

3687

2009-2010 Regular Sessions

I N S E N A T E

March 27, 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 disability benefits for firefighters employed by the division of military and naval affairs

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 two new sections 63-g and 63-h to read as follows:

3 S 63-G. PERFORMANCE OF DUTY DISABILITY RETIREMENT. A. ANY MEMBER OF
4 THE RETIREMENT SYSTEM EMPLOYED BY THE DIVISION OF MILITARY AND NAVAL
5 AFFAIRS SHALL BE ELIGIBLE TO RETIRE PURSUANT TO THE PROVISIONS OF THIS
6 SECTION IF HE OR SHE IS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIRE-
7 FIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING
8 AND SAFETY OFFICER.

9 B. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR
10 SPECIAL LAW TO THE CONTRARY, ANY MEMBER WHO BECOMES PHYSICALLY OR
11 MENTALLY INCAPACITATED AS THE RESULT OF A DISABILITY FROM ANY CONDITION
12 OF IMPAIRMENT OF HEALTH CAUSED BY: (1) DISEASES OF THE HEART; OR (2) ANY
13 (I) MELANOMA OR (II) CONDITION OF CANCER AFFECTING THE LYMPHATIC, DIGES-
14 TIVE, HEMATOLOGICAL, URINARY, NEUROLOGICAL, BREAST, REPRODUCTIVE OR
15 PROSTATE SYSTEMS, WHO IS PRESENTLY EMPLOYED AND WHO SHALL HAVE SUSTAINED
16 SUCH DISABILITY WHILE SO EMPLOYED AND WHILE ACTUALLY A MEMBER OF THE
17 RETIREMENT SYSTEM, WHO SUCCESSFULLY PASSED A PHYSICAL EXAMINATION ON
18 ENTRY INTO SERVICE AS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIRE-
19 FIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING
20 AND SAFETY OFFICER, WHICH EXAMINATION FAILED TO DISCLOSE EVIDENCE OF ANY
21 DISEASE OR OTHER IMPAIRMENT OF THE HEART OR SUCH MELANOMA OR CONDITION,
22 SHALL BE PRESUMPTIVE EVIDENCE THAT SUCH DISABILITY OR DEATH (A) WAS
23 CAUSED BY THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT, NOT CAUSED BY
24 SUCH FIREFIGHTER'S OWN NEGLIGENCE AND (B) WAS INCURRED IN THE PERFORM-

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

LBD08791-02-9

1 ANCE AND DISCHARGE OF DUTY, UNLESS THE CONTRARY BE PROVEN BY COMPETENT
2 EVIDENCE AND SHALL BE PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT
3 BENEFIT PAYABLE PURSUANT TO THIS SECTION.

4 C. APPLICATION FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOW-
5 ANCE FOR SUCH A MEMBER MAY BE MADE BY:

6 1. SUCH MEMBER;

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

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

9 D. AFTER THE FILING OF SUCH AN APPLICATION SUCH MEMBER SHALL BE GIVEN
10 ONE OR MORE MEDICAL EXAMINATIONS.

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

16 F. THE RETIREMENT ALLOWANCE PAYABLE UPON RETIREMENT FOR PERFORMANCE OF
17 DUTY DISABILITY SHALL CONSIST OF A PENSION OF ONE-HALF OF HIS OR HER
18 FINAL AVERAGE SALARY PLUS AN ANNUITY WHICH SHALL BE THE ACTUARIAL EQUIV-
19 ALENT OF SUCH MEMBER'S ACCUMULATED CONTRIBUTIONS, IF ANY.

20 G. IF THE MEMBER, AT THE TIME OF THE FILING OF AN APPLICATION UNDER
21 THE PROVISIONS OF SUBDIVISION C OF THIS SECTION, IS ELIGIBLE FOR A
22 SERVICE RETIREMENT BENEFIT, THEN AND IN THAT EVENT, SUCH MEMBER MAY
23 SIMULTANEOUSLY FILE AN APPLICATION FOR SERVICE RETIREMENT IN ACCORDANCE
24 WITH THE PROVISIONS OF SECTION SEVENTY OF THIS ARTICLE, PROVIDED THAT
25 THE MEMBER INDICATES ON THE APPLICATION FOR SERVICE RETIREMENT THAT SUCH
26 APPLICATION IS FILED WITHOUT PREJUDICE TO THE APPLICATION FOR PERFORM-
27 ANCE OF DUTY DISABILITY RETIREMENT.

