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

5528

2011-2012 Regular Sessions

I N S E N A T E

May 31, 2011

Introduced by COMMITTEE ON RULES -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the education law, the administrative code of the city of New York and the retirement and social security law, in relation to the transfer of the members, assets and liabilities of the board of education retirement system of the city of New York to the New York city employees' retirement system and the teachers' retirement system of such city

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

Section 1. Section 2575 of the education law is amended by adding a new subdivision 26 to read as follows:

26. (A) THE FOLLOWING TERMS, AS USED IN THIS SUBDIVISION, SHALL HAVE THE FOLLOWING MEANINGS, UNLESS A DIFFERENT MEANING IS PLAINLY REQUIRED BY THE CONTEXT:

(1) "BERS". THE BOARD OF EDUCATION RETIREMENT SYSTEM OF THE CITY OF NEW YORK ESTABLISHED PURSUANT TO THE PROVISIONS OF THIS SECTION.

(2) "NYCERS". THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM.

(3) "TRS". THE TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK.

(4) "BERS RULES AND REGULATIONS". THE RULES AND REGULATIONS FOR THE GOVERNMENT, MANAGEMENT AND CONTROL OF BERS ADOPTED PURSUANT TO THE PROVISIONS OF THIS SECTION.

(5) "BERS TRANSFER DATE". THE EFFECTIVE DATE OF THIS SUBDIVISION.

(6) "BERS BENEFICIARY". ANY PERSON WHO, IMMEDIATELY PRIOR TO THE BERS TRANSFER DATE, IS ENTITLED TO RECEIVE BENEFITS FROM BERS PURSUANT TO ANY PROVISION OF LAW OR THE BERS RULES AND REGULATIONS IN EFFECT IMMEDIATELY PRIOR TO THE BERS TRANSFER DATE, INCLUDING A SERVICE RETIREE OF BERS WHO, IMMEDIATELY PRIOR TO THE BERS TRANSFER DATE, IS ENTITLED TO DEFERRED PAYABILITY OF A RETIREMENT ALLOWANCE.

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

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(7) "ADMINISTRATIVE CODE". THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK.

(8) "DISCONTINUED MEMBER OF BERS". ANY MEMBER OF BERS WHO HAS DISCONTINUED EDUCATION SERVICE AND HAS A VESTED RIGHT TO DEFERRED PAYABILITY OF A RETIREMENT ALLOWANCE FROM BERS.

(B)(1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ON AND AFTER THE BERS TRANSFER DATE, BERS SHALL NO LONGER EXIST AS A RETIREMENT SYSTEM ESTABLISHED PURSUANT TO THE PROVISIONS OF THIS SECTION.

(2) ANY PERSON WHO, IMMEDIATELY PRIOR TO THE BERS TRANSFER DATE, IS A MEMBER OF BERS, OTHER THAN A MEMBER WHO IS TRANSFERRED TO TRS PURSUANT TO SUBPARAGRAPH THREE OF THIS PARAGRAPH, OR OTHER THAN A DISCONTINUED MEMBER OF BERS WHO BECOMES A DISCONTINUED MEMBER OF TRS PURSUANT TO SUBPARAGRAPH NINE OF THIS PARAGRAPH, SHALL, ON THE BERS TRANSFER DATE, BECOME A MEMBER OF NYCERS, AND SHALL HAVE HIS OR HER MEMBERSHIP IN BERS TRANSFERRED TO NYCERS. NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE CONSTRUED TO DIMINISH OR IMPAIR ANY OF THE RIGHTS, BENEFITS OR PRIVILEGES OF RETIREMENT SYSTEM MEMBERSHIP OF ANY MEMBER OF BERS WHO IS TRANSFERRED TO NYCERS PURSUANT TO THIS SUBPARAGRAPH.

(3) ANY PERSON WHO, IMMEDIATELY PRIOR TO THE BERS TRANSFER DATE, IS A MEMBER OF BERS AND EITHER HOLDS, OR LAST HELD, A POSITION IN EDUCATION SERVICE AS A TEACHER WITHIN THE MEANING OF PARAGRAPH (C) OF SUBDIVISION SEVEN OF SECTION 13-501 OF THE ADMINISTRATIVE CODE, SHALL, ON THE BERS TRANSFER DATE, BECOME A MEMBER OF TRS, AND SHALL HAVE HIS OR HER MEMBERSHIP IN BERS TRANSFERRED TO TRS. NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE CONSTRUED TO DIMINISH OR IMPAIR ANY OF THE RIGHTS, BENEFITS OR PRIVILEGES OF RETIREMENT SYSTEM MEMBERSHIP OF ANY MEMBER OF BERS WHO IS TRANSFERRED TO TRS PURSUANT TO THIS SUBPARAGRAPH, AND ALL SUCH MEMBERS TRANSFERRED TO TRS SHALL BE SUBJECT TO THE BENEFIT PROVISIONS SET FORTH IN PARAGRAPH (D) OF SUBDIVISION SEVEN OF SUCH SECTION 13-501, WHERE SUCH PROVISIONS ARE APPLICABLE.

