§ 138-a. Referenda among public employees; extension of old-age and survivors insurance. 1. As soon as practicable after the effective date hereof, the governor or the state agency or officer designated by him shall, in accordance with the applicable provisions of the federal social security act and subdivision thirteen of this section, authorize the separate referenda described below (and thereafter, such similarly separated referenda as may be deemed appropriate and be consistent with this article and such federal act):

a. One referendum among all eligible employees of the state (exclusive of those in police officer or firefighter positions) who are members of the New York state employees' retirement system, a second referendum among all eligible employees of political subdivisions of the state (exclusive of those in police officer or firefighter positions) who are members of such retirement system, which subdivisions elected to provide seven calendar quarters of retroactive coverage for such employees pursuant to subdivision seven of this section, a third referendum among all eligible employees of political subdivisions of the state (exclusive of those in police officer or firefighter positions) who are members of such retirement system, which subdivisions elected to provide six calendar quarters of retroactive coverage for such employees pursuant to subdivision seven of this section, a fourth referendum among all eligible employees of political subdivisions of the state (exclusive of those in police officer or firefighter positions) who are members of such retirement system, which subdivisions elected to provide four calendar quarters of retroactive coverage for such employees pursuant to subdivision seven of this section, and a fifth referendum among all eligible employees of the remaining political subdivisions of the state (exclusive of those in police officer or firefighter positions) who are members of such retirement system, on the question of whether service in positions (exclusive of police officer or firefighter positions) in the employ of the state or of such political subdivisions, as the case may be, and covered by such system also shall be covered by old-age and survivors insurance.

b. Separate referenda among eligible employees of the state (exclusive of those in police officer or firefighter positions) whose positions are

covered by a separate retirement system or plan maintained by the state, other than the New York state and local employees' retirement system or the New York state teachers' retirement system, and who are members of such system or plan, on the question of whether service in positions (exclusive of police officer or firefighter positions) covered by such system or plan also shall be covered by old-age and survivors insurance.

c. One referendum among all eligible employees of the state who are members of the New York state teachers' retirement system, a second referendum among all eligible employees of political subdivisions of the state who are members of such retirement system, which subdivisions elected to provide seven calendar quarters of retroactive coverage for such employees pursuant to subdivision seven of this section, a third referendum among all eligible employees of political subdivisions of the state who are members of such retirement system, which subdivisions elected to provide six calendar quarters of retroactive coverage for such employees pursuant to subdivision seven of this section, a fourth referendum among all eligible employees of political subdivisions of the state who are members of such retirement system, which subdivisions elected to provide four calendar quarters of retroactive coverage for such employees pursuant to subdivision seven of this section, and a fifth referendum among all eligible employees of the remaining political subdivisions of the state who are members of such retirement system, on the question of whether service in positions covered by such system also shall be covered by old-age and survivors insurance.

d. Separate referenda among eligible employees of each political subdivision (exclusive of those in police officer or firefighter positions) who are members of a retirement system or plan maintained by such political subdivision other than a retirement system relating to retirement benefits under the Canada pension plan, on the question of whether service in positions in the employ of such political subdivision and covered by such system or plan also shall be covered by old-age and survivors insurance. The modification providing old-age and survivors insurance coverage pursuant to such referenda shall provide such retroactive coverage, if any, and shall exclude from old-age and survivors insurance coverage such classes of employment as authorized by

paragraph b of subdivision two of section one hundred thirty-six of this article, if any, as the governing body of such political subdivision shall determine, consistent with the federal social security act. Such determination shall be made within a reasonable period of time fixed by the director and indicated in a certificate filed with the director.

