

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:

1 Section 1. The retirement and social security law is amended by adding
2 a new section 65 to read as follows:
3 S 65. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN
4 COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED
5 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE
6 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY
7 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE
8 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE
9 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO
10 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE
11 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE
12 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED
13 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-
14 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,
15 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A
16 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO
17 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR
18 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"
19 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE
20 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN
21 DECLARED BY CONGRESS.
22 B. APPLICATION FOR RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE
23 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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1 WHICH SUCH MEMBER IS EMPLOYED. APPLICATION MAY BE MADE NOT LATER THAN
2 TWO YEARS AFTER THE MEMBER OR RETIREE IS DISCONTINUED FROM ACTIVE DUTY
3 AND PROVIDED THAT THE MEMBER MEETS THE REQUIREMENTS OF THIS SECTION.

4 C. AFTER THE FILING OF SUCH AN APPLICATION, SUCH MEMBER OR RETIREE
5 SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS. IF THE COMPTROLLER
6 DETERMINES THAT SUCH PERSON IS PHYSICALLY INCAPACITATED FOR THE PERFORM-
7 ANCE OF DUTY AND OUGHT TO BE RETIRED, HE OR SHE SHALL BE SO RETIRED.
8 SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE COMP-
9 TROLLER.

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

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

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

30 S 365. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN
31 COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED
32 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE
33 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY
34 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE
35 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE
36 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO
37 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE
38 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE
39 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED
40 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-
41 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,
42 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A
43 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO
44 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR
45 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"
46 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE
47 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN
48 DECLARED BY CONGRESS.

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

54 C. AFTER THE FILING OF SUCH AN APPLICATION, SUCH MEMBER OR RETIREE
55 SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS. IF THE COMPTROLLER
56 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

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

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

16 S 4. The retirement and social security law is amended by adding a new
17 section 507-j to read as follows:

18 S 507-J. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN
19 COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED
20 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE
21 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY
22 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE
23 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE
24 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO
25 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE
26 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE
27 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED
28 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-
29 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,
30 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A
31 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO
32 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR
33 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"
34 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE
35 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN
36 DECLARED BY CONGRESS.

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

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

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

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

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

10 S 5. The retirement and social security law is amended by adding a new
11 section 607-i to read as follows:

12 S 607-I. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN
13 COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED
14 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE
15 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY
16 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE
17 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE
18 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO
19 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE
20 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE
21 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED
22 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-
23 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,
24 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A
25 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO
26 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR
27 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"
28 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE
29 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN
30 DECLARED BY CONGRESS.

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

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

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

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

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

7 S 511-B. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN
8 COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED
9 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE
10 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY
11 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE
12 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE
13 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO
14 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE
15 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE
16 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED
17 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-
18 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,
19 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A
20 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO
21 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR
22 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"
23 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE
24 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN
25 DECLARED BY CONGRESS.

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

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

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

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

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

1 S 13-168.1 PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED
2 IN COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED
3 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE
4 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY
5 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE
6 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE
7 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO
8 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE
9 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE
10 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED
11 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-
12 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,
13 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A
14 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO
15 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR
16 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"
17 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE
18 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN
19 DECLARED BY CONGRESS.

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

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

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

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

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

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

1 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO
2 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE
3 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE
4 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED
5 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-
6 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,
7 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A
8 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO
9 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR
10 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"
11 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE
12 37 OF THE UNITED STATE CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN
13 DECLARED BY CONGRESS.

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

19 C. AFTER THE FILING OF SUCH AN APPLICATION, SUCH MEMBER OR RETIREE
20 SHALL BE GIVEN ONE OR MORE MEDICAL EXAMINATIONS. IF THE MEDICAL BOARD
21 DETERMINES THAT SUCH PERSON IS PHYSICALLY INCAPACITATED FOR THE PERFORM-
22 ANCE OF DUTY AND OUGHT TO BE RETIRED, HE OR SHE SHALL BE SO RETIRED.
23 SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE RETIRE-
24 MENT SYSTEM.

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

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

43 S 9. This act shall take effect immediately and shall be deemed to
44 have been in full force and effect on and after September 11, 2001;
45 provided that sections 507-j and 607-i of the retirement and social
46 security law as added by sections four and five of this act shall expire
47 on the same date as section 615 of such law expires; and provided,
48 further, that applications for performance of duty disability retirement
49 pursuant to this act, made on the basis of injuries sustained prior to
50 the effective date of this act may be filed not later than two years
51 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.