

# STATE OF NEW YORK

9857

## IN ASSEMBLY

February 20, 2020

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 retirement for members of the department of environmental conservation, forest rangers, university police officers and the regional state park police

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 a new section 363-ee to read as follows:

3 § 363-ee. Accidental disability retirement allowance for certain  
4 members or officers of the division of law enforcement in the department  
5 of environmental conservation, forest rangers, regional state park  
6 police officers, and university police officers. a. A member may elect  
7 to receive an accidental disability retirement allowance as provided  
8 under this section in lieu of the benefits provided under section three  
9 hundred sixty-three-e of this title if, at the time application therefor  
10 is filed, he or she is:

11 1. Physically or mentally incapacitated for performance of duty as the  
12 natural and proximate result of an accident not caused by his or her own  
13 willful negligence sustained in such service and while actually a non-  
14 seasonally appointed member of the division of law enforcement in the  
15 department of environmental conservation, a police officer in the  
16 department of environmental conservation, an officer in the regional  
17 state park police, a forest ranger in the service of the department of  
18 environmental conservation which shall mean a person who serves on a  
19 full-time basis in the title of forest ranger I, forest ranger II,  
20 forest ranger III, assistant superintendent of forest fire control,  
21 superintendent of forest fire control or any successor titles or new  
22 titles in the forest ranger title series in the department of environ-  
23 mental conservation, or a university police officer appointed pursuant  
24 to paragraph 1 of subdivision two of section three hundred fifty-five of  
25 the education law, and

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

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2. Actually in service upon which his or her membership is based. However, in a case where a member is discontinued from service subsequent to the accident, either voluntarily or involuntarily, and provided that the member meets the requirements of paragraph one of this subdivision, application may be made, either (a) by a vested member incapacitated as the result of a qualifying World Trade Center condition as defined in section two of this chapter at any time, or (b) not later than two years after the member is first discontinued from service.

b. Application for an accidental disability retirement allowance for such a member may be made by:

1. Such member, or

2. The head of the department where such member is employed or his or her designee, or

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

c. (a) After the filing of such an application such member shall be given one or more medical examinations. No such application shall be approved, however, unless the member or some other person on his or her behalf shall have filed written notice in the office of the comptroller within ninety days after the accident, setting forth:

1. The time when and the place where such accident occurred;

2. The particulars thereof;

3. The nature and extent of the member's injuries; and

4. His or her alleged incapacity.

(b) The notice herein required need not be given:

1. If notice of such accident shall be filed in accordance with the provisions of the workers' compensation law of any state within which a participating employer shall have its employees located or performing functions and duties within the normal scope of their employment, or

2. If the application for accidental disability retirement is filed within one year after the date of such accident, or

3. If a failure to file notice has been excused for good cause shown as provided by rules and regulations promulgated by the comptroller.

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

e. Notwithstanding any other provision of law, the retirement allowance payable upon accidental disability retirement shall consist of:

1. An annuity which shall be the actuarial equivalent of the member's accumulated contributions, plus

2. A pension which is the actuarial equivalent of the reserved-for-increased-take-home-pay to which he or she may be entitled, if any, plus

3. A pension of three-quarters of his or her final average salary. The payment of such pension shall be subject to the provisions of section three hundred sixty-four of this title.

f. If the member, at the time of the filing of an application under the provisions of subdivision b of this section, is eligible for a service retirement benefit, then and in that event, he or she may simultaneously file an application for service retirement in accordance with the provisions of section seventy of this chapter, provided that the member indicates on the application for service retirement that such application is filed without prejudice to the application for accidental disability retirement.

g. For purposes of this section, the term "accident" shall have the same meaning and be interpreted in the same manner as such term is

1 defined and interpreted to mean in section three hundred sixty-three of  
2 this title.

