

STATE OF NEW YORK

8586

IN SENATE

June 16, 2020

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

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

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

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

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

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

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PART A

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

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

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

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

d. "State employer" means (a) the executive branch of the state, (b) the state-operated institutions of the state university of New York, (c) the statutory and contract colleges operated pursuant to section 357 of the education law, (d) the state university construction fund (hereinafter referred to in this act as the "fund"), (e) a cooperative extension association (hereinafter referred to in this act as the "association"), (f) the city university of New York as defined in subdivision 2 of section 6202 of the education law, (g) the unified court system, (h) the senate, (i) the assembly, and (j) joint legislative employers.

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

(b) "Educational employer" means a participating employer which is a school district, a board of cooperative educational services, a vocational education and extension board, an institution for the instruction of the deaf and of the blind as enumerated in section 4201 of the education law, or a school district as enumerated in section 1 of chapter 566 of the laws of 1967, as amended.

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

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

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

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

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

(e) nonjudicial officers and employees of the unified court system unless the chief administrator of the courts elects as provided herein, which election shall cover only nonjudicial officers and employees hold-

ing positions in any title in the classified service of the unified court system;

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

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

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

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

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

(iii) with respect to officers or employees of components of the assembly as identified pursuant to section 90 of the legislative law, the assembly adopts a resolution authorizing the speaker of the assembly to file an election for officers or employees of those components designated in such resolution.

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

For the purposes of such paragraphs (f), (g) or (h) of this subdivision, an employee of the legislature shall be as such term is defined in section 7-a, 7-b or 7-d of the legislative law or by any other provision of law which classifies employees of an entity to be legislative employees for all purposes, but shall not include senators or members of the assembly. The term "joint legislative employer" shall mean legislative commissions, committees, task forces, councils or similar bodies whose membership is comprised of both senators and assembly members, or which consist of commissioners, or the majority of whose membership is appointed by one or more of the following: the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, and/or the minority leader of the assembly. The temporary president of the senate and the speaker of the assembly shall be the joint legislative employer of the employees of the legislature referred to in sections 7-a and 7-b of the legislative law.

g. "Eligible title" means any title where a certain number of positions in that title, as identified by agency, department, work location or appointing authority, college or campus, as the case may be, would otherwise be identified for layoff but for this act because of economy, consolidation or abolition of functions, curtailment of activities or otherwise. However, an eligible title can also include a title as identified by agency, department, work location or appointing authority in

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

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

20 i. "Active service" means service while being paid on the payroll,
21 provided that (a) a leave of absence with pay shall be deemed active
22 service; (b) other approved leave without pay not to exceed twelve weeks
23 from February 1, 2020 and the commencement of the designated open peri-
24 od; and (c) the period of time subsequent to the June 2020 school term
25 and on or before August 31, 2020 for a teacher (or other employee
26 employed on a school-year basis) who is otherwise in active service on
27 February 1, 2020 shall be deemed active service.

28 j. "Open period" means the period beginning with the commencement
29 date as defined in subdivision k of this section and shall not be more
30 than ninety days nor less than thirty days in length, as specified by
31 the director of state operations or by a participating employer pursuant
32 to section four of this act, by the appropriate board of trustees for
33 the state university (including the association), the fund, the city
34 university of New York or a community college operating under a program
35 of the state university or by a state employer described in paragraphs
36 (g), (h), (i) and (j) of subdivision d of this section; provided however
37 that any such period shall not extend beyond September 30, 2020 for the
38 executive branch of a state employer described in paragraphs (a) and (b)
39 of subdivision d of this section (except for college faculty), not
40 beyond December 31, 2020 for participating employers, college faculty
41 for a state employer described in paragraph (b) of subdivision d of this
42 section, state employers described in paragraphs (c), (d) and (e) of
43 subdivision d of this section, not beyond January 31, 2021 for college
44 faculty of an employer described in paragraph (f) of subdivision d of
45 this section, and not beyond August 31, 2020 for educational employers.
46 For the purposes of retirement pursuant to this act, a service retire-
47 ment application must be filed with the appropriate retirement system
48 not less than fourteen days prior to the effective date of retirement to
49 become effective, unless a shorter period of time is permitted under
50 law.

