

# STATE OF NEW YORK

9041

## IN SENATE

October 9, 2020

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to authorize employers to provide a temporary retirement incentive for certain public employees in the city of New York (Part A); and to provide an age 55/25 years temporary retirement incentive for certain public employees in the city of New York (Part B)

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

1 Section 1. This act enacts into law components of legislation that  
2 would enable the city of New York to offer a temporary retirement incen-  
3 tive to their employees, as well as to provide an age 55/25 years tempo-  
4 rary incentive for certain public employees. Each component is wholly  
5 contained within a Part identified as Parts A and B. The effective date  
6 for each particular provision contained within such Part is set forth in  
7 the last section of such Part. Any provision in any section contained  
8 within a Part, including the effective date of the Part, which makes  
9 reference to a section "of this act", when used in connection with that  
10 particular component, shall be deemed to mean and refer to the corre-  
11 sponding section of the Part in which it is found, unless noted other-  
12 wise.

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

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

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1

## PART A

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

4 a. "Retirement system" means the New York city teachers' retirement  
5 system, the New York city board of education retirement system or the  
6 New York city employees' retirement system, exclusive of the retirement  
7 plans established pursuant to sections 13-156 and 13-157 of the adminis-  
8 trative code of the city of New York.

9 b. "Teachers' retirement system" means the New York city teachers'  
10 retirement system.

11 c. "Eligible employee" means a person who is a member of a retirement  
12 system who is an employee of the city of New York, but such term shall  
13 not include the following persons:

14 (a) elected officials, judges or justices appointed to or serving in a  
15 court of record;

16 (b) chief administrative officers of employers which participate in a  
17 teachers' retirement system;

18 (c) appointed members of boards or commissions any of whose members  
19 are appointed by the governor or by another public officer or body;

20 d. "Eligible title" means any title where a certain number of posi-  
21 tions in that title, as identified by agency, department, work location  
22 or appointing authority of the city of New York, as the case may be,  
23 would otherwise be identified for layoff but for this act because of  
24 economy, consolidation or abolition of functions, curtailment of activ-  
25 ities or otherwise. However, an eligible title can also include a title  
26 as identified by an agency, department, work location or appointing  
27 authority of the city of New York in which positions would not be elimi-  
28 nated but into which employees in titles affected by layoff can be  
29 transferred or reassigned pursuant to the civil service law, rule or  
30 regulation. The determination of eligible titles shall be made by the  
31 chief executive officer of the city of New York.

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

41 f. "Open period" means the period beginning with the commencement date  
42 as defined in subdivision g of this section and shall not be more than  
43 ninety days nor less than thirty days in length, as specified by the  
44 city of New York. For the purposes of retirement pursuant to this act, a  
45 service retirement application must be filed with the appropriate  
46 retirement system not less than fourteen days prior to the effective  
47 date of retirement to become effective, unless a shorter period of time  
48 is permitted under law.

49 g. "Commencement date" means the first day the retirement incentive  
50 authorized by this act shall be made available, which shall mean a date  
51 or dates on or after the effective date of this act to be determined by  
52 the chief executive officer of the city of New York. The chief executive  
53 officer shall notify the heads of the appropriate retirement systems of  
54 the dates of each open period prior to the commencement dates of such  
55 periods.

1 § 2. The determination of whether a title shall be considered eligible  
2 shall consider whether the reduction of a specific number of positions  
3 within a title would unacceptably:

4 a. Directly result in a reduction of the level of service required or  
5 mandated to protect and care for clients of the city of New York or to  
6 assure public health and safety;

7 b. Endanger the health or safety of employees of the city of New York;

8 or

9 c. Clearly result in a loss of significant revenue to the city of New  
10 York or result in substantially increased overtime or contractual costs.  
11 However, any title may be determined eligible if the vacancies created  
12 can be controlled by the use of transfer or reassignment provisions of  
13 the civil service law, rules or regulations or other deployment of city  
14 employees.

15 § 3. a. Eligibility for inclusion in the retirement incentive provided  
16 by section six of this act shall be determined by seniority for employ-  
17 ees of the city of New York; seniority shall mean the date of original  
18 permanent appointment in the civil service of the city adjusted to  
19 include veteran's credits for those entitled to receive such credits  
20 pursuant to sections 80, 80-a and 85, if applicable, of the civil  
21 service law, as established in the official records of the New York city  
22 department of citywide administrative services, regardless of the juris-  
23 dictional classification of the position or the status of the incumbent.