3 h. 1. (a) Notwithstanding any provisions of this chapter or of any  
4 general, special or local law, charter, administrative code or rule or  
5 regulation to the contrary, if any condition or impairment of health is  
6 caused by a qualifying World Trade Center condition as defined in  
7 section two of this chapter, it shall be presumptive evidence that it  
8 was incurred in the performance and discharge of duty and the natural  
9 and proximate result of an accident not caused by such member's own  
10 willful negligence, unless the contrary be proved by competent evidence.

11 (b) The comptroller is hereby authorized to promulgate rules and regu-  
12 lations to implement the provisions of this paragraph.

13 2. (a) Notwithstanding the provisions of this chapter or of any gener-  
14 al, special or local law, charter, administrative code or rule or regu-  
15 lation to the contrary, if a member who participated in World Trade  
16 Center rescue, recovery or cleanup operations, as defined in section two  
17 of this chapter, and subsequently retired on a service retirement, an  
18 ordinary disability retirement or a performance of duty disability  
19 retirement and subsequent to such retirement is determined by the comp-  
20 troller to have a qualifying World Trade Center condition, as defined in  
21 section two of this chapter, upon such determination by the comptroller  
22 it shall be presumed that such disability was incurred in the perform-  
23 ance and discharge of duty as the natural and proximate result of an  
24 accident not caused by such member's own willful negligence, and that  
25 the member would have been physically or mentally incapacitated for the  
26 performance and discharge of duty of the position from which he or she  
27 retired had the condition been known and fully developed at the time of  
28 the member's retirement, unless the contrary is proven by competent  
29 evidence.

30 (b) The comptroller shall consider a reclassification of the member's  
31 retirement as an accidental disability retirement effective as of the  
32 date of such reclassification.

33 (c) Such member's retirement option shall not be changed as a result  
34 of such reclassification.

35 (d) The member's former employer at the time of the member's retire-  
36 ment shall have an opportunity to be heard on the member's application  
37 for reclassification by the comptroller according to procedures devel-  
38 oped by the comptroller.

39 (e) The comptroller is hereby authorized to promulgate rules and regu-  
40 lations to implement the provisions of this paragraph.

41 i. Notwithstanding any other provision of this chapter or of any  
42 general, special or local law, charter, administrative code or rule or  
43 regulation to the contrary, if a retiree who: (1) has met the criteria  
44 of subdivision h of this section and retired on a service or disability  
45 retirement, or would have met the criteria if not already retired on an  
46 accidental disability; and (2) has not been retired for more than twen-  
47 ty-five years; and (3) dies from a qualifying World Trade Center condi-  
48 tion, as defined in section two of this chapter, as determined by the  
49 applicable head of the retirement system or applicable medical board,  
50 then unless the contrary be proven by competent evidence, such retiree  
51 shall be deemed to have died as a natural and proximate result of an  
52 accident sustained in the performance of duty and not as a result of  
53 willful negligence on his or her part. Such retiree's eligible benefici-  
54 ary, as set forth in section three hundred sixty-one of this title,  
55 shall be entitled to an accidental death benefit as provided by section  
56 three hundred sixty-one of this title, however, for the purposes of

1 determining the salary base upon which the accidental death benefit is  
2 calculated, the retiree shall be deemed to have died on the date of his  
3 or her retirement. Upon the retiree's death, the eligible beneficiary  
4 shall make a written application to the head of the retirement system  
5 within the time for filing an application for an accidental death bene-  
6 fit as set forth in section three hundred sixty-one of this title  
7 requesting conversion of such retiree's service or disability retirement  
8 benefit to an accidental death benefit. At the time of such conversion,  
9 the eligible beneficiary shall relinquish all rights to the prospective  
10 benefits payable under the service or disability retirement benefit,  
11 including any post-retirement death benefits, since the retiree's death.  
12 If the eligible beneficiary is not the only beneficiary receiving or  
13 entitled to receive a benefit under the service or disability retirement  
14 benefit (including, but not limited to, post-retirement death benefits  
15 or benefits paid or payable pursuant to the retiree's option selection),  
16 the accidental death benefit payments to the eligible beneficiary will  
17 be reduced by any amounts paid or payable to any other beneficiary.

