

Legislative Bill Drafting Commission
17044-01-0

*** FISCAL NOTE NEEDED ***

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

CIVISE

(Authorizes certain public employers
to offer temporary retirement incen-
tives; provides an age 55/25 years
temporary retirement incentive for
certain public employees)

Retirement incentive

AN ACT

to authorize employers to provide a
temporary retirement incentive for
certain public employees (Part A);
and to provide an age 55/25 years
temporary retirement incentive for
certain public employees (Part B)

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

s15 Addabbo	s55 Funke	s26 Kavanagh	s58 O'Mara	s41 Serino
s52 Akshar	s59 Gallivan	s63 Kennedy	s62 Ortt	s29 Serrano
s46 Amedore	s05 Gaughran	s28 Krueger	s21 Parker	s51 Seward
s36 Bailey	s12 Gianaris	s24 Lanza	s19 Persaud	s39 Skoufis
s30 Benjamin	s22 Gounardes	s01 LaValle	s13 Ramos	s16 Stavisky
s34 Biaggi	s47 Griffio	s45 Little	s61 Ranzenhofer	s35 Stewart- Cousins
s57 Borrello	s40 Harckham	s11 Liu	s48 Ritchie	s49 Tedisco
s04 Boyle	s54 Helming	s03 Martinez	s33 Rivera	s06 Thomas
s44 Breslin	s27 Hoylman	s53 May	s56 Robach	s02
s08 Brooks	s31 Jackson	s37 Mayer	s18 Salazar	s50
s38 Carlucci	s43 Jordan	s42 Metzger	s10 Sanders	s60
s14 Comrie	s09 Kaminsky	s25 Montgomery	s23 Savino	
s17 Felder	s07 Kaplan	s20 Myrie	s32 Sepulveda	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a072 De La Rosa	a104 Jacobson	a069 O'Donnell	a052 Simon
a092 Abinanti	a034 DenDekker	a097 Jaffee	a051 Ortiz	a036 Simotas
a084 Arroyo	a003 DeStefano	a011 Jean-Pierre	a091 Otis	a005 Smith
a107 Ashby	a070 Dickens	a135 Johns	a132 Palmesano	a118 Smullen
a035 Aubry	a054 Dilan	a115 Jones	a002 Palumbo	a022 Solages
a120 Barclay	a081 Dinowitz	a077 Joyner	a088 Paulin	a114 Stec
a030 Barnwell	a147 DiPietro	a040 Kim	a141 Peoples- Stokes	a110 Steck
a106 Barrett	a016 D'Urso	a131 Kolb	a058 Perry	a010 Stern
a060 Barron	a048 Eichenstein	a105 Lalor	a023 Pheffer	a127 Stirpe
a082 Benedetto	a004 Englebright	a013 Lavine	Amato	a102 Tague
a042 Bichotte	a074 Epstein	a134 Lawrence	a086 Pichardo	a071 Taylor
a079 Blake	a109 Fahy	a050 Lentol	a089 Pretlow	a001 Thiele
a117 Blankenbush	a061 Fall	a125 Lifton	a073 Quart	a033 Vanel
a098 Brabenec	a080 Fernandez	a009 LiPetri	a019 Ra	a116 Walczyk
a026 Braunstein	a126 Finch	a123 Lupardo	a006 Ramos	a055 Walker
a138 Bronson	a008 Fitzpatrick	a129 Magnarelli	a062 Reilly	a143 Wallace
a093 Buchwald	a124 Friend	a064 Malliotakis	a087 Reyes	a112 Walsh
a142 Burke	a046 Frontus	a130 Manktelow	a043 Richardson	a041 Weinstein
a119 Buttenschon	a095 Galef	a108 McDonald	a078 Rivera	a024 Weprin
a094 Byrne	a007 Garbarino	a014 McDonough	a068 Rodriguez	a059 Williams
a133 Byrnes	a148 Giglio	a146 McMahan	a027 Rosenthal, D.	a113 Woerner
a103 Cahill	a066 Glick	a017 Mikulin	a067 Rosenthal, L.	a056 Wright
a044 Carroll	a150 Goodell	a101 Miller, B.	a025 Rozic	a096 Zebrowski
a047 Colton	a075 Gottfried	a038 Miller, M. G.	a149 Ryan	a012
a032 Cook	a021 Griffin	a020 Miller, M. L.	a121 Salka	a031
a122 Crouch	a100 Gunther	a015 Montesano	a111 Santabarbara	a085
a039 Cruz	a139 Hawley	a145 Morinello	a090 Sayegh	a136
a063 Cusick	a083 Heastie	a057 Mosley	a140 Schimminger	a137
a045 Cymbrowitz	a028 Hevesi	a065 Niou	a099 Schmitt	
a018 Darling	a128 Hunter	a037 Nolan	a076 Seawright	
a053 Davila	a029 Hyndman	a144 Norris		

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
signed copies of bill and: in Assembly 2 copies of memorandum in support, in
Senate 4 copies of memorandum in support (single house); or 4 signed copies
of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. This act enacts into law components of legislation that
2 would enable public employers to offer a temporary retirement incentive
3 to their employees, as well as to provide an age 55/25 years temporary
4 incentive for certain public employees. Each component is wholly
5 contained within a Part identified as Parts A and B. The effective date
6 for each particular provision contained within such Part is set forth in
7 the last section of such part. Any provision in any section contained
8 within a Part, including the effective date of the Part, which makes
9 reference to a section "of this act", when used in connection with that
10 particular component, shall be deemed to mean and refer to the corre-
11 sponding section of the Part in which it is found, unless noted other-
12 wise.

