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New York State ESSA Summary

The New York State Equity for Surviving Spouses Act (“NYS ESSA”) would reinforce for New York public employees the New York statutory surviving spouse protections of the right of election and the family exemption. NYS ESSA is similar to the Retirement Equity Act of 1984 (“REACT”) and other federal laws reinforcing state-law protections for the surviving spouses of more than 140 million American private and federal employees.

NYS ESSA is based on the four REACT equitable principles. First, an employee’s surviving spouse is entitled to a portion of the employee’s retirement plan’s benefits. Second, the entitlement is established when the employee’s beneficiaries, if any, are determined. Third, the entitlement is to at least one-half of the plan’s benefits. Fourth, the entitlement may be eliminated or reduced only with the surviving spouse’s written consent on a plan form setting forth the waived benefits that the spouse executes after the spouse marries the employee.

NYS ESSA would, like REACT provide that, absent a knowing spousal waiver, the surviving spouse would be entitled to at least half of the employee’s retirement plan benefits, whether the employee dies before or after retiring. In the latter case, the surviving spouse presumably gets half of each of the employee’s annuity benefit payments during the surviving spouse’s life and would continue to get the same payment amount following the employee’s death.

As is now the case for elective share rights to the same retirement plan benefits, no minimum marriage period would be required to obtain these spousal survivor rights, and these rights would apply to all the employee’s retirement plan benefits. These rights would be unaffected by the length of the marriage or when the employee earned the benefits.

Under current law, the default retirement benefit for New York defined benefit plans is a single life annuity. The law should be changed because pursuant to its provisions surviving spouses have been inadvertently dispossessed of all plan benefits by an employee’s mistaken choice of the default single life annuity. The surviving spouse’s elective share rights are of no value in such case because there are no survivor benefits to be allocated to the employee’s surviving spouse. Further, the elective share rights are inadequate if an employee chooses a non-spouse as the joint and 50% survivor beneficiary. The elective share rights generally entitle the surviving spouse to lifetime monthly payments equal to one-third of 50% of the employee’s lifetime monthly payments, i.e., one sixth of those employee payments. This is half the usual one third elective share interest in a decedent’s assets.

NYS ESSA would resolve all these issues, protect surviving spouses of New York public employees, make it more likely that both spouses participate in decision-making about family assets and income, and create defaults that better reflect the wishes of most married New York state or local government employees and their spouses.

NYS ESSA would substantially benefit some individual surviving spouses some of whom would otherwise be left impoverished on an employee’s death and dependent on other New York public funds. For pre-retirement benefits, aggregate plan benefit costs would not change, but an employee’s spouse may be more often entitled to at least 50% of the plan’s death benefit. A decrease in the percentage of non-spousal survivor beneficiaries may increase costs because survivor annuity benefits are COLA adjusted only for surviving spouse beneficiaries. This speculative cost increase from more benefits for surviving spouses would result from NYS ESSA achieving its equitable goal of improving the access of a public employee’s surviving spouse to retirement plan benefits.

**NEW YORK STATE EQUITY FOR
SURVIVING SPOUSES
ACT
(NYS ESSA)**

What Are the Current Protections for Surviving Spouses?

- If there is **no will**, the employee's surviving spouse is entitled to **the employee's entire net estate** if the employee leaves no issue. If the employee leaves issue, surviving spouse is entitled to **\$50,000 plus half of the remaining estate**.
- Notwithstanding the employee's will terms and the employee's plan beneficiary designations:
 - the employee's surviving spouse gets **\$25,000** of the employee's cash, \$20,000 of the employee's farm animals and equipment, and the employee's car (**Family Exemption**)
 - AND the employee's surviving spouse may **elect** to get the greater of (**\$50,000**) or **one-third of the value of the employee's elective estate**, including the **employee's New York State pension benefits (Right to Election)**.

These rights are unaffected by the length of the marriage or when the benefits were earned.

How Would NYS ESSA Improve the Equity of Surviving Spouse Protections?

NYS ESSA would improve the equity of surviving spouse benefits by reinforcing the current spousal survivor protections **with the four equity features of the Retirement Equity Act of 1984 (REACT)** enacted for ERISA retirement plans by providing that:

- A New York public employee's surviving spouse is **entitled to retirement and pre-retirement benefits regardless of whether the surviving spouse is entitled to any other assets** upon the employee's death.
- A New York public employee's spousal survivor benefit protections **take effect when an employee's beneficiaries, if any, are determined.**
- A New York public employee's spousal survivor is entitled to at least **half of the employee's retirement plan benefits or pre-retirement plan benefits.**
- A New York public employee's default spousal survivor benefits may only be **waived with the surviving spouse's consent on a plan form setting forth those benefits after the marriage.**

Why Are NYS ESSA Equitable Protections for Surviving Spouses Needed? (1)

- **Patricia** was a **stay-at-home mother of five children, two of whom continued to be dependents into adulthood.** Her husband of 30 years, **John**, had retired from NYSTRS and died after a long bout of illness, **assuring her often that she would receive “everything” from his pension** to help with family expenses upon his passing. After John’s funeral, **Patricia applied for survivor benefits.** She was **shocked to learn that she was entitled to no benefits.**

Why Are NYS ESSA Equitable Protections for Surviving Spouses Needed? (2)

- John had accepted the default single-life annuity. A **single-life annuity** pays the retired member the largest monthly benefit, but all payments cease upon death, with **no benefits to the surviving spouse**.
- New York's public retirement systems, however, do not require participants to elect survivor benefit coverage for their spouses and **survivor benefit coverage elections are not set as the default**. **Nor are the spouses notified** if they will receive no survivor benefits. Spouses are thus **denied a say** in **one of the most significant economic decisions during their marriage**.
- Patricia's husband's decision to forego survivor benefits, made without Patricia's knowledge or consent, has **impoverished Patricia**. Patricia holds on to her belief that **her husband did not intend to deprive her of income** and that he may not have fully understood the retirement application that he completed and filed.

Who Would Be Helped by NYS ESSA Equitable Surviving Spouse Protections?

NYS ESSA would amend New York State law to set forth **spousal benefit rights to retirement annuity benefits and death benefits** from the **three New York State defined benefit plans**:

- New York State and Local Retirement System (**NYSLRS**) and New York State and Local Police and Fire Retirement System (**NYSPFRS**) – **501,980** active members
- New York State Teachers' Retirement System (**NYSTRS**) - **259,000** active members.

More than **three quarters of a million NYS government worker families statewide** would benefit from the **NYS ESSA giving surviving spouses of public employee more equitable access to retirement and pre-retirement benefits**.

What Benefits Would Stay the Same Under the Provisions of NYS ESSA?

NYS ESSA would not change the current statutory revocation of an employee's spousal designations upon divorce, annulment of marriage or judicial separation.

There are several classes of **employees** whose spouse's benefit rights to **retirement annuity benefits** and **death benefits** **NYS ESSA would not change:**

- Employees in **retirement pay status** on the effective date
- Employees who do not change **their retirement plan annuity option (including beneficiary) or death benefit beneficiary(ies) after the effective date**
- Employees to the extent their plan benefits are or become subject to **domestic relations orders or support orders.**

What is the ESSA Effective Date and Marital Verification and Recoupment Procedures?

NYS ESSA's effective date would be January 1st of the second year following the year of enactment.

- The applicable plans would have more than a year to conform their forms and procedures to the ESSA spousal survivor protections.
- Under current law, **an employee's spousal designation is revoked upon divorce, annulment of marriage or judicial separation, absent a domestic relations order to the contrary. Only surviving spouses get beneficiary COLAs.** Thus, prudent pension plan administrators now verify marriage as of the time of the death of an employee whose beneficiary appears to be the employee's surviving spouse. If the plan, nevertheless, pays the wrong beneficiary, it remains fully liable to the rightful beneficiary and bears the burden of recovering the wrongful payment.
- Unlike current law, **NYS ESSA gives plans whose administrators acted prudently when paying the wrong beneficiary pursuant to its terms, the right to recoup the wrongful payments from the surviving spouse, who is the correct beneficiary.** This places the recovery burden on the surviving spouse, although in the interests of fairness, monthly annuity payment reductions for recoupment purposes are limited.

Would NYS ESSA Reduce An Employee's Accrued Plan Benefits?

NYS ESSA **would not affect the value of an employee's pre-retirement death benefits.** Like the **one-third right of election** of the employee's surviving spouse and the **equitable distribution rights** of the employee's spouse, NYS ESSA **may affect who obtains such benefits.**

NYS ESSA **would not affect the value of the employee's retirement benefits.** Like the **one-third right of election** of the employee's surviving spouse and the **equitable distribution rights** of the employee's spouse, NYS ESSA **may affect who obtains such benefits.** If a 63-year old NYSLRS employee with a spouse three years younger elects the joint and 50% survivor benefit for the surviving spouse, each lifetime payment of the employee would be reduced by less than 10%.

Thus, **the New York State Constitution's prohibition on the diminishment or impairment of New York State public employee retirement plan benefits would not limit NYS ESSA,** in the same manner it did not limit the one-third right of election rules or the equitable distribution rules.

What are the Private/Federal/State/Local Laws That are Models for NYS ESSA?

- **Private Employer Plans—REACT** — Increased joint and 50% survivor from 65% to 80%
- **Federal Civil Service Retirement System**
- **Federal Employee Retirement System**
- **Federal Military Retirement System**
- **States Requiring Spousal Consent:** Alaska, Arizona, Connecticut, Delaware, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Texas, Utah, Washington, West Virginia, Wisconsin, Wyoming
- **States Requiring Spousal Notice:** California, Florida, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, South Dakota, Virginia
- **Cities Requiring Spousal Consent:** Washington, DC, Chicago, Houston, Phoenix, San Francisco
- **Accidental Death Benefits from NYS Government Plans** — Always Surviving Spouse

Spousal Survivor Benefit Policies for Public Defined Benefit Plans

State/Gov't Agency	Spousal Consent Required	Spousal Notice Only	Citations
Alabama	No	No	AL Stat §§ 36-27-16, -161, 162
Alaska	Yes	No	AK Stat § 39.35.450
Arizona	Yes	No	AZ Stat §§ 38-755, -760, -762, -776
Arkansas	No	No	AR Stat § 24-4-606 & -608
California	No	Yes	CA Govt § 21261
Colorado	No	No	CO Stat §§ 24-51-615, -902, -905, -906, -907, -909
Connecticut	Yes	No	CT Gen'l Stat. § 5-165
Delaware	Yes	No	29 Del. C. § 5528
Florida	No	Yes	FL Stat §§ 121.591, 121.4501, 121.091
Georgia	No	No	GA Stat § 47-2-121
Hawai'i	No	Yes	HI Stat § 88-83
Idaho	No	No	ID Stat § 59-1351
Illinois	Yes	No	IL Stat Ch 40 § 5/14-120
Indiana	No	No	IN Code 5-10.2-4-7
Iowa	Yes	No	IA Stat § 97B.51
Kansas	Yes	No	KS Stat 74-4918, 74-4918a, 74-4925a, 74-4917b
Kentucky	No	No	KY 61.542, 61.635, 61.640
Louisiana	Yes	No	LA RS 11:471, 11:471.1, 477
Maine	No	Yes	ME Stat 5 § 17804
Maryland	No	No	MD Code State Personnel & Pensions § 21-401
Massachusetts	No	Yes	MA Stat 32 § 12
Michigan	Yes	No	MI Stat 38.31
Minnesota	Yes	No	MN Stat §§ 352.115 , 352.116
Mississippi	No	No	2017 MS Laws HB 1301
Missouri	Yes	No	MO Stat 104.395
Montana	No	No	MT Stat 19-2-303, 19-2-801, 19-2-802
Nebraska	No	No	NE Stat § 84-1323
Nevada	Yes	No	NV Stat 286.541, 286.545, 286.674
New Hampshire	No	Yes	NH Stat § 100-A:13

Spousal Survivor Benefit Policies for Public Defined Benefit Plans

State/Gov't Agency	Spousal Consent Required	Spousal Notice Only	Citations
New Jersey	No	Yes	NJ Stat 43:15A-50, 43:15A-50a
New Mexico	Yes	No	NM Stat § 10-11-116
New York	No	No	NY RSSL, EDUC, NYC Admin Code, NYCRR
North Carolina	No	No	NC Stat § 135-5
North Dakota	Yes	No	ND Stat § 40-46-13
Ohio	Yes	No	OH Stat § 145.384
Oklahoma	Yes	No	OK Stat 74 § 918
Oregon	No	No	OR Stat §§ 238.308, 238.390
Pennsylvania	No	No	71 PA Stat § 5705
Rhode Island	No	No	RI Stat § 36-10-18
South Carolina	No	No	SC Stat § 9-1-1620
South Dakota	No	Yes	SD Stat §§ 3-12-510, 3-12-514
Tennessee	No	No	TN Stat § 8-36-601
Texas	Yes	No	TX Gov't § 804.051
Utah	Yes	No	UT Stat § 49-12-405
Vermont	No	No	VT Stat 24 § 5060
Virginia	No	Yes	VA Stat §§ 51.1-165, 51.1-165.1
Washington	Yes	No	WA Stat 41.40.188
West Virginia	Yes	No	WV Stat § 5-10-24; WV Code State Rules § 162-1-8
Wisconsin	Yes	No	WI Stat 40.24
Wyoming	Yes	No	WY Stat § 9-3-420; WY Rules & Regs 19 § 4
TOTAL YESES	22	9	
New York City	No	No	RSSL; NYC Admin. Code
Washington, D.C.	Yes	No	D.C. Mun. Reg. Rule B2606.5
Boston	No	Yes	MA Gen Laws 32 § 12, 32 § 12B
Chicago	Yes	No	IL Stat Ch 40 § 5/7-154

Spousal Survivor Benefit Policies for Public Defined Benefit Plans

San Francisco	Yes	No	S.F. Admin. Code § 16.80
Los Angeles	No	No	10 L.A. Charter & Admin. Code §§ 4.1060, 4.1080.10
TOTAL YESES	3	1	
State/Gov't Agency	Spousal Consent Required	Spousal Notice Only	Citations
Federal Gov't CSRS	Yes	No	5 C.F.R. § 831.611; -.614; -.618; 5 U.S.C. §§ 8339, 8341
Federal Gov't FERS	Yes	No	5 C.F.R. § 842.603; -.606; -.607; 5 U.S.C. §§ 8416, 8442
Federal Gov't TSP	Yes	No	5 U.S.C.A. § 8435
Military Pension	Yes	No	10 U.S.C. § 1448, 1448a
Railroad Ret. Board	Yes	No	45 U.S.C. § 231a(d)
TOTAL YESES	5	0	

Modules Used to Generate ESSA, Including Effective Date Provisions as of April 6, 2022

Death Benefit Module

NYS ESSA Section 2: Section 512 of the Education Law

i. Notwithstanding any other provision of this section to the contrary, at least one-half of the death benefits payable under this section, including any accumulated contributions remaining at the time of the member's death, payable under this section shall be paid to the member's surviving spouse, if any, unless the member elects that the surviving spouse receive less than one-half of the death benefits, and:

1. (A) the member's surviving spouse consents, after the date of the member's marriage, in writing to the member's election;

(Bi) the spousal survivor written consent is on a plan form addressed to the member, and the form sets forth:

(i) the amount of the member's death benefits,

(ii) the entitlement of the surviving spouse to at least half of the death benefits,

(iii) the surviving spouse's right to prevent any future member elections regarding the member's death benefits without the surviving spouse's consent unless the consent of the surviving spouse expressly permits member elections without any further consent by the surviving spouse, and

(iv) the fact that consenting to the member's election would result in the surviving spouse receiving no death benefits or less death benefits than the surviving spouse would otherwise be entitled under this subdivision;

(C) the consent includes an acknowledgement that the surviving spouse understands the surviving spouse's entitlement to be paid at least one-half the death benefits absent the surviving spouse's consent to the member's election, and that the surviving spouse's consent would eliminate or reduce these death benefit payments;

(D) the consent includes a signature by the surviving spouse that was witnessed by either a notary public or a representative of the retirement system; and

- (E) the completed consent and the member's election are received by the system before the member's death;
- 2. the member and the surviving spouse were legally separated when the member's election was filed with the retirement system;
- 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of the member's death; or
- 4. the retirement board determined that the consent required under paragraph one of this subdivision could not be obtained because
 - (A) there is no surviving spouse;
 - (B) the surviving spouse could not be located between the time the member elected that the surviving spouse would not be paid at least one-half of the death benefits and the date of the member's death; or
 - (C) such other circumstances as the retirement board may prescribe by written plan regulations.

j. Notwithstanding any other provision of this section to the contrary, a member's election must comply with the terms of subdivision i of this section to be effective.

k. If the retirement board of the system acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in—

- 1. relying on a consent referred to in paragraph one of subdivision i of this section, or
- 2. making a determination under paragraph four of subdivision i of this section,

then such consent or determination shall be treated as valid for purpose of discharging the retirement system and the board from liability to the extent of payments made pursuant to such action. These discharges shall not deprive the surviving spouse of any right to which the surviving spouse would otherwise be entitled from any party other than the retirement system or the board.

Annuity Benefit Module

NYS ESSA Section 3: Section 513 of the Education Law

5. Notwithstanding any other provision of this section to the contrary, a member's retirement allowance payable under this section shall be paid as Option 3, so that upon his or her death, if the member has a surviving spouse who was married to the member on the date the member filed his or her retirement application, or on the date the member filed his or her last effective option selection, if any, whichever is later, the surviving spouse shall be paid for life survivor benefit payments, each of which is equal to at least one-half the amount of the member's retirement allowance payments payable under this section unless the member elects that the surviving spouse receive either no survivor benefit payments or survivor benefit payments, each of which is less than one-half the amount of the member's retirement allowance payments, and:

- a.
 - (i) the member's surviving spouse consents, after the date of the member's marriage, in writing to the member's election;
 - (ii) the spousal survivor written consent [is on a plan form addressed to the member and the form](#) sets forth:
 - (A) the amount of the Option 3 monthly benefit entitlements of the member and of the spouse,
 - (B) the time each individual would be entitled under Option 3 to those benefits,
 - (C) the surviving spouse's right to prevent any future member elections regarding the member's survivor benefits without the surviving spouse's consent unless the consent of the surviving spouse expressly permits member elections without any further consent by the surviving spouse, and
 - (D) the fact that consenting to the member's survivor benefit election would result in the surviving spouse receiving no survivor benefits or smaller survivor benefits than the surviving spouse would otherwise be entitled under this subdivision;
 - (iii) the consent includes an acknowledgement that the surviving spouse understands the surviving spouse's entitlement to life survivor benefit payments, each of which is equal to at least one-half the amount of the member's retirement allowance payments absent the surviving spouse's consent to the member's election, and that the surviving spouse's consent would eliminate or reduce those survivor benefits would eliminate or reduce those survivor benefits;
 - (iv) the consent includes a signature by the surviving spouse that was witnessed by either a notary public or a representative of the retirement system; and
 - (v) the completed consent and the member's election are received by the system

before the payability date;

- b. the member and the surviving spouse were legally separated when the member's election was filed with the retirement system;
- c. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date the member's election is filed with the retirement system; or
- d. the retirement board determined that the consent required under paragraph a of this subdivision could not be obtained because
 - (i) there is no surviving spouse;
 - (ii) the surviving spouse could not be located between the time the member elected that the surviving spouse would not be paid a retirement allowance of at least fifty percent of the amount paid to such member and the date of the filing of the member's application for a retirement allowance; or
 - (iii) such other circumstances as the retirement board may prescribe by written plan regulations.

