

# STATE OF NEW YORK

10723

## IN ASSEMBLY

May 15, 2018

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 disability benefits for firefighters employed by the division of military and naval affairs

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 two new sections 63-g and 63-h to read as follows:

3 § 63-g. Performance of duty disability retirement. a. Any member of  
4 the retirement system employed by the division of military and naval  
5 affairs shall be eligible to retire pursuant to the provisions of this  
6 section if he or she is an airport firefighter apprentice, airport fire-  
7 fighter I, airport firefighter II, airport firefighter III or training  
8 and safety officer.

9 b. Notwithstanding any provision of this chapter or of any general or  
10 special law to the contrary, any member who becomes physically or  
11 mentally incapacitated as the result of a disability, who is presently  
12 employed and who shall have sustained such disability while so employed  
13 and while actually a member of the retirement system, provided that such  
14 disability or death (A) was caused by the natural and proximate result  
15 of a disability, not caused by such firefighter's own willful negligence  
16 and (B) was incurred in the performance and discharge of duty, unless  
17 the contrary be proven by competent evidence, shall be paid a perform-  
18 ance of duty disability retirement benefit payable pursuant to this  
19 section.

20 c. Application for a performance of duty disability retirement allow-  
21 ance for such a member may be made by:

22 1. Such member;

23 2. The head of the department in which such member is employed; or

24 3. Some person acting on behalf of and authorized by such member.

25 d. After the filing of such an application such member shall be given  
26 one or more medical examinations. If the comptroller determines that  
27 the member is physically or mentally incapacitated for the performance

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

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1 of duty and ought to be retired for performance of duty disability, such  
2 member shall be so retired. Such retirement shall be effective as of a  
3 date approved by the comptroller.

4 e. The retirement allowance payable upon retirement for performance of  
5 duty disability shall consist of a pension of one-half of his or her  
6 final average salary plus an annuity which shall be the actuarial equiv-  
7 alent of such member's accumulated contributions, if any.

8 f. If the member, at the time of the filing of an application under  
9 the provisions of subdivision c of this section, is eligible for a  
10 service retirement benefit, then and in that event, such member may  
11 simultaneously file an application for service retirement in accordance  
12 with the provisions of section seventy of this article, provided that  
13 the member indicates on the application for service retirement that such  
14 application is filed without prejudice to the application for perform-  
15 ance of duty disability retirement.

16 g. Any benefit provided pursuant to this section shall not be consid-  
17 ered as an accidental disability benefit within the meaning of section  
18 sixty-four of this title. Any benefit payable pursuant to the workers'  
19 compensation law to a member receiving a disability allowance pursuant  
20 to this section shall be in addition to such retirement for disability  
21 incurred in performance of duty allowance.

22 § 63-h. Certain impairments of health; presumption. a. Any member of  
23 the retirement system employed by the division of military and naval  
24 affairs shall be eligible to retire pursuant to the provisions of this  
25 section if he or she is an airport firefighter apprentice, airport fire-  
26 fighter I, airport firefighter II, airport firefighter III or training  
27 and safety officer.

28 b. Notwithstanding any provision of this chapter or of any general or  
29 special law to the contrary, any condition of impairment of health  
30 caused by: (1) diseases of the heart; or (2) any (i) melanoma or (ii)  
31 condition of cancer affecting the lymphatic, digestive, hematological,  
32 urinary, neurological, breast, reproductive or prostate systems result-  
33 ing in disability to a member covered by this section, presently  
34 employed, who successfully passed a physical examination on entry into  
35 service as an airport firefighter apprentice, airport firefighter I,  
36 airport firefighter II, airport firefighter III or training and safety  
37 officer which examination failed to reveal evidence of any disease or  
38 other impairment of the heart or such melanoma or condition, shall be  
39 presumptive evidence that it was incurred in the performance and  
40 discharge of duty, unless the contrary be proven by competent evidence  
41 and shall be paid a performance of duty disability retirement allowance  
42 equal to that which is provided in section sixty-three of this title,  
43 subject to the provisions of section sixty-four of this title.