13 § 2. Legislative findings. The legislature finds and declares that the
14 retirement benefits provided for in this act are designed to achieve
15 cost-savings for public employers and to avoid layoffs of public employ-
16 ees in this time of fiscal need. Therefore, the retirement incentive
17 benefit provided for in Part A of this act and the age 55/25 years
18 retirement benefit provided for in Part B of this act are intended only
19 to be temporary in nature for employees who are eligible to receive and
20 qualify for the applicable benefit during the applicable time periods
21 specified within each Part. Further, nothing in this act shall be
22 construed to create an expectation of a future or continuing retirement
23 benefit for any public employee who is not eligible to receive and qual-
24 ify for the retirement benefits in this act during the applicable time
25 periods.

1 Section 1. Definitions. As used in this act, unless the context clear-
2 ly requires otherwise:

3 a. "Retirement system" means the New York state and local employees'
4 retirement system, the New York state teachers' retirement system, the
5 New York city teachers' retirement system, the New York city board of
6 education retirement system or the New York city employees' retirement
7 system, exclusive of the retirement plans established pursuant to
8 sections 13-156 and 13-157 of the administrative code of the city of New
9 York.

10 b. "Teachers' retirement system" means the New York state teachers'
11 retirement system or the New York city teachers' retirement system.

12 c. "Optional retirement program" means the programs established pursu-
13 ant to the provisions of section 181, 391 or 6251 of the education law;
14 or continued pursuant to section 3 of chapter 980 of the laws of 1962.

15 d. "State employer" means (a) the executive branch of the state, (b)
16 the state-operated institutions of the state university of New York, (c)
17 the statutory and contract colleges operated pursuant to section 357 of
18 the education law, (d) the state university construction fund (herein-
19 after referred to in this act as the "fund"), (e) a cooperative exten-
20 sion association (hereinafter referred to in this act as the "associ-
21 ation"), (f) the city university of New York as defined in subdivision 2
22 of section 6202 of the education law, (g) the unified court system, (h)
23 the senate, (i) the assembly, and (j) joint legislative employers.

24 e. (a) "Local employer" means an employer, other than a state employ-
25 er, which participates in a retirement system; such term shall include a
26 community college operating under the program of the state university of
27 New York.

1 (b) "Educational employer" means an employer which participates in a
2 retirement system and which is a school district, a board of cooperative
3 educational services, a vocational education and extension board, an
4 institution for the instruction of the deaf and of the blind as enumer-
5 ated in section 4201 of the education law, or a school district as
6 enumerated in section 1 of chapter 566 of the laws of 1967, as amended.

7 f. "Eligible employee" means a person who is a member of a retirement
8 system or a participant in an optional retirement program who is an
9 employee in the executive branch of a state employer or an employee of a
10 state employer or a local or educational employer which makes an
11 election under this section or section four of this act, but such term
12 shall not include the following persons:

13 (a) elected officials, judges or justices appointed to or serving in a
14 court of record and acting village justices;

15 (b) chief administrative officers of participating employers which
16 participate in a teachers' retirement system;

17 (c) officers described in sections 4, 41-a, 46, 61, 70, 70-a, 169
18 (including those officers whose salary is established pursuant to salary
19 plans under subdivision 3 of section 169), 180 and subdivision 1 of
20 section 41 of the executive law and any agency or department head
21 appointed by the governor, comptroller or attorney general;

22 (d) appointed members of boards or commissions any of whose members
23 are appointed by the governor or by another state officer or body;

24 (e) nonjudicial officers and employees of the unified court system
25 unless the chief administrator of the courts elects as provided herein,
26 which election shall cover only nonjudicial officers and employees hold-
27 ing positions in any title in the classified service of the unified
28 court system;

1 (f) officers or employees of the senate unless the senate adopts a
2 resolution authorizing the temporary president to file the election as
3 provided in this subdivision;

4 (g) officers or employees of the assembly unless the assembly adopts a
5 resolution authorizing the speaker of the assembly to file the election
6 as provided in this subdivision; and

7 (h) officers or employees of joint legislative employers unless:

8 (i) with respect to officers or employees of the legislative library,
9 legislative messenger service, legislative health service, legislative
10 ethics commission, the legislative bill drafting commission, and the
11 joint line of the legislative task force on demographic research and
12 reapportionment, the senate and assembly adopt a concurrent resolution
13 authorizing the temporary president of the senate and the speaker of the
14 assembly to jointly file an election as provided in this subdivision;

15 (ii) with respect to officers or employees of components of the senate
16 as identified pursuant to section 90 of the legislative law, the senate
17 adopts a resolution authorizing the temporary president to file an
18 election for officers or employees of those components designated in
19 such resolution; and

20 (iii) with respect to officers or employees of components of the
21 assembly as identified pursuant to section 90 of the legislative law,
22 the assembly adopts a resolution authorizing the speaker of the assembly
23 to file an election for officers or employees of those components desig-
24 nated in such resolution.

25 Any election under paragraphs (e) through (h) of this subdivision to
26 make available the retirement incentive program provided by this act
27 shall be in writing and filed with the state comptroller not later than
28 ninety days after the effective date of this act. Notwithstanding any

1 other provision of this act, each such filing shall specify the
2 commencement date and the length of the open period.

3 For the purposes of such paragraphs (f), (g) or (h) of this subdivi-
4 sion, an employee of the legislature shall be as such term is defined in
5 section 7-a, 7-b or 7-d of the legislative law or by any other provision
6 of law which classifies employees of an entity to be legislative employ-
7 ees for all purposes, but shall not include senators or members of the
8 assembly. The term "joint legislative employer" shall mean legislative
9 commissions, committees, task forces, councils or similar bodies whose
10 membership is comprised of both senators and assembly members, or which
11 consist of commissioners, or the majority of whose membership is
12 appointed by one or more of the following: the temporary president of
13 the senate, the speaker of the assembly, the minority leader of the
14 senate, and/or the minority leader of the assembly. The temporary presi-
15 dent of the senate and the speaker of the assembly shall be the joint
16 legislative employer of the employees of the legislature referred to in
17 sections 7-a and 7-b of the legislative law.

