STATE OF NEW YORK

2722--A

2021-2022 Regular Sessions

IN SENATE

January 22, 2021

Introduced by Sens. HARCKHAM, MANNION, MARTUCCI, MAYER, SANDERS, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

§ 2. Legislative findings. The legislature finds and declares that the retirement benefits provided for in this act are designed to achieve cost-savings for public employers and to avoid layoffs of public employees in this time of fiscal need. Therefore, the retirement incentive benefit provided for in Part A of this act and the age 55/25 years retirement benefit provided for in Part B of this act are intended only to be temporary in nature for employees who are eligible to receive and

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

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qualify for the applicable benefit during the applicable time periods specified within each Part. Further, nothing in this act shall be construed to create an expectation of a future or continuing retirement benefit for any public employee who is not eligible to receive and qualify for the retirement benefits in this act during the applicable time periods.

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

h. "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 d of this section or of a community college who is a member of a teachers' retirement system, the New York state and local employees' retirement system or a participant in an optional retirement program.

i. "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, 2021 and the commencement of the designated open period; and (c) the period of time subsequent to the June 2021 school term and on or before August 31, 2021 for a teacher (or other employee employed on a school-year basis) who is otherwise in active service on February 1, 2021 shall be deemed active service.

j. "Open period" means the period beginning with the commencement date as defined in subdivision k of this section and shall not be more than ninety days nor less than thirty days in length, as specified by the director of state operations or by a participating employer pursuant to section four of this act, by the appropriate board of trustees for the state university (including the association), the fund, the city university of New York or a community college operating under a program of the state university or by a state employer described in paragraphs (g), (h), (i) and (j) of subdivision d of this section; provided however that any such period shall not extend beyond September 30, 2021 for the executive branch of a state employer described in paragraphs (a) and (b) of subdivision d of this section (except for college faculty), not beyond December 31, 2021 for participating employers, college faculty for a state employer described in paragraph (b) of subdivision d of this section, state employers described in paragraphs (c), (d) and (e) of subdivision d of this section, not beyond January 31, 2022 for college faculty of an employer described in paragraph (f) of subdivision d of this section, and not beyond August 31, 2021 for educational employers. 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.

k. "Commencement date" means the first day the retirement incentive authorized by this act shall be made available, which shall mean a date 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, and which date shall occur no later than thirty days before September 30, 2021 or for any participating employer a date on or after the effective date of this act. For any other state employer, such term shall mean a date on or after the effective date of this act and shall occur no later than thirty days before September 30, 2021. The director of state operations shall notify the head of the appropriate retirement system of the date of each open period applicable to employees of the executive branch or of a state employer prior to the commencement date.

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

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

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

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

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

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

§ 4. a. On or before August 31, 2021, a participating employer or a state employer described in paragraphs (b), (c), (d), (e) and (f) of subdivision d of section one of this act may elect to provide its employees the retirement incentive authorized by this act by (a) the enactment of a local law or (b) in the case of a participating employer which is not so empowered to act by local law or a state employer described in paragraphs (b), (c), (d), (e) and (f) of subdivision d of section one of this act, by the adoption of a resolution of its governing body; provided however, no local law or resolution enacted pursuant to this section shall in any manner supersede any local charter, provided further, that for an educational employer such election must be made by July 30, 2021. The local law or resolution shall specify the commencement date of the program and the length of the open period. For a community college operating under the program of state university of New York, such election shall be made by the board of trustees of such community college subject to the approval of its sponsor. A copy of such law or resolution shall be filed with the appropriate retirement system or systems, and, if applicable, on forms provided by such system. The local law or resolution shall be accompanied by the affidavit of the chief executive officer or other comparable official certifying to the information contained in subdivision b of this section.

