECTION.
174. SURVIVOR'S BENEFITS.
175. SOCIAL SECURITY.
176. EMPLOYER NOT LIABLE FOR PAYMENT OF BENEFITS.
177. INCONSISTENT PROVISIONS OF OTHER ACTS SUPERSEDED.

S 170. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

1. THE TERM "ELECTING EMPLOYEE" SHALL MEAN ANY ELIGIBLE EMPLOYEE WHO EXERCISES HIS OR HER ELECTION PURSUANT TO THIS ARTICLE TO COME UNDER THE OPTIONAL RETIREMENT PROGRAM BY APPLYING FOR SUCH PROGRAM BUT WHO AWAITS THE APPROVAL OF THE ELECTING EMPLOYER.

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

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2. THE TERM "ELECTING EMPLOYER" SHALL MEAN A MUNICIPALITY WHICH ELECTS TO OFFER THE OPTIONAL RETIREMENT PROGRAM AUTHORIZED BY THIS ARTICLE BY, AFTER A PUBLIC HEARING, ENACTING A LOCAL LAW SETTING FORTH SUCH PROGRAM.

3. THE TERM "ELIGIBLE EMPLOYEES" SHALL MEAN THOSE EMPLOYEES WHO BEGIN TO WORK FOR ANY ELECTING EMPLOYER AFTER THE ENACTMENT OF A LOCAL LAW SETTING FORTH AN OPTIONAL RETIREMENT PROGRAM AS AUTHORIZED BY THIS ARTICLE. NO PERSON RECEIVING A BENEFIT BY REASON OF HIS OR HER RETIREMENT FROM ANY RETIREMENT OR PENSION SYSTEM OF NEW YORK STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE ELIGIBLE TO ELECT THE OPTIONAL RETIREMENT PROGRAM PURSUANT TO THIS ARTICLE. NO PERSON OTHERWISE ELIGIBLE UNDER THIS ARTICLE, WHO IS COVERED UNDER THE VOLUNTEER AMBULANCE WORKERS' BENEFIT LAW, THE VOLUNTEER FIREFIGHTERS' BENEFIT LAW, ARTICLES EIGHT, FOURTEEN-B, FIFTEEN, TWENTY-TWO, OR TITLE NINE OF ARTICLE TWO OF THE RETIREMENT AND SOCIAL SECURITY LAW, SHALL BE ELIGIBLE UNDER THIS ARTICLE.

4. THE TERM "ENROLLED EMPLOYEES" SHALL MEAN ANY ELECTING EMPLOYEE WHO HAS BEEN APPROVED OR ACCEPTED INTO THE OPTIONAL RETIREMENT SYSTEM BY THE ELECTING EMPLOYER PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SEVENTY-THREE OF THIS ARTICLE.

5. THE TERM "INSURER" SHALL MEAN A LIFE INSURANCE CORPORATION, OR OTHER CORPORATION SUBJECT TO INSURANCE DEPARTMENT SUPERVISION.

6. THE TERM "MUNICIPALITY" SHALL MEAN ANY MUNICIPAL CORPORATION AS DEFINED IN SECTION TWO OF THIS CHAPTER.

7. THE TERM "OPTIONAL RETIREMENT PROGRAM" SHALL MEAN THE RETIREMENT PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE.

8. THE TERM "SALARY" SHALL MEAN ALL AMOUNTS PAID BY OR FOR THE ELECTING EMPLOYER AS COMPENSATION FOR SERVICES RENDERED BY AN ELIGIBLE EMPLOYEE HOLDING A POSITION WITH THE ELECTING EMPLOYER.

S 171. OPTIONAL RETIREMENT PROGRAM AUTHORIZED. 1. AUTHORIZATION OF PROGRAM. THERE IS HEREBY AUTHORIZED AN OPTIONAL RETIREMENT PROGRAM WHICH SHALL PROVIDE FOR THE PURCHASE OF CONTRACTS PROVIDING RETIREMENT AND DEATH BENEFITS FOR OR ON BEHALF OF ENROLLED EMPLOYEES. UNDER SUCH PROGRAM AN ELECTING EMPLOYER AND SUCH EMPLOYEES SHALL CONTRIBUTE, TO THE EXTENT AUTHORIZED OR REQUIRED, TOWARDS THE PURCHASE OF SUCH CONTRACTS, WHICH SHALL BE ISSUED TO, AND BECOME THE PROPERTY OF, SUCH EMPLOYEES. THE MUNICIPALITY, AFTER A PUBLIC HEARING AND BY THE ENACTMENT OF A LOCAL LAW WHICH SHALL BECOME EFFECTIVE UPON THE DATE SUCH LOCAL LAW SHALL HAVE BECOME A LAW, MAY ELECT TO OFFER: (A) ONLY THE OPTIONAL RETIREMENT PROGRAM TO ELIGIBLE EMPLOYEES OF SUCH MUNICIPALITY, OR (B) BOTH THE OPTIONAL RETIREMENT PROGRAM AND THE EXISTING PUBLIC RETIREMENT SYSTEM.

2. DESIGNATION OF INSURERS. THE MUNICIPALITY SHALL DESIGNATE THE INSURER OR INSURERS TO WHICH PAYMENT OF SUCH CONTRIBUTIONS MAY BE MADE AND SHALL APPROVE THE FORM AND CONTENT OF SUCH CONTRACTS. IN MAKING SUCH DESIGNATION AND GIVING SUCH APPROVAL SUCH MUNICIPALITY SHALL GIVE DUE CONSIDERATION TO (A) THE NATURE AND EXTENT OF THE RIGHTS AND BENEFITS TO BE PROVIDED BY SUCH CONTRACTS FOR ELECTING EMPLOYEES AND THEIR BENEFICIARIES, (B) THE RELATION OF SUCH RIGHTS AND BENEFITS TO THE AMOUNT OF CONTRIBUTIONS TO BE MADE UNDER THIS ARTICLE, (C) THE SUITABILITY OF SUCH RIGHTS AND BENEFITS TO THE NEEDS AND INTERESTS OF ELECTING EMPLOYEES AND TO THE INTERESTS OF THE MUNICIPALITY AND OF ELECTING EMPLOYERS IN THE EMPLOYMENT AND RETENTION OF ELIGIBLE EMPLOYEES, AND (D) THE AUTHORITY AND ABILITY OF THE DESIGNATED INSURER OR INSURERS TO PROVIDE RIGHTS AND BENEFITS UNDER SUCH CONTRACTS.

3. ADMINISTRATION OF PROGRAM. THE MUNICIPALITY IS HEREBY AUTHORIZED TO PROVIDE FOR, BY THE ENACTMENT OF A LOCAL LAW, THE ADMINISTRATION OF SUCH OPTIONAL RETIREMENT PROGRAM AND TO PERFORM OR AUTHORIZE THE PERFORMANCE

OF SUCH FUNCTIONS AS MAY BE NECESSARY FOR SUCH PURPOSES IN ACCORDANCE WITH THIS ARTICLE. SUCH PROGRAM MAY BE ADMINISTERED BY THE MUNICIPALITY, BY THE OFFICE OF THE COMPTROLLER IF IT SHALL OFFER SUCH A PLAN, OR BY THE PENSION ADMINISTRATOR OF THE STATE UNIVERSITY OF NEW YORK, AT THE OPTION OF THE MUNICIPALITY.