24 b. All eligible employees serving in eligible titles desiring to avail  
25 themselves of the retirement incentive provided by section six of this  
26 act shall provide written notice to his or her employer on or before the  
27 twenty-first day preceding the end of the open period. Failure to  
28 provide such written notice shall render the employee ineligible for the  
29 retirement incentive provided by this act.

30 § 4. a. On or after the effective date of this act, the city of New  
31 York may elect to provide its employees the retirement incentive author-  
32 ized by this act by the enactment of a local law, provided however, no  
33 local law enacted pursuant to this section shall in any manner supersede  
34 any local charter. The local law shall specify the commencement date of  
35 the program and the length of the open period or periods. A copy of  
36 such law shall be filed with the appropriate retirement system or  
37 systems, and, if applicable, on forms provided by such system. The local  
38 law or resolution shall be accompanied by the affidavit of the chief  
39 executive officer certifying to the information contained in subdivision  
40 c of this section.

41 b. The commencement date of an open period for eligible employees of a  
42 retirement system of the city of New York who elects retirement benefits  
43 pursuant to this section may be up to one hundred eighty days after the  
44 end of the open period for other eligible employees, if requested by  
45 such system.

46 c. Notwithstanding any other provision of law, the benefits provided  
47 by this act shall not be made available to any person who (a) has  
48 received any retirement incentive authorized by any provision of state  
49 law, or (b) who receives, has received or is eligible to receive a  
50 payment in a lump sum or in another form from a retirement incentive  
51 pursuant to the provisions of a collective bargaining agreement or by  
52 other arrangement with his or her employer, unless such person files a  
53 written statement with his or her employer, a copy of which shall be  
54 forwarded to the appropriate retirement system, that he or she agrees to  
55 waive any right to such payment. If the city of New York has offered a  
56 retirement incentive pursuant to the provisions of a collective bargain-

1 ing agreement or by other arrangement, such city shall prepare, and file  
2 with each retirement system, a list containing the names and social  
3 security numbers of all persons described in this subdivision. The city  
4 is authorized, however, to exempt persons in its employ from the  
5 provisions of paragraph (b) of this subdivision. Such exemption shall be  
6 made part of the election made pursuant to this section.

7 § 5. Notwithstanding any other provision of law, any eligible employee  
8 serving in an eligible title who:

9 a. has been continuously in the active service of the city of New York  
10 prior to the commencement date of the applicable open period;

11 b. files an application for service retirement that is effective  
12 during the open period; and

13 c. is otherwise eligible for a service retirement as of the effective  
14 date of the application for retirement shall be entitled to the retire-  
15 ment incentive provided in section six of this act. If not otherwise  
16 eligible for a service retirement, the following person shall be deemed  
17 to satisfy the eligibility condition of this section: a person who is at  
18 least age fifty with ten or more years service as of the effective date  
19 of retirement (other than a member of a retirement plan which provides  
20 for half-pay pension upon completion of twenty-five years or less  
21 service without regard to age); or a member of a retirement plan which  
22 provides for half-pay pension upon completion of twenty-five years of  
23 service without regard to age who has not accrued, excluding additional  
24 credit granted pursuant to this act, the minimum number of years of  
25 service required to retire with an allowance equal to fifty percent of  
26 final average salary under such plan, but has, with the inclusion of the  
27 additional credit provided under this act, accrued such number of years  
28 of credit.

29 § 6. Notwithstanding any other provision of law, an eligible employee  
30 serving in an eligible title who is a member of a retirement system of  
31 the city of New York and employed by the city of New York and who is  
32 entitled to a retirement incentive pursuant to section five of this act  
33 shall receive a retirement incentive of one-twelfth of a year of addi-  
34 tional retirement credit for each year of pension service credited as of  
35 the date of retirement, up to a maximum of three years of retirement  
36 service credit at the time of retirement, provided, however, that  
37 service credit provided under the provisions of sections 902 and 911 of  
38 the retirement and social security law shall not be included when calcu-  
39 lating the additional retirement credit awarded pursuant to this act.  
40 For the New York city teachers' retirement system, the New York city  
41 employees' retirement system and the New York city board of education  
42 retirement system such incentive shall be available for all purposes,  
43 including fulfilling the qualifying service requirements of plan A and  
44 C, if applicable.

