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

9985

I N A S S E M B L Y

February 23, 2010

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

AN ACT to amend the retirement and social security law, in relation to providing accidental disability retirement benefits for chief fire marshals, assistant fire marshals, division supervising fire marshals, supervising fire marshals, fire marshals and fire marshal trainees

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 605-d to read as follows:

S 605-D. ACCIDENTAL DISABILITY RETIREMENT FOR CHIEF FIRE MARSHALS, ASSISTANT FIRE MARSHALS, DIVISION SUPERVISING FIRE MARSHALS, SUPERVISING FIRE MARSHALS, FIRE MARSHALS AND FIRE MARSHAL TRAINEES. A. A MEMBER EMPLOYED AS A CHIEF FIRE MARSHAL, ASSISTANT FIRE MARSHAL, DIVISION SUPERVISING FIRE MARSHAL, SUPERVISING FIRE MARSHAL, FIRE MARSHAL OR FIRE MARSHAL TRAINEE SHALL BE ENTITLED TO AN ACCIDENTAL DISABILITY RETIREMENT ALLOWANCE IF, AT THE TIME APPLICATION THEREFOR IS FILED, SUCH MEMBER IS:

1. PHYSICALLY OR MENTALLY INCAPACITATED FOR PERFORMANCE OF DUTY AS THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT, NOT CAUSED BY HIS OWN WILLFUL NEGLIGENCE, SUSTAINED IN SUCH SERVICE AND WHILE ACTUALLY A MEMBER OF THE RETIREMENT SYSTEM; AND

2. ACTUALLY IN SERVICE UPON WHICH HIS OR HER MEMBERSHIP IS BASED. HOWEVER, IN A CASE WHERE A MEMBER IS DISCONTINUED FROM SERVICE SUBSEQUENT TO THE ACCIDENT, EITHER VOLUNTARILY OR INVOLUNTARILY, AND PROVIDED THAT THE MEMBER MEETS THE REQUIREMENTS OF PARAGRAPH ONE OF THIS SUBDIVISION, APPLICATION MAY BE MADE EITHER (A) BY A VESTED MEMBER INCAPACITATED AS THE RESULT OF A QUALIFYING WORLD TRADE CENTER CONDITION AS DEFINED IN SECTION TWO OF THIS CHAPTER AT ANY TIME, OR (B) NOT LATER THAN TWO YEARS AFTER THE MEMBER IS FIRST DISCONTINUED FROM SERVICE.

B. APPLICATION FOR AN ACCIDENTAL DISABILITY RETIREMENT ALLOWANCE FOR SUCH A MEMBER MAY BE MADE BY:

1. SUCH MEMBER; OR

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

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

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

LBD14015-02-0

C. 1. AFTER THE FILING OF SUCH AN APPLICATION, SUCH MEMBER SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS. NO SUCH APPLICATION SHALL BE APPROVED, HOWEVER, UNLESS THE MEMBER OR SOME OTHER PERSON ON HIS BEHALF SHALL HAVE FILED WRITTEN NOTICE IN THE OFFICE OF THE COMPTROLLER WITHIN NINETY DAYS AFTER THE ACCIDENT, SETTING FORTH:

(A) THE TIME WHEN AND THE PLACE WHERE SUCH ACCIDENT OCCURRED; AND

(B) THE PARTICULARS THEREOF; AND

(C) THE NATURE AND EXTENT OF THE MEMBER'S INJURIES; AND

(D) HIS OR HER ALLEGED INCAPACITY.

2. THE NOTICE HEREIN REQUIRED NEED NOT BE GIVEN:

(A) IF THE NOTICE OF SUCH ACCIDENT SHALL BE FILED IN ACCORDANCE WITH THE PROVISIONS OF THE WORKERS' COMPENSATION LAW OF ANY STATE WITHIN WHICH A PARTICIPATING EMPLOYER SHALL HAVE ITS EMPLOYEES LOCATED OR PERFORMING FUNCTIONS AND DUTIES WITHIN THE NORMAL SCOPE OF THEIR EMPLOYMENT; OR

(B) IF THE APPLICATION FOR ACCIDENTAL DISABILITY RETIREMENT IS FILED WITHIN ONE YEAR AFTER THE DATE OF SUCH ACCIDENT; OR

(C) IF A FAILURE TO FILE NOTICE HAS BEEN EXCUSED FOR GOOD CAUSE SHOWN AS PROVIDED BY RULES AND REGULATIONS PROMULGATED BY THE COMPTROLLER.

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

E. THE ANNUAL RETIREMENT ALLOWANCE PAYABLE UPON ACCIDENTAL DISABILITY RETIREMENT SHALL BE A PENSION OF THREE-QUARTERS OF HIS FINAL AVERAGE SALARY. THE PAYMENT OF SUCH PENSION SHALL BE SUBJECT TO THE PROVISIONS OF SECTION SIXTY-FOUR OF THIS CHAPTER.

F. IF THE MEMBER, AT THE TIME OF THE FILING OF AN APPLICATION UNDER THE PROVISIONS OF SUBDIVISION B OF THIS SECTION, IS ELIGIBLE FOR A SERVICE RETIREMENT BENEFIT, THEN AND IN THAT EVENT, HE MAY SIMULTANEOUSLY FILE AN APPLICATION FOR SERVICE RETIREMENT IN ACCORDANCE WITH THE PROVISION 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 ACCIDENTAL DISABILITY RETIREMENT.

G. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THIS SECTION SHALL APPLY TO CHIEF FIRE MARSHALS, ASSISTANT FIRE MARSHALS, DIVISION SUPERVISING FIRE MARSHALS, SUPERVISING FIRE MARSHALS, FIRE MARSHALS AND FIRE MARSHAL TRAINEES WHO WERE HIRED ON OR AFTER JULY TWENTY-SEVEN, NINETEEN HUNDRED SEVENTY-SIX.

S 2. This act shall take effect immediately.

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

This bill would grant chief fire marshals, assistant fire marshals, division supervising fire marshals, supervising fire marshals, fire marshals and fire marshal trainees an accidental disability for injuries sustained in the performance of duty and the result of an accident, unless the contrary be proven by competent evidence. The benefit for an accidental disability would be 75% of final average salary less worker's compensation.

If this bill is enacted, insofar as this bill would affect Nassau County, the estimated increase in the annual contributions for the fiscal year ending March 31, 2011 would be approximately $61,300.

These estimated costs are based on 57 members having an estimated annual salary for the fiscal year ending March 31, 2010 of approximately $5.9 million.

There would also be a cost for any other municipality which employs fire marshals, which would depend on the salaries of the affected fire marshals.

This estimate, dated January 29, 2010, and intended for use only during the 2010 Legislative Session, is Fiscal Note No. 2010-74, prepared by the Actuary for the New York State and Local Employees' Retirement System.