

5745

2015-2016 Regular Sessions

I N S E N A T E

June 1, 2015

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

AN ACT to amend the workers' compensation law and the retirement and social security law in relation to participants in the World Trade Center rescue

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

1 Section 1. Section 162 of the workers' compensation law, as amended by
2 section 489 of the laws of 2013, is amended to read as follows:
3 S 162. Registration of participation in World Trade Center rescue,
4 recovery and clean-up operations. In order for the claim of a partic-
5 ipant in World Trade Center rescue, recovery and clean-up operations to
6 come within the application of this article, such participant must file
7 a written and sworn statement with the board on a form promulgated by
8 the chair indicating the dates and locations of such participation and
9 the name of such participant's employer during the period of partic-
10 ipation. Such statement must be filed not later than September eleventh,
11 two thousand [fourteen] SEVENTEEN. The board shall transmit a copy of
12 such statement to the employer or carrier named therein. The filing of
13 such a statement shall not be considered the filing of a claim for bene-
14 fits under this chapter.
15 S 2. Section 168 of the workers' compensation law is amended by adding
16 a new subdivision 3 to read as follows:
17 3. A CLAIM BY A PARTICIPANT IN THE WORLD TRADE CENTER RESCUE, RECOVERY
18 OR CLEANUP OPERATIONS WHOSE DISABLEMENT OCCURRED BETWEEN SEPTEMBER ELEV-
19 ENTH, TWO THOUSAND TWELVE, AND SEPTEMBER ELEVENTH, TWO THOUSAND FIFTEEN,
20 SHALL NOT BE DISALLOWED AS BARRED BY SECTION EIGHTEEN OR SECTION TWEN-
21 TY-EIGHT OF THIS CHAPTER IF SUCH CLAIM IS FILED ON OR BEFORE SEPTEMBER
22 ELEVENTH, TWO THOUSAND SEVENTEEN. ANY SUCH CLAIM BY A PARTICIPANT IN THE
23 WORLD TRADE CENTER RESCUE, RECOVERY OR CLEANUP OPERATIONS WHOSE DISABLE-
24 MENT OCCURRED BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND TWELVE, AND

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

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1 SEPTEMBER ELEVENTH, TWO THOUSAND FIFTEEN, AND WAS DISALLOWED BY SECTION
2 EIGHTEEN OR TWENTY-EIGHT OF THIS CHAPTER SHALL BE RECONSIDERED BY THE
3 BOARD.

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

7 (a) "Qualifying World Trade Center condition" shall mean a qualifying
8 condition or impairment of health resulting in disability to a member
9 who participated in World Trade Center rescue, recovery or cleanup oper-
10 ations for a qualifying period, as those terms are defined below,
11 provided the following conditions have been met: (i) such member, or
12 eligible beneficiary in the case of the member's death, must have filed
13 a written and sworn statement with the member's retirement system on a
14 form provided by such system indicating the underlying dates and
15 locations of employment not later than September eleventh, two thousand
16 [fifteen] SEVENTEEN, and (ii) such member has either successfully passed
17 a physical examination for entry into public service, or authorized
18 release of all relevant medical records, if the member did not undergo a
19 physical examination for entry into public service; and (iii) there is
20 no evidence of the qualifying condition or impairment of health that
21 formed the basis for the disability in such physical examination for
22 entry into public service or in the relevant medical records, prior to
23 September eleventh, two thousand one except for such member, or eligible
24 beneficiary in the case of the member's death, of a local retirement
25 system of a city with a population of one million or more that is
26 covered by section 13-551 of the administrative code of the city of New
27 York, or by section twenty-five hundred seventy-five of the education
28 law and for such member who separated from service with vested rights,
29 or eligible beneficiary of such member who separated from service with
30 vested rights in the case of the member's death, of a local retirement
31 system of a city with a population of one million or more who are
32 covered by sections 13-168, 13-252.1 or 13-353.1 of the administrative
33 code of the city of New York or sections five hundred seven-c, six
34 hundred five-b, six hundred five-c, or six hundred seven-b of this chap-
35 ter. The deadline for filing a written and sworn statement required by
36 subparagraph (i) of this paragraph shall be September eleventh, two
37 thousand [fourteen] SEVENTEEN for such member, or eligible beneficiary
38 in the case of the member's death, of a local retirement system of a
39 city with a population of one million or more that is covered by section
40 13-551 of the administrative code of the city of New York, or by section
41 twenty-five hundred seventy-five of the education law and for such
42 member who separated from service with vested rights, or eligible bene-
43 ficiary of such member who separated from service with vested rights in
44 the case of the member's death, of a local retirement system of a city
45 with a population of one million or more who are covered by sections
46 13-168, 13-252.1 or 13-353.1 of the administrative code of the city of
47 New York and sections five hundred seven-c, six hundred five-b, six
48 hundred five-c, or six hundred seven-b of this chapter. Every retirement
49 system shall keep a copy of every written and sworn statement that is
50 presented for filing not later than September eleventh, two thousand
51 [fifteen] SEVENTEEN, including those that are rejected for filing as
52 untimely.

53 S 4. Notwithstanding any other provision to the contrary, none of the
54 provisions of this act shall be subject to section twenty-five of the
55 retirement and social security law.

1 S 5. This act shall take effect immediately and shall be deemed to
2 have been in full force and effect on and after September 11, 2001;
3 provided, however, that the amendments to sections 162 and 168 of the
4 workers' compensation law made by sections one and two of this act,
5 respectively, shall apply to all open and closed claims coming within
6 its purview.

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

This bill would amend chapter 93 of the Laws of 2005 and chapter 445 of the Laws of 2006, which provided 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 to be presumptive evidence that such disability, or death as a result of such disability was the result of an accident and was sustained in the performance of duty.

Insofar as this bill would affect the New York State and Local Employees' Retirement and the New York State and Local Police and Fire Retirement System, this bill would extend the deadline for filing notice regarding the eligibility for benefits for certain members who participated in the World Trade Center rescue, recovery or cleanup operation to September 11, 2017.

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.

This bill would also lead to more deaths being classified as "accidental". For each death classified as accidental due to this bill, the cost would depend on the age, service, salary and plan of the affected individual, as well as whether such person was an active member or has been receiving an ordinary disability, a performance of duty disability, an accidental disability or a service retirement. It is estimated that the cost for each ERS and PFRS individual affected would average approximately three (3) times final average salary and seven (7) times final average salary, respectively.

ERS Costs: Pursuant to Section 25 of the Retirement and Social Security Law, the increased cost to the New York State and Local Employees' Retirement System 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 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.

PFRS Costs: These costs would be shared by the State of New York and the participating employers in the PFRS.

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. 2015-123, prepared by the Actuary for the New York State and Local Employees' Retirement and the New York State and Local Police and Fire Retirement System.