45 An eligible employee who is covered by the provisions of article 15 of  
46 the retirement and social security law shall retire under the provisions  
47 of article 15 of the retirement and social security law. The amount of  
48 such benefit for an eligible employee who is covered by article 15 of  
49 the retirement and social security law and retires under the provisions  
50 of this section (other than a member with thirty or more years of  
51 service in the New York city employees' retirement system, the New York  
52 city teachers' retirement system, or the New York city board of educa-  
53 tion retirement system) shall be reduced by six percent for each of the  
54 first two years by which retirement precedes age sixty-two, plus a  
55 further reduction of three percent for each year by which retirement  
56 precedes age sixty, provided, however, the foregoing reductions shall

1 not apply: (i) in any case where an eligible employee can retire after  
2 twenty-five years of service with immediate payability prior to the age  
3 of sixty-two pursuant to section 604-b of the retirement and social  
4 security law or (ii) to any time period subsequent to the point at which  
5 an eligible employee can retire for service without reduction of his or  
6 her service retirement allowance pursuant to article 16 of the retire-  
7 ment and social security law. Such reduction shall be prorated for  
8 partial years. The amount of such benefit for an eligible employee with  
9 thirty or more years of service who is a member of the New York city  
10 employees' retirement system, the New York city teachers' retirement  
11 system, or the New York city board of education retirement system, or an  
12 eligible employee who is a participant in the optional twenty-five year  
13 early retirement program for certain New York city members governed by  
14 section 604-c of the retirement and social security law, as added by  
15 chapter 96 of the laws of 1995 or a twenty-five year participant in the  
16 age fifty-five retirement program governed by section 604-i of the  
17 retirement and social security law, with twenty-five or more years of  
18 service and who is covered by article 15 of the retirement and social  
19 security law shall be reduced by five percent for each year by which  
20 retirement pursuant to this section precedes age fifty-five. The amount  
21 of such benefit for an eligible New York city employee with five or more  
22 years of service and who is a participant in the age fifty-seven retire-  
23 ment program governed by section 604-d of the retirement and social  
24 security law shall be reduced by one-thirtieth for the first two years  
25 by which retirement precedes age fifty-seven plus a further reduction of  
26 one-twentieth for each year by which retirement precedes age fifty-five.  
27 Such reduction shall be prorated for partial years. There shall be no  
28 reduction for an eligible New York city employee in a physically taxing  
29 position with twenty-five or more years of service and who is a partic-  
30 ipant (i) in the optional twenty-five year early retirement program for  
31 certain members governed by section 604-c of the retirement and social  
32 security law, as added by chapter 96 of the laws of 1995, or (ii) in the  
33 age fifty-seven retirement program governed by section 604-d of the  
34 retirement and social security law.

35 An eligible employee serving in an eligible title who is covered by  
36 article 11 of the retirement and social security law shall retire under  
37 the provisions of such article. There shall be no reduction in retire-  
38 ment benefit provided that such employee retires with thirty or more  
39 years of service at age fifty-five or older.

40 An eligible employee serving in an eligible title who is not covered  
41 by article 11 or 15 of the retirement and social security law shall  
42 retire under the provisions of the plan by which he or she is covered.  
43 The amount of such benefit shall be reduced by five percent for each  
44 year by which retirement pursuant to this section precedes age fifty-  
45 five, provided, however, the foregoing reductions shall not apply: (i)  
46 in any case where an eligible employee can retire pursuant to a plan  
47 which permits retirement for service with immediate payability, exclu-  
48 sive of this act, prior to the age of fifty-five or (ii) to any time  
49 period subsequent to the point at which an eligible employee can retire  
50 for service without reduction of his or her service retirement allowance  
51 pursuant to article 16 of the retirement and social security law. Such  
52 reduction shall be prorated for partial years.

