§ 399. Special annuity and custodial account programs authorized. 1. An employer is hereby authorized to establish by resolution special annuity and custodial account programs which shall provide for the purchase of contracts or establishment of custodial accounts providing retirement and death benefits for or on behalf of employees electing to enter into an agreement with such employer providing for a reduction of annual salary for the purpose of purchasing such contracts or for making contributions to such custodial accounts.

2. Where the employer has established a special annuity and/or custodial account program authorized by this article, any employee may enter into an agreement with his employer for the reduction of his salary which is earned after the effective date of such agreement and for contributions to the purchase of an annuity contract or to a custodial account for such employee by his employer in an amount equal to the reduction in salary so agreed on. The employer shall purchase the annuity contract or make contributions to the custodial account for such employee entering into such an agreement from the insurer or custodian designated pursuant to subdivision four of this section. Such annuity contract shall be issued to, and become the property of, such employee whose rights therein shall be non-forfeitable except for failure to pay future premiums or such custodial account shall be established on behalf of such employee whose rights therein are non-forfeitable. Neither the state, or a political subdivision thereof, nor an employer shall be a party to any annuity contract purchased or custodial account established in whole or in part with payments pursuant to said agreement, and no retirement, death or other benefit shall be payable by the state, or political subdivision thereof, or by an employer under such agreement or such annuity contract or custodial account.

3. Subject to approval and filing, as hereinafter provided by the comptroller, any such agreement shall specify the amount of such reduction, and the effective date thereof, and shall be binding and irrevocable as to both parties thereto during the continuation of such employee's employment with the employer; provided, however, that such agreement may be terminated in accordance with university guidelines upon notice in writing by either party. Such termination shall take

effect at the beginning of the payroll period the first day of which is nearest to the thirtieth day following the day on which such notification of termination was (i) received by the employer, in the event such termination is initiated by the employee, or (ii) sent to the employee in the event such termination is initiated by the employer.

4. The board of trustees of state university with respect to the state university and the community colleges, and the board of trustees of the city university with respect to employees of the city university of New York, shall designate the insurer or insurers from which such annuity contracts or in the case of custodial accounts, the company or companies from whom regulated investment company shares shall be purchased. In making such designation, due consideration shall be given to (a) the nature and extent of the rights and benefits to be provided by contracts for such special annuity or custodial account for employees and their beneficiaries, (b) the relation of such rights and benefits to the amount of contributions to be made for such contracts, (c) the suitability of such rights and benefits to the needs and interests of employees, and to the interests of employers in the employment and retention of employees, and (d) the authority and ability of the designated insurer or insurers or designated company or companies to provide rights and benefits under such contracts or custodial accounts.

5. The board of trustees of state university, with respect to the state university and the community colleges, and the board of trustees of the city of New York with respect to the city university, are hereby authorized to provide for the administration of a program for the purchase of such special annuities or establishment of custodial accounts, and to perform or authorize the performance of such functions as may be necessary for such purpose in accordance with this section.

6. No agreement for reduction of salary as authorized by this section or any termination thereof shall become effective until approved by and filed with the comptroller. Upon such approval and filing the comptroller shall reduce an employee's salary pursuant to said agreement and pay an amount equal to the amount agreed upon for such salary reduction as an employer contribution to the designated insurer or

insurers or designated custodian or custodians. Notwithstanding the reductions of salary authorized by this article, (i) the amount of employer and employee contributions otherwise required on behalf of an employee electing the optional retirement program pursuant to articles eight-B or one hundred twenty-five-A of this chapter, as the case may be, shall continue to be made on the basis of the salary of such employee without regard to such reduction, or (ii) in the event a member of a public retirement system in this state agrees to a reduction of his salary in accordance with this subdivision, such agreement shall not cause him to lose any benefits under such public retirement system to which he would be otherwise entitled had he not agreed to reduce his salary for the purpose of having a special annuity purchased or contributions to a custodial account made on his behalf, and any required employer and employee contributions shall continue to be made on the basis of the salary of such employee without regard to such reduction. Any survivor's benefit payable pursuant to the civil service law shall be based upon the salary of such employee without regard to the reduction authorized by this article.

7. Any payroll deduction, other than income tax withholdings as required by law, which may be required or authorized pursuant to law, contract, agreement, or any other instrument, the amount of which is determined in relation to an employee's earnings, shall be based on the salary of such employee without regard to reduction thereof pursuant to any agreement authorized by this article.

8. An employee agreeing to have his salary reduced in accordance with this article shall be paid an amount equal to his salary less the amount of the reduction pursuant to such agreement and any deductions authorized by law, such amount to be paid in equal installments in accordance with the payroll procedure otherwise appropriate.

9. Payments for contracts providing for a special annuity or custodial account shall be made by the comptroller to the designated insurer or insurers or designated custodians out of moneys otherwise available in accordance with law for salaries of the employees for whom such annuities are purchased or contributions to such custodial accounts are

made.

10. Nothing contained in this section shall impair or prevent any agreements which have heretofore, or may hereafter be, entered into between Alfred university and any employee of the state college of ceramics under the management and control of Alfred university as the representative of the state university trustees, or between Cornell university and any employee of the state colleges of agriculture, home economics, veterinary medicine or industrial and labor relations, the state agricultural experiment station at Geneva, or any other institution or agency under the management and control of Cornell university as representative of the state university trustees for reduction of the basic annual salary of any such employee as otherwise fixed by or pursuant to law and purchase of a special annuity or contribution to a custodial account on his behalf. In the case of any such employee whose salary is paid directly to him by the state, the comptroller is hereby authorized to reduce his salary in accordance with any such agreement as certified on the appropriate payroll and upon the audit and warrant of the comptroller the amount of any such reduction shall be paid to Alfred university or Cornell university, as the case may be, out of moneys appropriated and otherwise available for the payment of such employee's salary, for the purchase by such university of a special annuity or contribution to a custodial account for such employee. No agreement for reduction of salary and purchase of a special annuity or contribution to a custodial account by any employee to whom this subdivision is applicable shall cause him to lose any benefits to which he would otherwise be entitled by reason of membership in the New York state and local employees' retirement system and any required employer and employee contributions to such system shall continue to be made on the basis of the salary of such employee without regard to such reduction. In the case of any such employee electing the optional retirement program the amount of employer and employee contributions otherwise required shall continue to be made on the basis of the salary of such employee without regard to such reduction. Any survivor's benefit payable pursuant to the civil service law shall be based on the salary of any employee to whom this subdivision is applicable without regard to his agreement for reduction thereof. Subdivisions seven and

eight of this section shall apply to employees to whom this subdivision is applicable who enter into agreements for reduction of salary and purchase of special annuities or contribution to a custodial account.