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

6005--A

2009-2010 Regular Sessions

I N A S S E M B L Y

February 24, 2009

Introduced by M. of A. ABBATE -- 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 the performance of duty disability retirement of certain peace officers and police officers in the state department of taxation and finance

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 a new section 63-g to read as follows:

S 63-G. PERFORMANCE OF DUTY DISABILITY RETIREMENT; CERTAIN EMPLOYEES. A. ANY MEMBER EMPLOYED BY THE DEPARTMENT OF TAXATION AND FINANCE WHO IS A PEACE OFFICER, AS DEFINED IN SUBDIVISION FOUR OF SECTION 2.10 OF THE CRIMINAL PROCEDURE LAW OR IS A POLICE OFFICER AS DEFINED IN PARAGRAPH (Q) OF SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, WHO BECOMES PHYSICALLY OR MENTALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY, SUSTAINED IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES 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.

B. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR SPECIAL LAW TO THE CONTRARY, A MEMBER COVERED BY THIS SECTION WHO CONTRACTS HIV (WHERE THERE MAY HAVE BEEN EXPOSURE TO A BODILY FLUID AS A NATURAL AND PROXIMATE RESULT OF AN INJURY, SUSTAINED IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES AS DESCRIBED IN SUBDIVISION A OF THIS SECTION), TUBERCULOSIS OR HEPATITIS WILL BE PRESUMED TO HAVE CONTRACTED SUCH DISEASE IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES, AND

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

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WILL BE PRESUMED TO BE DISABLED FROM THE PERFORMANCE OF HIS OR HER DUTIES, UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE.

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 HEART, RESULTING IN DISABILITY OR DEATH TO A MEMBER COVERED BY THIS SECTION, PRESENTLY EMPLOYED AND WHO SHALL HAVE SUSTAINED SUCH DISABILITY WHILE SO EMPLOYED, WHO SUCCESSFULLY PASSED A PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS A PEACE OFFICER, AS DEFINED IN SUBDIVISION FOUR OF SECTION 2.10 OF THE CRIMINAL PROCEDURE LAW OR AS A POLICE OFFICER AS DEFINED IN PARAGRAPH (Q) OF SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, WHICH EXAMINATION FAILED TO DISCLOSE EVIDENCE OF ANY DISEASE OR OTHER IMPAIRMENT OF THE HEART, SHALL BE PRESUMPTIVE EVIDENCE THAT IT WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY, UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE.

S 2. The retirement and social security law is amended by adding a new section 507-j to read as follows:

S 507-J. PERFORMANCE OF DUTY DISABILITY RETIREMENT; CERTAIN EMPLOYEES. A. ANY MEMBER EMPLOYED BY THE DEPARTMENT OF TAXATION AND FINANCE WHO IS A PEACE OFFICER, AS DEFINED IN SUBDIVISION FOUR OF SECTION 2.10 OF THE CRIMINAL PROCEDURE LAW OR IS A POLICE OFFICER AS DEFINED IN PARAGRAPH (Q) OF SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, WHO BECOMES PHYSICALLY OR MENTALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY, SUSTAINED IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES 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.

B. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR SPECIAL LAW TO THE CONTRARY, A MEMBER COVERED BY THIS SECTION WHO CONTRACTS HIV (WHERE THERE MAY HAVE BEEN EXPOSURE TO A BODILY FLUID AS A NATURAL AND PROXIMATE RESULT OF AN INJURY, SUSTAINED IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES AS DESCRIBED IN SUBDIVISION A OF THIS SECTION), TUBERCULOSIS OR HEPATITIS WILL BE PRESUMED TO HAVE CONTRACTED SUCH DISEASE IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES, AND WILL BE PRESUMED TO BE DISABLED FROM THE PERFORMANCE OF HIS OR HER DUTIES, UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE.