6. Notwithstanding any other provision of this section to the contrary, a member's election must comply with the terms of subdivision five of this section to be effective.

7. If the retirement board of the system acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in—

- a. relying on a consent referred to in paragraph a of subdivision five of this section, or
- b. making a determination under paragraph c of subdivision five of this section,

then such consent or determination shall be treated as valid for purpose of discharging the retirement system and the board from liability to the extent of payments made pursuant to such action. These discharges shall not deprive the surviving spouse of any right to which the surviving spouse would otherwise be entitled from any party other than the retirement system or the board. To the extent the [retirement](#) system and the board were completely discharged for any annuity benefit payments that the system made to the member in excess of what the member would have been entitled under Option 3 if the member's beneficiary had been the surviving spouse, such excess payments shall be called Discharged Payments. The retirement system may recover the actuarial equivalent of those Discharged Payments, computed using the plan's actuarial factors, from the surviving spouse with offsets against the system's monthly annuity benefit payments to the surviving spouse payable under this section, but may not thereby reduce any of those benefit payments by more than 10%.

Effective Date Provision

NYS ESSA Section 14

Section 14. This act shall take effect for all benefit payments beginning after December 31 of the year immediately after the year the bill is enacted other than those payments made pursuant to a benefit designation executed before such date. This act shall not change the law pertaining to a prenuptial agreement or a postnuptial agreement executed on or before December 31 of the year immediately after the year the bill is enacted. This act shall not change the law pertaining to a domestic relations order or a support order.

STATE OF NEW YORK

 BILL NUMBER _____

IN _____

_____, 2022

Introduced by: _____

AN ACT to amend the retirement and social security law, and the education law in relation to enacting the “New York State Equity for Surviving Spouses Act,” which would require any public retirement plan for employees of the State of New York or New York localities other than the City of New York, to provide that (1) the default retirement annuity payment form be a joint and survivor annuity in which an employee’s surviving spouse is the employee’s beneficiary with a right to lifetime payments equal to at least 50% of the annuity benefits to which the employee was entitled; and (2) the default beneficiary for at least 50% of the employee’s pre-retirement death benefits be the employee’s surviving spouse. These default choices are more consistent with the equitable preferences of most married employees to protect their surviving spouses than the current default choices. In order to further protect surviving spouses, particularly those staying home to raise children, the amendment would reinforce the elective share rights of surviving spouses by also prohibiting an employee from changing either default designation without the written consent of the employee’s surviving spouse.

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

1 Section 1. Short title. This act shall be known and may be cited as the “New York State Equity
2 for Surviving Spouses Act.”

3
4

5 Section 2. Section 512 of the education law, as amended by L. 2021, ch. 78, § 5, is amended to
6 read as follows:

7

8 § 512. Withdrawal and death benefits

9 Benefits upon withdrawal and death shall be payable as follows:

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS ESSA April 6, 2022

1
2 a. A member who withdraws from service or ceases to be a teacher for any cause other than death
3 or retirement shall be paid on demand the accumulated contributions standing to the credit of his
4 individual account in the annuity savings fund. A member who has no accumulated contributions
5 credited to his individual account in the annuity savings fund and who ceases to be a teacher for
6 any cause other than death or retirement may withdraw from membership in the system by filing
7 a notice of withdrawal with the system pursuant to rules and regulations adopted by the retirement
8 board.

9 b. 1. Should a contributor die before retirement, his accumulated contributions shall be paid to
10 his estate or to such person as he shall have nominated to receive such benefit. In the
11 event such designated beneficiary does not survive him, or if he shall not have so
12 designated a beneficiary, such benefit shall be payable to the deceased member's estate
13 or as provided in section one thousand three hundred ten of the surrogate's court
14 procedure act ~~[one hundred three a of the decedent estate law]~~. Such nomination must
15 be by written designation duly executed and filed with the retirement board.

16 2. In addition to the return of accumulated contributions, a death benefit also shall be
17 payable upon the death of a member who dies before the effective date of his
18 retirement, and was in service upon which his membership was based when he
19 died or was on the payroll in such service and paid within a period of twelve
20 months prior to his death and had not been otherwise gainfully employed since
21 he ceased to be on such payroll or if, during the period that membership is valid,
22 the retirement board shall determine to its satisfaction that said member was
23 physically or mentally incapacitated for the performance of duty at the time he
24 ceased to be on the payroll in such service and that he had been so incapacitated
25 and had not been otherwise gainfully employed since he ceased to be on such
26 payroll; provided he had credit for one or more years of service while actually a
27 member. The amount of death benefit shall be computed by multiplying one
28 twelfth of the compensation earnable by such member during his last twelve
29 months of service while a member by the number of years, not to exceed twelve,
30 of his total credit for service as a teacher in this state. Where the member has
31 more than twelve years of credited service as a teacher in this state and when his
32 death occurs on or after July first, nineteen hundred sixty-one, and before July
33 first, nineteen hundred seventy-four, there shall be added to such benefit one
34 twenty-fourth of such compensation multiplied by the number of years in excess
35 of twelve, but not to exceed twenty-four such years, of his total credit for service
36 as a teacher in the state. The death benefit shall be paid to such person as he shall
37 have nominated to receive such benefit. In the event such designated beneficiary
38 does not survive him, or if he shall not have so designated a beneficiary, such
39 benefit shall be payable to the deceased member's estate or as provided in
40 section one thousand three hundred ten of the surrogate's court procedure act
41 ~~[one hundred three a of the decedent estate law]~~. Such nomination must be by
42 written designation duly executed and filed with the retirement board. The
43 provisions of this paragraph two of subdivision b of this section shall apply only

EXPLANATION—Matter (underscored) is new; matter in brackets [-] is old law to be omitted
NYS ESSA April 6, 2022

1 to deaths occurring on and after July first, nineteen hundred fifty-nine.

2 3. Notwithstanding any other provisions of this article or any rules or regulations
 3 adopted thereunder by the retirement board, the death benefit payable pursuant
 4 to paragraph two of this subdivision, in the case of a member who dies after
 5 having become eligible to apply and be retired for special service or
 6 superannuation pursuant to the provisions of this article, shall be increased by
 7 the amount, if any, that the actuarial equivalent of the pension portion of his
 8 retirement allowance, computed as if he had been retired on the day immediately
 9 preceding his death, and computed in accordance with the provisions of
 10 subdivision two of section five hundred ten and subdivision four of section five
 11 hundred eleven-a of this article, exceeds the amount of the death benefit
 12 otherwise payable pursuant to paragraph two of this subdivision. The provisions
 13 of this paragraph three of subdivision b of this section shall apply only to deaths
 14 occurring after the date on which said paragraph three becomes operative and
 15 prior to July first, nineteen hundred seventy-four.

16 4. Notwithstanding any other provision of this article, the requirement of one or more
 17 years of credited service, as set forth in paragraph two of this subdivision, shall
 18 be deemed to have been satisfied by any member who has credit for three or
 19 more months of service rendered since last becoming a member. The provisions
 20 of this paragraph shall apply only to deaths occurring after June thirtieth,
 21 nineteen hundred seventy and before July first, nineteen hundred seventy-five.

22 5. Notwithstanding any other provision of this article, the death benefit payable
 23 pursuant to paragraph two of this subdivision shall be increased by the excess,
 24 if any, of the greater of a or b over the sum of c and d, where a, b, c and d are as
 25 set forth hereunder:

26 a. One-twelfth of the member's compensation multiplied by the number of years,
 27 not to exceed thirty-six, of his total credited state service.

28 b. The lesser of three times the member's compensation or twenty thousand
 29 dollars.

30 c. The death benefit which, in accordance with the provisions of paragraph two
 31 of this subdivision, is payable in addition to the return of accumulated
 32 contributions.

33 d. The reserve for increased-take-home-pay.

34 The term "compensation", as used in this subparagraph, shall mean (1) in the case of
 35 a member who has credit for one or more years of service rendered since last
 36 becoming a member, the compensation earned by such member during his last
 37 twelve months of service, and (2) in the case of a member who has credit for less
 38 than one year of service rendered since last becoming a member, it shall mean
 39 his annual rate of compensation at the time of his death. The provisions of this
 40 paragraph shall apply only to deaths occurring after June thirtieth, nineteen
 41 hundred seventy and before July first, nineteen hundred seventy-five. The

1 additional death benefits payable hereunder shall be construed as being payable
 2 under paragraph two of this subdivision for the purpose of computing benefits
 3 payable under paragraph three of this subdivision.

4 c. The member or, within ninety days after his death, the person nominated by him to receive any
 5 benefit payable on his account, may file with the retirement board a written designation, duly
 6 executed, providing that such benefit shall be paid in the form of an annuity to the person so
 7 nominated. Such annuity shall be determined as the actuarial equivalent of the benefit otherwise
 8 payable, on the basis of the interest rate and the mortality tables adopted by the retirement board
 9 for use in the calculations of such annuities. Such annuity shall be payable throughout the life of
 10 the person so nominated, with no payments at his death unless the member or, within ninety days
 11 after his death, the person nominated by him to receive his benefit, shall elect to have the actuarial
 12 equivalent of such annuity paid in the form of a reduced annuity payable for life with the provision
 13 that if the person so nominated should die before the annuity payments received by him are equal
 14 to such actuarial equivalent, the balance thereof shall be paid in a lump sum to such beneficiary's
 15 estate or to such person as such member or his nominee shall have designated. Such designation
 16 of a beneficiary to receive such benefit may be made or changed at any time by the person who
 17 made it. Such election or change shall be made by written designation duly executed and filed with
 18 the retirement board. Notwithstanding the foregoing provisions, the retirement board reserves the
 19 right to pay any benefit in the form of a lump sum payment if the annuity determined as the
 20 actuarial equivalent of the benefit otherwise payable is less than one hundred dollars per month.

21 d. 1. The retirement board may adopt rules and regulations providing that a trustee of an inter
 22 vivos or testamentary trust shall be eligible to be nominated to receive a lump sum
 23 benefit pursuant to subdivision b of this section.

24 2. Any proceeds received by a trustee under this section shall not be subject to the
 25 debts of the member or to transfer or estate taxes to any greater extent than if
 26 such proceeds were payable to the beneficiaries named in the trust and not to the
 27 estate of the member.

28 3. A payment made in good faith under this section to either a designated trustee of an
 29 inter vivos trust, a successor trustee of an inter vivos trust who provides a copy
 30 of his appointment or a trustee of² successor trustee of a testamentary trust who
 31 provides a copy of the letters of trusteeship shall be a complete discharge to the
 32 system to the extent of the payment.

33 4. If no qualified trustee claims the proceeds within eighteen months after the death of
 34 the member, or if satisfactory evidence is furnished within such period showing
 35 that there is or will be no trustee to receive the proceeds, payment shall be made
 36 to the deceased member's estate.

37 e. Notwithstanding any other provision of law, a member with ten or more years of credited service
 38 in such system who dies before a retirement benefit becomes payable and who is otherwise not
 39 entitled to a death benefit from the retirement system shall be deemed to have died on the last day
 40 that he or she was in service upon which his or her membership was based for purposes of
 41 eligibility for the payment of a death benefit pursuant to the provisions of this section. The death

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1 benefit payable in such case shall be one-half of that which would have been payable had such
2 member died on the last day that service was rendered.

3 f. Notwithstanding the provisions of any other law to the contrary and solely for the purpose of
4 determining eligibility for the death benefit payable pursuant to this section, a person subject to
5 this section shall be considered to have died while in teaching service provided such person was
6 in such service at the time he or she was ordered to active duty pursuant to Title 10 of the United
7 States Code, with the armed forces of the United States or to service in the uniformed services
8 pursuant to Chapter 43 of Title 38 of the United States Code and died while on such active duty or
9 service in the uniformed services on or after June fourteenth, two thousand five. Provided, further,
10 that any such person ordered to active duty pursuant to Title 10 of the United States Code, with
11 the armed forces of the United States or to service in the uniformed services pursuant to Chapter
12 43 of Title 38 of the United States Code who died prior to rendering the minimum amount of
13 service necessary to be eligible for this benefit shall be considered to have satisfied the minimum
14 service requirement.

15 g. Notwithstanding any other provision of law to the contrary, any member of the retirement
16 system subject to article fourteen or fifteen of the retirement and social security law who has
17 permanently ceased teaching shall have the right to elect the return of his or her accumulated
18 contributions and thereby terminate his or her membership in the retirement system without regard
19 to the amount of service to his or her credit, provided a public employee retirement system in
20 another state has certified in a manner satisfactory to the system that such member is a member of
21 such other retirement system, has at least five years of retirement credit in such other system, and
22 is eligible, upon the termination of his or her membership in the system, to obtain retirement credit
23 in such other retirement system for the service which has been credited to his or her membership
24 in the system. Upon refund of such accumulated contributions, any and all obligations of the
25 retirement system to such member shall be totally discharged. The retirement board is authorized
26 to adopt such rules and regulations as may be necessary to implement this subdivision.

27 h. [Expires and deemed repealed Dec. 31, 2022, pursuant to L. 2021, c. 78, § 14. See, also, subd.
28 h above.]

29 1. Notwithstanding any other provision of this article or of any general, special or
30 local law to the contrary, and solely for the purpose of determining eligibility
31 for benefits under this section, where:

32 (A) a member reported in person to such member's usual place of public
33 employment at the direction of such member's public employer or to any
34 alternate worksite as directed by such public employer, on or after March first,
35 two thousand twenty, provided that such alternate worksite was not such
36 member's home or residence;

37 (B) such member contracted COVID-19 within forty-five days after reporting
38 to work as described in subparagraph (A) of this paragraph as confirmed by a
39 positive laboratory test or as diagnosed before or after such member's death by
40 a licensed, certified, registered or authorized physician, nurse practitioner, or

1 physician's assistant currently in good standing in any state or the District of
 2 Columbia, or a physician, nurse practitioner, or physician's assistant authorized
 3 to practice in New York by executive order during the declared COVID-19
 4 state of emergency; and

5 (C) such member died on or before December thirty-first, two thousand
 6 twenty-two, and COVID-19 caused or contributed to such member's death, as
 7 documented on such member's death certificate, or as certified by a physician,
 8 nurse practitioner, or physician's assistant described in subparagraph (B) of this
 9 paragraph who determines with a reasonable degree of medical certainty that
 10 COVID-19 caused or contributed to the member's death, such member's
 11 statutory beneficiary shall receive an accidental death benefit, unless such
 12 statutory beneficiary elects to receive an ordinary death benefit.

13 2. Any amount payable as a result of this section shall be reduced by any amount
 14 paid by such member's retirement system to any recipient of ordinary death
 15 benefits under this article.
 16

17 3. (A) Notwithstanding any provision of this article or of any general, special or
 18 local law to the contrary, and solely for the purpose of determining eligibility
 19 for benefits under this section, where a member:

20 (i) retired from his or her retirement system on or after March first, two
 21 thousand twenty, and before July first, two thousand twenty;

22 (ii) on or after March first, two thousand twenty, reported in person to such
 23 member's usual place of public employment at the direction of such
 24 member's public employer or to any alternate worksite as directed by such
 25 public employer, provided that such alternate worksite was not such
 26 member's home or residence;

27 (iii) contracted COVID-19 within forty-five days after any such date of
 28 reporting to work in person, as confirmed by a positive laboratory test or as
 29 diagnosed before or after such member's death by a licensed, certified,
 30 registered or authorized physician, nurse practitioner, or physician's
 31 assistant currently in good standing in any state or the District of Columbia,
 32 or a physician, nurse practitioner, or physician's assistant authorized to
 33 practice in New York by executive order during the declared COVID-19
 34 state of emergency; and

35 (iv) such member died on or before December thirty-first, two thousand
 36 twenty, and COVID-19 caused or contributed to such member's death, as
 37 documented on such member's death certificate, or as certified by a
 38 physician, nurse practitioner, or physician's assistant described in clause (iii)
 39 of this subparagraph who determines with a reasonable degree of medical
 40 certainty that COVID-19 caused or contributed to the member's death, such
 41 member's statutory beneficiary shall receive an accidental death benefit if

1 such statutory beneficiary elects conversion of the member's service or
2 disability retirement benefit into an accidental death benefit.

3
4 (B) Such member's statutory beneficiary, as defined under this article, for
5 purposes of accidental death benefits payable from such member's retirement
6 system under this article, may, within ninety days of such member's retirement
7 or September first, two thousand twenty, whichever is later, apply to such
8 member's retirement system to request the conversion of such member's
9 service or disability retirement benefit into an accidental death benefit. For
10 purposes of the salary base upon which the accidental death benefit is
11 calculated, such member shall be deemed to have died⁵ on the date of such
12 member's retirement. At the time of such conversion, such statutory
13 beneficiary shall relinquish all rights to the prospective benefits payable under
14 the service or disability retirement statute, including any post-retirement death
15 benefits, since such member's death. If the statutory beneficiary is not the only
16 beneficiary receiving or entitled to receive a benefit under the service or
17 disability retirement statute, including, but not limited to, a post-retirement
18 death benefit or benefit paid or payable pursuant to the member's option
19 selection, the accidental death benefit payments to the statutory beneficiary
20 will be reduced by any amounts paid or payable to any other statutory
21 beneficiary.

22 4. In order to be eligible for the benefit described in this subdivision, the applicable
23 retirement system or systems are authorized to promulgate rules and
24 regulations to administer this benefit including, but not limited to, requiring a
25 statement to be filed confirming the member contracted COVID-19 and the
26 dates and locations of the member's employment.

27 i. Notwithstanding any other provision of this section to the contrary, at least one-half of the death
28 benefits payable under this section, including any accumulated contributions remaining at the time
29 of the member's death, payable under this section shall be paid to the member's surviving spouse,
30 if any, unless the member elects that the surviving spouse receive less than one-half of the death
31 benefits, and:

32 1. (A) the member's surviving spouse consents, after the date of the member's
33 marriage, in writing to the member's election;

34 (Bi) the spousal survivor written consent is on a plan form addressed to the
35 member, and the form sets forth:

36 (i) the amount of the member's death benefits,

37 (ii) the entitlement of the surviving spouse to at least half of the death
38 benefits,

39 (iii) the surviving spouse's right to prevent any future member elections
40 regarding the member's death benefits without the surviving spouse's

1 consent unless the consent of the surviving spouse expressly permits
 2 member elections without any further consent by the surviving spouse,
 3 and

4 (iv) the fact that consenting to the member's election would result in the
 5 surviving spouse receiving no death benefits or less death benefits than
 6 the surviving spouse would otherwise be entitled under this subdivision;

7 (C) the consent includes an acknowledgement that the surviving spouse
 8 understands the surviving spouse's entitlement to be paid at least one-half the
 9 death benefits absent the surviving spouse's consent to the member's election,
 10 and that the surviving spouse's consent would eliminate or reduce these death
 11 benefit payments;

12 (D) the consent includes a signature by the surviving spouse that was witnessed
 13 by either a notary public or a representative of the retirement system; and

14 (E) the completed consent and the member's election are received by the system
 15 before the member's death;

16 2. the member and the surviving spouse were legally separated when the member's
 17 election was filed with the retirement system; or

18 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 19 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 20 the member's death; or

21 4. the retirement board determined that the consent required under paragraph one of
 22 this subdivision could not be obtained from the surviving spouse because

23 (A) there is no surviving spouse;

24 (B) the surviving spouse could not be located between the time the member
 25 elected that the surviving spouse would not be paid at least one-half of the death
 26 benefits and the date of the member's death; or

27 (C) such other circumstances as the retirement board may prescribe by written
 28 plan regulations.

