



**THE ORGANIZATION OF NYS
MANAGEMENT CONFIDENTIAL EMPLOYEES**

An Affiliate of OPEIU Local 153, AFL-CIO

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OMCE TESTIMONY

**JOINT LEGISLATIVE BUDGET HEARING
ON
WORKFORCE DEVELOPMENT
JANUARY 25, 2017**

**BARBARA ZARON
PRESIDENT**

**JOSEPH B. SANO
EXECUTIVE DIRECTOR**

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Joint Legislative Budget Hearing on Workforce Development
January 25, 2017
OMCE Testimony

Senator Young, Assemblyman Farrell, and members of The Committee – Thank you again for welcoming OMCE to discuss with you the M/C employee and retiree issues and concerns.

First, we want to thank you for your support and efforts to ensure pay parity for M/C's. While M/C's have been very upset about the length of time it's taken - we are finally approaching pay parity. M/C's will receive their 3rd parity payment this year and as stated in the Executive Budget briefing book, "The budget also includes extension of the provisions of these agreements (PEF) to M/C employees." So M/C's are promised the 2, 2, 2 % salary increases that PEF agreed to and the M/C Pay Bill will be part B of the PEF Pay Bill – which you should be getting soon.

And while we haven't seen the language yet, we certainly want the increases implemented and paid.

While M/C employees who are still working are approaching parity, M/C's who have retired have received none of the 7% salary increase that was withheld in 2009 and 2010. For several years we proposed a Withheld Pay Pension Adjustment Bill – this year we are trying a new approach – and are proposing a Management/Confidential Personal Income Tax Credit. (Draft Copy Attached).

"A taxpayer who worked in an M/C position for the state and retired between April 1, 2009 and March 31, 2019 and had a salary increase authorized under Chapter 100 L 2008 which was withheld in 2009 and 2010 shall be allowed credit against the tax imposed – equal to 5% of their annual zero option retirement allowance provided by NYSLERS but not to exceed \$3000 annually for five years."

We have begun discussions on this proposal and ask for your support of this new initiative.

There are many tax credit proposals included in the Governor's budget and there is an existing tax credit for the employees of START-UP NY businesses which appear to be retained if the program is approved as the Excelsior Business Program.

This year again the Governor is proposing several measures that would negatively affect M/C retirees along with other retirees. These proposals are:

- Eliminate Taxpayer Subsidy for the Medicare Part B Income Related Monthly Adjustment Amounts (IRMAA) for High Income State Retirees (PPGG Part S).
- Maintain Reimbursement of the Medicare Part B Standard Premium for State Retirees at Current Levels (PPGG Part S).
- Differential Healthcare Premiums for New Civilian State Retirees Based on Years of Service (PPGG Part T).

We opposed these proposals last year and the Legislature rejected them. We oppose the proposals this year and urge you to again reject them.

IRMAA and Medicare Cap:

This is the fourth year in a row that we oppose these proposals.

The Governor proposes to eliminate the subsidy for Medicare part B for “ high income “ retirees and is also proposing to cap the reimbursement of the Medicare Part B Standard Premium at December 2016 levels rather than providing automatic inflationary increases.

Over many years the state has saved many millions of dollars as a result of requiring that Medicare be the primary health insurance provider for the retiree. Breaking the compact with retirees who have given years of service to the people of NY is wrong especially in light of increasing health insurance and Medicare costs.

To minimize the cost to NYS of retiree health benefits, upon turning 65 all retirees participating in NYSHIP are required to enroll in Medicare. As a requirement for Medicare enrollment such retirees must pay the Part B premiums but they must also pay a NYSHIP premium to the state for their health insurance coverage. Recognizing the need to avoid this additional payment, the Legislature provided for full reimbursement of all Medicare Part B premiums.

NYSHIP retirees accepted Medicare as their primary health insurance provider 50 years ago to save the state money, but the Governor’s proposals negate the implied intent of Medicare premium reimbursement – retirees will save the state money and will be held harmless for additional Medicare payments. This was the founding principle of this arrangement over 50 years ago.

Differential Health Care Premium:

Implementing differential healthcare premium contributions for civilian new retirees based on years of service is unacceptable. Although some might see this as a more equitable approach to funding retiree health insurance coverage for

certain new civilian state retirees with less than 30 years of service, we don't agree.