18 g. "Eligible title" means any title where a certain number of posi-
19 tions in that title, as identified by agency, department, work location
20 or appointing authority, college or campus, as the case may be, would
21 otherwise be identified for layoff but for this act because of economy,
22 consolidation or abolition of functions, curtailment of activities or
23 otherwise. However, an eligible title can also include a title as iden-
24 tified by an agency, department, work location or appointing authority
25 in which positions would not be eliminated but into which employees in
26 titles affected by layoff can be transferred or reassigned pursuant to
27 the civil service law, rule or regulation. The determination of eligible
28 titles shall be made by: (a) the appointing authority, subject to the

1 approval of the director of state operations for titles within the execu-
2 tive branch, (b) the board of trustees for the state university
3 (including the association) subject to the approval of the director of
4 state operations, the fund, the city university of New York and of each
5 community college operating under the program of the state university,
6 (c) the person or persons who elect under paragraphs (e) through (h) of
7 subdivision f of this section to offer the retirement incentive provided
8 by this act, and (d) the chief executive officer or other comparable
9 official for local or educational employers other than the community
10 colleges.

11 h. "College faculty" means an employee, not in the classified service,
12 of a state employer described in paragraphs (b), (c), (d), (e) and (f)
13 of subdivision d of this section or of a community college who is a
14 member of a teachers' retirement system, the New York state and local
15 employees' retirement system or a participant in an optional retirement
16 program.

17 i. "Active service" means service while being paid on the payroll,
18 provided that (a) a leave of absence with pay shall be deemed active
19 service; (b) other approved leave without pay not to exceed twelve weeks
20 prior to the commencement of the designated open period; and (c) the
21 period of time subsequent to a June school term and on or before August
22 31 of the year for which an open period is designated for a teacher (or
23 other employee employed on a school-year basis) who is otherwise in
24 active service on the effective date of this act shall be deemed active
25 service.

26 j. "Open period " means the period beginning with the commencement
27 date as defined in subdivision k of this section and shall not be more
28 than ninety days nor less than thirty days in length, as specified by

1 the director of state operations or by a local or educational employer
2 pursuant to section four of this act, by the appropriate board of trus-
3 tees for the state university (including the association), the fund, the
4 city university of New York or a community college operating under a
5 program of the state university or by a state employer described in
6 paragraphs (g), (h), (i) and (j) of subdivision d of this section. For
7 the purposes of retirement pursuant to this act, a service retirement
8 application must be filed with the appropriate retirement system not
9 less than fourteen days prior to the effective date of retirement to
10 become effective, unless a shorter period of time is permitted under
11 law.

12 k. "Commencement date" means the first day the retirement incentive
13 authorized by this act shall be made available, which shall mean a date
14 on or after the effective date of this act to be determined by the
15 director of state operations for the executive branch of the state and
16 by a chief executive officer or other comparable official of a local or
17 educational employer for such local or educational employer's employees.
18 The director of state operations and the chief executive officer or
19 other comparable official of a local or educational employer shall noti-
20 fy the heads of the appropriate retirement systems of the dates of each
21 open period prior to the commencement dates of such periods.

22 § 2. The determination of whether a title shall be considered eligible
23 shall consider whether the reduction of a specific number of positions
24 within a title would unacceptably:

25 a. Directly result in a reduction of the level of service required or
26 mandated to protect and care for clients of the state or a local or
27 educational employer or to assure public health and safety;

1 b. Endanger the health or safety of employees of the state or a local
2 or educational employer; or

3 c. Clearly result in a loss of significant revenue to the state or a
4 local or educational employer or result in substantially increased over-
5 time or contractual costs. However, upon the determination of the direc-
6 tor of state operations, with respect to employees of the executive
7 branch of a state employer, any titles may be determined eligible if the
8 vacancies created can be controlled by the use of transfer or reassign-
9 ment provisions of the civil service law, rules or regulations or other
10 deployment of state employees.

11 § 3. a. Eligibility for inclusion in the retirement incentive provided
12 by section six of this act shall be determined: (a) by seniority: for
13 local and educational employers and state employers described in para-
14 graphs (a), (b), (c), (d), (e) and (f) of subdivision d of section one
15 of this act, other than for college faculty; seniority shall mean the
16 date of original permanent appointment in the civil service of the state
17 adjusted to include veteran's credits for those entitled to receive such
18 credits pursuant to sections 80, 80-a and 85, if applicable, of the
19 civil service law, as established in the official records of the depart-
20 ment of civil service, regardless of the jurisdictional classification
21 of the position or the status of the incumbent; (b) by seniority, as
22 applicable for the unified court system; (c) for state employers
23 described in paragraphs (h), (i) and (j) of subdivision d of section one
24 of this act as determined by the person or persons who make the election
25 to offer the retirement incentive; and (d) for college faculty, by the
26 board of trustees of the state university, city university and of each
27 community college operating under the program of the state university.

1 b. All eligible employees serving in eligible titles desiring to avail
2 themselves of the retirement incentive provided by section six of this
3 act shall provide written notice to his or her employer on or before the
4 twenty-first day preceding the end of the open period. Failure to
5 provide such written notice shall render the employee ineligible for the
6 retirement incentive provided by this act.

7 § 4. a. On or after the effective date of this act, a local or educa-
8 tional employer or a state employer described in paragraphs (b), (c),
9 (d), (e) and (f) of subdivision d of section one of this act may elect
10 to provide its employees the retirement incentive authorized by this act
11 by (a) the enactment of a local law or (b) in the case of a local or
12 educational employer which is not so empowered to act by local law or a
13 state employer described in paragraphs (b), (c), (d), (e) and (f) of
14 subdivision d of section one of this act, by the adoption of a resol-
15 ution of its governing body; provided however, no local law or resol-
16 ution enacted pursuant to this section shall in any manner supersede any
17 local charter. The local law or resolution shall specify the commence-
18 ment date of the program and the length of the open period or periods.
19 For a community college operating under the program of state university
20 of New York, such election shall be made by the board of trustees of
21 such community college subject to the approval of its sponsor. A copy of
22 such law or resolution shall be filed with the appropriate retirement
23 system or systems, and, if applicable, on forms provided by such system.
24 The local law or resolution shall be accompanied by the affidavit of the
25 chief executive officer or other comparable official certifying to the
26 information contained in subdivision b of this section.