S 172. RATES OF CONTRIBUTION. 1. EMPLOYER CONTRIBUTIONS. THE ELECTING EMPLOYER SHALL, DURING CONTINUANCE OF AN ENROLLED EMPLOYEE'S EMPLOYMENT, MAKE CONTRIBUTIONS AT THE RATE OF EIGHT PERCENT OF HIS OR HER SALARY, OUT OF MONIES WHICH SHALL BE AVAILABLE TO THE ELECTING EMPLOYER FOR SUCH PURPOSE. FOR PURPOSES OF THIS SUBDIVISION, THAT PORTION OF THE EMPLOYEE'S SALARY UPON WHICH CONTRIBUTIONS ARE OR MAY THEREAFTER BE PAID TO THE SECRETARY OF THE TREASURY OF THE UNITED STATES PURSUANT TO ARTICLE THREE OF THE RETIREMENT AND SOCIAL SECURITY LAW SHALL BE DEEMED NOT TO EXCEED SIXTEEN THOUSAND FIVE HUNDRED DOLLARS.

2. EMPLOYEE CONTRIBUTIONS. IN THE CASE OF ANY ENROLLED EMPLOYEE, CONTRIBUTIONS AT THE RATE OF THREE PER CENTUM OF HIS OR HER SALARY SHALL BE DEDUCTED AS THE EMPLOYEE CONTRIBUTION BY THE APPROPRIATE FISCAL OFFICER WITH RESPECT TO AN ELECTING EMPLOYER, PROVIDED HOWEVER, THAT SUCH EMPLOYEE CONTRIBUTION SHALL BE MADE BY THE ELECTING EMPLOYER IN ACCORDANCE WITH SUBDIVISION ONE OF THIS SECTION DURING SUCH PERIOD AS THE (A) CONTRIBUTIONS OF ANY MEMBERS OF ANY OTHER PUBLIC RETIREMENT SYSTEM IN THIS STATE IN ITS EMPLOY SHALL BE REDUCED BY AT LEAST EIGHT PERCENT OF THEIR COMPENSATION IN ACCORDANCE WITH SECTION SEVENTY-A OF THE RETIREMENT AND SOCIAL SECURITY LAW, OR (B) EMPLOYEE CONTRIBUTIONS TO ANY SUCH SYSTEM OF WHICH ANY OF ITS EMPLOYEES ARE MEMBERS ARE NO LONGER REQUIRED BY REASONS OF SUCH SYSTEM BECOMING NON-CONTRIBUTORY FOR SUCH EMPLOYEES.

3. FISCAL OFFICER TO MAKE PAYMENTS. PAYMENT OF CONTRIBUTIONS BY ELECTING EMPLOYERS PURSUANT TO SUBDIVISIONS ONE AND TWO OF THIS SECTION SHALL BE MADE TO THE DESIGNATED INSURER OR INSURERS BY THE APPROPRIATE FISCAL OFFICER FOR EMPLOYEES OF SUCH ELECTING EMPLOYER.

4. CONTRIBUTIONS DURING THE FIRST YEAR OF SERVICE. NO CONTRIBUTIONS PURSUANT TO SUBDIVISIONS ONE AND TWO OF THIS SECTION FOR ENROLLED EMPLOYEES SHALL BE MADE BY THE ELECTING EMPLOYER UNTIL HIS OR HER COMPLETION OF ONE YEAR OF SERVICE AND CONTINUANCE IN SERVICE THEREAFTER. EMPLOYEE CONTRIBUTIONS, IF ANY, REQUIRED DURING THIS INITIAL YEAR OF SERVICE SHALL BE DEDUCTED AND HELD BY THE APPROPRIATE FISCAL OFFICER OF AN ELECTING EMPLOYER. AT THE END OF HIS OR HER INITIAL YEAR OF SERVICE, A SINGLE CONTRIBUTION IN AN AMOUNT DETERMINED PURSUANT TO SUBDIVISIONS ONE AND TWO OF THIS SECTION, WITH INTEREST AT THE RATE OF FOUR PERCENT PER ANNUM, SHALL BE MADE BY THE APPROPRIATE FISCAL OFFICER FOR AN ELECTING EMPLOYER, TO THE DESIGNATED INSURER OR INSURERS, ON BEHALF OF SUCH EMPLOYEE CONTINUED IN SERVICE. IN THE CASE OF AN ENROLLED EMPLOYEE WHO DOES NOT CONTINUE IN SERVICE WITH AN ELECTING EMPLOYER BEYOND HIS OR HER INITIAL YEAR OF SERVICE, THE AMOUNT OF EMPLOYEE CONTRIBUTION, IF ANY, DEDUCTED FROM HIS OR HER SALARY SHALL BE REFUNDED TO HIM OR HER, WITH INTEREST AT THE RATE OF FOUR PERCENT PER ANNUM.

5. EXCEPTIONS. THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION SHALL NOT APPLY TO ANY ENROLLED EMPLOYEE OTHER THAN AN EMPLOYEE APPOINTED FOR A SPECIFIED PERIOD OF LESS THAN THREE MONTHS WHO, AT THE TIME OF INITIAL APPOINTMENT, OWNS A CONTRACT DETERMINED BY THE ELECTING EMPLOYER TO BE SIMILAR TO THOSE CONTRACTS TO BE PURCHASED UNDER THE OPTIONAL RETIREMENT PROGRAM AND ISSUED BY THE DESIGNATED INSURER OR INSURERS.

S 173. ELECTION. 1. ELECTION OF THE OPTIONAL RETIREMENT PROGRAM. (A) THIS SECTION SHALL NOT APPLY IN ANY MUNICIPALITY WHICH DOES NOT ELECT TO

OFFER BOTH THE OPTIONAL RETIREMENT PROGRAM AND THE EXISTING PUBLIC RETIREMENT SYSTEM.

(B) EACH ELIGIBLE EMPLOYEE, WITHIN THIRTY DAYS OF HIS OR HER ENTRY INTO SERVICE, SHALL ELECT (I) TO JOIN A PUBLIC RETIREMENT SYSTEM IN THIS STATE IN ACCORDANCE WITH THE PROVISIONS OF LAW APPLICABLE THERETO OR (II) THE OPTIONAL RETIREMENT PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE; PROVIDED HOWEVER, THAT UPON ELECTION BY THE ELIGIBLE EMPLOYEE, THE ELECTING EMPLOYER SHALL MAKE THE FINAL APPROVAL OR DISAPPROVAL AS TO THE ENROLLMENT OF THE ELECTING EMPLOYEE IN THE OPTIONAL RETIREMENT PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE.

(C) IN THE EVENT AN ELIGIBLE EMPLOYEE FAILS TO MAKE AN ELECTION AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION OR THE ELECTING EMPLOYER DECIDES THE ELECTING EMPLOYEE SHALL NOT ENROLL IN THE OPTIONAL RETIREMENT PROGRAM PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION, HE OR SHE SHALL BE DEEMED TO HAVE ELECTED MEMBERSHIP IN SUCH PUBLIC RETIREMENT SYSTEM IN THIS STATE IN WHICH HIS OR HER MEMBERSHIP MAY BE OTHERWISE REQUIRED IN ACCORDANCE WITH LAW. SUCH MEMBERSHIP SHALL BE EFFECTIVE AS OF THE DATE OF ENTRY INTO SERVICE OR AT THE TIME OTHERWISE REQUIRED BY LAW.