Health insurance premiums, deductibles, co-pays, etc., are not based on years of service – and retirees have had to absorb significantly higher costs for their health insurance in the last several years.

It does not seem fair or equitable to charge retirees with less service to pay more for their health insurance. These retirees have been paying their required share – and had less opportunity to accrue substantial amounts of sick leave credits to convert to pay for their health insurance in retirement, so they by formula are already paying more than those with more service. Moreover M/C's only earn 8 sick days per year which further curtails the number of unused days. To charge them significantly more now, up to 50% of the cost puts M/C's in triple jeopardy. It would also create a system where there are 20 different percentages for non uniformed employees/retirees to administer - hardly an efficient system.

Only Medicare eligible retirees – and non Medicare eligible active employees – are required to enroll in Medicare for the purpose of helping the state reduce the cost of the NYSHIP program so failure to reimburse the additional premiums is unfair and discriminatory. If approved, it will put an unfair burden on more Medicare eligible retirees as the Federal Government is shifting the cost of Medicare more and more to enrollees, and, these provisions will apply to Legislators and Legislative Staff!!!

Retiree Health Benefits Trust Fund:

This year the Governor is proposing to establish a "Retiree Health Benefit Trust Fund." This is an interesting concept but needs careful review.

Anything that takes a long range vision that will allow the state to ensure the promise made to state retirees is worthy of consideration. This is in no way an endorsement. The devil is in the details and those are not yet clear. Concepts like this, if properly formulated and implemented, may deter the annual attacks on retiree health insurance benefits.

This proposal calls to mind the disastrous experience of the U.S. Postal Service when it was required to pay an assessment into its retiree trust fund each year for 3 years (to cover the projected 30 year cost). We were told this program would be different – but again details and joint oversight will be needed.

We are continuing to review the proposal but our initial questions include:
If implemented:

- Will this twist apply or affect the total cost of health insurance or only the employer share?
- Why assign responsibility for managing the investments of the trust fund to the Commissioner of Tax and Finance, with limited investment expertise, rather than the State Comptroller who manages the pension fund investments and has that expertise?
- Does Section 8 change - the state's obligation to provide retiree benefits?

Workforce Issues:

Consolidation of ALJ Functions - (ELFA, Part U)

This part proposes the creation of a new Central Administrative Hearings office, headed by a Chief ALJ appointed by and serving at the pleasure of the Governor. The Chief ALJ may establish, consolidate, reorganize or abolish any administrative hearing function within any civil department (Not the A/G or Comptroller) – necessary for efficient operation of the laws.

A plan is to be submitted to Division of the Budget for approval.

While the Governor assumes several benefits, e.g. "An office independent of other agencies can result in a more impartial and efficient hearing process, a more skilled workforce, and possible cost savings ___" there is no acknowledgement of potential negative impacts similar to those experienced in other agency consolidations – staff disruptions, loss of expertise, long learning time frames of new operations and responsibilities.

If we look at the Justice Center, for example, an independent office, the opposite of the proposed benefits is true.

At the very least – if you approve this provision, any reorganization plan needs to be subject to review beyond DOB – review with all employee organizations and advocates, and legislative review as well.

Chief Procurement Officer:

The Governor proposes to appoint a Chief Procurement Officer to oversee the integrity and uniformity of procurement practices across the state, etc. – (GGER part K).

We already have a procurement unit at OGS and the State Comptroller has the authority to review, approve and audit procurement contracts.

What is needed in our view is restoration of the authority of the State Comptroller to review and approve ALL pending state contracts including SUNY, Research Foundation and the non-profits established by those entities. This is the authority that was taken away in 2011.

Duplicating in a Chief Procurement Officer the responsibilities of the State Comptroller is not efficient and does not promote good government practices.

Proliferation of Inspectors General (GGER, Part F,G,I,J)

We also express our concern that we appear to be becoming a government by Inspectors General – maybe we should re-focus our efforts instead on ensuring that agencies have sufficient career staff, that they are provided the necessary training and resources to carry out their responsibilities and that a culture of ethical behavior is promoted in all agencies by and for the Governor's appointees.

