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

2716

2009-2010 Regular Sessions

I N S E N A T E

February 27, 2009

Introduced by Sen. ADAMS -- 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, the education law and the administrative code of the city of New York, in relation to a special disability retirement benefit for members of the armed forces injured in combat

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 65 to read as follows:

S 65. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN DECLARED BY CONGRESS.

B. APPLICATION FOR RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE OF DUTY MAY BE MADE BY SUCH MEMBER, OR THE HEAD OF THE DEPARTMENT IN

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

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WHICH SUCH MEMBER IS EMPLOYED. APPLICATION MAY BE MADE NOT LATER THAN TWO YEARS AFTER THE MEMBER OR RETIREE IS DISCONTINUED FROM ACTIVE DUTY AND PROVIDED THAT THE MEMBER MEETS THE REQUIREMENTS OF THIS SECTION.

C. AFTER THE FILING OF SUCH AN APPLICATION, SUCH MEMBER OR RETIREE SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS. IF THE COMPTROLLER DETERMINES THAT SUCH PERSON IS PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTY AND OUGHT TO BE RETIRED, HE OR SHE SHALL BE SO RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE COMPTROLLER.

D. IN THE CASE OF A MEMBER ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT UNDER THIS SECTION, FINAL AVERAGE SALARY SHALL MEAN THE REGULAR COMPENSATION EARNED FROM SUCH PARTICIPATING EMPLOYER BY A MEMBER DURING THE TWELVE MONTHS OF ACTUAL SERVICE IMMEDIATELY PRECEDING THE DATE OF SUCH EMPLOYEE'S RETIREMENT, EXCLUSIVE OF ANY LUMP SUM PAYMENTS FOR SICK LEAVE, OR ACCUMULATED VACATION CREDIT, OR ANY FORM OF TERMINATION PAY; PROVIDED, HOWEVER, IF THE COMPENSATION EARNED IN SAID TWELVE MONTHS EXCEEDS THAT OF THE PREVIOUS TWELVE MONTHS BY MORE THAN TWENTY PER CENTUM, THE AMOUNT IN EXCESS OF TWENTY PER CENTUM SHALL BE EXCLUDED IN THE COMPUTATION OF FINAL AVERAGE SALARY; PROVIDED FURTHER, HOWEVER, THAT THE BENEFITS COMPUTED PURSUANT TO THIS SECTION SHALL BE PAYABLE UNLESS THE MEMBER WOULD OTHERWISE BE ENTITLED TO A GREATER BENEFIT UNDER OTHER PROVISIONS OF THIS SECTION, IN WHICH CASE SUCH GREATER BENEFIT SHALL BE PAYABLE.

E. THE PERFORMANCE OF DUTY DISABILITY BENEFIT PROVIDED FOR IN THIS SECTION SHALL BE IN LIEU OF ANY OTHER RETIREMENT BENEFIT WHICH SUCH MEMBER OR RETIREE IS OR MAY BE ENTITLED TO RECEIVE FROM THE RETIREMENT SYSTEM.

S 2. The retirement and social security law is amended by adding a new section 365 to read as follows:

S 365. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN DECLARED BY CONGRESS.

B. APPLICATION FOR RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE OF DUTY MAY BE MADE BY SUCH MEMBER, OR THE HEAD OF THE DEPARTMENT IN WHICH SUCH MEMBER IS EMPLOYED. APPLICATION MAY BE MADE NOT LATER THAN TWO YEARS AFTER THE MEMBER OR RETIREE IS DISCONTINUED FROM ACTIVE DUTY AND PROVIDED THAT THE MEMBER MEETS THE REQUIREMENTS OF THIS SECTION.

C. AFTER THE FILING OF SUCH AN APPLICATION, SUCH MEMBER OR RETIREE SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS. IF THE COMPTROLLER DETERMINES THAT SUCH PERSON IS PHYSICALLY INCAPACITATED FOR THE PERFORM-

ANCE OF DUTY AND OUGHT TO BE RETIRED, HE OR SHE SHALL BE SO RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE COMPTROLLER.