2. In the event the federal social security act is amended to authorize the extension of old-age and survivors insurance coverage to service performed in this state in police officer or firefighter positions, the governor or the state agency or officer designated by him or her shall, as soon as practicable after the enactment of such amendment and in accordance with the applicable provisions of such federal act and subdivision thirteen of this section, to the extent then applicable, shall take such action as may be necessary to extend old-age and survivors insurance coverage to such positions, including, to the extent applicable, referenda as follows:

a. One referendum among all eligible employees of the state serving in police officer or firefighter positions who are members of the New York state and local employees' retirement system.

b. A separate referendum among all eligible employees of the state serving in police officer or firefighter positions whose positions are covered by a retirement system or plan maintained by the state other than the New York state and local employees' retirement system, and who are members of such system or plan.

c. One referendum among all eligible employees of political subdivisions of the state serving in police officer or firefighter positions who are members of the New York state and local employees' retirement system, which political subdivisions elected to provide retroactive coverage to or about March sixteenth, nineteen hundred fifty-six, to such employees pursuant to subdivision seven of this section, a second referendum among all eligible employees of political subdivisions of the state serving in police officer or firefighter positions who are members of such retirement system, which subdivisions elected to provide retroactive coverage to or about June sixteenth,

nineteen hundred fifty-six, to such employees pursuant to subdivision seven of this section, a third referendum among all eligible employees of political subdivisions of the state serving in police officer or firefighter positions who are members of such retirement system, which political subdivisions elected to provide retroactive coverage to or about December sixteenth, nineteen hundred fifty-six, to such employees pursuant to subdivision seven of this section, and a fourth referendum among all eligible employees of the remaining political subdivisions of the state serving in police officer or firefighter positions who are members of such system, which eligible employees shall have retroactive coverage to or about December sixteenth, nineteen hundred fifty-seven.

d. Separate referenda among eligible employees of each political subdivision serving in police officer or firefighter positions whose positions are covered by a separate retirement system or plan maintained by such political subdivision and who are members of such system or plan. Each such referendum shall be on the question of whether service in the police officer or firefighter positions affected thereby also shall be covered by old-age and survivors insurance.

2-a. Notwithstanding any inconsistent provision of this article:

a. The alternative referendum and certification procedure provided by paragraph seven of subdivision (d) of section two hundred eighteen of the federal social security act, as added by public law eighty-five-two hundred twenty-nine, may be followed in lieu of any referendum and certification of the result thereof as required by this section. All actions heretofore duly taken which comply or anticipate compliance with any procedure authorized or contemplated by such paragraph seven are hereby ratified and confirmed and shall be deemed to have been taken in full compliance with this section.

b. Any action duly taken which extended or extends retroactive coverage to a date on or about March sixteenth, nineteen hundred fifty-six, or thereafter, for any public employees, including those not provided with such coverage prior to January first, nineteen hundred fifty-eight, is hereby ratified and confirmed and such retroactive

coverage shall be deemed to have been provided in full compliance with this section as hereby amended.

3. Each notice of referendum required by the federal social security act to be given to employees shall contain or shall be accompanied by a statement, in such form and with such detail as the governor, or the state agency or officer designated by him, shall determine is sufficient to inform such employees of the rights which will accrue to them, their dependents and survivors, and of the liabilities to which they will be subject in the event that service in their positions is covered by old-age and survivors insurance. Such information also shall be made available to employees for a reasonable period before they are required to indicate, pursuant to subdivision thirteen of this section, whether they desire old-age and survivors insurance coverage.

4. The governor or the state agency or officer designated by him shall have power to require the filing by public agencies and officers of information and data necessary for the conduct of referenda provided for herein and the determination of the results thereof.

5. Where in any such referendum a majority of the eligible employees vote in favor of covering service in positions covered by a retirement system or plan under old-age and survivors insurance, and the other applicable conditions of the federal social security act have been met, the governor shall make the necessary certificate to the federal secretary in accordance with such act.

6. Whenever any such certification is made to the federal secretary, the director shall take the necessary action to effectuate the result of such referendum and modify the state's agreement with the federal secretary accordingly, except that with respect to the referenda provided by paragraph c of subdivision one of this section among eligible employees of political subdivisions who are members of the New York state teachers' retirement system, no such modification shall be made with respect to employees of political subdivisions unless a majority of all the members of the system (counted without reference to any division theretofore made pursuant to subdivision thirteen hereof)

employed by political subdivisions voted in favor of coverage in such referenda.