(4) FOR ALL PERSONS WHO ARE TRANSFERRED FROM BERS TO NYCERS PURSUANT TO SUBPARAGRAPH TWO OF THIS PARAGRAPH, OR FROM BERS TO TRS PURSUANT TO SUBPARAGRAPH THREE OF THIS PARAGRAPH, BERS SHALL MAKE A TRANSFER OF ACCUMULATED MEMBER CONTRIBUTIONS AND SERVICE CREDIT TO THE APPROPRIATE RETIREMENT SYSTEM USING A METHOD WHICH IS CALCULATED, AS CERTIFIED BY THE ACTUARY FOR SUCH RETIREMENT SYSTEM, TO PRODUCE RESULTS WHICH ARE REASONABLY EQUIVALENT TO THE RESULTS WHICH WOULD BE PRODUCED BY USING THE METHOD REQUIRED BY SECTION FORTY-THREE OF THE RETIREMENT AND SOCIAL SECURITY LAW. ALL RECORDS AND DOCUMENTS RELATING TO MEMBERS OF BERS SHALL ALSO BE TRANSFERRED TO THE APPROPRIATE RETIREMENT SYSTEM.

(5) THE ACTUARY FOR BERS SHALL DETERMINE, AS OF THE DATE IMMEDIATELY PRECEDING THE BERS TRANSFER DATE, THE TOTAL AMOUNTS OF THE ASSETS AND LIABILITIES OF BERS, AND THE PERCENTAGES AND AMOUNTS OF SUCH ASSETS AND LIABILITIES THAT ARE ATTRIBUTABLE TO EACH OF THE FOLLOWING GROUPS:

(I)(A) THOSE BERS MEMBERS WHO ARE TRANSFERRED TO NYCERS PURSUANT TO SUBPARAGRAPH TWO OF THIS PARAGRAPH; (B) THOSE BERS BENEFICIARIES WHO BECOME BENEFICIARIES OF NYCERS PURSUANT TO SUBPARAGRAPH SEVEN OF THIS PARAGRAPH; AND (C) THOSE DISCONTINUED MEMBERS OF BERS WHO BECOME DISCONTINUED MEMBERS OF NYCERS PURSUANT TO SUBPARAGRAPH EIGHT OF THIS PARAGRAPH; AND

(II)(A) THOSE BERS MEMBERS WHO ARE TRANSFERRED TO TRS PURSUANT TO SUBPARAGRAPH THREE OF THIS PARAGRAPH, AND (B) THOSE DISCONTINUED MEMBERS OF BERS WHO BECOME DISCONTINUED MEMBERS OF TRS PURSUANT TO SUBPARAGRAPH NINE OF THIS PARAGRAPH.

(6) EFFECTIVE AS OF THE BERS TRANSFER DATE, THE AMOUNTS OF THE ASSETS AND LIABILITIES DETERMINED PURSUANT TO ITEM (I) OF SUBPARAGRAPH FIVE OF THIS PARAGRAPH SHALL BE TRANSFERRED TO NYCERS, AND THE AMOUNTS OF ASSETS AND LIABILITIES DETERMINED PURSUANT TO ITEM (II) OF SUCH SUBPARAGRAPH FIVE SHALL BE TRANSFERRED TO TRS.

(7) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ON THE BERS TRANSFER DATE, ANY PERSON WHO IS A BERS BENEFICIARY IMMEDIATELY PRIOR TO THE BERS TRANSFER DATE SHALL BECOME A BENEFICIARY OF NYCERS, AND, ON AND AFTER THE BERS TRANSFER DATE, NYCERS SHALL PAY TO SUCH BENEFICIARY ALL BENEFITS TO WHICH HE OR SHE IS OTHERWISE ENTITLED UNDER THE APPLICABLE PROVISIONS OF LAW OR THE APPLICABLE PROVISIONS OF THE BERS RULES AND REGULATIONS IN EFFECT IMMEDIATELY PRIOR TO SUCH DATE.

(8) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ANY PERSON WHO, IMMEDIATELY PRIOR TO THE BERS TRANSFER DATE, IS A DISCONTINUED MEMBER OF BERS AS A RESULT OF HAVING DISCONTINUED SERVICE FROM A POSITION OTHER THAN THE POSITION OF TEACHER WITHIN THE MEANING OF PARAGRAPH (C) OF SUBDIVISION SEVEN OF SECTION 13-501 OF THE ADMINISTRATIVE CODE, SHALL, ON THE BERS TRANSFER DATE, BECOME A DISCONTINUED MEMBER OF NYCERS, AND THEREAFTER NYCERS SHALL PAY TO SUCH DISCONTINUED MEMBER ALL BENEFITS TO WHICH HE OR SHE IS OTHERWISE ENTITLED UNDER THE APPLICABLE PROVISIONS OF LAW OR THE APPLICABLE PROVISIONS OF THE BERS RULES AND REGULATIONS IN EFFECT IMMEDIATELY PRIOR TO THE BERS TRANSFER DATE.