D. IN THE CASE OF A MEMBER ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT UNDER THIS SECTION, FINAL AVERAGE SALARY SHALL MEAN THE REGULAR COMPENSATION EARNED FROM SUCH PARTICIPATING EMPLOYER BY A MEMBER DURING THE TWELVE MONTHS OF ACTUAL SERVICE IMMEDIATELY PRECEDING THE DATE OF SUCH EMPLOYEE'S RETIREMENT, EXCLUSIVE OF ANY LUMP SUM PAYMENTS FOR SICK LEAVE, OR ACCUMULATED VACATION CREDIT, OR ANY FORM OF TERMINATION PAY; PROVIDED, HOWEVER, IF THE COMPENSATION EARNED IN SAID TWELVE MONTHS EXCEEDS THAT OF THE PREVIOUS TWELVE MONTHS BY MORE THAN TWENTY PER CENTUM, THE AMOUNT IN EXCESS OF TWENTY PER CENTUM SHALL BE EXCLUDED IN THE COMPUTATION OF FINAL AVERAGE SALARY; PROVIDED FURTHER, HOWEVER, THAT THE BENEFITS COMPUTED PURSUANT TO THIS SECTION SHALL BE PAYABLE UNLESS THE MEMBER WOULD OTHERWISE BE ENTITLED TO A GREATER BENEFIT UNDER OTHER PROVISIONS OF THIS SECTION, IN WHICH CASE SUCH GREATER BENEFIT SHALL BE PAYABLE.

E. THE PERFORMANCE OF DUTY DISABILITY BENEFIT PROVIDED FOR IN THIS SECTION SHALL BE IN LIEU OF ANY OTHER RETIREMENT BENEFIT WHICH SUCH MEMBER OR RETIREE IS OR MAY BE ENTITLED TO RECEIVE FROM THE RETIREMENT SYSTEM.

S 3. The retirement and social security law is amended by adding a new section 448-b to read as follows:

S 448-B. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN DECLARED BY CONGRESS.

B. APPLICATION FOR RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE OF DUTY MAY BE MADE BY SUCH MEMBER, OR THE HEAD OF THE DEPARTMENT IN WHICH SUCH MEMBER IS EMPLOYED. APPLICATION MAY BE MADE NOT LATER THAN TWO YEARS AFTER THE MEMBER OR RETIREE IS DISCONTINUED FROM ACTIVE DUTY AND PROVIDED THAT THE MEMBER MEETS THE REQUIREMENTS OF THIS SECTION.

C. AFTER THE FILING OF SUCH AN APPLICATION, SUCH MEMBER OR RETIREE SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS. IF THE HEAD OF THE RETIREMENT SYSTEM DETERMINES THAT SUCH PERSON IS PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTY AND OUGHT TO BE RETIRED, HE OR SHE SHALL BE SO RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE HEAD OF THE RETIREMENT SYSTEM.

D. IN THE CASE OF A MEMBER ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT UNDER THIS SECTION, FINAL AVERAGE SALARY SHALL MEAN THE REGULAR COMPENSATION EARNED FROM SUCH PARTICIPATING EMPLOYER BY A MEMBER

DURING THE TWELVE MONTHS OF ACTUAL SERVICE IMMEDIATELY PRECEDING THE DATE OF SUCH EMPLOYEE'S RETIREMENT, EXCLUSIVE OF ANY LUMP SUM PAYMENTS FOR SICK LEAVE, OR ACCUMULATED VACATION CREDIT, OR ANY FORM OF TERMINATION PAY; PROVIDED, HOWEVER, IF THE COMPENSATION EARNED IN SAID TWELVE MONTHS EXCEEDS THAT OF THE PREVIOUS TWELVE MONTHS BY MORE THAN TWENTY PER CENTUM, THE AMOUNT IN EXCESS OF TWENTY PER CENTUM SHALL BE EXCLUDED IN THE COMPUTATION OF FINAL AVERAGE SALARY; PROVIDED FURTHER, HOWEVER, THAT THE BENEFITS COMPUTED PURSUANT TO THIS SECTION SHALL BE PAYABLE UNLESS THE MEMBER WOULD OTHERWISE BE ENTITLED TO A GREATER BENEFIT UNDER OTHER PROVISIONS OF THIS SECTION, IN WHICH CASE SUCH GREATER BENEFIT SHALL BE PAYABLE.