7. In the event a referendum which includes employees of the state favors the extension of old-age and survivors insurance coverage to positions in the employ of the state, the director shall, in such modification, provide for retroactive coverage to March sixteenth, nineteen hundred fifty-six. The director shall fix a reasonable period of time during which the governing body of each political subdivision, having employees who are members of the New York state employees' retirement system, the New York state teachers' retirement system, or a pension or retirement system maintained by the political subdivision may determine to provide retroactive coverage to or about March sixteenth, nineteen hundred fifty-six, June sixteenth, nineteen hundred fifty-six, December sixteenth, nineteen hundred fifty-six, or December sixteenth, nineteen hundred fifty-seven to its employees who are members of any of such systems. The director shall have power to fix the precise retroactive date in each such case.

7-a. Notwithstanding any action previously taken by the governing body of any political subdivision with respect to whether or not retroactive coverage should be extended to any of its employees or the amount of retroactive coverage which it has provided, and notwithstanding any inconsistent provision of this section or of any general, special or local law, city or village charter, ordinance or resolution, in the event the federal social security act authorizes or is amended to authorize it to do so such governing body may, during the period authorized by and in the manner provided by such act, extend retroactive coverage to employees of such political subdivision to a date not earlier than one in the first calendar quarter of nineteen hundred fifty-six so that only one payroll date or such other minimum period, determined by the director, shall be included in such retroactive period to accomplish the result of providing retroactive coverage for the earliest calendar quarter to be included in such retroactive coverage. The director shall have power to fix the precise retroactive date in each such case.

8. a. Notwithstanding any other provision of law, any individual who, on or after August first, nineteen hundred fifty-six, had an option to join a retirement system or plan applicable to his position and who could have joined such retirement system or plan prior to the execution date of a modification extending old-age and survivors insurance to any position covered by such retirement system or plan, but who had not joined such retirement system or plan prior thereto, is hereby declared personally ineligible for membership in such retirement system or plan, effective as of August first, nineteen hundred fifty-six, or if he first occupies such position later, such later date.

b. The director shall modify the federal agreement under this article to provide old-age and survivors insurance coverage to individuals in the employ of the state who are ineligible to become members of a retirement system applicable to their positions, including individuals to whom paragraph a of this subdivision is applicable, and provide, with respect to such individuals, the retroactive coverage specified in subdivision seven of this section.

c. The director shall modify the federal agreement under this article to provide old-age and survivors insurance coverage to individuals in the employ of any political subdivision of the state who are ineligible to become members of a retirement system applicable to their positions, including individuals to whom paragraph a of this subdivision is applicable, and provide, with respect to such individuals, the retroactive coverage, if any, and the excludable classes of employment as authorized by paragraph b of subdivision two of section one hundred thirty-six of this article, if any, determined by the governing body of the political subdivision by which such individuals are employed, consistent with the federal social security act.

d. Eligibility for membership in a retirement system or plan is hereby restored to every employee who was made ineligible for membership in such a system or plan by operation of any provision of paragraph a, b or c of this subdivision eight as originally enacted by chapter seven hundred seventy-six of the laws of nineteen hundred fifty-seven.

9. In the event that a referendum among eligible employees of the state or of one or more political subdivisions favors the extension of old-age and survivors insurance coverage to positions covered by a retirement system or plan of which they are members, persons who are members of such system or plan as of the referendum date shall be given such coverage only if they indicated their desire therefor, prior to the applicable referendum, in such manner and on or before such date as the director shall specify by rule or regulation consistent with the federal social security act.