(D) THE AMOUNT, IF ANY, REQUIRED TO HAVE BEEN CONTRIBUTED BY ANY ENROLLED EMPLOYEE IN ACCORDANCE WITH AN ENROLLMENT OR FAILURE TO ELECT PURSUANT TO PARAGRAPH (B) OR PARAGRAPH (C) OF THIS SUBDIVISION SHALL BE COLLECTED BY PAYROLL DEDUCTIONS IN SUCH MANNER AS MAY BE PROVIDED BY THE APPROPRIATE FISCAL OFFICER FOR EMPLOYEES OF AN ELECTING EMPLOYER, OR IN THE CASE OF MEMBERSHIP IN OTHER PUBLIC RETIREMENT SYSTEMS IN THIS STATE, BY THE RETIREMENT SYSTEM CONCERNED.

(E) ANY EMPLOYEE OF AN ELECTING EMPLOYER WHO BECOMES ELIGIBLE TO ELECT THE OPTIONAL RETIREMENT PROGRAM BY REASON OF HIS OR HER APPOINTMENT, PROMOTION, TRANSFER OR RECLASSIFICATION TO A POSITION PREVIOUSLY SO ELIGIBLE, MAY ELECT THE OPTIONAL RETIREMENT PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION. SUCH ELECTION SHALL BE MADE WITHIN THIRTY DAYS AFTER NOTICE IN WRITING TO SUCH EMPLOYEE OF HIS OR HER ELIGIBILITY, AND SHALL BECOME EFFECTIVE ON THE DATE OF SUCH ENROLLMENT SHOULD THE ELECTION OF SUCH ELIGIBLE EMPLOYEE BE APPROVED BY THE ELECTING EMPLOYER.

(F) NO ELECTION BY AN ELIGIBLE EMPLOYEE OF THE OPTIONAL RETIREMENT PROGRAM SHALL BE EFFECTIVE UNLESS IT SHALL BE ACCOMPANIED BY AN APPROPRIATE APPLICATION, WHERE REQUIRED, FOR THE ISSUANCE OF A CONTRACT OR CONTRACTS UNDER THE PROGRAM AND NO ELECTION SHALL BECOME AN ENROLLMENT WITHOUT THE APPROVAL OF THE ELECTING EMPLOYER PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION.

2. INELIGIBILITY FOR OTHER RETIREMENT SYSTEM MEMBERSHIP. ANY EMPLOYEE WHO ENROLLS IN THE OPTIONAL RETIREMENT PROGRAM SHALL BE INELIGIBLE FOR MEMBERSHIP IN THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM, THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM OR ANY OTHER PUBLIC RETIREMENT SYSTEM IN THIS STATE SO LONG AS HE OR SHE SHALL REMAIN CONTINUOUSLY EMPLOYED IN ANY POSITION BY AN ELECTING EMPLOYER AND SHALL CONTINUE IN THE OPTIONAL RETIREMENT PROGRAM.

3. DISCONTINUANCE OF SERVICE FOR NEW YORK STATE RETIREMENT SYSTEMS. (A) ANY ELIGIBLE EMPLOYEE WHO IS A MEMBER OF EITHER THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM AT THE TIME HE OR SHE ENROLLS IN THE OPTIONAL RETIREMENT PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE, SHALL BE DEEMED TO BE A PERSON WHO DISCONTINUES SERVICE ON THE EFFECTIVE DATE OF SUCH ENROLLMENT, FOR THE PURPOSE OF DETERMINING HIS OR HER ELIGIBILITY FOR RIGHTS AND BENEFITS IN EITHER SUCH SYSTEM; PROVIDED HOWEVER, THAT IF HE OR SHE

DOES NOT WITHDRAW HIS OR HER ACCUMULATED CONTRIBUTIONS, THE AMOUNT OF ANY SUCH BENEFIT TO WHICH HE OR SHE OR HIS OR HER ESTATE OR PERSON DESIGNATED BY HIM OR HER MAY BECOME ENTITLED UNDER EITHER SUCH SYSTEM SHALL BE COMPUTED ONLY ON THE BASIS OF SERVICE OTHERWISE CREDITABLE TO HIM OR HER THEREIN AND HIS OR HER COMPENSATION DURING SUCH SERVICE.

(B) ENROLLED EMPLOYEES AND THEIR BENEFICIARIES SHALL NOT BE ENTITLED TO ANY RIGHT OR BENEFIT UNDER EITHER THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM OTHER THAN A VESTED RETIREMENT ALLOWANCE, RETIREMENT ALLOWANCE OR ORDINARY DEATH BENEFIT TO THE EXTENT EXPRESSLY PROVIDED FOR IN THIS SECTION.

4. DISCONTINUANCE OF SERVICE FOR NEW YORK CITY RETIREMENT SYSTEMS. (A) ANY ELIGIBLE EMPLOYEE OF AN ELECTING EMPLOYER WHO IS A MEMBER OR TRANSFERRED CONTRIBUTOR OF EITHER THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM OR THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM AT THE TIME HE OR SHE ENROLLS IN THE OPTIONAL RETIREMENT PROGRAM OFFERED BY AN ELECTING EMPLOYER PURSUANT TO THIS ARTICLE SHALL BE DEEMED TO BE A PERSON WHO TERMINATES MEMBERSHIP ON THE EFFECTIVE DATE OF SUCH ENROLLMENT, FOR THE PURPOSE OF DETERMINING HIS OR HER ELIGIBILITY FOR RIGHTS AND BENEFITS IN EITHER SUCH SYSTEM; PROVIDED HOWEVER, THAT IF HE OR SHE DOES NOT WITHDRAW HIS OR HER ACCUMULATED CONTRIBUTIONS, (I) HIS OR HER CONTINUED SERVICE AT A COMMUNITY COLLEGE WHOSE EMPLOYEES ARE OTHERWISE ELIGIBLE FOR THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM OR THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM SHALL BE DEEMED TO BE MEMBER SERVICE IN EITHER THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM OR THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM FOR THE PURPOSE OF DETERMINING HIS OR HER ELIGIBILITY FOR ANY RETIREMENT ALLOWANCE OR ORDINARY DEATH BENEFIT UNDER EITHER SUCH SYSTEM DEPENDENT UPON A SPECIFIED PERIOD OF TOTAL SERVICE OR UPON ATTAINMENT OF A SPECIFIED AGE WHILE IN SERVICE OR UPON DEATH WHILE IN SERVICE; AND (II) THE AMOUNT OF ANY SUCH BENEFIT TO WHICH HE OR SHE OR HIS OR HER ESTATE OR PERSON DESIGNATED BY HIM OR HER MAY BECOME ENTITLED UNDER EITHER SUCH SYSTEM SHALL BE COMPUTED ONLY ON THE BASIS OF SERVICE OTHERWISE CREDITABLE TO HIM OR HER THEREIN AND HIS OR HER COMPENSATION DURING SUCH SERVICE.

(B) ENROLLED EMPLOYEES AND THEIR BENEFICIARIES SHALL NOT BE ENTITLED TO ANY RIGHT OR BENEFIT UNDER EITHER THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM OR THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM OTHER THAN A RETIREMENT ALLOWANCE OR ORDINARY DEATH BENEFIT TO THE EXTENT EXPRESSLY PROVIDED FOR IN THIS SECTION. SUCH EMPLOYEE SHALL NOT BE ELIGIBLE FOR ANY BENEFIT PURSUANT TO SECTION TWO HUNDRED FORTY-FIVE OF THE MILITARY LAW.

