STATE OF NEW YORK

6061--B

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Civil Service and Pensions in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law and the workers' compensation law, in relation to participation in World Trade Center rescue, recovery or cleanup operations by members of the state police; and to repeal certain provisions of the retirement and social security law relating thereto

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

Section 1. Subparagraph (a) of paragraph 1 of subdivision h of section 363-bb of the retirement and social security law, as amended by chapter 93 of the laws of 2005, is amended to read as follows:

(a) Notwithstanding any provisions of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, any condition or impairment of health caused by 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 minimum of forty hours shall be presumptive evidence that it was incurred in the performance and discharge of duty and the natural and proximate result of an accident not caused by such member's own willful negligence, unless the contrary be proved by competent evidence. A member shall be eligible for the presumption provided for under this paragraph notwithstanding the fact that the member did not participate in World Trade Center recovery and cleanup operations for a minimum of forty hours, provided that: (i) the member participated in the rescue, recovery, or cleanup operations at the World Trade Center

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

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site between September eleventh, two thousand one and September twelfth, two thousand one; (ii) the member sustained a documented physical injury at the World Trade Center site between September eleventh, two thousand one and September twelfth, two thousand one that is a qualifying condition or impairment of health resulting in disability to the member that prevented the member from continuing to participate in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours; and (iii) the documented physical injury that resulted in a disability to the member that prevented the member from continuing to participate in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours is the qualifying condition or impairment of health which the member seeks to be eligible for the presumption provided for under this paragraph. **A member shall also be eligible for the presumption provided for under this paragraph notwithstanding the fact that the member did not participate in World Trade Center recovery and cleanup operations for a minimum of forty hours, provided that the member drove, rode in, repaired, cleaned, rehabilitated, or otherwise used or worked in vehicles or equipment, including emergency vehicle radio equipment, owned by the state of New York that was contaminated by debris in the World Trade Center site, as defined in paragraph (f) of subdivision thirty-six of section two of this chapter, regardless of whether the use of or work on such vehicles and equipment was performed within the World Trade Center site, and provided such use or work occurred prior to decontamination of such vehicles or equipment. Absent proof to the contrary, contamination is presumed where such vehicles or equipment were in service between September eleventh, two thousand one and September eleventh, two thousand two and used in the World Trade Center site. Furthermore, it is presumed a member who was a member of the state police between September eleventh, two thousand one and September eleventh, two thousand six, and occupied a position whose duties would reasonably include use of or work on such contaminated vehicles and equipment, drove, rode in, repaired, cleaned, rehabilitated, or otherwise used or worked on such contaminated vehicles and equipment.**

§ 2. Subparagraph (d) of paragraph 1 of subdivision h of section 363-bb of the retirement and social security law is REPEALED.

§ 3. Subparagraph (e) of paragraph 1 of subdivision h of section 363-bb of the retirement and social security law, as amended by chapter 495 of the laws of 2007, is amended to read as follows:

(e) In order to be eligible for consideration for such presumption, such member must file a written and sworn statement with the member's retirement system on a form provided by such system indicating the dates and locations of employment. [~~**Such statement must be filed not later than four years following the effective date of chapter one hundred four of the laws of two thousand five.**~~]

§ 4. Subparagraph (a) of paragraph 2 of subdivision h of section 363-bb of the retirement and social security law, as amended by chapter 93 of the laws of 2005, is amended to read as follows:

(a) Notwithstanding the provisions of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a member who participated in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours, and subsequently retired on a service retirement, an ordinary disability retirement, a performance of duty disability retirement or a state police disability retirement pursuant to section three hundred sixty-three-b of this title and subsequent to such retirement incurred a disa-