10. a. In the event that the referenda among eligible employees of political subdivisions of the state (exclusive of those in police officer or firefighter positions) who are members of the New York state and local employees' retirement system favor the extension of old-age and survivors insurance coverage to their positions, all positions in the employ of each political subdivision of the state, except those covered by a retirement system or plan of the state or the political subdivision and subject to separate referenda hereunder, and except those excluded from coverage pursuant to paragraph b of subdivision two of section one hundred thirty-six of this article, also shall be covered by old-age and survivors insurance at or about the same time that the director modifies the agreement with the federal secretary to effectuate the result of such referenda as to the political subdivisions affected thereby. Each political subdivision to which old-age and survivors insurance is extended pursuant to this subdivision shall have the option, within a reasonable period of time fixed by the director, to file a certificate with the director fixing the effective date of its coverage (which may include retroactive coverage for such period as its governing body shall determine subject to the federal social security act and which effective date shall be not later than its last payroll date in December nineteen hundred fifty-seven) and excluding from coverage classes of employment as authorized by paragraph b of subdivision two of section one hundred thirty-six of this article.

b. In the event that the referenda among eligible employees of political subdivisions of the state who are members of the New York state employees' retirement system favor the extension of old-age and

survivors insurance coverage to their positions, all positions in the employ of a political subdivision of the state which is created subsequent to the date of the modification of the agreement with the federal secretary, to effectuate the result of such referenda also shall be covered by old-age and survivors insurance, effective the date the political subdivision first has employees on the payroll, or becomes eligible, or as soon thereafter as is consistent with the federal social security act. Each political subdivision to which old-age and survivors insurance is extended pursuant to this paragraph shall have the option, within a reasonable period of time fixed by the director and prior to participation by such political subdivision in New York state employees' retirement system, to file a certificate with the director excluding from coverage classes of employment as authorized by paragraph b of subdivision two of section one hundred thirty-six of this article.

11. Where the agreement with the federal secretary is modified, each political subdivision affected thereby shall be obligated under this article as if the modification had been made on the basis of its application to and agreement with the director that it be so modified.

12. Where the director modifies the agreement with the federal secretary to provide for old-age and survivors insurance coverage to employees of the state or of a political subdivision in addition to their coverage by a retirement system or plan, such action shall, as of the effective date of coverage, be deemed to restore the eligibility for membership in such system or plan of employees in positions in the employ of the state or the political subdivision, as the case may be, who theretofore were eligible for membership therein, but whose positions were excluded from eligibility therein in order that old-age and survivors insurance coverage could be extended to them.

13. A retirement system or plan, for the purposes of this article, shall be deemed to constitute a separate retirement system with respect to the positions covered thereby for which a separate referendum is authorized herein. Each retirement system or plan shall be divided into two parts, one of which shall be composed of positions of members of such system who desire old-age and survivors insurance coverage on the

basis of their service in such positions and the other to be composed of positions of the members who do not desire such coverage. Each such part shall be deemed a separate retirement system for the purposes of the referenda provided for in this article. Positions of persons who become members of a retirement system or plan after old-age and survivors insurance shall have been extended shall be included in the part composed of members desiring such coverage.

14. Notwithstanding the provisions of section one hundred forty-three of this article, the costs of each referendum conducted hereunder shall be paid as an administrative expense by the retirement system or plan among whose members the referendum is conducted. The governor or state officer or agency designated by him shall have power to require each such system or plan to pay the costs so incurred.

15. Where the compensation of any person whose position is covered by old-age and survivors insurance pursuant to this article is paid from a special or administrative fund provided for by law other than an income fund of the state university or the mental hygiene services fund, the contributions required to be paid by his employer for such coverage, including a proportionate share of the costs of administration charged to such employer pursuant to section one hundred thirty-nine of this article, shall be paid from such special or administrative fund.

16. Notwithstanding anything to the contrary contained in subdivision nine of this section, the director is hereby authorized, on behalf of the state, consistent with the provisions of the federal social security act, to modify the agreement with the federal secretary for the purpose of extending old age and survivors insurance coverage to positions of members of the division or part of a retirement system composed of members who do not desire coverage, if in the manner and before the date specified by the director, the individuals occupying such positions, file with him a written request therefor.