Justice Center:

Last year, in our testimony we mentioned that “we believe there are serious questions about the efficacy and efficiency of the Justice Center, which as it operates is designed as the investigator, prosecutor, court and appeals court for all allegations of abuse and neglect. There’s no increase in the number of alleged abuse and neglect cases for this special needs population and the actual operations and need for this redundant operation must be examined.”

Our experience during the last year has provided additional evidence that a thorough review and change in policy and operating procedures is necessary. Every day we talk to M/C employees who are subjected to the violation of their rights of just cause and due process.

In addition we have joined with other labor organizations in a coalition to address the areas that need to be reviewed and improved.

We also wrote to Deputy Secretary for Health and Human Services Paul Francis (copy attached) but are still waiting for a response. And we continue to represent our members whose careers and lives are put in jeopardy by the Justice Center.

Unequivocally we state that abuse and neglect of our citizens with special needs cannot and should not be tolerated. However, abuse of the employees who care for our vulnerable populations also must be protected from abuse.

The broad issues of concern are:

1. Multiple Reporting Requirements – duplicative and wasteful.
2. Significant Incident Reporting – duplicative and wasteful.
 - a) Duplicative Reporting
 - b) Deviations from Treatment Plans
 - c) Potential Harm Reporting
3. Representation – employee legal rights not always observed by Justice Center staff.
4. Lack of timeliness of Justice Center Investigations – 60 day time limit frequently extended to up to 1 yr.

5. **Conflicting Rules and Regulations – Justice Center insists on their rules which conflict with agency rules.**

As we stated in our letter to Paul Francis, "The Justice Center for People with Special Needs (JC) remains an attempt to resolve issues that were already being addressed by the six State Oversight Agencies (SOAs) and the Commission for Quality Care. This new bureaucracy we believe has produced no value added in the care of our most needy citizens. It drains financial resources away from hiring mandated reporters (direct care and professionals) which results in the need for increased overtime expenditures to maintain care. To many of our M/C members charged with managing the delivery of care, it appears that the creation and funding of the Justice Center evokes a self-fulfilling prophecy of inviting alleged abuse and neglect through the diversion of funds to the JC oversight mission rather than to funding increased direct care staffing. We contend that adequate hiring, training and staffing and allocation of proper resources to the 6 SOAs will do more to reduce any actual abuse and neglect than the JC can ever hope to achieve."

We know that the agencies are concerned, our M/C's and other staff are concerned and legislators are concerned about the need to improve the operation of the Justice Center. We are ready to work with you toward achieving this goal.

Agency Staffing:

The Governor's Budget touts that the executive controlled state workforce has declined by nearly 10,000 positions comparing Jan. 2011 to December 2016 workforce and that agencies are streamlining their services and focusing on filling critical vacancies.

What is never discussed is the delayed or undelivered service because of insufficient staffing – the public who call for help in getting through to state agencies or employees who need help in getting information from the agencies they work for, and/or the consolidated service agencies. I note the comments made by CSEA President Danny Donohue about the budget proposals related to OPWDD which "Show a reckless disregard for existing clients and the state workforce trying to care for them."

Downsizing state facilities and downgrading the value of state employees is a serious issue. Managing in this environment gets more difficult as there is no relief in sight. Maybe the Governor's priorities need to be adjusted.

Infrastructure projects such as rebuilding airports, roads and bridges, and water and sewer systems are certainly important. No less important is the need to build our career state workforce infrastructure so the promise of NY can be fulfilled.

We are supposed to have a workforce hired through Constitutional merit and fitness competitive exams but this requirement has continued to be ignored over the years, especially for M/C positions.

The Department of Civil Service is charged with carrying out and ensuring compliance with the constitutional and statutory requirements for a civil service system. Unfortunately the department is so under resourced and compliant with Executive requests that the constitutional requirements seem to go by the wayside or are considered optional. The Department needs to be staffed to carry out its responsibilities. The administration of the Merit System needs to be bolstered and needs closer oversight.

The “merit based civil service system” that is constitutionally required is under attack particularly with regard to MC positions. Many requests from agencies to Civil Service for placement of MC positions in the exempt jurisdictional class are routinely approved by the CS Commission despite protests from OMCE and the employee organizations and the recommendations of the professional staff at Civil Service that the exempt classification is not appropriate or justified.