53 An eligible employee serving in an eligible title who participates in  
54 a retirement plan which provides for a retirement allowance equal to  
55 fifty percent of final average salary upon the completion of twenty-five  
56 years of service without regard to age and who is otherwise eligible to

1 retire shall retire under the provisions of such plan. Such employee  
2 shall, at the time of retirement, be credited with one-twelfth of a year  
3 of additional retirement service credit for each year of service credit-  
4 ed under such plan as of the date of retirement, up to a maximum of  
5 three years of retirement service credit. If such employee has not  
6 accrued, excluding additional credit granted pursuant to this act, the  
7 minimum number of years of service required to retire with an allowance  
8 equal to fifty percent of final average salary under such plan, but has,  
9 with the inclusion of the additional credit provided under this act,  
10 accrued such number of years of credit, the benefit payable shall be the  
11 percentage of final average salary that would ordinarily be applicable  
12 to such individual upon retirement with such amount of credit (including  
13 incentive credit), reduced by five per centum per year for each year by  
14 which the number of years of service otherwise required to retire with  
15 an allowance equal to fifty percent of final average salary under such  
16 plan exceeds the amount of service credited to such employee under such  
17 plan at retirement (excluding the additional retirement incentive  
18 service credit provided pursuant to this act). Such reduction shall be  
19 prorated for partial years.

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

28 b. An employee of the city of New York who retires under the retire-  
29 ment incentive provided by this act, who is eligible for terminal leave  
30 pursuant to an applicable collective bargaining agreement or a personnel  
31 policy or rule or retirement leave pursuant to section 3107 of the  
32 education law or who has an accrued annual leave balance on the effec-  
33 tive date of retirement shall be paid in three equal installments two  
34 months, fourteen months and twenty-four months following such eligible  
35 employee's effective date of retirement.

36 § 8. a. The city of New York, if it elects the retirement incentive  
37 provided by this act shall be required to demonstrate the savings of  
38 their election by either eliminating positions vacated as a result of an  
39 eligible employee in an eligible title receiving the incentive provided  
40 by section six of this act or demonstrating a compensation savings such  
41 that the total amount of base salary paid for the two-year period subse-  
42 quent to the effective date of retirement for such eligible employees in  
43 eligible titles to new hires, if any, who otherwise would not have been  
44 hired by such employer after the effective date of this act but for the  
45 retirement incentive provided herein shall be no more than one-half of  
46 the total amount of base salary that would have been paid to such eligi-  
47 ble employees from their date of retirement for such two-year period.  
48 The city may also demonstrate savings, however, by identifying a vacant  
49 position into which another employee can be appointed, transferred, or  
50 reassigned pursuant to the civil service law, rules or regulations, in  
51 which case the former position of the employee so appointed, trans-  
52 ferred, or reassigned shall be eliminated. The city shall make avail-  
53 able its plans for achieving the savings described herein.

54 b. The New York city department of citywide administrative services  
55 shall prepare a report designating the title, grade level, salary, and  
56 classification, according to appointing authority, (i) of each position

1 which is eliminated pursuant to subdivision a of this section, (ii) of  
2 each position into which another employee was appointed, transferred, or  
3 reassigned and the former position of such employee, and (iii) of each  
4 position which is eliminated as a result of an appointment, transfer or  
5 reassignment referred to in paragraph (ii) of this subdivision. Such  
6 report shall be available no later than ninety days after the last date  
7 of the open period related to such positions.

8 § 9. Nothing in this act shall be used to provide benefits that shall  
9 exceed the limits contained in section 415 of the internal revenue code.  
10 Provided, however, any service retirement benefit which has been reduced  
11 because of section 415 of the internal revenue code shall be increased  
12 when (and consistent with) the dollar limits in section 415 of the  
13 internal revenue code are adjusted by the internal revenue service for  
14 cost of living increases. Such increases shall not increase the benefit  
15 in excess of the service retirement benefit otherwise payable.

16 § 10. Any eligible employee who retires pursuant to the provisions of  
17 this act and enters or reenters public service as defined in subdivision  
18 e of section 210 of the retirement and social security law and joins or  
19 rejoins any public retirement system of the city of New York shall if  
20 the additional benefit was provided pursuant to: (a) section six of this  
21 act, forfeit the additional benefit authorized by this act at the time  
22 of his or her subsequent retirement; or (b) repay to the city such addi-  
23 tional contribution together with the appropriate interest as determined  
24 by the appropriate retirement system.

