

# STATE OF NEW YORK

8326

2017-2018 Regular Sessions

## IN ASSEMBLY

June 8, 2017

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 from any condition  
12 of impairment of health caused by: (1) diseases of the heart; or (2) any  
13 (i) melanoma or (ii) condition of cancer affecting the lymphatic, diges-  
14 tive, hematological, urinary, neurological, breast, reproductive or  
15 prostate systems, who is presently employed and who shall have sustained  
16 such disability while so employed and while actually a member of the  
17 retirement system, who successfully passed a physical examination on  
18 entry into service as an airport firefighter apprentice, airport fire-  
19 fighter I, airport firefighter II, airport firefighter III or training  
20 and safety officer, which examination failed to disclose evidence of any  
21 disease or other impairment of the heart or such melanoma or condition,  
22 shall be presumptive evidence that such disability or death (A) was  
23 caused by the natural and proximate result of an accident, not caused by  
24 such firefighter's own negligence and (B) was incurred in the perform-

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

LBD09309-03-7

1 ance and discharge of duty, unless the contrary be proven by competent  
2 evidence and shall be paid a performance of duty disability retirement  
3 benefit payable pursuant to this section.

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

6 1. Such member;

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

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

9 d. After the filing of such an application such member shall be given  
10 one or more medical examinations.

11 e. If the comptroller determines that the member is physically or  
12 mentally incapacitated for the performance of duty and ought to be  
13 retired for performance of duty disability, such member shall be so  
14 retired. Such retirement shall be effective as of a date approved by  
15 the comptroller.

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

20 g. If the member, at the time of the filing of an application under  
21 the provisions of subdivision c of this section, is eligible for a  
22 service retirement benefit, then and in that event, such member may  
23 simultaneously file an application for service retirement in accordance  
24 with the provisions of section seventy of this article, provided that  
25 the member indicates on the application for service retirement that such  
26 application is filed without prejudice to the application for perform-  
27 ance of duty disability retirement.

28 h. Any benefit provided pursuant to this section shall not be consid-  
29 ered as an accidental disability benefit within the meaning of section  
30 sixty-four of this title. Any benefit payable pursuant to the workers'  
31 compensation law to a member receiving a disability allowance pursuant  
32 to this section shall be in addition to such retirement for disability  
33 incurred in performance of duty allowance.

34 § 63-h. Certain impairments of health; presumption. a. Any member of  
35 the retirement system employed by the division of military and naval  
36 affairs shall be eligible to retire pursuant to the provisions of this  
37 section if he or she is an airport firefighter apprentice, airport fire-  
38 fighter I, airport firefighter II, airport firefighter III or training  
39 and safety officer.

40 b. Notwithstanding any provision of this chapter or of any general or  
41 special law to the contrary, any condition of impairment of health  
42 caused by: (1) diseases of the heart; or (2) any (i) melanoma or (ii)  
43 condition of cancer affecting the lymphatic, digestive, hematological,  
44 urinary, neurological, breast, reproductive or prostate systems result-  
45 ing in disability to a member covered by this section, presently  
46 employed and who shall have sustained such disability as the result of  
47 an accident not caused by his or her own willful negligence sustained in  
48 such service and while actually a member of the retirement system, who  
49 successfully passed a physical examination on entry into service as an  
50 airport firefighter apprentice, airport firefighter I, airport fire-  
51 fighter II, airport firefighter III or training and safety officer which  
52 examination failed to disclose evidence of any disease or other impair-  
53 ment of the heart or such melanoma or condition, shall be presumptive  
54 evidence that such disability or death (A) was caused by the natural and  
55 proximate result of an accident, not caused by such firefighter's own  
56 negligence and (B) was incurred in the performance and discharge of

1 duty, unless the contrary be proven by competent evidence and shall be  
2 paid a performance of duty disability retirement allowance equal to that  
3 which is provided in section sixty-three of this title, subject to the  
4 provisions of section sixty-four of this title.

5 c. Notwithstanding any provision of this chapter or of any general or  
6 special law to the contrary, any condition of impairment of health  
7 caused by diseases of the lung, resulting in disability to a member  
8 covered by this section, presently employed and while actually a member  
9 of the retirement system, who successfully passed a physical examination  
10 on entry into service as an airport firefighter apprentice, airport  
11 firefighter I, airport firefighter II, airport firefighter III or training  
12 and safety officer, which examination failed to disclose evidence of  
13 any disease or other impairment of the lung, shall be presumptive  
14 evidence that such disability or death (1) was caused by the natural and  
15 proximate result of an accident, not caused by such firefighter's own  
16 negligence and (2) was incurred in the performance and discharge of  
17 duty, unless the contrary be proven by competent evidence and shall be  
18 paid a performance of duty disability retirement allowance equal to that  
19 which is provided in section sixty-three of this title, subject to the  
20 provisions of section sixty-four of this title.

