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2009-2010 Regular Sessions

I N S E N A T E

March 9, 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 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:

- 1 Section 1. The retirement and social security law is amended by adding  
2 a new section 63-g to read as follows:  
3 S 63-G. PERFORMANCE OF DUTY DISABILITY RETIREMENT; CERTAIN EMPLOYEES.  
4 A. ANY MEMBER EMPLOYED BY THE DEPARTMENT OF TAXATION AND FINANCE WHO IS  
5 A PEACE OFFICER, AS DEFINED IN SUBDIVISION FOUR OF SECTION 2.10 OF THE  
6 CRIMINAL PROCEDURE LAW OR IS A POLICE OFFICER AS DEFINED IN PARAGRAPH  
7 (Q) OF SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE  
8 LAW, WHO BECOMES PHYSICALLY OR MENTALLY INCAPACITATED FOR THE PERFORM-  
9 ANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY,  
10 SUSTAINED IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES SHALL BE  
11 PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THAT  
12 WHICH IS PROVIDED IN SECTION SIXTY-THREE OF THIS TITLE, SUBJECT TO THE  
13 PROVISIONS OF SECTION SIXTY-FOUR OF THIS TITLE.  
14 B. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR  
15 SPECIAL LAW TO THE CONTRARY, A MEMBER COVERED BY THIS SECTION WHO  
16 CONTRACTS HIV (WHERE THERE MAY HAVE BEEN EXPOSURE TO A BODILY FLUID AS A  
17 NATURAL AND PROXIMATE RESULT OF AN INJURY, SUSTAINED IN THE PERFORMANCE  
18 OR DISCHARGE OF HIS OR HER DUTIES AS DESCRIBED IN SUBDIVISION A OF THIS  
19 SECTION), TUBERCULOSIS OR HEPATITIS WILL BE PRESUMED TO HAVE CONTRACTED  
20 SUCH DISEASE IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES, AND  
21 WILL BE PRESUMED TO BE DISABLED FROM THE PERFORMANCE OF HIS OR HER  
22 DUTIES, UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE.

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

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1 C. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR  
2 SPECIAL LAW TO THE CONTRARY, ANY CONDITION OF IMPAIRMENT OF HEALTH  
3 CAUSED BY DISEASES OF THE HEART, RESULTING IN DISABILITY OR DEATH TO A  
4 MEMBER COVERED BY THIS SECTION, PRESENTLY EMPLOYED AND WHO SHALL HAVE  
5 SUSTAINED SUCH DISABILITY WHILE SO EMPLOYED, WHO SUCCESSFULLY PASSED A  
6 PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS A PEACE OFFICER, AS  
7 DEFINED IN SUBDIVISION FOUR OF SECTION 2.10 OF THE CRIMINAL PROCEDURE  
8 LAW OR AS A POLICE OFFICER AS DEFINED IN PARAGRAPH (Q) OF SUBDIVISION  
9 THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, WHICH EXAM-  
10 INATION FAILED TO DISCLOSE EVIDENCE OF ANY DISEASE OR OTHER IMPAIRMENT  
11 OF THE HEART, SHALL BE PRESUMPTIVE EVIDENCE THAT IT WAS INCURRED IN THE  
12 PERFORMANCE AND DISCHARGE OF DUTY, UNLESS THE CONTRARY BE PROVED BY  
13 COMPETENT EVIDENCE.

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

16 S 507-J. PERFORMANCE OF DUTY DISABILITY RETIREMENT; CERTAIN EMPLOY-  
17 EES. A. ANY MEMBER EMPLOYED BY THE DEPARTMENT OF TAXATION AND FINANCE  
18 WHO IS A PEACE OFFICER, AS DEFINED IN SUBDIVISION FOUR OF SECTION 2.10  
19 OF THE CRIMINAL PROCEDURE LAW OR IS A POLICE OFFICER AS DEFINED IN PARA-  
20 GRAPH (Q) OF SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL  
21 PROCEDURE LAW, WHO BECOMES PHYSICALLY OR MENTALLY INCAPACITATED FOR THE  
22 PERFORMANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY,  
23 SUSTAINED IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES SHALL BE  
24 PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THAT  
25 WHICH IS PROVIDED IN SECTION SIXTY-THREE OF THIS CHAPTER, SUBJECT TO THE  
26 PROVISIONS OF SECTION SIXTY-FOUR OF THIS CHAPTER.