This trend of diminishing the competitive class management group bodes ill for the future of the state workforce and ensuring that the public is well served. Adherence to professional and ethical standards, continuity of service, competence and institutional knowledge, and loyalty to the public service rather than to the elected official of the day is the right prescription for how to effectively manage.

MC Jurisdictional Classification

	2009*	2011	2014	Entire Workforce
Class				
Competitive	6786	5416	5167	
	62.9%	61.7%	56.9 %	81.3%
Non-Competitive	1382	1081	1160	
	12.7%	12.3%	12.8%	13.3%
Exempt	2615	2287	2747	
	24%	26%	30.2%	1.9%

Another indication of the department’s inability to do its job because of understaffing is the volume of calls we get from MC employees who have tried to get the information they need from Civil Service but either can’t get through

on the phone or are told by the person they eventually talk to "call OMCE, we can't help you". As a matter of fact, program and control agencies, the retirement system as well as Civil Service frequently refer the employees to OMCE to answer their questions.

Succession Planning

In most state agencies there is no real succession planning underway for the training and replacement of those in critical MC positions. Couple that with a reticence by union represented employees to ascend to MC positions given the history of compensation woes and we have a "Pipeline" to MC positions that is broken. Given the demographic fact that those union represented employees eligible for advancement are nearly the same age as those in the MC positions (2014 CS Workforce Management Report p.11) there remains no incentive to give up bargaining unit security and raises to accept a MC position where increased responsibilities have been coupled with an artificially diminished pay schedule. It is repetitive but bears repeating-the system is broken.....broken...broken. We have discussed succession planning proposals with Governor's staff and hope to make progress this year.

Replacing a merit based MC workforce with a class of "Fellows" does nothing to fix the problem. This appointment mechanism adds a layer of cost without any real benefit to the management of the state's resources. Based on the Executive's flawed experiment (see the HUD Inspector General's scathing review) while serving as HUD Secretary, we see MCs across the agencies trying to educate this cadre of appointees while they struggle to get the job done with inadequate numbers of career staff, and see their advancement opportunities curtailed as fellows are sometimes given priority for placement in higher level positions.

While the Governor and his administration tout the reorganization and centralization of human resources, finance and ITS functions into the Business Service Center so agencies can focus on their program missions, the Civil Service department which is responsible for administering the Merit System continues to be starved of needed resources.

The Governor is proposing:

The Empire Star Public Service Award to recognize outstanding employee performance.

The Governor's budget proposal states, "New York State is composed of a diverse and dedicated workforce of remarkable men and women who provide invaluable services to millions of New Yorkers every day. Many of these public servants stand-out for going above and beyond the call of duty. They exceed

what is expected of them in their day-to-day work, and in unforeseen circumstances and emergencies. In recognition of these extraordinary employees, Governor Cuomo proposes to launch the Empire Star Public Service Award.

The Empire Star Public Service Award will represent the highest honor a State employee can receive and will include a \$5,000 professional development scholarship. Through this award, the Governor will publicly recognize and highlight the outstanding service and accomplishments of public employees from all ten regions of the State, nominated by their co-workers for exemplary job performance. Recipients will have distinguished themselves from their peers through meaningful contributions to State government, demonstrating their dedication to serve New Yorkers with a high level of performance, integrity and pride. An Awards Selection Committee, which will include the Department of Civil Service and the Governor's Office of Employee Relations, will review all nominations."

We agree there are many extraordinary employees whose contributions should be recognized. We have already received comments from folks who see this as a way to give a perk to "The Favorite Few." There are questions about how this program will work but perhaps it would be better to scrap this idea to use the money set aside to benefit the entire workforce.

Recognizing extra ordinary employees would be most effective if the state workforce is able to believe that they and their work are truly valued and that they are treated with respect and dignity on an ongoing day after day basis by all State officials.



