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

3521--B

2015-2016 Regular Sessions

I N  S E N A T E

February 11, 2015

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to disability retirement benefits for certain participants in World Trade Center rescue, recovery, or cleanup operations

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

Section 1. Paragraph 4 of subdivision d of section 605 of the retirement and social security law is renumbered paragraph 5 and a new paragraph 4 is added to read as follows:

4. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATION TO THE CONTRARY, ANY MEMBER WITH AN ACTIVE MEMBERSHIP WHO PARTICIPATED IN WORLD TRADE CENTER RESCUE, RECOVERY, OR CLEANUP OPERATIONS, AS SUCH PARTICIPATION IS DEFINED IN SECTION TWO OF THIS CHAPTER, WHO INCURRED A QUALIFYING WORLD TRADE CENTER CONDITION, AS DEFINED IN SECTION TWO OF THIS CHAPTER, THAT IS DETERMINED TO HAVE BEEN INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY AND IS THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT NOT CAUSED BY SUCH MEMBER'S OWN WILLFUL NEGLIGENCE, SHALL BE PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THREE-QUARTERS OF FINAL AVERAGE SALARY. THE PAYMENT OF SUCH PENSION SHALL BE SUBJECT TO THE PROVISIONS OF SECTION SIXTY-FOUR OF THIS CHAPTER.

S 2. Subdivisions h and i of section 507 of the retirement and social security law are relettered subdivisions i and j and a new subdivision h is added to read as follows:

H. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATION TO THE CONTRARY, ANY MEMBER WITH AN ACTIVE MEMBERSHIP WHO PARTICIPATED IN WORLD TRADE CENTER RESCUE, RECOVERY, OR CLEANUP OPERATIONS, AS SUCH PARTICIPATION IS

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

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DEFINED IN SECTION TWO OF THIS CHAPTER, WHO INCURRED A QUALIFYING WORLD TRADE CENTER CONDITION, AS DEFINED IN SECTION TWO OF THIS CHAPTER, THAT IS DETERMINED TO HAVE BEEN INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY AND IS THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT NOT CAUSED BY SUCH MEMBER'S OWN WILLFUL NEGLIGENCE, SHALL BE PAID A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THREE-QUARTERS OF FINAL AVERAGE SALARY. THE PAYMENT OF SUCH PENSION SHALL BE SUBJECT TO THE PROVISIONS OF SECTION SIXTY-FOUR OF THIS CHAPTER.

S 3. Paragraph (a) of subdivision 36 of section 2 of the retirement and social security law, as amended by chapter 472 of the laws of 2014, is amended to read as follows:

(a) "Qualifying World Trade Center condition" shall mean a qualifying condition or impairment of health resulting in disability to a member who participated in World Trade Center rescue, recovery or cleanup operations for a qualifying period, as those terms are defined below, provided the following conditions have been met: (i) such member, or eligible beneficiary in the case of the member's death, must have filed a written and sworn statement with the member's retirement system on a form provided by such system indicating the underlying dates and locations of employment not later than September eleventh, two thousand fifteen, and (ii) such member has either successfully passed a physical examination for entry into public service, or authorized release of all relevant medical records, if the member did not undergo a physical examination for entry into public service; and (iii) there is no evidence of the qualifying condition or impairment of health that formed the basis for the disability in such physical examination for entry into public service or in the relevant medical records, prior to September eleventh, two thousand one except for such member, or eligible beneficiary in the case of the member's death, of a local retirement system of a city with a population of one million or more that is covered by section 13-551 of the administrative code of the city of New York, or by section twenty-five hundred seventy-five of the education law and for such member who separated from service with vested rights, or eligible beneficiary of such member who separated from service with vested rights in the case of the member's death, of a local retirement system of a city with a population of one million or more who are covered by sections 13-168, 13-252.1 or 13-353.1 of the administrative code of the city of New York or sections five hundred seven-c, six hundred five-b, six hundred five-c, or six hundred seven-b of this chapter. The deadline for filing a written and sworn statement required by subparagraph (i) of this paragraph shall be September eleventh, two thousand fourteen for such member, or eligible beneficiary in the case of the member's death, of a local retirement system of a city with a population of one million or more that is covered by section 13-551 of the administrative code of the city of New York, or by section twenty-five hundred seventy-five of the education law and for such member who separated from service with vested rights, or eligible beneficiary of such member who separated from service with vested rights in the case of the member's death, of a local retirement system of a city with a population of one million or more who are covered by sections 13-168, 13-252.1 or 13-353.1 of the administrative code of the city of New York and sections five hundred seven-c, six hundred five-b, six hundred five-c, or six hundred seven-b of this chapter. NOTWITHSTANDING THE DEADLINE FOR FILING A WRITTEN AND SWORN STATEMENT REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE DEADLINE SHALL BE SEPTEMBER ELEVENTH, TWO THOUSAND SIXTEEN FOR SUCH MEMBER, OR ELIGIBLE BENEFICIARY IN THE CASE OF THE MEMBER'S DEATH, ELIGIBLE FOR THE DISABIL-