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

23 § 607-i. Performance of duty disability retirement. a. Any member of  
24 the retirement system employed by the division of military and naval  
25 affairs shall be eligible to retire pursuant to the provisions of this  
26 section if he or she is an airport firefighter apprentice, airport fire-  
27 fighter I, airport firefighter II, airport firefighter III or training  
28 and safety officer.

29 b. Notwithstanding any provision of this chapter or of any general or  
30 special law to the contrary, any member who becomes physically or  
31 mentally incapacitated as the result of a disability from any condition  
32 of impairment of health caused by: (1) diseases of the heart; or (2) any  
33 (i) melanoma or (ii) condition of cancer affecting the lymphatic, diges-  
34 tive, hematological, urinary, neurological, breast, reproductive or  
35 prostate systems, who is presently employed and who shall have sustained  
36 such disability while so employed and while actually a member of the  
37 retirement system, who successfully passed a physical examination on  
38 entry into service as an airport firefighter apprentice, airport fire-  
39 fighter I, airport firefighter II, airport firefighter III or training  
40 and safety officer, which examination failed to disclose evidence of any  
41 disease or other impairment of the heart or such melanoma or condition,  
42 shall be presumptive evidence that such disability or death (A) was  
43 caused by the natural and proximate result of an accident, not caused by  
44 such firefighter's own negligence and (B) was incurred in the perform-  
45 ance and discharge of duty, unless the contrary be proven by competent  
46 evidence and shall be paid a performance of duty disability retirement  
47 benefit payable pursuant to this section.

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

50 1. Such member;

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

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

53 d. After the filing of such an application such member shall be given  
54 one or more medical examinations.

55 e. If the comptroller determines that the member is physically or  
56 mentally incapacitated for the performance of duty and ought to be

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

4 f. 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 g. 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 chapter, 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 h. 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 chapter. 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 § 607-j. 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 and who shall have sustained such disability as the result of  
35 an accident not caused by his or her own willful negligence sustained in  
36 such service and while actually a member of the retirement system, who  
37 successfully passed a physical examination on entry into service as an  
38 airport firefighter apprentice, airport firefighter I, airport fire-  
39 fighter II, airport firefighter III or training and safety officer which  
40 examination failed to disclose evidence of any disease or other impair-  
41 ment of the heart or such melanoma or condition, shall be presumptive  
42 evidence that such disability or death (A) was caused by the natural and  
43 proximate result of an accident, not caused by such firefighter's own  
44 negligence and (B) was incurred in the performance and discharge of  
45 duty, unless the contrary be proven by competent evidence and shall be  
46 paid a performance of duty disability retirement allowance equal to that  
47 which is provided in section sixty-three of this chapter, subject to the  
48 provisions of sections sixty-three and sixty-four of this chapter.

49 c. Notwithstanding any provision of this chapter or of any general or  
50 special law to the contrary, any condition of impairment of health  
51 caused by diseases of the lung, resulting in disability to a member  
52 covered by this section, presently employed and while actually a member  
53 of the retirement system, who successfully passed a physical examination  
54 on entry into service as an airport firefighter apprentice, airport  
55 firefighter I, airport firefighter II, airport firefighter III or train-  
56 ing and safety officer, which examination failed to disclose evidence of

1 any disease or other impairment of the lung, shall be presumptive  
2 evidence that such disability or death (1) was caused by the natural and  
3 proximate result of an accident, not caused by such firefighter's own  
4 negligence and (2) was incurred in the performance and discharge of  
5 duty, unless the contrary be proven by competent evidence and shall be  
6 paid a performance of duty disability retirement allowance equal to that  
7 which is provided in section sixty-three of this chapter, subject to the  
8 provisions of section sixty-four of this chapter.

9 § 3. This act shall take effect immediately.

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

This bill would grant improved disability pensions to airport firefighters and training and safety officers in the New York State division of military and naval affairs who sustain a disability related to heart disease, lung disease and certain forms of cancer. This bill would help individuals who sustained such disabilities to establish the presumption that they were incurred in the performance and discharge of duty, unless the contrary be proven by competent evidence. The benefit for a heart or cancer related accidental disability, or a lung disease related performance of duty disability would be 75% of final average salary (FAS) minus worker's compensation (WC).

If this bill is enacted, the disability benefits of affected members with heart, lung or certain cancer related disabilities would increase from approximately 1/3 of FAS to 75% of FAS minus WC. The estimated increase in the annual contributions of the state of New York for the fiscal year ending March 31, 2018 would be approximately \$24,000.

In addition to the annual contributions discussed above, there will be an immediate past service cost of \$202,000 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 February 1, 2018.

These estimated costs are based on 61 members having an annual salary for the fiscal year ending March 31, 2016 of approximately \$3.7 million.

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, 2016 actuarial valuation. Distributions and other statistics can be found in the 2016 Report of the Actuary and the 2016 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2015 and 2016 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, 2016 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 26, 2017, and intended for use only during the 2017 Legislative Session, is Fiscal Note No. 2017-60, prepared by the Actuary for the New York State and Local Retirement System.