28 H. ANY BENEFIT PROVIDED PURSUANT TO THIS SECTION SHALL NOT BE CONSID-
29 ERED AS AN ACCIDENTAL DISABILITY BENEFIT WITHIN THE MEANING OF SECTION
30 SIXTY-FOUR OF THIS TITLE. ANY BENEFIT PAYABLE PURSUANT TO THE WORKERS'
31 COMPENSATION LAW TO A MEMBER RECEIVING A DISABILITY ALLOWANCE PURSUANT
32 TO THIS SECTION SHALL BE IN ADDITION TO SUCH RETIREMENT FOR DISABILITY
33 INCURRED IN PERFORMANCE OF DUTY ALLOWANCE.

34 S 63-H. CERTAIN IMPAIRMENTS OF HEALTH; PRESUMPTION. A. ANY MEMBER OF
35 THE RETIREMENT SYSTEM EMPLOYED BY THE DIVISION OF MILITARY AND NAVAL
36 AFFAIRS SHALL BE ELIGIBLE TO RETIRE PURSUANT TO THE PROVISIONS OF THIS
37 SECTION IF HE OR SHE IS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIRE-
38 FIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING
39 AND SAFETY OFFICER.

40 B. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR
41 SPECIAL LAW TO THE CONTRARY, ANY CONDITION OF IMPAIRMENT OF HEALTH
42 CAUSED BY: (1) DISEASES OF THE HEART; OR (2) ANY (I) MELANOMA OR (II)
43 CONDITION OF CANCER AFFECTING THE LYMPHATIC, DIGESTIVE, HEMATOLOGICAL,
44 URINARY, NEUROLOGICAL, BREAST, REPRODUCTIVE OR PROSTATE SYSTEMS RESULT-
45 ING IN DISABILITY TO A MEMBER COVERED BY THIS SECTION, PRESENTLY
46 EMPLOYED AND WHO SHALL HAVE SUSTAINED SUCH DISABILITY AS THE RESULT OF
47 AN ACCIDENT NOT CAUSED BY HIS OR HER OWN WILLFUL NEGLIGENCE SUSTAINED IN
48 SUCH SERVICE AND WHILE ACTUALLY A MEMBER OF THE RETIREMENT SYSTEM, WHO
49 SUCCESSFULLY PASSED A PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS AN
50 AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIREFIGHTER I, AIRPORT FIRE-
51 FIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING AND SAFETY OFFICER WHICH
52 EXAMINATION FAILED TO DISCLOSE EVIDENCE OF ANY DISEASE OR OTHER IMPAIR-
53 MENT OF THE HEART OR SUCH MELANOMA OR CONDITION, SHALL BE PRESUMPTIVE
54 EVIDENCE THAT SUCH DISABILITY OR DEATH (A) WAS CAUSED BY THE NATURAL AND
55 PROXIMATE RESULT OF AN ACCIDENT, NOT CAUSED BY SUCH FIREFIGHTER'S OWN
56 NEGLIGENCE AND (B) WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF

1 DUTY, UNLESS THE CONTRARY BE PROVEN BY COMPETENT EVIDENCE AND SHALL BE
2 PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THAT
3 WHICH IS PROVIDED IN SECTION SIXTY-THREE OF THIS TITLE, SUBJECT TO THE
4 PROVISIONS OF SECTION SIXTY-FOUR OF THIS TITLE.

