

7754

I N S E N A T E

June 18, 2012

Introduced by Sen. BALL -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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, RULE OR REGULATION TO  
7 THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON  
8 ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED  
9 MILITIA OF THE STATE OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILI-  
10 TARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE  
11 OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN  
12 A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE  
13 AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED  
14 FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS  
15 EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL,  
16 SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOW-  
17 ANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE  
18 SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF  
19 OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION  
20 310(A) OF TITLE 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR  
21 NOT WAR HAS BEEN DECLARED BY CONGRESS.  
22 B. APPLICATION FOR RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE  
23 OF DUTY MAY BE MADE BY SUCH MEMBER, OR THE HEAD OF THE DEPARTMENT IN  
24 WHICH SUCH 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.

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

LBD16071-01-2

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

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

27 S 365. 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, RULE OR REGULATION TO  
31 THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON  
32 ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED  
33 MILITIA OF THE STATE OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILI-  
34 TARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE  
35 OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN  
36 A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE  
37 AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED  
38 FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS  
39 EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL,  
40 SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOW-  
41 ANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE  
42 SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF  
43 OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION  
44 310(A) OF TITLE 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR  
45 NOT WAR HAS BEEN 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 COMPTROLLER  
53 DETERMINES THAT SUCH PERSON IS PHYSICALLY INCAPACITATED FOR THE PERFORM-  
54 ANCE OF DUTY AND OUGHT TO BE RETIRED, HE OR SHE SHALL BE SO RETIRED.  
55 SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE COMP-  
56 TROLLER.

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

21 S 448-B. 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, RULE OR REGULATION TO  
25 THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON  
26 ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED  
27 MILITIA OF THE STATE OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILI-  
28 TARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE  
29 OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN  
30 A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE  
31 AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED  
32 FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS  
33 EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL,  
34 SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOW-  
35 ANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE  
36 SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF  
37 OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION  
38 310(A) OF TITLE 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR  
39 NOT WAR HAS BEEN 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 4. The retirement and social security law is amended by adding a new  
14 section 507-j to read as follows:

15 S 507-J. 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, RULE OR REGULATION TO  
19 THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON  
20 ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED  
21 MILITIA OF THE STATE OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILI-  
22 TARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE  
23 OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN  
24 A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE  
25 AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED  
26 FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS  
27 EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL,  
28 SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOW-  
29 ANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE  
30 SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF  
31 OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION  
32 310(A) OF TITLE 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR  
33 NOT WAR HAS BEEN DECLARED BY CONGRESS.

34 B. APPLICATION FOR RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE  
35 OF DUTY MAY BE MADE BY SUCH MEMBER, OR THE HEAD OF THE DEPARTMENT IN  
36 WHICH SUCH MEMBER IS EMPLOYED. APPLICATION MAY BE MADE NOT LATER THAN  
37 TWO YEARS AFTER THE MEMBER OR RETIREE IS DISCONTINUED FROM ACTIVE DUTY  
38 AND PROVIDED THAT THE MEMBER 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 HEAD OF THE  
41 RETIREMENT SYSTEM DETERMINES THAT SUCH PERSON IS PHYSICALLY INCAPACI-  
42 TATED FOR THE PERFORMANCE OF DUTY AND OUGHT TO BE RETIRED, HE OR SHE  
43 SHALL BE SO RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE  
44 APPROVED BY THE HEAD OF THE RETIREMENT SYSTEM.

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

9 S 607-I. PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED IN  
10 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, RULE OR REGULATION TO  
13 THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON  
14 ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED  
15 MILITIA OF THE STATE OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILI-  
16 TARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE  
17 OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN  
18 A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE  
19 AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED  
20 FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS  
21 EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL,  
22 SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOW-  
23 ANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE  
24 SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF  
25 OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION  
26 310(A) OF TITLE 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR  
27 NOT WAR HAS BEEN DECLARED BY CONGRESS.

28 B. APPLICATION FOR RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE  
29 OF DUTY MAY BE MADE BY SUCH MEMBER, OR THE HEAD OF THE DEPARTMENT IN  
30 WHICH SUCH MEMBER IS EMPLOYED. APPLICATION MAY BE MADE NOT LATER THAN  
31 TWO YEARS AFTER THE MEMBER OR RETIREE IS DISCONTINUED FROM ACTIVE DUTY  
32 AND 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 HEAD OF THE  
35 RETIREMENT SYSTEM DETERMINES THAT SUCH PERSON IS PHYSICALLY INCAPACI-  
36 TATED FOR THE PERFORMANCE OF DUTY AND OUGHT TO BE RETIRED, HE OR SHE  
37 SHALL BE SO RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE  
38 APPROVED BY THE HEAD OF THE RETIREMENT SYSTEM.