E. THE PERFORMANCE OF DUTY DISABILITY BENEFIT PROVIDED FOR IN THIS SECTION SHALL BE IN LIEU OF ANY OTHER RETIREMENT BENEFIT WHICH SUCH MEMBER OR RETIREE IS OR MAY BE ENTITLED TO RECEIVE FROM THE RETIREMENT SYSTEM.

S 4. 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 BENEFIT FOR MEMBERS INJURED IN COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN DECLARED BY CONGRESS.

B. APPLICATION FOR RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE OF DUTY MAY BE MADE BY SUCH MEMBER, OR THE HEAD OF THE DEPARTMENT IN WHICH SUCH MEMBER IS EMPLOYED. APPLICATION MAY BE MADE NOT LATER THAN TWO YEARS AFTER THE MEMBER OR RETIREE IS DISCONTINUED FROM ACTIVE DUTY AND PROVIDED THAT THE MEMBER MEETS THE REQUIREMENTS OF THIS SECTION.

C. AFTER THE FILING OF SUCH AN APPLICATION, SUCH MEMBER OR RETIREE SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS. IF THE HEAD OF THE RETIREMENT SYSTEM DETERMINES THAT SUCH PERSON IS PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTY AND OUGHT TO BE RETIRED, HE OR SHE SHALL BE SO RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE HEAD OF THE RETIREMENT SYSTEM.

D. IN THE CASE OF A MEMBER ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT UNDER THIS SECTION, FINAL AVERAGE SALARY SHALL MEAN THE REGULAR COMPENSATION EARNED FROM SUCH PARTICIPATING EMPLOYER BY A MEMBER DURING THE TWELVE MONTHS OF ACTUAL SERVICE IMMEDIATELY PRECEDING THE DATE OF SUCH EMPLOYEE'S RETIREMENT, EXCLUSIVE OF ANY LUMP SUM PAYMENTS FOR SICK LEAVE, OR ACCUMULATED VACATION CREDIT, OR ANY FORM OF TERMINATION PAY; PROVIDED, HOWEVER, IF THE COMPENSATION EARNED IN SAID TWELVE MONTHS EXCEEDS THAT OF THE PREVIOUS TWELVE MONTHS BY MORE THAN TWENTY PER CENTUM, THE AMOUNT IN EXCESS OF TWENTY PER CENTUM SHALL BE EXCLUDED

IN THE COMPUTATION OF FINAL AVERAGE SALARY; PROVIDED FURTHER, HOWEVER, THAT THE BENEFITS COMPUTED PURSUANT TO THIS SECTION SHALL BE PAYABLE UNLESS THE MEMBER WOULD OTHERWISE BE ENTITLED TO A GREATER BENEFIT UNDER OTHER PROVISIONS OF THIS SECTION, IN WHICH CASE SUCH GREATER BENEFIT SHALL BE PAYABLE.

E. THE PERFORMANCE OF DUTY DISABILITY BENEFIT PROVIDED FOR IN THIS SECTION SHALL BE IN LIEU OF ANY OTHER RETIREMENT BENEFIT WHICH SUCH MEMBER OR RETIREE IS OR MAY BE ENTITLED TO RECEIVE FROM THE RETIREMENT SYSTEM.

S 5. 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 BENEFIT FOR MEMBERS INJURED IN COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN DECLARED BY CONGRESS.

B. APPLICATION FOR RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE OF DUTY MAY BE MADE BY SUCH MEMBER, OR THE HEAD OF THE DEPARTMENT IN WHICH SUCH MEMBER IS EMPLOYED. APPLICATION MAY BE MADE NOT LATER THAN TWO YEARS AFTER THE MEMBER OR RETIREE IS DISCONTINUED FROM ACTIVE DUTY AND PROVIDED THAT THE MEMBER MEETS THE REQUIREMENTS OF THIS SECTION.

