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

3687

2009-2010 Regular Sessions

I N S E N A T E

March 27, 2009

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the retirement and social security law, in relation to disability benefits for firefighters employed by the division of military and naval affairs

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

Section 1. The retirement and social security law is amended by adding two new sections 63-g and 63-h to read as follows:

S 63-G. PERFORMANCE OF DUTY DISABILITY RETIREMENT. A. ANY MEMBER OF THE RETIREMENT SYSTEM EMPLOYED BY THE DIVISION OF MILITARY AND NAVAL AFFAIRS SHALL BE ELIGIBLE TO RETIRE PURSUANT TO THE PROVISIONS OF THIS SECTION IF HE OR SHE IS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIREFIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING AND SAFETY OFFICER.

B. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR SPECIAL LAW TO THE CONTRARY, ANY MEMBER WHO BECOMES PHYSICALLY OR MENTALLY INCAPACITATED AS THE RESULT OF A DISABILITY FROM ANY CONDITION OF IMPAIRMENT OF HEALTH CAUSED BY: (1) DISEASES OF THE HEART; OR (2) ANY (I) MELANOMA OR (II) CONDITION OF CANCER AFFECTING THE LYMPHATIC, DIGESTIVE, HEMATOLOGICAL, URINARY, NEUROLOGICAL, BREAST, REPRODUCTIVE OR PROSTATE SYSTEMS, WHO IS PRESENTLY EMPLOYED AND WHO SHALL HAVE SUSTAINED SUCH DISABILITY WHILE SO EMPLOYED AND WHILE ACTUALLY A MEMBER OF THE RETIREMENT SYSTEM, WHO SUCCESSFULLY PASSED A PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIREFIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING AND SAFETY OFFICER, WHICH EXAMINATION FAILED TO DISCLOSE EVIDENCE OF ANY DISEASE OR OTHER IMPAIRMENT OF THE HEART OR SUCH MELANOMA OR CONDITION, SHALL BE PRESUMPTIVE EVIDENCE THAT SUCH DISABILITY OR DEATH (A) WAS CAUSED BY THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT, NOT CAUSED BY SUCH FIREFIGHTER'S OWN NEGLIGENCE AND (B) WAS INCURRED IN THE PERFORM-

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

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ANCE AND DISCHARGE OF DUTY, UNLESS THE CONTRARY BE PROVEN BY COMPETENT EVIDENCE AND SHALL BE PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT BENEFIT PAYABLE PURSUANT TO THIS SECTION.

C. APPLICATION FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE FOR SUCH A MEMBER MAY BE MADE BY:

1. SUCH MEMBER;

2. THE HEAD OF THE DEPARTMENT IN WHICH SUCH MEMBER IS EMPLOYED; OR

3. SOME PERSON ACTING ON BEHALF OF AND AUTHORIZED BY SUCH MEMBER.

D. AFTER THE FILING OF SUCH AN APPLICATION SUCH MEMBER SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS.

E. IF THE COMPTROLLER DETERMINES THAT THE MEMBER IS PHYSICALLY OR MENTALLY INCAPACITATED FOR THE PERFORMANCE OF DUTY AND OUGHT TO BE RETIRED FOR PERFORMANCE OF DUTY DISABILITY, SUCH MEMBER SHALL BE SO RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE COMPTROLLER.

F. THE RETIREMENT ALLOWANCE PAYABLE UPON RETIREMENT FOR PERFORMANCE OF DUTY DISABILITY SHALL CONSIST OF A PENSION OF ONE-HALF OF HIS OR HER FINAL AVERAGE SALARY PLUS AN ANNUITY WHICH SHALL BE THE ACTUARIAL EQUIVALENT OF SUCH MEMBER'S ACCUMULATED CONTRIBUTIONS, IF ANY.

G. IF THE MEMBER, AT THE TIME OF THE FILING OF AN APPLICATION UNDER THE PROVISIONS OF SUBDIVISION C OF THIS SECTION, IS ELIGIBLE FOR A SERVICE RETIREMENT BENEFIT, THEN AND IN THAT EVENT, SUCH MEMBER MAY SIMULTANEOUSLY FILE AN APPLICATION FOR SERVICE RETIREMENT IN ACCORDANCE WITH THE PROVISIONS OF SECTION SEVENTY OF THIS ARTICLE, PROVIDED THAT THE MEMBER INDICATES ON THE APPLICATION FOR SERVICE RETIREMENT THAT SUCH APPLICATION IS FILED WITHOUT PREJUDICE TO THE APPLICATION FOR PERFORMANCE OF DUTY DISABILITY RETIREMENT.

