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

5328

2015-2016 Regular Sessions

I N A S S E M B L Y

February 18, 2015

Introduced by M. of A. ABBATE -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to providing performance of duty disability retirement benefits for members in the employ of Nassau County as chief fire marshals, assistant chief fire marshals, division supervising fire marshals, supervising fire marshals, fire marshals and fire marshal trainees

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

Section 1. The retirement and social security law is amended by adding a new section 607-i to read as follows:

S 607-I. PERFORMANCE OF DUTY DISABILITY RETIREMENT FOR MEMBERS IN THE EMPLOY OF NASSAU COUNTY AS CHIEF FIRE MARSHALS, ASSISTANT CHIEF FIRE MARSHALS, DIVISION SUPERVISING FIRE MARSHALS, SUPERVISING FIRE MARSHALS, FIRE MARSHALS AND FIRE MARSHAL TRAINEES. A. A MEMBER EMPLOYED BY NASSAU COUNTY AS A CHIEF FIRE MARSHAL, ASSISTANT CHIEF FIRE MARSHAL, DIVISION SUPERVISING FIRE MARSHAL, SUPERVISING FIRE MARSHAL, FIRE MARSHAL OR FIRE MARSHAL TRAINEE, WHO BECOMES PHYSICALLY OR MENTALLY INCAPACITATED FOR THE PERFORMANCE OF DUTIES AS THE NATURAL AND PROXIMATE RESULT OF AN INJURY, SUSTAINED AND DOCUMENTED AFTER THE ENACTMENT OF THIS SECTION, AND SUSTAINED IN THE PERFORMANCE OR DISCHARGE OF HIS OR HER DUTIES SHALL BE PAID PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOWANCE EQUAL TO THREE-QUARTERS OF FINAL AVERAGE SALARY, SUBJECT TO SECTION SIXTY-FOUR OF THIS CHAPTER.

B. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR OF ANY GENERAL OR SPECIAL LAW TO THE CONTRARY, A MEMBER COVERED BY THIS SECTION WHO CONTRACTS HIV (WHERE THE MEMBER MAY HAVE BEEN EXPOSED TO A BODILY FLUID OF A PERSON UNDER HIS OR HER CARE OR TREATMENT, OR WHILE THE MEMBER EXAMINED, TRANSPORTED OR OTHERWISE HAD CONTACT WITH SUCH PERSON, IN THE PERFORMANCE OF HIS OR HER DUTIES) TUBERCULOSIS OR HEPATITIS, WILL BE PRESUMED TO HAVE CONTRACTED SUCH DISEASE IN THE PERFORMANCE OR DISCHARGE

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

LBD07721-02-5

OF HIS OR HER DUTIES, UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE.

C. 1. (A) NOTWITHSTANDING ANY PROVISIONS OF THIS CHAPTER OR OF ANY GENERAL, SPECIAL OR LOCAL LAW, CHARTER, ADMINISTRATIVE CODE OR RULE OR REGULATION TO THE CONTRARY, IF ANY CONDITION OR IMPAIRMENT OF HEALTH IS CAUSED BY A QUALIFYING WORLD TRADE CENTER CONDITION AS DEFINED IN SECTION TWO OF THIS CHAPTER, IT SHALL BE PRESUMPTIVE EVIDENCE THAT IT WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY AND THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT NOT CAUSED BY SUCH MEMBER'S OWN WILLFUL NEGLIGENCE, UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE.

(B) THE HEAD OF EACH RETIREMENT SYSTEM IS HEREBY AUTHORIZED TO PROMULGATE RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS PARAGRAPH.

2. (A) NOTWITHSTANDING THE PROVISIONS OF THIS CHAPTER OR OF ANY GENERAL, SPECIAL OR LOCAL LAW, CHARTER, ADMINISTRATIVE CODE OR RULE OR REGULATION TO THE CONTRARY, IF A MEMBER WHO PARTICIPATED IN WORLD TRADE CENTER RESCUE, RECOVERY OR CLEANUP OPERATIONS AS DEFINED IN SECTION TWO OF THIS CHAPTER, AND SUBSEQUENTLY RETIRED ON A SERVICE RETIREMENT, AN ORDINARY DISABILITY RETIREMENT, A PERFORMANCE OF DUTY DISABILITY RETIREMENT, AND SUBSEQUENT TO SUCH RETIREMENT OR SEPARATION IS DETERMINED BY THE COMPTROLLER TO HAVE A QUALIFYING WORLD TRADE CENTER CONDITION, AS DEFINED IN SECTION TWO OF THIS CHAPTER, UPON SUCH DETERMINATION BY THE HEAD OF THE RETIREMENT SYSTEM, IT SHALL BE PRESUMED THAT SUCH DISABILITY WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY AS THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT NOT CAUSED BY SUCH MEMBER'S OWN WILLFUL NEGLIGENCE, AND THAT THE MEMBER WOULD HAVE BEEN PHYSICALLY OR MENTALLY INCAPACITATED FOR THE PERFORMANCE AND DISCHARGE OF DUTY OF THE POSITION FROM WHICH HE OR SHE RETIRED HAD THE CONDITION BEEN KNOWN AND FULLY DEVELOPED AT THE TIME OF THE MEMBER'S RETIREMENT, UNLESS THE CONTRARY IS PROVEN BY COMPETENT EVIDENCE.