29 j. Notwithstanding any other provision of this section to the contrary, a member's election must
 30 comply with the terms of subdivision i of this section to be effective

31 k. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 32 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 33 matters would use in the conduct of an enterprise of a like character and with like aims, in—

34 1. relying on a consent referred to in paragraph one of subdivision i of this section, or

35 2. making a determination under paragraph four of subdivision i of this section,

36 then such consent or determination shall be treated as valid for purpose of discharging the
 37 retirement system and the board from liability to the extent of payments made pursuant to such

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1 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 2 spouse would otherwise be entitled from any party other than the retirement system or the
 3 retirement board.

4
 5
 6 Section 3. Section 513 of the education law, as amended by L. 1973, ch. 1046, § 82, is amended
 7 to read as follows:

8
 9 § 513. Optional allowances

10 1. With the exception that no election of an optional benefit shall become effective in case a
 11 member dies within thirty days after the filing of an application for a retirement allowance,
 12 until the first payment on account of any benefit becomes normally due, any member, at the
 13 time of his retirement, may elect to receive his benefits in a retirement allowance payable
 14 throughout life or he may on retirement elect to receive the actuarial equivalent at that time
 15 of his retirement allowance in a lesser retirement allowance, payable throughout life with the
 16 provision that:

17 Option 1. If he dies before he has received in payments the present value of his
 18 retirement allowance as it was at the time of his retirement, the balance shall be
 19 paid to his legal representatives or to such person as he shall nominate by written
 20 designation duly acknowledged and filed with the retirement board.

21 Option 2. Upon his death, his retirement allowance shall be continued through
 22 the life of and paid to such person as he shall nominate by written designation
 23 duly acknowledged and filed with the retirement board at the time of his
 24 retirement.

25 Option 3. Upon his death, one-half of his retirement allowance shall be
 26 continued throughout the life of and paid to such person as he shall nominate by
 27 written designation duly acknowledged and filed with the retirement board at
 28 the time of his retirement.

29 Option 4. Some other benefit or benefits shall be paid either to the member or to
 30 such person or persons as he shall nominate, provided such other benefit or
 31 benefits, together with the lesser retirement allowance, shall be certified by the
 32 actuary to be of equivalent actuarial value to his retirement allowance and shall
 33 be approved by the retirement board.

34 2. If any retired member who has not elected an optional benefit, or who has elected a benefit under
 35 Option 4 providing for the payment at death of the amount, if any, by which his accumulated
 36 contributions at the time of his retirement exceed the aggregate amount of his annuity payments,
 37 dies within thirty days after the date his retirement becomes effective, notwithstanding any other
 38 provisions of this law to the contrary, benefits shall be paid in accordance with subdivision (b) or
 39 (c) of section five hundred twelve, except that the amount of his accumulated contributions payable
 40 under paragraph (1) of said subdivision (b) shall be reduced by any annuity payments received by
 41 him prior to his death and the benefit payable under paragraph (2) of said subdivision (b) shall be
 42 reduced by any pension payments received by him prior to his death. The amounts payable shall

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1 be paid to the beneficiary or beneficiaries entitled thereto as provided under section five hundred
 2 twelve, except that if the member has elected Option 4, as provided above, the beneficiary
 3 nominated under such Option 4 shall be substituted for any beneficiary previously nominated and
 4 all amounts payable shall be paid to the beneficiary nominated under such Option 4.

5 3. In the case of persons who last became members on or after July first, nineteen hundred seventy-
 6 three, the provisions of subdivision two of this section shall apply only to deaths occurring after
 7 the date on which said subdivision two becomes operative and prior to July first, nineteen hundred
 8 seventy-four.

9 4. a. The retirement board may adopt rules and regulations providing that a trustee of an inter
 10 vivos or testamentary trust shall be (1) eligible to be nominated to receive a lump sum
 11 benefit under option one and (2) eligible to be nominated to receive any benefit under
 12 option four which the retirement board shall deem appropriate.

13 b. Any proceeds received by a trustee under this section shall not be subject to the
 14 debts of the member or to transfer or estate taxes to any greater extent than if
 15 such proceeds were payable to the beneficiaries named in the trust and not to the
 16 estate of the member.

17 c. A payment made in good faith under this section to either a designated trustee of an
 18 inter vivos trust, a successor trustee of an inter vivos trust who provides a copy
 19 of his appointment or a trustee or successor trustee of a testamentary trust who
 20 provides a copy of the letters of trusteeship shall be a complete discharge to the
 21 system to the extent of the payment.

22 d. If no qualified trustee claims the proceeds within eighteen months after the death of
 23 the retired member, or if satisfactory evidence is furnished within such period
 24 showing that there is or will be no trustee to receive the proceeds, payment shall
 25 be made to the deceased retired member's estate.

26 5. Notwithstanding any other provision of this section to the contrary, a member's retirement
 27 allowance payable under this section shall be paid as Option 3, so that upon his or her death, if the
 28 member has a surviving spouse who was married to the member on the date the member filed his
 29 or her retirement application, or on the date the member filed his or her last effective option
 30 selection, if any, whichever is later, the surviving spouse shall be paid for life survivor benefit
 31 payments, each of which is equal to at least one-half the amount of the member's retirement
 32 allowance payments payable under this section unless the member elects that the surviving spouse
 33 receive either no survivor benefit payments or survivor benefit payments, each of which is less
 34 than one-half the amount of the member's retirement allowance payments, and:

35 a. (i) the member's surviving spouse consents after the date of the member's marriage,
 36 in writing to the member's election;

37 (ii) the spousal survivor consent is on a plan form addressed to the member, and
 38 the form sets forth:

39 (A) the amount of the Option 3 monthly benefit entitlements of the
 40 member and of the spouse,

1 (B) the time each would be entitled under Option 3 to those benefits,

2 (C) the surviving spouse's right to prevent any future member elections
 3 regarding the member's survivor benefits without the surviving spouse's
 4 consent unless the consent of the surviving spouse expressly permits
 5 member elections without any further consent by the surviving spouse,
 6 and

7 (D) the fact that consenting to the member's survivor benefit election
 8 would result in the surviving spouse receiving no survivor benefits or
 9 smaller survivor benefits than the surviving spouse would otherwise be
 10 entitled under this subdivision;

11 (iii) the consent includes an acknowledgement that the surviving spouse
 12 understands the surviving spouse's entitlement to life survivor benefit
 13 payments, each of which is equal to at least one-half the amount of the member's
 14 retirement allowance payments absent the surviving spouse's consent to the
 15 member's election, and that the spouse's consent would eliminate or reduce
 16 those survivor benefits; each of which is

17 (iv) the consent includes a signature by the surviving spouse that was witnessed
 18 by either a notary public or a representative of the retirement system; and

19 (v) the completed consent and the member's election are received by the system
 20 before the payability date;

21 b. the member and the surviving spouse were legally separated when the member's
 22 election was filed with the retirement system;

23 c. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 24 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 25 the filing of the member's application for a retirement allowance; or

26 d. the retirement board determined that the consent required under paragraph a of this
 27 subdivision could not be obtained from the surviving spouse because

28 (i) there is no surviving spouse;

29 (ii) the surviving spouse could not be located between the time the member
 30 elected that the surviving spouse would not be paid a retirement allowance of at
 31 least fifty percent of the amount paid to such member and the date of the filing
 32 of the member's application for a retirement allowance; or

33 (iii) such other circumstances as the retirement board may prescribe by written
 34 plan regulations.

35 6. Notwithstanding any other provision of this section to the contrary, a member's election must
 36 comply with the terms of subdivision five of this section to be effective.

37 7. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 38 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such

1 matters would use in the conduct of an enterprise of a like character and with like aims, in—

2 a. relying on a consent referred to in paragraph a of subdivision five of this section, or

3 b. making a determination under paragraph c of subdivision five of this section,

4 then such consent or determination shall be treated as valid for purpose of discharging the
 5 retirement system and the board from liability to the extent of payments made pursuant to such
 6 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 7 spouse would otherwise be entitled from any party other than the retirement system or the board.
 8 To the extent the retirement system and the board were completely discharged for any annuity
 9 benefit payments that the system made to the member in excess of what the member would have
 10 been entitled under Option 3 if the member's beneficiary had been the surviving spouse, such
 11 excess payments shall be called Discharged Payments. The retirement system may recover the
 12 actuarial equivalent of those Discharged Payments, computed using the plan's actuarial factors,
 13 from the surviving spouse with offsets against the system's monthly annuity benefit payments to
 14 the surviving spouse payable under this section, but may not thereby reduce any of those benefit
 15 payments by more than 10%.

16
 17
 18 Section 4. Section 51 of the retirement & social security law, as amended by L. 1972, ch. 283, §
 19 32, is amended to read as follows:
 20

21 § 51. Refunds and Withdrawals.

22
 23 a. A member under age sixty may withdraw his accumulated contributions if he has been
 24 separated from service for a period of at least fifteen days.

25 b. A member sixty years of age, or over, may elect, not later than fifteen days after filing his
 26 application for retirement, or not later than thirty days after his mandatory retirement has become
 27 effective by operation of law, to withdraw his accumulated contributions in lieu of a retirement
 28 allowance, provided that he

29 1. Has had less than five years of total service credit, or

30 2. Last became a member before April sixth, nineteen hundred forty-three, or

31 3. Is eligible for an annual retirement allowance which, without optional
 32 modification, amounts to less than three hundred dollars.

33 c. The following contributions or additional contributions shall be treated as excess contributions
 34 which, together with regular interest and special interest thereon, may be withdrawn by a member
 35 at any time prior to retirement, or if not so withdrawn, shall be used to purchase additional annuity:

36 1. Contributions paid by a member in order to receive credit for service in war after
 37 world war I, as defined in section two of this article, not including, however,
 38 contributions required by subdivision k of section forty-one of this article.

39 2. Additional contributions paid by a member pursuant to section eighty, eighty-nine-

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1 a or eighty-nine-b and where, as a result of a change in his employment, such
 2 additional contributions would not provide an additional pension allowance for service
 3 for which such additional contributions were made.

4 3. Such other contributions to the annuity savings fund as may be determined by
 5 regulation of the comptroller to be excess and subject to such withdrawal.

6 d. If a member dies before the effective date of his retirement, his accumulated contributions shall
 7 be paid to his estate or to the person nominated by him in a written designation duly executed and
 8 filed with the comptroller.

9 In the event such a designated beneficiary does not survive him, or if he shall not have so
 10 designated a beneficiary, such contributions shall be payable to the deceased member's estate or
 11 as provided in section one thousand three hundred ten of the surrogate's court procedure act. Such
 12 member, or after his death, the person so nominated by him may file with the comptroller a written
 13 designation, duly executed providing that such contributions shall be paid in the form of an annuity
 14 to such person so nominated. Such designation shall be filed prior to or within ninety days after
 15 the death of the member. The amount of such annuity shall be determined as the actuarial
 16 equivalent of such accumulated contributions on the basis of regular interest and the age of the
 17 person so nominated as of the date of such member's death.

18 d. Notwithstanding the provisions of section ninety of this article, accumulated contributions shall
 19 be payable in the manner provided by subdivision d or e of this section in the case of a retired
 20 member who shall die before attaining age seventy where:

21 1. His application for retirement became effective prior to his death, and

22 2. No optional election by him was in effect at the time of his death, or he had made
 23 and filed a valid election to receive his retirement allowance without optional
 24 modification, and

25 3. He died within the period of thirty days immediately after his retirement became
 26 effective.

27 The amount of the accumulated contributions so payable under this subdivision shall be reduced
 28 by the amount of any annuity payment that may have been paid on account of such retirement.

29 The provisions of this subdivision shall apply in any case where death occurred on or after January
 30 first, nineteen hundred fifty-four.

31 e. A member, or after his death, the person nominated by him to receive his accumulated
 32 contributions, may elect to receive the actuarial equivalent of the annuity specified in subdivision
 33 d of this section in the form of a reduced annuity, payable for life, with the further proviso that if
 34 the person so nominated should die before the annuity payments received by him are equal to such
 35 actuarial equivalent, the balance thereof shall be paid in a lump sum to such beneficiary's estate
 36 or to such person as such member or his nominee shall have designated prior to his death. Such
 37 election shall be made prior to or within ninety days after the death of the member. Such
 38 designation of a beneficiary to receive such lump sum may be made or changed at any time by the
 39 person who made it. Such election, designation or change shall be made by a writing duly executed

1 and filed with the comptroller. If the person nominated to receive such lump sum does not survive
 2 the member's beneficiary, such lump sum, if any, shall be payable to the estate of the member's
 3 beneficiary or as provided in section one thousand three hundred ten of the surrogate's court
 4 procedure act.

5 f. Notwithstanding any other provision of this section to the contrary, at least one-half of the
 6 accumulated contributions remaining at the time of the member's death, payable under this section
 7 shall be paid to the member's surviving spouse, if any, unless the member elects that the surviving
 8 spouse receive less than one-half of the death benefits, and:

9 1. (A) the member's surviving spouse consents, after the date of the member's
 10 marriage, in writing to the member's election;

11 (B) the spousal survivor written consent is on a plan form addressed to the
 12 member and the form sets forth

13 (i) the amount of the member's accumulated contributions,

14 (ii) the entitlement of the surviving spouse to at least half of the
 15 accumulated contributions,

16 (iii) the surviving spouse's right to prevent any future member elections
 17 regarding the member's death benefits without the surviving spouse's
 18 consent unless the consent of the surviving spouse expressly permits
 19 member elections without any further consent by the surviving spouse,
 20 and

21 (iv) the fact that consenting to the member's election would result in the
 22 surviving spouse receiving no or less of the accumulated contributions
 23 than the surviving spouse would otherwise be entitled under this
 24 subdivision;

25 (C), the consent includes an acknowledgement that the surviving spouse
 26 understands the surviving spouse's entitlement to be paid at least one-half the
 27 accumulated contributions absent the surviving spouse's consent to the
 28 member's election, and that the surviving spouse's consent would eliminate or
 29 reduce these payments;

30 (D) the consent includes a signature by the surviving spouse that was witnessed
 31 by either a notary public or a representative of the retirement system; and

32 (E) the completed consent and the member's election are received by the system
 33 before the member's death;

34 2. the member and the surviving spouse were legally separated when the member's
 35 election was filed with the retirement system;

36 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 37 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 38 the member's death; or

1 4. the retirement board determined that the consent required under paragraph one of
 2 this subdivision could not be obtained from the surviving spouse because

3 (A) there is no surviving spouse;

4 (B) the surviving spouse could not be located between the time the member
 5 elected that the surviving spouse would not be paid at least one-half of the
 6 accumulated contributions and the date of the member's death; or

7 (C) such other circumstances as the retirement board may prescribe by written
 8 plan regulations.

9 g. Notwithstanding any other provision of this section to the contrary, a member's election must
 10 comply with the terms of subdivision f of this section to be effective.

11 h. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 12 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 13 matters would use in the conduct of an enterprise of a like character and with like aims, in—

14 1. relying on a consent referred to in paragraph one of subdivision f of this section, or

15 2. making a determination under paragraph four of subdivision f of this section,

16 then such consent or determination shall be treated as valid for purpose of discharging the
 17 retirement system and the board from liability to the extent of payments made pursuant to such
 18 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 19 spouse would otherwise be entitled from any party other than the retirement system or the board.

20
 21
 22 Section 5. Section 60 of the retirement & social security law, as amended by L. 2011, ch. 582,
 23 §§ 1, 2, is amended to read as follows:
 24

25 § 60. Ordinary death benefit

26 a. An ordinary death benefit plus the reserve-for-increased-take-home-pay shall be payable upon
 27 the death of a member who:

28 1. Died before the effective date of his retirement, and

29 2. Was in service upon which his membership was based when he died or was on the
 30 payroll in such service and paid within a period of twelve months prior to his
 31 death or within a period of twenty-four months prior to his death if on leave of
 32 absence as set forth below and had, unless his service was based on seasonal
 33 employment, not been otherwise gainfully employed since he ceased to be on
 34 such payroll except while on leave of absence which was granted in accordance
 35 with the provisions of subdivision i of section forty-one of this chapter and
 36 which commenced during the period from April first, nineteen hundred sixty-six
 37 through June thirtieth, nineteen hundred seventy-four, to perform services as a

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1 civilian officer or employee of the federal government or one of its agencies or
 2 a contractor of the United States Agency for International Development engaged
 3 to perform the work of such agency, the United Nations, any other international
 4 organization of which the United States of America is a member, or a foreign
 5 government, and

- 6 3. Has credit for one or more years of service while actually a member. This
 7 requirement of one or more years of service while actually a member shall not
 8 be applicable to the reserve-for-increased-take-home-pay and shall be subject to
 9 waiver as provided in subdivision e of section forty-one of this article.

10 An ordinary death benefit shall not be payable in any case in which an accidental death benefit is
 11 payable provided, however, that where payments made pursuant to section sixty-one of this chapter
 12 on account of an accidental death benefit, computed without reduction pursuant to section sixty-
 13 four of this article, and the reserve-for-increased-take-home-pay total less than the ordinary death
 14 benefit and the reserve-for-increased-take-home-pay that would have been computed and made
 15 payable pursuant to this section sixty in the case of ordinary death, the difference shall be paid to
 16 the beneficiary or member's estate to which the ordinary death benefit and reserve-for-increased-
 17 take-home-pay would have been paid.

18 Provided further, that where the beneficiary or beneficiaries designated to receive the accidental
 19 death benefit pursuant to section sixty-one of this article is the same beneficiary or beneficiaries
 20 designated by the member to receive the ordinary death benefit, then, and in that case, the
 21 beneficiary or beneficiaries may elect to receive, in a lump sum, the value of the ordinary death
 22 benefit and the reserve-for-increased-take-home-pay, if any, that would have been computed and
 23 made payable pursuant to the provisions hereof in case of ordinary death, in lieu of any other
 24 benefit.