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

31 § 12. The provisions of section 430 of the retirement and social secu-  
32 rity law shall not apply to any benefit or benefit improvement provided  
33 by this act.

34 § 13. The pension benefit costs of section six of this act shall be  
35 paid by the city of New York as provided by applicable law for each  
36 retirement system covered by this act over a period not to exceed five  
37 years commencing in the fiscal year following the fiscal year in which  
38 this act shall have become a law.

39 § 14. Where an employee is eligible to receive the benefit authorized  
40 under section six and the retirement benefit provided for under section  
41 five of part B of this act, such employee may elect a section under  
42 which he or she will participate. In no event shall the benefits  
43 provided for in section six of this act be received by any employee in  
44 conjunction with the benefits of section five of part B of this act.

45 § 15. This act shall take effect immediately.

46 PART B

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

49 a. "Retirement system" means the New York city teachers' retirement  
50 system, the New York city board of education retirement system or the  
51 New York city employees' retirement system, exclusive of the retirement  
52 plans established pursuant to sections 13-156 and 13-157 of the adminis-  
53 trative code of the city of New York.

54 b. "Teachers' retirement system" means the New York city teachers'  
55 retirement system.

1 c. "Eligible employee" means a person who is a member of a retirement  
2 system of the city of New York who has attained age fifty-five and has  
3 at least twenty-five years of creditable service in a retirement system,  
4 but such term shall not include the following persons:

5 (a) elected officials, judges or justices appointed to or serving in  
6 court of record;

7 (b) chief administrative officers of employers which participate in a  
8 teachers' retirement system;

9 (c) appointed members of boards or commissions any of whose members  
10 are appointed by the governor or by another public officer or body;

11 d. "Active service" means service while being paid on the payroll,  
12 provided that (a) a leave of absence with pay shall be deemed active  
13 service; (b) other approved leave without pay not to exceed twelve weeks  
14 prior to and the commencement of the designated open period; and (c) the  
15 period of time subsequent to a June school term and on or before August  
16 31 of the year for which an open period is designated for a teacher (or  
17 other employee employed on a school-year basis) who is otherwise in  
18 active service on the effective date of this act shall be deemed active  
19 service.

20 e. "Open period" means the period beginning with the commencement date  
21 as defined in subdivision f of this section and shall be ninety days in  
22 length, as specified by the city of New York. For the purposes of  
23 retirement pursuant to this act, a service retirement application must  
24 be filed with the appropriate retirement system not less than fourteen  
25 days prior to the effective date of retirement to become effective,  
26 unless a shorter period of time is permitted under law.

27 f. "Commencement date" means the first day the retirement benefit  
28 mandated by this act shall be made available, which shall mean a date or  
29 dates on or after the effective date of this act to be determined by the  
30 chief executive officer of the city of New York. The chief executive  
31 officer shall notify the head of the appropriate retirement system of  
32 the date of the open periods prior to the commencement dates of such  
33 periods.

34 § 2. The city of New York, if it elects to participate pursuant to  
35 section three of this act shall establish a commencement date for the  
36 retirement benefit established under section five of this act by the  
37 chief executive officer issuing an executive order establishing such  
38 commencement date, provided, however, no executive order shall in any  
39 manner supersede any local charter. A copy of any such executive order  
40 establishing a commencement date shall be filed with the appropriate  
41 retirement system or systems, and, if applicable, on forms provided by  
42 such system. The executive order shall be accompanied by the affidavit  
43 of the chief executive officer certifying the commencement date.

44 § 3. a. On or after the effective date of this act, the city of New  
45 York may elect to provide its employees the retirement incentive author-  
46 ized by this act by the enactment of a local law provided however, no  
47 local law enacted pursuant to this section shall in any manner supersede  
48 any local charter. A copy of such law or resolution shall be filed with  
49 the appropriate retirement system or systems, and, if applicable, on  
50 forms provided by such system. The local law shall be accompanied by the  
51 affidavit of the chief executive officer certifying the validity of such  
52 law.

53 b. The commencement date of an open period for eligible employees of a  
54 retirement system of the city of New York who elects retirement benefits  
55 pursuant to this section may be up to one hundred eighty days after the



1 end of the open period for other eligible employees, if requested by  
2 such system.