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

3 S 511-B. 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, RULE OR REGULATION TO  
7 THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON  
8 ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED  
9 MILITIA OF THE STATE OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILI-  
10 TARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE  
11 OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN  
12 A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE  
13 AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED  
14 FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS  
15 EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL,  
16 SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOW-  
17 ANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE  
18 SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE  
19 OF OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION  
20 310(A) OF TITLE 37 OF THE UNITED STATES CODE, REGARDLESS OF WHETHER OR  
21 NOT WAR HAS BEEN 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 RETIREMENT BOARD.  
24 APPLICATION MAY BE MADE NOT LATER THAN TWO YEARS AFTER THE MEMBER OR  
25 RETIREE IS DISCONTINUED FROM ACTIVE DUTY AND PROVIDED THAT THE MEMBER  
26 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 RETIREMENT  
29 BOARD DETERMINES THAT SUCH PERSON IS PHYSICALLY INCAPACITATED FOR THE  
30 PERFORMANCE OF DUTY AND OUGHT TO BE RETIRED, HE OR SHE SHALL BE SO  
31 RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY  
32 THE RETIREMENT BOARD.

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

53 S 13-168.1 PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED  
54 IN COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED  
55 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE  
56 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW, RULE OR REGULATION TO

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

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

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

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

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

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

47 S 13-551.1 PERFORMANCE OF DUTY DISABILITY BENEFIT FOR MEMBERS INJURED  
48 IN COMBAT. A. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED  
49 FORTY-TWO, TWO HUNDRED FORTY-THREE OR TWO HUNDRED FORTY-FOUR OF THE  
50 MILITARY LAW OR THE PROVISIONS OF ANY OTHER LAW, RULE OR REGULATION TO  
51 THE CONTRARY, ANY MEMBER OR RETIREE WHO IS A MEMBER OF THE MILITARY ON  
52 ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES OR THE ORGANIZED  
53 MILITIA OF THE STATE OF NEW YORK AS DEFINED IN SECTION ONE OF THE MILI-  
54 TARY LAW, AND WHO BECOMES PHYSICALLY INCAPACITATED FOR THE PERFORMANCE  
55 OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY SUSTAINED IN  
56 A COMBAT THEATRE OR COMBAT ZONE OF OPERATIONS, AS DOCUMENTED BY THE

1 AWARD OF A UNITED STATES CAMPAIGN RIBBON OR SERVICE MEDAL, OR THE ARMED  
2 FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS  
3 EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL,  
4 SHALL BE ELIGIBLE FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOW-  
5 ANCE EQUAL TO SEVENTY-FIVE PERCENT OF HIS OR HER ONE YEAR FINAL AVERAGE  
6 SALARY. FOR PURPOSES OF THIS SECTION "COMBAT THEATRE" OR "COMBAT ZONE OF  
7 OPERATIONS" SHALL INCLUDE HAZARDOUS SERVICE AS DESCRIBED IN SECTION  
8 310(A) OF TITLE 37 OF THE UNITED STATE CODE, REGARDLESS OF WHETHER OR  
9 NOT WAR HAS BEEN DECLARED BY CONGRESS.

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

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

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

35 E. THE PERFORMANCE OF DUTY DISABILITY BENEFIT PROVIDED FOR IN THIS  
36 SECTION SHALL BE IN LIEU OF ANY OTHER RETIREMENT BENEFIT WHICH SUCH  
37 MEMBER OR RETIREE IS OR MAY BE ENTITLED TO RECEIVE FROM THE RETIREMENT  
38 SYSTEM.

39 S 9. This act shall take effect immediately and shall be deemed to  
40 have been in full force and effect on and after September 11, 2001; and  
41 provided that applications for performance of duty disability retirement  
42 pursuant to this act, made on the basis of injuries sustained prior to  
43 the effective date of this act shall be filed not later than two years  
44 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 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.

Summary of relevant resources:

Data: March 31, 2011 Actuarial Year End File with distributions of membership and other statistics displayed in the 2011 Report of the Actuary and 2011 Comprehensive Annual Financial Report.

Assumptions and Methods: 2010 and 2011 Annual Report to the Comptroller on Actuarial Assumptions, Codes Rules and Regulations of the State of New York: Audit and Control.

Market Assets and GASB Disclosures: March 31, 2011 New York State and Local Retirement System Financial Statements and Supplementary Information.

Valuations of Benefit Liabilities and Actuarial Assets: summarized in the 2011 Actuarial Valuations report.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This estimate, dated November 14, 2011, and intended for use only during the 2012 Legislative Session, is Fiscal Note No. 2012-11, prepared by the Actuary for the NYS&LERS and the NYS&LPFRS.