STATE OF NEW YORK

7892

2019-2020 Regular Sessions

IN ASSEMBLY

May 28, 2019

Introduced by M. of A. ABBATE -- (at request of the State Comptroller) -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to extending the period of time to file an application for an accidental death benefit after the death of a member of the New York state and local employees' retirement system or the New York state and local police and fire retirement system

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The section heading and the opening paragraph of subdivision a of section 61 of the retirement and social security law, as amended by chapter 336 of the laws of 1960, are amended to read as follows:

[~~Accidential~~] Accidental death benefit.

An [~~accidential~~] accidental death benefit and the reserve-for-increased-take-home-pay shall be payable upon the death of a member if, upon application filed within [~~two~~] five years after the death of such member, the comptroller shall determine, on the basis of the evidence, that such member:

§ 2. The opening paragraph of subdivision a of section 361 of the retirement and social security law, as added by chapter 1000 of the laws of 1966, is amended to read as follows:

An accidental death benefit and the reserve-for-increased-take-home-pay shall be payable upon the death of a member if, upon application, filed within [~~two~~] five years after the death of such member the comptroller shall determine, on the basis of the evidence, that such member:

§ 3. The opening paragraph of subdivision a of section 509 of the retirement and social security law, as amended by chapter 489 of the laws of 2008, is amended to read as follows:

The eligible beneficiary of a member in service, or a vested member that dies as a result of a qualifying World Trade Center condition as

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

LBD08969-04-9

defined in section two of this chapter, shall be entitled to an accidental death benefit in the form of a pension equal to fifty percent of such member's final average salary if, upon application filed within [~~two~~] **five** years after the death of the member, the head of the retirement system determines that such member:

§ 4. Subdivision a of section 607 of the retirement and social security law, as amended by chapter 582 of the laws of 2011, is amended to read as follows:

a. The eligible beneficiary of a member in service, or of a vested member who dies as a result of a qualifying World Trade Center condition as defined in section two of this chapter, shall be entitled to an accidental death benefit in the form of a pension equal to fifty percent of such member's wages earned during his or her last year of actual service or his or her annual wage rate if he or she was credited with less than one year of service since last becoming a member, if, upon application filed within [~~sixty days~~] **five years** after the death of the member, the head of the retirement system determines that such member died before the effective date of retirement, as the natural and proximate result of an accident not caused by his or her own willful negligence sustained in the performance of his or her duties in active service and while actually a member of the retirement system.

Notwithstanding the provisions of section two hundred forty-two, two hundred forty-three or two hundred forty-four of the military law or the provisions of any other law to the contrary and solely for the purpose of determining eligibility for an accidental death benefit, a member shall be considered to have died as the natural and proximate result of an accident sustained in the performance of duty provided such member was on the payroll in the service upon which membership is based at the time he or she was ordered to active duty pursuant to Title 10 of the United States Code, with the armed forces of the United States or to service in the uniformed services pursuant to Chapter 43 of Title 38 of the United States Code and died while on such active duty or service in the uniformed services on or after June fourteenth, two thousand five.

Provided, however, the head of the retirement system in its sole discretion may accept an application for an accidental death benefit after the expiration of the [~~sixty day~~] **applicable** filing period, where, but only where, an ordinary death benefit has not been previously paid.

§ 5. Notwithstanding any other provision of law to the contrary, the provisions of this act shall not be subject to the provisions of section twenty-five of the retirement and social security law requiring an appropriation in an amount equal to the value of the benefits associated with prior service when enacted on a statewide basis. This act extends the filing deadline for accidental death benefits from two to five years following the death of an active member occurring on or after January 1, 2020. Since it is impossible to determine the number of members who could be affected by this act specifically, the number of members who participated in World Trade Center rescue, recovery or cleanup operations and who will qualify for a death benefit, it cannot be readily determined the amount, if any, of an appropriation.

§ 6. This act shall take effect January 1, 2020 and shall apply to the death of a member occurring on or after such date.

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

This bill would extend the filing deadline for accidental death benefits to 5 years following the death of an active member of certain public retirement systems. Currently the filing deadline is 2 years. The filing extension will apply only to those deaths occurring on or after

January 1, 2020. The provisions of Section 25 of the Retirement and Social Security Law (RSSL) will not apply.

If this bill is enacted, insofar as it would affect the New York State and Local Employees' Retirement System (ERS) and the New York State and Local Police and Fire Retirement System (PFRS), it is estimated that there would be an average per person cost of approximately 3.5 times final salary on behalf of affected ERS members and 11 times final salary on behalf of affected PFRS members whose applications are filed within the extended period.

The number of members and retirees who could be affected by this legislation cannot be readily determined. Those costs arising in ERS would be borne by the State of New York and all the participating employers in ERS. Those costs arising in PFRS would be borne by the State of New York and all the participating employers in 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, 2018 actuarial valuation. Distributions and other statistics can be found in the 2018 Report of the Actuary and the 2018 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2015, 2016, 2017 and 2018 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, 2018 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 fiscal note does not constitute a legal opinion on the viability of the proposed change nor is it intended to serve as a substitute for the professional judgment of an attorney.

This estimate, dated May 13, 2019, and intended for use only during the 2019 Legislative Session, is Fiscal Note No. 2019-113, prepared by the Actuary for the New York State and Local Retirement System.