(9) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ANY PERSON WHO, IMMEDIATELY PRIOR TO THE BERS TRANSFER DATE, IS A DISCONTINUED MEMBER OF BERS AS A RESULT OF HAVING DISCONTINUED SERVICE FROM THE POSITION OF TEACHER WITHIN THE MEANING OF PARAGRAPH (C) OF SUBDIVISION SEVEN OF SECTION 13-501 OF THE ADMINISTRATIVE CODE, SHALL, ON THE BERS TRANSFER DATE, BECOME A DISCONTINUED MEMBER OF TRS, AND THEREAFTER TRS SHALL PAY TO SUCH DISCONTINUED MEMBER ALL BENEFITS TO WHICH HE OR SHE IS OTHERWISE ENTITLED UNDER THE APPLICABLE PROVISIONS OF LAW OR THE APPLICABLE PROVISIONS OF THE BERS RULES AND REGULATIONS IN EFFECT IMMEDIATELY PRIOR TO THE BERS TRANSFER DATE.

(10) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ON THE BERS TRANSFER DATE, THE DUTIES AND RESPONSIBILITIES OF ADMINISTERING THE TAX DEFERRED ANNUITY PROGRAM AND THE VARIABLE ANNUITY PROGRAM FOR BERS MEMBERS CONFERRED UPON THE RETIREMENT BOARD OF BERS BY THE APPLICABLE PROVISIONS OF THE BERS RULES AND REGULATIONS IN EFFECT IMMEDIATELY PRIOR TO SUCH DATE SHALL BE TRANSFERRED TO AND ASSUMED BY THE BOARD OF TRUSTEES OF NYCERS, FOR THE BENEFIT OF THOSE MEMBERS OF NYCERS WHO, ON OR AFTER SUCH DATE, MAY OTHERWISE BE ELIGIBLE TO PARTICIPATE IN SUCH PROGRAMS PURSUANT TO APPLICABLE PROVISIONS OF LAW OR RULE. EFFECTIVE AS OF THE BERS TRANSFER DATE, ALL PROVISIONS OF THE BERS RULES AND REGULATIONS RELATING TO THE TAX DEFERRED ANNUITY PROGRAM AND THE VARIABLE ANNUITY PROGRAM WHICH ARE IN EFFECT IMMEDIATELY PRIOR TO SUCH DATE SHALL BE DEEMED TO BE ADOPTED BY THE BOARD OF TRUSTEES OF NYCERS. ON AND AFTER THE BERS TRANSFER DATE, THE BOARD OF TRUSTEES OF NYCERS SHALL HAVE THE AUTHORITY TO AMEND SUCH RULES AND REGULATIONS.

(11) ANY MEMBER OF NYCERS WHO IS PERSONALLY EMPLOYED AND PAID BY THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK ON AND AFTER THE BERS TRANSFER DATE ON THE INDIRECT METHOD OF COMPENSATION PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT WHICH PROVIDES FOR THE DETERMINATION OF SUCH MEMBER'S PENSION SALARY FOR PENSION PURPOSES ONLY BASED ON THE AREA OF HIS OR HER BUILDING ASSIGNMENT SHALL, ON OR AFTER THE BERS TRANSFER DATE, HAVE HIS OR HER PENSION SALARY FOR PENSION PURPOSES ONLY DETERMINED IN ACCORDANCE WITH THE METHOD SET FORTH IN SECTION TWENTY-SEVEN OF THE BERS RULES AND REGULATIONS IN EFFECT IMME-

DIATELY PRIOR TO THE BERS TRANSFER DATE, AND THE PROVISIONS OF THE APPLICABLE COLLECTIVE BARGAINING AGREEMENT, AND SUCH PENSION SALARY SHALL BE BASED ON THE AREA OF SUCH PERSON'S REGULAR BUILDING ASSIGNMENT ONLY, PROVIDED, HOWEVER, THAT NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED TO DIMINISH OR IMPAIR ANY OF THE RIGHTS, BENEFITS OR PRIVILEGES OF RETIREMENT SYSTEM MEMBERSHIP OF ANY PERSON WHO LAST BECAME A MEMBER OF NYCERS PRIOR TO THE BERS TRANSFER DATE, AND PROVIDED FURTHER THAT THE THREE-YEAR FINAL AVERAGE SALARY FOR A MEMBER COVERED BY THE PROVISIONS OF THIS PARAGRAPH WHO IS SUBJECT TO THE PROVISIONS OF ARTICLE ELEVEN, FOURTEEN OR FIFTEEN OF THE RETIREMENT AND SOCIAL SECURITY LAW, SHALL BE BASED ON THE SALARY FOR PENSION PURPOSES DETERMINED PURSUANT TO THIS PARAGRAPH FOR EACH YEAR THAT IS USED IN THE CALCULATION OF THE THREE-YEAR FINAL AVERAGE SALARY FOR SUCH MEMBER PURSUANT TO THE APPLICABLE PROVISIONS OF SUBDIVISION E OF SECTION FOUR HUNDRED FORTY-THREE OF THE RETIREMENT AND SOCIAL SECURITY LAW, SUBDIVISION D OF SECTION FIVE HUNDRED TWELVE OF SUCH LAW OR SUBDIVISION D OF SECTION SIX HUNDRED EIGHT OF SUCH LAW.