44 c. Notwithstanding any provision of this chapter or of any general or  
45 special law to the contrary, any condition of impairment of health  
46 caused by diseases of the lung, resulting in disability to a member  
47 covered by this section, presently employed, who successfully passed a  
48 physical examination on entry into service as an airport firefighter  
49 apprentice, airport firefighter I, airport firefighter II, airport fire-  
50 fighter III or training and safety officer, which examination failed to  
51 disclose evidence of any disease or other impairment of the lung, shall  
52 be presumptive evidence that it was incurred in the performance and  
53 discharge of duty, unless the contrary be proven by competent evidence  
54 and shall be paid a performance of duty disability retirement allowance  
55 equal to that which is provided in section sixty-three of this title,  
56 subject to the provisions of section sixty-four of this title.

1 d. After the filing of an application such member shall be given one  
2 or more medical examinations. If the comptroller determines that the  
3 member is physically or mentally incapacitated for the performance of  
4 duty and ought to be retired for performance of duty disability, such  
5 member shall be so retired. Such retirement shall be effective as of a  
6 date approved by the comptroller.

7 e. If the member, at the time of the filing of such application, is  
8 eligible for a service retirement benefit, then and in that event, such  
9 member may simultaneously file an application for service retirement,  
10 provided that the member indicates on the application for service  
11 retirement that such application is filed without prejudice to the  
12 application for performance of duty disability retirement.

13 § 2. The retirement and social security law is amended by adding two  
14 new sections 607-i and 607-j to read as follows:

15 § 607-i. Performance of duty disability retirement. a. Any member of  
16 the retirement system employed by the division of military and naval  
17 affairs shall be eligible to retire pursuant to the provisions of this  
18 section if he or she is an airport firefighter apprentice, airport fire-  
19 fighter I, airport firefighter II, airport firefighter III or training  
20 and safety officer.

21 b. Notwithstanding any provision of this chapter or of any general or  
22 special law to the contrary, any member who becomes physically or  
23 mentally incapacitated as the result of a disability, who is presently  
24 employed and who shall have sustained such disability while so employed  
25 and while actually a member of the retirement system, provided that such  
26 disability or death (A) was caused by the natural and proximate result  
27 of a disability, not caused by such firefighter's own willful negligence  
28 and (B) was incurred in the performance and discharge of duty, unless  
29 the contrary be proven by competent evidence, shall be paid a perform-  
30 ance of duty disability retirement benefit payable pursuant to this  
31 section.

32 c. Application for a performance of duty disability retirement allow-  
33 ance for such a member may be made by:

34 1. Such member;

35 2. The head of the department in which such member is employed; or

36 3. Some person acting on behalf of and authorized by such member.

37 d. After the filing of such an application such member shall be given  
38 one or more medical examinations. If the comptroller determines that  
39 the member is physically or mentally incapacitated for the performance  
40 of duty and ought to be retired for performance of duty disability, such  
41 member shall be so retired. Such retirement shall be effective as of a  
42 date approved by the comptroller.

43 e. The retirement allowance payable upon retirement for performance of  
44 duty disability shall consist of a pension of one-half of his or her  
45 final average salary plus an annuity which shall be the actuarial equiv-  
46 alent of such member's accumulated contributions, if any.

47 f. If the member, at the time of the filing of an application under  
48 the provisions of subdivision c of this section, is eligible for a  
49 service retirement benefit, then and in that event, such member may  
50 simultaneously file an application for service retirement in accordance  
51 with the provisions of section seventy of this chapter, provided that  
52 the member indicates on the application for service retirement that such  
53 application is filed without prejudice to the application for perform-  
54 ance of duty disability retirement.

55 g. Any benefit provided pursuant to this section shall not be consid-  
56 ered as an accidental disability benefit within the meaning of section

1 sixty-four of this chapter. Any benefit payable pursuant to the workers'  
2 compensation law to a member receiving a disability allowance pursuant  
3 to this section shall be in addition to such retirement for disability  
4 incurred in performance of duty allowance.

