§ 80-a. Legislative and executive retirement plan; new plan. a. As used in this section the following words and phrases shall have the following meanings unless a different meaning is plainly required by the context:

1. "Legislative and executive member". A person who is lieutenant-governor, comptroller, attorney-general, a senator, an assemblyman or an annual or session employee of the legislature, and elects to come under the provisions of this section.

1-a. "Legislative employee" means (a) an officer or employee of the senate; (b) an officer or employee of the assembly; (c) an officer or employee of a joint legislative employer. For the purposes of this subdivision, the term "joint legislative employer" shall mean legislative commissions, committees, task forces (irrespective of intended or actual duration), joint legislative commissions, councils or similar bodies whose membership is comprised of both senators and assembly members, or which consist of commissioners, or the majority of whose membership is appointed by one or more of the following: the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and/or the minority leader of the assembly, and shall include officers and employees of the legislative library, legislative health service, legislative messenger service and including components of the senate or assembly that are so identified pursuant to the legislative law; and further shall include officers and employees of a joint legislative employer which at the time of the service satisfies the foregoing definition of "joint legislative employer". "Legislative service" or "legislative employment" shall mean service or employment as a legislative employee as defined herein.

2. "Annual employee". A person employed by the legislature on an annual payroll for not less than twenty-six weeks in any calendar year (exclusive of employees of joint legislative committees or temporary commissions) regardless of whether or not such service is consecutive and regardless of whether rendered before or after the effective date of this act.

3. "Session employee". A person employed by the legislature on a session payroll during the entire period of a regular session of the legislature. For the purposes of this paragraph, the entire period of a regular session of the legislature shall mean the period covered by the session payroll schedule adopted for administrative purposes and certified to by the temporary president of the senate or the speaker of the assembly, as the case may be, at the commencement of a regular session of the legislature.

4. "Final average salary". The average yearly and/or annual compensation earned during any three consecutive years of creditable service, as selected by such member at the time of retirement.

5. "Yearly compensation". The total salary or wages and statutory allowance paid in any calendar year for creditable service to the lieutenant-governor, comptroller, attorney-general, a senator, an assemblyman or an annual or session employee of the legislature for any purpose, and/or while a delegate, officer or employee of the conventions to revise and amend the constitution of the state in the years nineteen hundred thirty-eight or nineteen hundred sixty-seven, or both.

6. "Annual compensation". The total salary or wages paid in any calendar year to a person for any creditable service under this section, other than service as lieutenant-governor, comptroller, attorney-general, a senator, an assemblyman or an annual or session employee of the legislature.

7. "Creditable service". Regardless of whether rendered before or after the effective date of this section, service rendered as lieutenant-governor, comptroller, attorney-general, a senator, an assemblyman or an annual or session employee of the legislature, and service rendered to the state, any political subdivision thereof or a public benefit corporation for which credit is granted under the provisions of this or any other section of this chapter, and military service. A senator or an assemblyman or a session employee who serves during an entire regular legislative session, and an annual employee who serves not less than twenty-six weeks during any calendar year shall be

credited with service for the entire year. Notwithstanding the foregoing provisions of this paragraph, service rendered to the state, any political subdivision thereof or a public benefit corporation for which credit is granted under the provisions of any other section of this chapter shall not be deemed to be creditable service, as herein defined, if rendered by a person who becomes a member under the provisions of this section on and after July first, nineteen hundred seventy-two.

8. "Military service". (a) Prior military service as defined in paragraphs d and e of subdivision twenty-four of section two of this chapter; and

(b) Service in war after world war I as defined in subdivisions twenty-nine, twenty-nine-a, thirty, and thirty-one of section two of this chapter; and

(c) In the case of a senator or assemblyman, service, not in excess of three years and not otherwise creditable under subparagraph (b) of this paragraph, rendered on active duty in the armed forces of the United States during the period commencing July first, nineteen hundred forty, and terminating December thirty-first, nineteen hundred forty-six, by a person who was a resident of the state at the time of entry into service and at the time of being discharged therefrom (i) under honorable circumstances, or (ii) has a qualifying condition, as defined in section three hundred fifty of the executive law, and was a resident of the state at the time of entry into service and at the time of receiving a discharge other than bad conduct or dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section three hundred fifty of the executive law, and was a resident of the state at the time of entry into service and at the time of receiving a discharge other than bad conduct or dishonorable from such service.