S 2. Paragraph b of subdivision 3 of section 13-101 of the administrative code of the city of New York, as amended by chapter 16 of the laws of 1997, is amended to read as follows:

b. Service as a paid employee of the triborough bridge authority, the Henry Hudson parkway authority, the Marine parkway authority, the New York city tunnel authority, the New York city parkway authority, the New York city housing authority, the triborough bridge and tunnel authority, the New York city transit authority, the New York city housing development corporation, the New York city health and hospitals corporation, the New York city off-track betting corporation, the New York city school construction authority, THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK (EXCEPT SERVICE ON ACCOUNT OF WHICH ANY PERSON IS ELIGIBLE TO PARTICIPATE IN THE TEACHERS' RETIREMENT SYSTEM), the New York city municipal water finance authority, the New York city water board, the transit construction fund, the New York city transitional finance authority, the New York city sports authority and the New York city rehabilitation mortgage insurance corporation shall constitute city-service as herein defined.

S 3. Subdivision 55 of section 13-101 of the administrative code of the city of New York is amended to read as follows:

55. "Official list of physically taxing positions" shall [mean] BE COMPRISED OF (A) the list of positions WITH RESPECT TO THE CITY promulgated and maintained by the list administrator pursuant to subdivision 1 of section 13-162 of this chapter, relating to the career pension plan, AND (B) THE LIST OF POSITIONS PROMULGATED AND MAINTAINED BY THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK PURSUANT TO SUCH SUBDIVISION 1.

S 4. Paragraph 1 of subdivision c of section 13-133 of the administrative code of the city of New York is amended by adding a new subparagraph (G) to read as follows:

(G) THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK SHALL MAKE MONTHLY PAYMENTS, IN TWELVE EQUAL INSTALLMENTS, WITH RESPECT TO OBLIGATIONS WHICH IT INCURS TO PAY SUMS TO THE RETIREMENT SYSTEM.

S 5. Subdivision 1 of section 13-162 of the administrative code of the city of New York is amended by adding a new paragraph 10 to read as follows:

(10) THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK SHALL CONTINUE TO MAINTAIN AN OFFICIAL LIST OF PHYSICALLY

TAXING POSITIONS OF SUCH BOARD WHICH SHALL CONTAIN THE TITLES OF CAREER PENSION PLAN POSITIONS WHICH, BY REASON OF THEIR DUTIES, AS ESTABLISHED PURSUANT TO LAW, REQUIRE HEAVY DUTY AND EXTRAORDINARY PHYSICAL EFFORT. BEFORE PROMULGATING, CHANGING OR AMENDING SUCH LIST, THE BOARD OF EDUCATION SHALL CONSULT WITH THE PUBLIC EMPLOYEE ORGANIZATION CERTIFIED BY SUCH BOARD AS AN EXCLUSIVE COLLECTIVE BARGAINING REPRESENTATIVE AS TO INCLUSION OR EXCLUSION ON SUCH LIST OF THOSE CAREER PENSION PLAN POSITIONS FOR WHICH THE CERTIFIED PUBLIC EMPLOYEE ORGANIZATION IS ENTITLED TO BARGAIN.

S 6. Subdivision 7 of section 13-501 of the administrative code of the city of New York is amended by adding two new paragraphs (c) and (d) to read as follows:

(C)(1) "TEACHER" ALSO SHALL MEAN ANY BOARD OF EDUCATION EMPLOYEE SERVING AS A REGULAR SUBSTITUTE, FULL TERM PER DIEM SUBSTITUTE, OCCASIONAL PER DIEM SUBSTITUTE, OR SUBSTITUTE PARAPROFESSIONAL, OTHER THAN OCCASIONAL PER DIEM SUBSTITUTE OR EMPLOYEE PAID ON A PER SESSION BASIS, IN ANY POSITION WHERE A REGULARLY APPOINTED EMPLOYEE IS DEFINED AS A "TEACHER" IN PARAGRAPH (A) OF THIS SUBDIVISION, WHO FILES AN APPLICATION FOR MEMBERSHIP IN THE RETIREMENT ASSOCIATION ON A FORM SUPPLIED BY THE RETIREMENT BOARD.