3 § 4. Notwithstanding any other provision of law, any eligible employee  
4 who (a) has been continuously in the active service of the city of New  
5 York prior to the commencement date of the applicable open period, (b)  
6 files an application for service retirement that is effective during the  
7 open period, and (c) is otherwise eligible for a service retirement as  
8 of the effective date of the application for retirement shall be enti-  
9 tled to the retirement benefit provided in section five of this act.

10 § 5. a. Notwithstanding any other provision of law, an eligible  
11 employee who is: (a) a member of a retirement system of the city of New  
12 York and employed by the city of New York and (b) who is entitled to a  
13 retirement benefit pursuant to section four of this act may retire  
14 during the open period without the reduction of his or her retirement  
15 benefit that would otherwise be imposed by article 11 or 15 of the  
16 retirement and social security law if he or she has attained the age of  
17 fifty-five and has completed at least twenty-five or more years of cred-  
18 itable service. An eligible employee who is covered by the provisions of  
19 articles 11 and 15 of the retirement and social security law shall  
20 retire under the provisions of articles 11 and 15 of the retirement and  
21 social security law.

22 b. The chief executive officer of the city of New York may deny  
23 participation in the retirement benefit provided by subdivision a of  
24 this section if the chief executive officer makes a determination that  
25 the employee holds a position that is deemed critical to the maintenance  
26 of public health and safety.

27 c. Where an employee is eligible for the retirement benefit under this  
28 section and the retirement incentive authorized pursuant to section six  
29 of part A of this act, such employee shall elect a section under which  
30 he or she will participate. The benefits provided by subdivision a of  
31 this section shall not be conditioned upon the city of New York making  
32 the benefits of section six of part A of this act available to employees  
33 in their employ. Further, the benefits provided by subdivision a of this  
34 section shall not be available in conjunction with the benefits of  
35 section six of part A of this act.

36 d. The action of the chief executive officer of the city of New York  
37 in denying the retirement benefit provided for in subdivision a of this  
38 section to any individual shall be subject to review in the manner  
39 provided for in article 78 of the civil practice law and rules. Such  
40 action for review pursuant to article 78 of the civil practice law and  
41 rules shall only be commenced by the individual that was denied the  
42 retirement benefit provided by subdivision a of this section.

43 e. After making any such determination under subdivision b of this  
44 section the chief executive officer of the city of New York shall notify  
45 the appropriate retirement system or teachers' retirement system of its  
46 determination.

47 § 6. The pension benefit costs of section five of this act shall be  
48 paid by the city of New York as provided by applicable law for each  
49 retirement system covered by this act over a period not to exceed five  
50 years commencing in the fiscal year following the fiscal year in which  
51 this act shall have become a law.

52 § 7. This act shall take effect immediately.

53 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-  
54 sion, section or part of this act shall be adjudged by any court of  
55 competent jurisdiction to be invalid, such judgment shall not affect,  
56 impair, or invalidate the remainder thereof, but shall be confined in

1 its operation to the clause, sentence, paragraph, subdivision, section  
 2 or part thereof directly involved in the controversy in which such judg-  
 3 ment shall have been rendered. It is hereby declared to be the intent of  
 4 the legislature that this act would have been enacted even if such  
 5 invalid provisions had not been included herein.

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

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

SUMMARY OF BILL: This proposed legislation, as it relates to the New York City Retirement Systems (NYCRS), would provide for a temporary Early Retirement Incentive Program (ERI Program) to allow certain members of the New York City Employees' Retirement System (NYCERS), the New York City Teachers' Retirement System (TRS), and the New York City Board of Education Retirement System (BERS), who are employees of the City of New York (City) and meet enumerated criteria, to elect immediate retirement with enhanced benefits.

The ERI Program consists of two parts and is contingent upon the City's election to participate in the Program. Part A would provide to eligible members, determined by title, seniority, and enumerated policy considerations, an additional service credit. Part B would remove the application of early retirement reduction factors for qualifying members. The benefits of the respective Parts cannot be combined.

Eligible NYCRS members would have anywhere from 30 to 90 days in an open period to elect and retire under Part A or within a 90-day open period following the commencement date to retire under Part B of the ERI Program. Multiple open periods, not to exceed 180 days from the end of an open period for other employees, may be requested by the NYCRS. Should the City elect to participate in the ERI Program provided by this Act, it would be required to demonstrate the savings related to the election.