C. AFTER THE FILING OF SUCH AN APPLICATION, SUCH MEMBER OR RETIREE SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS. IF THE HEAD OF THE RETIREMENT SYSTEM DETERMINES THAT SUCH PERSON IS PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTY AND OUGHT TO BE RETIRED, HE OR SHE SHALL BE SO RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE HEAD OF THE RETIREMENT SYSTEM.

D. IN THE CASE OF A MEMBER ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT UNDER THIS SECTION, FINAL AVERAGE SALARY SHALL MEAN THE REGULAR COMPENSATION EARNED FROM SUCH PARTICIPATING EMPLOYER BY A MEMBER DURING THE TWELVE MONTHS OF ACTUAL SERVICE IMMEDIATELY PRECEDING THE DATE OF SUCH EMPLOYEE'S RETIREMENT, EXCLUSIVE OF ANY LUMP SUM PAYMENTS FOR SICK LEAVE, OR ACCUMULATED VACATION CREDIT, OR ANY FORM OF TERMINATION PAY; PROVIDED, HOWEVER, IF THE COMPENSATION EARNED IN SAID TWELVE MONTHS EXCEEDS THAT OF THE PREVIOUS TWELVE MONTHS BY MORE THAN TWENTY PER CENTUM, THE AMOUNT IN EXCESS OF TWENTY PER CENTUM SHALL BE EXCLUDED IN THE COMPUTATION OF FINAL AVERAGE SALARY; PROVIDED FURTHER, HOWEVER, THAT THE BENEFITS COMPUTED PURSUANT TO THIS SECTION SHALL BE PAYABLE UNLESS THE MEMBER WOULD OTHERWISE BE ENTITLED TO A GREATER BENEFIT UNDER OTHER PROVISIONS OF THIS SECTION, IN WHICH CASE SUCH GREATER BENEFIT SHALL BE PAYABLE.

E. THE PERFORMANCE OF DUTY DISABILITY BENEFIT PROVIDED FOR IN THIS SECTION SHALL BE IN LIEU OF ANY OTHER RETIREMENT BENEFIT WHICH SUCH MEMBER OR RETIREE IS OR MAY BE ENTITLED TO RECEIVE FROM THE RETIREMENT SYSTEM.

S 6. The education law is amended by adding a new section 511-b to read as follows:

S 511-B. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN DECLARED BY CONGRESS.

B. APPLICATION FOR RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE OF DUTY MAY BE MADE BY FILING AN APPLICATION WITH THE RETIREMENT BOARD. APPLICATION MAY BE MADE NOT LATER THAN TWO YEARS AFTER THE MEMBER OR RETIREE IS DISCONTINUED FROM ACTIVE DUTY AND PROVIDED THAT THE MEMBER MEETS THE REQUIREMENTS OF THIS SECTION.

C. AFTER THE FILING OF SUCH AN APPLICATION, SUCH MEMBER OR RETIREE SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS. IF THE RETIREMENT BOARD DETERMINES THAT SUCH PERSON IS PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTY AND OUGHT TO BE RETIRED, HE OR SHE SHALL BE SO RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE RETIREMENT BOARD.

D. IN THE CASE OF A MEMBER ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT UNDER THIS SECTION, FINAL AVERAGE SALARY SHALL MEAN THE REGULAR COMPENSATION EARNED FROM SUCH PARTICIPATING EMPLOYER BY A MEMBER DURING THE TWELVE MONTHS OF ACTUAL SERVICE IMMEDIATELY PRECEDING THE DATE OF SUCH EMPLOYEE'S RETIREMENT, EXCLUSIVE OF ANY LUMP SUM PAYMENTS FOR SICK LEAVE, OR ACCUMULATED VACATION CREDIT, OR ANY FORM OF TERMINATION PAY; PROVIDED, HOWEVER, IF THE COMPENSATION EARNED IN SAID TWELVE MONTHS EXCEEDS THAT OF THE PREVIOUS TWELVE MONTHS BY MORE THAN TWENTY PER CENTUM, THE AMOUNT IN EXCESS OF TWENTY PER CENTUM SHALL BE EXCLUDED IN THE COMPUTATION OF FINAL AVERAGE SALARY; PROVIDED FURTHER, HOWEVER, THAT THE BENEFITS COMPUTED PURSUANT TO THIS SECTION SHALL BE PAYABLE UNLESS THE MEMBER WOULD OTHERWISE BE ENTITLED TO A GREATER BENEFIT UNDER OTHER PROVISIONS OF THIS SECTION, IN WHICH CASE SUCH GREATER BENEFIT SHALL BE PAYABLE.