(2) "TEACHER" ALSO SHALL MEAN ANY EMPLOYEE SERVING IN ANY OF THE FOLLOWING POSITIONS WHICH, PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH ADDED THIS SUBPARAGRAPH, WERE POSITIONS IN EDUCATION SERVICE (AS DEFINED IN SUBPARAGRAPH TEN OF PARAGRAPH (B) OF SUBDIVISION SEVENTEEN OF SECTION TWENTY-FIVE HUNDRED SEVENTY-FIVE OF THE EDUCATION LAW) THAT, PRIOR TO SUCH EFFECTIVE DATE, WOULD HAVE CONFERRED ELIGIBILITY FOR MEMBERSHIP IN THE BOARD OF EDUCATION RETIREMENT SYSTEM OF THE CITY: (I) SUBSTITUTE SCHOOL SECRETARY INTERN, PER SESSION TEACHER, PER DIEM TEACHER, PER DIEM SECRETARY, SCHOOL SECRETARY ASSISTANT, HEAD NURSE, HEAD NURSE (BOE), SUPERVISOR OF NURSES, STAFF NURSE, REGISTERED NURSE (BOE), PUBLIC HEALTH NURSE, PEDIATRIC NURSE ASSOCIATE, SUPERVISING THERAPIST, SENIOR OCCUPATIONAL THERAPIST, SENIOR OCCUPATIONAL THERAPIST (BOE), OCCUPATIONAL THERAPIST, OCCUPATIONAL THERAPIST (BOE), SENIOR PHYSICAL THERAPIST, SENIOR PHYSICAL THERAPIST (BOE), PHYSICAL THERAPIST, PHYSICAL THERAPIST (BOE), SUBSTITUTE VOCATIONAL ASSISTANT, NON-ANNUALIZED ADULT EDUCATION TEACHER, NON-ANNUALIZED ADULT EDUCATION ASSISTANT COORDINATOR, NON-ANNUALIZED EDUCATION COORDINATOR, DIRECTOR OF DRUG AND ALCOHOL PROGRAMS, ASSISTANT DIRECTOR OF DRUG AND ALCOHOL PROGRAMS, SIGN LANGUAGE INTERPRETER, TEACHER OF MILITARY SCIENCE, SENIOR ARMY, NAVY, AIR FORCE, AEROSPACE, MARINE CORPS OR COAST GUARD INSTRUCTOR, ARMY, NAVY, AIR FORCE, AEROSPACE, MARINE CORPS OR COAST GUARD INSTRUCTOR OR YOUTH DEVELOPMENT SPECIALIST, OR (II) THE FOLLOWING POSITIONS REPRESENTED BY THE RECOGNIZED TEACHER ORGANIZATION FOR COLLECTIVE BARGAINING PURPOSES: EDUCATION ADMINISTRATOR, EDUCATION OFFICER, ASSOCIATE EDUCATION OFFICER, EDUCATION ANALYST OR ASSOCIATE EDUCATION ANALYST WHO FILES AN APPLICATION FOR MEMBERSHIP IN THE RETIREMENT ASSOCIATION ON A FORM SUPPLIED BY THE RETIREMENT BOARD.

(D) (1) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH ONE OF PARAGRAPH (C) OF THIS SUBDIVISION OR ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE RETIREMENT BENEFITS OF ANY MEMBER WHO RETIRES FROM ANY OF THE SUBSTITUTE POSITIONS SPECIFIED IN SUBPARAGRAPH ONE OF PARAGRAPH (C) OF THIS SUBDIVISION (INCLUDING A MEMBER WHO BECOMES ENTITLED TO RETIREMENT BENEFITS AS THE RESULT OF DISCONTINUING SERVICE FROM ANY OF SUCH SUBSTITUTE POSITIONS WITH A VESTED RIGHT TO DEFERRED PAYABILITY OF SUCH RETIREMENT BENEFITS) WITHOUT HAVING ATTAINED AN EMPLOYMENT STATUS WHICH WOULD HAVE PERMITTED SUCH MEMBER TO JOIN THE RETIREMENT SYSTEM PURSUANT

TO PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE CALCULATED PURSUANT TO THE PROVISIONS OF THE BERS RULES AND REGULATIONS (AS DEFINED IN SUBPARAGRAPH FOUR OF PARAGRAPH (A) OF SUBDIVISION TWENTY-SIX OF SECTION TWENTY-FIVE HUNDRED SEVENTY-FIVE OF THE EDUCATION LAW) OR THE PROVISIONS OF LAW, AS AMENDED, BY WHICH RETIREMENT BENEFITS WOULD HAVE BEEN CALCULATED FOR PERSONS IN SUCH SUBSTITUTE POSITIONS IF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH ADDED THIS SUBPARAGRAPH HAD NOT BEEN ENACTED, AND SUCH MEMBER WERE RETIRING (OR DISCONTINUING SERVICES WITH A VESTED RIGHT TO DEFERRED PAYABILITY OF RETIREMENT BENEFITS) FROM ANY OF SUCH SUBSTITUTE POSITIONS AS A MEMBER OF THE BOARD OF EDUCATION RETIREMENT SYSTEM OF THE CITY.

(2) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH TWO OF PARAGRAPH (C) OF THIS SUBDIVISION OR ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE RETIREMENT BENEFITS OF ANY MEMBER WHO RETIRES FROM ANY OF THE TITLES SPECIFIED IN SUBPARAGRAPH TWO OF PARAGRAPH (C) OF THIS SUBDIVISION (INCLUDING A MEMBER WHO BECOMES ENTITLED TO RETIREMENT BENEFITS AS THE RESULT OF DISCONTINUING SERVICE FROM ANY OF SUCH TITLES WITH A VESTED RIGHT TO DEFERRED PAYABILITY OF SUCH RETIREMENT BENEFITS) SHALL BE CALCULATED PURSUANT TO THE PROVISIONS OF THE BERS RULES AND REGULATIONS OR THE PROVISIONS OF LAW, AS AMENDED, BY WHICH RETIREMENT BENEFITS WOULD HAVE BEEN CALCULATED FOR PERSONS IN SUCH TITLES IF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH ADDED THIS SUBPARAGRAPH HAS NOT BEEN ENACTED, AND SUCH MEMBER WERE RETIRING (OR DISCONTINUING SERVICE WITH A VESTED RIGHT TO DEFERRED PAYABILITY OF RETIREMENT BENEFITS) FROM ANY OF SUCH TITLES AS A MEMBER OF THE BOARD OF EDUCATION RETIREMENT SYSTEM OF THE CITY.

