

STATE OF NEW YORK

2722

2021-2022 Regular Sessions

IN SENATE

January 22, 2021

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

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

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

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1 benefit for any public employee who is not eligible to receive and qual-
2 ify for the retirement benefits in this act during the applicable time
3 periods.

4 PART A

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

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

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

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

19 d. "State employer" means (a) the executive branch of the state, (b)
20 the state-operated institutions of the state university of New York, (c)
21 the statutory and contract colleges operated pursuant to section 357 of
22 the education law, (d) the state university construction fund (herein-
23 after referred to in this act as the "fund"), (e) a cooperative exten-
24 sion association (hereinafter referred to in this act as the "associ-
25 ation"), (f) the city university of New York as defined in subdivision 2
26 of section 6202 of the education law, (g) the unified court system, (h)
27 the senate, (i) the assembly, and (j) joint legislative employers.

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

32 (b) "Educational employer" means a participating employer which is a
33 school district, a board of cooperative educational services, a voca-
34 tional education and extension board, an institution for the instruction
35 of the deaf and of the blind as enumerated in section 4201 of the educa-
36 tion law, or a school district as enumerated in section 1 of chapter 566
37 of the laws of 1967, as amended.

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

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

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

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

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

1 (e) nonjudicial officers and employees of the unified court system
2 unless the chief administrator of the courts elects as provided herein,
3 which election shall cover only nonjudicial officers and employees hold-
4 ing positions in any title in the classified service of the unified
5 court system;

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

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

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

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

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

25 (iii) with respect to officers or employees of components of the
26 assembly as identified pursuant to section 90 of the legislative law,
27 the assembly adopts a resolution authorizing the speaker of the assembly
28 to file an election for officers or employees of those components desig-
29 nated in such resolution.

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

38 For the purposes of such paragraphs (f), (g) or (h) of this subdivi-
39 sion, an employee of the legislature shall be as such term is defined in
40 section 7-a, 7-b or 7-d of the legislative law or by any other provision
41 of law which classifies employees of an entity to be legislative employ-
42 ees for all purposes, but shall not include senators or members of the
43 assembly. The term "joint legislative employer" shall mean legislative
44 commissions, committees, task forces, councils or similar bodies whose
45 membership is comprised of both senators and assembly members, or which
46 consist of commissioners, or the majority of whose membership is
47 appointed by one or more of the following: the temporary president of
48 the senate, the speaker of the assembly, the minority leader of the
49 senate, and/or the minority leader of the assembly. The temporary presi-
50 dent of the senate and the speaker of the assembly shall be the joint
51 legislative employer of the employees of the legislature referred to in
52 sections 7-a and 7-b of the legislative law.

53 g. "Eligible title" means any title where a certain number of posi-
54 tions in that title, as identified by agency, department, work location
55 or appointing authority, college or campus, as the case may be, would
56 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

1 director of state operations for the executive branch of the state, and
2 which date shall occur no later than thirty days before September 30,
3 2021 or for any participating employer a date on or after the effective
4 date of this act. For any other state employer, such term shall mean a
5 date on or after the effective date of this act and shall occur no later
6 than thirty days before September 30, 2021. The director of state oper-
7 ations shall notify the head of the appropriate retirement system of the
8 date of each open period applicable to employees of the executive branch
9 or of a state employer prior to the commencement date.

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

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

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

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

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

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

51 § 4. a. On or before August 31, 2021, a participating employer or a
52 state employer described in paragraphs (b), (c), (d), (e) and (f) of
53 subdivision d of section one of this act may elect to provide its
54 employees the retirement incentive authorized by this act by (a) the
55 enactment of a local law or (b) in the case of a participating employer
56 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

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

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

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

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

1 security law shall be reduced by five percent for each year by which
2 retirement pursuant to this section precedes age fifty-five. The amount
3 of such benefit for an eligible New York city employee with five or more
4 years of service and who is a participant in the age fifty-seven retire-
5 ment program governed by section 604-d of the retirement and social
6 security law shall be reduced by one-thirtieth for the first two years
7 by which retirement precedes age fifty-seven plus a further reduction of
8 one-twentieth for each year by which retirement precedes age fifty-five.

