§ 101. Reduction or suspension of benefits. a. If a retired member, receiving a retirement allowance for other than physical disability, returns to active public service, except as otherwise provided in this section or section two hundred eleven or two hundred twelve of this chapter, and is eligible for membership in the retirement system, he thereupon shall become a member and his retirement allowance shall cease. In such event, he shall contribute to the retirement system as if he were a new member. Upon his subsequent retirement he shall:

1. Be credited with all member service earned by him since he last became a member of the retirement system, and

2. Receive a retirement allowance which shall consist of:

(a) An annuity which is the actuarial equivalent of all his accumulated contributions, and

(b) The pension including the pension-providing-for-increased-take-home-pay which he was receiving immediately prior to his last restoration to membership, plus a pension including the pension-providing-for-increased-take-home-pay based upon the member service credit earned by him since he last became a member. Such latter pensions shall be computed as if he were a new member when he last became a member.

Where such member shall have earned at least two years of member service credit after restoration to active service, the total service credit to which he was entitled at the time of his earlier retirement may, at his option, again be credited to him and upon his subsequent retirement he shall be credited in addition with all member service earned by him subsequent to his last restoration to membership. Such total service credit to which he was entitled at the time of his earlier retirement shall be so credited only in the event that such member returns to the retirement system with regular interest the actuarial equivalent of the amount of the retirement allowance he received, or in the event that such amount is not so repaid the actuarial equivalent thereof shall be deducted from his subsequent retirement allowance.

Notwithstanding the foregoing provisions of this subdivision, a

retired member who is receiving a retirement allowance for other than physical disability, and who returns to active public service, may elect not to be restored to membership in the retirement system until he has rendered one year of service following his return to public service. In such event his retirement allowance shall be suspended during such year of service as provided in subdivision b of this section. Upon restoration to membership following completion of such year of service, his service in such year shall be deemed to be service while a member for purposes of subdivision b of section sixty of this chapter. He may purchase member service credit for such year, which shall be deemed earned member service credit. This paragraph shall not be construed to authorize the return to public service of any person who is otherwise not eligible therefor on account of having reached age seventy.

If a retired member receiving a retirement allowance for other than physical disability, returns to active public service, and is then ineligible for membership in the retirement system, his retirement allowance shall be suspended in the same manner as provided in subdivision b of this section.

b. Temporary service.

1. The payment of any retirement allowance, or of any benefit in lieu thereof, on account of retirement for other than physical disability shall be suspended as provided herein, during the time that the beneficiary thereof is in receipt of other compensation paid from direct or indirect state or municipal taxes:

(a) For temporary government or temporary public service other than jury duty, or

(b) For service pursuant to subdivision d of this section where the retired member continues as a beneficiary of the retirement system, or

(c) For service pursuant to subdivision e of this section where the retired member has not elected to again become a member of the retirement system.

2. In the case of a retirement allowance, without option, the amount of the pension portion, including the

pension-providing-for-increased-take-home-pay, suspended for any period shall be equal to the amount of such other compensation for the same period.

3. In the case where an optional benefit in lieu of a retirement allowance without option shall have been selected, the pension portion thereof, including the pension-providing-for-increased-take-home-pay, shall be suspended in such manner as the comptroller shall approve. The amount so suspended shall be equal to the actuarial equivalent of the amount by which the pension portion of the retirement allowance, including the pension-providing-for-increased-take-home-pay, as it would be without option, would be suspended pursuant to paragraph two of this subdivision b. The retired member, however, may pay to the fund or funds from which the pension portion of his retirement allowance, including the pension-providing-for-increased-take-home-pay, is payable the difference between the suspended portion thereof, without option, and the suspended portion of the optional pension portion of the retirement allowance, including the pension-providing-for-increased-take-home-pay, granted to him. In such event any payments to his beneficiary shall be made as if no suspension occurred.