S 7. Paragraph 1 of subdivision c of section 13-638.4 of the administrative code of the city of New York, as added by chapter 749 of the laws of 1992, is amended to read as follows:

(1) Notwithstanding any other provision of law to the contrary, and except as provided in paragraph two OR TWO-A of this subdivision, and subject to the provisions of subdivision f of this section a member of NYCERS or BERS, who otherwise is entitled to credit for city-service or education service, shall have such credit prorated on the basis of one year of service credit for eighteen hundred twenty-seven hours of such service rendered in a calendar year, provided, however, that no such member shall earn more than one year of service credit during any calendar year, and no such member shall earn, for any fraction of a calendar year, a fraction of a year of service credit, which fraction is greater than such fraction of a calendar year. However, this paragraph shall not apply to teachers, including those who work as regular substitutes and per diem teachers.

S 8. Subdivision c of section 13-638.4 of the administrative code of the city of New York is amended by adding a new paragraph 2-a to read as follows:

(2-A) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH ONE OF THIS SUBDIVISION, OR ANY OTHER PROVISION OF LAW TO THE CONTRARY, AND SUBJECT TO THE PROVISIONS OF SUBDIVISION F OF THIS SECTION, A MEMBER OF NYCERS, WHO OTHERWISE IS ENTITLED TO CREDIT FOR CITY-SERVICE IN A JOB TITLE WITH THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK IN WHICH DUTIES ARE REGULARLY SCHEDULED TO BE PERFORMED ONLY DURING THE SCHOOL YEAR, OR WHO OTHERWISE IS ENTITLED TO CREDIT FOR SERVICE IN THE TITLE OF SCHOOL CROSSING GUARD WITH THE NEW YORK CITY POLICE DEPARTMENT, WHERE THE DUTIES OF SUCH TITLE ARE REGULARLY SCHEDULED TO BE PERFORMED ONLY DURING THE SCHOOL YEAR, SHALL HAVE SUCH CREDIT PRORATED ON THE BASIS OF ONE YEAR OF SERVICE CREDIT FOR FOURTEEN HUNDRED SEVENTY HOURS

OF SUCH SERVICE RENDERED IN A CALENDAR YEAR, PROVIDED THAT NO SUCH MEMBER SHALL EARN MORE THAN ONE YEAR OF SERVICE CREDIT DURING ANY CALENDAR YEAR, AND NO SUCH MEMBER SHALL EARN FOR ANY FRACTION OF A CALENDAR YEAR, A FRACTION OF A YEAR OF SERVICE CREDIT, WHICH FRACTION IS GREATER THAN SUCH FRACTION OF A CALENDAR YEAR.

S 9. Subparagraph (i) of paragraph 1 of subdivision e of section 13-638.4 of the administrative code of the city of New York, as added by chapter 749 of the laws of 1992, is amended to read as follows:

(i) "Full-time position in city-service". (A) A position in city-service in which a person is regularly scheduled to work at least eighteen hundred twenty-seven hours per year; OR

(B) A POSITION IN CITY-SERVICE AS AN EMPLOYEE OF THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK OR AN EMPLOYEE OF THE NEW YORK CITY POLICE DEPARTMENT IN THE TITLE OF SCHOOL CROSSING GUARD (A) IN WHICH DUTIES ARE REGULARLY SCHEDULED TO BE PERFORMED ONLY DURING THE SCHOOL YEAR; (B) IN WHICH A PERSON IS REGULARLY SCHEDULED TO WORK AT LEAST FOURTEEN HUNDRED SEVENTY HOURS PER SCHOOL YEAR; AND (C) IN WHICH SUCH PERSON, AS A MEMBER OF NYCERS, IS ENTITLED TO EARN CREDIT FOR SUCH SERVICE, PURSUANT TO PARAGRAPH TWO-A OF SUBDIVISION C OF THIS SECTION, ON THE BASIS OF ONE YEAR OF SERVICE CREDIT FOR FOURTEEN HUNDRED SEVENTY HOURS OF SUCH SERVICE RENDERED IN A CALENDAR YEAR.

S 10. Subparagraph (i) of paragraph 2 of subdivision f of section 13-638.4 of the administrative code of the city of New York, as added by chapter 749 of the laws of 1992, is amended to read as follows:

(i) Except as provided in SUBPARAGRAPH (IV) OF THIS PARAGRAPH OR subparagraph (iv) of paragraph eight of this subdivision, the provisions of this subdivision shall apply only to two or more positions in city-service held concurrently by a member of NYCERS or to two or more positions in education service held concurrently by a member of BERS.