ITY RETIREMENT BENEFIT PROVIDED BY SUBDIVISION H OF SECTION FIVE HUNDRED SEVEN OR PARAGRAPH FOUR OF SUBDIVISION D OF SECTION SIX HUNDRED FIVE OF THIS CHAPTER. Every retirement system shall keep a copy of every written and sworn statement that is presented for filing not later than September eleventh, two thousand fifteen, including those that are rejected for filing as untimely.

S 4. This act shall take effect immediately and apply to all members who are determined to have incurred a qualifying World Trade Center condition in the performance and discharge of duty that is the natural and proximate result of an accident not caused by such member's own willful negligence prior to the effective date of this act.

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

This bill would amend the benefits of members of public retirement systems who contract any form of disease or disability related to exposure to any elements in connection with the World Trade Center tragedy of September 11, 2001. The annual accidental disability benefit would be 75% of a member's final average salary less workers compensation, regardless of a member's plan coverage. Currently, eligible members receive the accidental disability benefit specified in the plan under which they are covered. This improved benefit would be payable to current members who may file for this benefit in the future, or current retirees (or their beneficiaries) who are already receiving World Trade Center related retirement benefits.

If this bill is enacted, it would lead to more disabilities being classified as "in performance of duty" or "accidental". For the disabilities so classified due to this bill, the cost would depend on the age, service, salary and plan of the affected member or retiree, as well as whether such person would have otherwise been eligible for, or has been receiving an ordinary disability, a performance of duty disability or a service retirement. For those who contract such disease prior to retirement, it is estimated that there could be per person one-time costs of as much as four (4) times salary. For those who contract such disease subsequent to a service retirement, it is estimated that there would be an average per person cost of approximately 150% of final average salary. For those who contract such disease subsequent to an ordinary disability retirement, it is estimated that there would be an average per person cost of approximately four (4) times final average salary.

For the 38 retirees known to be affected at this time, there would be a one-time cost of $7.96 million, assuming a payment date of March 1, 2016.

Pursuant to Section 25 of the Retirement and Social Security Law, the increased cost would be borne entirely by the State of New York and would require an itemized appropriation sufficient to pay the cost of the provision. A precise cost for future years can't be determined at this time. Every year a cost will be determined (and billed to the state) based on those benefiting from this provision.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2014 actuarial valuation. Distributions and other statistics can be found in the 2014 Report of the Actuary and the 2014 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2010, 2011, 2012, 2013 and 2014 Annual Report to the comptroller on Actuarial Assumptions, and the Codes Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2014 New York State and Local Retirement System Financial Statements and Supplementary Information.

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 May 21, 2015, and intended for use only during the 2015 Legislative Session, is Fiscal Note No. 2015-71, prepared by the Actuary for the New York State and Local Employees' Retirement System.