H. ANY BENEFIT PROVIDED PURSUANT TO THIS SECTION SHALL NOT BE CONSIDERED AS AN ACCIDENTAL DISABILITY BENEFIT WITHIN THE MEANING OF SECTION SIXTY-FOUR OF THIS TITLE. ANY BENEFIT PAYABLE PURSUANT TO THE WORKERS' COMPENSATION LAW TO A MEMBER RECEIVING A DISABILITY ALLOWANCE PURSUANT TO THIS SECTION SHALL BE IN ADDITION TO SUCH RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE OF DUTY ALLOWANCE.

S 63-H. CERTAIN IMPAIRMENTS OF HEALTH; PRESUMPTION. A. ANY MEMBER OF THE RETIREMENT SYSTEM EMPLOYED BY THE DIVISION OF MILITARY AND NAVAL AFFAIRS SHALL BE ELIGIBLE TO RETIRE PURSUANT TO THE PROVISIONS OF THIS SECTION IF HE OR SHE IS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIREFIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING AND SAFETY OFFICER.

B. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR SPECIAL LAW TO THE CONTRARY, ANY CONDITION OF IMPAIRMENT OF HEALTH CAUSED BY: (1) DISEASES OF THE HEART; OR (2) ANY (I) MELANOMA OR (II) CONDITION OF CANCER AFFECTING THE LYMPHATIC, DIGESTIVE, HEMATOLOGICAL, URINARY, NEUROLOGICAL, BREAST, REPRODUCTIVE OR PROSTATE SYSTEMS RESULTING IN DISABILITY TO A MEMBER COVERED BY THIS SECTION, PRESENTLY EMPLOYED AND WHO SHALL HAVE SUSTAINED SUCH DISABILITY AS THE RESULT OF AN ACCIDENT NOT CAUSED BY HIS OR HER OWN WILLFUL NEGLIGENCE SUSTAINED IN SUCH SERVICE AND WHILE ACTUALLY A MEMBER OF THE RETIREMENT SYSTEM, WHO SUCCESSFULLY PASSED A PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIREFIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING AND SAFETY OFFICER WHICH EXAMINATION FAILED TO DISCLOSE EVIDENCE OF ANY DISEASE OR OTHER IMPAIRMENT OF THE HEART OR SUCH MELANOMA OR CONDITION, SHALL BE PRESUMPTIVE EVIDENCE THAT SUCH DISABILITY OR DEATH (A) WAS CAUSED BY THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT, NOT CAUSED BY SUCH FIREFIGHTER'S OWN NEGLIGENCE AND (B) WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF

DUTY, UNLESS THE CONTRARY BE PROVEN BY COMPETENT EVIDENCE AND SHALL BE PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THAT WHICH IS PROVIDED IN SECTION SIXTY-THREE OF THIS TITLE, SUBJECT TO THE PROVISIONS OF SECTION SIXTY-FOUR OF THIS TITLE.

C. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR SPECIAL LAW TO THE CONTRARY, ANY CONDITION OF IMPAIRMENT OF HEALTH CAUSED BY DISEASES OF THE LUNG, RESULTING IN DISABILITY TO A MEMBER COVERED BY THIS SECTION, PRESENTLY EMPLOYED AND WHILE ACTUALLY A MEMBER OF THE RETIREMENT SYSTEM, WHO SUCCESSFULLY PASSED A PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIREFIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING AND SAFETY OFFICER, WHICH EXAMINATION FAILED TO DISCLOSE EVIDENCE OF ANY DISEASE OR OTHER IMPAIRMENT OF THE LUNG, SHALL BE PRESUMPTIVE EVIDENCE THAT SUCH DISABILITY OR DEATH (1) WAS CAUSED BY THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT, NOT CAUSED BY SUCH FIREFIGHTER'S OWN NEGLIGENCE AND (2) WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY, UNLESS THE CONTRARY BE PROVEN BY COMPETENT EVIDENCE AND SHALL BE PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THAT WHICH IS PROVIDED IN SECTION SIXTY-THREE OF THIS TITLE, SUBJECT TO THE PROVISIONS OF SECTION SIXTY-FOUR OF THIS TITLE.

S 2. The retirement and social security law is amended by adding two new sections 607-i and 607-j to read as follows:

S 607-I. PERFORMANCE OF DUTY DISABILITY RETIREMENT. A. ANY MEMBER OF THE RETIREMENT SYSTEM EMPLOYED BY THE DIVISION OF MILITARY AND NAVAL AFFAIRS SHALL BE ELIGIBLE TO RETIRE PURSUANT TO THE PROVISIONS OF THIS SECTION IF HE OR SHE IS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIREFIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING AND SAFETY OFFICER.

B. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR SPECIAL LAW TO THE CONTRARY, ANY MEMBER WHO BECOMES PHYSICALLY OR MENTALLY INCAPACITATED AS THE RESULT OF A DISABILITY FROM ANY CONDITION OF IMPAIRMENT OF HEALTH CAUSED BY: (1) DISEASES OF THE HEART; OR (2) ANY (I) MELANOMA OR (II) CONDITION OF CANCER AFFECTING THE LYMPHATIC, DIGESTIVE, HEMATOLOGICAL, URINARY, NEUROLOGICAL, BREAST, REPRODUCTIVE OR PROSTATE SYSTEMS, WHO IS PRESENTLY EMPLOYED AND WHO SHALL HAVE SUSTAINED SUCH DISABILITY WHILE SO EMPLOYED AND WHILE ACTUALLY A MEMBER OF THE RETIREMENT SYSTEM, WHO SUCCESSFULLY PASSED A PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIREFIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING AND SAFETY OFFICER, WHICH EXAMINATION FAILED TO DISCLOSE EVIDENCE OF ANY DISEASE OR OTHER IMPAIRMENT OF THE HEART OR SUCH MELANOMA OR CONDITION, SHALL BE PRESUMPTIVE EVIDENCE THAT SUCH DISABILITY OR DEATH (A) WAS CAUSED BY THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT, NOT CAUSED BY SUCH FIREFIGHTER'S OWN NEGLIGENCE AND (B) WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY, UNLESS THE CONTRARY BE PROVEN BY COMPETENT EVIDENCE AND SHALL BE PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT BENEFIT PAYABLE PURSUANT TO THIS SECTION.

C. APPLICATION FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE FOR SUCH A MEMBER MAY BE MADE BY:

1. SUCH MEMBER;

2. THE HEAD OF THE DEPARTMENT IN WHICH SUCH MEMBER IS EMPLOYED; OR

3. SOME PERSON ACTING ON BEHALF OF AND AUTHORIZED BY SUCH MEMBER.

D. AFTER THE FILING OF SUCH AN APPLICATION SUCH MEMBER SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS.

E. IF THE COMPTROLLER DETERMINES THAT THE MEMBER IS PHYSICALLY OR MENTALLY INCAPACITATED FOR THE PERFORMANCE OF DUTY AND OUGHT TO BE

RETIRED FOR PERFORMANCE OF DUTY DISABILITY, SUCH MEMBER SHALL BE SO RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE COMPTROLLER.

F. THE RETIREMENT ALLOWANCE PAYABLE UPON RETIREMENT FOR PERFORMANCE OF DUTY DISABILITY SHALL CONSIST OF A PENSION OF ONE-HALF OF HIS OR HER FINAL AVERAGE SALARY PLUS AN ANNUITY WHICH SHALL BE THE ACTUARIAL EQUIVALENT OF SUCH MEMBER'S ACCUMULATED CONTRIBUTIONS, IF ANY.

G. IF THE MEMBER, AT THE TIME OF THE FILING OF AN APPLICATION UNDER THE PROVISIONS OF SUBDIVISION C OF THIS SECTION, IS ELIGIBLE FOR A SERVICE RETIREMENT BENEFIT, THEN AND IN THAT EVENT, SUCH MEMBER MAY SIMULTANEOUSLY FILE AN APPLICATION FOR SERVICE RETIREMENT IN ACCORDANCE WITH THE PROVISIONS OF SECTION SEVENTY OF THIS CHAPTER, PROVIDED THAT THE MEMBER INDICATES ON THE APPLICATION FOR SERVICE RETIREMENT THAT SUCH APPLICATION IS FILED WITHOUT PREJUDICE TO THE APPLICATION FOR PERFORMANCE OF DUTY DISABILITY RETIREMENT.

H. ANY BENEFIT PROVIDED PURSUANT TO THIS SECTION SHALL NOT BE CONSIDERED AS AN ACCIDENTAL DISABILITY BENEFIT WITHIN THE MEANING OF SECTION SIXTY-FOUR OF THIS CHAPTER. ANY BENEFIT PAYABLE PURSUANT TO THE WORKERS' COMPENSATION LAW TO A MEMBER RECEIVING A DISABILITY ALLOWANCE PURSUANT TO THIS SECTION SHALL BE IN ADDITION TO SUCH RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE OF DUTY ALLOWANCE.

S 607-J. CERTAIN IMPAIRMENTS OF HEALTH; PRESUMPTION. A. ANY MEMBER OF THE RETIREMENT SYSTEM EMPLOYED BY THE DIVISION OF MILITARY AND NAVAL AFFAIRS SHALL BE ELIGIBLE TO RETIRE PURSUANT TO THE PROVISIONS OF THIS SECTION IF HE OR SHE IS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIREFIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING AND SAFETY OFFICER.

B. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR SPECIAL LAW TO THE CONTRARY, ANY CONDITION OF IMPAIRMENT OF HEALTH CAUSED BY: (1) DISEASES OF THE HEART; OR (2) ANY (I) MELANOMA OR (II) CONDITION OF CANCER AFFECTING THE LYMPHATIC, DIGESTIVE, HEMATOLOGICAL, URINARY, NEUROLOGICAL, BREAST, REPRODUCTIVE OR PROSTATE SYSTEMS RESULTING IN DISABILITY TO A MEMBER COVERED BY THIS SECTION, PRESENTLY EMPLOYED AND WHO SHALL HAVE SUSTAINED SUCH DISABILITY AS THE RESULT OF AN ACCIDENT NOT CAUSED BY HIS OR HER OWN WILLFUL NEGLIGENCE SUSTAINED IN SUCH SERVICE AND WHILE ACTUALLY A MEMBER OF THE RETIREMENT SYSTEM, WHO SUCCESSFULLY PASSED A PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIREFIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING AND SAFETY OFFICER WHICH EXAMINATION FAILED TO DISCLOSE EVIDENCE OF ANY DISEASE OR OTHER IMPAIRMENT OF THE HEART OR SUCH MELANOMA OR CONDITION, SHALL BE PRESUMPTIVE EVIDENCE THAT SUCH DISABILITY OR DEATH (A) WAS CAUSED BY THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT, NOT CAUSED BY SUCH FIREFIGHTER'S OWN NEGLIGENCE AND (B) WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY, UNLESS THE CONTRARY BE PROVEN BY COMPETENT EVIDENCE AND SHALL BE PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THAT WHICH IS PROVIDED IN SECTION SIXTY-THREE OF THIS CHAPTER, SUBJECT TO THE PROVISIONS OF SECTIONS SIXTY-THREE AND SIXTY-FOUR OF THIS CHAPTER.

C. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR SPECIAL LAW TO THE CONTRARY, ANY CONDITION OF IMPAIRMENT OF HEALTH CAUSED BY DISEASES OF THE LUNG, RESULTING IN DISABILITY TO A MEMBER COVERED BY THIS SECTION, PRESENTLY EMPLOYED AND WHILE ACTUALLY A MEMBER OF THE RETIREMENT SYSTEM, WHO SUCCESSFULLY PASSED A PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIREFIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING AND SAFETY OFFICER, WHICH EXAMINATION FAILED TO DISCLOSE EVIDENCE OF

ANY DISEASE OR OTHER IMPAIRMENT OF THE LUNG, SHALL BE PRESUMPTIVE EVIDENCE THAT SUCH DISABILITY OR DEATH (1) WAS CAUSED BY THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT, NOT CAUSED BY SUCH FIREFIGHTER'S OWN NEGLIGENCE AND (2) WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY, UNLESS THE CONTRARY BE PROVEN BY COMPETENT EVIDENCE AND SHALL BE PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THAT WHICH IS PROVIDED IN SECTION SIXTY-THREE OF THIS CHAPTER, SUBJECT TO THE PROVISIONS OF SECTION SIXTY-FOUR OF THIS CHAPTER.

S 3. This act shall take effect immediately; provided, however, that sections 607-i and 607-j of the retirement and social security law, as added by section two of this act, shall expire on the same date as article 15 of such law expires pursuant to section 615 of such law.

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

This bill would grant improved disability pensions to airport firefighters and training and safety officers in the New York State division of military and naval affairs who sustain a disability related to heart disease, lung disease and certain forms of cancer. This bill would help individuals who sustained such disabilities to establish the presumption that they were incurred in the performance and discharge of duty, unless the contrary be proven by competent evidence. The benefit for a heart or cancer related accidental disability, or a lung disease related performance of duty disability would be 75% of final average salary less worker's compensation. The benefit for a heart or cancer related performance of duty disability benefit would be 50% of final average salary.

If this bill is enacted, the disability benefits of affected members with heart, lung of certain cancer related disabilities would increase from approximately 1/3 of final average salary (FAS) to 50% of FAS or 75% of FAS. The estimated increase in the annual contributions of the State of New York for the fiscal year ending March 31, 2009 would be approximately $24,000.

These estimated costs are based on ninety-four (94) members having an annual salary for the fiscal year ending March 31, 2009 of approximately $4.4 million.

This estimate, dated March 25, 2009, and intended for use only during the 2009 Legislative Session, is Fiscal Note No. 2009-146, prepared by the Actuary for the New York State and Local Employees' Retirement System.