

# STATE OF NEW YORK

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8801

## IN SENATE

July 17, 2020

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

AN ACT in relation to enabling public employers to offer certain temporary retirement incentives for certain public employees

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

1 Section 1. Legislative findings. The legislature finds and declares  
2 that the state is experiencing economic difficulties and in order to  
3 avoid layoffs of public employees, a retirement incentive is necessary.  
4 However, nothing in this act shall be construed to create an expectation  
5 of a future or continuing retirement benefit for any public employee who  
6 is not eligible to receive and qualify for the retirement benefits in  
7 this act during the applicable time periods.

8 § 2. Definitions. For purposes of this act, the following terms shall  
9 have the following meanings:

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

17 (b) "State employer" means:

18 (1) the executive branch of the state;

19 (2) the state-operated institutions of the state university of New  
20 York;

21 (3) the statutory and contract colleges operated pursuant to section  
22 357 of the education law;

23 (4) the state university construction fund (hereinafter referred to in  
24 this act as the "fund");

25 (5) a cooperative extension association (hereinafter referred to in  
26 this act as the "association");

27 (6) the city university of New York as defined in subdivision 2 of  
28 section 6202 of the education law;

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

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- (7) the unified court system;
- (8) the senate;
- (9) the assembly; and
- (10) joint legislative employers.

(c) "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.

(d) "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 pursuant to section 4201 of the education law, or a school district pursuant to section 1 of chapter 566 of the laws of 1967, as amended.

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

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

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

(iii) officers described in sections 4, 41-a, 46, 61, 70, 70-a, 169 (including those officers whose salary is established pursuant to salary plans described in 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;

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

(v) 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 holding positions in any title in the classified service of the unified court system;

(vi) 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;

(vii) 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

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

a. with respect to officers or employees of the legislative library, legislative messenger service, legislative health service, legislative ethics committee, 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;

b. 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

1 c. with respect to officers or employees of components of the assembly  
2 as identified pursuant to section 90 of the legislative law, the assem-  
3 bly adopts a resolution authorizing the speaker of the assembly to file  
4 an election for officers or employees of those components designated in  
5 such resolution.

6 (2) Any election under subparagraphs (v) through (viii) of paragraph  
7 one of this subdivision to make available the retirement incentive  
8 provided by this act shall be in writing and filed with the state comp-  
9 troller not later than ninety days after the effective date of this act.  
10 Notwithstanding any other provision of this act, each such filing shall  
11 specify the commencement date of the open period.

12 (3) For the purposes of paragraph (vi), (vii) or (viii) of paragraph  
13 one of this subdivision, an employee of the legislature shall be as such  
14 term is defined in section 7-a, 7-b or 7-d of the legislative law or by  
15 any other provision of law which classifies employees of an entity to be  
16 legislative employees for all purposes, but shall not include senators  
17 or members of the assembly. The term "joint legislative employer" shall  
18 mean legislative commissions, committees, task forces, councils or simi-  
19 lar bodies whose membership is comprised of both senators and assembly  
20 members, or which consist of commissioners, or the majority of whose  
21 membership is appointed by one or more of the following: the temporary  
22 president of the senate, the speaker of the assembly, the minority lead-  
23 er of the senate, and/or the minority leader of the assembly. The tempo-  
24 rary president of the senate and the speaker of the assembly shall be  
25 the joint legislative employer of the employees of the legislature  
26 referred to in sections 7-a and 7-b of the legislative law.

27 (f) "College faculty" means an employee, not in the classified  
28 service, of a state employer described in paragraphs 2, 3, 4, 5 and 6 of  
29 subdivision (b) of this section or of a community college who is a  
30 member of a teachers' retirement system, or the New York state and local  
31 employees' retirement system.

32 (g) "Active service" means service while being paid on the payroll,  
33 provided that:

34 (1) a leave of absence with pay shall be deemed active service;

35 (2) other approved leave without pay not to exceed twelve weeks from  
36 February 1, 2020 and the commencement of the designated open period; and

37 (3) the period of time subsequent to the June 2020 school term and on  
38 or before August 31, 2020 for a teacher (or other employee employed on a  
39 school-year basis) who is otherwise in active service on the effective  
40 date of this act shall be deemed active service.

