

STATE OF NEW YORK

8433

2017-2018 Regular Sessions

IN ASSEMBLY

June 16, 2017

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to disability retirement benefits for certain participants in World Trade Center rescue, recovery, or cleanup operations

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

1 Section 1. Paragraph 4 of subdivision d of section 605 of the retire-
2 ment and social security law is renumbered paragraph 5 and a new para-
3 graph 4 is added to read as follows:

4 4. Notwithstanding any other law, rule or regulation to the contrary,
5 any member with an active membership who participated in World Trade
6 Center rescue, recovery, or cleanup operations, as such participation is
7 defined in section two of this chapter, who incurred a qualifying World
8 Trade Center condition, as defined in section two of this chapter, that
9 is determined to have been incurred in the performance and discharge of
10 duty and is the natural and proximate result of an accident not caused
11 by such member's own willful negligence, shall be paid a performance of
12 duty disability retirement allowance equal to three-quarters of final
13 average salary. The payment of such pension shall be subject to the
14 provisions of section sixty-four of this chapter.

15 § 2. Section 507 of the retirement and social security law is amended
16 by adding a new subdivision h-1 to read as follows:

17 h-1. Notwithstanding any other law, rule or regulation to the contra-
18 ry, any member with an active membership who participated in World Trade
19 Center rescue, recovery, or cleanup operations, as such participation is
20 defined in section two of this chapter, who incurred a qualifying World
21 Trade Center condition, as defined in section two of this chapter, that
22 is determined to have been incurred in the performance and discharge of
23 duty and is the natural and proximate result of an accident not caused
24 by such member's own willful negligence, shall be paid a performance of

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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duty disability retirement allowance equal to three-quarters of final average salary. The payment of such pension shall be subject to the provisions of section sixty-four of this chapter.

§ 3. Paragraph (a) of subdivision 36 of section 2 of the retirement and social security law, as amended by chapter 326 of the laws of 2016, is amended to read as follows:

(a) "Qualifying World Trade Center condition" shall mean a qualifying condition or impairment of health resulting in disability to a member who participated in World Trade Center rescue, recovery or cleanup operations for a qualifying period, as those terms are defined below, provided the following conditions have been met: (i) such member, or eligible beneficiary in the case of the member's death, must have filed a written and sworn statement with the member's retirement system on a form provided by such system indicating the underlying dates and locations of employment not later than September eleventh, two thousand eighteen, and (ii) such member has either successfully passed a physical examination for entry into public service, or authorized release of all relevant medical records, if the member did not undergo a physical examination for entry into public service; and (iii) there is no evidence of the qualifying condition or impairment of health that formed the basis for the disability in such physical examination for entry into public service or in the relevant medical records, prior to September eleventh, two thousand one except for such member, or eligible beneficiary in the case of the member's death, of a local retirement system of a city with a population of one million or more that is covered by section 13-551 of the administrative code of the city of New York, or by section twenty-five hundred seventy-five of the education law and for such member who separated from service with vested rights, or eligible beneficiary of such member who separated from service with vested rights in the case of the member's death, of a local retirement system of a city with a population of one million or more who are covered by sections 13-168, 13-252.1 or 13-353.1 of the administrative code of the city of New York or sections five hundred seven-c, six hundred five-b, six hundred five-c, or six hundred seven-b of this chapter. The deadline for filing a written and sworn statement required by subparagraph (i) of this paragraph shall be September eleventh, two thousand eighteen for such member, or eligible beneficiary in the case of the member's death, of a local retirement system of a city with a population of one million or more that is covered by section 13-551 of the administrative code of the city of New York, or by section twenty-five hundred seventy-five of the education law and for such member who separated from service with vested rights, or eligible beneficiary of such member who separated from service with vested rights in the case of the member's death, of a local retirement system of a city with a population of one million or more who are covered by sections 13-168, 13-252.1 or 13-353.1 of the administrative code of the city of New York and sections five hundred seven-c, six hundred five-b, six hundred five-c, or six hundred seven-b of this chapter. Notwithstanding the deadline for filing a written and sworn statement required by subparagraph (i) of this paragraph, the deadline shall be September eleventh, two thousand eighteen for such member, or eligible beneficiary in the case of the member's death, eligible for the disability retirement benefit provided by subdivision h-1 of section five hundred seven or paragraph four of subdivision d of section six hundred five of this chapter. Every retirement system shall keep a copy of every written and sworn statement that is presented for filing not

1 later than September eleventh, two thousand eighteen, including those
2 that are rejected for filing as untimely.