5 C. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR
6 SPECIAL LAW TO THE CONTRARY, ANY CONDITION OF IMPAIRMENT OF HEALTH
7 CAUSED BY DISEASES OF THE LUNG, RESULTING IN DISABILITY TO A MEMBER
8 COVERED BY THIS SECTION, PRESENTLY EMPLOYED AND WHILE ACTUALLY A MEMBER
9 OF THE RETIREMENT SYSTEM, WHO SUCCESSFULLY PASSED A PHYSICAL EXAMINATION
10 ON ENTRY INTO SERVICE AS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT
11 FIREFIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAIN-
12 ING AND SAFETY OFFICER, WHICH EXAMINATION FAILED TO DISCLOSE EVIDENCE OF
13 ANY DISEASE OR OTHER IMPAIRMENT OF THE LUNG, SHALL BE PRESUMPTIVE
14 EVIDENCE THAT SUCH DISABILITY OR DEATH (1) WAS CAUSED BY THE NATURAL AND
15 PROXIMATE RESULT OF AN ACCIDENT, NOT CAUSED BY SUCH FIREFIGHTER'S OWN
16 NEGLIGENCE AND (2) WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF
17 DUTY, UNLESS THE CONTRARY BE PROVEN BY COMPETENT EVIDENCE AND SHALL BE
18 PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THAT
19 WHICH IS PROVIDED IN SECTION SIXTY-THREE OF THIS TITLE, SUBJECT TO THE
20 PROVISIONS OF SECTION SIXTY-FOUR OF THIS TITLE.

21 S 2. The retirement and social security law is amended by adding two
22 new sections 607-i and 607-j to read as follows:

23 S 607-I. PERFORMANCE OF DUTY DISABILITY RETIREMENT. A. ANY MEMBER OF
24 THE RETIREMENT SYSTEM EMPLOYED BY THE DIVISION OF MILITARY AND NAVAL
25 AFFAIRS SHALL BE ELIGIBLE TO RETIRE PURSUANT TO THE PROVISIONS OF THIS
26 SECTION IF HE OR SHE IS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIRE-
27 FIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING
28 AND SAFETY OFFICER.

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30 SPECIAL LAW TO THE CONTRARY, ANY MEMBER WHO BECOMES PHYSICALLY OR
31 MENTALLY INCAPACITATED AS THE RESULT OF A DISABILITY FROM ANY CONDITION
32 OF IMPAIRMENT OF HEALTH CAUSED BY: (1) DISEASES OF THE HEART; OR (2) ANY
33 (I) MELANOMA OR (II) CONDITION OF CANCER AFFECTING THE LYMPHATIC, DIGES-
34 TIVE, HEMATOLOGICAL, URINARY, NEUROLOGICAL, BREAST, REPRODUCTIVE OR
35 PROSTATE SYSTEMS, WHO IS PRESENTLY EMPLOYED AND WHO SHALL HAVE SUSTAINED
36 SUCH DISABILITY WHILE SO EMPLOYED AND WHILE ACTUALLY A MEMBER OF THE
37 RETIREMENT SYSTEM, WHO SUCCESSFULLY PASSED A PHYSICAL EXAMINATION ON
38 ENTRY INTO SERVICE AS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIRE-
39 FIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING
40 AND SAFETY OFFICER, WHICH EXAMINATION FAILED TO DISCLOSE EVIDENCE OF ANY
41 DISEASE OR OTHER IMPAIRMENT OF THE HEART OR SUCH MELANOMA OR CONDITION,
42 SHALL BE PRESUMPTIVE EVIDENCE THAT SUCH DISABILITY OR DEATH (A) WAS
43 CAUSED BY THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT, NOT CAUSED BY
44 SUCH FIREFIGHTER'S OWN NEGLIGENCE AND (B) WAS INCURRED IN THE PERFORM-
45 ANCE AND DISCHARGE OF DUTY, UNLESS THE CONTRARY BE PROVEN BY COMPETENT
46 EVIDENCE AND SHALL BE PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT
47 BENEFIT PAYABLE PURSUANT TO THIS SECTION.

48 C. APPLICATION FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOW-
49 ANCE FOR SUCH A MEMBER MAY BE MADE BY:

- 50 1. SUCH MEMBER;
- 51 2. THE HEAD OF THE DEPARTMENT IN WHICH SUCH MEMBER IS EMPLOYED; OR
- 52 3. SOME PERSON ACTING ON BEHALF OF AND AUTHORIZED BY SUCH MEMBER.

53 D. AFTER THE FILING OF SUCH AN APPLICATION SUCH MEMBER SHALL BE GIVEN
54 ONE OR MORE MEDICAL EXAMINATIONS.

55 E. IF THE COMPTROLLER DETERMINES THAT THE MEMBER IS PHYSICALLY OR
56 MENTALLY INCAPACITATED FOR THE PERFORMANCE OF DUTY AND OUGHT TO BE

1 RETIRED FOR PERFORMANCE OF DUTY DISABILITY, SUCH MEMBER SHALL BE SO
2 RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE
3 COMPTROLLER.