5. NEW YORK STATE TEACHERS' RETIREMENT SYSTEM EXCEPTIONS. (A) SUBDIVISION TWO OF THIS SECTION SHALL NOT APPLY TO ANY ENROLLED EMPLOYEE WHO RENDERS SERVICE WHICH IS CREDITABLE IN THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM, OTHER THAN SERVICE FOR WHICH A CONTRIBUTION IS MADE TO THE OPTIONAL RETIREMENT PROGRAM PURSUANT TO THIS ARTICLE.

(B) SUBDIVISION THREE OF THIS SECTION SHALL NOT APPLY TO ANY MEMBER OF THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM WHO, AFTER JOINING SUCH SYSTEM, ENROLLS IN THE OPTIONAL RETIREMENT PROGRAM PURSUANT TO THIS ARTICLE.

(C) SUBDIVISION THREE OF THIS SECTION NOTWITHSTANDING, ANY ENROLLED EMPLOYEE WHO IS A MEMBER OF THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM MAY OBTAIN CREDIT FOR SERVICE, OTHER THAN SERVICE FOR WHICH A CONTRIBUTION IS MADE TO THE OPTIONAL RETIREMENT PROGRAM, WHICH IS CREDITABLE IN SUCH SYSTEM AND WAS RENDERED AFTER SUCH MEMBER HAD ENROLLED IN THE OPTIONAL RETIREMENT PROGRAM, PROVIDED (I) SUCH MEMBER HAS RENDERED

AT LEAST FIVE YEARS OF SERVICE CREDITED WITH THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM AT THE TIME SUCH SERVICE IS CREDITED, AND (II) IN THE CASE OF SUCH MEMBER SUBJECT TO THE PROVISIONS OF ARTICLE FOURTEEN OR FIFTEEN OF THE RETIREMENT AND SOCIAL SECURITY LAW, THE MEMBER CONTRIBUTES THREE PERCENT OF THE WAGES EARNED FOR SUCH SERVICE TOGETHER WITH INTEREST AT THE RATE OF FIVE PERCENT PER ANNUM COMPOUNDED ANNUALLY FROM THE DATE OF SUCH SERVICE UNTIL PAYMENT IS MADE.

(D) ANYTHING IN THIS SUBDIVISION NOTWITHSTANDING, SERVICE AS AN ENROLLED EMPLOYEE FOR WHICH A CONTRIBUTION IS MADE TO THE OPTIONAL RETIREMENT PROGRAM SHALL NEITHER ENTITLE ANY ENROLLED EMPLOYEE TO JOIN OR REJOIN THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM NOR BE CREDITABLE IN SUCH SYSTEM.

S 174. SURVIVOR'S BENEFITS. IN THE CASE OF THE DEATH OF ANY ENROLLED EMPLOYEE, AFTER THE EFFECTIVE DATE OF SUCH ENROLLMENT AND BEFORE RETIREMENT, THE VALUE OF THE DEATH BENEFITS PROVIDED BY THE CONTRACT OR CONTRACTS PURCHASED UNDER THE OPTIONAL RETIREMENT PROGRAM WHICH IS ATTRIBUTABLE TO THE STATE'S CONTRIBUTION AS DETERMINED BY THE LOCAL LEGISLATIVE BODY, SHALL BE DEEMED TO BE AN ORDINARY DEATH BENEFIT PROVIDED UNDER A PUBLIC PENSION PLAN WITHIN THE MEANING OF SECTION SIX HUNDRED FIFTY-FIVE OF THE RETIREMENT AND SOCIAL SECURITY LAW. NOTWITHSTANDING THE PROVISIONS OF SUCH SECTION OF THE RETIREMENT AND SOCIAL SECURITY LAW, A SURVIVOR'S BENEFIT PAYABLE THEREUNDER ON ACCOUNT OF THE DEATH OF ANY ENROLLED EMPLOYEE WHILE IN THE EMPLOY OF AN ELECTING EMPLOYER, AFTER THE EFFECTIVE DATE OF SUCH ENROLLMENT AND BEFORE RETIREMENT, INCLUDING AN EMPLOYEE SUBJECT TO THE PROVISIONS OF SUBDIVISION THREE OF SECTION ONE HUNDRED SEVENTY-THREE OF THIS ARTICLE, SHALL BE PAID TO SUCH PERSON OR PERSONS AS SUCH EMPLOYEE SHALL HAVE NOMINATED TO RECEIVE THE DEATH BENEFITS PROVIDED BY THE CONTRACT OR CONTRACTS PURCHASED UNDER THE OPTIONAL RETIREMENT PROGRAM. IN THE EVENT SUCH DESIGNATED BENEFICIARY OR BENEFICIARIES DO NOT SURVIVE THE EMPLOYEE, OR IF A BENEFICIARY WAS NOT SO DESIGNATED, THE SURVIVOR'S BENEFIT SHALL BE PAID TO THE DECEASED EMPLOYEE'S ESTATE OR AS PROVIDED IN SECTION THIRTEEN HUNDRED TEN OF THE SURROGATE'S COURT PROCEDURE ACT.

S 175. SOCIAL SECURITY. EVERY ENROLLED EMPLOYEE SHALL HAVE OLD-AGE, SURVIVOR'S, AND DISABILITY INSURANCE COVERAGE PROVIDED BY THE FEDERAL SOCIAL SECURITY ACT IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE THREE OF THE RETIREMENT AND SOCIAL SECURITY LAW.

S 176. EMPLOYER NOT LIABLE FOR PAYMENT OF BENEFITS. NO ELECTING EMPLOYER SHALL BE A PARTY TO ANY CONTRACT PURCHASED IN WHOLE OR IN PART WITH CONTRIBUTIONS MADE UNDER THE OPTIONAL RETIREMENT PROGRAM ESTABLISHED AND ADMINISTERED PURSUANT TO THIS ARTICLE. NO RETIREMENT, DEATH, OR OTHER BENEFITS SHALL BE PAYABLE BY ANY ELECTING EMPLOYER UNDER SUCH OPTIONAL RETIREMENT PROGRAM. SUCH BENEFITS SHALL BE PAID TO ENROLLED EMPLOYEES OR THEIR BENEFICIARIES BY THE DESIGNATED INSURER OR INSURERS IN ACCORDANCE WITH THE TERMS OF THEIR CONTRACTS.

S 177. INCONSISTENT PROVISIONS OF OTHER ACTS SUPERSEDED. INSOFAR AS THE PROVISIONS OF THIS ARTICLE ARE INCONSISTENT WITH THE PROVISIONS OF ANY OTHER ACT, GENERAL OR SPECIAL, THE PROVISIONS OF THIS ARTICLE SHALL BE CONTROLLING.

S 2. The education law is amended by adding a new article 9-A to read as follows:

ARTICLE 9-A
AUTHORIZATION OF OPTIONAL RETIREMENT PROGRAMS FOR SCHOOL DISTRICTS

SECTION 430. DEFINITIONS.
431. OPTIONAL RETIREMENT PROGRAM AUTHORIZED.

432. RATES OF CONTRIBUTION.
433. ELECTION.
434. SURVIVOR'S BENEFITS.
435. SOCIAL SECURITY.
436. EMPLOYER NOT LIABLE FOR PAYMENT OF BENEFITS.
437. INCONSISTENT PROVISIONS OF OTHER ACTS SUPERSEDED.