E. THE PERFORMANCE OF DUTY DISABILITY BENEFIT PROVIDED FOR IN THIS SECTION SHALL BE IN LIEU OF ANY OTHER RETIREMENT BENEFIT WHICH SUCH MEMBER OR RETIREE IS OR MAY BE ENTITLED TO RECEIVE FROM THE RETIREMENT SYSTEM.

S 7. The administrative code of the city of New York is amended by adding a new section 13-168.1 to read as follows:

S 13-168.1 PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN DECLARED BY CONGRESS.

B. APPLICATION FOR RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE OF DUTY MAY BE MADE BY FILING AN APPLICATION WITH THE BOARD OF TRUSTEES OF THE RETIREMENT SYSTEM. APPLICATION MAY BE MADE NOT LATER THAN TWO YEARS AFTER THE MEMBER OR RETIREE IS DISCONTINUED FROM ACTIVE DUTY AND PROVIDED THAT THE MEMBER MEETS THE REQUIREMENTS OF THIS SECTION.

C. AFTER THE FILING OF SUCH AN APPLICATION, SUCH MEMBER OR RETIREE SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS. IF THE MEDICAL BOARD DETERMINES THAT SUCH PERSON IS PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTY AND OUGHT TO BE RETIRED, HE OR SHE SHALL BE SO RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE BOARD OF TRUSTEES.

D. IN THE CASE OF A MEMBER ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT UNDER THIS SECTION, FINAL AVERAGE SALARY SHALL MEAN THE REGULAR COMPENSATION EARNED FROM SUCH PARTICIPATING EMPLOYER BY A MEMBER DURING THE TWELVE MONTHS OF ACTUAL SERVICE IMMEDIATELY PRECEDING THE DATE OF SUCH EMPLOYEE'S RETIREMENT, EXCLUSIVE OF ANY LUMP SUM PAYMENTS FOR SICK LEAVE, OR ACCUMULATED VACATION CREDIT, OR ANY FORM OF TERMINATION PAY; PROVIDED, HOWEVER, IF THE COMPENSATION EARNED IN SAID TWELVE MONTHS EXCEEDS THAT OF THE PREVIOUS TWELVE MONTHS BY MORE THAN TWENTY PER CENTUM, THE AMOUNT IN EXCESS OF TWENTY PER CENTUM SHALL BE EXCLUDED IN THE COMPUTATION OF FINAL AVERAGE SALARY; PROVIDED FURTHER, HOWEVER, THAT THE BENEFITS COMPUTED PURSUANT TO THIS SECTION SHALL BE PAYABLE UNLESS THE MEMBER WOULD OTHERWISE BE ENTITLED TO A GREATER BENEFIT UNDER OTHER PROVISIONS OF THIS SECTION, IN WHICH CASE SUCH GREATER BENEFIT SHALL BE PAYABLE.

E. THE PERFORMANCE OF DUTY DISABILITY BENEFIT PROVIDED FOR IN THIS SECTION SHALL BE IN LIEU OF ANY OTHER RETIREMENT BENEFIT WHICH SUCH MEMBER OR RETIREE IS OR MAY BE ENTITLED TO RECEIVE FROM THE RETIREMENT SYSTEM.

S 8. The administrative code of the city of New York is amended by adding a new section 13-551.1 to read as follows:

S 13-551.1 PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE

OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE 37 OF THE UNITED STATE CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN DECLARED BY CONGRESS.

