§ 656. Managerial/confidential survivor's benefit. 1. a. The term "managerial/confidential employee" as used in this section shall mean a full time employee or officer in the executive branch of the state whose position has been designated managerial or confidential pursuant to article fourteen of the civil service law, an employee covered by section nineteen of the correction law, an employee in the professional service in the state university who is designated, stipulated or excluded from negotiating units as managerial or confidential as defined pursuant to article fourteen of the civil service law, an employee covered by paragraph (a) of subdivision one of section two hundred fifteen of the executive law or who has been excluded from representation rights under such article pursuant to rules and regulations of the public employment relations board, or who is a civilian state employee of the division of military and naval affairs in the executive department whose position is not in, or is excluded from representation rights in, any recognized or certified bargaining unit, and whose salary is paid directly by the state, judges and justices of the unified court system and nonjudicial employees thereof not in collective negotiating units. Managerial/confidential employees may be considered state employees for the purposes of section six hundred fifty-five of this article provided, however, an employee shall be eligible for the greater of the benefits afforded by this section or section six hundred fifty-five of this article and shall in no event receive benefits pursuant to both such sections.

b. "Full time" as used in this section shall mean employment on a work schedule of at least twenty hours per week and at a rate of salary of at least that of the hiring rate of the M/C-3 pay grade or equivalent.

2. A survivor's benefit shall be payable upon the death of a managerial/confidential employee who has served as a managerial/confidential employee for thirty or more days exclusive of days of leave and dies before the effective date of retirement provided that such employee:

a. Was on the state payroll as a managerial/confidential employee for thirty or more days of the sixty days immediately prior to his or her

death, or

b. Had at least one year of service as a managerial/confidential employee and died while on the payroll following his or her return from an authorized leave of absence, or

c. Had at least one but less than five years of service as a managerial/confidential employee since last entering state service and died while off the payroll and while on an authorized leave of absence, provided such person was not otherwise gainfully employed since ceasing to be on the state payroll, and provided such person was on the state payroll as a managerial/confidential employee within six months prior to his or her death, or

d. Had five or more years of service as a managerial/confidential employee since last entering state service and died while off the payroll and while on an authorized leave of absence, provided such person was not otherwise gainfully employed since ceasing to be on the state payroll, and provided such person was on the state payroll as a managerial/confidential employee within one year prior to his or her death.

e. For the purpose of determining eligibility for benefits under this section, previous service rendered as an employee in a position designated as managerial or confidential pursuant to article fourteen of the civil service law of an authority or commission established under the public authorities law shall be credited to a state employee as state service, provided such authority or commission has in effect, at the time of death of such employee, a provision for a survivor's benefit which is substantially equivalent to that provided in this section and in which previous state service is credited to authority or commission employees toward eligibility for such survivor's benefit.

f. For the purposes of this subdivision, a managerial/confidential employee holding a position having an annual salary payable over a period of less than twelve months shall be considered to be on the payroll during any period in which he or she would otherwise be on the

payroll if the annual salary of that position were paid over the full twelve months. For purposes of paragraphs c and d of this subdivision, an employee shall not be deemed to have been gainfully employed solely on account of the performance of military duty in any capacity in the armed forces of the United States or of any reserve thereof or in the national guard.

Notwithstanding the provisions of any other law to the contrary and solely for the purpose of determining eligibility for a survivors benefit, a member shall be considered to have died while on the state payroll provided such member was on such payroll or was on the payroll in the service upon which membership is based at the time he or she was ordered to active duty pursuant to Title 10 of the United States Code, with the armed forces of the United States or to service in the uniformed services pursuant to Chapter 43 of Title 38 of the United States Code and died while on such active duty or service in the uniformed services on or after June fourteenth, two thousand five.

Provided, further, that any such member ordered to active duty pursuant to Title 10 of the United States Code, with the armed forces of the United States or to service in the uniformed services pursuant to Chapter 43 of Title 38 of the United States Code who died prior to rendering the minimum amount of service necessary to be eligible for this benefit shall be considered to have satisfied the minimum service requirement.

3. The survivor's benefit shall be payable from the survivor's benefit fund established pursuant to subdivision seven of section six hundred fifty-five of this article. The survivor's benefit shall be an amount which when added to the ordinary death benefit provided under any public pension plan to which the deceased managerial/confidential employee belonged, equals the annual rate of compensation of the managerial/confidential employee as of the date he or she was last on the payroll prior to death; provided, however, that such survivor's benefit, when added to any ordinary death benefit payable from a public pension plan to which such employee belonged, shall not exceed the lesser of fifty thousand dollars or if the ordinary death benefit

payable is reduced due to the age of a member five times the ordinary death benefit for which the employee is eligible or, if no such benefit is payable, would have been eligible had he or she remained in state service for one year. Any benefit, other than an accidental death benefit, payable by a public pension plan in lieu of the ordinary death benefit shall, for the purposes of this section, be deemed to be an ordinary death benefit.

4. The survivor's benefit payable under this section shall be paid to such person or persons as the managerial/confidential employee shall have last nominated to receive the ordinary death benefit of the retirement system or pension plan supported by funds of the state of which such employee last became a member, or if such employee did not nominate such a beneficiary, or if such beneficiary has died, or if the employee was not a member of such a retirement system or pension plan, to the person last specifically designated by such employee to receive the survivor's benefit under this section on a form prescribed by the department of audit and control and filed with the department or agency in which such employee was last employed prior to death. In the event such a designated beneficiary does not survive such employee, or if a beneficiary was not designated, the survivor's benefit shall be payable to the estate of the state employee or as provided in section thirteen hundred ten of the surrogate's court procedure act.

5. Notwithstanding any other provisions of this section, in the case of a managerial/confidential employee on whose account an accidental death benefit is payable from a public pension plan to which the employee belonged, and regardless of the length of service of the deceased employee, the survivor's benefit shall be five thousand dollars and shall be payable to the person or persons first receiving the accidental death benefit.

6. If the survivor's benefit is paid for a deceased employee or officer whose salary or compensation is paid from a special or administrative fund other than the general fund or other than an income fund of the state university or other than the mental hygiene services fund, the cost of such benefit shall be charged against such other fund

or funds. If the amounts appropriated or allocable from such special or administrative fund or funds are insufficient for such purpose, the director of the budget may allocate such additional sums from such fund or funds as may be necessary therefor; provided however, that no transfer shall be made between two or more of such funds. Such amounts shall be paid at such times as required, to the state comptroller and shall be credited to the survivor's benefit fund.

7. The state comptroller shall prescribe such regulations as may be required for the effective administration and implementation of the provisions of this section including the establishment of criteria for determining eligibility of managerial/confidential employees. The state comptroller may enter into agreements with other agencies to perform such duties as may be necessary to implement the provisions of this section.

8. The provisions of this section shall apply to managerial/confidential employees who die on or after October first, nineteen hundred eighty and on or before June thirtieth, nineteen hundred eighty-one.