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

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

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

a. has been continuously in the active service of a state employer or of a participating employer from February 1, 2021 to the date immediately prior to the commencement date of the applicable open period;

b. files an application for service retirement (or files the appropriate application and authorization form with the optional retirement program and a duly acknowledged retirement incentive form for such

program with the appropriate personnel office) that is effective during the open period; and

c. is otherwise eligible for a service retirement as of the effective date of the application for retirement shall be entitled to the retirement incentive provided in section six of this act. If not otherwise eligible for a service retirement, the following person shall be deemed to satisfy the eligibility condition of this section: a person who is at least age fifty with ten or more years service as of the effective date of retirement (other than a member of a retirement plan which provides for half-pay pension upon completion of twenty-five years or less service without regard to age); a member of a retirement plan which provides for half-pay pension upon completion of twenty-five years of service without regard to age who has not accrued, excluding additional credit granted pursuant to this act, the minimum number of years of service required to retire with an allowance equal to fifty percent of final average salary under such plan, but has, with the inclusion of the additional credit provided under this act, accrued such number of years of credit; or a participant in an optional retirement plan at least fifty years of age with ten years of service on an annual salary basis with his or her employer as of the date of retirement.

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

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

An eligible employee who is covered by the provisions of article 15 of the retirement and social security law shall retire under the provisions of article 15 of the retirement and social security law. The amount of such benefit for an eligible employee who is covered by article 15 of the retirement and social security law and retires under the provisions of this section (other than a member with thirty or more years of service in the New York state and local employees' retirement system or a teachers' retirement system) shall be reduced by six percent for each of the first two years by which retirement precedes age sixty-two, plus a further reduction of three percent for each year by which retirement precedes age sixty, provided, however, the foregoing reductions shall not apply: (i) in any case where an eligible employee can retire after twenty-five years of service with immediate payability prior to the age of sixty-two pursuant to section 604-b of the retirement and social security law or (ii) to any time period subsequent to the point at which an eligible employee can retire for service without reduction of his or her service retirement allowance pursuant to article 16 of the retirement and social security law. Such reduction shall be prorated for partial years. The amount of such benefit for an eligible employee with thirty or more years of service who is a member of the New York state and local employees' retirement system or a teachers' retirement system

or an eligible employee who is a participant in the optional twenty-five year early retirement program for certain New York city members governed by section 604-c of the retirement and social security law, as added by chapter 96 of the laws of 1995 or a twenty-five year participant in the age fifty-five retirement program governed by section 604-i of the retirement and social security law, with twenty-five or more years of service and who is covered by article 15 of the retirement and social security law shall be reduced by five percent for each year by which retirement pursuant to this section precedes age fifty-five. The amount of such benefit for an eligible New York city employee with five or more years of service and who is a participant in the age fifty-seven retirement program governed by section 604-d of the retirement and social security law shall be reduced by one-thirtieth for the first two years by which retirement precedes age fifty-seven plus a further reduction of one-twentieth for each year by which retirement precedes age fifty-five. Such reduction shall be prorated for partial years. There shall be no reduction for an eligible New York city employee in a physically taxing position with twenty-five or more years of service and who is a participant (i) in the optional twenty-five year early retirement program for certain members governed by section 604-c of the retirement and social security law, as added by chapter 96 of the laws of 1995, or (ii) in the age fifty-seven retirement program governed by section 604-d of the retirement and social security law.

An eligible employee serving in an eligible title who is covered by article 11 of the retirement and social security law shall retire under the provisions of such article. The amount of such benefit for an eligible employee covered by article 11 of the retirement and social security law other than a member of a teachers' retirement system or a member of the New York state and local employees' retirement system with thirty or more years of service, a participant in the optional age fifty-five improved benefit retirement program for certain New York city employees governed by section 445-d of the retirement and social security law, as added by chapter 96 of the laws of 1995, with twenty-five or more years of service, or a participant in the optional age fifty-five retirement program for New York city teachers and certain other members governed by section 445-i of the retirement and social security law, with twenty-five or more years of service, shall be reduced by six percent for each of the first two years by which retirement pursuant to this section precedes age sixty-two, plus a further reduction of three percent for each year by which retirement pursuant to this section precedes age sixty, provided, however, the foregoing reductions shall not apply: (i) in any case where an eligible employee can retire pursuant to a plan which permits retirement for service with immediate payability, exclusive of this act, prior to the age of fifty-five or (ii) to any time period subsequent to the point at which an eligible employee can retire for service without reduction of his or her service retirement allowance pursuant to article 16 of the retirement and social security law. Such reduction shall be prorated for partial years. The amount of such benefit for an eligible employee who is a member of a teachers' retirement system or a member of the New York state and local employees' retirement system with thirty or more years of service, a participant in the optional age fifty-five improved benefit retirement program for certain New York city employees governed by section 445-d of the retirement and social security law, as added by chapter 96 of the laws of 1995, with twenty-five or more years of service, or a participant in the optional age fifty-five retirement program for New York city teachers and certain

other members governed by section 445-i of the retirement and social security law, with twenty-five or more years of service and who is covered by article 11 of the retirement and social security law shall be reduced by five percent for each year by which retirement pursuant to this section precedes age fifty-five. Such reduction shall be prorated for partial years. There shall be no reduction for an eligible New York city employee in a physically taxing position and who is a participant in the optional age fifty-five improved benefit retirement program for certain New York city employees governed by section 445-d of the retirement and social security law, as added by chapter 96 of the laws of 1995, with twenty-five or more years of service.