41 (h) "Open period" means the period beginning with the commencement  
42 date as defined in subdivision (i) of this section and shall be ninety  
43 days in length, provided however that there shall be only one such open  
44 period and any such period shall not extend beyond September 30, 2020  
45 for a state employer and December 31, 2020 for a participating employer.  
46 For educational employers who make election after July 15, 2020, the  
47 open period shall begin immediately after such election, and shall not  
48 extend beyond October 15, 2020. For the purposes of retirement pursuant  
49 to this act, a service retirement application shall be filed with the  
50 appropriate retirement system not less than fourteen days prior to the  
51 effective date of retirement to become effective, unless a shorter peri-  
52 od of time is permitted under law.

53 (i) "Commencement date" means the first day the retirement benefit  
54 mandated by this act shall be made available, which shall mean a date or  
55 dates on or after the effective date of this act to be determined by the  
56 director of state operations for the executive branch of the state, or

1 for any other state employer or any participating employer which elects  
2 to participate pursuant to section four of this act, a date on or after  
3 the effective date of this act, provided, however, that for an educa-  
4 tional employer which elects to participate pursuant to subdivision (d)  
5 of this section, the commencement date shall be July 15, 2020 or imme-  
6 diately after election of the retirement incentive for educational  
7 employers who elect after July 15, 2020 and provided, further that for  
8 participating employers which elect to participate pursuant to section  
9 four of this act, except the city of New York and participating employ-  
10 ers which are not empowered to act by local law, the commencement date  
11 shall be November 1, 2020. The director of state operations shall notify  
12 the head of the appropriate retirement system of the date of the open  
13 period applicable to employees of the executive branch or of a state  
14 employer prior to the commencement date.

15 § 3. (a) A state employer which elects to participate pursuant to  
16 section four of this act, a participating employer which is not  
17 empowered to act by local law which elects to participate pursuant to  
18 section four of this act, or the city of New York, if it elects to  
19 participate pursuant to section four of this act shall establish a  
20 commencement date for the retirement benefit established under section  
21 six of this act in the following manner:

22 (1) for the executive branch, the director of state operations shall  
23 establish the commencement date in writing to the appropriate retirement  
24 system;

25 (2) for state employers described in paragraphs 2, 3, 4, 5 and 6 of  
26 subdivision (b) of section two of this act and participating employers  
27 that are not empowered to act by local law, its governing body shall  
28 adopt a resolution establishing a commencement date;

29 (3) for state employers described in paragraphs 7, 8, 9 and 10 of  
30 subdivision (b) of section two of this act, the person or persons who  
31 make the election to offer the retirement incentive shall establish a  
32 commencement date in writing to the appropriate retirement system; and

33 (4) for the city of New York, the chief executive officer shall issue  
34 an executive order establishing the commencement date, provided, howev-  
35 er, no executive order, in the case of the city of New York issued  
36 pursuant to this section, shall in any manner supersede any local char-  
37 ter. A copy of any such resolution or executive order in the case of  
38 the city of New York establishing a commencement date shall be filed  
39 with the appropriate retirement system or systems, and, if applicable,  
40 on forms provided by such system. The resolution or executive order in  
41 the case of the city of New York shall be accompanied by the affidavit  
42 of the chief executive officer or other comparable official certifying  
43 the commencement date.

44 (b) A state employer, participating employer which is not empowered to  
45 act by local law which elects to participate pursuant to section four of  
46 this act, or the city of New York if it elects to participate pursuant  
47 to section four of this act shall be required to establish a commence-  
48 ment date under subdivision (a) of this section for the retirement bene-  
49 fit established under section six of this act. In the event that a state  
50 employer, a participating employer which is not empowered to act by  
51 local law which elects to participate pursuant to section four of this  
52 act, or the city of New York if it elects to participate pursuant to  
53 section four of this act fails to establish a commencement date for the  
54 retirement benefit established under section six of this act, the  
55 commencement date for the eligible employees of a state employer shall  
56 be July 15, 2020. The commencement date for the eligible employees of

1 all other employers referenced in this subdivision shall be September 1,  
2 2020.

