

3535

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 25, 2011

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Introduced by M. of A. CASTELLI, ORTIZ, TEDISCO, BURLING, SALADINO, MENG  
-- Multi-Sponsored by -- M. of A. AMEDORE, BARCLAY, BOYLE, BUTLER,  
CALHOUN, CONTE, CORWIN, CROUCH, DUPREY, FINCH, FITZPATRICK, GIGLIO,  
HAWLEY, HAYES, JORDAN, KOLB, P. LOPEZ, McDONOUGH, McKEVITT, J. MILLER,  
MOLINARO, MONTESANO, MURRAY, OAKS, RABBITT, RAIA, REILICH, SAYWARD,  
SPANO, THIELE, TOBACCO -- read once and referred to the Committee on  
Governmental Employees

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 ASSEM-  
BLY, 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"

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

LBD05484-02-1

1 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE  
2 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN  
3 DECLARED BY CONGRESS.

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

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

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

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

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

35 S 365. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN  
36 COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED  
37 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE  
38 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY  
39 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE  
40 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE  
41 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO  
42 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE  
43 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE  
44 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED  
45 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-  
46 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,  
47 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A  
48 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO  
49 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR  
50 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"  
51 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE  
52 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN  
53 DECLARED BY CONGRESS.

54 B. APPLICATION FOR RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE  
55 OF DUTY MAY BE MADE BY SUCH MEMBER, OR THE HEAD OF THE DEPARTMENT IN  
56 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 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

1 SHALL BE SO RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE  
2 APPROVED BY THE HEAD OF THE RETIREMENT SYSTEM.

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

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

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

23 S 507-J. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN  
24 COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED  
25 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE  
26 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY  
27 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE  
28 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE  
29 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO  
30 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE  
31 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE  
32 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED  
33 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-  
34 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,  
35 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A  
36 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO  
37 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR  
38 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"  
39 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE  
40 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN  
41 DECLARED BY CONGRESS.

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

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

53 D. IN THE CASE OF A MEMBER ELIGIBLE FOR A PERFORMANCE OF DUTY DISABIL-  
54 ITY RETIREMENT UNDER THIS SECTION, FINAL AVERAGE SALARY SHALL MEAN THE  
55 REGULAR COMPENSATION EARNED FROM SUCH PARTICIPATING EMPLOYER BY A MEMBER  
56 DURING THE TWELVE MONTHS OF ACTUAL SERVICE IMMEDIATELY PRECEDING THE

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

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

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

17 S 607-I. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN  
18 COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED  
19 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE  
20 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY  
21 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE  
22 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE  
23 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO  
24 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE  
25 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE  
26 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED  
27 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-  
28 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,  
29 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A  
30 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO  
31 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR  
32 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"  
33 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE  
34 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN  
35 DECLARED BY CONGRESS.

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

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

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

1 THAT THE BENEFITS COMPUTED PURSUANT TO THIS SECTION SHALL BE PAYABLE  
2 UNLESS THE MEMBER WOULD OTHERWISE BE ENTITLED TO A GREATER BENEFIT UNDER  
3 OTHER PROVISIONS OF THIS SECTION, IN WHICH CASE SUCH GREATER BENEFIT  
4 SHALL BE PAYABLE.

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

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

11 S 511-B. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN  
12 COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED  
13 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE  
14 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY  
15 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE  
16 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE  
17 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO  
18 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE  
19 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE  
20 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED  
21 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-  
22 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,  
23 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A  
24 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO  
25 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR  
26 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"  
27 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE  
28 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN  
29 DECLARED BY CONGRESS.

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

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

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

55 E. THE PERFORMANCE OF DUTY DISABILITY BENEFIT PROVIDED FOR IN THIS  
56 SECTION SHALL BE IN LIEU OF ANY OTHER RETIREMENT BENEFIT WHICH SUCH

1 MEMBER OR RETIREE IS OR MAY BE ENTITLED TO RECEIVE FROM THE RETIREMENT  
2 SYSTEM.

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

5 S 13-168.1 PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED  
6 IN COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED  
7 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE  
8 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY  
9 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE  
10 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE  
11 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO  
12 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE  
13 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE  
14 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED  
15 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-  
16 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,  
17 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A  
18 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO  
19 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR  
20 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"  
21 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE  
22 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN  
23 DECLARED BY CONGRESS.

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

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

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

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

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

55 S 13-551.1 PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED  
56 IN COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED

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

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

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

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

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

47 S 9. This act shall take effect immediately and shall be deemed to  
48 have been in full force and effect on and after September 11, 2001; and  
49 provided that applications for performance of duty disability retirement  
50 pursuant to this act, made on the basis of injuries sustained prior to  
51 the effective date of this act shall be filed not later than two years  
52 after such effective date.

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

This bill would allow certain members and retirees of public retire-  
ment systems in Nw 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 NYS&LERS and NYS&LPFRS.

This estimate, dated January 21, 2010, and intended for use only during the 2011 Legislative Session, is Fiscal Note No. 2011-25, prepared by the Actuary for the NYS&LERS and the NYS&LPFRS.