51 k. "Commencement date" means the first day the retirement incentive
52 authorized by this act shall be made available, which shall mean a date
53 on or after the effective date of this act to be determined by the
54 director of state operations for the executive branch of the state, and
55 which date shall occur no later than thirty days before September 30,
56 2020 or for any participating employer a date on or after the effective

1 date of this act. For any other state employer, such term shall mean a
2 date on or after the effective date of this act and shall occur no later
3 than thirty days before September 30, 2020. The director of state oper-
4 ations shall notify the head of the appropriate retirement system of the
5 date of each open period applicable to employees of the executive branch
6 or of a state employer prior to the commencement date.

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

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

13 b. Endanger the health or safety of employees of the state or a
14 participating employer; or

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

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

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

48 § 4. a. On or before August 31, 2020, a participating employer or a
49 state employer described in paragraphs (b), (c), (d), (e) and (f) of
50 subdivision d of section one of this act may elect to provide its
51 employees the retirement incentive authorized by this act by (a) the
52 enactment of a local law or (b) in the case of a participating employer
53 which is not so empowered to act by local law or a state employer
54 described in paragraphs (b), (c), (d), (e) and (f) of subdivision d of
55 section one of this act, by the adoption of a resolution of its govern-
56 ing body; provided however, no local law or resolution enacted pursuant

1 to this section shall in any manner supersede any local charter,
2 provided further, that for an educational employer such election must be
3 made by July 30, 2020. The local law or resolution shall specify the
4 commencement date of the program and the length of the open period. For
5 a community college operating under the program of state university of
6 New York, such election shall be made by the board of trustees of such
7 community college subject to the approval of its sponsor. A copy of such
8 law or resolution shall be filed with the appropriate retirement system
9 or systems, and, if applicable, on forms provided by such system. The
10 local law or resolution shall be accompanied by the affidavit of the
11 chief executive officer or other comparable official certifying to the
12 information contained in subdivision b of this section.

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

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

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

41 a. has been continuously in the active service of a state employer or
42 of a participating employer from February 1, 2020 to the date immedi-
43 ately prior to the commencement date of the applicable open period;

44 b. files an application for service retirement (or files the appropri-
45 ate application and authorization form with the optional retirement
46 program and a duly acknowledged retirement incentive form for such
47 program with the appropriate personnel office) that is effective during
48 the open period; and

49 c. is otherwise eligible for a service retirement as of the effective
50 date of the application for retirement shall be entitled to the retire-
51 ment incentive provided in section six of this act. If not otherwise
52 eligible for a service retirement, the following person shall be deemed
53 to satisfy the eligibility condition of this section: a person who is at
54 least age fifty with ten or more years service as of the effective date
55 of retirement (other than a member of a retirement plan which provides
56 for half-pay pension upon completion of twenty-five years or less

1 service without regard to age); a member of a retirement plan which
2 provides for half-pay pension upon completion of twenty-five years of
3 service without regard to age who has not accrued, excluding additional
4 credit granted pursuant to this act, the minimum number of years of
5 service required to retire with an allowance equal to fifty percent of
6 final average salary under such plan, but has, with the inclusion of the
7 additional credit provided under this act, accrued such number of years
8 of credit; or a participant in an optional retirement plan at least
9 fifty years of age with ten years of service on an annual salary basis
10 with his or her employer as of the date of retirement.

11 § 6. Notwithstanding any other provision of law, an eligible employee
12 serving in an eligible title who is:

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

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

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

14 An eligible employee serving in an eligible title who is covered by
15 article 11 of the retirement and social security law shall retire under
16 the provisions of such article. The amount of such benefit for an eligi-
17 ble employee covered by article 11 of the retirement and social security
18 law other than a member of a teachers' retirement system or a member of
19 the New York state and local employees' retirement system with thirty or
20 more years of service, a participant in the optional age fifty-five
21 improved benefit retirement program for certain New York city employees
22 governed by section 445-d of the retirement and social security law, as
23 added by chapter 96 of the laws of 1995, with twenty-five or more years
24 of service, or a participant in the optional age fifty-five retirement
25 program for New York city teachers and certain other members governed by
26 section 445-i of the retirement and social security law, with twenty-
27 five or more years of service, shall be reduced by six percent for each
28 of the first two years by which retirement pursuant to this section
29 precedes age sixty-two, plus a further reduction of three percent for
30 each year by which retirement pursuant to this section precedes age
31 sixty, provided, however, the foregoing reductions shall not apply: (i)
32 in any case where an eligible employee can retire pursuant to a plan
33 which permits retirement for service with immediate payability, exclu-
34 sive of this act, prior to the age of fifty-five or (ii) to any time
35 period subsequent to the point at which an eligible employee can retire
36 for service without reduction of his or her service retirement allowance
37 pursuant to article 16 of the retirement and social security law. Such
38 reduction shall be prorated for partial years. The amount of such bene-
39 fit for an eligible employee who is a member of a teachers' retirement
40 system or a member of the New York state and local employees' retirement
41 system with thirty or more years of service, a participant in the
42 optional age fifty-five improved benefit retirement program for certain
43 New York city employees governed by section 445-d of the retirement and
44 social security law, as added by chapter 96 of the laws of 1995, with
45 twenty-five or more years of service, or a participant in the optional
46 age fifty-five retirement program for New York city teachers and certain
47 other members governed by section 445-i of the retirement and social
48 security law, with twenty-five or more years of service and who is
49 covered by article 11 of the retirement and social security law shall be
50 reduced by five percent for each year by which retirement pursuant to
51 this section precedes age fifty-five. Such reduction shall be prorated
52 for partial years. There shall be no reduction for an eligible New York
53 city employee in a physically taxing position and who is a participant
54 in the optional age fifty-five improved benefit retirement program for
55 certain New York city employees governed by section 445-d of the retire-

1 ment and social security law, as added by chapter 96 of the laws of
2 1995, with twenty-five or more years of service.

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

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

40 b. A participant in an optional retirement program who is entitled to
41 a retirement incentive pursuant to section five of this act shall
42 receive an additional employer contribution equal to an amount, which
43 shall be calculated as follows: (one-twelfth for each year of service)
44 multiplied by (fifteen percent) multiplied by (the employee's earnable
45 annual salary rate in effect on March 1, 2020 or the effective date of
46 this act if the employee retires prior to March 1, 2020), such amount
47 not to exceed forty-five percent of such salary rate. Such contribution
48 shall be made to the employee's retirement annuity under the optional
49 retirement program up to the maximum contribution allowable under
50 section 415 of the internal revenue code. Any contribution in excess of
51 that limit shall be contributed by the employer to an internal revenue
52 code section 403(b) contract on behalf of the employee to the extent it
53 can be contributed on a before-tax basis under the maximum limits
54 allowed under the internal revenue code. Contributions in excess of that
55 amount shall be paid in cash to the participant in three equal install-
56 ments during a twenty-four month period commencing on such eligible

1 employee's effective date of retirement. Provided, however, if the
2 employee is employed by the city university of New York and in the
3 active service of such employer on October 1, 2020 or the effective date
4 of this act if the employee retires prior to October 1, 2020, the
5 employee's earnable annual salary rate shall be the annual salary rate
6 in effect on such applicable date.

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

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

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

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

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

48 § 9. Notwithstanding any inconsistent provision of section eight of
49 this act or any other provision of law:

50 a. A participating employer or a state employer described in para-
51 graphs (b) through (e) of subdivision d of section one of this act shall
52 not be required to eliminate the positions of eligible employees in
53 eligible titles receiving the retirement incentive provided by section
54 six of this act if such employer can demonstrate that it will achieve a
55 compensation savings such that the total amount of base salary paid for
56 the two-year period subsequent to the effective date of retirement for

1 such eligible employees in eligible titles to those new hires, if any,
2 who otherwise would not have been hired by such employer after the
3 effective date of this act but for the retirement incentive provided
4 herein shall be no more than one-half of the total amount of base salary
5 that would have been paid to such eligible employees from their date of
6 retirement for such two-year period. Each such employer shall make
7 available its plans for achieving these savings.

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

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

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

48 § 11. Any eligible employee who retires pursuant to the provisions of
49 this act and enters or reenters public service as defined in subdivision
50 e of section 210 of the retirement and social security law and joins or
51 rejoins any public retirement system of the state as defined in subdivi-
52 sion 6 of section 152 of the retirement and social security law or
53 elects to participate in an optional retirement program shall if the
54 additional benefit was provided pursuant to: (a) subdivision a of
55 section six of this act, forfeit the additional benefit authorized by
56 this act at the time of his or her subsequent retirement; or (b) subdivi-

vision b of section six of this act, repay to the state or participating employer such additional contribution together with the appropriate interest as determined by the state comptroller.