9. "Service fraction". The fraction by which a member's final average salary times his years of service is multiplied to determine such member's pension.

b. Any person who is lieutenant-governor, comptroller, attorney-general, a senator, an assemblyman or an annual or session employee of the legislature may elect to come under the provisions of

this section by filing an application therefor with the comptroller on or before April first, nineteen hundred sixty-nine or within one year after he last becomes lieutenant-governor, comptroller, attorney-general, a senator, an assemblyman or an annual or session employee of the legislature, whichever is later. One year or more after the filing thereof, a member may withdraw any such election by written notice duly acknowledged and filed with the comptroller.

c. 1. A legislative and executive member who, while a member of this retirement system under the provisions of any other section of this chapter, elected, prior to August nineteenth, nineteen hundred sixty-seven, to contribute at a rate of contribution determined in accordance with the provisions of such section, shall continue to contribute at such rate until such election is withdrawn as provided in subdivision e of section seventy-five-a of this chapter.

2. No contribution may be made by a legislative and executive member under the provisions of this section who:

(a) becomes a member of the retirement system on and after April first, nineteen hundred sixty-eight; or

(b) was a non-contributory member of the retirement system at the time he elects to come under the provisions of this section.

3. In addition, every person who was a member of this retirement system prior to August nineteenth, nineteen hundred sixty-six may elect or may continue to make contributions pursuant to subdivision i of section twenty-one of this chapter.

d. 1. A legislative and executive member who does not withdraw his contributions made prior to April first, nineteen hundred sixty, shall be entitled to retire, subject to the provisions of subdivision h of this section, upon his:

(a) Completion of twenty years of service as a state senator or assemblyman, which may include service credited under subparagraph (c) of paragraph eight of subdivision a of this section, or

(b) Completion of at least five years of service as a legislative and executive member, and

(c) Completion of at least five additional years of creditable service, and

(d) Attainment of age fifty-five,

by filing an application therefor in a manner similar to that provided in section seventy of this article.

2. (a) Upon completion of such service and upon retirement, each such legislative and executive member shall receive a pension for creditable service prior to April first, nineteen hundred sixty which, together with an annuity, if any, which shall be the actuarial equivalent of his accumulated normal contributions attributable to the period prior to April first, nineteen hundred sixty, and accumulated contributions paid to receive credit for military service as defined in subparagraph c of paragraph eight of subdivision a of this section, shall be sufficient to provide him with a retirement allowance equal to one-fortieth of his final average salary for each year of such service.

For the purpose only of determining the amount of such pension provided for in this subparagraph (a), the annuity shall be computed as it would be if it were not reduced by the actuarial equivalent of any outstanding loan, and if it were not increased by the actuarial equivalent of other than normal contributions, and if it were not reduced by reason of the legislative and executive member's election to decrease his annuity contributions to the retirement system in order to apply the amount of such reduction in payment of his contributions for old age and survivors insurance coverage.

(b) In addition, each such legislative and executive member shall receive: (1) An additional annuity which shall be the actuarial equivalent of his accumulated contributions other than those required pursuant to subparagraph (a) of paragraph two of this subdivision or made on and after April first, nineteen hundred sixty to this retirememt system, or to a local pension system in the case of a member who transfers his membership to this retirement system on and after such date pursuant to section forty-three of this chapter; and

(2) An additional pension of one-fortieth of such member's final average salary for each year of creditable service after April first, nineteen hundred sixty.

3. In no event shall the sum total of the pensions payable under this section to any member exceed seventy-five per cent of such member's final average salary.

e. Any legislative and executive member who was a member of this retirement system pursuant to the provisions of any other section of this chapter, and/or who was a member of a local pension system and who receives or received service credit therefor in this retirement system pursuant to section forty-three of this chapter, and/or who renders or rendered military service, shall receive full credit under this section for such service. In addition to credit for military service previously granted or subsequently granted pursuant to other provisions of this chapter, credit for military service as defined in subparagraph (c) of paragraph eight of subdivision a of this section shall be granted upon payment by the member of both the amount of contributions which such member would have been required to pay into the annuity savings fund and the amount which the state would have been required to pay into the pension accumulation fund if such service had been legislative service pursuant to section eighty of this chapter. No credit shall be allowed for military service if, but for the member's failure to avail himself of the privilege of transfer within the time and in the manner provided in section forty-three of this article, credit for such service could have been obtained upon transfer from another retirement system pursuant to such section, nor shall such credit for military service as defined in subparagraph (c) of paragraph eight of subdivision a of this section be allowed if application for such credit is made later than one year after first becoming a member of the legislative and executive plan set forth in this section. Such contributions shall be paid in a lump sum or in such installments as the comptroller shall approve, and shall be reduced by the amount of applicable contributions, if any, made or transferred to this retirement system under any section of this chapter for such service.

f. 1. A legislative and executive member who discontinues service other than by death or retirement after March thirty-first, nineteen hundred sixty-eight and who has received credit for service on the basis

of the plan contained in this section for at least ten years and who does not withdraw his contributions made prior to April first, nineteen hundred sixty shall be eligible to retire on the date when the member would have otherwise been eligible to retire pursuant to subdivision d of this section had he continued in the service covered by this section, and shall receive a retirement allowance computed in accordance with the provisions of paragraph two of this subdivision.