S 430. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

1. THE TERM "ELECTING EMPLOYEE" SHALL MEAN ANY ELIGIBLE EMPLOYEE WHO EXERCISES HIS OR HER ELECTION PURSUANT TO THIS ARTICLE TO COME UNDER THE OPTIONAL RETIREMENT PROGRAM BY APPLYING FOR SUCH PROGRAM BUT WHO AWAITS THE APPROVAL OF THE ELECTING EMPLOYER.

2. THE TERM "ELECTING EMPLOYER" SHALL MEAN A SCHOOL DISTRICT WHICH ELECTS TO OFFER THE OPTIONAL RETIREMENT PROGRAM AUTHORIZED BY THIS ARTICLE BY, AFTER A PUBLIC MEETING, ADOPTING A RESOLUTION SETTING FORTH SUCH PROGRAM.

3. THE TERM "ELIGIBLE EMPLOYEES" SHALL MEAN THOSE EMPLOYEES WHO BEGIN TO WORK FOR ANY ELECTING EMPLOYER AFTER THE ADOPTION OF A RESOLUTION SETTING FORTH AN OPTIONAL RETIREMENT PROGRAM AS AUTHORIZED BY THIS ARTICLE. NO PERSON RECEIVING A BENEFIT BY REASON OF HIS OR HER RETIREMENT FROM ANY RETIREMENT OR PENSION SYSTEM OF NEW YORK STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE ELIGIBLE TO ELECT THE OPTIONAL RETIREMENT PROGRAM PURSUANT TO THIS ARTICLE.

4. THE TERM "ENROLLED EMPLOYEES" SHALL MEAN ANY ELECTING EMPLOYEE WHO HAS BEEN APPROVED OR ACCEPTED INTO THE OPTIONAL RETIREMENT SYSTEM BY THE ELECTING EMPLOYER PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED THIRTY-THREE OF THIS ARTICLE.

5. THE TERM "INSURER" SHALL MEAN A LIFE INSURANCE CORPORATION, OR OTHER CORPORATION SUBJECT TO INSURANCE DEPARTMENT SUPERVISION.

6. THE TERM "MUNICIPALITY" SHALL MEAN ANY MUNICIPAL CORPORATION AS DEFINED IN SECTION TWO OF THE GENERAL MUNICIPAL LAW.

7. THE TERM "OPTIONAL RETIREMENT PROGRAM" SHALL MEAN THE RETIREMENT PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE.

8. THE TERM "SALARY" SHALL MEAN ALL AMOUNTS PAID BY OR FOR THE ELECTING EMPLOYER AS COMPENSATION FOR SERVICES RENDERED BY AN ELIGIBLE EMPLOYEE HOLDING A POSITION WITH THE ELECTING EMPLOYER.

9. THE TERM "SCHOOL DISTRICT" SHALL MEAN ANY COMMON SCHOOL DISTRICT, UNION FREE SCHOOL DISTRICT, CENTRAL SCHOOL DISTRICT, CENTRAL HIGH SCHOOL DISTRICT AND BOARDS OF COOPERATIVE EDUCATIONAL SERVICES.

S 431. OPTIONAL RETIREMENT PROGRAM AUTHORIZED. 1. AUTHORIZATION OF PROGRAM. THERE IS HEREBY AUTHORIZED AN OPTIONAL RETIREMENT PROGRAM WHICH SHALL PROVIDE FOR THE PURCHASE OF CONTRACTS PROVIDING RETIREMENT AND DEATH BENEFITS FOR OR ON BEHALF OF ENROLLED EMPLOYEES. UNDER SUCH PROGRAM AN ELECTING EMPLOYER AND SUCH EMPLOYEES SHALL CONTRIBUTE, TO THE EXTENT AUTHORIZED OR REQUIRED, TOWARDS THE PURCHASE OF SUCH CONTRACTS, WHICH SHALL BE ISSUED TO, AND BECOME THE PROPERTY OF, SUCH EMPLOYEES. ANY SCHOOL DISTRICT, IF THE BOARD OF EDUCATION OF SUCH SCHOOL DISTRICT SO AUTHORIZES, AFTER A PUBLIC MEETING, BY THE ADOPTION OF A RESOLUTION WHICH SHALL BECOME EFFECTIVE UPON THE DATE SUCH RESOLUTION SHALL HAVE BEEN ADOPTED, MAY ELECT TO OFFER: (A) ONLY THE OPTIONAL RETIREMENT PROGRAM TO ELIGIBLE EMPLOYEES OF SUCH SCHOOL DISTRICT, OR (B) BOTH THE OPTIONAL RETIREMENT PROGRAM AND THE EXISTING NEW YORK STATE TEACHERS' RETIREMENT SYSTEM.

2. DESIGNATION OF INSURERS. THE SCHOOL DISTRICT SHALL DESIGNATE THE INSURER OR INSURERS TO WHICH PAYMENT OF SUCH CONTRIBUTIONS MAY BE MADE AND SHALL APPROVE THE FORM AND CONTENT OF SUCH CONTRACTS. IN MAKING SUCH DESIGNATION AND GIVING SUCH APPROVAL SUCH SCHOOL DISTRICT SHALL GIVE DUE

CONSIDERATION TO (A) THE NATURE AND EXTENT OF THE RIGHTS AND BENEFITS TO BE PROVIDED BY SUCH CONTRACTS FOR ELECTING EMPLOYEES AND THEIR BENEFICIARIES, (B) THE RELATION OF SUCH RIGHTS AND BENEFITS TO THE AMOUNT OF CONTRIBUTIONS TO BE MADE UNDER THIS ARTICLE, (C) THE SUITABILITY OF SUCH RIGHTS AND BENEFITS TO THE NEEDS AND INTERESTS OF ELECTING EMPLOYEES AND TO THE INTERESTS OF THE SCHOOL DISTRICT AND OF ELECTING EMPLOYERS IN THE EMPLOYMENT AND RETENTION OF ELIGIBLE EMPLOYEES, AND (D) THE AUTHORITY AND ABILITY OF THE DESIGNATED INSURER OR INSURERS TO PROVIDE RIGHTS AND BENEFITS UNDER SUCH CONTRACTS.

3. ADMINISTRATION OF PROGRAM. THE APPROPRIATE BOARD OF EDUCATION IS HEREBY AUTHORIZED TO PROVIDE FOR, BY THE ADOPTION OF A RESOLUTION, THE SCHOOL DISTRICT TO ADMINISTER SUCH OPTIONAL RETIREMENT PROGRAM AND TO PERFORM SUCH FUNCTIONS AS MAY BE NECESSARY FOR SUCH PURPOSES IN ACCORDANCE WITH THIS ARTICLE. SUCH PROGRAM MAY BE ADMINISTERED BY THE BOARD, BY THE OFFICE OF THE COMPTROLLER IF IT SHALL OFFER SUCH A PLAN, OR BY THE PENSION ADMINISTRATOR OF THE STATE UNIVERSITY OF NEW YORK, AT THE OPTION OF THE BOARD.