5 § 607-j. Certain impairments of health; presumption. a. Any member of  
6 the retirement system employed by the division of military and naval  
7 affairs shall be eligible to retire pursuant to the provisions of this  
8 section if he or she is an airport firefighter apprentice, airport fire-  
9 fighter I, airport firefighter II, airport firefighter III or training  
10 and safety officer.

11 b. Notwithstanding any provision of this chapter or of any general or  
12 special law to the contrary, any condition of impairment of health  
13 caused by: (1) diseases of the heart; or (2) any (i) melanoma or (ii)  
14 condition of cancer affecting the lymphatic, digestive, hematological,  
15 urinary, neurological, breast, reproductive or prostate systems result-  
16 ing in disability to a member covered by this section, presently  
17 employed, who successfully passed a physical examination on entry into  
18 service as an airport firefighter apprentice, airport firefighter I,  
19 airport firefighter II, airport firefighter III or training and safety  
20 officer which examination failed to reveal evidence of any disease or  
21 other impairment of the heart or such melanoma or condition, shall be  
22 presumptive evidence that it was incurred in the performance and  
23 discharge of duty, unless the contrary be proven by competent evidence  
24 and shall be paid a performance of duty disability retirement allowance  
25 equal to that which is provided in section sixty-three of this chapter,  
26 subject to the provisions of sections sixty-three and sixty-four of this  
27 chapter.

28 c. Notwithstanding any provision of this chapter or of any general or  
29 special law to the contrary, any condition of impairment of health  
30 caused by diseases of the lung, resulting in disability to a member  
31 covered by this section, presently employed, who successfully passed a  
32 physical examination on entry into service as an airport firefighter  
33 apprentice, airport firefighter I, airport firefighter II, airport fire-  
34 fighter III or training and safety officer, which examination failed to  
35 disclose evidence of any disease or other impairment of the lung, shall  
36 be presumptive evidence that it was incurred in the performance and  
37 discharge of duty, unless the contrary be proven by competent evidence  
38 and shall be paid a performance of duty disability retirement allowance  
39 equal to that which is provided in section sixty-three of this chapter,  
40 subject to the provisions of section sixty-four of this chapter.

41 d. After the filing of an application such member shall be given one  
42 or more medical examinations. If the comptroller determines that the  
43 member is physically or mentally incapacitated for the performance of  
44 duty and ought to be retired for performance of duty disability, such  
45 member shall be so retired. Such retirement shall be effective as of a  
46 date approved by the comptroller.

47 e. If the member, at the time of the filing of such application, is  
48 eligible for a service retirement benefit, then and in that event, such  
49 member may simultaneously file an application for service retirement,  
50 provided that the member indicates on the application for service  
51 retirement that such application is filed without prejudice to the  
52 application for performance of duty disability retirement.

53 § 3. This act shall take effect immediately.

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

This bill would grant improved disability pensions to airport fire-fighters and training and safety officers in the New York State division

of military and naval affairs who sustain a disability in the performance of their duties equal to 50% of final average salary (FAS), or 75% of FAS less worker's compensation (WC) when such disability is related to heart disease, lung disease, or certain forms of cancer, unless the contrary be proven by competent evidence. Currently, affected members are entitled to a disability benefit of approximately 1/3 of FAS.

If this bill is enacted, the estimated increase in the annual contributions of the state of New York would be approximately \$85,000 for the fiscal year ending March 31, 2019.

In addition to the annual contributions discussed above, there will be an immediate past service cost of \$632,000 which will be borne by the state of New York as a one-time payment. This estimate is based on the assumption that payment will be made on March 1, 2019.

These estimated costs are based on 71 members having an annual salary for the fiscal year ending March 31, 2017 of approximately \$3.9 million.

Summary of relevant resources:

The identities of the members who are affected by this legislation are not obtainable from our database. Job title code data provided by the Civil Service Employees Association was relied upon to identify affected members.

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2017 actuarial valuation. Distributions and other statistics can be found in the 2017 Report of the Actuary and the 2017 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in 2015, 2016, and 2017 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, 2017 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 10, 2018, and intended for use only during the 2018 Legislative Session, is Fiscal Note No. 2018-79, prepared by the Actuary for the New York State and Local Retirement System.