9 Such reduction shall be prorated for partial years. There shall be no
10 reduction for an eligible New York city employee in a physically taxing
11 position with twenty-five or more years of service and who is a partic-
12 ipant (i) in the optional twenty-five year early retirement program for
13 certain members governed by section 604-c of the retirement and social
14 security law, as added by chapter 96 of the laws of 1995, or (ii) in the
15 age fifty-seven retirement program governed by section 604-d of the
16 retirement and social security law.

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

1 in the optional age fifty-five improved benefit retirement program for
2 certain New York city employees governed by section 445-d of the retire-
3 ment and social security law, as added by chapter 96 of the laws of
4 1995, with twenty-five or more years of service.

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

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

42 b. A participant in an optional retirement program who is entitled to
43 a retirement incentive pursuant to section five of this act shall
44 receive an additional employer contribution equal to an amount, which
45 shall be calculated as follows: (one-twelfth for each year of service)
46 multiplied by (fifteen percent) multiplied by (the employee's earnable
47 annual salary rate in effect on March 1, 2021 or the effective date of
48 this act if the employee retires prior to March 1, 2021), such amount
49 not to exceed forty-five percent of such salary rate. Such contribution
50 shall be made to the employee's retirement annuity under the optional
51 retirement program up to the maximum contribution allowable under
52 section 415 of the internal revenue code. Any contribution in excess of
53 that limit shall be contributed by the employer to an internal revenue
54 code section 403(b) contract on behalf of the employee to the extent it
55 can be contributed on a before-tax basis under the maximum limits
56 allowed under the internal revenue code. Contributions in excess of that

1 amount shall be paid in cash to the participant in three equal install-
2 ments during a twenty-four month period commencing on such eligible
3 employee's effective date of retirement. Provided, however, if the
4 employee is employed by the city university of New York and in the
5 active service of such employer on October 1, 2021 or the effective date
6 of this act if the employee retires prior to October 1, 2021, the
7 employee's earnable annual salary rate shall be the annual salary rate
8 in effect on such applicable date.

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

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

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

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

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

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

52 a. A participating employer or a state employer described in para-
53 graphs (b) through (e) of subdivision d of section one of this act shall
54 not be required to eliminate the positions of eligible employees in
55 eligible titles receiving the retirement incentive provided by section
56 six of this act if such employer can demonstrate that it will achieve a

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

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

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

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

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

1 section six of this act, forfeit the additional benefit authorized by
2 this act at the time of his or her subsequent retirement; or (b) subdivi-
3 sion b of section six of this act, repay to the state or participating
4 employer such additional contribution together with the appropriate
5 interest as determined by the state comptroller.

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

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

15 § 14. The pension benefit costs of subdivision a of section six of
16 this act shall be paid by employers as provided by applicable law for
17 each retirement system covered by this act over a period not to exceed
18 five years commencing in the state fiscal year ending March 31, 2023.

19 § 15. Where an employee is eligible to receive the benefit authorized
20 under section six and the retirement benefit provided for under section
21 five of part B of the chapter of the laws of 2021 which added this part,
22 such employee may elect a section under which he or she will partic-
23 ipate.

24 § 16. This act shall take effect immediately.

25 PART B

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

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

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

37 c. "State employer" means (a) the executive branch of the state, (b)
38 the state-operated institutions of the state university of New York, (c)
39 the statutory and contract colleges operated pursuant to section 357 of
40 the education law, (d) the state university construction fund (herein-
41 after referred to in this act as the "fund"), (e) a cooperative exten-
42 sion association (hereinafter referred to in this act as the "associ-
43 ation"), and (f) the city university of New York as defined in
44 subdivision 2 of section 6202 of the education law, (g) the unified
45 court system, (h) the senate, (i) the assembly, and (j) joint legisla-
46 tive employers.

