

8032

2011-2012 Regular Sessions

I N A S S E M B L Y

May 27, 2011

Introduced by M. of A. RAMOS, CASTELLI, ORTIZ, TEDISCO, BURLING, SALADINO, MENG, P. RIVERA, STEVENSON, KATZ, GIGLIO, MALLIOTAKIS -- Multi-Sponsored by -- M. of A. AMEDORE, BARCLAY, BLANKENBUSH, BOYLE, BUTLER, CALHOUN, CERETTO, CONTE, CORWIN, CROUCH, CURRAN, DUPREY, FINCH, FITZPATRICK, HAWLEY, HAYES, JOHNS, JORDAN, KOLB, P. LOPEZ, McDONOUGH, McKEVITT, McLAUGHLIN, J. MILLER, MOLINARO, MONTESANO, MURRAY, OAKS, PALMESANO, RABBITT, RAIA, REILICH, N. RIVERA, SAYWARD, SMARDZ, SPANO, TENNEY, 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 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

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

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

S 365. 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.

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

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

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

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

30 S 3. The retirement and social security law is amended by adding a new
31 section 448-b to read as follows:

32 S 448-B. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN
33 COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED
34 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE
35 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY
36 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE
37 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE
38 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO
39 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE
40 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE
41 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED
42 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-
43 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,
44 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A
45 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO
46 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR
47 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"
48 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE
49 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN
50 DECLARED BY CONGRESS.

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

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

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

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

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

27 S 507-J. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN
28 COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED
29 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE
30 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY
31 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE
32 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE
33 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO
34 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE
35 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE
36 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED
37 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-
38 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,
39 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A
40 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO
41 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR
42 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"
43 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE
44 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN
45 DECLARED BY CONGRESS.

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

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

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

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

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

21 S 607-I. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN
22 COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED
23 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE
24 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY
25 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE
26 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE
27 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO
28 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE
29 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE
30 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED
31 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-
32 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,
33 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A
34 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO
35 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR
36 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"
37 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE
38 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN
39 DECLARED BY CONGRESS.

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

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

51 D. IN THE CASE OF A MEMBER ELIGIBLE FOR A PERFORMANCE OF DUTY DISABIL-
52 ITY RETIREMENT UNDER THIS SECTION, FINAL AVERAGE SALARY SHALL MEAN THE
53 REGULAR COMPENSATION EARNED FROM SUCH PARTICIPATING EMPLOYER BY A MEMBER
54 DURING THE TWELVE MONTHS OF ACTUAL SERVICE IMMEDIATELY PRECEDING THE
55 DATE OF SUCH EMPLOYEE'S RETIREMENT, EXCLUSIVE OF ANY LUMP SUM PAYMENTS
56 FOR SICK LEAVE, OR ACCUMULATED VACATION CREDIT, OR ANY FORM OF TERMI-

1 NATION PAY; PROVIDED, HOWEVER, IF THE COMPENSATION EARNED IN SAID TWELVE
2 MONTHS EXCEEDS THAT OF THE PREVIOUS TWELVE MONTHS BY MORE THAN TWENTY
3 PER CENTUM, THE AMOUNT IN EXCESS OF TWENTY PER CENTUM SHALL BE EXCLUDED
4 IN THE COMPUTATION OF FINAL AVERAGE SALARY; PROVIDED FURTHER, HOWEVER,
5 THAT THE BENEFITS COMPUTED PURSUANT TO THIS SECTION SHALL BE PAYABLE
6 UNLESS THE MEMBER WOULD OTHERWISE BE ENTITLED TO A GREATER BENEFIT UNDER
7 OTHER PROVISIONS OF THIS SECTION, IN WHICH CASE SUCH GREATER BENEFIT
8 SHALL BE PAYABLE.

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

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

15 S 511-B. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN
16 COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED
17 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE
18 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY
19 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE
20 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE
21 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO
22 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE
23 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE
24 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED
25 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-
26 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,
27 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A
28 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO
29 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR
30 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"
31 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE
32 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN
33 DECLARED BY CONGRESS.

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

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

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

1 OTHER PROVISIONS OF THIS SECTION, IN WHICH CASE SUCH GREATER BENEFIT
2 SHALL BE PAYABLE.

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

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

9 S 13-168.1 PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED
10 IN COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED
11 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE
12 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, ANY
13 MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON ACTIVE DUTY IN THE
14 ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE
15 OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILITARY LAW, AND WHO
16 BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE
17 NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN A COMBAT THEATRE
18 OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE AWARD OF A UNITED
19 STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED FORCES EXPEDITION-
20 ARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL,
21 OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, SHALL BE ELIGIBLE FOR A
22 PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO
23 SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE SALARY. FOR
24 PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF OPERATIONS"
25 SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION 310(A) OF TITLE
26 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR NOT WAR HAS BEEN
27 DECLARED BY CONGRESS.

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

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

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

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

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

3 S 13-551.1 PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED
4 IN 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 STATE 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 FILING AN APPLICATION WITH THE DEPARTMENT IN
24 WHICH THE MEMBER IS EMPLOYED. APPLICATION MAY BE MADE NOT LATER THAN
25 TWO YEARS AFTER THE MEMBER OR RETIREE IS DISCONTINUED FROM ACTIVE DUTY
26 AND PROVIDED THAT THE MEMBER MEETS THE REQUIREMENTS OF THIS SECTION.

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

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

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

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

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

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 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.