25 Notwithstanding the provisions of any other law to the contrary and solely for the purpose of
 26 determining eligibility for an ordinary death benefit and/or guaranteed ordinary death benefit, a
 27 member shall be considered to have died while in service upon which his or her membership was
 28 based provided such member was on the payroll in the service upon which membership is based
 29 at the time he or she was ordered to active duty pursuant to Title 10 of the United States Code,
 30 with the armed forces of the United States or to service in the uniformed services pursuant to
 31 Chapter 43 of Title 38 of the United States Code and died while on such active duty or service in
 32 the uniformed services on or after June fourteenth, two thousand five. Provided, further, that any
 33 such member ordered to such active duty with the armed forces of the United States or in service
 34 in the uniformed services who died prior to rendering the minimum amount of service necessary
 35 to be eligible for this benefit shall be considered to have satisfied the minimum service
 36 requirement.

37 aa. Notwithstanding the provisions of section ninety of this article, an ordinary death benefit plus
 38 the reserve-for-increased-take-home-pay shall be payable to the beneficiary designated in a valid
 39 election of "Option One-half", if any, or in the manner provided by subdivision c, d, or e of this
 40 section, in any other case, if a retired member shall die where:

- 41 1. His application for retirement became effective prior to his death, and

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1 2. No optional election by him was in effect at the time of his death, or he had made
2 and filed a valid election to receive his retirement allowance without optional
3 modification or under “Option One-half”, and

4 3. He died within the period of thirty days immediately after his retirement became
5 effective.

6 The amount of the ordinary death benefit so payable under this subdivision shall be reduced by the
7 amount of any pension payment that may have been paid on account of such retirement.

8 The provisions of this subdivision shall apply in any case where death occurred on or after January
9 first, nineteen hundred fifty-four.

10 b. The ordinary death benefit plus the reserve-for-increased-take-home-pay shall be payable from
11 the pension accumulation fund. The ordinary death benefit shall not exceed the compensation
12 earnable by such member during his last twelve months of service while a member. The amount
13 thereof shall be computed by multiplying one-twelfth of such compensation by the number of
14 years, not to exceed twelve, of his total service credit. Provided, however, that where the member
15 has more than twelve years of total service credit and where his death occurs on or after July first,
16 nineteen hundred sixty, and on or before June thirtieth, nineteen hundred seventy-four, there shall
17 be added to such ordinary death benefit one-twenty-fourth of such compensation multiplied by the
18 number of years, not to exceed twenty-four, but exclusive of the first twelve, of his total service
19 credit. Provided, further, that where a member, qualified under subdivisions a or aa of this section,
20 would have been entitled to a service retirement benefit at the time of his death and where his death
21 occurs on or after July first, nineteen hundred sixty-three and on or before June thirtieth, nineteen
22 hundred seventy-four, the amount payable under this section shall be equal to the pension reserve
23 that would have been established had the member retired on the date of his death, unless the
24 ordinary death benefit and the reserve-for-increased-take-home-pay, hereinabove provided for,
25 shall be in excess thereof.

26 In the case of a retired member who has returned to service, total service credit, for purposes of
27 this section only, shall include service rendered prior to his retirement, provided that he shall have
28 rendered at least one year of service since he last became a member, or provided he shall have
29 rendered since he returned to public service one year of service during which he elected pursuant
30 to subdivision a of section one hundred one of this article not to be restored to membership in the
31 retirement system. The member’s accumulated contributions shall be refunded in accordance with
32 subdivision d of section fifty-one of this article.

33 bb. (a) An ordinary death benefit shall be payable upon the death of a member who was in the
34 employ of the state during its participation under section seventy-five-a of this chapter or of a
35 participating employer while such employer is participating under the provisions of section
36 seventy-five-b of this chapter.

37 The provisions of this subdivision bb shall apply in any case where death occurred on or after
38 August nineteenth, nineteen hundred sixty-six and prior to July first, nineteen hundred seventy-
39 four.

40 (b) The ordinary death benefit shall be payable from the pension accumulation

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1 fund. Such ordinary death benefit shall be based on compensation earnable by
 2 such member during his last twelve months of service while a member. The
 3 amount thereof shall be computed by multiplying one-twelfth of such
 4 compensation by the number of years, not to exceed thirty-six, of his total
 5 service credit. Provided that where a member, qualified under subdivisions a and
 6 aa of this section would have been eligible for service retirement at the time of
 7 his death and where his death occurs on or after August nineteenth, nineteen
 8 hundred sixty-six and prior to July first, nineteen hundred seventy-four, the
 9 amount payable under this section shall be equal to the pension reserve that
 10 would have been established pursuant to section seventy-five-c had the member
 11 retired on the date of his death, unless the ordinary death benefit hereinabove
 12 provided for shall be in excess thereof. The benefit provided herein shall be in
 13 lieu of the ordinary death benefit presently payable under other provisions of
 14 this chapter, unless the benefit under such other provisions shall be in excess of
 15 those provided for herein, in which event the greater benefit shall be payable.

16 (c) In the case of a retired member who has returned to service, total service
 17 credit, for purposes of this subdivision only, shall include service rendered prior
 18 to his retirement, provided that he shall have rendered at least one year of service
 19 since he last became a member, or provided he shall have rendered since he
 20 returned to public service one year of service during which he elected pursuant
 21 to subdivision a of section one hundred one of this article not to be restored to
 22 membership in the retirement system. The member's accumulated contributions
 23 shall be refunded in accordance with subdivision d of section fifty-one of this
 24 article.

25 c. The ordinary death benefit and the reserve-for-increased-take-home-pay shall be paid to the
 26 member's estate or to such person as he shall have nominated to receive such ordinary death
 27 benefit. To be effective, such a nomination must be in the form of a written designation, duly
 28 acknowledged and filed with the comptroller for this specific purpose. In the event such a
 29 designated beneficiary does not survive him, or if he shall not have so designated a beneficiary,
 30 such benefit shall be payable to the deceased member's estate or as provided in section one
 31 thousand three hundred ten of the surrogate's court procedure act.

32 d. The member, or on the death of the member, the person nominated by him to receive his death
 33 benefit, may provide, by written designation, duly executed and filed with the comptroller, that
 34 such death benefit and the reserve-for-increased-take-home-pay shall be paid in the form of an
 35 annuity. Such designation shall be filed prior to or within ninety days after the death of the member.
 36 The amount of such annuity shall be determined as the actuarial equivalent of such death benefit
 37 and reserve on the basis of the age of such beneficiary at the time of the member's death and
 38 regular interest.

39 e. A member, or after his death, the person nominated by him to receive his ordinary death benefit,
 40 may elect to receive the actuarial equivalent of the annuity specified in subdivision d of this section
 41 in the form of a reduced annuity, payable for life, with the further proviso that if the person so

1 nominated should die before the annuity payments received by him are equal to such actuarial
 2 equivalent, the balance thereof shall be paid in a lump sum to such beneficiary's estate or to such
 3 person as such member or his nominee shall have designated prior to his death. Such election shall
 4 be made prior to or within ninety days after the death of the member. Such designation of a
 5 beneficiary to receive such lump sum may be made or changed at any time by the person who
 6 made it. Such election, designation or change shall be made by a writing duly executed and filed
 7 with the comptroller. If the person nominated to receive such lump sum does not survive the
 8 member's beneficiary, such lump sum, if any, shall be payable to the estate of the member's
 9 beneficiary, or as provided in section one thousand three hundred ten of the surrogate's court
 10 procedure act.

11 f. 1. Notwithstanding any provision of paragraph three of subdivision a of this section to
 12 the contrary and in lieu of the ordinary death benefit payable pursuant to subdivisions b or
 13 bb of this section or the guaranteed ordinary death benefit payable pursuant to section sixty-
 14 a of this article, a special death benefit shall be payable upon the death in service of a security
 15 service s unit member or parkway police unit member or security supervisors unit member
 16 who is subject to the provisions of this article, and who has credit for ninety or more days of
 17 service while actually a member of the retirement system.

18 2. The special death benefit provided under this section to the beneficiary of
 19 such security services unit member or parkway police unit member or security
 20 supervisors unit member shall be:

21 (a) in the case of a security services unit member or parkway police unit member
 22 or security supervisors unit member who was employed by the state on or before
 23 the date this act takes effect, equal to three times the member's compensation
 24 earnable during his last twelve months of service as a member or, if he had not
 25 completed twelve months of service prior to the date of his death, three times
 26 the compensation he would have earned had he worked for twelve months prior
 27 to such date, in either case raised to the next higher multiple of one thousand
 28 dollars. If, however, the ordinary death benefit payable pursuant to subdivision
 29 b or bb of this section upon the death of such a security services member or
 30 parkway police unit member or security supervisors unit member would have
 31 exceeded the special death benefit payable pursuant to this subdivision, the
 32 special death benefit payable in the event of death of such a member prior to
 33 July first, nineteen hundred seventy-one shall be equal to that benefit which
 34 would have otherwise been payable pursuant to subdivision b or bb of this
 35 section notwithstanding any provision of paragraph one of this subdivision to
 36 the contrary; or

37 (b) in the case of a security services unit member or parkway police unit member
 38 or security supervisors unit member who enters service after the date this act
 39 takes effect,¹ equal to three times the member's compensation earnable during
 40 his last twelve months of service as a member or, if he has not completed twelve
 41 months of service prior to the date of his death, three times the compensation he
 42 would have earned had he worked for twelve months prior to such date in either

1 case raised to the next higher multiple of one thousand dollars.

2 3. For the purpose of this subdivision: (a) the terms “security services unit member”,
 3 “parkway police unit member”, and “security supervisors unit member” shall
 4 mean a member in the employ of the state in the collective negotiating unit
 5 designated as the security services unit or parkway police unit or security
 6 supervisors unit established pursuant to article fourteen of the civil service law;
 7 and (b) the term “death in service” shall include the death of such a member who
 8 dies while off the payroll provided he or she (i) was on the payroll in such service
 9 and paid within a period of twelve months prior to his or her death, or was on
 10 the payroll in the service upon which membership is based at the time he or she
 11 was ordered to active duty pursuant to Title 10 of the United States Code, with
 12 the armed forces of the United States or to service in the uniformed services
 13 pursuant to Chapter 43 of Title 38 of the United States Code and died while on
 14 such active duty or service in the uniformed services on or after June fourteenth,
 15 two thousand five, (ii) had not been otherwise gainfully employed since he or
 16 she ceased to be on such payroll and (iii) had credit for one or more years of
 17 continuous service since he last entered or reentered the service of his or her
 18 employer. Provided, further, that any such member ordered to active duty
 19 pursuant to Title 10 of the United States Code, with the armed forces of the
 20 United States or to service in the uniformed services pursuant to Chapter 43 of
 21 Title 38 of the United States Code who died prior to rendering the minimum
 22 amount of service necessary to be eligible for this benefit shall be considered to
 23 have satisfied the minimum service requirement.

24 4. The provisions of this subdivision shall apply in any case where death occurs on or
 25 after the date this subdivision takes effect and prior to July first, nineteen
 26 hundred seventy-four.

27 g. Notwithstanding any other provision of this section to the contrary, at least one-half of the death
 28 benefits payable under this section, including the reserve-for-increased-take-home-pay at the time
 29 of the member’s death, payable under this section shall be paid to the member’s surviving spouse,
 30 if any, unless the member elects that the surviving spouse receive less than one-half of the death
 31 benefits, and:

32 1. (a) the member’s surviving spouse consents, after the date of the member’s
 33 marriage, in writing to the member’s election;

34 (b) the spousal survivor written consent is on a plan form addressed to the
 35 member and the form sets forth:

36 (i) the amount of the member’s death benefits,

37 (ii) the entitlement of the surviving spouse to at least half of the death
 38 benefits,

39 (iii) the surviving spouse’s right to prevent any future member elections
 40 regarding the member’s death benefits without the surviving spouse’s
 41 consent unless the consent of the surviving spouse expressly permits

1 member elections without any further consent by the surviving spouse,
2 and

3 (iv) the fact that consenting to the member's election would result in the
4 surviving spouse receiving no death benefits or less death benefits than
5 the surviving spouse would otherwise be entitled under this subdivision;

6 (c) the consent includes, an acknowledgement that the surviving spouse
7 understands the surviving spouse's entitlement to be paid at least one-half the
8 death benefits absent the surviving spouse's consent to the member's election,
9 and that the surviving spouse's consent would eliminate or reduce these death
10 benefit payments;

11 (d) the consent includes a signature by the surviving spouse that was witnessed
12 by either a notary public or a representative of the retirement system, and

13 (e) the completed consent and the member's election are received by the system
14 before the member's death;

15 2. the member and the surviving spouse were legally separated when the member's
16 election was filed with the retirement system; or

17 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
18 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
19 the member's death; or

20 4. the retirement board determined that the consent required under paragraph one of
21 this subdivision could not be obtained from the surviving spouse because

22 (a) there is no surviving spouse;

23 (b) the surviving spouse could not be located between the time the member
24 elected that the surviving spouse would not be paid at least one-half of the death
25 benefits and the date of the member's death; or

26 (c) such other circumstances as the retirement board may prescribe by written
27 plan regulations.

28 h. Notwithstanding any other provision of this section to the contrary, a member's election must
29 comply with the terms of subdivision g of this section to be effective.

30 i. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
31 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
32 matters would use in the conduct of an enterprise of a like character and with like aims, in—

33 1. relying on a consent referred to in paragraph one of subdivision g of this section, or

34 2. making a determination under paragraph four of subdivision g of this section,

35 then such consent or determination shall be treated as valid for purpose of discharging the
36 retirement system and the board from liability to the extent of payments made pursuant to such
37 action. These discharges shall not deprive the surviving spouse of any right to which the surviving

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1 spouse would otherwise be entitled from any party other than the retirement system or the board.

2
3
4 Section 6. Section 60-c of the retirement and social security law, added L. 1998, ch. 388, § 1, is
5 amended to read as follows:

6
7 § 60-c. Death benefit for vested members who die prior to retirement

8 a. A death benefit plus the reserve-for-increased-take-home-pay shall be payable upon the
9 death of a member who:

- 10 1. Died before the effective date of retirement while a member of the retirement
11 system;
- 12 2. Had at least ten years of credited service at the time of death; and
- 13 3. Died at a time and in a manner which did not result in the eligibility of the member's
14 estate or any beneficiary to receive any other retirement system death benefits
15 on account of such death.

16 b. Benefits provided under this section shall be payable to the member's estate or the beneficiary
17 or beneficiaries nominated by the member on a designation of beneficiary form filed with the
18 comptroller pursuant to section sixty of this title, who would have been eligible to receive benefits
19 if benefits had become payable pursuant to such section.

20 c. The amount of the benefit payable pursuant to this section shall be equal to one-half of the
21 amount of the ordinary death benefit which would have been payable pursuant to section sixty of
22 this title had the member's death occurred on the last day of service upon which membership was
23 based.

24 d. Notwithstanding any other provision of this section to the contrary, at least one-half of the death
25 benefits payable under this section, including the reserve-for-increased-take-home-pay at the time
26 of the member's death, payable under this section shall be paid to the member's surviving spouse,
27 if any, unless the member elects that the surviving spouse receive less than one-half of the death
28 benefits, and:

29 1. (A) the member's surviving spouse consents, after the date of the member's
30 marriage, in writing to the member's election;

31 (B) the spousal survivor written consent is on a plan form addressed to the
32 member and the form sets forth:

33 (i) the amount of the member's death benefits,

34 (ii) the entitlement of the surviving spouse to at least half of the death
35 benefits,

36 (iii) the surviving spouse's right to prevent any future member elections
37 regarding the member's death benefits without the surviving spouse's

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1 consent unless the consent of the surviving spouse expressly permits
 2 member elections without any further consent by the surviving spouse,
 3 and

4 (iv) the fact that consenting to the member's election would result in the
 5 surviving spouse receiving no death benefits or less death benefits than
 6 the surviving spouse would otherwise be entitled under this subdivision;

7 (C) the consent includes an acknowledgement that the surviving spouse
 8 understands the surviving spouse's entitlement to be paid at least one-half the
 9 death benefits absent the surviving spouse's consent to the member's election,
 10 and that the surviving spouse's consent to the member's election would
 11 eliminate or reduce these death benefit payments; and

12 (D) the consent includes a signature by the surviving spouse that was witnessed
 13 by either a notary public or a representative of the retirement system; and,

14 (E) the completed consent and the member's election are received by the system
 15 before the member's death;

16 2. the member and the surviving spouse were legally separated when the member's
 17 election was filed with the retirement system; or

18 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 19 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 20 the member's death; or

21 4. the retirement board determined that the consent required under paragraph one of
 22 this subdivision could not be obtained from the surviving spouse because

23 (A) there is no surviving spouse;

24 (B) the surviving spouse could not be located between the time the member
 25 elected that the surviving spouse would not be paid at least one-half of the death
 26 benefits and the date of the member's death; or

27 (C) such other circumstances as the retirement board may prescribe by written
 28 plan regulations.

29 e. Notwithstanding any other provision of this section to the contrary, a member's election must
 30 comply with the terms of subdivision d of this section to be effective.

31 f. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 32 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 33 matters would use in the conduct of an enterprise of a like character and with like aims, in—

34 1. relying on a consent referred to in paragraph one of subdivision d of this section, or

35 2. making a determination under paragraph four of subdivision d of this section,

36 then such consent or determination shall be treated as valid for purpose of discharging the
 37 retirement system and the board from liability to the extent of payments made pursuant to such

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1 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 2 spouse would otherwise be entitled from any party other than the retirement system or the board.
 3
 4

5 Section 7. Section 90 of the retirement and social security law, as amended by L. 2004, ch. 446,
 6 § 1, is amended to read as follows:
 7

8 § 90. Options

9 a. A member; or if he is an incompetent, his spouse or the committee of his property; or if he is a
 10 conservatee, his spouse or the conservator of his property, may elect to receive a Single Life
 11 Allowance (a retirement allowance without optional modification) or to receive the actuarial
 12 equivalent of his retirement allowance at the time of his retirement, in the form of a smaller
 13 retirement allowance payable to him for life and one of the following optional settlements:

14 Cash Refund-Contributions (Option One-half). If he dies before he has received
 15 annuity payments equal to the present value of his annuity, as it was at the time
 16 of his retirement, the balance thereof shall be paid to his estate or to a beneficiary
 17 designated as provided in this section. In the event a designated beneficiary does
 18 not survive him, any balance shall be payable to the estate of the deceased retired
 19 member or as provided in section one thousand three hundred ten of the
 20 surrogate's court procedure act. The beneficiary so designated may elect by
 21 written designation, duly executed and filed with the comptroller, to receive the
 22 balance payable in the form of an annuity, the amount of which shall be
 23 determined as the actuarial equivalent of such balance on the basis of regular
 24 interest and the age of such beneficiary at the time of the retiree's death, or in
 25 the alternative to receive the actuarial equivalent of such balance in the form of
 26 a reduced annuity payable for life, with the further proviso that if he should die
 27 before the annuity payments received by him are equal to such actuarial
 28 equivalent, the balance thereof shall be paid in a lump sum to his estate or to
 29 such person as he shall have designated to receive same. In either case the
 30 election shall be made within ninety days after the death of the retiree. The
 31 designation of the individual who is to receive such lump sum on the death of
 32 the beneficiary, may be changed by the beneficiary at any time. Such election,
 33 designation or change shall be made by a writing, duly executed and filed with
 34 the comptroller. In the event a designated beneficiary has elected to receive a
 35 balance payable in the form of a reduced annuity, and the person designated by
 36 him to receive a lump sum payment does not survive him, such lump sum, if
 37 any, shall be payable to the estate of the designated beneficiary or as provided
 38 in section one thousand three hundred ten of the surrogate's court procedure act.