18 j. Notwithstanding any other provision of this chapter or of any  
19 general, special or local law, charter, administrative code or rule or  
20 regulation to the contrary, if a member who: (1) has met the criteria of  
21 subdivision h of this section; and (2) dies in active service from a  
22 qualifying World Trade Center condition, as defined in section two of  
23 this chapter, as determined by the applicable head of the retirement  
24 system or applicable medical board to have been caused by such member's  
25 participation in the World Trade Center rescue, recovery or cleanup  
26 operations, as defined in section two of this chapter, then unless the  
27 contrary be proven by competent evidence, such member shall be deemed to  
28 have died as a natural and proximate result of an accident sustained in  
29 the performance of duty and not as a result of willful negligence on his  
30 or her part. Such member's eligible beneficiary, as set forth in section  
31 three hundred sixty-one of this title, shall be entitled to an acci-  
32 dental death benefit provided he or she makes written application to the  
33 head of the retirement system within the time for filing an application  
34 for an accidental death benefit as set forth in section three hundred  
35 sixty-one of this title.

36 § 2. The section heading and subdivision a of section 363-e of the  
37 retirement and social security law, as added by chapter 208 of the laws  
38 of 1997, are amended to read as follows:

39 Disability retirement allowance for members of the division of law  
40 enforcement in the department of environmental conservation, police  
41 officers in the department of environmental conservation, forest  
42 rangers, university police officers and the regional state park police.

43 a. Every non-seasonally appointed sworn member or officer of the divi-  
44 sion of law enforcement in the department of environmental conservation  
45 and the regional state park police, every police officer in the depart-  
46 ment of environmental conservation, every forest ranger and every  
47 university police officer appointed pursuant to paragraph 1 of subdivi-  
48 sion two of section three hundred fifty-five of the education law who  
49 becomes physically or mentally incapacitated for the performance of duty  
50 shall be covered by the provisions of this section in lieu of the  
51 provisions of section three hundred sixty-two or three hundred sixty-  
52 three of this ~~article~~ title; except, however, any such member or offi-  
53 cer who last entered or reentered service in the department of environ-  
54 mental conservation or state park police, as the case may be, prior to  
55 September first, nineteen hundred ninety-seven, shall be entitled to  
56 apply for disability retirement pursuant to such sections and to receive

1 the benefit so payable in lieu of the benefit payable pursuant to this  
2 section. The benefits provided by this section for university police  
3 officers shall be in lieu of section three hundred sixty-three of this  
4 title.

5 § 3. This act shall take effect immediately.

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

This bill would grant improved accidental and performance of duty disability pensions to certain members or officers of the division of law enforcement in the department of environmental conservation, forest rangers, regional state park police and university police officers. The benefit for an accidental disability would be 75% of final average salary minus worker's compensation. The benefit for a performance of duty disability benefit would be 50% of final average salary.

If this bill is enacted during the 2020 legislative session, we anticipate that there will be an increase of approximately \$350,000 in the annual contributions for the fiscal year ending March 31, 2021. In future years, this cost will vary as the billing rates and salary of affected members change.

In addition to the annual contributions discussed above, there will be an immediate past service cost of approximately \$1.09 million 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, 2021.

These estimated costs are based on 571 members having an annual salary for the fiscal year ending March 31, 2019 of approximately \$49.1 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, 2019 actuarial valuation. Distributions and other statistics can be found in the 2019 Report of the Actuary and the 2019 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2015, 2016, 2017, 2018, and 2019 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, 2019 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 January 28, 2020, and intended for use only during the 2020 Legislative Session, is Fiscal Note No. 2020-31, prepared by the Actuary for the New York State and Local Retirement System.