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

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

§ 14. The pension benefit costs of subdivision a of section six of this act shall be paid by employers as provided by applicable law for each retirement system covered by this act over a period not to exceed five years commencing in the state fiscal year ending March 31, 2022.

§ 15. Where an employee is eligible to receive the benefit authorized under section six and the retirement benefit provided for under section five of part B of the chapter of the laws of 2020 which added this part, such employee may elect a section under which he or she will participate.

§ 16. This act shall take effect immediately.

PART B

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

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

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

c. "State employer" means (a) the executive branch of the state, (b) the state-operated institutions of the state university of New York, (c) the statutory and contract colleges operated pursuant to section 357 of the education law, (d) the state university construction fund (hereinafter referred to in this act as the "fund"), (e) a cooperative extension association (hereinafter referred to in this act as the "association"), and (f) the city university of New York as defined in subdivision 2 of section 6202 of the education law, (g) the unified court system, (h) the senate, (i) the assembly, and (j) joint legislative employers.

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

(b) "Educational employer" means a participating employer which is a school district, a board of cooperative educational services, a vocational education and extension board, an institution for the instruction of the deaf and of the blind as enumerated in section 4201 of the education law, or a school district as enumerated in section 1 of chapter 566 of the laws of 1967, as amended.

1 e. "Eligible employee" means a person who is a member of a retirement
2 system who is an employee in the executive branch of a state employer or
3 an employee of a state employer or a participating employer who has
4 attained age fifty-five and has at least twenty-five years of creditable
5 service in a retirement system, but such term shall not include the
6 following persons:

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

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

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

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

18 (e) nonjudicial officers and employees of the unified court system
19 unless the chief administrator of the courts elects as provided herein,
20 which election shall cover only nonjudicial officers and employees hold-
21 ing positions in any title in the classified service of the unified
22 court system;

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

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

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

30 (i) with respect to officers or employees of the legislative library,
31 legislative messenger service, legislative health service, legislative
32 ethics committee, the legislative bill drafting commission, and the
33 joint line of the legislative task force on demographic research and
34 reapportionment, the senate and assembly adopt a concurrent resolution
35 authorizing the temporary president of the senate and the speaker of the
36 assembly to jointly file an election as provided in this subdivision;

37 (ii) with respect to officers or employees of components of the senate
38 as identified pursuant to section 90 of the legislative law, the senate
39 adopts a resolution authorizing the temporary president to file an
40 election for officers or employees of those components designated in
41 such resolution; and

42 (iii) with respect to officers or employees of components of the
43 assembly as identified pursuant to section 90 of the legislative law,
44 the assembly adopts a resolution authorizing the speaker of the assembly
45 to file an election for officers or employees of those components desig-
46 nated in such resolution.

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

53 For the purposes of such paragraph (f), (g) or (h) of this subdivi-
54 sion, an employee of the legislature shall be as such term is defined in
55 section 7-a, 7-b or 7-d of the legislative law or by any other provision
56 of law which classifies employees of an entity to be legislative employ-

ees for all purposes, but shall not include senators or members of the assembly. The term "joint legislative employer" shall mean legislative commissions, committees, task forces, councils or similar bodies whose membership is comprised of both senators and assembly members, or which consist of commissioners, or the majority of whose membership is appointed by one or more of the following: the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, and/or the minority leader of the assembly. The temporary president of the senate and the speaker of the assembly shall be the joint legislative employer of the employees of the legislature referred to in sections 7-a and 7-b of the legislative law.

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

g. "Active service" means service while being paid on the payroll, provided that (a) a leave of absence with pay shall be deemed active service; (b) other approved leave without pay not to exceed twelve weeks from February 1, 2020 and the commencement of the designated open period; and (c) the period of time subsequent to the June 2020 school term and on or before August 31, 2020 for a teacher (or other employee employed on a school-year basis) who is otherwise in active service on the effective date of this act shall be deemed active service.

h. "Open period" means the period beginning with the commencement date as defined in subdivision i of this section and shall be ninety days in length; provided however that there shall be only one such open period and any such period shall not extend beyond September 30, 2020 for a state employer and December 31, 2020 for a participating employer. For educational employers who make election after June 1, 2020, the open period shall begin immediately after such election, and shall not extend beyond August 31, 2020. For the purposes of retirement pursuant to this act, a service retirement application must be filed with the appropriate retirement system not less than fourteen days prior to the effective date of retirement to become effective, unless a shorter period of time is permitted under law.