3 § 4. This act shall take effect immediately and apply to all members
4 who are determined to have incurred a qualifying World Trade Center
5 condition in the performance and discharge of duty that is the natural
6 and proximate result of an accident not caused by such member's own
7 willful negligence prior to the effective date of this act.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

PROVISIONS OF PROPOSED LEGISLATION: With respect to the New York City Retirement Systems (NYCRS), the proposed legislation would amend provisions of the Retirement and Social Security Law (RSSL) to grant to active Tier 3 or 4 NYCRS members who have incurred a World Trade Center (WTC) Qualifying Condition a performance of duty disability retirement equivalent to 75% of the member's Final Average Salary (FAS). The proposed legislation would also require that applicable members or beneficiaries of the proposed benefit file a WTC Notice of Participation with the applicable NYCRS by September 11, 2018 in order to be eligible to receive the proposed benefit.

The Effective Date of the proposed legislation would be the date of enactment, provided that it shall apply to all eligible members prior to the Effective Date.

IMPACT ON BENEFITS PAYABLE: Under the proposed legislation, the benefits for WTC retirees would be revised to equal a retirement allowance of:

- * 75% multiplied by Final Average Salary (FAS),

- Reduced by:

- * 100% of Workers' Compensation benefits (if any).

Please note that generally, unformed WTC retirees are currently entitled to a 75% of FAS benefit (i.e., members of the New York City Police Pension Fund (POLICE), the New York Fire Department Pension Fund (FIRE), and Sanitation and Correction members of the New York City Employees' Retirement System (NYCERS)). Therefore, the application of the proposed legislation would be likely limited to civilian members of NYCERS, the Teachers' Retirement System of the City of New York (TRS), and the Board of Education Retirement System of the City of New York (BERS).

Although only certain NYCERS members are ineligible for Workers' Compensation benefits and therefore would not have their benefit subject to an offset, for purposes of this Fiscal Note, it is assumed that the Workers' Compensation offset provisions cited in sections 1 and 2 of the proposed legislation and contained in RSSL section 64 would not apply to NYCRS members because such members are not paid benefits under RSSL Article 2.

FINANCIAL IMPACT - ACTUARIAL PRESENT VALUE OF BENEFITS (APVB): Although there are currently approximately 3,900 active members who have submitted a WTC Notice of Participation Form for NYCERS, TRS, and BERS, the number of members from this group who could potentially benefit from this proposed legislation in the future cannot be readily determined. Therefore the ultimate impact of this proposed legislation would depend on the number of members affected in the future as well as other characteristics including the age, years of service, and salary history of the member.

For purposes of this fiscal note, the Actuary considered only those members who have currently retired from active membership with WTC-related disability benefits. Those members who have been reclassified as having a WTC-related disability after retirement from service were excluded.

With respect to members currently in receipt of WTC benefits, under the actuarial assumptions used in the Preliminary June 30, 2016 (Lag) actuarial valuations of NYCERS, the enactment of this proposed legislation would increase the APVB by approximately \$20,768,000 as of June 30, 2016. This amount is the sum of the amounts shown in the table below.

Table

Estimated Financial Impact on NYCERS, TRS, and BERS
If Certain Civilian NYCERS WTC Members
Receive a 75% Performance of Duty Disability Benefit

(\$ 000s)

Payments	NYCERS	TRS	BERS	Total
Retroactive*	\$7,470	\$14	\$0	\$7,484
Prospective	<u>13,239</u>	<u>45</u>	<u>0</u>	<u>13,284</u>
Total	\$20,709	\$59	\$0	\$20,768

* It has been assumed that no interest will be credited on these retro-active payments.

FINANCIAL IMPACT - EMPLOYER PAYMENTS: In accordance with ACNY Section 13.638.2(k-2), new Unfunded Actuarial Accrued Liability (UAAL) attributable to benefit changes are to be amortized as determined by the Actuary but generally over the remaining working lifetime of those impacted by the benefit changes.

Since these members are collecting a pension and therefore have no remaining working lifetime, the entire increase in UAAL of \$20,768,000 would be recognized in one year. Assuming this legislation passes in the 2017 Legislative Session, the increased employer contribution would be recognized in Fiscal Year 2019 under the One Year Lag Methodology.

OTHER COSTS: Not measured in this Fiscal Note are the following:

* Any additional costs related to future civilian NYCERS members who retire due to a WTC qualifying condition and who would benefit from this proposed legislation, if enacted.

* The initial, additional administrative costs of the NYCERS to implement the proposed legislation.

* The impact of this proposed legislation on Other Postemployment Benefit (OPEB) costs.

CENSUS DATA: The starting census data used for the calculations presented herein is the census data used in the Preliminary June 30, 2016 (Lag) actuarial valuation of the NYCERS to determine the Preliminary Fiscal Year 2018 employer contributions.

This data was supplemented by data provided by NYCERS, TRS and BERS that identified members currently in receipt of WTC benefits. NYCERS identified 45 members with an average benefit of \$28,423, TRS identified 1 member with a benefit of \$36,537 and BERS did not identify any members currently receiving WTC benefits.