27 b. The executive branch of the state may elect to provide its employ-
28 ees the retirement incentive authorized by section six of this act by

1 the director of the state operations filing an election with the state
2 comptroller specifying the commencement date and length of all open
3 periods, provided that such periods shall not be more than ninety days
4 nor less than thirty days in length.

5 c. Notwithstanding any other provision of law, the benefits provided
6 by this act shall not be made available to any person who (a) has
7 received any retirement incentive authorized by any provision of state
8 law, or (b) who receives, has received or is eligible to receive a
9 payment in a lump sum or in another form from a retirement incentive
10 pursuant to the provisions of a collective bargaining agreement or by
11 other arrangement with his or her employer, unless such person files a
12 written statement with his or her employer, a copy of which shall be
13 forwarded to the appropriate retirement system, that he or she agrees to
14 waive any right to such payment. A state, local, or educational employer
15 who makes an election pursuant to this section and who offers or has
16 offered a retirement incentive pursuant to the provisions of a collec-
17 tive bargaining agreement or by other arrangement shall prepare, and
18 file with each retirement system, a list containing the names and social
19 security numbers of all persons described in this subdivision. A state,
20 local or educational employer is authorized to exempt persons in its
21 employ from the provisions of paragraph (b) of this subdivision. Such
22 exemption shall be made part of the election made pursuant to this
23 section.

24 § 5. Notwithstanding any other provision of law, any eligible employee
25 serving in an eligible title who:

26 a. has been continuously in the active service of a state, local, or
27 educational employer prior to the commencement date of the applicable
28 open period;

1 b. files an application for service retirement (or files the appropri-
2 ate application and authorization form with the optional retirement
3 program and a duly acknowledged retirement incentive form for such
4 program with the appropriate personnel office) that is effective during
5 the open period; and

6 c. is otherwise eligible for a service retirement as of the effective
7 date of the application for retirement shall be entitled to the retire-
8 ment incentive provided in section six of this act. If not otherwise
9 eligible for a service retirement, the following person shall be deemed
10 to satisfy the eligibility condition of this section: a person who is at
11 least age fifty with ten or more years service as of the effective date
12 of retirement (other than a member of a retirement plan which provides
13 for half-pay pension upon completion of twenty-five years or less
14 service without regard to age); a member of a retirement plan which
15 provides for half-pay pension upon completion of twenty-five years of
16 service without regard to age who has not accrued, excluding additional
17 credit granted pursuant to this act, the minimum number of years of
18 service required to retire with an allowance equal to fifty percent of
19 final average salary under such plan, but has, with the inclusion of the
20 additional credit provided under this act, accrued such number of years
21 of credit; or a participant in an optional retirement plan at least
22 fifty years of age with ten years of service on an annual salary basis
23 with his or her employer as of the date of retirement.

24 § 6. Notwithstanding any other provision of law, an eligible employee
25 serving in an eligible title who is:

26 a. A member of a retirement system and who is entitled to a retirement
27 incentive pursuant to section five of this act shall receive a retire-
28 ment incentive of one-twelfth of a year of additional retirement credit

1 for each year of pension service credited as of the date of retirement,
2 up to a maximum of three years of retirement service credit at the time
3 of retirement, provided, however, that service credit provided under the
4 provisions of sections 902 and 911 of the retirement and social security
5 law shall not be included when calculating the additional retirement
6 credit awarded pursuant to this act. For the New York city teachers'
7 retirement system, the New York city employees' retirement system and
8 the New York city board of education retirement system such incentive
9 shall be available for all purposes, including fulfilling the qualifying
10 service requirements of plan A and C, if applicable.

11 An eligible employee who is covered by the provisions of article 15 of
12 the retirement and social security law shall retire under the provisions
13 of article 15 of the retirement and social security law. The amount of
14 such benefit for an eligible employee who is covered by article 15 of
15 the retirement and social security law and retires under the provisions
16 of this section (other than a member with thirty or more years of
17 service in the New York state and local employees' retirement system or
18 a teachers' retirement system) shall be reduced by six percent for each
19 of the first two years by which retirement precedes age sixty-two, plus
20 a further reduction of three percent for each year by which retirement
21 precedes age sixty, provided, however, the foregoing reductions shall
22 not apply: (i) in any case where an eligible employee can retire after
23 twenty-five years of service with immediate payability prior to the age
24 of sixty-two pursuant to section 604-b of the retirement and social
25 security law or (ii) to any time period subsequent to the point at which
26 an eligible employee can retire for service without reduction of his or
27 her service retirement allowance pursuant to article 16 of the retire-
28 ment and social security law. Such reduction shall be prorated for

1 partial years. The amount of such benefit for an eligible employee with
2 thirty or more years of service who is a member of the New York state
3 and local employees' retirement system or a teachers' retirement system
4 or an eligible employee who is a participant in the optional twenty-five
5 year early retirement program for certain New York city members governed
6 by section 604-c of the retirement and social security law, as added by
7 chapter 96 of the laws of 1995 or a twenty-five year participant in the
8 age fifty-five retirement program governed by section 604-i of the
9 retirement and social security law, with twenty-five or more years of
10 service and who is covered by article 15 of the retirement and social
11 security law shall be reduced by five percent for each year by which
12 retirement pursuant to this section precedes age fifty-five. The amount
13 of such benefit for an eligible New York city employee with five or more
14 years of service and who is a participant in the age fifty-seven retire-
15 ment program governed by section 604-d of the retirement and social
16 security law shall be reduced by one-thirtieth for the first two years
17 by which retirement precedes age fifty-seven plus a further reduction of
18 one-twentieth for each year by which retirement precedes age fifty-five.
19 Such reduction shall be prorated for partial years. There shall be no
20 reduction for an eligible New York city employee in a physically taxing
21 position with twenty-five or more years of service and who is a partic-
22 ipant (i) in the optional twenty-five year early retirement program for
23 certain members governed by section 604-c of the retirement and social
24 security law, as added by chapter 96 of the laws of 1995, or (ii) in the
25 age fifty-seven retirement program governed by section 604-d of the
26 retirement and social security law.