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March 24, 2016

Mr. Paul Francis
Deputy Secretary to the Governor for Health and Human Services
State Capitol-Executive Chamber
Albany, NY 12224

Dear Mr. Francis:

On behalf of our membership we believe it is crucial that we bring to your attention several issues that have developed with regard to the oversight role of the Justice Center for People with Special Needs (JC) Abuse and neglect of our citizens with special needs cannot and should not be tolerated. On that we can agree. However the current operational structure and procedures used by the JC we believe violate public employees' rights to just cause and due process and need to be addressed by this administration. To the workers charged with caring for our most vulnerable citizens the Justice Center is deemed to be the Injustice Center. Our defense of our members' rights and our discussions with other labor organizations clearly shows areas of practice that we all concur need to be reviewed and improved. Let us elaborate:

1. Multiple Reporting Requirements: The JC requires anyone who provides custodial care to individually report all cases of suspected abuse or neglect. Historically, the State accepted a single report from facilities like a juvenile detention center, OPWDD homes etc., which typically identify all witnesses for investigators to interview. The Justice Center requires every mandated reporter with any knowledge of an alleged incident to make an individual report. This diverts program staff to make multiple reports and requires Justice Center staff to take all of those reports. The process is duplicative and wasteful since the purpose of these reports is to trigger investigations not to complete them. We recommend amendment of the law or state policy to allow for a straight forward sensible reporting requirement.

2. Significant Incidents Reporting:

- a) Duplicative Reporting: The JC requires the reporting of all "significant incidents" meaning events that are neither abuse nor neglect. The JC definition of "significant incident" is unfair, overbroad and lacks clear guidelines. For example, significant incidents include "conduct *between persons receiving services* that would constitute abuse... if committed by a custodian." For example, if two recipients/kids get into a fight and staff quickly intervenes and break up the fight, all staff must separately report it, write incident reports and undergo interrogation because a fight qualifies as a significant incident. Fights among recipients occur

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despite the best efforts of staff. Significant incident reporting and resulting investigations divert facility staff from doing their jobs and deprive the JC of valuable investigative time for more serious matters. In fact we have had duplicate reports yield duplicate investigations. We had a member accused in a single incident but the Justice Center processed two investigations of the same alleged incident. One investigation determined the alleged incident was unsubstantiated and the other investigation of the same incident concluded that there was a substantiated finding of neglect. This case was resolved by it being closed as unsubstantiated but it shows the waste of taxpayer dollars on multiple filings of a single incident and the staff to conduct multiple investigations of the same incident with confusing if not contradictory results

- b) **Deviations from Treatment Plans:** Significant incidents are also defined to include conduct by a custodian which is inconsistent with a service recipient's individual treatment plan or individualized education plan. Many workers who fall within the definition of custodian are not permitted access to or knowledge of the contents of treatment and education plans as a matter of policy and practice. So by treating deviations from treatment plans as significant incidents, the law mandates the punishment of workers who inadvertently deviate from a plan they know nothing about and are not allowed to see.
- c) **Potential Harm Reporting:** Any "incident which because of its severity or the sensitivity of the situation may result in, or has the reasonable foreseeable potential to result in harm to the health, safety or welfare" of the service recipient is a "significant incident." This broad language offers no meaningful guidance. If a resident is preparing a sandwich and cuts their hand or briefly chokes on their sandwich, are these both significant incidents? This definition of a significant incident requires workers to report anything or risk everything. There is no latitude for applying common sense. The JC holds the position that all incidents are reportable. The JC will determine if an incident is significant or not. Yet we have been told that the JC has called facilities and asked that certain high functioning clients have their phone privileges restricted because of their continuing calls to the JC.

3. **Representation:** Justice Center policies on representation are inconsistent and confusing depending upon whether the Justice Center chooses to designate a worker as a suspect or a witness. Acceptance of an MC employee's representation rights varies depending on an individual investigator's knowledge, experience and background. Initially MC employees being investigated by the JC were told that "...you have no rights...you are not unionized....!" Civil Service Law Section 75 (Discipline and Discharge) rights apply as well as one's "Weingarten Rights" to representation. The fact that OMCE had to enforce these basic rights on behalf of its members shows a total lack of training and preparation and yes, inexperience on the part of JC investigators. All accused and witnesses should enjoy the same legal protections. This issue must be resolved to allow fair investigations and equal treatment of all workers. Actual pre-hearings and hearings offer an employee's representatives little or no opportunity to address the thoroughness of an investigation, conclusions made by investigators without knowledge of agency operating procedures or protocols and the actual competency of the investigation itself. We are still plagued with investigators that have little or no practical knowledge as to the actual functioning and service delivery of the 6 State Oversight Agencies but are empowered to address allegations of significant

incidents of abuse and neglect.

