S T A T E  O F  N E W  Y O R K

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:

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

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

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

(a) Definitions. As used in this subdivision:

(i) "Base pay of city salary" means the base pay received by a public officer or employee from employment by a city. For public officers and employees who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan", have returned to city employment from ordered military duty as of the effective date of this subdivision and are, on the effective date of this subdivision, public officers or employees, the base pay of city salary shall be calculated 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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soldier as of the effective date of this subdivision or the date of return to city service, whichever is later.

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

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

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

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

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

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

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

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

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

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

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

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

(x) "Public officer" or "employee" means a public officer or an employee of a city OR AN EMPLOYEE OF THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION.

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

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

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

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

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

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

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

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

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

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

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

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

S 3. This act shall take effect immediately.