39 Cash Refund-Initial Value (Option One). If he dies before he has received retirement
 40 allowance payments equal to the present value of his retirement allowance, as it
 41 was at the time of his retirement, the balance thereof shall be paid to his estate
 42 or to the beneficiary so designated. In the event a designated beneficiary does

1 not survive him, any balance shall be payable to the estate of the deceased retired
 2 member or as provided in section one thousand three hundred ten of the
 3 surrogate's court procedure act. The beneficiary so designated may elect by
 4 written designation, duly executed and filed with the comptroller, to receive the
 5 balance payable in the form of an annuity, the amount of which shall be
 6 determined as the actuarial equivalent of such balance on the basis of regular
 7 interest and the age of such beneficiary at the time of the retiree's death, or in
 8 the alternative, to receive the actuarial equivalent of such balance in the form of
 9 a reduced annuity payable for life, with the further proviso that if he should die
 10 before the annuity payments received by him are equal to such actuarial
 11 equivalent, the balance thereof shall be paid in a lump sum to his estate or to
 12 such person as he shall have designated to receive same. In either case the
 13 election shall be made within ninety days after the death of the retiree. The
 14 designation of the individual who is to receive such lump sum on the death of
 15 the beneficiary, may be changed by the beneficiary at any time. Such election,
 16 designation or change shall be made by a writing, duly executed and filed with
 17 the comptroller. In the event a designated beneficiary has elected to receive a
 18 balance payable in the form of a reduced annuity, and the person designated by
 19 him to receive a lump sum payment does not survive him, such lump sum, if
 20 any, shall be payable to the estate of the designated beneficiary or as provided
 21 in section one thousand three hundred ten of the surrogate's court procedure act.

22 Joint Allowance-Full (Option Two). Upon his death, a retirement allowance in an
 23 amount equal to that paid to him, shall be paid for life to the beneficiary so
 24 designated.

25 Joint Allowance-Half (Option Three). Upon his death, a retirement allowance of one-
 26 half the amount paid to him shall be paid for life to the beneficiary so designated.

27 Actuarial Equivalent Allowance (Option Four). Such other optional benefit or benefits
 28 as the comptroller shall approve and which shall be the actuarial equivalent of
 29 his retirement allowance at the time of his retirement.

30 aa. In the event that the monthly retirement allowance payable to a member or a beneficiary shall
 31 amount to less than twenty-five dollars, then and in such event, the member or beneficiary may
 32 elect, in lieu of such monthly retirement allowance, to receive the actuarial equivalent thereof in a
 33 lump sum.

34 b. All elections under this section shall be made on blanks prepared by the comptroller for that
 35 purpose. Any such election may be made at any time before the first payment on account of any
 36 benefit becomes normally due, except that in the case of retirement on account of disability, such
 37 an election may be made within thirty days after mailing by the comptroller of notification of
 38 approval of retirement on account of disability.

39 An optional election shall not become effective if the member dies before the effective date of his
 40 retirement. Provided, however, if a member who is otherwise eligible for disability retirement
 41 pursuant to this chapter dies after the filing in the office of the comptroller of the application for

1 disability retirement and a valid option election form pursuant to this chapter and it is established
 2 that the physical or mental impairment or incapacitation of the applicant specified in such
 3 application was directly related to the cause of the applicant's death, such application shall be
 4 approved by the comptroller effective one day before the date of the applicant's death. An election
 5 of an option may be withdrawn or a new option may be chosen within the period provided in this
 6 subdivision b for the making of such an election. Except as provided in subdivision b of section
 7 seventy of this article, where an optional election does not become effective, retirement shall be
 8 without option.

9 bb. 1. Notwithstanding any other provision of this section or of section seventy of this
 10 article, the comptroller, for reasonable cause, shall have power to extend the time
 11 for the election of an option, for a period or periods which shall expire not later
 12 than sixty days immediately after the effective date of a member's retirement.

13 2. Notwithstanding any other provision of this section, but except where payment of
 14 accumulated contributions, an ordinary death benefit, or both, is or are required
 15 pursuant to subdivision dd of section fifty-one of this article or subdivision aa
 16 of section sixty of this article, retirement shall be on the basis of "Option One-
 17 half" unless the member files an effective election pursuant to this section to
 18 retire on a different basis. The provisions of this paragraph two shall apply to
 19 cases where retirement shall become effective on or after May first, nineteen
 20 hundred fifty-four.

21 c. A member, or person authorized by this section to make an election in his behalf, may designate
 22 his beneficiary under any of the options herein provided. Each such designation shall be:

23 1. Made in writing on a blank provided by the comptroller for such purpose, and

24 2. Ineffective until it is filed in the comptroller's office, and

25 3. Revocable to the extent that:

26 (a) A new beneficiary under a "Cash Refund-Contributions" option (Option
 27 One-half), or "a Cash Refund-Initial Value" option (Option One) may be
 28 designated at any time during the member's life.

29 (b) A new beneficiary under any other option may be designated at any time
 30 within the period provided for the making of an election pursuant to this section.

31 d. In the event of the death of a retired member, the installment of his retirement allowance, which
 32 would have become due and payable next following his death, shall be pro-rated as of the date of
 33 his death. The amount of such installment, as so pro-rated, shall be paid as follows:

34 1. If the member shall have:

35 (a) Elected to receive an optional benefit pursuant to this section, and

36 (b) Designated a beneficiary pursuant to this section, such amount shall be paid
 37 to such beneficiary, if such beneficiary survives him. In any other case such
 38 amount shall be paid to the retired member's estate or pursuant to section one

1 thousand three hundred ten of the surrogate's court procedure act.

- 2 2. If the member shall not have elected to receive an optional benefit, such amount
3 shall be paid to the beneficiary designated by him pursuant to subdivision d of
4 section fifty-one of this article. In the event the appropriately designated
5 beneficiary does not survive such member, or if he shall not have so designated
6 a beneficiary, such amount shall be payable to the retired member's estate or
7 pursuant to section one thousand three hundred ten of the surrogate's court
8 procedure act.

9 e. Notwithstanding any other provision of this article, an option selection previously filed by a
10 member or retired member subject to the provisions of this section may be changed no later than
11 thirty days following the date of payability of his or her retirement allowance. A retired member
12 who has been retired for disability may change an option selection previously filed no later than
13 (1) thirty days following the date on which such member's application for disability retirement
14 was approved by the retirement board or (2) thirty days following the date on which such retiree
15 was retired for disability, whichever is later.

16 f. Notwithstanding any other provision of this section to the contrary, a member's retirement
17 allowance payable under this section shall be paid as Option Three, so that upon his or her death,
18 if the member has a surviving spouse who was married to the member on the date the member
19 filed his or her retirement application, or on the date the member filed his or her last effective
20 option selection, if any, whichever is later, the surviving spouse shall be paid for life survivor
21 benefit payments, each of which is equal to at least one-half the amount of the member's retirement
22 allowance payments payable under this section unless the member elects that the surviving spouse
23 receive either no survivor benefit payments or survivor benefit payments, each of which is less
24 than one-half the amount of the member's retirement allowance payments, and :

- 25 1. (a) the member's surviving spouse consents after the date of the member's
26 marriage, in writing to the member's election;
27 (b) the spousal survivor consent is on a plan form addressed to the member, and
28 the form sets forth:
29 (i) the amount of the Option Three monthly benefit entitlements of the
30 member and of the spouse,
31 (ii) the time each would be entitled to those benefits under Option Three,
32 (iii) the surviving spouse's right to prevent any future member elections
33 regarding the member's survivor benefits without the surviving spouse's
34 consent unless the consent of the surviving spouse expressly permits
35 member elections without any further consent by the surviving spouse,
36 and
37 (iv) the fact that consenting to the member's survivor benefit election
38 would result in the surviving spouse receiving no survivor benefits or
39 smaller survivor benefits than the surviving spouse would otherwise be
40 entitled under this subdivision;

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1 (c) the consent includes an acknowledgement that the surviving spouse
 2 understands the surviving spouse's entitlement to life survivor benefit payments,
 3 each of which is equal to at least one-half the amount of the member's retirement
 4 allowance payments absent the surviving spouse's consent to the member's
 5 election, and that the surviving spouse's consent would eliminate or reduce those
 6 survivor benefits;

7 (d) the consent includes a signature by the surviving spouse that was witnessed
 8 by either a notary public or a representative of the retirement system; and

9 (e) the completed consent and the member's election are received by the system
 10 before the payability date;

11 2. the member and the surviving spouse were legally separated when the member's
 12 election was filed with the retirement system;

13 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 14 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 15 the filing of the member's application for a retirement allowance; or

16 4. the retirement board determined that the consent required under paragraph 1 of this
 17 subdivision could not be obtained from the surviving spouse because

18 (a) there is no surviving spouse;

19 (b) the surviving spouse could not be located between the time the member
 20 elected that the surviving spouse would not be paid a retirement allowance of at
 21 least fifty percent of the amount paid to such member and the date of the filing
 22 of the member's application for a retirement allowance; or

23 (c) such other circumstances as the retirement board may prescribe by written
 24 plan regulations.

25 g. Notwithstanding any other provision of this section to the contrary, a member's election must
 26 comply with the terms of subdivision one of this section to be effective.

27 h. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 28 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 29 matters would use in the conduct of an enterprise of a like character and with like aims, in—

30 1. relying on a consent referred to in paragraph 1 of subdivision f of this section, or

31 2. making a determination under paragraph 3 of subdivision f of this section,

32 then such consent or determination shall be treated as valid for purpose of discharging the
 33 retirement system and the board from liability to the extent of payments made pursuant to such
 34 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 35 spouse would otherwise be entitled from any party other than the retirement system or the board.
 36 To the extent the retirement system and the board were completely discharged for any annuity
 37 benefit payments that the system made to the member in excess of what the member would have
 38 been entitled under Option Three if the member's beneficiary had been the surviving spouse, such

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1 excess payments shall be called Discharged Payments. The retirement system may recover the
 2 actuarial equivalent of those Discharged Payments, computed using the plan's actuarial factors,
 3 from the surviving spouse with offsets against the system's monthly annuity benefit payments to
 4 the surviving spouse payable under this section, but may not thereby reduce any of those benefit
 5 payments by more than 10%.

6
 7
 8 Section 8. Section 351 of the retirement & social security law, as amended by L. 2018, ch. 476,
 9 § 185, is amended to read as follows:

10
 11 § 351 Refunds and withdrawals

12
 13 a. A member under age sixty may withdraw his accumulated contributions if he has been
 14 separated from service for a period of at least fifteen days.

15 b. A member sixty years of age or over, may elect, not later than fifteen days after filing his
 16 application for retirement, or not later than thirty days after his mandatory retirement has become
 17 effective by operation of law, to withdraw his accumulated contributions in lieu of a retirement
 18 allowance, provided that he

19 1. Has had less than five years of total service credit, or

20 2. Last became a member of the state employees' retirement system before April sixth,
 21 nineteen hundred forty-three, and subsequently became a member of the police
 22 and fire retirement system, or

23 3. Is eligible for an annual retirement allowance which, without optional
 24 modification, amounts to less than three hundred dollars.

25 c. The following contributions or additional contributions shall be treated as excess contributions
 26 which, together with regular interest and special interest thereon, may be withdrawn by a member
 27 at any time prior to retirement, or if not so withdrawn, shall be used to purchase additional annuity:

28 1. Contributions paid by a member in order to receive credit for service in war after
 29 world war I, as defined in section three hundred two of this article, not including,
 30 however, contributions required by subdivision k of section three hundred forty-
 31 one of this article.

32 2. Additional contributions paid by a member pursuant to sections three hundred
 33 eighty-one, three hundred eighty-one-a, three hundred eighty-three, three
 34 hundred eighty-three-a, three hundred eighty-four, three hundred eighty-four-a,
 35 three hundred eighty-four-b, three hundred eighty-four-d, three hundred eighty-
 36 five, three hundred eighty-five-a, three hundred eighty-six, three hundred
 37 eighty-seven, three hundred eighty-seven-a and three hundred eighty-eight and
 38 where, as a result of a change in his employment, such additional contributions
 39 would not provide an additional pension allowance for service for which such
 40 additional contributions were made.

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1 3. Such other contributions to the annuity savings fund as may be determined by
2 regulation of the comptroller to be excess and subject to such withdrawal.

3 d. If a member dies before the effective date of his retirement, his accumulated contributions shall
4 be paid to his estate or to the person nominated by him in a written designation duly executed and
5 filed with the comptroller. In the event such a designated beneficiary does not survive him, or if
6 he shall not have so designated a beneficiary, such contributions shall be payable to the deceased
7 member's estate or as provided in section one thousand three hundred ten of the surrogate's court
8 procedure act. Such member, or after his death, the person so nominated by him may file with the
9 comptroller a written designation, duly executed providing that such contributions shall be paid in
10 the form of an annuity to such person so nominated. Such designation shall be filed prior to or
11 within ninety days after the death of the member. The amount of such annuity shall be determined
12 as the actuarial equivalent of such accumulated contributions on the basis of regular interest and
13 the age of the person so nominated as of the date of such member's death.

14 dd. Notwithstanding the provisions of section three hundred ninety of this article, accumulated
15 contributions shall be payable in the manner provided by subdivision d or e of this section in the
16 case of a retired member who shall die before attaining age seventy where:

- 17 1. His application for retirement became effective prior to his death, and
- 18 2. No optional election by him was in effect at the time of his death, or he had made
19 and filed a valid election to receive his retirement allowance without optional
20 modification, and
- 21 3. He died within the period of thirty days immediately after his retirement became
22 effective.

23 The amount of the accumulated contributions so payable under this subdivision shall be reduced
24 by the amount of any annuity payment that may have been paid on account of such retirement.

25 The provisions of this subdivision shall apply in any case where death occurred on or after January
26 first, nineteen hundred fifty-four.

27 e. A member, or after his death, the person nominated by him to receive his accumulated
28 contributions, may elect to receive the actuarial equivalent of the annuity specified in subdivision
29 d of this section in the form of a reduced annuity, payable for life, with the further proviso that if
30 the person so nominated should die before the annuity payments received by him are equal to such
31 actuarial equivalent, the balance thereof shall be paid in a lump sum to such beneficiary's estate
32 or to such person as such member or his nominee shall have designated prior to his death. Such
33 election shall be made prior to or within ninety days after the death of the member. Such
34 designation of a beneficiary to receive such lump sum may be made or changed at any time by the
35 person who made it. Such election, designation or change shall be made by a writing duly executed
36 and filed with the comptroller. If the person nominated to receive such lump sum does not survive
37 the member's beneficiary, such lump sum, if any, shall be payable to the estate of the member's
38 beneficiary or as provided in section one thousand three hundred ten of the surrogate's court
39 procedure act.

1 f. Notwithstanding any other provision of this section to the contrary, at least one-half of the
 2 accumulated contributions remaining at the time of the member's death, payable under this section
 3 shall be paid to the member's surviving spouse, unless the member elects that the surviving spouse
 4 receive less than one-half of the death benefits, and:

5 1. (A) the member's surviving spouse consented, after the date of the member's
 6 marriage, in writing to the member's election

7 (B) the spousal survivor written consent is on a plan form addressed to the
 8 member and the form sets forth

9 (i) the amount of the member's accumulated contributions,

10 (ii) the entitlement of the surviving spouse to at least half of the
 11 accumulated contributions,

12 (iii) the surviving spouse's right to prevent any future member elections
 13 regarding the member's death benefits without the surviving spouse's
 14 consent unless the consent of the surviving spouse expressly permits
 15 member elections without any further consent by the surviving spouse,
 16 and

17 (iv) the fact that consenting to the member's election would result in the
 18 surviving spouse receiving no or a smaller portion of the accumulated
 19 contributions than the surviving spouse would otherwise be entitled
 20 under this subdivision;

21 (C) the consent includes an acknowledgement that the surviving spouse
 22 understands the surviving spouse's entitlement to be paid at least one-half the
 23 accumulated contributions absent the surviving spouse's consent to the
 24 member's election, and that the surviving spouse's consent would eliminate or
 25 reduce these payments; and

26 (D) the consent includes a signature by the surviving spouse that was witnessed
 27 by either a notary public or a representative of the retirement system, and

28 (E) the completed consent and the member's election are received by the system
 29 before the member's death;

30 2. the member and the surviving spouse were legally separated when the member's
 31 election was filed with the retirement system;

32 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 33 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 34 the member's death; or

35 4. the retirement board determined that the consent required under paragraph one of
 36 this subdivision could not be obtained from the surviving spouse because

37 (A) there is no surviving spouse;

38 (B) the surviving spouse could not be located between the time the member

1 elected that the surviving spouse would not be paid at least one-half of the
 2 accumulated contributions and the date of the member's death; or
 3 (C) such other circumstances as the retirement board may prescribe by written
 4 plan regulations.

5 g. Notwithstanding any other provision of this section to the contrary, a member's election must
 6 comply with the terms of subdivision f of this section to be effective.

7 h. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 8 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 9 matters would use in the conduct of an enterprise of a like character and with like aims, in—

10 1. relying on a consent referred to in paragraph one of subdivision f of this section, or

11 2. making a determination under paragraph four of subdivision f of this section,

12 then such consent or determination shall be treated as valid for purpose of discharging the
 13 retirement system and the board from liability to the extent of payments made pursuant to such
 14 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 15 spouse would otherwise be entitled from any party other than the retirement system or the board.

16
 17
 18 Section 9. Section 360 of the retirement and social security law, as amended by L. 2018, ch. 476,
 19 § 186, is amended to read as follows:
 20

21 § 360. Ordinary death benefit

22 a. An ordinary death benefit plus the reserve-for-increased-take-home-pay shall be payable upon
 23 the death of a member who:

24 1. Died before the effective date of his retirement, and

25 2. Was in service upon which his membership was based when he died or was on the
 26 payroll in such service and paid within a period of twelve months prior to his
 27 death or within a period of twenty-four months prior to his death if on leave of
 28 absence as set forth below and had, unless his service was based on seasonal
 29 employment, not been otherwise gainfully employed since he ceased to be on
 30 such payroll except while on leave of absence which was granted in accordance
 31 with the provisions of subdivision i of section three hundred forty-one of this
 32 chapter and which commenced during the period from April first, nineteen
 33 hundred sixty-six through June thirtieth, nineteen hundred seventy-four, to
 34 perform services as a civilian officer or employee of the Federal government or
 35 one of its agencies or a contractor of the United States Agency for International
 36 Development engaged to perform the work of such agency, the United Nations,
 37 any other international organization of which the United States of America is a
 38 member, or a foreign government, and

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1 3. Has credit for one or more years of service while actually a member. This requirement of one
 2 or more years of service while actually a member shall not be applicable to the reserve-for-
 3 increased-take-home-pay and shall be subject to waiver as provided in subdivision e of section
 4 three hundred forty-one of this article.