27 An eligible employee serving in an eligible title who is covered by
28 article 11 of the retirement and social security law shall retire under

1 the provisions of such article. There shall be no reduction in retire-
2 ment benefit provided that such employee retires with thirty or more
3 years of service at age fifty-five or older.

4 An eligible employee serving in an eligible title who is not covered
5 by article 11 or 15 of the retirement and social security law shall
6 retire under the provisions of the plan by which he or she is covered.
7 The amount of such benefit shall be reduced by five percent for each
8 year by which retirement pursuant to this section precedes age fifty-
9 five, provided, however, the foregoing reductions shall not apply: (i)
10 in any case where an eligible employee can retire pursuant to a plan
11 which permits retirement for service with immediate payability, exclu-
12 sive of this act, prior to the age of fifty-five or (ii) to any time
13 period subsequent to the point at which an eligible employee can retire
14 for service without reduction of his or her service retirement allowance
15 pursuant to article 16 of the retirement and social security law. Such
16 reduction shall be prorated for partial years.

17 An eligible employee serving in an eligible title who participates in
18 a retirement plan which provides for a retirement allowance equal to
19 fifty percent of final average salary upon the completion of twenty-five
20 years of service without regard to age and who is otherwise eligible to
21 retire shall retire under the provisions of such plan. Such employee
22 shall, at the time of retirement, be credited with one-twelfth of a year
23 of additional retirement service credit for each year of service credit-
24 ed under such plan as of the date of retirement, up to a maximum of
25 three years of retirement service credit, subject to the provisions of
26 subdivision b of this section. If such employee has not accrued, exclud-
27 ing additional credit granted pursuant to this act, the minimum number
28 of years of service required to retire with an allowance equal to fifty

1 percent of final average salary under such plan, but has, with the
2 inclusion of the additional credit provided under this act, accrued such
3 number of years of credit, the benefit payable shall be the percentage
4 of final average salary that would ordinarily be applicable to such
5 individual upon retirement with such amount of credit (including incen-
6 tive credit), reduced by five per centum per year for each year by which
7 the number of years of service otherwise required to retire with an
8 allowance equal to fifty percent of final average salary under such plan
9 exceeds the amount of service credited to such employee under such plan
10 at retirement (excluding the additional retirement incentive service
11 credit provided pursuant to this act). Such reduction shall be prorated
12 for partial years.

13 b. A participant in an optional retirement program who is entitled to
14 a retirement incentive pursuant to section five of this act shall
15 receive an additional employer contribution equal to an amount, which
16 shall be calculated as follows: (one-twelfth for each year of service)
17 multiplied by (fifteen percent) multiplied by (the employee's earnable
18 annual salary rate in effect on the effective date of this act), such
19 amount not to exceed forty-five percent of such salary rate. Such
20 contribution shall be made to the employee's retirement annuity under
21 the optional retirement program up to the maximum contribution allowable
22 under section 415 of the internal revenue code. Any contribution in
23 excess of that limit shall be contributed by the employer to an internal
24 revenue code section 403(b) contract on behalf of the employee to the
25 extent it can be contributed on a before-tax basis under the maximum
26 limits allowed under the internal revenue code. Contributions in excess
27 of that amount shall be paid in cash to the participant in three equal

1 installments during a twenty-four month period commencing on such eligi-
2 ble employee's effective date of retirement.

3 § 7. a. An employee of a state employer, other than the city universi-
4 ty of New York, who retires pursuant to this act may defer calculation
5 of the value of accumulated sick leave credits, if any, and partic-
6 ipation in the state health insurance plan.

7 b. Notwithstanding any other provision of law, any termination pay or
8 leave arising from accrued sick leave or accrued annual leave for an
9 eligible employee who has elected the retirement incentive provided by
10 this act and who is a member of the New York city teachers' retirement
11 system employed by the board of education of the city of New York shall
12 be paid in three equal installments during a twenty-four month period
13 commencing on such eligible employee's effective date of retirement.

14 c. An employee of the city of New York or the city university of New
15 York, as defined in subdivision 2 of section 6202 of the education law,
16 who retires under the retirement incentive provided by this act, who is
17 eligible for terminal leave pursuant to an applicable collective
18 bargaining agreement or a personnel policy or rule or retirement leave
19 pursuant to section 3107 of the education law or who has an accrued
20 annual leave balance on the effective date of retirement shall be paid
21 in three equal installments two months, fourteen months and twenty-four
22 months following such eligible employee's effective date of retirement.

23 § 8. a. A state, local, or educational employer electing the retire-
24 ment incentive provided by this act shall be required to demonstrate the
25 savings of their election by either eliminating positions vacated as a
26 result of an eligible employee in an eligible title receiving the incen-
27 tive provided by section six of this act or demonstrating a compensation
28 savings such that the total amount of base salary paid for the two-year

1 period subsequent to the effective date of retirement for such eligible
2 employees in eligible titles to new hires, if any, who otherwise would
3 not have been hired by such employer after the effective date of this
4 act but for the retirement incentive provided herein shall be no more
5 than one-half of the total amount of base salary that would have been
6 paid to such eligible employees from their date of retirement for such
7 two-year period. A state, local, or educational employer may also demon-
8 strate savings, however, by identifying a vacant position into which
9 another state, local, or educational employee can be appointed, trans-
10 ferred, or reassigned pursuant to the civil service law, rules or regu-
11 lations, in which case the former position of the state, local, or
12 educational employee so appointed, transferred, or reassigned shall be
13 eliminated. Each such employer shall make available its plans for
14 achieving the savings described herein.