ACTUARIAL ASSUMPTIONS AND METHODS: The additional employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the Preliminary June 30, 2016 (Lag) actuarial valuations used to determine the Preliminary Fiscal Year 2018 employer contributions of NYCERS.

STATEMENT OF ACTUARIAL OPINION: I, Sherry S. Chan, am the Chief Actuary for, and independent of, the New York City Pension Funds and Retire-

ment Systems. I am a Fellow of the Society of Actuaries, a Fellow of the Conference of Consulting Actuaries and a Member of the American Academy of Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

FISCAL NOTE IDENTIFICATION: This Fiscal Note 2017-30 dated June 14, 2017 was prepared by the Chief Actuary for the New York City Employees' Retirement System, the Teachers' Retirement System of the City of New York, and the Board of Education Retirement System of the City of New York. This estimate is intended for use only during the 2017 Legislative Session.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill would amend Sections 2, 507 and 605 of the Retirement and Social Security Law to allow any member of the New York State Teachers' Retirement System who had an active membership when such member participated in the World Trade Center rescue, recovery, or cleanup operations and who incurred a qualifying World Trade Center condition determined to have been incurred in the performance and discharge of duty to receive a performance of duty disability retirement benefit equal to 75% of final average salary. Currently, an active member would receive an accidental disability retirement benefit which is generally one-third of final average salary. Members who become disabled or die as a result of a qualifying World Trade Center condition are assumed to have become disabled or died as a result of an accidental or on-the-job disability or death. The deadline to apply for this performance of duty disability retirement benefit for a member or an eligible beneficiary in the case of a member's death would be September 11, 2018. This bill would take effect immediately and apply to all members who are determined to have incurred a qualifying World Trade Center condition in the performance and discharge of duty prior to the effective date of this act.

The cost, or additional present value of benefits, is estimated to be, on average, \$280,000 for each member who receives this performance of duty disability retirement benefit. Although the potential increase in an affected member's benefit is estimated to be large, the additional annual cost to the employers of members of the New York State Teachers' Retirement System is estimated to be negligible if this bill is enacted because it is anticipated there would be few applications received for this performance of duty disability retirement benefit from our membership.

Employee data is from the System's most recent actuarial valuation files, consisting of data provided by the employers to the Retirement System. Data distributions and statistics can be found in the System's Comprehensive Annual Financial Report (CAFR). System assets are as reported in the System's financial statements, and can also be found in the CAFR. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report.

The source of this estimate is Fiscal Note 2017-27 dated May 19, 2017 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2017 Legislative Session. I, Richard A. Young, am the Actuary for the New York State Teachers' Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill would amend the benefits of members of public retirement systems who contract any form of disease or disability related to exposure to any elements in connection with the World Trade Center tragedy

rescue, recovery or cleanup operations. The annual accidental disability benefit would be 75% of a member's final average salary less workers compensation, regardless of a member's plan coverage. Currently, eligible members receive the accidental disability benefit specified in the plan under which they are covered. This improved benefit would be payable to current members who may file for this benefit in the future, or current retirees (or their beneficiaries) who are eligible to receive World Trade Center related retirement benefits.

If this bill is enacted, it would lead to more disabilities being classified as "in performance of duty" or "accidental". For the disabilities so classified due to this bill, the cost would depend on the age, service, salary and plan of the affected member or retiree, as well as whether such person would have otherwise been eligible for, or has been receiving an ordinary disability, a performance of duty disability or a service retirement. For those who contract such disease prior to retirement, it is estimated that there could be per person one-time costs of as much as 5 times salary. For those who contract such disease subsequent to a service retirement, it is estimated that there would be an average per person cost of approximately 2 times final average salary. For those who contract such disease subsequent to an ordinary disability retirement, it is estimated that there would be an average per person cost of approximately 5 times final average salary.

For the 40 retirees and 3 beneficiaries known to be affected at this time, there would be a one-time cost of \$8.65 million, assuming a payment date of March 1, 2018.

Pursuant to Section 25 of the Retirement and Social Security Law, the increased cost would be borne entirely by the State of New York and would require an itemized appropriation sufficient to pay the cost of the provision. A precise cost for future years can't be determined at this time. Every year a cost will be determined (and billed to the state) based on those benefiting from this provision.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2016 actuarial valuation. Distributions and other statistics can be found in the 2016 Report of the Actuary and the 2016 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2015 and 2016 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2016 New York State and Local Retirement System Financial Statements and Supplementary Information.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This estimate, dated May 25, 2017, and intended for use only during the 2017 Legislative Session, is Fiscal Note No. 2017-108, prepared by the Actuary for the New York State and Local Retirement System.