

3894

2011-2012 Regular Sessions

I N S E N A T E

March 9, 2011

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the military law, in relation to enacting the "New York city health and hospitals corporation military pay act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York city health and hospitals corporation military pay act".

3 S 2. Subdivision 5-a of section 242 of the military law, as added by
4 chapter 238 of the laws of 2008, subparagraph (ii) of paragraph (b) and
5 the opening paragraph of paragraph (e) as amended by chapter 240 of the
6 laws of 2008, is amended to read as follows:

7 5-a. Pay for employees of a city with a population of one million or
8 more. This subdivision shall govern the calculation of compensation and,
9 where applicable, repayment of same by public officers or employees of a
10 city with a population of one million or more OR WHO ARE EMPLOYEES OF
11 THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION who are engaged in
12 the performance of ordered military duty, including time spent traveling
13 to and returning from such duty. In any conflict between this subdivi-
14 sion and any other provision of law with respect to such public servant
15 soldiers, this subdivision shall be controlling.

16 (a) Definitions. As used in this subdivision:

17 (i) "Base pay of city salary" means the base pay received by a public
18 officer or employee from employment by a city. For public officers and
19 employees who, prior to the effective date of this subdivision, elected
20 to participate in a "full pay/repayment plan", have returned to city
21 employment from ordered military duty as of the effective date of this
22 subdivision and are, on the effective date of this subdivision, public
23 officers or employees, the base pay of city salary shall be calculated
24 by the implementing agency as the salary received by the public servant

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

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1 soldier as of the effective date of this subdivision or the date of
2 return to city service, whichever is later.

3 For public officers and employees who, prior to the effective date of
4 this subdivision, elected to participate in a "full pay/repayment plan"
5 and who return to city employment from ordered military duty after the
6 effective date of this subdivision, the base pay of city salary shall be
7 calculated on the date of return to city employment.

8 For public officers and employees who, prior to the effective date of
9 this subdivision, elected to participate in a "full pay/repayment plan"
10 and who have, by the effective date of this subdivision, already sepa-
11 rated from city employment in a manner other than by retirement, and
12 except where the implementing agency shall determine the existence of
13 hardship, the base pay of city salary shall be calculated as the salary
14 received by the public servant soldier as of the date of separation from
15 city service.

16 For public officers and employees who, prior to the effective date of
17 this subdivision, elected to participate in a "full pay/repayment plan"
18 and who separate from city employment in a manner other than retirement
19 after the effective date of this subdivision, and except where the
20 implementing agency shall determine the existence of hardship, the base
21 pay of city salary shall be calculated as the salary received by the
22 public servant soldier as of the date of return to city service.

23 (ii) "Balloon payment" means the payment required for full satisfac-
24 tion of any remaining outstanding repayment obligation after ten years
25 from the date of return from ordered military duty pursuant to paragraph
26 (e) of this subdivision.

27 (iii) "City" means a city with a population of one million or more.

28 (iv) "City salary" means the gross salary received by a public officer
29 or employee from employment by a city, before taxes, deductions, or
30 court-ordered payments, required or voluntary; but excluding payments by
31 a city as employer for health, pension, and other benefits.

32 (v) "Covered operation" means those military operations designated by
33 the federal government of the United States, in support of "Operation
34 Enduring Freedom", "Operation Iraqi Freedom", "Operation Noble Eagle",
35 or successors thereto, or operations specifically connected by federal
36 designation, action or implication with homeland security. The imple-
37 menting agency may make such additional designations on a case-by-case
38 basis as it shall deem, in its discretion, to be in keeping with the
39 spirit and intent of this subdivision.

40 (vi) "Differential pay" means the pay calculated as the difference
41 between a public servant soldier's military salary and city salary,
42 where the military salary is less than the city salary.

43 (vii) "Full pay/repayment plan" means a salary and benefits plan in
44 effect in a city prior to the effective date of this subdivision whereby
45 a public servant soldier elected to receive city salary while on mili-
46 tary duty, but is required to repay the lesser of such city salary or
47 military salary to a city upon return from military duty.

48 (viii) "Implementing agency" means an agency of a city, as designated
49 by the mayor of such city in writing, that is authorized to implement
50 the provisions of this subdivision.

51 (ix) "Military salary" means the gross salary paid by the government
52 of the United States to a public servant soldier for ordered military
53 duty in the armed forces of the United States in a covered operation, as
54 further defined by the implementing agency, provided that such military
55 pay shall be calculated without regard to such extra or additional

1 stipends as hazard pay, housing or food allowances, or other similar
2 additions.

3 (x) "Public officer" or "employee" means a public officer or an
4 employee of a city OR AN EMPLOYEE OF THE NEW YORK CITY HEALTH AND HOSPI-
5 TALS CORPORATION.