15 b. The director of state operations shall direct the department of
16 civil service to prepare a report designating the title, grade level,
17 salary, and classification, according to appointing authority, (i) of
18 each position which is eliminated pursuant to subdivision a of this
19 section, (ii) of each position into which another state employee was
20 appointed, transferred, or reassigned and the former position of such
21 state, local, or educational employee, and (iii) of each position which
22 is eliminated as a result of an appointment, transfer or reassignment
23 referred to in paragraph (ii) of this subdivision. Such report shall be
24 available no later than ninety days after the last date of the open
25 period related to such positions.

26 c. Nothing herein shall be construed to impair the authority of the
27 director of state operations pursuant to section two or subdivision g of
28 section one of this act.

1 § 9. Notwithstanding the provisions of section eight of this act, the
2 city of New York or the city university of New York, as defined in
3 subdivision 2 of section 6202 of the education law, shall not be
4 required to eliminate the positions of eligible employees in eligible
5 titles receiving the retirement incentive provided by section six of
6 this act if such employer can demonstrate that it will achieve a compen-
7 sation or equivalent headcount savings such that the total amount of
8 compensation including benefits paid for the two-year period subsequent
9 to the effective date of retirement for such eligible employees in
10 eligible titles to those new hires, if any, who otherwise would not have
11 been hired by such employer after the effective date of this act but for
12 the retirement incentive provided herein shall be no more than one-half
13 of the total amount of base salary that would have been paid to such
14 eligible employees from their date of retirement for such two-year peri-
15 od. For purposes of this section, the "city of New York" shall mean the
16 city of New York or a local or educational employer a majority of the
17 members of whose governing body are: (a) appointed by the mayor of the
18 city of New York or other citywide elected official, a borough president
19 of the city of New York, or any combination thereof; (b) designated by
20 virtue of their city of New York office or position or their office or
21 position with a local or educational employer whose governing board is
22 described in this section; or (c) appointed or designated by any combi-
23 nation of the foregoing. Each such employer shall make available its
24 plans for achieving these savings.

25 § 10. Nothing in this act shall be used to provide benefits that shall
26 exceed the limits contained in section 415 of the internal revenue code.
27 Provided, however, any service retirement benefit which has been reduced
28 because of section 415 of the internal revenue code shall be increased

1 when (and consistent with) the dollar limits in section 415 of the
2 internal revenue code are adjusted by the internal revenue service for
3 cost of living increases. Such increases shall not increase the benefit
4 in excess of the service retirement benefit otherwise payable.

5 § 11. Any eligible employee who retires pursuant to the provisions of
6 this act and enters or reenters public service as defined in subdivision
7 e of section 210 of the retirement and social security law and joins or
8 rejoins any public retirement system of the state as defined in subdivi-
9 sion 6 of section 152 of the retirement and social security law or
10 elects to participate in an optional retirement program shall if the
11 additional benefit was provided pursuant to: (a) subdivision a of
12 section six of this act, forfeit the additional benefit authorized by
13 this act at the time of his or her subsequent retirement; or (b) subdivi-
14 sion b of section six of this act, repay to the state or participating
15 employer such additional contribution together with the appropriate
16 interest as determined by the state comptroller.

17 § 12. Notwithstanding any other provision of law, if the service
18 retirement benefit of a member of a retirement system is subject to a
19 maximum retirement benefit, the additional benefit authorized by this
20 act will be computed by multiplying the final average salary times the
21 number of years of service credit granted by section six of this act
22 times the benefit fraction of the plan under which such member retires.

23 § 13. The provisions of section 430 of the retirement and social secu-
24 rity law shall not apply to any benefit or benefit improvement provided
25 by this act.

26 § 14. The pension benefit costs of subdivision a of section six of
27 this act shall be paid by employers as provided by applicable law for
28 each retirement system covered by this act over a period not to exceed

1 five years commencing in the state fiscal year following the fiscal year
2 in which this act shall have become a law.

3 § 15. Where an employee is eligible to receive the benefit authorized
4 under section six and the retirement benefit provided for under section
5 five of part B of this act, such employee may elect a section under
6 which he or she will participate. In no event shall the benefits
7 provided for in section six of this act be received by any employee in
8 conjunction with the benefits of section five of part B of this act.

9 § 16. This act shall take effect immediately.

10 PART B

11 Section 1. Definitions. As used in this act, unless the context clear-
12 ly requires otherwise:

13 a. "Retirement system" means the New York state and local employees'
14 retirement system, the New York state teachers' retirement system, the
15 New York city teachers' retirement system, the New York city board of
16 education retirement system or the New York city employees' retirement
17 system, exclusive of the retirement plans established pursuant to
18 sections 13-156 and 13-157 of the administrative code of the city of New
19 York.

20 b. "Teachers' retirement system" means the New York state teachers'
21 retirement system or the New York city teachers' retirement system.

22 c. "State employer" means (a) the executive branch of the state, (b)
23 the state-operated institutions of the state university of New York, (c)
24 the statutory and contract colleges operated pursuant to section 357 of
25 the education law, (d) the state university construction fund (herein-
26 after referred to in this act as the "fund"), (e) a cooperative exten-
27 sion association (hereinafter referred to in this act as the "associ-

1 ation"), and (f) the city university of New York as defined in
2 subdivision 2 of section 6202 of the education law, (g) the unified
3 court system, (h) the senate, (i) the assembly, and (j) joint legisla-
4 tive employers.

5 d. (a) "Local employer" means an employer, other than a state employ-
6 er, which participates in a retirement system; such term shall include a
7 community college operating under the program of state university of New
8 York.

9 (b) "Educational employer" means an employer which participates in a
10 retirement system and which is a school district, a board of cooperative
11 educational services, a vocational education and extension board, an
12 institution for the instruction of the deaf and of the blind as enumer-
13 ated in section 4201 of the education law, or a school district as
14 enumerated in section 1 of chapter 566 of the laws of 1967, as amended.