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

51 (b) "Educational employer" means a participating employer which is a
52 school district, a board of cooperative educational services, a voca-
53 tional education and extension board, an institution for the instruction
54 of the deaf and of the blind as enumerated in section 4201 of the educa-

tion 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

1 section 7-a, 7-b or 7-d of the legislative law or by any other provision
2 of law which classifies employees of an entity to be legislative employ-
3 ees for all purposes, but shall not include senators or members of the
4 assembly. The term "joint legislative employer" shall mean legislative
5 commissions, committees, task forces, councils or similar bodies whose
6 membership is comprised of both senators and assembly members, or which
7 consist of commissioners, or the majority of whose membership is
8 appointed by one or more of the following: the temporary president of
9 the senate, the speaker of the assembly, the minority leader of the
10 senate, and/or the minority leader of the assembly. The temporary presi-
11 dent of the senate and the speaker of the assembly shall be the joint
12 legislative employer of the employees of the legislature referred to in
13 sections 7-a and 7-b of the legislative law.

14 f. "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 c of this section or of a community college who is a
17 member of a teachers' retirement system, or the New York state and local
18 employees' retirement system.

19 g. "Active service" means service while being paid on the payroll,
20 provided that (a) a leave of absence with pay shall be deemed active
21 service; (b) other approved leave without pay not to exceed twelve weeks
22 from February 1, 2021 and the commencement of the designated open peri-
23 od; and (c) the period of time subsequent to the June 2021 school term
24 and on or before August 31, 2021 for a teacher (or other employee
25 employed on a school-year basis) who is otherwise in active service on
26 the effective date of this act shall be deemed active service.

27 h. "Open period" means the period beginning with the commencement date
28 as defined in subdivision i of this section and shall be ninety days in
29 length; provided however that there shall be only one such open period
30 and any such period shall not extend beyond September 30, 2021 for a
31 state employer and December 31, 2021 for a participating employer. For
32 educational employers who make election after June 1, 2021, the open
33 period shall begin immediately after such election, and shall not extend
34 beyond August 31, 2021. For the purposes of retirement pursuant to this
35 act, a service retirement application must be filed with the appropriate
36 retirement system not less than fourteen days prior to the effective
37 date of retirement to become effective, unless a shorter period of time
38 is permitted under law.

39 i. "Commencement date" means the first day the retirement benefit
40 mandated by this act shall be made available, which shall mean a date or
41 dates on or after the effective date of this act to be determined by the
42 director of state operations for the executive branch of the state, or
43 for any other state employer or any participating employer which elects
44 to participate pursuant to section three of this act a date on or after
45 the effective date of this act; provided, however, that for an educa-
46 tional employer which elects to participate pursuant to section three of
47 this act, the commencement date shall be June 1, 2021; or immediately
48 after election of the retirement incentive for educational employers who
49 elect after June 1, 2021 and provided, further that for participating
50 employers which elect to participate pursuant to section three of this
51 act, except the city of New York and participating employers which are
52 not empowered to act by local law, the commencement date shall be Octo-
53 ber 1, 2021. The director of state operations shall notify the head of
54 the appropriate retirement system of the date of the open period appli-
55 cable to employees of the executive branch or of a state employer prior
56 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

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

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

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

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

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

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

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

7 § 6. The pension benefit costs of section five of this act shall be
8 paid by employers as provided by applicable law for each retirement
9 system covered by this act over a period not to exceed five years
10 commencing in the state fiscal year ending March 31, 2023.

11 § 7. This act shall take effect immediately.

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

21 § 4. This act shall take effect immediately; provided, however, that
22 the applicable effective date of Parts A and B of this act shall be as
23 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, 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.