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

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2015-2016 Regular Sessions

I N S E N A T E

June 1, 2015

Introduced by Sens. GOLDEN, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

Section 1. Section 162 of the workers' compensation law, as amended by section 489 of the laws of 2013, is amended to read as follows:

S 162. Registration of participation in World Trade Center rescue, recovery and clean-up operations. In order for the claim of a participant in World Trade Center rescue, recovery and clean-up operations to come within the application of this article, such participant must file a written and sworn statement with the board on a form promulgated by the chair indicating the dates and locations of such participation and the name of such participant's employer during the period of participation. Such statement must be filed not later than September eleventh, two thousand [fourteen] EIGHTEEN. The board shall transmit a copy of such statement to the employer or carrier named therein. The filing of such a statement shall not be considered the filing of a claim for benefits under this chapter.

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

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S 2. Section 168 of the workers' compensation law is amended by adding a new subdivision 3 to read as follows:

3. A CLAIM BY A PARTICIPANT IN THE WORLD TRADE CENTER RESCUE, RECOVERY OR CLEANUP OPERATIONS WHOSE DISABLEMENT OCCURRED BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND TWELVE, AND SEPTEMBER ELEVENTH, TWO THOUSAND FIFTEEN, SHALL NOT BE DISALLOWED AS BARRED BY SECTION EIGHTEEN OR SECTION TWENTY-EIGHT OF THIS CHAPTER IF SUCH CLAIM IS FILED ON OR BEFORE SEPTEMBER ELEVENTH, TWO THOUSAND EIGHTEEN. ANY SUCH CLAIM BY A PARTICIPANT IN THE WORLD TRADE CENTER RESCUE, RECOVERY OR CLEANUP OPERATIONS WHOSE DISABLEMENT OCCURRED BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND TWELVE, AND SEPTEMBER ELEVENTH, TWO THOUSAND FIFTEEN, AND WAS DISALLOWED BY SECTION EIGHTEEN OR TWENTY-EIGHT OF THIS CHAPTER SHALL BE RECONSIDERED BY THE BOARD.

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] EIGHTEEN, 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] EIGHTEEN 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. 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] EIGHTEEN, including those that are rejected for filing as untimely.

S 4. Notwithstanding any other provision to the contrary, none of the provisions of this act shall be subject to section 25 of the retirement and social security law.

S 5. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after September 11, 2001; provided, however, that the amendments to sections 162 and 168 of the workers' compensation law made by sections one and two of this act, respectively, shall apply to all open and closed claims coming within 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. The provisions of this act will not be subject to Section 25 of the Retirement and Social Security Law.

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, 2018.

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 5 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 2 times 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 5 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 3.5 times final average salary and 8 times final average salary, respectively.

These costs would be shared by the State of New York and the participating employers in the ERS and 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, 2015 actuarial valuation. Distributions and other statistics can be found in the 2015 Report of the Actuary and the 2015 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2015 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, 2015 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 February 16, 2016, and intended for use only during the 2016 Legislative Session, is Fiscal Note No. 2016-62, prepared by the Actuary for the New York State and Local Retirement System.

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

PROVISIONS OF PROPOSED LEGISLATION: With respect to the New York City Retirement System (NYCRS), the proposed legislation would amend Retirement and Social Security Law (RSSL) Section 2, to extend, for certain members who participated in the Rescue, Recovery or Cleanup operations related to the World Trade Center (WTC) attack on September 11, 2001, the deadline for filing a Notice of Participation under the WTC Disability Law.

The NYCRS include: New York City Employees' Retirement System (NYCERS), New York City Teachers' Retirement System (NYCTRS), New York City Board of Education Retirement System (BERS), New York City Police Pension Fund (POLICE) and New York Fire Department Pension Fund (FIRE).

The effective date of this proposed legislation would be the date of enactment, and would, as it related to NYCRS, be deemed retroactive to September 11, 2001.

