S T A T E O F N E W Y O R K

2947--A

2009-2010 Regular Sessions

I N A S S E M B L Y

January 22, 2009

Introduced by M. of A. McENENY, CANESTRARI, GALEF -- Multi-Sponsored by -- M. of A. COLTON, COOK, GLICK, MAYERSOHN, ORTIZ, PAULIN, WRIGHT -- read once and referred to the Committee on Governmental Employees -- recommitted to the Committee on Governmental Employees in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to retirement options of married members

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph 2 of subdivision bb of section 90 of the retirement and social security law, as amended by chapter 163 of the laws of 1959, is amended to read as follows:

2. (A) Notwithstanding any other provision of this section, but except where payment of accumulated contributions, an ordinary death benefit, or both, is or are required pursuant to subdivision dd of section fifty-one of this article or subdivision aa of section sixty of this article, retirement OF MEMBERS WHO LAST JOINED THE RETIREMENT SYSTEM ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND TEN shall be on the basis of "Option One-half" unless the member files an effective election pursuant to this section to retire on a different basis. [The provisions of this paragraph two shall apply to cases where retirement shall become effective on or after May first, nineteen hundred fifty-four.]

(B) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS SECTION, BUT EXCEPT WHERE PAYMENT OF ACCUMULATED CONTRIBUTIONS, AN ORDINARY DEATH BENEFIT OR BOTH IS REQUIRED PURSUANT TO SUBDIVISION DD OF SECTION FIFTY-ONE OF THIS ARTICLE OR SUBDIVISION AA OF SECTION SIXTY OF THIS ARTICLE, RETIREMENT OF MEMBERS WHO LAST JOINED THE RETIREMENT SYSTEM ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN SHALL BE ON THE BASIS OF "OPTION ONE-HALF" IF THE MEMBER IS NOT MARRIED AT THE TIME OF RETIREMENT, OR ON THE BASIS OF

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

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THE JOINT ALLOWANCE-HALF OPTION, WITH THE SPOUSE AS BENEFICIARY, IF THE MEMBER IS MARRIED AT THE TIME OF RETIREMENT, UNLESS THE MEMBER FILES AN EFFECTIVE ELECTION PURSUANT TO THIS SECTION TO RETIRE ON A DIFFERENT BASIS. IN ORDER TO BECOME EFFECTIVE, SUCH ELECTION MUST CONTAIN THE SPOUSE'S SIGNED AND ACKNOWLEDGED WAIVER OF RIGHTS TO RECEIVE BENEFITS UNDER THE "JOINT ALLOWANCE-HALF" OPTION. THE COMPTROLLER MAY PROMULGATE REGULATIONS UNDER WHICH THE WAIVER OTHERWISE REQUIRED MAY BE EXCUSED ON THE BASIS THAT THE SPOUSE CAN NOT BE LOCATED OR BECAUSE OF OTHER CIRCUMSTANCES PROVIDED IN SUCH REGULATIONS.

S 2. Paragraph 2 of subdivision bb of section 390 of the retirement and social security law, as added by chapter 1000 of the laws of 1966, is amended to read as follows:

2. (A) Notwithstanding any other provision of this section, but except where payment of accumulated contributions, an ordinary death benefit, or both, is or are required pursuant to subdivision dd of section three hundred fifty-one of this article or subdivision aa of section three hundred sixty of this article, retirement OF MEMBERS WHO LAST JOINED THE RETIREMENT SYSTEM ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND TEN shall be on the basis of "Option One-half" unless the member files an effective election pursuant to this section to retire on a different basis. [The provisions of this paragraph two shall apply to cases where retirement shall become effective on or after April first, nineteen hundred sixty-seven.]

(B) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS SECTION, BUT EXCEPT WHERE PAYMENT OF ACCUMULATED CONTRIBUTIONS, AN ORDINARY DEATH BENEFIT OR BOTH IS REQUIRED PURSUANT TO SUBDIVISION DD OF SECTION THREE HUNDRED FIFTY-ONE OF THIS ARTICLE OR SUBDIVISION AA OF SECTION THREE HUNDRED SIXTY OF THIS ARTICLE, RETIREMENT OF MEMBERS WHO LAST JOINED THE RETIREMENT SYSTEM ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN SHALL BE ON THE BASIS OF "OPTION ONE-HALF" IF THE MEMBER IS NOT MARRIED AT THE TIME OF RETIREMENT, OR ON THE BASIS OF THE JOINT ALLOWANCE-HALF OPTION, WITH THE SPOUSE AS BENEFICIARY, IF THE MEMBER IS MARRIED AT THE TIME OF RETIREMENT, UNLESS THE MEMBER FILES AN EFFECTIVE ELECTION PURSUANT TO THIS SECTION TO RETIRE ON A DIFFERENT BASIS. IN ORDER TO BECOME EFFECTIVE, SUCH ELECTION MUST CONTAIN THE SPOUSE'S SIGNED ACKNOWLEDGED WAIVER OF RIGHTS TO RECEIVE BENEFITS UNDER THE "JOINT ALLOWANCE-HALF" OPTION. THE COMPTROLLER MAY PROMULGATE REGULATIONS UNDER WHICH THE WAIVER OTHERWISE REQUIRED MAY BE EXCUSED ON THE BASIS THAT THE SPOUSE CAN NOT BE LOCATED OR BECAUSE OF OTHER CIRCUMSTANCES PROVIDED IN SUCH REGULATIONS.