6 (xi) "Public servant soldier" means a public officer [or], employee of
7 a city OR AN EMPLOYEE OF THE NEW YORK CITY HEALTH AND HOSPITALS CORPO-
8 RATION performing ordered military duty in connection with a covered
9 operation.

10 (b) The mayor of a city shall designate an agency of such city to be
11 the implementing agency that will administer and implement this subdivi-
12 sion. The implementing agency is hereby authorized to and shall:

13 (i) provide for the continuation of health insurance benefits, to the
14 public servant soldier and to such public servant soldier's family, if
15 the family had been included in such coverage prior to the public serv-
16 ant soldier beginning ordered military duty, under the same terms and
17 conditions as applied to such public servant soldier prior to leaving
18 city employment for ordered military duty; and

19 (ii) provide for hardship under certain conditions determined by the
20 implementing agency for public servant soldiers who elected to partic-
21 ipate in a "full pay/repayment plan". Such conditions shall include, but
22 shall not be limited to, any material unforeseen or compelling changes
23 in circumstances affecting a public servant soldier's ability to repay
24 that occurred since such public servant soldier elected to participate
25 in the "full pay/repayment plan," including but not limited to injuries
26 sustained while on ordered military duty, or a determination by the
27 implementing agency that the public servant soldier is or will be expe-
28 riencing severe economic hardship due to a change in circumstances.
29 Relief may include an extension of the repayment term or a reduction in
30 the percentage of salary dedicated to repayment, or a modification to
31 the requirement for a balloon payment. Such determinations of economic
32 hardship may be made on a case-by-case basis, and the implementing agen-
33 cy may require the provision of such information by the public servant
34 soldier as it deems necessary to make such determination.

35 (c) Subdivision five of this section or any other law to the contrary
36 notwithstanding, until August first, two thousand ten, unless the mayor
37 of a city, in his or her discretion, extends such date, a public officer
38 or employee shall be paid city salary as such public officer or employee
39 for any and all periods of absence while engaged in the performance of
40 ordered military duty, and while going to and returning from such duty,
41 not exceeding thirty working days in any one calendar year and not
42 exceeding thirty working days in any one continuous period of such
43 absence.

44 (d) Subdivision five of this section or any other law to the contrary
45 notwithstanding, until August first, two thousand ten, unless the mayor
46 of a city, in his or her discretion, extends such date, a public servant
47 soldier shall, after having received the city salary to which he or she
48 is entitled pursuant to paragraph (c) of this subdivision, be paid
49 differential pay thereafter on his or her regularly scheduled pay period
50 for the duration of such ordered military duty, if such ordered military
51 duty is in connection with a covered operation. No repayment shall be
52 required to the city for such differential pay received by a public
53 servant soldier, provided that this prohibition on repayment shall not
54 apply in the case of a material error in calculation that results in an
55 unwarranted increase to the public servant soldier. Repayment of any

1 such overage shall be governed by the terms of paragraph (e) of this
2 subdivision.

3 (e) A public officer or employee who, prior to the effective date of
4 this subdivision, elected to participate in a "full pay/repayment plan"
5 and, in having done so, incurred a repayment obligation, shall make
6 repayments in accordance with terms adopted by the implementing agency,
7 except that, with respect to such repayment obligations, such officer or
8 employee shall have satisfied the obligation to repay when he or she has
9 repaid eighty-five percent of the amount of city salary or military
10 salary, whichever is less, less other such discounts implemented by the
11 implementing agency as of the effective date of this subdivision and
12 such incentives as may be implemented by the implementing agency to
13 encourage payment, and no such term shall:

14 (i) require a public officer or employee, while employed by such city,
15 to pay in any pay period more than seven and one-half percent of his or
16 her base pay of city salary toward satisfying his or her repayment obli-
17 gation, except that a term may provide for full satisfaction of any
18 remaining outstanding repayment obligation after ten years from the date
19 of return from ordered military duty; or

20 (ii) require a retired public officer or employee to pay, in any
21 month, an amount more than seven and one-half percent of his or her
22 monthly pension payment, except that a term may provide for full satis-
23 faction of any remaining outstanding repayment obligation after ten
24 years from the date of return from ordered military duty; or

25 (iii) require a public officer or employee separated from employment
26 by such city in a manner other than by retirement, to pay, in any year,
27 an amount more than seven and one-half percent of the base pay of city
28 salary, except that a term may provide for full satisfaction of any
29 remaining outstanding repayment obligation after ten years from the date
30 of return from ordered military duty.

31 (f) Notwithstanding paragraph (e) of this subdivision, a city shall
32 not require the satisfaction of any repayment obligation in the event
33 that a public servant soldier is killed in the performance of ordered
34 military duty.

35 S 3. This act shall take effect immediately.