S 432. RATES OF CONTRIBUTION. 1. EMPLOYER CONTRIBUTIONS. THE ELECTING EMPLOYER SHALL, DURING CONTINUANCE OF AN ENROLLED EMPLOYEE'S EMPLOYMENT, MAKE CONTRIBUTIONS AT THE RATE OF EIGHT PERCENT OF HIS OR HER SALARY, OUT OF MONIES WHICH SHALL BE AVAILABLE TO THE ELECTING EMPLOYER FOR SUCH PURPOSE. FOR PURPOSES OF THIS SUBDIVISION, THAT PORTION OF THE EMPLOYEE'S SALARY UPON WHICH CONTRIBUTIONS ARE OR MAY THEREAFTER BE PAID TO THE SECRETARY OF THE TREASURY OF THE UNITED STATES PURSUANT TO ARTICLE THREE OF THE RETIREMENT AND SOCIAL SECURITY LAW SHALL BE DEEMED NOT TO EXCEED SIXTEEN THOUSAND FIVE HUNDRED DOLLARS.

2. EMPLOYEE CONTRIBUTIONS. IN THE CASE OF ANY ENROLLED EMPLOYEE, CONTRIBUTIONS AT THE RATE OF THREE PERCENT OF HIS OR HER SALARY SHALL BE DEDUCTED AS THE EMPLOYEE CONTRIBUTION BY THE APPROPRIATE FISCAL OFFICER WITH RESPECT TO AN ELECTING EMPLOYER, PROVIDED HOWEVER, THAT SUCH EMPLOYEE CONTRIBUTION SHALL BE MADE BY THE ELECTING EMPLOYER IN ACCORDANCE WITH SUBDIVISION ONE OF THIS SECTION DURING SUCH PERIOD AS THE (A) CONTRIBUTIONS OF ANY MEMBERS OF ANY OTHER PUBLIC RETIREMENT SYSTEM IN THIS STATE IN ITS EMPLOY SHALL BE REDUCED BY AT LEAST EIGHT PERCENT OF THEIR COMPENSATION IN ACCORDANCE WITH SECTION SEVENTY-A OF THE RETIREMENT AND SOCIAL SECURITY LAW, OR (B) EMPLOYEE CONTRIBUTIONS TO ANY SUCH SYSTEM OF WHICH ANY OF ITS EMPLOYEES ARE MEMBERS ARE NO LONGER REQUIRED BY REASONS OF SUCH SYSTEM BECOMING NON-CONTRIBUTORY FOR SUCH EMPLOYEES.

3. FISCAL OFFICER TO MAKE PAYMENTS. PAYMENT OF CONTRIBUTIONS BY ELECTING EMPLOYERS PURSUANT TO SUBDIVISIONS ONE AND TWO OF THIS SECTION SHALL BE MADE TO THE DESIGNATED INSURER OR INSURERS BY THE APPROPRIATE FISCAL OFFICER FOR EMPLOYEES OF SUCH ELECTING EMPLOYER.

4. CONTRIBUTIONS DURING THE FIRST YEAR OF SERVICE. NO CONTRIBUTIONS PURSUANT TO SUBDIVISIONS ONE AND TWO OF THIS SECTION FOR ENROLLED EMPLOYEES SHALL BE MADE BY THE ELECTING EMPLOYER UNTIL HIS OR HER COMPLETION OF ONE YEAR OF SERVICE AND CONTINUANCE IN SERVICE THEREAFTER. EMPLOYEE CONTRIBUTIONS, IF ANY, REQUIRED DURING THIS INITIAL YEAR OF SERVICE SHALL BE DEDUCTED AND HELD BY THE APPROPRIATE FISCAL OFFICER OF AN ELECTING EMPLOYER. AT THE END OF HIS OR HER INITIAL YEAR OF SERVICE, A SINGLE CONTRIBUTION IN AN AMOUNT DETERMINED PURSUANT TO SUBDIVISIONS ONE AND TWO OF THIS SECTION, WITH INTEREST AT THE RATE OF FOUR PERCENT PER ANNUM, SHALL BE MADE BY THE APPROPRIATE FISCAL OFFICER FOR AN ELECTING EMPLOYER, TO THE DESIGNATED INSURER OR INSURERS, ON BEHALF OF SUCH EMPLOYEE CONTINUED IN SERVICE. IN THE CASE OF AN ENROLLED EMPLOYEE WHO DOES NOT CONTINUE IN SERVICE WITH AN ELECTING EMPLOYER BEYOND HIS OR HER INITIAL YEAR OF SERVICE, THE AMOUNT OF EMPLOYEE CONTRIBUTION, IF ANY,

DEDUCTED FROM HIS OR HER SALARY SHALL BE REFUNDED TO HIM OR HER, WITH INTEREST AT THE RATE OF FOUR PERCENT PER ANNUM.

5. EXCEPTIONS. THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION SHALL NOT APPLY TO ANY ENROLLED EMPLOYEE OTHER THAN AN EMPLOYEE APPOINTED FOR A SPECIFIED PERIOD OF LESS THAN THREE MONTHS WHO, AT THE TIME OF INITIAL APPOINTMENT, OWNS A CONTRACT DETERMINED BY THE ELECTING EMPLOYER TO BE SIMILAR TO THOSE CONTRACTS TO BE PURCHASED UNDER THE OPTIONAL RETIREMENT PROGRAM AND ISSUED BY THE DESIGNATED INSURER OR INSURERS.

S 433. ELECTION. 1. ELECTION OF THE OPTIONAL RETIREMENT PROGRAM. (A) THIS SECTION SHALL NOT APPLY TO ANY SCHOOL DISTRICT WHICH DOES NOT ELECT TO OFFER BOTH THE OPTIONAL RETIREMENT PROGRAM AND THE EXISTING NEW YORK STATE TEACHERS' RETIREMENT SYSTEM.

(B) EACH ELIGIBLE EMPLOYEE, WITHIN THIRTY DAYS OF HIS OR HER ENTRY INTO SERVICE, SHALL ELECT (I) TO JOIN A PUBLIC RETIREMENT SYSTEM IN THIS STATE IN ACCORDANCE WITH THE PROVISIONS OF LAW APPLICABLE THERETO OR (II) THE OPTIONAL RETIREMENT PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE; PROVIDED HOWEVER, THAT UPON ELECTION BY THE ELIGIBLE EMPLOYEE, THE ELECTING EMPLOYER SHALL MAKE THE FINAL APPROVAL OR DISAPPROVAL AS TO THE ENROLLMENT OF THE ELECTING EMPLOYEE IN THE OPTIONAL RETIREMENT PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE.

(C) IN THE EVENT AN ELIGIBLE EMPLOYEE FAILS TO MAKE AN ELECTION AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION OR THE ELECTING EMPLOYER DECIDES THE ELECTING EMPLOYEE SHALL NOT ENROLL IN THE OPTIONAL RETIREMENT PROGRAM PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION, HE OR SHE SHALL BE DEEMED TO HAVE ELECTED MEMBERSHIP IN SUCH PUBLIC RETIREMENT SYSTEM IN THIS STATE IN WHICH HIS OR HER MEMBERSHIP MAY BE OTHERWISE REQUIRED IN ACCORDANCE WITH LAW. SUCH MEMBERSHIP SHALL BE EFFECTIVE AS OF THE DATE OF ENTRY INTO SERVICE OR AT THE TIME OTHERWISE REQUIRED BY LAW.