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

An eligible employee serving in an eligible title who participates in a retirement plan which provides for a retirement allowance equal to fifty percent of final average salary upon the completion of twenty-five years of service without regard to age and who is otherwise eligible to retire shall retire under the provisions of such plan. Such employee shall, at the time of retirement, be credited with one-twelfth of a year of additional retirement service credit for each year of service credited under such plan as of the date of retirement, up to a maximum of three years of retirement service credit, subject to the provisions of subdivision b of this section. If such employee has not accrued, excluding additional credit granted pursuant to this act, the minimum number of years of service required to retire with an allowance equal to fifty percent of final average salary under such plan, but has, with the inclusion of the additional credit provided under this act, accrued such number of years of credit, the benefit payable shall be the percentage of final average salary that would ordinarily be applicable to such individual upon retirement with such amount of credit (including incentive credit), reduced by five per centum per year for each year by which the number of years of service otherwise required to retire with an allowance equal to fifty percent of final average salary under such plan exceeds the amount of service credited to such employee under such plan at retirement (excluding the additional retirement incentive service credit provided pursuant to this act). Such reduction shall be prorated for partial years.

b. A participant in an optional retirement program who is entitled to a retirement incentive pursuant to section five of this act shall receive an additional employer contribution equal to an amount, which shall be calculated as follows: (one-twelfth for each year of service) multiplied by (fifteen percent) multiplied by (the employee's earnable annual salary rate in effect on March 1, 2021 or the effective date of this act if the employee retires prior to March 1, 2021), such amount not to exceed forty-five percent of such salary rate. Such contribution

shall be made to the employee's retirement annuity under the optional retirement program up to the maximum contribution allowable under section 415 of the internal revenue code. Any contribution in excess of that limit shall be contributed by the employer to an internal revenue code section 403(b) contract on behalf of the employee to the extent it can be contributed on a before-tax basis under the maximum limits allowed under the internal revenue code. Contributions in excess of that amount shall be paid in cash to the participant in three equal installments during a twenty-four month period commencing on such eligible employee's effective date of retirement. Provided, however, if the employee is employed by the city university of New York and in the active service of such employer on October 1, 2021 or the effective date of this act if the employee retires prior to October 1, 2021, the employee's earnable annual salary rate shall be the annual salary rate in effect on such applicable date.

§ 7. a. An employee of a state employer, other than the city university of New York, who retires pursuant to this act may defer calculation of the value of accumulated sick leave credits, if any, and participation in the state health insurance plan.

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

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

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

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

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

a. A participating employer or a state employer described in paragraphs (b) through (e) of subdivision d of section one of this act shall not be required to eliminate the positions of eligible employees in eligible titles receiving the retirement incentive provided by section six of this act if such employer can demonstrate that it will achieve a compensation savings such that the total amount of base salary paid for the two-year period subsequent to the effective date of retirement for such eligible employees in eligible titles to those new hires, if any, who otherwise would not have been hired by such employer after the effective date of this act but for the retirement incentive provided herein shall be no more than one-half of the total amount of base salary that would have been paid to such eligible employees from their date of retirement for such two-year period. Each such employer shall make available its plans for achieving these savings.

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

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

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

§ 11. Any eligible employee who retires pursuant to the provisions of this act and enters or reenters public service as defined in subdivision e of section 210 of the retirement and social security law and joins or rejoins any public retirement system of the state as defined in subdivision 6 of section 152 of the retirement and social security law or elects to participate in an optional retirement program shall if the additional benefit was provided pursuant to: (a) subdivision a of section six of this act, forfeit the additional benefit authorized by this act at the time of his or her subsequent retirement; or (b) subdivision 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, 2023.