3 § 4. On or before September 1, 2020, a participating employer or a  
4 state employer described in paragraphs 2, 3, 4, 5 and 6 of subdivision  
5 (b) of section two of this act may elect to provide its employees the  
6 retirement incentive authorized by this act by:

7 (a) the enactment of a local law; or

8 (b) in the case of a participating employer which is not so empowered  
9 to act by local law or a state employer described in paragraphs 2, 3, 4,  
10 5 and 6 of subdivision (b) of section two of this act, by the adoption  
11 of a resolution of its governing body, provided however, no local law or  
12 resolution enacted pursuant to this section shall in any manner super-  
13 sede any local charter, provided further, that for an educational  
14 employer such election shall be made thirty days after the effective  
15 date of this act. For a community college operating under the program  
16 of state university of New York, such election shall be made by the  
17 board of trustees of such community college subject to the approval of  
18 its sponsor. A copy of such law or resolution shall be filed with the  
19 appropriate retirement system or systems, and, if applicable, on forms  
20 provided by such system. The local law or resolution shall be accompa-  
21 nied by the affidavit of the chief executive officer or other comparable  
22 official certifying the validity of such local law or resolution. The  
23 executive branch of the state shall be deemed to have made an election  
24 under this section upon its enactment.

25 § 5. Notwithstanding any other provision of law, any eligible employee  
26 who has been continuously in the active service of a state employer or  
27 of a participating employer from February 1, 2020 to the date immedi-  
28 ately prior to the commencement date of the applicable open period, files  
29 an application for service retirement that is effective during the open  
30 period, and is eligible for a service retirement pursuant to this act  
31 because he or she has attained the age of fifty and has at least twen-  
32 ty-five years of creditable service or has attained the age of fifty-  
33 five and has at least ten years of creditable service, as of the effec-  
34 tive date of the application for retirement shall be entitled to the  
35 retirement benefit provided in section six of this act.

36 § 6. (a) Notwithstanding any other provision of law, an eligible  
37 employee who is a member of a retirement system and who is entitled to a  
38 retirement benefit pursuant to section five of this act may retire  
39 during the open period without the reduction of his or her retirement  
40 benefit that would otherwise be imposed by article 11 or 15 of the  
41 retirement and social security law if he or she has attained the age of  
42 fifty and has completed at least twenty-five years of creditable service  
43 or has attained the age of fifty-five and has completed at least ten  
44 years of creditable service. An eligible employee who is covered by the  
45 provisions of articles 11 and 15 of the retirement and social security  
46 law shall retire under the provisions of articles 11 and 15 of the  
47 retirement and social security law.

48 (b) The director of state operations, the chief executive officer of  
49 the city of New York, or chief executive officer or governing board, as  
50 appropriate, of the participating employer may deny participation in the  
51 retirement benefit provided by subdivision (a) of this section if the  
52 director of state operations, the chief executive officer of New York  
53 city or the chief executive officer or governing board of the partic-  
54 ipating employer makes a determination that the employee holds a posi-  
55 tion that is deemed critical to the maintenance of public health and  
56 safety.

1 (c) The action of the director of state operations, the chief execu-  
2 tive officer of the city of New York, or chief executive officer or  
3 governing board, as appropriate, of the participating employer in deny-  
4 ing the retirement benefit provided for in subdivision (a) of this  
5 section to any individual shall be subject to review in the manner  
6 provided for in article 78 of the civil practice law and rules. Such  
7 action for review pursuant to article 78 of the civil practice law and  
8 rules shall only be commenced by the individual that was denied the  
9 retirement benefit provided by subdivision (a) of this section.

10 (d) After making any such determination under subdivision (b) of this  
11 section, the director of state operations, the chief executive officer  
12 of the city of New York and the chief executive officer or governing  
13 board, as appropriate, of the participating employer shall notify the  
14 appropriate retirement system or teachers' retirement system of its  
15 determination.

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

20 § 8. Section 50 of the legislative law shall not apply to the  
21 provisions of this act.

22 § 9. Severability clause. If any clause, sentence, paragraph, subdivi-  
23 sion, section or part of this act shall be adjudged by any court of  
24 competent jurisdiction to be invalid, such judgment shall not affect,  
25 impair, or invalidate the remainder thereof, but shall be confined in  
26 its operation to the clause, sentence, paragraph, subdivision, section  
27 or part thereof directly involved in the controversy in which such judg-  
28 ment shall have been rendered. It is hereby declared to be the intent of  
29 the legislature that this act would have been enacted even if such  
30 invalid provisions had not been included herein.

31 § 10. This act shall take effect immediately.