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 HEART, RESULTING IN DISABILITY OR DEATH TO A MEMBER COVERED BY THIS SECTION, PRESENTLY EMPLOYED AND WHO SHALL HAVE SUSTAINED SUCH DISABILITY WHILE SO EMPLOYED, WHO SUCCESSFULLY PASSED A PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS A PEACE OFFICER, AS DEFINED IN SUBDIVISION FOUR OF SECTION 2.10 OF THE CRIMINAL PROCEDURE LAW OR AS A POLICE OFFICER AS DEFINED IN PARAGRAPH (Q) OF SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, WHICH EXAMINATION FAILED TO DISCLOSE EVIDENCE OF ANY DISEASE OR OTHER IMPAIRMENT OF THE HEART, SHALL BE PRESUMPTIVE EVIDENCE THAT IT WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY, UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE.

S 3. The retirement and social security law is amended by adding a new section 607-i to read as follows:

S 607-I. PERFORMANCE OF DUTY DISABILITY RETIREMENT; CERTAIN EMPLOYEES. A. ANY MEMBER EMPLOYED BY THE DEPARTMENT OF TAXATION AND FINANCE WHO IS A PEACE OFFICER, AS DEFINED IN SUBDIVISION FOUR OF SECTION 2.10 OF THE CRIMINAL PROCEDURE LAW OR IS A POLICE OFFICER AS DEFINED IN PARA-

GRAPH (Q) OF SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, WHO BECOMES PHYSICALLY OR MENTALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY, SUSTAINED IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES 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.

B. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR SPECIAL LAW TO THE CONTRARY, A MEMBER COVERED BY THIS SECTION WHO CONTRACTS HIV (WHERE THERE MAY HAVE BEEN EXPOSURE TO A BODILY FLUID AS A NATURAL AND PROXIMATE RESULT OF AN INJURY, SUSTAINED IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES AS DESCRIBED IN SUBDIVISION A OF THIS SECTION), TUBERCULOSIS OR HEPATITIS WILL BE PRESUMED TO HAVE CONTRACTED SUCH DISEASE IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES, AND WILL BE PRESUMED TO BE DISABLED FROM THE PERFORMANCE OF HIS OR HER DUTIES, UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE.

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 HEART, RESULTING IN DISABILITY OR DEATH TO A MEMBER COVERED BY THIS SECTION, PRESENTLY EMPLOYED AND WHO SHALL HAVE SUSTAINED SUCH DISABILITY WHILE SO EMPLOYED, WHO SUCCESSFULLY PASSED A PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS A PEACE OFFICER, AS DEFINED IN SUBDIVISION FOUR OF SECTION 2.10 OF THE CRIMINAL PROCEDURE LAW OR AS A POLICE OFFICER AS DEFINED IN PARAGRAPH (Q) OF SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, WHICH EXAMINATION FAILED TO DISCLOSE EVIDENCE OF ANY DISEASE OR OTHER IMPAIRMENT OF THE HEART, SHALL BE PRESUMPTIVE EVIDENCE THAT IT WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY, UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE.

S 4. This act shall take effect immediately.

FISCAL NOTE.--This bill would allow certain peace officers and police officers employed by the Department of Taxation and Finance to be eligible for a performance of duty disability retirement allowance which would be 75% of final average salary less any Worker's Compensation payments received. Further, this bill would grant a presumption that certain infectious diseases and heart related disabilities have been sustained in the performance of duty, unless the contrary be proven by competent evidence.

If this bill is enacted, we anticipate that there will be an increase of approximately $66,000 in the annual contributions of the State of New York for the fiscal year ending March 31, 2011.

In addition to the annual contributions discussed above, we estimate that there will be a past service cost of approximately $190,000 which would be borne by the State of New York as a one-time payment. This estimate is based on the assumption that payment will be made on March 1, 2011.

These estimated costs are based on seventy-eight (78) officers employed by the Department of Taxation and Finance with a total salary of approximately $5.0 million for the fiscal year ending March 31, 2009.

This estimate, dated December 22, 2009, and intended for use only during the 2010 Legislative Session, is Fiscal Note No. 2010-36, prepared by the Actuary for the New York State and Local Employees' Retirement System.