§ 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 2021 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.

e. "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 age fifty-five and has at least twenty-five years of creditable service in a retirement system, but such term shall not include the following persons:

(a) elected officials, judges or justices appointed to or serving in 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 holding 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 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;

(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 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 of the open period.

For the purposes of such paragraph (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.

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, 2021 and the commencement of the designated open period; and (c) the period of time subsequent to the June 2021 school term and on or before August 31, 2021 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, 2021 for a state employer and December 31, 2021 for a participating employer. For educational employers who make election after June 1, 2021, the open period shall begin immediately after such election, and shall not extend beyond August 31, 2021. 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, 2021; or immediately after election of the retirement incentive for educational employers who

elect after June 1, 2021 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, 2021. 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 to act by local law which elects to participate pursuant to section three of this act, or the city of New York, if it elects to participate pursuant to section three of this act shall establish a commencement date for the retirement benefit established under section five of this act in the following manner: (a) for the executive branch, the director of state operations shall establish the commencement date in writing to the appropriate retirement system; (b) for state employers described in paragraphs (b), (c), (d), (e) and (f) of subdivision c of section one of this act and participating employers that are not empowered to act by local law, its governing body shall adopt a resolution establishing a commencement date; (c) for state employers described in paragraphs (g), (h), (i) and (j) of subdivision c of section one of this act, the person or persons who make the election to offer the retirement incentive pursuant to part A of the chapter of the laws of 2021 which added this part shall establish a commencement date in writing to the appropriate retirement system; and (d) for the city of New York, the chief executive officer shall issue an executive order establishing the commencement date, provided, however, no executive order, in the case of the city of New York issued pursuant to this section, shall in any manner supersede any local charter. A copy of any such resolution or executive order in the case of the city of New York establishing a commencement date shall be filed with the appropriate retirement system or systems, and, if applicable, on forms provided by such system. The resolution or executive order in the case of the city of New York shall be accompanied by the affidavit of the chief executive officer or other comparable official certifying the commencement date.

b. A state employer, participating employer which is not empowered to act by local law which elects to participate pursuant to section three of this act, or the city of New York if it elects to participate pursuant to section three of this act shall be required to establish a commencement date under paragraph a of this subdivision for the retirement benefit established under section five of this act. In the event that a state employer, participating employer which is not empowered to act by local law which elects to participate pursuant to section three of this act, or the city of New York if it elects to participate pursuant to section three of this act fails to establish a commencement date for the retirement benefit established under section five of this act, the commencement date for the eligible employees of a state employer shall be July 1, 2021. The commencement date for the eligible employees of all other employers referenced in this subdivision shall be September 1, 2021.

§ 3. On or before September 1, 2021, a participating employer or a state employer described in paragraphs (b), (c), (d), (e) and (f) of subdivision c of section one of this act may elect to provide its employees the retirement incentive authorized by this act by (a) the enactment of a local law or (b) in the case of a participating employer

which is not so empowered to act by local law or a state employer described in paragraphs (b), (c), (d), (e) and (f) of subdivision c of section one of this act, by the adoption of a resolution of its governing body; provided however, no local law or resolution enacted pursuant to this section shall in any manner supersede any local charter, provided further, that for an educational employer such election must be made by July 1, 2021. For a community college operating under the program of state university of New York, such election shall be made by the board of trustees of such community college subject to the approval of its sponsor. A copy of such law or resolution shall be filed with the appropriate retirement system or systems, and, if applicable, on forms provided by such system. The local law or resolution shall be accompanied by the affidavit of the chief executive officer or other comparable official certifying the validity of such local law or resolution. The executive branch of the state shall be deemed to have made an election under this section upon its enactment.

§ 4. Notwithstanding any other provision of law, any eligible employee who (a) has been continuously in the active service of a state employer or of a participating employer from February 1, 2021 to the date immediately prior to the commencement date of the applicable open period, (b) files an application for service retirement that is effective during the open period, and (c) is otherwise eligible for a service retirement as of the effective date of the application for retirement shall be entitled to the retirement benefit provided in section five of this act.