S 11. Paragraph 2 of subdivision f of section 13-638.4 of the administrative code of the city of New York is amended by adding a new subparagraph (iv) to read as follows:

(IV) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, OR ANY OTHER PROVISION OF LAW TO THE CONTRARY, ANY PERSON WHO IS A MEMBER OF NYCERS ON OR AFTER THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH ADDED THIS SUBPARAGRAPH, AND WHO, AT ANY POINT IN TIME PRIOR TO SUCH EFFECTIVE DATE, CONCURRENTLY HELD A POSITION IN CITY-SERVICE AND A POSITION IN EDUCATION SERVICE WHILE A MEMBER OF EITHER NYCERS OR BERS, SHALL HAVE THE SAME RIGHTS AND BE SUBJECT TO THE SAME OBLIGATIONS UNDER THE PROVISIONS OF THIS SUBDIVISION FOR SERVICE RENDERED IN SUCH CONCURRENTLY HELD POSITIONS THAT HE OR SHE WOULD HAVE HAD OR BEEN SUBJECT TO IF EACH OF SUCH CONCURRENTLY HELD POSITIONS HAD ENTITLED SUCH PERSON TO MEMBERSHIP IN THE RETIREMENT SYSTEM IN WHICH HE OR SHE WAS A MEMBER AT THE SAME TIME.

S 12. Subparagraph (i) of paragraph 5 of subdivision a of section 445-d of the retirement and social security law, as amended by chapter 634 of the laws of 1999, is amended to read as follows:

(i) with respect to members of NYCERS, all positions in city-service (as defined in subdivision three of section 13-101 of the administrative code), except (a) any position in the uniformed transit police force, as defined in subdivision thirty-one of section 13-101 of the administrative code; (b) any position in the New York city transit authority which is covered by the provisions of section 13-161 of the administrative code, whether or not the person employed in such position elected the benefits of such section 13-161; (c) any position in the housing police service, as defined in subdivision thirty-five of section 13-101 of the

administrative code; (d) any position in the uniformed correction force, as defined in subdivision thirty-nine of section 13-101 of the administrative code; (e) any position in the uniformed force of the department of sanitation, as defined in subdivision sixty-two of section 13-101 of the administrative code; (f) the positions of bridge and tunnel officer, bridge and tunnel sergeant, bridge and tunnel lieutenant, assistant bridge and tunnel maintainer, bridge and tunnel maintainer, senior bridge and tunnel maintainer and laborer with the Triborough bridge and tunnel authority; (g) any position in the division of housing and community renewal; (h) any position in the unified court system; (i) any teaching position with the city university of New York; [and] (j) any position as an investigator member; AND (K) ANY POSITION REPRESENTED BY THE RECOGNIZED TEACHER ORGANIZATION FOR COLLECTIVE BARGAINING PURPOSES WHICH, PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH AMENDED THIS SUBPARAGRAPH, WAS A POSITION IN EDUCATION SERVICE THAT WOULD HAVE CONFERRED ELIGIBILITY FOR MEMBERSHIP IN BERS; or

S 13. Subparagraph (i) of paragraph 5 of subdivision a of section 445-i of the retirement and social security law, as added by chapter 19 of the laws of 2008, is amended to read as follows:

(i) with respect to members of TRS, all positions as a teacher (as defined in PARAGRAPH (A) OF subdivision seven of section 13-501 of the administrative code), AND ANY POSITION SPECIFIED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH WHICH, PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH AMENDED THIS SUBPARAGRAPH, WAS A NEW YORK CITY ELIGIBLE POSITION WITH RESPECT TO MEMBERS OF BERS, and shall not include any position covered by section 13-563 of the administrative code; or

S 14. Subdivision b-1 of section 602 of the retirement and social security law, as added by section 2 of part C of chapter 504 of the laws of 2009, is amended to read as follows:

b-1. Notwithstanding the provisions of subdivision a or b of this section or any other provision of law to the contrary, (i) a member of the New York city teachers' retirement system who holds a position represented by the recognized teacher organization for collective bargaining purposes, and who became subject to the provisions of this article after the effective date of this subdivision, or (ii) a member of the New York city board of education retirement system who holds a position represented by the recognized teacher organization for collective bargaining purposes, and who became subject to the provisions of this article after the effective date of this subdivision, OR (III) A MEMBER OF THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM WHO HOLDS A POSITION REPRESENTED BY THE RECOGNIZED TEACHER ORGANIZATION FOR COLLECTIVE BARGAINING PURPOSES WHICH, PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH AMENDED THIS SUBDIVISION, WAS A POSITION IN EDUCATION SERVICE (AS DEFINED IN PARAGRAPH FOURTEEN OF SUBDIVISION A OF SECTION SIX HUNDRED FOUR-I OF THIS ARTICLE) THAT WOULD HAVE CONFERRED ELIGIBILITY FOR MEMBERSHIP IN THE NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM, AND WHO BECAME SUBJECT TO THE PROVISIONS OF THIS ARTICLE AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, shall not be eligible for service retirement benefits hereunder until such member has rendered a minimum of ten years of credited service.