15 e. "Eligible employee" means a person who is a member of a retirement
16 system who is an employee in the executive branch of a state employer or
17 an employee of a state employer or a local or educational employer who
18 has attained age fifty-five and has at least twenty-five years of cred-
19 itable service in a retirement system, but such term shall not include
20 the following persons:

21 (a) elected officials, judges or justices appointed to or serving in
22 court of record and acting village justices;

23 (b) chief administrative officers of participating employers which
24 participate in a teachers' retirement system;

25 (c) officers described in sections 4, 41-a, 46, 61, 70, 70-a, 169
26 (including those officers whose salary is established pursuant to salary
27 plans under subdivision 3 of section 169), 180 and subdivision 1 of

1 section 41 of the executive law and any agency or department head
2 appointed by the governor, comptroller or attorney general;

3 (d) appointed members of boards or commissions any of whose members
4 are appointed by the governor or by another state officer or body;

5 (e) nonjudicial officers and employees of the unified court system
6 unless the chief administrator of the courts elects as provided herein,
7 which election shall cover only nonjudicial officers and employees hold-
8 ing positions in any title in the classified service of the unified
9 court system;

10 (f) officers or employees of the senate unless the senate adopts a
11 resolution authorizing the temporary president to file the election as
12 provided in this subdivision;

13 (g) officers or employees of the assembly unless the assembly adopts a
14 resolution authorizing the speaker of the assembly to file the election
15 as provided in this subdivision; and

16 (h) officers or employees of joint legislative employers unless:

17 (i) with respect to officers or employees of the legislative library,
18 legislative messenger service, legislative health service, legislative
19 ethics committee, the legislative bill drafting commission, and the
20 joint line of the legislative task force on demographic research and
21 reapportionment, the senate and assembly adopt a concurrent resolution
22 authorizing the temporary president of the senate and the speaker of the
23 assembly to jointly file an election as provided in this subdivision;

24 (ii) with respect to officers or employees of components of the senate
25 as identified pursuant to section 90 of the legislative law, the senate
26 adopts a resolution authorizing the temporary president to file an
27 election for officers or employees of those components designated in
28 such resolution; and

1 (iii) with respect to officers or employees of components of the
2 assembly as identified pursuant to section 90 of the legislative law,
3 the assembly adopts a resolution authorizing the speaker of the assembly
4 to file an election for officers or employees of those components desig-
5 nated in such resolution.

6 Any election under paragraphs (e) through (h) of this subdivision to
7 make available the retirement incentive provided by this act shall be in
8 writing and filed with the state comptroller not later than ninety days
9 after the effective date of this act. Notwithstanding any other
10 provision of this act, each such filing shall specify the commencement
11 date of the open period or periods.

12 For the purposes of such paragraph (f), (g) or (h) of this subdivi-
13 sion, an employee of the legislature shall be as such term is defined in
14 section 7-a, 7-b or 7-d of the legislative law or by any other provision
15 of law which classifies employees of an entity to be legislative employ-
16 ees for all purposes, but shall not include senators or members of the
17 assembly. The term "joint legislative employer" shall mean legislative
18 commissions, committees, task forces, councils or similar bodies whose
19 membership is comprised of both senators and assembly members, or which
20 consist of commissioners, or the majority of whose membership is
21 appointed by one or more of the following: the temporary president of
22 the senate, the speaker of the assembly, the minority leader of the
23 senate, and/or the minority leader of the assembly. The temporary presi-
24 dent of the senate and the speaker of the assembly shall be the joint
25 legislative employer of the employees of the legislature referred to in
26 sections 7-a and 7-b of the legislative law.

27 f. "College faculty" means an employee, not in the classified service,
28 of a state employer described in paragraphs (b), (c), (d), (e) and (f)

1 of subdivision c of this section or of a community college who is a
2 member of a teachers' retirement system, or the New York state and local
3 employees' retirement system.

4 g. "Active service" means service while being paid on the payroll,
5 provided that (a) a leave of absence with pay shall be deemed active
6 service; (b) other approved leave without pay not to exceed twelve weeks
7 prior to and the commencement of the designated open period; and (c) the
8 period of time subsequent to a June school term and on or before August
9 31 of the year for which an open period is designated for a teacher (or
10 other employee employed on a school-year basis) who is otherwise in
11 active service on the effective date of this act shall be deemed active
12 service.

13 h. "Open period" means the period beginning with the commencement date
14 as defined in subdivision i of this section and shall be ninety days in
15 length, as specified by the director of state operations or by a local
16 or educational employer pursuant to section four of this act, by the
17 appropriate board of trustees for the state university (including the
18 association), the fund, the city university of New York or a community
19 college operating under a program of the state university of New York or
20 by a state employer described in paragraphs (g), (h), (i), and (j) of
21 subdivision c of this section. For the purposes of retirement pursuant
22 to this act, a service retirement application must be filed with the
23 appropriate retirement system not less than fourteen days prior to the
24 effective date of retirement to become effective, unless a shorter peri-
25 od of time is permitted under law.

26 i. "Commencement date" means the first day the retirement benefit
27 mandated by this act shall be made available, which shall mean a date or
28 dates on or after the effective date of this act to be determined by the

1 director of state operations for the executive branch of the state and
2 by a chief executive officer or other comparable official of a local or
3 educational employer for such employer's employees. The director of
4 state operations and the chief executive officer or other comparable
5 official of a local or educational employer shall notify the head of the
6 appropriate retirement system of the date of the open periods prior to
7 the commencement dates of such periods.