5 An ordinary death benefit shall not be payable in any case in which an accidental death benefit is
 6 payable provided, however, that where payments made pursuant to section three hundred sixty-
 7 one of this chapter on account of an accidental death benefit, computed without reduction pursuant
 8 to section three hundred sixty-four of this article, and the reserve-for-increased-take-home-pay
 9 total less than the ordinary death benefit and the reserve-for-increased-take-home-pay that would
 10 have been computed and made payable pursuant to this section three hundred sixty in the case of
 11 ordinary death, the difference shall be paid to the beneficiary or member's estate to which the
 12 ordinary death benefit and reserve-for-increased-take-home-pay would have been paid. Provided
 13 further, that where the beneficiary or beneficiaries designated to receive the accidental death
 14 benefit pursuant to section three hundred sixty-one of this chapter is the same beneficiary or
 15 beneficiaries designated by the member to receive the ordinary death benefit, then, and in that case
 16 the beneficiary or beneficiaries may elect to receive, in a lump sum, the value of the ordinary death
 17 benefit and the reserve-for-increased-take-home-pay, if any, that would have been computed and
 18 made payable pursuant to the provisions hereof in case of ordinary death, in lieu of any other
 19 benefit.

20 Notwithstanding the provisions of any other law to the contrary and solely for the purpose of
 21 determining eligibility for an ordinary death benefit and/or guaranteed ordinary death benefit, a
 22 member shall be considered to have died while in service upon which his or her membership was
 23 based provided such member was on the payroll in the service upon which membership is based
 24 at the time he or she was ordered to active duty pursuant to Title 10 of the United States Code,
 25 with the armed forces of the United States or to service in the uniformed services pursuant to
 26 Chapter 43 of Title 38 of the United States Code and died while on such active duty or service in
 27 the uniformed services on or after June fourteenth, two thousand five. Provided, further, that any
 28 such member ordered to active duty with the armed forces of the United States or to service in the
 29 uniformed services who died prior to rendering the minimum amount of service necessary to be
 30 eligible for this benefit shall be considered to have satisfied the minimum service requirement.

31 aa. Notwithstanding the provisions of section three hundred ninety of this article, an ordinary death
 32 benefit plus the reserve-for-increased-take-home-pay shall be payable to the beneficiary
 33 designated in a valid election of "Option One-half", if any, or in the manner provided by
 34 subdivisions c, d, or e of this section, in any other case, if a retired member shall die where:

- 35 1. His application for retirement became effective prior to his death, and
- 36 2. No optional election by him was in effect at the time of his death, or he had made
 37 and filed a valid election to receive his retirement allowance without optional
 38 modification or under "Option One-half", and
- 39 3. He died within the period of thirty days immediately after his retirement became
 40 effective.

41 The amount of the ordinary death benefit so payable under this subdivision shall be reduced by the

1 amount of any pension payment that may have been paid on account of such retirement.

2 The provisions of this subdivision shall apply in any case where death occurred on or after January
3 first, nineteen hundred fifty-four.

4 b. The ordinary death benefit plus the reserve-for-increased-take-home-pay shall be payable from
5 the pension accumulation fund. The ordinary death benefit shall not exceed the compensation
6 earnable by such member during his last twelve months of service while a member. The amount
7 thereof shall be computed by multiplying one-twelfth of such compensation by the number of
8 years, not to exceed twelve, of his total service credit. Provided, however, that where the member
9 has more than twelve years of total service credit and where his death occurs on or after April first,
10 nineteen hundred sixty-seven and on or before June thirtieth, nineteen hundred seventy-four, there
11 shall be added to such ordinary death benefit one-twenty-fourth of such compensation multiplied
12 by the number of years, not to exceed twenty-four, but exclusive of the first twelve, of his total
13 service credit. Provided, further, that where a member, qualified under subdivisions¹ a or aa of this
14 section, would have been entitled to a service retirement benefit at the time of his death and where
15 his death occurs on or after April first, nineteen hundred sixty-seven, and on or before June
16 thirtieth, nineteen hundred seventy-four, the amount payable under this section shall be equal to
17 the pension reserve that would have been established had the member retired on the date of his
18 death, unless the ordinary death benefit and the reserve-for-increased-take-home-pay, hereinabove
19 provided for, shall be in excess thereof.

20 In the case of a retired member who has returned to service, total service credit for purposes of this
21 section only, shall include service rendered prior to his retirement, provided that he shall have
22 rendered at least one year of service since he last became a member or provided he shall have
23 rendered since he returned to public service one year of service during which he elected pursuant
24 to subdivision a of section four hundred one of this article not to be restored to membership in the
25 police and fire retirement system. The member's accumulated contributions shall be refunded in
26 accordance with subdivision d of section three hundred fifty-one of this article.

27 bb. (a) An ordinary death benefit shall be payable upon the death of a member who was
28 in the employ of the state during its participation under section three hundred
29 seventy-five-a of this chapter or of a participating employer while such employer
30 is participating under the provisions of section three hundred seventy-five-b of
31 this chapter.

32 The provisions of this subdivision bb shall apply in any case where death occurred on or² April
33 first, nineteen hundred sixty-seven and prior to July first, nineteen hundred seventy-four.

34 (b) The ordinary death benefit shall be payable from the pension accumulation fund.
35 Such ordinary death benefit shall be based on compensation earnable by such
36 member during his last twelve months of service while a member. The amount
37 thereof shall be computed by multiplying one-twelfth of such compensation by
38 the number of years, not to exceed thirty-six, of his total service credit.
39 Provided that where a member qualified under subdivisions a and aa of this
40 section would have been eligible for service retirement at the time of his death
41 and where his death occurs on or after April first, nineteen hundred sixty-seven

1 and prior to July first, nineteen hundred seventy-four, the amount payable
2 under this section shall be equal to the pension reserve that would have been
3 established pursuant to section three hundred seventy-five-c had the member
4 retired on the date of his death, unless the ordinary death benefit hereinabove
5 provided for, shall be in excess thereof. The benefit provided herein shall be in
6 lieu of the ordinary death benefit presently payable under other provisions of
7 this chapter, unless the benefit under such other provisions shall be in excess
8 of those provided for herein, in which event the greater benefit shall be
9 payable.

10 (c) In the case of a retired member who has returned to service, total service credit, for
11 purposes of this subdivision only, shall include service rendered prior to his
12 retirement, provided that he shall have rendered at least one year of service
13 since he last became a member, or provided he shall have rendered since he
14 returned to public service one year of service during which he elected pursuant
15 to subdivision a of section four hundred one of this article not to be restored to
16 membership in the retirement system. The member's accumulated
17 contributions shall be refunded in accordance with subdivision d of section
18 three hundred fifty-one of this article.

19 c. The ordinary death benefit and the reserve-for-increased-take-home-pay shall be paid to the
20 member's estate or to such person as he shall have nominated to receive such ordinary death
21 benefit. To be effective, such a nomination must be in the form of a written designation, duly
22 acknowledged and filed with the comptroller for this specific purpose. In the event such a
23 designated beneficiary does not survive him, or if he shall not have so designated a beneficiary,
24 such benefit shall be payable to the deceased member's estate or as provided in section one
25 thousand three hundred ten of the surrogate's court procedure act.

26 d. The member, or on the death of the member, the person nominated by him to receive his death
27 benefit, may provide, by written designation, duly executed and filed with the comptroller, that
28 such death benefit and the reserve-for-increased-take-home-pay shall be paid in the form of an
29 annuity. Such designation shall be filed prior to or within ninety days after the death of the member.
30 The amount of such annuity shall be determined as the actuarial equivalent of such death benefit
31 and reserve on the basis of the age of such beneficiary at the time of the member's death and
32 regular interest.

33 e. A member, or after his death, the person nominated by him to receive his ordinary death benefit,
34 may elect to receive the actuarial equivalent of the annuity specified in subdivision d of this section
35 in the form of a reduced annuity, payable for life, with the further proviso that if the person so
36 nominated should die before the annuity payments received by him are equal to such actuarial
37 equivalent, the balance thereof shall be paid in a lump sum to such beneficiary's estate or to such
38 person as such member or his nominee shall have designated prior to his death. Such election shall
39 be made prior to or within ninety days after the death of the member. Such designation of a
40 beneficiary to receive such lump sum may be made or changed at any time by the person who
41 made it. Such election, designation or change shall be made by a writing duly executed and filed
42 with the comptroller. If the person nominated to receive such lump sum does not survive the

1 member's beneficiary, such lump sum, if any, shall be payable to the estate of the member's
 2 beneficiary or as provided in section one thousand three hundred ten of the surrogate's court
 3 procedure act.

4 f. Special death benefit. Notwithstanding any provision of paragraph three of subdivision a of this
 5 section to the contrary, a special death benefit shall be payable upon the death of an officer or
 6 member of the state police who is subject to the provisions of section three hundred eighty-one-b
 7 of this chapter, and who has credit for ninety or more days of service while actually a member of
 8 the retirement system. In lieu of the ordinary death benefit payable pursuant to subdivisions b or
 9 bb of this section, the special death benefit shall be payable upon the death of an officer or member
 10 of the state police and shall be equal to three times the member's compensation earnable during
 11 his last twelve months of service as a member, raised to the next higher multiple of one thousand
 12 dollars. If, however, the ordinary death benefit payable pursuant to subdivision b or bb of this
 13 section upon the death of an officer or member of the state police who had been in service on or
 14 before April first, nineteen hundred sixty-nine would have exceeded the special death benefit
 15 otherwise payable pursuant to this subdivision had he not elected to come under the provisions of
 16 section three hundred eighty-one-b, the special death benefit payable under this subdivision shall
 17 be equal to that benefit which he would have received had he remained in his former plan. In no
 18 case shall the amount payable as a special death benefit on behalf of an officer or member of the
 19 state police who enters or re-enters service in the division after April first, nineteen hundred sixty-
 20 nine exceed three times the member's compensation earnable during his last twelve months of
 21 service as a member, raised to the next higher multiple of one thousand dollars.

22 g. 1. Notwithstanding any provision of paragraph three of subdivision a of this section to
 23 the contrary and in lieu of the ordinary death benefit payable pursuant to
 24 subdivisions b or bb of this section or the guaranteed ordinary death benefit
 25 payable pursuant to section three hundred sixty-a of this article, a special death
 26 benefit shall be payable upon the death in service of a security services unit
 27 member or parkway police unit member or security supervisors unit member
 28 who is subject to the provisions of this article, and who has credit for ninety or
 29 more days of service while actually a member of the retirement system.

30 2. The special death benefit provided under this section to the beneficiary of such
 31 security services unit member or parkway police unit member or security
 32 supervisors unit member shall be:

33 (a) in the case of a security services unit member or parkway police unit member
 34 or security supervisors unit member who was employed by the state on or before
 35 the date this act takes effect, equal to three times the member's compensation
 36 earnable during his last twelve months of service as a member or, if he had not
 37 completed twelve months of service prior to the date of his death, three times
 38 the compensation he would have earned had he worked for twelve months prior
 39 to such date, in either case raised to the next higher multiple of one thousand
 40 dollars. If, however, the ordinary death benefit payable pursuant to subdivision
 41 b or bb of this section upon the death of such a security services member or
 42 parkway police unit member or security supervisors unit member would have

1 exceeded the special death benefit payable pursuant to this subdivision, the
 2 special death benefit payable in the event of the death of such a member prior to
 3 July first, nineteen hundred seventy-one shall be equal to that benefit which
 4 would have otherwise been payable pursuant to subdivision b or bb of this
 5 section notwithstanding any provision of paragraph one of this subdivision to
 6 the contrary; or

7 (b) in the case of a security services unit member or parkway police unit member
 8 or security supervisors unit member who enters service after the date this act
 9 takes effect, equal to three times the member's compensation earnable during
 10 his last twelve months of service as a member or, if he has not completed twelve
 11 months of service prior to the date of his death, three times the compensation he
 12 would have earned had he worked for twelve months prior to such date, in either
 13 case raised to the next higher multiple of one thousand dollars.

14 3. For the purpose of this subdivision:

15 (a) the terms "security services unit member", "parkway police unit member",
 16 and "security supervisors unit member" shall mean a member in the employ of
 17 the state in the collective negotiating unit designated as the security services unit
 18 or parkway police unit or security supervisors unit established pursuant to article
 19 fourteen of the civil service law; and

20 (b) the term "death in service" shall include the death of such a member who
 21 dies while off the payroll provided he or she (i) was on the payroll in such service
 22 and paid within a period of twelve months prior to his or her death, or was on
 23 the payroll in the service upon which membership is based at the time he or she
 24 was ordered to active duty pursuant to Title 10 of the United States Code, with
 25 the armed forces of the United States or to service in the uniformed services
 26 pursuant to Chapter 43 of Title 38 of the United States Code and died while on
 27 such active duty or service in the uniformed services on or after June fourteenth,
 28 two thousand five, (ii) had not been otherwise gainfully employed since he or
 29 she ceased to be on such payroll and (iii) had credit for one or more years of
 30 continuous service since he or she last entered or reentered the service of his or
 31 her employer. Provided, further, that any such member ordered to active duty
 32 pursuant to Title 10 of the United States Code, with the armed forces of the
 33 United States or to service in the uniformed services pursuant to Chapter 43 of
 34 Title 38 of the United States Code who died prior to rendering the minimum
 35 amount of service necessary to be eligible for this benefit shall be considered to
 36 have satisfied the minimum service requirement.

37 4. The provisions of this subdivision shall apply in any case where death occurs on or
 38 after the date this subdivision takes effect and prior to July first, nineteen
 39 hundred seventy-four.

40 [h. Notwithstanding any other provision of this section to the contrary, at least one-half of the death](#)
 41 [benefits payable under this section, including the reserve-for-increased-take-home-pay at the time](#)

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1 of the member's death, payable under this section shall be paid to the member's surviving spouse,
 2 if any, unless the member elects that the surviving spouse receive less than one-half of the death
 3 benefits, and:

4 1. (a) the member's surviving spouse consents, after the date of the member's
 5 marriage, in writing to the member's election

6 (b) the spousal survivor written consent is on a plan form addressed to the
 7 member and the form sets forth:

8 (i) the amount of the member's death benefits,

9 (ii) the entitlement of the surviving spouse to at least half of the death
 10 benefits,

11 (iii) the surviving spouse's right to prevent any future member elections
 12 regarding the member's death benefits without the surviving spouse's
 13 consent unless the consent of the surviving spouse expressly permits
 14 member elections without any further consent by the surviving spouse,
 15 and

16 (D) the fact that consenting to the member's election would result in the
 17 surviving spouse receiving no death benefits or less death benefits than
 18 the surviving spouse would otherwise be entitled under this subdivision,

19 (c) the consent includes an acknowledgement that the surviving spouse
 20 understands the surviving spouse's entitlement to be paid at least one-half the
 21 death benefits absent the surviving spouse's consent to the member's election,
 22 and that the surviving spouse's consent would eliminate or reduce these death
 23 benefit payments; and;

24 (d) the consent includes a signature by the surviving spouse that was witnessed
 25 by either a notary public or a representative of the retirement system, and

26 (e) the completed consent and the member's election are received by the system
 27 before the member's death;

28 2. the member and the surviving spouse were legally separated when the member's
 29 election was filed with the retirement system;

30 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 31 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 32 the member's death; or

33 3. the retirement board determined that the consent required under paragraph one of
 34 this subdivision could not be obtained from the surviving spouse because

35 (a) there is no surviving spouse;

36 (b) the surviving spouse could not be located between the time the member
 37 elected that the surviving spouse would not be paid at least one-half of the death
 38 benefits and the date of the member's death; or

1 (c) such other circumstances as the retirement board may prescribe by written
 2 plan regulations.

3 i. Notwithstanding any other provision of this section to the contrary, a member's election must
 4 comply with the terms of subdivision h of this section to be effective.

5 j. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 6 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 7 matters would use in the conduct of an enterprise of a like character and with like aims, in—

8 1. relying on a consent referred to in paragraph one of subdivision h of this section, or

9 2. making a determination under paragraph three of subdivision h of this section,

10 then such consent or determination shall be treated as valid for purpose of discharging the
 11 retirement system and the board from liability to the extent of payments made pursuant to such
 12 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 13 spouse would otherwise be entitled from any party other than the retirement system or the board.

14
 15
 16 Section 10. Section 360-c of the retirement and social security law, as amended by L. 1998, ch.
 17 388, § 2, is amended to read as follows:

18
 19 § 360-c. Death benefit for vested members who die prior to retirement

20 a. A death benefit plus the reserve-for-increased-take-home-pay shall be payable upon the death
 21 of a member who:

22 1. Died before the effective date of retirement while a member of the retirement
 23 system;

24 2. Had at least ten years of credited service at the time of death; and

25 3. Died at a time and in a manner which did not result in the eligibility of the member's
 26 estate or any beneficiary to receive any other retirement system death benefits
 27 on account of such death.

28 b. Benefits provided under this section shall be payable to the member's estate or the beneficiary
 29 or beneficiaries nominated by the member on a designation of beneficiary form filed with the
 30 comptroller pursuant to section sixty of this chapter, who would have been eligible to receive
 31 benefits if benefits had become payable pursuant to such section.

32 c. The amount of the benefit payable pursuant to this section shall be equal to one-half of the
 33 amount of the ordinary death benefit which would have been payable pursuant to section sixty of
 34 this chapter had the member's death occurred on the last day of service upon which membership
 35 was based.

36 d. Notwithstanding any other provision of this section to the contrary, at least one-half of the death

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1 benefits payable under this section, including the reserve-for-increased-take-home-pay at the time
 2 of the member's death, payable under this section shall be paid to the member's surviving spouse,
 3 if any, unless the member elects that the surviving spouse receive less than one-half of the death
 4 benefits, and:

5 1. (A) the member's surviving spouse consents, after the date of the member's
 6 marriage, in writing to the member's election;

7 (Bi) the spousal survivor written consent is on a plan form addressed to the
 8 member and the form sets forth:

9 (i) the amount of the member's death benefits,

10 (ii) the entitlement of the surviving spouse to at least half of the death
 11 benefits,

12 (iii) the surviving spouse's right to prevent any future member elections
 13 regarding the member's death benefits without the surviving spouse's
 14 consent unless the consent of the surviving spouse expressly permits
 15 member elections without any further consent by the surviving spouse,
 16 and

17 (iv) the fact that consenting to the member's election would result in the
 18 surviving spouse receiving no death benefits or less death benefits than
 19 the surviving spouse would otherwise be entitled under this subdivision,

20 (C) the consent includes an acknowledgement that the surviving spouse
 21 understands the surviving spouse's entitlement to be paid at least one-half the
 22 death benefits absent the surviving spouse's consent to the member's election,
 23 and that the surviving spouse's consent would eliminate or reduce these death
 24 benefit payments;

25 (D) the consent includes a signature by the surviving spouse that was witnessed
 26 by either a notary public or a representative of the retirement system; and

27 (E) the completed consent and the member's election are received by the system
 28 before the member's death;

29 2. the member and the surviving spouse were legally separated when the member's
 30 election was filed with the retirement system; or

31 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
 32 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
 33 the member's death; or

34 4. the retirement board determined that the consent required under paragraph one of
 35 this subdivision could not be obtained from the surviving spouse because

36 (A) there is no surviving spouse;

37 (B) the surviving spouse could not be located between the time the member
 38 elects that the surviving spouse would not be paid at least one-half of the death

1 benefits and the date of the member's death; or

2 (C) such other circumstances as the retirement board may prescribe by written
 3 plan regulations.