(D) THE AMOUNT, IF ANY, REQUIRED TO HAVE BEEN CONTRIBUTED BY ANY ENROLLED EMPLOYEE IN ACCORDANCE WITH AN ENROLLMENT OR FAILURE TO ELECT PURSUANT TO PARAGRAPH (B) OR PARAGRAPH (C) OF THIS SUBDIVISION SHALL BE COLLECTED BY PAYROLL DEDUCTIONS IN SUCH MANNER AS MAY BE PROVIDED BY THE APPROPRIATE FISCAL OFFICER FOR EMPLOYEES OF AN ELECTING EMPLOYER, OR IN THE CASE OF MEMBERSHIP IN OTHER PUBLIC RETIREMENT SYSTEMS IN THIS STATE, BY THE RETIREMENT SYSTEM CONCERNED.

(E) ANY EMPLOYEE OF AN ELECTING EMPLOYER WHO BECOMES ELIGIBLE TO ELECT THE OPTIONAL RETIREMENT PROGRAM BY REASON OF HIS OR HER APPOINTMENT, PROMOTION, TRANSFER OR RECLASSIFICATION TO A POSITION PREVIOUSLY SO ELIGIBLE, MAY ELECT THE OPTIONAL RETIREMENT PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION. SUCH ELECTION SHALL BE MADE WITHIN THIRTY DAYS AFTER NOTICE IN WRITING TO SUCH EMPLOYEE OF HIS OR HER ELIGIBILITY, AND SHALL BECOME EFFECTIVE ON THE DATE OF SUCH ENROLLMENT SHOULD THE ELECTION OF SUCH ELIGIBLE EMPLOYEE BE APPROVED BY THE ELECTING EMPLOYER.

(F) NO ELECTION BY AN ELIGIBLE EMPLOYEE OF THE OPTIONAL RETIREMENT PROGRAM SHALL BE EFFECTIVE UNLESS IT SHALL BE ACCOMPANIED BY AN APPROPRIATE APPLICATION, WHERE REQUIRED, FOR THE ISSUANCE OF CONTRACT OR CONTRACTS UNDER THE PROGRAM AND NO ELECTION SHALL BECOME AN ENROLLMENT WITHOUT THE APPROVAL OF THE ELECTING EMPLOYER PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION.

2. INELIGIBILITY FOR OTHER RETIREMENT SYSTEM MEMBERSHIP. ANY EMPLOYEE WHO ENROLLS IN THE OPTIONAL RETIREMENT PROGRAM SHALL BE INELIGIBLE FOR MEMBERSHIP IN THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM, THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM OR ANY OTHER PUBLIC

RETIREMENT SYSTEM IN THIS STATE SO LONG AS HE OR SHE SHALL REMAIN CONTINUOUSLY EMPLOYED IN ANY POSITION BY AN ELECTING EMPLOYER AND SHALL CONTINUE IN THE OPTIONAL RETIREMENT PROGRAM.

3. DISCONTINUANCE OF SERVICE FOR NEW YORK STATE RETIREMENT SYSTEMS. (A) ANY ELIGIBLE EMPLOYEE WHO IS A MEMBER OF EITHER THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM AT THE TIME HE OR SHE ENROLLS IN THE OPTIONAL RETIREMENT PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE, SHALL BE DEEMED TO BE A PERSON WHO DISCONTINUES SERVICE ON THE EFFECTIVE DATE OF SUCH ENROLLMENT, FOR THE PURPOSE OF DETERMINING HIS OR HER ELIGIBILITY FOR RIGHTS AND BENEFITS IN EITHER SUCH SYSTEM; PROVIDED HOWEVER, THAT IF HE OR SHE DOES NOT WITHDRAW HIS OR HER ACCUMULATED CONTRIBUTIONS, THE AMOUNT OF ANY SUCH BENEFIT TO WHICH HE OR SHE OR HIS OR HER ESTATE OR PERSON DESIGNATED BY HIM OR HER MAY BECOME ENTITLED UNDER EITHER SUCH SYSTEM SHALL BE COMPUTED ONLY ON THE BASIS OF SERVICE OTHERWISE CREDITABLE TO HIM OR HER THEREIN AND HIS OR HER COMPENSATION DURING SUCH SERVICE.

(B) ENROLLED EMPLOYEES AND THEIR BENEFICIARIES SHALL NOT BE ENTITLED TO ANY RIGHT OR BENEFIT UNDER EITHER THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM OTHER THAN A VESTED RETIREMENT ALLOWANCE, RETIREMENT ALLOWANCE OR ORDINARY DEATH BENEFIT TO THE EXTENT EXPRESSLY PROVIDED FOR IN THIS SECTION.

4. DISCONTINUANCE OF SERVICE FOR NEW YORK CITY RETIREMENT SYSTEMS. (A) ANY ELIGIBLE EMPLOYEE OF AN ELECTING EMPLOYER WHO IS A MEMBER OR TRANSFERRED CONTRIBUTOR OF EITHER THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM OR THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM AT THE TIME HE OR SHE ENROLLS IN THE OPTIONAL RETIREMENT PROGRAM OFFERED BY AN ELECTING EMPLOYER PURSUANT TO THIS ARTICLE SHALL BE DEEMED TO BE A PERSON WHO TERMINATES MEMBERSHIP ON THE EFFECTIVE DATE OF SUCH ENROLLMENT, FOR THE PURPOSE OF DETERMINING HIS OR HER ELIGIBILITY FOR RIGHTS AND BENEFITS IN EITHER SUCH SYSTEM; PROVIDED HOWEVER, THAT IF HE OR SHE DOES NOT WITHDRAW HIS OR HER ACCUMULATED CONTRIBUTIONS, (I) HIS OR HER CONTINUED SERVICE AT A COMMUNITY COLLEGE WHOSE EMPLOYEES ARE OTHERWISE ELIGIBLE FOR THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM OR THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM SHALL BE DEEMED TO BE MEMBER SERVICE IN EITHER THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM OR THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM FOR THE PURPOSE OF DETERMINING HIS OR HER ELIGIBILITY FOR ANY RETIREMENT ALLOWANCE OR ORDINARY DEATH BENEFIT UNDER EITHER SUCH SYSTEM DEPENDENT UPON A SPECIFIED PERIOD OF TOTAL SERVICE OR UPON ATTAINMENT OF A SPECIFIED AGE WHILE IN SERVICE OR UPON DEATH WHILE IN SERVICE; AND (II) THE AMOUNT OF ANY SUCH BENEFIT TO WHICH HE OR SHE OR HIS OR HER ESTATE OR PERSON DESIGNATED BY HIM OR HER MAY BECOME ENTITLED UNDER EITHER SUCH SYSTEM SHALL BE COMPUTED ONLY ON THE BASIS OF SERVICE OTHERWISE CREDITABLE TO HIM OR HER THEREIN AND HIS OR HER COMPENSATION DURING SUCH SERVICE.

(B) ENROLLED EMPLOYEES AND THEIR BENEFICIARIES SHALL NOT BE ENTITLED TO ANY RIGHT OR BENEFIT UNDER EITHER THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM OR THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM OTHER THAN A RETIREMENT ALLOWANCE OR ORDINARY DEATH BENEFIT TO THE EXTENT EXPRESSLY PROVIDED FOR IN THIS SECTION. SUCH EMPLOYEE SHALL NOT BE ELIGIBLE FOR ANY BENEFIT PURSUANT TO SECTION TWO HUNDRED FORTY-FIVE OF THE MILITARY LAW.