8 § 2. A state employer which elects to participate pursuant to section
9 three of this act, local or educational employer which is not empowered
10 to act by local law which elects to participate pursuant to section
11 three of this act, or the city of New York, if it elects to participate
12 pursuant to section three of this act shall establish a commencement
13 date for the retirement benefit established under section five of this
14 act in the following manner: (a) for the executive branch, the director
15 of state operations shall establish the commencement date in writing to
16 the appropriate retirement system; (b) for state employers described in
17 paragraphs (b), (c), (d), (e) and (f) of subdivision c of section one of
18 this act and local and educational employers that are not empowered to
19 act by local law, the appropriate governing body shall adopt a resolu-
20 tion establishing a commencement date; (c) for state employers
21 described in paragraphs (g), (h), (i) and (j) of subdivision c of
22 section one of this act, the person or persons who make the election to
23 offer the retirement incentive pursuant to part A of this act shall
24 establish a commencement date in writing to the appropriate retirement
25 system; and (d) for the city of New York, the chief executive officer
26 shall issue an executive order establishing the commencement date,
27 provided, however, no executive order, in the case of the city of New
28 York issued pursuant to this section, shall in any manner supersede any

1 local charter. A copy of any such resolution or executive order in the
2 case of the city of New York establishing a commencement date shall be
3 filed with the appropriate retirement system or systems, and, if appli-
4 cable, on forms provided by such system. The resolution or executive
5 order in the case of the city of New York shall be accompanied by the
6 affidavit of the chief executive officer or other comparable official
7 certifying the commencement date.

8 § 3. a. On or after the effective date of this act, a state, local, or
9 educational employer may elect to provide its employees the retirement
10 incentive authorized by this act by (a) the enactment of a local law or
11 (b) in the case of a local or educational employer which is not so
12 empowered to act by local law or a state employer described in para-
13 graphs (b), (c), (d), (e) and (f) of subdivision c of section one of
14 this act, by the adoption of a resolution of its governing body;
15 provided however, no local law or resolution enacted pursuant to this
16 section shall in any manner supersede any local charter. For a communi-
17 ty college operating under the program of state university of New York,
18 such election shall be made by the board of trustees of such community
19 college subject to the approval of its sponsor. A copy of such law or
20 resolution shall be filed with the appropriate retirement system or
21 systems, and, if applicable, on forms provided by such system. The local
22 law or resolution shall be accompanied by the affidavit of the chief
23 executive officer or other comparable official certifying the validity
24 of such local law or resolution.

25 b. The executive branch of the state may elect to provide its employ-
26 ees the retirement incentive authorized by section six of this act by
27 the director of the state operations filing an election with the state
28 comptroller specifying the commencement date and length of any and all

1 open periods, provided that such periods shall not be more than ninety
2 days nor less than thirty days in length.

3 § 4. Notwithstanding any other provision of law, any eligible employee
4 who (a) has been continuously in the active service of a state, local,
5 or educational employer prior to the commencement date of the applicable
6 open period, (b) files an application for service retirement that is
7 effective during the open period, and (c) is otherwise eligible for a
8 service retirement as of the effective date of the application for
9 retirement shall be entitled to the retirement benefit provided in
10 section five of this act.

11 § 5. a. Notwithstanding any other provision of law, an eligible
12 employee who is: (a) a member of a retirement system and (b) who is
13 entitled to a retirement benefit pursuant to section four of this act
14 may retire during the open period without the reduction of his or her
15 retirement benefit that would otherwise be imposed by article 11 or 15
16 of the retirement and social security law if he or she has attained the
17 age of fifty-five and has completed at least twenty-five or more years
18 of creditable service. An eligible employee who is covered by the
19 provisions of articles 11 and 15 of the retirement and social security
20 law shall retire under the provisions of articles 11 and 15 of the
21 retirement and social security law.

22 b. The director of state operations, the chief executive officer of
23 the city of New York, or chief executive officer or governing board, as
24 appropriate, of the local or educational employer may deny participation
25 in the retirement benefit provided by subdivision a of this section if
26 the director of state operations, the chief executive officer of New
27 York city or the chief executive officer or governing board of the local
28 or educational employer makes a determination that the employee holds a

1 position that is deemed critical to the maintenance of public health and
2 safety.

3 c. Where an employee is eligible for the retirement benefit under this
4 section and the retirement incentive authorized pursuant to section six
5 of part A of this act, such employee shall elect a section under which
6 he or she will participate. The benefits provided by subdivision a of
7 this section shall not be conditioned upon a state or local or educa-
8 tional employer making the benefits of section six of part A of this act
9 available to employees in their employ. Further, the benefits provided
10 by subdivision a of this section shall not be available in conjunction
11 with the benefits of section six of part A of this act.

12 d. The action of the director of state operations, the chief executive
13 officer of the city of New York, or chief executive officer or governing
14 board, as appropriate, of the local or educational employer in denying
15 the retirement benefit provided for in subdivision a of this section to
16 any individual shall be subject to review in the manner provided for in
17 article 78 of the civil practice law and rules. Such action for review
18 pursuant to article 78 of the civil practice law and rules shall only be
19 commenced by the individual that was denied the retirement benefit
20 provided by subdivision a of this section.

21 e. After making any such determination under subdivision b of this
22 section, the director of state operations, the chief executive officer
23 of the city of New York and the chief executive officer or governing
24 board, as appropriate, of the local or educational employer shall notify
25 the appropriate retirement system or teachers' retirement system of its
26 determination.

27 § 6. The pension benefit costs of section five of this act shall be
28 paid by employers as provided by applicable law for each retirement

1 system covered by this act over a period not to exceed five years
2 commencing in the state fiscal year following the fiscal year in which
3 this act shall have become a law.

4 § 7. This act shall take effect immediately.

5 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-
6 sion, section or part of this act shall be adjudged by any court of
7 competent jurisdiction to be invalid, such judgment shall not affect,
8 impair, or invalidate the remainder thereof, but shall be confined in
9 its operation to the clause, sentence, paragraph, subdivision, section
10 or part thereof directly involved in the controversy in which such judg-
11 ment shall have been rendered. It is hereby declared to be the intent of
12 the legislature that this act would have been enacted even if such
13 invalid provisions had not been included herein.

14 § 4. This act shall take effect immediately; provided, however, that
15 the applicable effective date of Parts A and B of this act shall be as
16 specifically set forth in the last section of such Parts.