4 e. Notwithstanding any other provision of this section to the contrary, a member's election must
 5 comply with the terms of subdivision d of this section to be effective.

6 f. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 7 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 8 matters would use in the conduct of an enterprise of a like character and with like aims, in—

9 1. relying on a consent referred to in paragraph one of subdivision d of this section, or

10 2. making a determination under paragraph four of subdivision d of this section,

11 then such consent or determination shall be treated as valid for purpose of discharging the
 12 retirement system and the board from liability to the extent of payments made pursuant to such
 13 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 14 spouse would otherwise be entitled from any party other than the retirement system or the board.

15

16

17 Section 11. Section 390 of the retirement and social security law, as amended by L. 2004, ch. 446,
 18 § 2, is amended to read as follows:

19

20 § 390. Options

21 a. A member; or if he is an incompetent, his spouse or the committee of his property; or if he is a
 22 conservatee, his spouse or the conservator of his property, may elect to receive a Single Life
 23 Allowance (a retirement allowance without optional modification) or to receive the actuarial
 24 equivalent of his retirement allowance at the time of his retirement, in the form of a smaller
 25 retirement allowance payable to him for life and one of the following optional settlements.

26 Cash Refund-Contributions (Option One-half). If he dies before he has received
 27 annuity payments equal to the present value of his annuity, as it was at the time
 28 of his retirement, the balance thereof shall be paid to his estate or to a beneficiary
 29 designated as provided in this section. In the event a designated beneficiary does
 30 not survive him, any balance shall be payable to the estate of the deceased retired
 31 member or as provided in section one thousand three hundred ten of the
 32 surrogate's court procedure act.

33 The beneficiary so designated may elect by written designation, duly executed
 34 and filed with the comptroller, to receive the balance payable in the form of an
 35 annuity, the amount of which shall be determined as the actuarial equivalent of
 36 such balance on the basis of regular interest and the age of such beneficiary at
 37 the time of the retiree's death, or in the alternative, to receive the actuarial
 38 equivalent of such balance in the form of a reduced annuity payable for life, with

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1 the further proviso that if he should die before the annuity payments received by
 2 him are equal to such actuarial equivalent, the balance thereof shall be paid in a
 3 lump sum to his estate or to such person as he shall have designated to receive
 4 same. In either case the election shall be within ninety days after the death of the
 5 retiree. The designation of the individual who is to receive such lump sum on
 6 the death of the beneficiary, may be changed by the beneficiary at any time.
 7 Such election, designation or change shall be made by a writing, duly executed
 8 and filed with the comptroller. In the event a designated beneficiary has elected
 9 to receive a balance payable in the form of a reduced annuity, and the person
 10 designated by him to receive a lump sum payment does not survive him, such
 11 lump sum, if any, shall be payable to the estate of the designated beneficiary or
 12 as provided in section one thousand three hundred ten of the surrogate's court
 13 procedure act.

14 Cash Refund-Initial Value (Option One). If he dies before he has received retirement
 15 allowance payments equal to the present value of his retirement allowance, as it
 16 was at the time of his retirement, the balance thereof shall be paid to his estate
 17 or to the beneficiary so designated. In the event a designated beneficiary does
 18 not survive him, any balance shall be payable to the estate of the deceased retired
 19 member or as provided in section one thousand three hundred ten of the
 20 surrogate's court procedure act. The beneficiary so designated may elect by
 21 written designation, duly executed and filed with the comptroller, to receive the
 22 balance payable in the form of an annuity, the amount of which shall be
 23 determined as the actuarial equivalent of such balance on the basis of regular
 24 interest and the age of such beneficiary at the time of the retiree's death, or in
 25 the alternative, to receive the actuarial equivalent of such balance in the form of
 26 a reduced annuity payable for life, with the further proviso that if he should die
 27 before the annuity payments received by him are equal to such actuarial
 28 equivalent, the balance thereof shall be paid in a lump sum to his estate or to
 29 such person as he shall have designated to receive same. In either case the
 30 election shall be within ninety days after the death of the retiree. The designation
 31 of the individual who is to receive such lump sum on the death of the beneficiary,
 32 may be changed by the beneficiary at any time. Such election, designation or
 33 change shall be made by a writing, duly executed and filed with the comptroller.
 34 In the event a designated beneficiary has elected to receive a balance payable in
 35 the form of a reduced annuity, and the person designated by him to receive a
 36 lump sum payment does not survive him, such lump sum, if any, shall be payable
 37 to the estate of the designated beneficiary or as provided in section one thousand
 38 three hundred ten of the surrogate's court procedure act.

39 Joint Allowance-Full (Option Two). Upon his death, a retirement allowance in an
 40 amount equal to that paid to him, shall be paid for life to the beneficiary so
 41 designated.

42 Joint Allowance-Half (Option Three). Upon his death, a retirement allowance of one-
 43 half the amount paid to him shall be paid for life to the beneficiary so designated.

1 Actuarial Equivalent Allowance (Option Four). Such other optional benefit or benefits
 2 as the comptroller shall approve and which shall be the actuarial equivalent of
 3 his retirement allowance at the time of his retirement.

4 aa. In the event that the monthly retirement allowance payable to a member or a beneficiary shall
 5 amount to less than twenty-five dollars, then and in such event, the member or beneficiary may
 6 elect, in lieu of such monthly retirement allowance, to receive the actuarial equivalent thereof in a
 7 lump sum.

8 b. All elections under this section shall be made on blanks prepared by the comptroller for that
 9 purpose. Any such election may be made at any time before the first payment on account of any
 10 benefit becomes normally due, except that in the case of retirement on account of disability, such
 11 an election may be made within thirty days after mailing by the comptroller of notification of
 12 approval of retirement on account of disability.

13 An optional election shall not become effective if the member dies before the effective date of his
 14 retirement. Provided, however, if a member who is otherwise eligible for disability retirement
 15 pursuant to this chapter dies after the filing in the office of the comptroller of the application for
 16 disability retirement and a valid option election form pursuant to this chapter and it is established
 17 that the physical or mental impairment or incapacitation of the applicant specified in such
 18 application was directly related to the cause of the applicant's death, such application shall be
 19 approved by the comptroller effective one day before the date of the applicant's death. An election
 20 of an option may be withdrawn or a new option may be chosen within the period provided in this
 21 subdivision b for the making of such an election. Except as provided in subdivision b of section
 22 three hundred seventy of this article, where an optional election does not become effective,
 23 retirement shall be without option.

24 bb. 1. Notwithstanding any other provision of this section or of section three hundred seventy of
 25 this article, the comptroller, for reasonable cause, shall have power, to extend the time
 26 for the election of an option, for a period or periods which shall expire not later than
 27 sixty days immediately after the effective date of a member's retirement.

28 2. Notwithstanding any other provision of this section, but except where payment of
 29 accumulated contributions, an ordinary death benefit, or both, is or are required
 30 pursuant to subdivision dd of section three hundred fifty-one of this article or
 31 subdivision aa of section three hundred sixty of this article, retirement shall be
 32 on the basis of "Option One-half" unless the member files an effective election
 33 pursuant to this section to retire on a different basis. The provisions of this
 34 paragraph two shall apply to cases where retirement shall become effective on
 35 or after April first, nineteen hundred sixty-seven.

36 c. A member, or person authorized by this section to make an election in his behalf, may designate
 37 his beneficiary under any of the options herein provided. Each such designation shall be:

- 38 1. Made in writing on a blank provided by the comptroller for such purposes, and
- 39 2. Ineffective until it is filed in the comptroller's office, and

1 3. Revocable to the extent that:

2 (a) A new beneficiary under a “Cash Refund-Contributions” option (Option
3 One-half), or a “Cash Refund-Initial Value” option (Option One) may be
4 designated at any time during the member’s life.

5 (b) A new beneficiary under any other option may be designated at any time
6 within the period provided for the making of an election pursuant to this section.

7 d. In the event of the death of a retired member, the installment of his retirement allowance, which
8 would have become due and payable next following his death, shall be pro-rated as of the date of
9 his death. The amount of such installment, as so pro-rated, shall be paid as follows:

10 1. If the member shall have

11 (a) Elected to receive an optional benefit pursuant to this section, and

12 (b) Designated a beneficiary pursuant to this section, such amount shall be paid
13 to such beneficiary, if such beneficiary survives him. In any other case such
14 amount shall be paid to the retired member’s estate or pursuant to section one
15 thousand three hundred ten of the surrogate’s court procedure act.

16 2. If the member shall not have elected to receive an optional benefit, such amount
17 shall be paid to the beneficiary designated by him pursuant to subdivision d of
18 section three hundred fifty-one of this article. In the event the appropriately
19 designated beneficiary does not survive such member, or if he shall not have so
20 designated a beneficiary, such amount shall be payable to the retired member’s
21 estate or pursuant to section one thousand three hundred ten of the surrogate’s
22 court procedure act.

23 e. Notwithstanding any other provision of this article, an option selection previously filed by a
24 member or retired member subject to the provisions of this section may be changed no later than
25 thirty days following the date of payability of his or her retirement allowance. A retired member
26 who has been retired for disability may change an option selection previously filed no later than
27 (1) thirty days following the date on which such member’s application for disability retirement
28 was approved by the retirement board or (2) thirty days following the date on which such retiree
29 was retired for disability, whichever is later.

30 f. Notwithstanding any other provision of this section to the contrary, a member’s retirement
31 allowance payable under this section shall be paid as Option Three, so that upon his or her death,
32 if the member has a surviving spouse who was married to the member on the date the member
33 filed his or her retirement application, or on the date the member filed his or her last effective
34 option selection, if any, whichever is later, the surviving spouse shall be paid for life survivor
35 benefit payments, each of which is equal to at least one-half the amount of the member’s retirement
36 allowance payments payable under this section unless the member elects that the surviving spouse
37 receive either no survivor benefit payments or survivor benefit payments, each of which is less
38 than one-half the amount of the member’s retirement allowance payments, and:

- 1 1. (a) the member’s surviving spouse consents after the date of the member’s
2 marriage, in writing to the member’s election;
3 (b) the spousal survivor consent is on a plan form addressed to the member, and
4 the form sets forth:
5 (i) the amount of the Option Three monthly benefit entitlements of the
6 member and of the spouse,
7 (ii) the time each individual would be entitled to those benefits under
8 Option Three,
9 (iii) the surviving spouse’s right to prevent any future member elections
10 regarding the member’s survivor benefits without the surviving spouse’s
11 consent unless the consent of the surviving spouse expressly permits
12 member elections without any further consent by the surviving spouse,
13 and
14 (iv) the fact that consenting to the member’s survivor benefit election
15 would result in the surviving spouse receiving no survivor benefits or
16 smaller survivor benefits than the surviving spouse would otherwise be
17 entitled under this subdivision;
18 (c) the consent includes an acknowledgement that the surviving spouse
19 understands the surviving spouse’s entitlement to life survivor benefit payments,
20 each of which is equal to at least one-half the amount of the member’s retirement
21 allowance payments absent the surviving spouse’s consent to the member’s
22 election, and that the surviving spouse’s consent would eliminate or reduce those
23 survivor benefits;
24 (d) the consent includes a signature by the surviving spouse that was witnessed
25 by either a notary public or a representative of the retirement system, and
26 (e) the completed consent and the member’s election are received by the system
27 before the payability date;
28 2. the member and the surviving spouse were legally separated when the member’s
29 election was filed with the retirement system;
30 3. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
31 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
32 the filing of the member’s application for a retirement allowance; or
33 4. the retirement board determined that the consent required under paragraph 1 of this
34 subdivision could not be obtained from the surviving spouse because
35 (a) there is no surviving spouse;
36 (b) the surviving spouse could not be located between the time the member
37 elected that the surviving spouse would not be paid a retirement allowance of at
38 least fifty percent of the amount paid to such member and the date of the filing
39 of the member’s application for a retirement allowance; or

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1 (c) such other circumstances as the retirement board may prescribe by written
 2 plan regulations.

3 g. Notwithstanding any other provision of this section to the contrary, a member's election must
 4 comply with the terms of subdivision f of this section to be effective.

5 h. If the retirement board of the system acts with the care, skill, prudence, and diligence under the
 6 circumstances then prevailing that a prudent man acting in a like capacity and familiar with such
 7 matters would use in the conduct of an enterprise of a like character and with like aims, in—

8 1. relying on a consent referred to in paragraph one of subdivision f of this section, or

9 2. making a determination under paragraph four of subdivision f of this section,

10 then such consent or determination shall be treated as valid for purpose of discharging the
 11 retirement system and the board from liability to the extent of payments made pursuant to such
 12 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 13 spouse would otherwise be entitled from any party other than the retirement system or the board.
 14 To the extent the retirement system and the board were completely discharged for any annuity
 15 benefit payments that the system made to the member in excess of what the member would have
 16 been entitled under Option Three if the member's beneficiary had been the surviving spouse, such
 17 excess payments shall be called Discharged Payments. The retirement system may recover the
 18 actuarial equivalent of those Discharged Payments, computed using the plan's actuarial factors,
 19 from the surviving spouse with offsets against the system's monthly annuity benefit payments to
 20 the surviving spouse payable under this section, but may not thereby reduce any of those benefit
 21 payments by more than 10%.

22
 23
 24 Section 12. Section 657 of the retirement and social security law, as amended by L. 1989, ch. 75,
 25 § 2, is amended to read as follows:

26
 27 § 657. Survivor's benefit for retired state employees

- 28 1. a. The term "retired state employee" as used in this section shall mean a former employee
 29 or officer of the state (1) who while in state service retired for any cause from any
 30 retirement system or pension plan supported by funds of the state other than the state
 31 university optional retirement program of article eight-B of the education law or the
 32 education department optional retirement program of article three, part V, of the
 33 education law, or (2) who while in state service retired for any cause from either or
 34 both such optional retirement programs provided he or she had thereupon attained
 35 age fifty-five, or (3) who terminated state service for any cause on or after the
 36 attainment of age sixty-two; and who, at the time he or she retired pursuant to
 37 subparagraph one or two of this paragraph or terminated service pursuant to
 38 subparagraph three of this paragraph, had ten or more years of full time service as a
 39 state employee, provided that the ten years' full time service were within the last
 40 fifteen years prior to such retirement or termination. For purposes of this section, no

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1 person shall be deemed to be or have been an employee or officer of the state or in
 2 the state service for any period during which his or her salary was not paid directly
 3 by the state, except a person employed in an institution specified in paragraph b of
 4 this subdivision or a person employed in an authority or commission specified in
 5 paragraph c of this subdivision.

6 b. For all purposes of this section alone, the state colleges of agriculture, home
 7 economics, industrial and labor relations, and veterinary medicine, the state
 8 agricultural experiment station at Geneva, and any other institution or agency
 9 under the management and control of Cornell university, as the representative
 10 of the board of trustees of the state university of New York, and the state college
 11 of ceramics under the management and control of Alfred university, as the
 12 representative of the board of trustees of the state university of New York shall
 13 be deemed to be the state.

14 c. For the purpose of determining eligibility for benefits under this section, previous
 15 service rendered as an employee of an authority or commission established
 16 under the public authorities law shall be credited to a retired state employee as
 17 state service, provided such authority or commission has in effect, at the time of
 18 retirement of such retired employee, a provision for a survivor's benefit which
 19 is substantially equivalent to that provided in this section and in which previous
 20 state service is credited to retired authority or retired commission employees
 21 toward eligibility for such survivor's benefit.

22 d. For the purpose of determining eligibility for benefits under this section, no retired
 23 state employee who retired prior to October first, nineteen hundred sixty-six
 24 shall be eligible for benefits hereunder unless such retiree is a pensioner of the
 25 New York state and local employees' retirement system or the New York state
 26 and local police and fire retirement system.

27 2. The amount of a survivor's benefit under this section shall be a lump sum of two thousand
 28 dollars, except that where a retired state employee dies while reemployed as provided in
 29 subdivision four of this section or dies within thirty days following retirement pursuant to
 30 subdivision one of this section, the amount of the survivor's benefit under this section, if any, shall
 31 be two thousand dollars less any ordinary death benefit, exclusive of any ordinary death benefit
 32 attributable to the reserve-for-increased-take-home-pay, payable on account of the death of such
 33 employee under a retirement system or pension plan supported by funds of the state.

34 3. In addition to the benefit provided pursuant to subdivision two of this section an additional
 35 benefit shall be provided on behalf of retired state employees who retire or terminate their services,
 36 as defined by subdivision one of this section, on or after April first, nineteen hundred seventy,
 37 except, however, such additional benefits shall be provided on behalf of retired state employees
 38 who were members of the state police in a collective negotiating unit consisting of commissioned
 39 officers established pursuant to article fourteen of the civil service law who retire or terminate their
 40 services, as defined by subdivision one of this section, on or after April first, nineteen hundred
 41 seventy-one, and on behalf of retired state employees who were members of the state police in a

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1 collective negotiating unit defined in the certification of the public employment relations board
2 dated December twenty-ninth, nineteen hundred seventy in case numbers C-0570 and C-0575
3 established pursuant to article fourteen of the civil service law who retire or terminate their
4 services, as defined by subdivision one of this section, on or after April first, nineteen hundred
5 seventy-two, of one thousand dollars, except that where such retired state employee dies while
6 reemployed as provided in subdivision five of this section or dies within thirty days following
7 retirement pursuant to subdivision one of this section, the amount of the survivor's benefit under
8 this section, if any, shall be three thousand dollars less any ordinary death benefit, exclusive of any
9 ordinary death benefit attributable to the reserve-for-increased-take-home-pay, payable on account
10 of the death of such employee under a retirement system or pension plan supported by funds of
11 the state in lieu of the survivor's benefits specified in subdivision two of this section.

12 4. A survivor's benefit under this section shall not be payable in any case in which a survivor's
13 benefit is payable pursuant to section six hundred fifty-five of this chapter.

14 5. The eligibility for survivor's benefit protection provided by this section of a retired state
15 employee who subsequently reenters state service, or enters the service of a participating employer
16 of a retirement system or pension plan supported by funds of the state, shall continue but only until
17 such employee attains eligibility either for coverage under the survivor's benefit program provided
18 by section six hundred fifty-five of this article or for payment of an ordinary death benefit of two
19 thousand dollars or more, exclusive of any ordinary death benefit attributable to the reserve-for-
20 increased-take-home-pay, payable on account of the death of such employee under such a
21 retirement system or pension plan. Each time such employee leaves state service, or the service of
22 such a participating employer, and loses the eligibility attained following such entry or reentry,
23 such employee shall again become eligible for payment of a survivor's benefit provided by this
24 section.