S 15. Subparagraph (i) of paragraph 5 of subdivision a of section 604-c of the retirement and social security law, as amended by chapter 634 of the laws of 1999, is amended to read as follows:

(i) with respect to members of NYCERS, all positions in city-service (as defined in subdivision three of section 13-101 of the administrative code), except (a) any position in the uniformed transit police force, as defined in subdivision thirty-one of section 13-101 of the administrative code; (b) any position in the New York city transit authority which is covered by the provisions of section six hundred four-b of this article, whether or not the person employed in such position is a participant in the retirement program set forth in such section six hundred four-b of this article; (c) any position in the housing police service, as defined in subdivision thirty-five of section 13-101 of the administrative code; (d) any position in the uniformed correction force, as defined in subdivision thirty-nine of section 13-101 of the administrative code; (e) any position in the uniformed force of the department of sanitation, as defined in subdivision sixty-two of section 13-101 of the administrative code; (f) the positions of bridge and tunnel officer, bridge and tunnel sergeant, bridge and tunnel lieutenant, assistant bridge and tunnel maintainer, bridge and tunnel maintainer, senior bridge and tunnel maintainer and laborer with the Triborough bridge and tunnel authority; (g) any position in the division of housing and community renewal; (h) any position in the unified court system; (i) any teaching position with the city university of New York; [and] (j) any position as an investigator member; AND (K) ANY POSITION REPRESENTED BY THE RECOGNIZED TEACHER ORGANIZATION FOR COLLECTIVE BARGAINING PURPOSES WHICH, PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH AMENDED THIS SUBPARAGRAPH, WAS A POSITION IN EDUCATION SERVICE THAT WOULD HAVE CONFERRED ELIGIBILITY FOR MEMBERSHIP IN BERS; or

S 16. Subparagraph (i) of paragraph 5 of subdivision a of section 604-i of the retirement and social security law, as added by chapter 19 of the laws of 2008, is amended to read as follows:

(i) with respect to members of TRS, all positions as a teacher (as defined in PARAGRAPH (A) OF subdivision seven of section 13-501 of the administrative code), AND ANY POSITION SPECIFIED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH WHICH, PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH AMENDED THIS SUBPARAGRAPH, WAS A NEW YORK CITY ELIGIBLE POSITION WITH RESPECT TO MEMBERS OF BERS, and shall not include any position covered by section 13-563 of the administrative code; or

S 17. Subdivision a-1 of section 612 of the retirement and social security law, as added by section 4 of part C of chapter 504 of the laws of 2009, is amended to read as follows:

a-1. Notwithstanding the provisions of subdivision a of this section or any other provision of law to the contrary, (i) a member of the New York city teachers' retirement system who holds a position represented by the recognized teacher organization for collective bargaining purposes, who became subject to the provisions of this article after the effective date of this subdivision, and who has ten or more years of credited service, or (ii) a member of the New York city board of education retirement system who holds a position represented by the recognized teacher organization for collective bargaining purposes, who became subject to the provisions of this article after the effective date of this subdivision, and who has ten or more years of credited service, OR (III) A MEMBER OF THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM WHO HOLDS A POSITION REPRESENTED BY THE RECOGNIZED TEACHER ORGANIZATION FOR COLLECTIVE BARGAINING PURPOSES WHICH, PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH AMENDED

THIS SUBDIVISION, WAS A POSITION IN EDUCATION SERVICE (AS DEFINED IN PARAGRAPH FOURTEEN OF SUBDIVISION A OF SECTION SIX HUNDRED FOUR-I OF THIS ARTICLE) THAT WOULD HAVE CONFERRED ELIGIBILITY FOR MEMBERSHIP IN THE NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM, AND WHO BECAME SUBJECT TO THE PROVISIONS OF THIS ARTICLE AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, other than such a member of [either] ANY of such retirement systems who is entitled to a deferred vested benefit pursuant to any other provision of this article, shall, upon termination of employment, be entitled to a deferred vested benefit at normal retirement age computed in accordance with the provisions of section six hundred four of this article. Notwithstanding the provisions of subdivision a of this section or any other provision of law to the contrary, a member of the New York city teachers' retirement system who holds a position represented by the recognized teacher organization for collective bargaining purposes (OTHER THAN SUCH A POSITION WHICH, PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH AMENDED THIS SUBDIVISION, WAS A POSITION IN EDUCATION SERVICE, AS DEFINED IN PARAGRAPH FOURTEEN OF SUBDIVISION A OF SECTION SIX HUNDRED FOUR-I OF THIS ARTICLE, THAT WOULD HAVE CONFERRED ELIGIBILITY FOR MEMBERSHIP IN THE NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM), who became subject to the provisions of this article after the effective date of this subdivision, and who has ten or more years of credited service, shall, upon termination of employment, be entitled to a deferred vested benefit prior to normal retirement age, but no earlier than age fifty-five, computed in accordance with the provisions of subdivision i of section six hundred three of this article.

S 18. This act shall take effect on the ninetieth day after it shall have become a law.