4 F. THE RETIREMENT ALLOWANCE PAYABLE UPON RETIREMENT FOR PERFORMANCE OF
5 DUTY DISABILITY SHALL CONSIST OF A PENSION OF ONE-HALF OF HIS OR HER
6 FINAL AVERAGE SALARY PLUS AN ANNUITY WHICH SHALL BE THE ACTUARIAL EQUIV-
7 ALENT OF SUCH MEMBER'S ACCUMULATED CONTRIBUTIONS, IF ANY.

8 G. IF THE MEMBER, AT THE TIME OF THE FILING OF AN APPLICATION UNDER
9 THE PROVISIONS OF SUBDIVISION C OF THIS SECTION, IS ELIGIBLE FOR A
10 SERVICE RETIREMENT BENEFIT, THEN AND IN THAT EVENT, SUCH MEMBER MAY
11 SIMULTANEOUSLY FILE AN APPLICATION FOR SERVICE RETIREMENT IN ACCORDANCE
12 WITH THE PROVISIONS OF SECTION SEVENTY OF THIS CHAPTER, PROVIDED THAT
13 THE MEMBER INDICATES ON THE APPLICATION FOR SERVICE RETIREMENT THAT SUCH
14 APPLICATION IS FILED WITHOUT PREJUDICE TO THE APPLICATION FOR PERFORM-
15 ANCE OF DUTY DISABILITY RETIREMENT.

16 H. ANY BENEFIT PROVIDED PURSUANT TO THIS SECTION SHALL NOT BE CONSID-
17 ERED AS AN ACCIDENTAL DISABILITY BENEFIT WITHIN THE MEANING OF SECTION
18 SIXTY-FOUR OF THIS CHAPTER. ANY BENEFIT PAYABLE PURSUANT TO THE WORKERS'
19 COMPENSATION LAW TO A MEMBER RECEIVING A DISABILITY ALLOWANCE PURSUANT
20 TO THIS SECTION SHALL BE IN ADDITION TO SUCH RETIREMENT FOR DISABILITY
21 INCURRED IN PERFORMANCE OF DUTY ALLOWANCE.

22 S 607-J. CERTAIN IMPAIRMENTS OF HEALTH; PRESUMPTION. A. ANY MEMBER OF
23 THE RETIREMENT SYSTEM EMPLOYED BY THE DIVISION OF MILITARY AND NAVAL
24 AFFAIRS SHALL BE ELIGIBLE TO RETIRE PURSUANT TO THE PROVISIONS OF THIS
25 SECTION IF HE OR SHE IS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIRE-
26 FIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING
27 AND SAFETY OFFICER.

28 B. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR
29 SPECIAL LAW TO THE CONTRARY, ANY CONDITION OF IMPAIRMENT OF HEALTH
30 CAUSED BY: (1) DISEASES OF THE HEART; OR (2) ANY (I) MELANOMA OR (II)
31 CONDITION OF CANCER AFFECTING THE LYMPHATIC, DIGESTIVE, HEMATOLOGICAL,
32 URINARY, NEUROLOGICAL, BREAST, REPRODUCTIVE OR PROSTATE SYSTEMS RESULT-
33 ING IN DISABILITY TO A MEMBER COVERED BY THIS SECTION, PRESENTLY
34 EMPLOYED AND WHO SHALL HAVE SUSTAINED SUCH DISABILITY AS THE RESULT OF
35 AN ACCIDENT NOT CAUSED BY HIS OR HER OWN WILLFUL NEGLIGENCE SUSTAINED IN
36 SUCH SERVICE AND WHILE ACTUALLY A MEMBER OF THE RETIREMENT SYSTEM, WHO
37 SUCCESSFULLY PASSED A PHYSICAL EXAMINATION ON ENTRY INTO SERVICE AS AN
38 AIRPORT FIREFIGHTER APPRENTICE, AIRPORT FIREFIGHTER I, AIRPORT FIRE-
39 FIGHTER II, AIRPORT FIREFIGHTER III OR TRAINING AND SAFETY OFFICER WHICH
40 EXAMINATION FAILED TO DISCLOSE EVIDENCE OF ANY DISEASE OR OTHER IMPAIR-
41 MENT OF THE HEART OR SUCH MELANOMA OR CONDITION, SHALL BE PRESUMPTIVE
42 EVIDENCE THAT SUCH DISABILITY OR DEATH (A) WAS CAUSED BY THE NATURAL AND
43 PROXIMATE RESULT OF AN ACCIDENT, NOT CAUSED BY SUCH FIREFIGHTER'S OWN
44 NEGLIGENCE AND (B) WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF
45 DUTY, UNLESS THE CONTRARY BE PROVEN BY COMPETENT EVIDENCE AND SHALL BE
46 PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THAT
47 WHICH IS PROVIDED IN SECTION SIXTY-THREE OF THIS CHAPTER, SUBJECT TO THE
48 PROVISIONS OF SECTIONS SIXTY-THREE AND SIXTY-FOUR OF THIS CHAPTER.