bility caused by any qualifying condition or impairment of the health which the comptroller determines to have been caused by such member's having participated in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours, upon such determination by the comptroller it shall be presumed that such disability was incurred in the performance and discharge of duty as the natural and proximate result of an accident not caused by such member's own willful negligence, and that the member would have been physically or mentally incapacitated for the performance and discharge of duty of the position from which he or she retired had the condition been known and fully developed at the time of the member's retirement, unless the contrary is proven by competent evidence. A member shall be eligible for the presumption provided for under this paragraph notwithstanding the fact that the member did not participate in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours, provided that: (i) the member participated in the rescue, recovery, or cleanup operations at the World Trade Center site between September eleventh, two thousand one and September twelfth, two thousand one; (ii) the member sustained a documented physical injury at the World Trade Center site between September eleventh, two thousand one and September twelfth, two thousand one that is a qualifying condition or impairment of health resulting in disability to the member that prevented the member from continuing to participate in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours; and (iii) the documented physical injury that resulted in a disability to the member that prevented the member from continuing to participate in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours is the qualifying condition or impairment of health which the member seeks to be eligible for the presumption provided for under this paragraph. **A member shall also be eligible for the presumption provided for under this paragraph notwithstanding the fact that the member did not participate in World Trade Center recovery and cleanup operations for a minimum of forty hours, provided that the member drove, rode in, repaired, cleaned, rehabilitated, or otherwise used or worked in vehicles or equipment, including emergency vehicle radio equipment, owned by the state of New York that was contaminated by debris in the World Trade Center site, as defined in paragraph (f) of subdivision thirty-six of section two of this chapter, regardless of whether the use of or work on said vehicles and equipment was performed within the World Trade Center site, and provided such use or work occurred prior to decontamination of such vehicles or equipment. Absent proof to the contrary, contamination is presumed where such vehicles or equipment were in service between September eleventh, two thousand one and September eleventh, two thousand two and used in the World Trade Center site. Furthermore, it is presumed that a member who was a member of the state police between September eleventh, two thousand one and September eleventh, two thousand six, and occupied a position whose duties would reasonably include use of or work on such contaminated vehicles and equipment, drove, rode in, repaired, cleaned, rehabilitated, or otherwise used or worked on such contaminated vehicles and equipment.**

§ 5. Clause (i) of subparagraph (b) of paragraph 2 of subdivision h of section 363-bb of the retirement and social security law, as amended by chapter 495 of the laws of 2007, is amended to read as follows:

(i) the member files a written and sworn statement with the member's retirement system on a form provided by such system indicating the dates

and locations of employment [~~within four years following the effective date of chapter one hundred four of the laws of two thousand five~~]; and

§ 6. Subdivisions i and j of section 363-bb of the retirement and social security law, subdivision i as amended and subdivision j as added by chapter 5 of the laws of 2007, are amended to read as follows:

i. Notwithstanding any other provision of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a retiree who: (1) has met the criteria of subdivision h of this section and retired on a service or disability retirement, or would have met the criteria if not already retired on an accidental disability; and (2) has not been retired for more than twenty-five years; and (3) dies from a qualifying condition or impairment of health, as defined in subparagraph (c) of paragraph one of subdivision h of this section, that is determined by the applicable head of the retirement system or applicable medical board to have been caused by such retiree's participation in the World Trade Center rescue, recovery or cleanup operations, [~~as defined in subparagraph (d) of paragraph one of~~] **or is otherwise eligible for the presumption as provided in** subdivision h of this section, then unless the contrary be proven by competent evidence, such retiree shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part. Such retiree's eligible beneficiary, as set forth in section three hundred sixty-one of this title, shall be entitled to an accidental death benefit as provided by section three hundred sixty-one of this title, however, for the purposes of determining the salary base upon which the accidental death benefit is calculated, the retiree shall be deemed to have died on the date of his or her retirement. Upon the retiree's death, the eligible beneficiary shall make a written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in section three hundred sixty-one of this title requesting conversion of such retiree's service or disability retirement benefit to an accidental death benefit. At the time of such conversion, the eligible beneficiary shall relinquish all rights to the prospective benefits payable under the service or disability retirement benefit, including any post-retirement death benefits, since the retiree's death. If the eligible beneficiary is not the only beneficiary receiving or entitled to receive a benefit under the service or disability retirement benefit (including, but not limited to, post-retirement death benefits or benefits paid or payable pursuant to the retiree's option selection), the accidental death benefit payments to the eligible beneficiary will be reduced by any amounts paid or payable to any other beneficiary.

j. Notwithstanding any other provision of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a member who: (1) has met the criteria of subdivision h of this section; and (2) dies in active service from a qualifying condition or impairment of health, as defined in subparagraph (c) of paragraph one of subdivision h of this section, that is determined by the applicable head of the retirement system or applicable medical board to have been caused by such member's participation in the World Trade Center rescue, recovery or cleanup operations, [~~as defined in subparagraph (d) of paragraph one of~~] **or is otherwise eligible for the presumption as provided in** subdivision h of this section, then unless the contrary be proven by competent evidence, such member shall be deemed to have died as a natural and proximate result of an accident

sustained in the performance of duty and not as a result of willful negligence on his or her part. Such member's eligible beneficiary, as set forth in section three hundred sixty-one of this title, shall be entitled to an accidental death benefit provided he or she makes written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in section three hundred sixty-one of this title.