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

36 C. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR  
37 SPECIAL LAW TO THE CONTRARY, ANY CONDITION OF IMPAIRMENT OF HEALTH  
38 CAUSED BY DISEASES OF THE HEART, RESULTING IN DISABILITY OR DEATH TO A  
39 MEMBER COVERED BY THIS SECTION, PRESENTLY EMPLOYED AND WHO SHALL HAVE  
40 SUSTAINED SUCH DISABILITY WHILE SO EMPLOYED, WHO SUCCESSFULLY PASSED A  
41 PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS A PEACE OFFICER, AS  
42 DEFINED IN SUBDIVISION FOUR OF SECTION 2.10 OF THE CRIMINAL PROCEDURE  
43 LAW OR AS A POLICE OFFICER AS DEFINED IN PARAGRAPH (Q) OF SUBDIVISION  
44 THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, WHICH EXAM-  
45 INATION FAILED TO DISCLOSE EVIDENCE OF ANY DISEASE OR OTHER IMPAIRMENT  
46 OF THE HEART, SHALL BE PRESUMPTIVE EVIDENCE THAT IT WAS INCURRED IN THE  
47 PERFORMANCE AND DISCHARGE OF DUTY, UNLESS THE CONTRARY BE PROVED BY  
48 COMPETENT EVIDENCE.

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

51 S 607-I. PERFORMANCE OF DUTY DISABILITY RETIREMENT; CERTAIN EMPLOY-  
52 EES. A. ANY MEMBER EMPLOYED BY THE DEPARTMENT OF TAXATION AND FINANCE  
53 WHO IS A PEACE OFFICER, AS DEFINED IN SUBDIVISION FOUR OF SECTION 2.10  
54 OF THE CRIMINAL PROCEDURE LAW OR IS A POLICE OFFICER AS DEFINED IN PARA-  
55 GRAPH (Q) OF SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL  
56 PROCEDURE LAW, WHO BECOMES PHYSICALLY OR MENTALLY INCAPACITATED FOR THE

1 PERFORMANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY,  
2 SUSTAINED IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES SHALL BE  
3 PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THAT  
4 WHICH IS PROVIDED IN SECTION SIXTY-THREE OF THIS CHAPTER, SUBJECT TO THE  
5 PROVISIONS OF SECTION SIXTY-FOUR OF THIS CHAPTER.

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

15 C. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR  
16 SPECIAL LAW TO THE CONTRARY, ANY CONDITION OF IMPAIRMENT OF HEALTH  
17 CAUSED BY DISEASES OF THE HEART, RESULTING IN DISABILITY OR DEATH TO A  
18 MEMBER COVERED BY THIS SECTION, PRESENTLY EMPLOYED AND WHO SHALL HAVE  
19 SUSTAINED SUCH DISABILITY WHILE SO EMPLOYED, WHO SUCCESSFULLY PASSED A  
20 PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS A PEACE OFFICER, AS  
21 DEFINED IN SUBDIVISION FOUR OF SECTION 2.10 OF THE CRIMINAL PROCEDURE  
22 LAW OR AS A POLICE OFFICER AS DEFINED IN PARAGRAPH (Q) OF SUBDIVISION  
23 THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, WHICH EXAM-  
24 INATION FAILED TO DISCLOSE EVIDENCE OF ANY DISEASE OR OTHER IMPAIRMENT  
25 OF THE HEART, SHALL BE PRESUMPTIVE EVIDENCE THAT IT WAS INCURRED IN THE  
26 PERFORMANCE AND DISCHARGE OF DUTY, UNLESS THE CONTRARY BE PROVED BY  
27 COMPETENT EVIDENCE.

28 S 4. This act shall take effect immediately provided that the amend-  
29 ments to articles 14 and 15 of the retirement and social security law  
30 made by sections two and three of this act shall expire on the same date  
31 as such articles expire pursuant to section 615 of such law.

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

This bill would allow certain peace officers and police officers employed by the Department of Tax and Finance to be eligible for a performance of duty disability retirement allowance which would be 75% of final average salary less any Workers' 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 \$63,000 in the annual contributions of the State of New York for the fiscal year ending March 31, 2010.

In addition to the annual contributions discussed above, we estimate that there will be a past service cost of approximately \$183,000 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, 2010.

These estimated costs are based on eighty (80) officers employed by the Department of Tax and Finance with a total salary of approximately \$4.7 million for the fiscal year ending March 31, 2008.

This estimate, dated December 1, 2008, and intended for use only during the 2009 Legislative Session, is Fiscal Note No. 2009-70, prepared by the Actuary for the New York State and Local Employees' Retirement System.