(B) THE HEAD OF THE RETIREMENT SYSTEM SHALL CONSIDER A RECLASSIFICATION OF THE MEMBER'S RETIREMENT OR VESTING AS AN ACCIDENTAL DISABILITY RETIREMENT EFFECTIVE AS OF THE DATE OF SUCH RECLASSIFICATION.

(C) SUCH MEMBER'S RETIREMENT OPTION SHALL NOT BE CHANGED AS A RESULT OF SUCH RECLASSIFICATION.

(D) THE HEAD OF EACH RETIREMENT SYSTEM IS HEREBY AUTHORIZED TO PROMULGATE RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS PARAGRAPH.

D. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER OR OF ANY GENERAL, SPECIAL OR LOCAL LAW, CHARTER, ADMINISTRATIVE CODE OR RULE OR REGULATION TO THE CONTRARY, IF A RETIREE WHO: (1) HAS MET THE CRITERIA OF SUBDIVISION C OF THIS SECTION AND RETIRED ON A SERVICE OR DISABILITY RETIREMENT, WOULD HAVE MET THE CRITERIA IF NOT ALREADY RETIRED ON AN ACCIDENTAL DISABILITY; AND (2) HAS NOT BEEN RETIRED FOR MORE THAN TWENTY-FIVE YEARS; AND (3) DIES FROM A QUALIFYING WORLD TRADE CENTER CONDITION, AS DEFINED IN SECTION TWO OF THIS CHAPTER, AS DETERMINED BY THE APPLICABLE HEAD OF THE RETIREMENT SYSTEM OR APPLICABLE MEDICAL BOARD, THEN UNLESS THE CONTRARY BE PROVEN BY COMPETENT EVIDENCE, SUCH RETIREE SHALL BE DEEMED TO HAVE DIED AS A NATURAL AND PROXIMATE RESULT OF AN ACCIDENT SUSTAINED IN THE PERFORMANCE OF DUTY AND NOT AS A RESULT OF WILLFUL NEGLIGENCE ON HIS OR HER PART. SUCH RETIREE'S ELIGIBLE BENEFICIARY, AS SET FORTH IN SECTION SIX HUNDRED ONE OF THIS ARTICLE, SHALL BE ENTITLED TO AN ACCIDENTAL DEATH BENEFIT AS PROVIDED BY SECTION SIX HUNDRED SEVEN OF THIS ARTICLE, HOWEVER, FOR THE PURPOSES OF DETERMINING THE SALARY BASE UPON WHICH THE ACCIDENTAL DEATH BENEFIT IS CALCULATED, THE RETIREE SHALL BE DEEMED TO HAVE DIED ON THE DATE OF HIS OR HER

RETIREMENT. UPON THE RETIREE'S DEATH, THE ELIGIBLE BENEFICIARY SHALL MAKE A WRITTEN APPLICATION TO THE HEAD OF THE RETIREMENT SYSTEM WITHIN THE TIME FOR FILING AN APPLICATION FOR AN ACCIDENTAL DEATH BENEFIT AS SET FORTH IN SECTION SIX HUNDRED SEVEN OF THIS ARTICLE REQUESTING CONVERSION OF SUCH RETIREE'S SERVICE OR DISABILITY RETIREMENT BENEFIT TO AN ACCIDENTAL DEATH BENEFIT. AT THE TIME OF SUCH CONVERSION, THE ELIGIBLE BENEFICIARY SHALL RELINQUISH ALL RIGHTS TO THE PROSPECTIVE BENEFITS PAYABLE UNDER THE SERVICE OR DISABILITY RETIREMENT BENEFIT, INCLUDING ANY POST-RETIREMENT DEATH BENEFITS, SINCE THE RETIREE'S DEATH. IF THE ELIGIBLE BENEFICIARY IS NOT THE ONLY BENEFICIARY RECEIVING OR ENTITLED TO RECEIVE A BENEFIT UNDER THE SERVICE OR DISABILITY RETIREMENT BENEFIT (INCLUDING, BUT NOT LIMITED TO, POST-RETIREMENT DEATH BENEFITS OR BENEFITS PAID OR PAYABLE PURSUANT TO THE RETIREE'S OPTION SELECTION), THE ACCIDENTAL DEATH BENEFIT PAYMENTS TO THE ELIGIBLE BENEFICIARY WILL BE REDUCED BY ANY AMOUNTS PAID OR PAYABLE TO ANY OTHER BENEFICIARY.

E. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER OR OF ANY GENERAL, SPECIAL OR LOCAL LAW, CHARTER, ADMINISTRATIVE CODE OR RULE OR REGULATION TO THE CONTRARY, IF A MEMBER WHO: (1) HAS MET THE CRITERIA OF SUBDIVISION C OF THIS SECTION; AND (2) DIES FROM A QUALIFYING WORLD TRADE CENTER CONDITION, AS DEFINED IN SECTION TWO OF THIS CHAPTER, AS DETERMINED BY THE APPLICABLE HEAD OF THE RETIREMENT SYSTEM OR APPLICABLE MEDICAL BOARD TO HAVE BEEN CAUSED BY SUCH MEMBER'S PARTICIPATION IN THE WORLD TRADE CENTER RESCUE, RECOVERY OR CLEANUP OPERATIONS, AS DEFINED IN SECTION TWO OF THIS CHAPTER, THEN UNLESS THE CONTRARY BE PROVEN BY COMPETENT EVIDENCE, SUCH MEMBER SHALL BE DEEMED TO HAVE DIED AS A NATURAL AND PROXIMATE RESULT OF AN ACCIDENT SUSTAINED IN THE PERFORMANCE OF DUTY AND NOT AS A RESULT OF WILLFUL NEGLIGENCE ON HIS OR HER PART. SUCH MEMBER'S ELIGIBLE BENEFICIARY, AS SET FORTH IN SECTION SIX HUNDRED ONE OF THIS ARTICLE, SHALL BE ENTITLED TO AN ACCIDENTAL DEATH BENEFIT PROVIDED HE OR SHE MAKES WRITTEN APPLICATION TO THE HEAD OF THE RETIREMENT SYSTEM WITHIN THE TIME FOR FILING AN APPLICATION FOR AN ACCIDENTAL DEATH BENEFIT AS SET FORTH IN SECTION SIX HUNDRED SEVEN OF THIS ARTICLE.

S 2. All past service costs incurred due to implementing the provisions of this act shall be borne by Nassau county.

S 3. This act shall take effect immediately.

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

This bill will allow any Nassau County chief fire marshal, assistant fire marshal, division supervising fire marshal, supervising fire marshal, fire marshal and fire marshal trainee to become eligible to receive a disability benefit of 75% of final average salary (FAS) less worker's compensation for a disability sustained in the performance of duty. This would also include disabilities sustained due to hepatitis, tuberculosis, HIV and World Trade Center related illnesses. Currently, such members may file for an accidental disability benefit of 75% of FAS less workers compensation, but must be able to prove that their disability was the result of an accident. Such injuries must be sustained and documented after the enactment of this legislation.

Further, this bill would grant that members whose health is impaired due to a qualifying World Trade Center condition would also be eligible for this new benefit. In addition, the beneficiaries of those who have been retired due to a qualifying World Trade Center condition, and die within 25 years from their date of disability retirement, will have their benefits recalculated as 50% of pay accidental death benefits.

The number of members and retirees who could be affected by the enhanced World Trade Center benefits of this legislation cannot be readily determined.

If this legislation is enacted during the 2015 legislative session, we anticipate that there will be an increase in the annual contributions of Nassau County of approximately $53,000 for the fiscal year ending March 31, 2016. In future years, this cost will vary as the billing rates and salaries of the affected members change.

In addition to the annual contributions discussed above, there will be an immediate past service cost of approximately $353,000 which would be borne by Nassau County as a one-time payment. This estimate is based on the assumption that payment will be made on February 1, 2016. There would also be a past service cost for any members or retirees who become eligible for the enhanced World Trade center benefits of this legislation.

These estimated costs above are based on 45 fire marshals employed by Nassau County with a total estimated annual salary of approximately $4.8 million, for the fiscal year ending March 31, 2014.

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 opinions continued herein.

This estimate, dated January 29, 2015, and intended for use only during the 2015 Legislative Session, is Fiscal Note No. 2015-49, prepared by the Actuary for the New York State and Local Employees' Retirement System.