4. Lack of Timeliness of Justice Center Investigations: The statute requires investigations to be completed in 60 days. This protects both possible victims and the rights of workers. But the legislation allows the Justice Center to extend the 60 day limit in its sole discretion. This exception has swallowed the rule. Justice Center investigations routinely take 6 – 12 months. The impact on staff and clients can be severe. For example, falsely accused workers are at risk of serious financial and career impacts while barred from the workplace awaiting Justice Center determinations. Their co-workers suffer greater workloads and client care is compromised as managers struggle to get proper client supervision and services. In many cases our members are removed from the workplace and put on "administrative leave" with full pay. Are these delays the best use of taxpayer's dollars?

5. Conflicting Rules and Regulations: The regulations of the oversight agencies are subject to public hearing and when properly promulgated carry the force of law. Our members should not have to choose between following their agencies adopted regulation on incident reporting and the Justice Center's requirements. On 12/25/13 OPWDD forwarded to the Executive Directors of the providers that it operates and/or licenses, a revision of 14 NYCRR 633.12, which continues a classification of "sensitive situation" that does not require reporting to the Justice Center. Employees who have followed this regulation have discovered that they have done so at the risk of a Justice Center investigator retroactively questioning their judgement to so classify, and the Center on that basis, substantiating a charge of neglect, for failure to report to the Justice Center. Whenever state law or regulation is in conflict with Justice Center expectations the regulation or law should be changed to conform, before the employee's conduct is determined to be improper. As long as an employee's conduct conforms to the regulations of their state agency, the Center's corrective action should be limited to pursuing the appropriate change in the state agency's regulation.

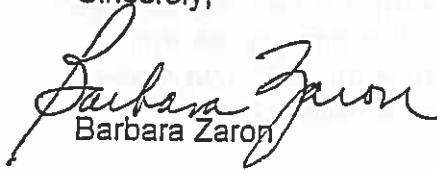
The Justice Center's own regulation on substantiated charges requires that a substantiated charge of level two and three neglect be dropped to a level four (no individual deemed responsible) when the provider's oversight or systemic agency error substantially interferes with the individuals responsibility.

.The Justice Center for People with Special Needs (JC) remains an attempt to resolve issues that were already being addressed by the six State Oversight Agencies (SOAs) and the Commission for Quality Care. This new bureaucracy we believe has produced no value added in the care of our most needy citizens. It drains financial resources away from hiring mandated reporters (direct care and professionals) which results in the need for increased overtime expenditures to maintain care. To many of our MC members charged with managing the delivery of care, it appears that the creation and funding of the Justice Center evokes a self-fulfilling prophecy of inviting alleged abuse and neglect through the diversion of funds to the JC oversight mission rather than to funding increased direct care staffing. We contend that adequate hiring, training and

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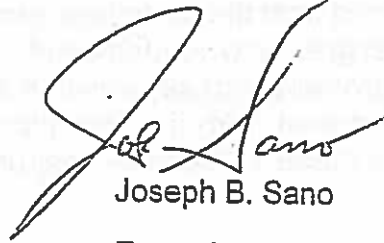
We urge the administration to address these issues and look forward to the administration's remediation plan. We are happy to discuss these issues in more detail as needed.

Sincerely,



Barbara Zaron

President



Joseph B. Sano

Executive Director

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AN ACT to amend the tax law, in relation to establishing a personal income tax credit for certain employees who served in a position or positions in the classified service of the state of New York designated managerial or confidential pursuant to article fourteen of the civil service law

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

Section 1. Section 606 of the tax law is amended by adding a new subsection (ddd) to read as follows:

(ddd) Management/ confidential personal income tax credit.

- (1) Allowance of credit. A taxpayer who served in a position or positions in the classified service of the state of New York designated managerial or confidential pursuant to article fourteen of the civil service law and retired between April 1, 2009 and March 31, 2019 and had a salary increase authorized under chapter 100 of the Laws of 2008 which was withheld for the fiscal years 2009 and/or 2010 shall be allowed a credit against the tax imposed by this article equal to the five per centum of their annual zero option retirement allowance this provided by the New York State and Local Employees' Retirement System but not to exceed \$3,000.00 annually for five years..
- (2) Application of credit. Any tax credit not used in the taxable year of retirement may be carried forward or backwards for ten calendar years until the full credit has been allowed.

§ 2. This act shall take effect immediately.