49 C. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR
50 SPECIAL LAW TO THE CONTRARY, ANY CONDITION OF IMPAIRMENT OF HEALTH
51 CAUSED BY DISEASES OF THE LUNG, RESULTING IN DISABILITY TO A MEMBER
52 COVERED BY THIS SECTION, PRESENTLY EMPLOYED AND WHILE ACTUALLY A MEMBER
53 OF THE RETIREMENT SYSTEM, WHO SUCCESSFULLY PASSED A PHYSICAL EXAMINATION
54 ON ENTRY INTO SERVICE AS AN AIRPORT FIREFIGHTER APPRENTICE, AIRPORT
55 FIREFIGHTER I, AIRPORT FIREFIGHTER II, AIRPORT FIREFIGHTER III OR TRAIN-
56 ING AND SAFETY OFFICER, WHICH EXAMINATION FAILED TO DISCLOSE EVIDENCE OF

1 ANY DISEASE OR OTHER IMPAIRMENT OF THE LUNG, SHALL BE PRESUMPTIVE
2 EVIDENCE THAT SUCH DISABILITY OR DEATH (1) WAS CAUSED BY THE NATURAL AND
3 PROXIMATE RESULT OF AN ACCIDENT, NOT CAUSED BY SUCH FIREFIGHTER'S OWN
4 NEGLIGENCE AND (2) WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF
5 DUTY, UNLESS THE CONTRARY BE PROVEN BY COMPETENT EVIDENCE AND SHALL BE
6 PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THAT
7 WHICH IS PROVIDED IN SECTION SIXTY-THREE OF THIS CHAPTER, SUBJECT TO THE
8 PROVISIONS OF SECTION SIXTY-FOUR OF THIS CHAPTER.

9 S 3. This act shall take effect immediately; provided, however, that
10 sections 607-i and 607-j of the retirement and social security law, as
11 added by section two of this act, shall expire on the same date as arti-
12 cle 15 of such law expires pursuant to section 615 of such law.

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

This bill would grant improved disability pensions to airport fire-
fighters and training and safety officers in the New York State division
of military and naval affairs who sustain a disability related to heart
disease, lung disease and certain forms of cancer. This bill would help
individuals who sustained such disabilities to establish the presumption
that they were incurred in the performance and discharge of duty, unless
the contrary be proven by competent evidence. The benefit for a heart or
cancer related accidental disability, or a lung disease related perform-
ance of duty disability would be 75% of final average salary less work-
er's compensation. The benefit for a heart or cancer related performance
of duty disability benefit would be 50% of final average salary.

If this bill is enacted, the disability benefits of affected members
with heart, lung of certain cancer related disabilities would increase
from approximately 1/3 of final average salary (FAS) to 50% of FAS or
75% of FAS. The estimated increase in the annual contributions of the
State of New York for the fiscal year ending March 31, 2009 would be
approximately \$24,000.

These estimated costs are based on ninety-four (94) members having an
annual salary for the fiscal year ending March 31, 2009 of approximately
\$4.4 million.

This estimate, dated March 25, 2009, and intended for use only during
the 2009 Legislative Session, is Fiscal Note No. 2009-146, prepared by
the Actuary for the New York State and Local Employees' Retirement
System.