§ 401. 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 sections two hundred eleven or two hundred twelve of this chapter, and is eligible for membership in the police and fire retirement system, he or she thereupon shall become a member and his or her retirement allowance shall cease. In such event, he or she shall contribute to the police and fire retirement system as if he or she were a new member. Upon his subsequent retirement he or she shall:

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

2. Received a retirement allowance which shall consist of:

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

(b) The pension including the pension-providing-for-increased-take-home-pay which he or she was receiving immediately prior to his or her 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 or her since he or she last became a member. Such latter pensions shall be computed as if he or she were a new member when he or she 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 or she was entitled at the time of his or her earlier retirement may, at his or her option, again be credited to him or her and upon his or her subsequent retirement he or she shall be credited in addition with all member service earned by him or her subsequent to his or her last restoration to membership. Such total service credit to which he or she was entitled at the time of his or her earlier retirement shall be so credited only in the event that such member returns to the police and fire retirement system with regular interest the actuarial equivalent of the amount of the retirement allowance he or

she received, or in the event that such amount is not so repaid the actuarial equivalent thereof shall be deducted from his or her 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 police and fire retirement system until he or she has rendered one year of service following his or her return to public service. In such event his or her 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 or her service in such year shall be deemed to be service while a member for purposes of subdivision b of section three hundred sixty of this chapter. He or she 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 police and fire retirement system, his or her 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 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 c of this section where the retired member continues as a beneficiary of the police and fire

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-increase-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. 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 even 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. 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.

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

c. 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.

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 police and fire retirement system the then present value of the annuity earned by his or her accumulated contributions, and upon receipt thereof cease to be a beneficiary of the police and fire retirement system, or

(b) Continue as a beneficiary of the police and fire 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 or she 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 subdivision one of section one hundred fifty of the civil service law shall govern with respect to state and local elective public officers.

d. Privilege of certain retired members, retired for other than physical disability, to undertake public employment.

1. Notwithstanding any inconsistent provisions of this section or of section one hundred fifty of the civil service law the provisions of this section shall be suspended to the extent necessary to permit a retired member to continue as such and to earn not to exceed eighteen hundred dollars per calendar year as compensation in any position of a temporary, seasonal or occasional nature in government service or public service, provided he duly executes and files with the comptroller a statement that he elects to have the provisions of this subdivision f apply to him, and:

(a) His retirement allowance, computed without optional modification, does not exceed thirty-five hundred dollars per year, or

(b) His retirement allowance, computed without optional modification, exceeds thirty-five hundred dollars per year and he annually waives that portion which is in excess of thirty-five hundred dollars by duly executing and filing with the comptroller a waiver of the aforesaid excess portion. The waiver shall be irrevocable during the calendar year in which it is filed.

A statement of election executed and filed pursuant to this subdivision f may be withdrawn by a retired member at any time by a statement similarly executed and filed.

2. The privilege granted by this subdivision f, to retired members to continue as such and to earn compensation in positions of a temporary, seasonal or occasional nature in government service or public service

shall remain in full force and effect until July first, nineteen hundred sixty-five.