S 3. Section 514 of the retirement and social security law is amended by adding a new subdivision e to read as follows:

E. 1. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, EXCEPT WHERE PAYMENT OF ACCUMULATED CONTRIBUTIONS, AN ORDINARY DEATH BENEFIT OR BOTH IS REQUIRED PURSUANT TO THIS ARTICLE, RETIREMENT OF MEMBERS OF THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM WHO LAST JOINED SUCH SYSTEM ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND TEN SHALL BE WITHOUT OPTIONAL MODIFICATION UNLESS THE MEMBER FILES AN EFFECTIVE ELECTION PURSUANT TO THIS SECTION TO RETIRE ON A DIFFERENT BASIS.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EXCEPT WHERE PAYMENT OF ACCUMULATED CONTRIBUTIONS, AN ORDINARY DEATH BENEFIT OR BOTH IS REQUIRED PURSUANT TO THIS ARTICLE, RETIREMENT OF MEMBERS OF THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM WHO LAST JOINED SUCH SYSTEM ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN SHALL BE WITHOUT OPTIONAL MODIFICATION IF THE MEMBER IS NOT MARRIED AT THE TIME OF RETIREMENT, OR ON THE BASIS OF OPTION TWO AS PROVIDED UNDER SUBDIVISION A OF THIS SECTION, WITH THE SPOUSE AS BENEFICIARY TO RECEIVE A MONTHLY BENEFIT

EQUAL TO FIFTY PERCENT OF THE AMOUNT OF THE MEMBER'S MONTHLY BENEFIT, IF THE MEMBER IS MARRIED AT THE TIME OF RETIREMENT, UNLESS THE MEMBER FILES AN EFFECTIVE ELECTION PURSUANT TO THIS SECTION TO RETIRE ON A DIFFERENT BASIS. IN ORDER TO BECOME EFFECTIVE, SUCH ELECTION MUST CONTAIN THE SPOUSE'S SIGNED AND ACKNOWLEDGED WAIVER OF RIGHTS TO RECEIVE BENEFITS UNDER THE OPTION TWO "JOINT ALLOWANCE-HALF" OPTION. THE COMPTROLLER MAY PROMULGATE REGULATIONS UNDER WHICH THE WAIVER OTHERWISE REQUIRED MAY BE EXCUSED ON THE BASIS THAT THE SPOUSE CAN NOT BE LOCATED OR OTHER CIRCUMSTANCES PROVIDED IN SUCH REGULATIONS.

S 4. Subdivision d of section 610 of the retirement and social security law is amended by adding a new paragraph 3 to read as follows:

3. (A) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, EXCEPT WHERE PAYMENT OF ACCUMULATED CONTRIBUTIONS, AN ORDINARY DEATH BENEFIT OR BOTH IS REQUIRED PURSUANT TO THIS ARTICLE, RETIREMENT OF MEMBERS OF THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM WHO LAST JOINED SUCH SYSTEM ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND TEN SHALL BE WITHOUT OPTIONAL MODIFICATION UNLESS THE MEMBER FILES AN EFFECTIVE ELECTION PURSUANT TO THIS SECTION TO RETIRE ON A DIFFERENT BASIS.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, EXCEPT WHERE PAYMENT OF ANY OTHER ACCUMULATED CONTRIBUTIONS, AN ORDINARY DEATH BENEFIT OR BOTH IS REQUIRED PURSUANT TO THIS ARTICLE, RETIREMENT OF MEMBERS OF THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM WHO LAST JOINED SUCH SYSTEM ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN SHALL BE WITHOUT OPTIONAL MODIFICATION IF THE MEMBER IS NOT MARRIED AT THE TIME OF RETIREMENT, OR ON THE BASIS OF OPTION TWO AS PROVIDED UNDER SUBDIVISION A OF THIS SECTION WITH THE SPOUSE AS BENEFICIARY TO RECEIVE A MONTHLY BENEFIT EQUAL TO FIFTY PERCENT OF THE AMOUNT OF THE MEMBER'S MONTHLY BENEFIT, IF THE MEMBER IS MARRIED AT THE TIME OF RETIREMENT, UNLESS THE MEMBER FILES AN EFFECTIVE ELECTION PURSUANT TO THIS SECTION TO RETIRE ON A DIFFERENT BASIS. IN ORDER TO BECOME EFFECTIVE, SUCH ELECTION MUST CONTAIN THE SPOUSE'S SIGNED AND ACKNOWLEDGED WAIVER OF RIGHTS TO RECEIVE BENEFITS UNDER THE OPTION TWO "JOINT ALLOWANCE-HALF" OPTION. THE COMPTROLLER MAY PROMULGATE REGULATIONS UNDER WHICH THE WAIVER OTHERWISE REQUIRED MAY BE EXCUSED ON THE BASIS THAT THE SPOUSE CAN NOT BE LOCATED OR BECAUSE OF OTHER CIRCUMSTANCES PROVIDED IN SUCH REGULATIONS.

S 5. This act shall take effect immediately.

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

This bill would require a retiring married member, who last joined the New York State and Local Employees' Retirement System or the New York State and Local Police and Fire Retirement System on or after January 1, 2011, to choose the joint allowance-half option with spouse as beneficiary unless the member's spouse consents to the selection of a different option.

If this bill is enacted, there would be a small administrative cost for modifying the current option election forms. In addition, there would be an administrative cost associated with the spousal consent forms. These costs would be shared by the State of New York and all participating employers in the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

This estimate, dated December 31, 2009, and intended for use only during the 2010 Legislative Session, is Fiscal Note No. 2010-59, prepared by the Actuary for the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.