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

b. The director of state operations, the chief executive officer of the city of New York, or chief executive officer or governing board, as appropriate, of the participating employer may deny participation in the retirement benefit provided by subdivision a of this section if the director of state operations, the chief executive officer of New York city or the chief executive officer or governing board of the participating employer makes a determination that the employee holds a position that is deemed critical to the maintenance of public health and safety.

c. Where an employee is eligible for the retirement benefit under this section and the retirement incentive authorized pursuant to section six of part A of the chapter of the laws of 2021 which added this part, such employee shall elect a section under which he or she will participate. The benefits provided by subdivision a of this section shall not be conditioned upon a state or participating employer making the benefits of section six of part A of this act available to employees in their employ. Further, the benefits provided by subdivision a of this section shall not be available in conjunction with the benefits of section six of part A of the chapter of the laws of 2021 which added this part.

d. The action of the director of state operations, the chief executive officer of the city of New York, or chief executive officer or governing

board, as appropriate, of the participating employer in denying the retirement benefit provided for in subdivision a of this section to any individual shall be subject to review in the manner provided for in article 78 of the civil practice law and rules. Such action for review pursuant to article seventy-eight of the civil practice law and rules shall only be commenced by the individual that was denied the retirement benefit provided by subdivision a of this section.

e. After making any such determination under subdivision b of this section, the director of state operations, the chief executive officer of the city of New York and the chief executive officer or governing board, as appropriate, of the participating employer shall notify the appropriate retirement system or teachers' retirement system of its determination.

§ 6. The pension benefit costs of section five 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, 2023.

§ 7. This act shall take effect immediately.

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

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

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

This bill would provide a temporary retirement incentive for fiscal year 2021- 2022 for eligible members of the New York State Teachers' Retirement System (NYSTRS).

Part A of the retirement incentive would provide certain eligible employees of employers who elect to participate a retirement incentive of one-twelfth of a year of additional service credit per year of accrued service credit up to a maximum of three additional years. To be eligible, a member must be eligible to retire, or have attained age 50 or greater, with at least ten years of service. Members subject to an early retirement reduction and less than age 55 at retirement will have their benefit further reduced by 3% per year prior to age 55. Members not subject to an early retirement reduction and less than age 55 at retirement will have their benefit reduced by 5% per year prior to age 55.

Part B of the retirement incentive would permit eligible Tier 2, 3 and 4 members of employers who elect to participate to retire without early retirement reductions upon attainment of at least age 55 with 25 years of service. Currently 30 years of service are required.

In order to receive either the Part A or Part B benefit, an eligible member of an employer who has elected to participate must retire during the employer's designated open period. For Part A, such open period shall be at least 30 but not more than 90 days in length and for educational employers, shall not extend beyond August 31, 2021. For Part B, the open period shall begin immediately after the election to participate and shall not extend beyond August 31, 2021. Members may not

receive a benefit under both Part A and Part B. Employers participating in Part A or Part B (or both) would pay the cost of the retirement incentive over a period not to exceed five years, beginning in the state fiscal year ending March 31, 2023.

It is not possible to accurately forecast the total cost to the New York State Teachers' Retirement System employers electing to participate in this retirement incentive because the number of eligible members electing to retire under the incentive, their ages and the amount of service credited cannot be readily estimated. The Part A cost, measured as the increase in the present value of benefit per participating member, however, will range from 5% to approximately 250% of final average salary, depending on the member's age, years of service, and tier at retirement. The Part B cost per participating member will range from 3% to approximately 200% of final average salary, depending on the member's age, years of service, and tier at retirement. The potential number of members eligible to benefit under Part A is much greater than under Part B.

Member data is from the System's most recent actuarial valuation files, consisting of data provided by the employers to the Retirement System. Data distributions and statistics can be found in the System's Comprehensive Annual Financial Report (CAFR). System assets are as reported in the System's financial statements, and can also be found in the CAFR. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report.

The source of this estimate is Fiscal Note 2021-9 dated February 3, 2021 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2021 Legislative Session. I, Richard A. Young, am the Actuary for the New York State Teachers' Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

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, 2023.

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 115% 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, 2023.

Summary of relevant resources:

Membership data as of March 31, 2020 was used in measuring the impact of the proposed change, the same data used in the April 1, 2020 actuarial valuation. Distributions and other statistics can be found in the 2020 Report of the Actuary and the 2020 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2020 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, 2020 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 December 30, 2020, and intended for use only during the 2021 Legislative Session, is Fiscal Note No. 2021-7, prepared by the Actuary for the New York State and Local Retirement System.