4. In the case of a member whose compensation for public service is equal to or greater than his final salary as defined herein, the annuity portion of his retirement allowance shall be suspended during the period that he is receiving such compensation. In the case of a member whose compensation for public service is less than his final salary as defined herein and who has retired without option, he shall be entitled to receive that portion of his annuity computed without option which, when added to his compensation for public service, does not exceed the aforesaid final salary, except that in the case of a retired judge or justice who serves as an official referee he shall receive that portion of his annuity computed without option, which when added to the compensation he is receiving from the state shall not exceed such final salary paid by the state. Where an optional benefit has been selected in lieu of a retirement allowance without option, the amount of the annuity suspended shall be the actuarial equivalent of the amount that would have been suspended if the retirement allowance had been without option.

In such a case the retired member may pay to the fund or funds, from which the annuity portion of his retirement allowance is payable, the difference between that portion of the annuity which is actually suspended, in accordance with the provisions of this paragraph, and the corresponding portion of the annuity without option. In such event any payments to his beneficiary shall be made as if no suspension occurred. The term "final salary", as used in this paragraph, shall mean the maximum salary or compensation which the retired member currently would be receiving in the position from which he last retired, if he had not so retired, except in the case of an official referee shall mean his final average salary had he retired at age seventy. If the position from which he was so retired has been abolished the comptroller, upon the basis of salary or compensation currently paid in similar or comparable positions, shall determine the maximum amount of salary or compensation which the retired member currently would be receiving in the abolished position.

c. Retired judges or justices certified for service as justices of the supreme court.

1. In the event that a judge or justice shall:

(a) Have retired and is receiving a retirement allowance from this retirement system, or another retirement system of which he was a member, and

(b) Be certified for service as a justice of the supreme court pursuant to section one hundred fourteen or one hundred fifteen of the judiciary law, his retirement allowance shall cease. He thereupon again shall become a member of the retirement system of which he formerly was a member. In such event he shall contribute, as if he were a new member, to the annuity savings fund of this retirement system or to the equivalent fund of such other retirement system.

2. Upon his subsequent retirement he shall:

(a) Be credited by the appropriate retirement system with all member service earned by him since he last became a member thereof, and

(b) Receive a retirement allowance from such system which shall consist of:

(1) An annuity which is the actuarial equivalent of all of the member's accumulated contributions, and

(2) The pension, including the pension-providing-for-increased-take-home-pay, which he was receiving immediately prior to his last restoration to membership, plus a pension, including the pension-providing-for-increased-take-home-pay, based upon the member service credit earned by him since he last became a member. Such latter pensions shall be computed as if he were a new member when he last became a member.

3. The provisions of this subdivision c shall be controlling notwithstanding any other provision of this chapter.

d. Election or appointment of retired members to certain public offices.

1. A retired member, unless otherwise disqualified, shall be eligible to:

(a) Election to a state office, or

(b) Appointment to fill a vacancy in an elective state office, or

(c) Appointment as an official referee.

2. In the event a retired member is so elected, except a retired member so elected and who is receiving less than ten thousand dollars in retirement allowance or benefit payments in any one year, or appointed, or so qualifies, he may:

(a) Upon written notice to the comptroller, receive from the retirement system the then present value of the annuity earned by his accumulated contributions, and upon receipt thereof cease to be a beneficiary of the retirement system, or

(b) Continue as a beneficiary of the retirement system, but with payments of any retirement allowance or any benefit in lieu thereof, on account of retirement for other than physical disability, suspended during the time he is in receipt of compensation for state or public service. Such suspension shall be governed by the provisions of paragraphs two, three and four of subdivision b of this section.

3. The provisions of section one hundred fifty of the civil service law shall govern with respect to state and local elective public officers.

e. Legislative officers and employees.

In the case of any person who shall have retired after having served as an officer or employee of the legislature for a period in excess of fifteen years and whose return to active service shall be requested, in a written certificate of and filed with the comptroller by:

1. The president pro tem of the senate, if the service be in the senate, or

2. The speaker of the assembly, if the service be in the assembly, or

3. Both such officers, if the service be under the jurisdiction of the senate and assembly jointly, except that the president of the senate and the speaker of the assembly shall be authorized to make such request in a case where they are empowered to make such an appointment,
the provisions of subdivision a of this section shall not be applicable unless the officer or employee so returned to active service shall file with the comptroller, within thirty days thereafter, a written notice that he elects to be subject to the provisions thereof. In the event he does not so elect, the provisions of subdivision b of this section shall be applicable to him.