2. (a) Such vested retirement allowance shall consist of a pension for creditable service prior to April first, nineteen hundred sixty which, together with an annuity, if any, which shall be the actuarial equivalent of his accumulated normal contributions attributable to the period prior to April first, nineteen hundred sixty and accumulated contributions paid to receive credit for military service as defined in subparagraph c of paragraph eight of subdivision a of this section, shall be sufficient to provide him with a retirement allowance equal to one-fortieth of his final average salary for each year of such service.

For the purpose only of determining the amount of such pension provided for in this subparagraph (a), the annuity shall be computed as it would be if it were not reduced by the actuarial equivalent of any outstanding loan, and if it were not increased by the actuarial equivalent of other than normal contributions, and if it were not reduced by reason of the legislative and executive member's election to decrease his annuity contributions to the retirement system in order to apply the amount of such reduction in payment of his contributions for old age and survivors insurance coverage.

(b) In addition, such vested retirement allowance shall include:

(1) an additional annuity which shall be the actuarial equivalent of his accumulated contributions other than those required pursuant to subparagraph a of paragraph two of this subdivision or made on and after April first, nineteen hundred sixty, to this retirement system, or to a local pension system in the case of a member who transfers his membership to this retirement system on and after such date pursuant to section forty-three of this chapter, and

(2) an additional pension of one-fortieth of such member's final average salary for each year of creditable service after April first,

nineteen hundred sixty.

g. 1. Any legislative and executive member, who has vested rights under subdivision f of this section, who terminates his employment as lieutenant-governor, comptroller, attorney-general, a senator, an assemblyman or an annual or session employee of the legislature, and who obtains other employment in the service of the state, a political subdivision thereof or a public benefit corporation participating in this retirement system or maintaining a local pension system from or to which a person may transfer pursuant to section forty-three of this chapter, may elect to continue to be a legislative and executive member and be covered by, and make contributions in accordance with, the provisions of this section in the same manner as during his period of service as lieutenant-governor, comptroller, attorney-general, a senator, an assemblyman or an annual or session employee of the legislature. In such case, notwithstanding the provisions of item (2) of subparagraph (b) of paragraph two of subdivision d, and item (2) of subparagraph (b) of paragraph two of subdivision f, the additional pension earned under this subdivision g shall be computed by multiplying the member's final average salary for each such year of service by the service fraction applicable to the section of this chapter or local pension system which otherwise would have been applicable to such member.

2. Notwithstanding any general, special or local law, charter or code, any such member who makes the election provided in this subdivision shall not be eligible for membership in the local pension system maintained by the political subdivision or public benefit corporation by which he is employed.

3. Every political subdivision or public benefit corporation which employs any such member shall make contributions to this retirement system on behalf of such member equal to the amount of contributions otherwise required of the political subdivision or public benefit corporation by this retirement system in the case of a participating employer, or by the local pension system in the case of a non-participating employer. Such contributions shall be transferred to

this retirement system at such times and in such manner as shall be prescribed by the comptroller.

h. 1. No member shall be eligible to retire under the provisions of subdivision d of this section unless he was a legislative and executive member and/or elected to be continued as a legislative and executive member pursuant to subdivision g of this section for at least three years immediately prior to his date of retirement, or was a senator or assemblyman for at least two years immediately prior to his date of retirement.

2. No member shall be eligible to retire under the provisions of subdivision f of this section unless he was a legislative and executive member and/or elected to be continued as a legislative and executive member pursuant to subdivision g of this section for at least three years immediately prior to his discontinuance of service or was a senator or assemblyman for at least two years immediately prior to his discontinuance of service.

i. Whenever any death benefit, based upon eligibility for retirement, is granted by any other provision of this chapter or any other law, any legislative and executive plan member shall be considered to have been eligible to retire after the completion of twenty years of creditable service as defined in this section, including five years as a legislative and executive member, notwithstanding any other requirement contained in this section respecting minimum age for retirement.

j. On and after July first, nineteen hundred seventy-three, no person may elect to be covered under the provisions of this section.

k. The provisions of this section shall be controlling notwithstanding any provision of this chapter to the contrary.