i. "Commencement date" means the first day the retirement benefit mandated by this act shall be made available, which shall mean a date or dates on or after the effective date of this act to be determined by the director of state operations for the executive branch of the state, or for any other state employer or any participating employer which elects to participate pursuant to section three of this act a date on or after the effective date of this act; provided, however, that for an educational employer which elects to participate pursuant to section three of this act, the commencement date shall be June 1, 2020; or immediately after election of the retirement incentive for educational employers who elect after June 1, 2020 and provided, further that for participating employers which elect to participate pursuant to section three of this act, except the city of New York and participating employers which are not empowered to act by local law, the commencement date shall be October 1, 2020. The director of state operations shall notify the head of the appropriate retirement system of the date of the open period applicable to employees of the executive branch or of a state employer prior to the commencement date.

§ 2. a. A state employer which elects to participate pursuant to section three of this act, participating employer which is not empowered

1 to act by local law which elects to participate pursuant to section
2 three of this act, or the city of New York, if it elects to participate
3 pursuant to section three of this act shall establish a commencement
4 date for the retirement benefit established under section five of this
5 act in the following manner: (a) for the executive branch, the director
6 of state operations shall establish the commencement date in writing to
7 the appropriate retirement system; (b) for state employers described in
8 paragraphs (b), (c), (d), (e) and (f) of subdivision c of section one of
9 this act and participating employers that are not empowered to act by
10 local law, its governing body shall adopt a resolution establishing a
11 commencement date; (c) for state employers described in paragraphs (g),
12 (h), (i) and (j) of subdivision c of section one of this act, the person
13 or persons who make the election to offer the retirement incentive
14 pursuant to part A of the chapter of the laws of 2020 which added this
15 part shall establish a commencement date in writing to the appropriate
16 retirement system; and (d) for the city of New York, the chief executive
17 officer shall issue an executive order establishing the commencement
18 date, provided, however, no executive order, in the case of the city of
19 New York issued pursuant to this section, shall in any manner supersede
20 any local charter. A copy of any such resolution or executive order in
21 the case of the city of New York establishing a commencement date shall
22 be filed with the appropriate retirement system or systems, and, if
23 applicable, on forms provided by such system. The resolution or execu-
24 tive order in the case of the city of New York shall be accompanied by
25 the affidavit of the chief executive officer or other comparable offi-
26 cial certifying the commencement date.

27 b. A state employer, participating employer which is not empowered to
28 act by local law which elects to participate pursuant to section three
29 of this act, or the city of New York if it elects to participate pursu-
30 ant to section three of this act shall be required to establish a
31 commencement date under paragraph a of this subdivision for the retire-
32 ment benefit established under section five of this act. In the event
33 that a state employer, participating employer which is not empowered to
34 act by local law which elects to participate pursuant to section three
35 of this act, or the city of New York if it elects to participate pursu-
36 ant to section three of this act fails to establish a commencement date
37 for the retirement benefit established under section five of this act,
38 the commencement date for the eligible employees of a state employer
39 shall be July 1, 2020. The commencement date for the eligible employees
40 of all other employers referenced in this subdivision shall be September
41 1, 2020.

42 § 3. On or before September 1, 2020, a participating employer or a
43 state employer described in paragraphs (b), (c), (d), (e) and (f) of
44 subdivision c of section one of this act may elect to provide its
45 employees the retirement incentive authorized by this act by (a) the
46 enactment of a local law or (b) in the case of a participating employer
47 which is not so empowered to act by local law or a state employer
48 described in paragraphs (b), (c), (d), (e) and (f) of subdivision c of
49 section one of this act, by the adoption of a resolution of its govern-
50 ing body; provided however, no local law or resolution enacted pursuant
51 to this section shall in any manner supersede any local charter,
52 provided further, that for an educational employer such election must be
53 made by July 1, 2020. For a community college operating under the
54 program of state university of New York, such election shall be made by
55 the board of trustees of such community college subject to the approval
56 of its sponsor. A copy of such law or resolution shall be filed with the

1 appropriate retirement system or systems, and, if applicable, on forms
2 provided by such system. The local law or resolution shall be accompa-
3 nied by the affidavit of the chief executive officer or other comparable
4 official certifying the validity of such local law or resolution. The
5 executive branch of the state shall be deemed to have made an election
6 under this section upon its enactment.