A member is eligible to participate in Part A of the ERI Program if he or she:

- \* Is otherwise eligible for service retirement;
- \* Is at least age 50 with 10 or more years of service and is not in a plan which permits retirement at half-pay with 25 or fewer years of service without regard to age; or
- \* Is in a plan that permits retirement at half-pay at 25 years of service without regard to age and would reach 25 years of service considering the additional service credit provided in Part A.

A member is eligible to participate in Part B of the ERI Program if he or she is age 55 or older and has at least 25 years of service.

In addition to the eligibility conditions above, members must also:

- \* Be in continuous active service preceding the commencement date of the open period;
- \* For Part A - provide timely written notice of the intent to avail himself or herself of the ERI and file for service retirement that is effective within the open period;
- \* For Part B - file for service retirement that is effective within the open period and otherwise be eligible to retire for service as of the effective date of retirement.

Effective Date: Upon enactment and as determined by the respective open periods contained in Parts A and B.

IMPACT ON BENEFITS: Part A would provide one-twelfth of a year of additional retirement service credit for each year of pension service, up to a maximum of three years of additional retirement service credit.

Some benefits provided under Part A could be subject to Early Retirement Factors (ERF) as specified in the proposed legislation.

Part B would allow members to retire with an unreduced benefit if they are at least age 55 with 25 or more years of service.

FINANCIAL IMPACT - OVERVIEW: There is no credible data available to estimate the number of members who will retire under the current ERI Program and potentially benefit from this proposed legislation. Therefore, the estimated financial impact has been calculated on a per event basis equal to the average increase in the Present Value of future employer contributions and in the annual employer contributions for members who would benefit from the proposed legislation.

The Present Value of future employer contributions is the net result of the increase in the Present Value of Future Benefits (PVFB) and the decrease in the Present Value of member contributions.

For the purposes of this Fiscal Note, the increase in Present Value of future employer contributions was amortized over a five-year period (four payments under the One-Year Lag Methodology (OYLM)) using level dollar payments, the maximum allowable period under the proposed legislation. This amortized value is the estimated increase in annual employer contributions.

There will also be future savings in Employer Contributions assuming that these members are not replaced. This additional savings is not included here.

With respect to an individual member, the additional cost of this proposed legislation could vary greatly depending on the member's length of service, age, and salary history.

FINANCIAL IMPACT - SUMMARY: Based on the census data and the actuarial assumptions and methods described herein, the enactment of this proposed legislation would result in an increase in the Present Value of Employer Contributions and annual employer contributions. The estimated pension financial impact has been calculated as the average increase per person. A breakdown of the financial impact by NYCERS is shown in the table below:

NYCERS	Additional Present Value of Future Employer Contributions (\$ Per Person)	Estimated Annual Employer Contributions (\$ Per Person)
Part A Only		
NYCERS	\$78,000	\$23,800
TRS	82,200	25,100
BERS	37,300	11,400
Average	\$75,500	\$23,100
Part B Only		
NYCERS	\$109,800	\$33,500
TRS	65,600	20,000
BERS	95,100	29,000
Average	\$105,500	\$32,200
Both A & B		
NYCERS	\$93,400	\$28,500
TRS	82,400	25,200
BERS	43,200	13,200
Average	\$85,100	\$26,000

CONTRIBUTION TIMING: For the purposes of this Fiscal Note, it is assumed that the changes in the Present Value of future employer contributions and annual employer contributions would be reflected for the first time in the Final June 30, 2019 actuarial valuations of NYCERS, TRS, and BERS. In accordance with the OYLM used to determine employer contributions, the increase in employer contributions would first be reflected in Fiscal Year 2021.

CENSUS DATA: The estimates presented herein are based on the census data used in the Preliminary June 30, 2019 (Lag) actuarial valuations of NYCERS, TRS, and BERS to determine the Preliminary Fiscal Year 2021 employer contributions.

The table below contains the census data for members who meet the eligibility requirements and would be impacted by the proposed legislation (Potential Elections), and for a subset of those members who would benefit actuarially (Assumed to Elect).