25 6. The survivor's benefit payable under this section shall be paid to such person or persons as the
26 retired state employee shall have last nominated to receive benefits under a retirement option of
27 the retirement system or pension plan supported by funds of the state of which such employee last
28 became a member, or if such employee did not nominate such a beneficiary, or if such beneficiary
29 has died, or if the employee was not a member of such a retirement system or pension plan, to the
30 person last specifically designated by such employee to receive the survivor's benefit under this
31 section on a form prescribed by and filed with the state comptroller. In the event such a designated
32 beneficiary does not survive such employee, or if a beneficiary was not designated, the survivor's
33 benefit shall be payable to the estate of the retired state employee or as provided in section thirteen
34 hundred ten of the surrogate's court procedure act.

35 7. The survivor's benefit fund provided for by subdivision seven of section six hundred fifty-five
36 of this article shall be the fund from which survivor's benefit payments pursuant to this section
37 shall be paid.

38 8. The state comptroller shall prescribe such regulations as may be required for the effective
39 administration and implementation of the provisions of this section including the establishment of
40 criteria for determining eligibility for payment under this section. The state comptroller may enter

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1 into agreement with other agencies to perform such duties as may be necessary to implement the
2 provisions of this section.

3 9. a. Every state department or agency shall promptly inform the state comptroller of the
4 retirement or termination, as defined by subdivision one of this section, of any
5 employee on whose behalf a survivor's benefit under this section may be payable.
6 Such employer shall set forth the relevant state employment record of the employee
7 and such other information as is required by the form to be prescribed by the state
8 comptroller.

9 b. Every public retirement system or pension plan within the state shall promptly
10 inform the state comptroller of the death of any member on whose behalf a
11 survivor's benefit under this section may be payable. Such system or plan shall
12 set forth the name or names of the beneficiary or beneficiaries, if any, last
13 designated by the member under any retirement option selected and such other
14 information as is required by the form to be prescribed by the state comptroller.

15 10. A designated beneficiary of every retired state employee who filed a designation of beneficiary
16 form with the state comptroller must file an application with the state comptroller for a survivor's
17 benefit under this section within six months after the death of such employee in order to qualify
18 for the survivor's benefit provided by this section. For good cause shown, the state comptroller
19 may waive this time requirement.

20 11. The provisions of this section shall apply to retired state employees who retire or terminate
21 their service, as defined by subdivision one of this section, on or before June thirtieth, nineteen
22 hundred seventy-four, provided, however, that nothing herein shall be deemed to apply to any
23 employee who retired on or before September thirtieth, nineteen hundred sixty-six and who died
24 prior to the effective date of this subdivision.

25 12. Notwithstanding any other provision of this section to the contrary, at least one-half of the
26 death benefits payable under this section shall be paid to the member's surviving spouse, if any,
27 unless the member elects that the surviving spouse receive less than one-half of the death benefits,
28 and:

29 a. (i) the member's surviving spouse consents, after the date of the member's
30 marriage, in writing to the member's election;

31 (ii) the spousal survivor written consent is on a plan form addressed to the
32 member and the form sets forth:

33 (A) the amount of the member's death benefits,

34 (B) the entitlement of the surviving spouse to at least half of the death
35 benefits,

36 (C) the surviving spouse's right to prevent any future member elections
37 regarding the member's death benefits without the surviving spouse's
38 consent unless the consent of the surviving spouse expressly permits

1 member elections without any further consent by the surviving spouse,
2 and

3 (D) the fact that consenting to the member's election would result in the
4 surviving spouse receiving no death benefits or less death benefits than
5 the surviving spouse would otherwise be entitled under this subdivision,

6 (iii) the consent includes an acknowledgement that the surviving spouse
7 understands the surviving spouse's entitlement to be paid at least one-half the
8 death benefits absent the surviving spouse's consent to the member's election,
9 and that the surviving spouse's consent to the member's election would
10 eliminate or reduce these death benefit payments;

11 (iv) the surviving spouse signed the spousal survivor consent, and the signature
12 was witnessed by either a notary public or a representative of the retirement
13 system, and

14 (v) the completed consent and the member's election are received by the system
15 before the member's death;

16 b. the member and the surviving spouse were legally separated when the member's
17 election was filed with the retirement system;

18 c. any of the conditions set forth in subparagraphs (1) through (6) of paragraph (a) of
19 Section 5-1.2 of the estates, powers, and trusts law were satisfied on the date of
20 the member's death; or

21 d. the retirement board determined that the consent required under paragraph one of
22 this subdivision could not be obtained from the surviving spouse because

23 (i) there is no surviving spouse;

24 (ii) the surviving spouse could not be located between the time the member
25 elected that the surviving spouse would not be paid at least one-half of the death
26 benefits and the date of the member's death; or

27 (iii) such other circumstances as the retirement board may prescribe by written
28 plan regulations.

29 13. Notwithstanding any other provision of this section to the contrary, a member's election must
30 comply with the terms of subdivision 12 of this section to be effective.

31 14. If the retirement board of the system acts with the care, skill, prudence, and diligence under
32 the circumstances then prevailing that a prudent man acting in a like capacity and familiar with
33 such matters would use in the conduct of an enterprise of a like character and with like aims, in—

34 a. relying on a consent referred to in paragraph (a) of subdivision 12 of this section,
35 or

36 b. making a determination under paragraph (d) of subdivision 12 of this section,

37 then such consent or determination shall be treated as valid for purpose of discharging the

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1 retirement system and the board from liability to the extent of payments made pursuant to such
 2 action. These discharges shall not deprive the surviving spouse of any right to which the surviving
 3 spouse would otherwise be entitled from any party other than the retirement system or the board.
 4
 5

6 Section 13. The provisions of this act shall be severable, and if any clause, sentence, paragraph,
 7 subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to
 8 be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be
 9 confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof
 10 directly involved in the controversy in which such judgment shall have been rendered.
 11

12
 13 Section 14. This act shall take effect for all benefit payments beginning after December 31 of the
 14 year immediately after the year the bill is enacted other than those payments made pursuant to a
 15 benefit designation executed before such date. This act shall not change the law pertaining to a
 16 prenuptial agreement or a postnuptial agreement executed on or before December 31 of the year
 17 immediately after the year the bill is enacted. This act shall not change the law pertaining to a
 18 domestic relations order or a support order.
 19
 20

NEW YORK STATE _____

MEMORANDUM IN SUPPORT OF LEGISLATION

Submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: _____

SPONSOR: _____

TITLE OF BILL: **AN ACT** to amend the retirement and social security law, and the education law in relation to enacting the “New York State Equity for Surviving Spouses Act,” which would require that which would require any public retirement plan for employees of the State of New York or New York localities other than the City of New York, to provide that (1) the default retirement annuity payment form be a joint and survivor annuity in which an employee’s surviving spouse is the employee’s beneficiary with a right to lifetime payments equal to at least 50% of the annuity benefits to which the employee was entitled; and (2) the default beneficiary for at least 50% of the employee’s pre-retirement death benefits be the employee’s surviving spouse. These default choices are more consistent with the equitable preferences of most married employees to protect their surviving spouses than the current default choices. In order to further protect surviving spouses, particularly those staying home to raise children, the amendment would reinforce the elective share rights of surviving spouses by prohibiting an employee from

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changing either default designation without the written consent of the employee's surviving spouse.

The amendment would align New York State government retirement practice with that of the federal government, the majority of the states, the District of Columbia, several large municipalities, and most private-employers, all of which similarly protect the surviving spouses of their employees. The amendment is modeled on the Retirement Equity Act of 1984's amendments to the Employee Retirement Income Security Act of 1974. Those amendments added equitable protections of the retirement and pre-retirement benefits of the surviving spouses of employees of private employers.

Surviving spouses of employees of the State of New York, in contrast, often do not now obtain the retirement survivor benefits or the pre-retirement death benefits that they expect. This is because the default retirement benefit provides no survivor benefits to anyone, and no pre-retirement death benefits need to be paid to the employee's surviving spouse. Moreover, the employee's spouse need receive no notice of the employee's retirement benefit selection or the employee's pre-retirement beneficiary designation. Thus, a non-working spouse raising small children may be emotionally and financially devastated to learn upon the employee's death that the surviving spouse will receive no survivor benefits or death benefits. Older non-working spouses may have to spend their remaining lives in destitution. The spousal right of election, which applies to a decedent's benefits from a New York State, City of New York, or any other New York locality government employee pension plan, is often of little utility with respect to these benefits because there may be no survivor benefits to elect against and the surviving spouse may not learn of the death benefits quickly enough to recover any portion of those benefits after their distribution.

The amendment would address the default issue by making the default retirement benefit the joint and 50% survivor annuity, with the surviving spouse as beneficiary, and by keeping the default pre-retirement benefit a lump sum payment, but requiring that the surviving spouse be the beneficiary of at least 50% of the lump sum.

As is now the case for a surviving spouse's elective share rights, no minimum marriage period would be required to obtain these surviving spouse benefits, and the spousal survivor benefits would not be limited to those accrued during the member's marriage or to those accrued after the effective date of the amendment. Furthermore, any individual who is not a surviving spouse for elective share rights purposes would not be a surviving spouse for purposes of the amendment.

The amendment would not affect the current plan benefit rules for members who are not married on the earlier of (1) the date the member dies, and (2) the later of the date of the filing of the member's retirement application, and of the date of the filing of the member's optional selection. Marriages to a member after the later of those dates would not result in any surviving spouse rights under this amendment.

The amendment would address the knowledge and spousal entitlement issues by not permitting an employee to select a non-default benefit that would reduce the surviving spouse's benefit without the written consent of the member's surviving spouse. The surviving spouse's consent must be on a form that sets forth the surviving spouse's entitlement to the default benefit, and the effect of the non-default election or designation on the surviving spouse's entitlement to those survivor or death benefits. This consent must be executed after the date of the member's marriage. The consent would, moreover, be effective only if the surviving spouse acknowledges

understanding the consent and signs the form before a notary public or plan representative.

Thus, the amendment would give surviving spouses an equitable interest in what is often the largest liquid asset of the employee and may allow the surviving spouse and their children to avoid poverty or the need for government financial assistance.

Accordingly, the amendment would change the terms of the three New York State defined benefit plans:

- New York State and Local Retirement System;
- New York State and Local Police and Fire Retirement System; and
- New York State Teachers' Retirement System,

as follows:

Education Law § 512. Withdrawal and death benefits

This Section applies to members of the New York State Teachers' Retirement System who die prior to retirement. The death benefit, including the accumulated member contributions, are payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires the member to designate his or her spouse as beneficiary. The measure adds subdivision (i), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. The statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated. The current statute references Section 103-a of the decedent estate law, which was repealed effective September 1, 1967 and replaced by Section 1310 of the Surrogate's Court Procedure Act.

Education Law § 513. Optional allowances

This Section sets forth the forms in which a member of the New York State Teachers' Retirement System may elect to receive his or her retirement allowance. If the member does not make an election, benefits are paid as a single life annuity for the life of the member only. The member may, alternatively, elect an optional form of benefit that pays the member an actuarially reduced benefit, and, upon the death of the member, a lifetime survivor annuity to the member's designated beneficiary. Under current law, a member is not required to elect any option or designate his or her spouse as beneficiary. The measure adds subdivision (5), which provides that the default

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benefits are paid pursuant to Option 3, so that upon the death of the member after retirement, a lifetime survivor annuity equal to one-half of the member's retirement annuity is paid to the member's surviving spouse, if any, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. Moreover, the board may recoup any such wrongful benefit payments by reducing each of the surviving spouse's monthly lifetime annuity benefits, but none of the reductions may exceed 10% of the monthly annuity benefit.

Retirement and Social Security Law § 51. Refunds and Withdrawals

This Section applies to members of the New York State and Local Employees' Retirement System who die prior to retirement. The death benefits, including the accumulated member contributions, are payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires the member to designate his or her spouse as beneficiary. The measure adds subdivision (f), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. The statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated. The current statute references Section 103-a of the decedent estate law, which was repealed effective September 1, 1967 and replaced by Section 1310 of the Surrogate's Court Procedure Act.

Retirement and Social Security Law § 60. Ordinary death benefit

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This Section applies to members of the New York State and Local Employees' Retirement System who die while actively employed and prior to retirement. The death benefit, including the reserve-for-increased-take-home-pay, is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires a member to designate his or her spouse as beneficiary. The measure adds subdivision (g), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action.

Retirement and Social Security Law § 60-c. Death benefit for vested members who die prior to retirement

This Section applies to members of the New York State and Local Employees' Retirement System who have at least ten years of credited service, who are not in active service, and who die prior to retirement. The death benefit, including the reserve-for-increased-take-home-pay, is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires a member to designate his or her spouse as beneficiary. The measure adds subdivision (d), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action.

Retirement and Social Security Law § 90. Options

This Section sets forth the forms in which a member of the New York State and Local Employees' Retirement System may receive his or her retirement allowance. If the member does not make an

election, benefits are paid as a single life annuity for the life of the member only. A member may, alternatively, elect an optional form of benefit which pays an actuarially reduced lifetime annuity to the member, and, upon the member's death, a lifetime survivor annuity to the member's designated beneficiary. Under current law, a member is not required to elect any option or designate his or her spouse as beneficiary. The measure adds subdivision (f), which provides that benefits are paid pursuant to Option Three, so that upon the death of the member after retirement, a lifetime survivor annuity equal to one-half of the member's retirement annuity is paid to the member's surviving spouse, if any, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. Moreover, the board may recoup any such wrongful benefit payments by reducing each of the surviving spouse's monthly lifetime annuity benefits, but none of the reductions may exceed 10% of the monthly annuity benefit.

Retirement and Social Security Law § 351. Refunds and Withdrawals

This Section applies to members of the New York State and Local Police and Fire Retirement System who die prior to retirement. The death benefit, including the accumulated member contributions, are payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires the member to designate his or her spouse as beneficiary. The measure adds subdivision (f), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. The statutory reference describing who may be paid the member's benefits if the member dies before retiring, but has no beneficiary designation in effect, is updated. The current statute references Section 103-a of the decedent

estate law, which was repealed effective September 1, 1967 and replaced by Section 1310 of the Surrogate's Court Procedure Act.

Retirement and Social Security Law § 360. Ordinary death benefit

This Section applies to members of the New York State and Local Police and Fire Retirement System who die prior to retirement while actively employed. The death benefit, including the reserve-for-increased-take-home-pay, is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires a member to designate his or her spouse as beneficiary. The measure adds subdivision (h), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action.

Retirement and Social Security Law § 360-c. Death benefit for vested members who die prior to retirement

This Section applies to members of the New York State and Local Police and Fire Retirement System who have at least ten years of credited service, who are not in active service, and who die prior to retirement. The death benefit, including the reserve-for-increased-take-home-pay, is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires a member to designate his or her spouse as beneficiary. The measure adds subdivision (d), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action.

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Retirement and Social Security Law § 390. Options

This Section sets forth the forms in which a member of the New York State and Local Police and Fire Retirement System may receive his or her retirement allowance. If the member does not make an election, benefits are paid as a single life annuity for the life of the member only. A member may, alternatively, elect an optional form of benefit that pays the member an actuarially reduced lifetime benefit, and, upon the death of the member, a lifetime survivor annuity to the member's designated beneficiary. Under current law, a member is not required to elect any option or designate his or her spouse as beneficiary. The measure adds subdivision (f), which provides that benefits are paid pursuant to Option Three, so that upon the death of the member after retirement, a lifetime survivor annuity equal to one-half of the member's retirement annuity is paid to the member's surviving spouse, if any, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action. Moreover, the board may recoup any such wrongful benefit payments by reducing each of the surviving spouse's monthly lifetime annuity benefits, but none of the reductions may exceed 10% of the monthly annuity benefit.

Retirement and Social Security Law § 657. Survivor's benefit for retired state employees

This Section provides that upon the death of a state employee who retired before June 30, 1974, a death benefit, including the reserve-for-increased-take-home-pay, is payable to the member's designated beneficiary, or, in the absence of a beneficiary, the member's estate. There is currently no provision that requires a member to designate his or her spouse as beneficiary. The measure adds subdivision (12), which provides that the member's surviving spouse, if any, is entitled to at least half of the benefits payable under this Section, unless the surviving spouse waived the death benefits by signing a written consent before a notary public or plan representative. Such consent must include an acknowledgment that the surviving spouse understands the consent. No consent is required if the member and the surviving spouse were legally separated at the time of the member's contrary election, or the surviving spouse could not be located between the time of the member's contrary election and the member's death. If the retirement board acts in accordance with the well-established ERISA fiduciary duty rules in determining that the member was unmarried; that the member and the surviving spouse were legally separated; that the member could not locate the surviving spouse at the relevant time or times; or that at the relevant time the

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surviving spouse would have been disqualified from exercising elective share rights, the retirement system and the board shall be discharged from liability to the extent of payments pursuant to such action.

LEGISLATIVE HISTORY:

None. New proposal.

FISCAL NOTE AND BUDGET IMPLICATIONS:

Those individual surviving spouses, who would otherwise get no survivor benefits, would benefit significantly from implementing the bill.

The administrative cost of implementing the bill would be insignificant. ERISA plans and federal plans, which have been subject to even more stringent spousal survivor requirements for almost forty years, have not found that the requisite procedures constitute a significant plan burden.

For ordinary death benefits, the benefit form of payment will not change. The only change is that the member's spouse will become entitled to at least 50% of the ordinary death benefit payment, absent a consent to waive the benefit. Thus, this would not affect the plan's cost of those benefits.

For annuity benefits, the benefit form of payment may change. The employee's surviving spouse will be entitled to survivor annuity benefit payments at least equal to 50% of the employee's lifetime annuity benefit payments, absent a spousal consent to waive the benefit. There do not appear to public records disclosing the current plan assumptions about the actual or the expected proportion of different benefit form elections, so it is not possible to estimate the likely changes in those proportions, the extent of the actuarial cost of such a change, if any, or the effect, if any, on the plan funding requirements. For survivor annuity benefits, aggregate plan benefit costs may increase because survivor benefits are COLA adjusted only for surviving spouse beneficiaries. N.Y. RETIRE. & SOC. SEC. L. §§ 78-a, 378-a, and N. Y. EDUC. L. § 532. This speculative cost increase would result from the bill achieving its equitable goal of improving the access of a public employee's surviving spouse to retirement plan benefits. Moreover, there would be offsetting government cost reductions to the extent the bill would prevent some individual surviving spouses from otherwise being left impoverished on an employee's death, and dependent on New York government public funds.

EFFECTIVE DATE AND SEVERABILITY:

The bill shall take effect for all benefit payments beginning after December 31 of the year immediately after the year that the bill is enacted other than those payments made pursuant to a benefit designation executed before such date. If enacted, the bill would not change the law pertaining to the effects of a domestic relations order or a support order. Nor would the bill

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change the law with respect to a prenuptial agreement or a postnuptial agreement executed on or before December 31 of the year immediately after the year the bill is enacted. The bill includes a severability section.