§ 7. Subdivision 1 of section 161 of the workers' compensation law, as added by chapter 446 of the laws of 2006, is amended to read as follows:

1. "Participant in World Trade Center rescue, recovery, or cleanup operations" means any (a) employee who within the course of employment, or (b) volunteer upon presentation to the board of evidence satisfactory to the board that he or she:

(i) participated in the rescue, recovery, or cleanup operations at the World Trade Center site between September eleventh, two thousand one and September twelfth, two thousand two; or

(ii) worked at the Fresh Kills Land Fill in New York city between September eleventh, two thousand one and September twelfth, two thousand two[~~,~~]; or

(iii) worked at the New York city morgue or the temporary morgue on pier locations on the west side of Manhattan between September eleventh, two thousand one and September twelfth, two thousand two[~~,~~]; or

(iv) worked on the barges between the west side of Manhattan and the Fresh Kills Land Fill in New York city between September eleventh, two thousand one and September twelfth, two thousand two[~~,~~]; or

(v) as a member of the state police, drove, rode in, repaired, cleaned, rehabilitated, or otherwise used or worked in vehicles or equipment, including emergency vehicle radio equipment, owned by the state of New York that was contaminated by debris in the World Trade Center site, as defined in paragraph (f) of subdivision thirty-six of section two of the retirement and social security law, regardless of whether the use of or work on said vehicles and equipment was performed within the World Trade Center site, provided such use or work occurred prior to decontamination of such vehicles or equipment. Absent proof to the contrary, contamination is presumed where such vehicles or equipment were in service between September eleventh, two thousand one and September eleventh, two thousand two and used in the World Trade Center site. Furthermore, it is presumed a member who was a member of the state police between September eleventh, two thousand one and September eleventh, two thousand six, and occupied a position whose duties would reasonably include use of or work on the contaminated vehicles and equipment, drove, rode in, repaired, cleaned, rehabilitated, or otherwise used or worked on such contaminated vehicles and equipment.

§ 8. 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.

§ 9. 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 section 161 of the workers' compensation law made by section seven of this act shall apply to all open and closed claims coming within the purview of the workers' compensation board.

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

This bill would expand the definition of a "participant in World Trade Center rescue, recovery, or cleanup operations" for members of the State Police by (1) eliminating the requirement to have worked at specific

covered sites, and (2) establishing the use of a State vehicle prior to decontamination as a qualified form of participation. Unless there exists competent evidence to the contrary, State vehicles used at the World Trade Center site between September 11, 2001 and September 11, 2002 are presumed to be contaminated, and all State Police officers who worked between September 11, 2001 and September 11, 2006, who could have reasonably used a contaminated State vehicle, are presumed to have used such vehicle prior to decontamination. These provisions take effect retroactively, beginning September 11, 2001.

For members who meet the requirements to be considered a participant in the World Trade Center rescue, recovery, or cleanup operations, the onset of any condition or impairment of health related to exposure in connection with participation serves as presumptive evidence that any disability, or death as a result of such disability, was the result of an accident and was sustained in the performance of duty, absent proof to the contrary.

If this bill is enacted, it would reclassify certain current and future retirement benefits. The cost of the revised benefit will depend upon the applicant's age, service, salary, plan, and benefit type otherwise payable.

Benefit without enactment:	None	Ordinary Disability	Service
Cost for WTC benefit:	9 times salary	5 times salary	2 times 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, plan, and status at time of death. It is estimated that the cost for each individual affected would average approximately 11 times salary.

It is estimated that the cost of providing these enhanced benefits will be approximately $5 billion. These costs would be shared by the State of New York and the participating employers in the Police and Fire Retirement System.

In addition to the costs stated above, there will be an administrative cost to implement the provisions of this legislation.

This proposal is expected to affect 2,800 active members collecting $393 million in annual salary and 2,531 retirees collecting $180 million in annual benefits, as of March 31, 2019.

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 March 12, 2020, and intended for use only during the 2020 Legislative Session, is Fiscal Note No. 2020-77, prepared by the Actuary for the New York State and Local Retirement System.