DEADLINES UNDER EXISTING PROVISIONS: Under current law, there are two different deadlines, depending on covered groupings, for timely filing a Notice of Participation.

Chapter 489 of the Laws of 2013 expanded coverage of the WTC Disability law to certain groups (Chapter 489/13 Covered Groups), and enacted a September 11, 2014 deadline for eligible individuals within those Groups to file a Notice of Participation. Chapter 489/13 Covered Groups include:

* Active, vested and retired Tier 1 and 2 NYCTRS members
* Active, vested and retired Tier 1 and 2 BERS members
* Vested Tier 1 and 2 NYCERS members
* Vested Tier 1 and 2 POLICE members
* Vested Tier 1 and 2 FIRE members
* Vested Tier 3 NYCERS Uniformed Corrections members
* Vested Tier 4 NYCERS Uniformed Sanitation members
* Vested Tier 4 and 6 NYCERS Deputy Sheriff members
* Vested Tier 4 and 6 NYCERS EMT members

Chapter 472 of the Laws of 2014 extended the deadline to file a Notice of Participation for all eligible groups not included in the Chapter 489/13 Covered Groups (the Original Covered Groups) to September 11, 2015.

DEADLINES UNDER PROPOSED LEGISLATION: With respect to the NYCERS, the proposed legislation would extend the deadline for filing a Notice of

Participation under the WTC Disability Law for the Original Covered Groups from September 11, 2015 to September 11, 2018, and extend the deadline for the Chapter 489/13 Covered Groups from September 11, 2014 to September 11, 2018.

ADDITIONAL EMPLOYER CONTRIBUTIONS: The increase in employer contributions as a result of the proposed legislation would depend on the number of additional members who file the required form, meet the requirements of the WTC Disability Laws and then ultimately benefit from one of the Laws.

As the Actuary believes that most members who would be eligible for the benefits provided under the WTC Disability Law have already filed the required form to register for participation, only a few members likely would benefit form the proposed legislation and, therefore, the increase in employer contributions would likely be de minimis.

ACTUARIAL ASSUMPTIONS AND METHODS: The additional employer costs and contributions have been determined based on the actuarial assumptions and methods used in June 30, 2015 (Lag) actuarial valuations of NYCRS.

STATEMENT OF ACTUARIAL OPINION: I, Sherry S. Chan, am the Chief Actuary for the New York City Retirement Systems. I am an Associate of the Society of Actuaries, a Fellow of the Conference of Consulting Actuaries and a Member of the American Academy of Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

FISCAL NOTE IDENTIFICATION: This Fiscal Note 2016-17 dated April 11, 2016, was prepared by the Chief Actuary for the New York City Employees' Retirement System, the New York City Teachers' Retirement System, the New York City Board of Education Retirement System, the New York City Police Pension Fund and the New York Fire Department Pension Fund. This estimate is intended for use only during the 2016 Legislative Session.

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

This bill would amend Subdivision 36 of Section 2 of the Retirement and Social Security Law to extend the deadline to September 11, 2018 for filing notice of having participated in the World Trade Center rescue, recover or cleanup operations during the qualifying period. Members who become disabled or die as a result of a "qualifying World Trade Center condition" are assumed to have become disabled or died as a result of an accidental or on-the-job disability or death. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after September 11, 2001.

The annual cost to the employers of members of the New York State Teachers' Retirement System is estimated to be negligible if this bill is enacted.

Employee data is from the System's most recent actuarial valuation files, consisting of data provided by the employers to the Retirement System. Data distributions and statistics can be found in the System's Comprehensive Annual Financial Report (CAFR). System assets are as reported in the System's financial statements, and can also be found in the CAFR. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report.

The source of this estimate is Fiscal Note 2016-28 dated June 9, 2016 prepared by the Actuary of the New York State Teacher's Retirement System and is intended for use only during the 2016 Legislative Session. I, Richard A. Young, am the Actuary for the New York State Teacher's Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.