5. NEW YORK STATE TEACHERS' RETIREMENT SYSTEM EXCEPTIONS. (A) SUBDIVISION TWO OF THIS SECTION SHALL NOT APPLY TO ANY ENROLLED EMPLOYEE WHO RENDERS SERVICE WHICH IS CREDITABLE IN THE NEW YORK STATE TEACHERS'

RETIREMENT SYSTEM, OTHER THAN SERVICE FOR WHICH A CONTRIBUTION IS MADE TO THE OPTIONAL RETIREMENT PROGRAM PURSUANT TO THIS ARTICLE.

(B) SUBDIVISION THREE OF THIS SECTION SHALL NOT APPLY TO ANY MEMBER OF THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM WHO, AFTER JOINING SUCH SYSTEM, ENROLLS IN THE OPTIONAL RETIREMENT PROGRAM PURSUANT TO THIS ARTICLE.

(C) SUBDIVISION THREE OF THIS SECTION NOTWITHSTANDING, ANY ENROLLED EMPLOYEE WHO IS A MEMBER OF THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM MAY OBTAIN CREDIT FOR SERVICE, OTHER THAN SERVICE FOR WHICH A CONTRIBUTION IS MADE TO THE OPTIONAL RETIREMENT PROGRAM, WHICH IS CREDITABLE IN SUCH SYSTEM AND WAS RENDERED AFTER SUCH MEMBER HAD ENROLLED IN THE OPTIONAL RETIREMENT PROGRAM, PROVIDED (I) SUCH MEMBER HAS RENDERED AT LEAST FIVE YEARS OF SERVICE CREDITED WITH THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM AT THE TIME SUCH SERVICE IS CREDITED, AND (II) IN THE CASE OF SUCH MEMBER SUBJECT TO THE PROVISIONS OF ARTICLE FOURTEEN OR FIFTEEN OF THE RETIREMENT AND SOCIAL SECURITY LAW, THE MEMBER CONTRIBUTES THREE PERCENT OF THE WAGES EARNED FOR SUCH SERVICE TOGETHER WITH INTEREST AT THE RATE OF FIVE PERCENT PER ANNUM COMPOUNDED ANNUALLY FROM THE DATE OF SUCH SERVICE UNTIL PAYMENT IS MADE.

(D) ANYTHING IN THIS SUBDIVISION NOTWITHSTANDING, SERVICE AS AN ENROLLED EMPLOYEE FOR WHICH A CONTRIBUTION IS MADE TO THE OPTIONAL RETIREMENT PROGRAM SHALL NEITHER ENTITLE ANY ENROLLED EMPLOYEE TO JOIN OR REJOIN THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM NOR BE CREDITABLE IN SUCH SYSTEM.

S 434. SURVIVOR'S BENEFITS. IN THE CASE OF THE DEATH OF ANY ENROLLED EMPLOYEE, AFTER THE EFFECTIVE DATE OF SUCH ENROLLMENT AND BEFORE RETIREMENT, THE VALUE OF THE DEATH BENEFITS PROVIDED BY THE CONTRACT OR CONTRACTS PURCHASED UNDER THE OPTIONAL RETIREMENT PROGRAM WHICH IS ATTRIBUTABLE TO THE STATE'S CONTRIBUTION AS DETERMINED BY THE APPROPRIATE BOARD OF EDUCATION, SHALL BE DEEMED TO BE AN ORDINARY DEATH BENEFIT PROVIDED UNDER A PUBLIC PENSION PLAN WITHIN THE MEANING OF SECTION SIX HUNDRED FIFTY-FIVE OF THE RETIREMENT AND SOCIAL SECURITY LAW. NOTWITHSTANDING THE PROVISIONS OF SUCH SECTION OF THE RETIREMENT AND SOCIAL SECURITY LAW, A SURVIVOR'S BENEFIT PAYABLE THEREUNDER ON ACCOUNT OF THE DEATH OF ANY ENROLLED EMPLOYEE WHILE IN THE EMPLOY OF AN ELECTING EMPLOYER, AFTER THE EFFECTIVE DATE OF SUCH ENROLLMENT AND BEFORE RETIREMENT, INCLUDING AN EMPLOYEE SUBJECT TO THE PROVISIONS OF SUBDIVISION THREE OF SECTION FOUR HUNDRED THIRTY-THREE OF THIS ARTICLE, SHALL BE PAID TO SUCH PERSON OR PERSONS AS SUCH EMPLOYEE SHALL HAVE NOMINATED TO RECEIVE THE DEATH BENEFITS PROVIDED BY THE CONTRACT OR CONTRACTS PURCHASED UNDER THE OPTIONAL RETIREMENT PROGRAM. IN THE EVENT SUCH DESIGNATED BENEFICIARY OR BENEFICIARIES DO NOT SURVIVE THE EMPLOYEE, OR IF A BENEFICIARY WAS NOT SO DESIGNATED, THE SURVIVOR'S BENEFIT SHALL BE PAID TO THE DECEASED EMPLOYEE'S ESTATE OR AS PROVIDED IN SECTION THIRTEEN HUNDRED TEN OF THE SURROGATE'S COURT PROCEDURE ACT.

S 435. SOCIAL SECURITY. EVERY ENROLLED EMPLOYEE SHALL HAVE OLD-AGE, SURVIVOR'S, AND DISABILITY INSURANCE COVERAGE PROVIDED BY THE FEDERAL SOCIAL SECURITY ACT IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE THREE OF THE RETIREMENT AND SOCIAL SECURITY LAW.

S 436. EMPLOYER NOT LIABLE FOR PAYMENT OF BENEFITS. NO ELECTING EMPLOYER SHALL BE A PARTY TO ANY CONTRACT PURCHASED IN WHOLE OR IN PART WITH CONTRIBUTIONS MADE UNDER THE OPTIONAL RETIREMENT PROGRAM ESTABLISHED AND ADMINISTERED PURSUANT TO THIS ARTICLE. NO RETIREMENT, DEATH, OR OTHER BENEFITS SHALL BE PAYABLE BY ANY ELECTING EMPLOYER UNDER SUCH OPTIONAL RETIREMENT PROGRAM. SUCH BENEFITS SHALL BE PAID TO ENROLLED

EMPLOYEES OR THEIR BENEFICIARIES BY THE DESIGNATED INSURER OR INSURERS IN ACCORDANCE WITH THE TERMS OF THEIR CONTRACTS.

S 437. INCONSISTENT PROVISIONS OF OTHER ACTS SUPERSEDED. INSOFAR AS THE PROVISIONS OF THIS ARTICLE ARE INCONSISTENT WITH THE PROVISIONS OF ANY OTHER ACT, GENERAL OR SPECIAL, THE PROVISIONS OF THIS ARTICLE SHALL BE CONTROLLING.

S 3. The opening paragraph of subdivision a of section 30 of the retirement and social security law is amended to read as follows:

A municipality may elect to participate in the retirement system. Such election shall be exercised by the adoption of a resolution approved by its local legislative body and any other body or officer required by law to approve resolution of such local legislative body. Upon the filing of a certified copy of such resolution with the comptroller, EXCEPT FOR MUNICIPALITIES THAT ELECT TO PARTICIPATE IN THE OPTIONAL RETIREMENT SYSTEMS AUTHORIZED PURSUANT TO ARTICLE EIGHT-A OF THE GENERAL MUNICIPAL LAW AND ARTICLE NINE-A OF THE EDUCATION LAW, such election shall be irrevocable, and the municipality shall become a participating employer, subject, however, to the conditions provided in this subdivision.

S 4. This act shall take effect immediately.