

# STATE OF NEW YORK

4436

2019-2020 Regular Sessions

## IN ASSEMBLY

February 4, 2019

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.

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

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1 d. After the filing of such an application such member shall be given  
2 one or more medical examinations. If the comptroller determines that  
3 the member is physically or mentally incapacitated for the performance  
4 of 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. The retirement allowance payable upon retirement for performance of  
8 duty disability shall consist of a pension of one-half of his or her  
9 final average salary plus an annuity which shall be the actuarial equiv-  
10 alent of such member's accumulated contributions, if any.

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

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

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

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

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

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

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

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

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

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

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

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

37 1. Such member;

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

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

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

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

50 f. If the member, at the time of the filing of an application under  
51 the provisions of subdivision c of this section, is eligible for a  
52 service retirement benefit, then and in that event, such member may  
53 simultaneously file an application for service retirement in accordance  
54 with the provisions of section seventy of this chapter, provided that  
55 the member indicates on the application for service retirement that such

1 application is filed without prejudice to the application for perform-  
2 ance of duty disability retirement.

3 g. Any benefit provided pursuant to this section shall not be consid-  
4 ered as an accidental disability benefit within the meaning of section  
5 sixty-four of this chapter. Any benefit payable pursuant to the workers'  
6 compensation law to a member receiving a disability allowance pursuant  
7 to this section shall be in addition to such retirement for disability  
8 incurred in performance of duty allowance.

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

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

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

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

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

1 § 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 an ordinary disability benefit of 1/3 of FAS.

If this bill is enacted during the 2019 legislative session, we anticipate that there will be an increase of approximately \$95,000 in the annual contributions of for the fiscal year ending March 31, 2020. In future years, this cost will vary as the billing rates and salary of the affected members change.

In addition to the annual contributions discussed above, there will be an immediate past service cost of approximately \$725,000 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, 2020.

These estimated costs are based on 71 members having an annual salary for the fiscal year ending March 31, 2018 of approximately \$4.4 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, 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 January 22, 2019, and intended for use only during the 2019 Legislative Session, is Fiscal Note No. 2019-30, prepared by the Actuary for the New York State and Local Retirement System.