B. APPLICATION FOR RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE OF DUTY MAY BE MADE BY FILING AN APPLICATION WITH THE DEPARTMENT IN WHICH THE MEMBER IS EMPLOYED. APPLICATION MAY BE MADE NOT LATER THAN TWO YEARS AFTER THE MEMBER OR RETIREE IS DISCONTINUED FROM ACTIVE DUTY AND PROVIDED THAT THE MEMBER MEETS THE REQUIREMENTS OF THIS SECTION.

C. AFTER THE FILING OF SUCH AN APPLICATION, SUCH MEMBER OR RETIREE SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS. IF THE MEDICAL BOARD DETERMINES THAT SUCH PERSON IS PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTY AND OUGHT TO BE RETIRED, HE OR SHE SHALL BE SO RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE RETIREMENT SYSTEM.

D. IN THE CASE OF A MEMBER ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT UNDER THIS SECTION, FINAL AVERAGE SALARY SHALL MEAN THE REGULAR COMPENSATION EARNED FROM SUCH PARTICIPATING EMPLOYER BY A MEMBER DURING THE TWELVE MONTHS OF ACTUAL SERVICE IMMEDIATELY PRECEDING THE DATE OF SUCH EMPLOYEE'S RETIREMENT, EXCLUSIVE OF ANY LUMP SUM PAYMENTS FOR SICK LEAVE, OR ACCUMULATED VACATION CREDIT, OR ANY FORM OF TERMINATION PAY; PROVIDED, HOWEVER, IF THE COMPENSATION EARNED IN SAID TWELVE MONTHS EXCEEDS THAT OF THE PREVIOUS TWELVE MONTHS BY MORE THAN TWENTY PER CENTUM, THE AMOUNT IN EXCESS OF TWENTY PER CENTUM SHALL BE EXCLUDED IN THE COMPUTATION OF FINAL AVERAGE SALARY; PROVIDED FURTHER, HOWEVER, THAT THE BENEFITS COMPUTED PURSUANT TO THIS SECTION SHALL BE PAYABLE UNLESS THE MEMBER WOULD OTHERWISE BE ENTITLED TO A GREATER BENEFIT UNDER OTHER PROVISIONS OF THIS SECTION, IN WHICH CASE SUCH GREATER BENEFIT SHALL BE PAYABLE.

E. THE PERFORMANCE OF DUTY DISABILITY BENEFIT PROVIDED FOR IN THIS SECTION SHALL BE IN LIEU OF ANY OTHER RETIREMENT BENEFIT WHICH SUCH MEMBER OR RETIREE IS OR MAY BE ENTITLED TO RECEIVE FROM THE RETIREMENT SYSTEM.

S 9. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after September 11, 2001; provided that sections 507-j and 607-i of the retirement and social security law as added by sections four and five of this act shall expire on the same date as section 615 of such law expires; and provided, further, that applications for performance of duty disability retirement pursuant to this act, made on the basis of injuries sustained prior to the effective date of this act may be filed not later than two years after such effective date.

FISCAL NOTE.--This bill would allow certain members and retirees of public retirement systems in New York State who are members of the military on active duty who become physically incapacitated for the performance of duties as the result of an injury sustained in a combat theatre or combat zone of operations to receive a performance of duty disability

benefit of 75% of their one year final average salary. Affected individuals must file an application within two years of being discontinued from active duty. This bill would be deemed to have been in effect as of September 11, 2001.

If this bill is enacted, insofar as it would affect the New York State and Local Employees' Retirement System (NYS&LERS) and the New York State and Local Police and Fire Retirement System (NYS&LPFRS), the cost would depend on the age, service, salary and plan of the affected member. It is estimated that there could be per person one-time costs of as much as four (4) times salary. These costs would be borne by the State of New York and all the participating employers in the ERS and PFRS.

This estimate, dated December 1, 2008, and intended for use only during the 2009 Legislative Session, is Fiscal Note No. 2009-56, prepared by the Actuary for the NYS&LERS and the NYS&LPFRS.