7 § 4. Notwithstanding any other provision of law, any eligible employee
8 who (a) has been continuously in the active service of a state employer
9 or of a participating employer from February 1, 2020 to the date imme-
10 diately prior to the commencement date of the applicable open period,
11 (b) files an application for service retirement that is effective during
12 the open period, and (c) is otherwise eligible for a service retirement
13 as of the effective date of the application for retirement shall be
14 entitled to the retirement benefit provided in section five of this act.

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

26 b. The director of state operations, the chief executive officer of
27 the city of New York, or chief executive officer or governing board, as
28 appropriate, of the participating employer may deny participation in the
29 retirement benefit provided by subdivision a of this section if the
30 director of state operations, the chief executive officer of New York
31 city or the chief executive officer or governing board of the partic-
32 ipating employer makes a determination that the employee holds a posi-
33 tion that is deemed critical to the maintenance of public health and
34 safety.

35 c. Where an employee is eligible for the retirement benefit under this
36 section and the retirement incentive authorized pursuant to section six
37 of part A of the chapter of the laws of 2020 which added this part, such
38 employee shall elect a section under which he or she will participate.
39 The benefits provided by subdivision a of this section shall not be
40 conditioned upon a state or participating employer making the benefits
41 of section six of part A of this act available to employees in their
42 employ. Further, the benefits provided by subdivision a of this section
43 shall not be available in conjunction with the benefits of section six
44 of part A of the chapter of the laws of 2020 which added this part.

45 d. The action of the director of state operations, the chief executive
46 officer of the city of New York, or chief executive officer or governing
47 board, as appropriate, of the participating employer in denying the
48 retirement benefit provided for in subdivision a of this section to any
49 individual shall be subject to review in the manner provided for in
50 article 78 of the civil practice law and rules. Such action for review
51 pursuant to article seventy-eight of the civil practice law and rules
52 shall only be commenced by the individual that was denied the retirement
53 benefit provided by subdivision a of this section.

54 e. After making any such determination under subdivision b of this
55 section, the director of state operations, the chief executive officer
56 of the city of New York and the chief executive officer or governing

1 board, as appropriate, of the participating employer shall notify the
2 appropriate retirement system or teachers' retirement system of its
3 determination.

4 § 6. The pension benefit costs of section five of this act shall be
5 paid by employers as provided by applicable law for each retirement
6 system covered by this act over a period not to exceed five years
7 commencing in the state fiscal year ending March 31, 2022.

8 § 7. This act shall take effect immediately.

9 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-
10 sion, section or part of this act shall be adjudged by any court of
11 competent jurisdiction to be invalid, such judgment shall not affect,
12 impair, or invalidate the remainder thereof, but shall be confined in
13 its operation to the clause, sentence, paragraph, subdivision, section
14 or part thereof directly involved in the controversy in which such judg-
15 ment shall have been rendered. It is hereby declared to be the intent of
16 the legislature that this act would have been enacted even if such
17 invalid provisions had not been included herein.

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

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

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

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

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

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

We anticipate that the per-member cost (at retirement) of the additional service credit benefit will average approximately 65% of a member's final average salary. This cost will be borne by each employer electing the incentive over a period not to exceed five years commencing with a payment in the State fiscal year ending March 31, 2022.

We anticipate that the per-member cost (at retirement) of the elimination of the early retirement reductions at 25 years of service instead of at 30 years of service will average approximately 110% of a member's final average salary. This cost will be borne by each employer electing

the incentive over a period not to exceed five years commencing with a payment in the State fiscal year ending March 31, 2022.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2019 actuarial valuation. Distributions and other statistics can be found in the 2019 Report of the Actuary and the 2019 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2015, 2016, 2017, 2018, and 2019 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes, Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2019 New York State and Local Retirement System Financial Statements and Supplementary Information.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This fiscal note does not constitute a legal opinion on the viability of the proposed change nor is it intended to serve as a substitute for the professional judgment of an attorney.

This estimate, dated June 1, 2020, and intended for use only during the 2020 Legislative Session, is Fiscal Note No. 2020-116, prepared by the Actuary for the New York State and Local Retirement System.