NYCRS		Potential Elections		
Part A Only	Count	Avg Age	Avg Svc	Avg Salary
NYCERS	34,147	58.5	22.3	\$83,900
TRS	31,727	57.7	21.2	101,300
BERS	9,736	60.2	15.8	49,900
Total	75,610	58.4	21.0	\$86,800
Part B Only	Count	Avg Age	Avg Svc	Avg Salary
NYCERS	5,990	58.2	30.2	\$88,600
TRS	569	58.0	26.9	110,100
BERS	430	58.6	29.5	72,700
Total	6,989	58.2	29.9	\$89,400
Both A & B	Count	Avg Age	Avg Svc	Avg Salary
NYCERS	34,147	58.5	22.3	\$83,900
TRS	31,727	57.7	21.2	101,300
BERS	9,736	60.2	15.8	49,900
Total	75,610	58.4	21.0	\$86,800
Assumed to Elect				
	Count	Avg Age	Avg Svc	Avg Salary
	19,077	60.4	26.4	\$87,600
	11,372	61.2	27.1	109,100
	3,218	63.6	21.8	51,900
	33,667	61.0	26.2	\$91,400
	Count	Avg Age	Avg Svc	Avg Salary
	5,941	58.2	30.2	\$88,400
	530	57.9	26.9	109,900
	423	58.6	29.5	71,500
	6,894	58.2	29.9	\$89,000
	Count	Avg Age	Avg Svc	Avg Salary
	20,035	60.2	26.5	\$88,000
	11,525	61.2	27.1	109,200
	3,231	63.5	21.8	52,200
	34,791	60.8	26.3	\$91,700

ACTUARIAL ASSUMPTIONS AND METHODS: The changes in the Present Value of future employer contributions and annual employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the June 30, 2019 (Lag) actuarial valuations

used to determine the Preliminary Fiscal Year 2021 employer contributions of NYCERS, TRS, and BERS.

To determine the impact of the elective nature of the proposed legislation, a subgroup based on who could potentially benefit actuarially was used. The Present Value of future employer costs (i.e. the PVFB less the Present Value of future member contributions) of each member's benefit was determined under their current plan and as if retiring immediately under the ERI Program. If the Present Value of future employer cost under the ERI Program was greater than or equal to the Present Value of future employer cost under the member's current plan, then the member was deemed to benefit actuarially.

Based on this analysis, the costs presented in this Fiscal Note are borne only from current NYCERS, TRS, and BERS members who are employed by the City and assumed to benefit from, and thus opt to retire under, the ERI Program.

**RISK AND UNCERTAINTY:** The costs presented in this Fiscal Note depend highly on the realization of the actuarial assumptions used, as well as certain demographic characteristics of NYCERS, TRS, and BERS, and other exogenous factors such as investment, contribution, and other risks. If actual experience deviates from actuarial assumptions, the actual costs could differ from those presented herein. Costs are also dependent on the actuarial methods used, and therefore different actuarial methods could produce different results. Quantifying these risks is beyond the scope of this Fiscal Note.

Not measured in this Fiscal Note are the following:

- \* The offsetting reduction in salary due to retirements earlier than expected.

- \* The impact of potential new hires replacing members who retire due to the ERI Program.

- \* The initial, additional administrative costs to implement the proposed legislation.

- \* The impact of this proposed legislation on Other Postemployment Benefit (OPEB) costs.

**STATEMENT OF ACTUARIAL OPINION:** I, Sherry S. Chan, am the Chief Actuary for, and independent of, the New York City Retirement Systems and Pension Funds. I am a Fellow of the Society of Actuaries, an Enrolled Actuary under the Employee Retirement Income and Security Act of 1974, a Member of the American Academy of Actuaries, and a Fellow of the Conference of Consulting Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein. To the best of my knowledge, the results contained herein have been prepared in accordance with generally accepted actuarial principles and procedures and with the Actuarial Standards of Practice issued by the Actuarial Standards Board.

**FISCAL NOTE IDENTIFICATION:** This Fiscal Note 2020-61 dated September 16, 2020 was prepared by the Chief Actuary for the New York City Employees' Retirement System, the New York City Teachers' Retirement System, and the New York City Board of Education Retirement System. This estimate is intended for use only during the 2020 Legislative Session.