# STATE OF NEW YORK

9873

# 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 and the administrative code of the city of New York, in relation to establishing disability retirement benefits for certain members who suffer any condition or impairment of health caused by diseases of the lung

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

Section 1. The retirement and social security law is amended by adding a new section 605-f to read as follows:

**§ 605-f. Disability retirement for certain New York city members. a. For the purposes of this section, a "New York city member" shall mean a member employed in any of the following titles: associate transit customer service specialist two, assistant train dispatcher, collection supervisor one, dispatcher one, dispatcher rapid transit operations, electrical supervisor, electronic supervisor, locomotive engine instructor supervisor, maintenance of way instructor supervisor, maintenance supervisor car equipment one, maintenance supervisor electric equipment one, maintenance supervisor electric power one, maintenance supervisor elevated one, maintenance supervisor lighting one, maintenance supervisor lighting one buses, maintenance supervisor power cables one, maintenance supervisor power distribution one, maintenance supervisor power electron one, maintenance supervisor revenue one, maintenance supervisor signals one, maintenance supervisor stores one, maintenance supervisor structure A carpentry one buses, maintenance supervisor structure A carpentry one, maintenance supervisor structure B masonry one, maintenance supervisor structure B masonry one buses, maintenance supervisor structure C ironwork one, maintenance supervisor structure C ironwork one buses, maintenance supervisor structure D sheetmetal one, maintenance supervisor structure E plumbing one, maintenance supervisor structure E plumbing one buses, maintenance supervisor structure F painting one, maintenance supervisor structure F painting one buses, maintenance supervisor structure H air cooling and heating one, maintenance supervisor structure H air cooling and heating one buses, maintenance supervi-**

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

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sor surface one, maintenance supervisor telephones one, maintenance supervisor track equipment one, maintenance supervisor track one, maintenance supervisor ventilation and drainage one, maintenance supervisor ventilation one buses, powers and signals supervisor, Staten Island railway operations supervisor, storeroom supervisor, superintendent administration and timekeeping, supervisor infrastructure, supervisor maintenance, supervisor station one, train service supervisor, transit property protection supervisor one, yard dispatcher rapid transit operations, collection supervisor revenue two, dispatcher one surface Queens, maintenance supervisor car equipment two, maintenance supervisor electric equipment two, maintenance supervisor electric power two, maintenance supervisor elevated two, maintenance supervisor lighting two, maintenance supervisor power cables two, maintenance supervisor power distribution two, maintenance supervisor revenue two, maintenance supervisor signals two, maintenance supervisor structure A carpenter two, maintenance supervisor structure B masonry two, maintenance supervisor structure C ironwork two, maintenance supervisor structure D sheetmetal two, maintenance supervisor structure E plumbing two, maintenance supervisor structure F painting two, maintenance supervisor structure H air cool two, maintenance supervisor surface one Queens, maintenance supervisor telephones two, maintenance supervisor track equipment two, maintenance supervisor track two, maintenance supervisor ventilation two, supervisor station two, transit property protection two, car inspector assignment A, car inspector assignment B, car inspector B 01-E, car maintainer B, car maintainer B 01-E, car maintainer C, cleaner (labor) station maintenance helper, cleaner (transit authority labor) amalgamated transit union Q1056, cleaner (transit authority labor) amalgamated transit union S1726, cleaner (transit authority labor) TWU Local 100 01-D, cleaner/ station maintenance helper, collecting agent, collecting agent 01-F, conductor (construction and flagging), conductor, light maintainer, maintainer (electronic equipment), maintainer one (revenue equipment), mechanical maintainer C, power cable maintainer, power distribution maintainer, power electronic maintainer, power electronic technician, power maintainer B, quality control specialist, railroad stock worker one, railroad stock worker two, railroad track cleaner, road car inspector, signal maintainer, station agent non automated fare collection, station agent automated fare collection, station agent paid as collecting agent, structure maintainer A, structure maintainer B, structure maintainer C, structure maintainer D, structure maintainer E, structure maintainer F, structure maintainer G, TA electronic helper power distribution 01-F, TA electronic mechanical maintenance (ventilation) 01-E, TA electronic helper lighting 01-F, TA electronic helper power 01-F, TA electronic helper signals 01-F, TA electronic mechanical maintenance 01-E, TA electronic mechanical maintenance heating ventilation and cooling 01-E, TA property protection agent 01-F, telephone maintainer, tower operator, track equipment maintainer, track worker, track worker (specialist), train operator (revenue vehicles), train operator (yard), transit electronic helper elevated, transit electronic helper lighting, transit electronic helper power, transit electronic helper power distribution, transit electronic helper signals, transit electrical apprentice, transit electronic mechanical maintainer elevated, transit electronic mechanical maintainer heating ventilation and cooling, transit electronic mechanical maintainer ventilation, transit property protection agent, transit railcar technical specialist one, transit railcar technical specialist one operations, transit railcar technical specialist two, transit railcar technical specialist two oper-

ations, transit railcar technical specialist three, transit railcar technical specialist three operations, transit railcar technical specialist four, transit railcar technical specialist four operations and transit railcar technical specialist intern.

b. A New York city member shall be entitled to disability retirement allowance, if, at the time application therefor is filed, such member is physically incapacitated for performance of duty as a result of any condition of impairment of health caused by diseases of the lung while so employed and as a result of his or her employment.

c. Notwithstanding any provision of this chapter or of any general, special or local law to the contrary, any New York city member who is diagnosed with any condition of impairment of health caused by diseases of the lung, resulting in disability to such member, presently employed, and who shall have sustained such disability while so employed, shall have such diagnosis be presumptive evidence that such disability was incurred in the performance and discharge of duty, unless the contrary be proven by competent evidence.

d. The annual retirement allowance payable shall be equal to the three-quarters of his or her final average salary, subject to section 13-176 of the administrative code of the city of New York.

§ 2. The administrative code of the city of New York is amended by adding a new section 13-168.1 to read as follows:

§ 13-168.1 Disability retirement for certain New York city members. a. For the purposes of this section, a "New York city member" shall mean a member employed in any of the following titles: associate transit customer service specialist two, assistant train dispatcher, collection supervisor one, dispatcher one, dispatcher rapid transit operations, electrical supervisor, electronic supervisor, locomotive engine instructor supervisor, maintenance of way instructor supervisor, maintenance supervisor car equipment one, maintenance supervisor electric equipment one, maintenance supervisor electric power one, maintenance supervisor elevated one, maintenance supervisor lighting one, maintenance supervisor lighting one buses, maintenance supervisor power cables one, maintenance supervisor power distribution one, maintenance supervisor power electron one, maintenance supervisor revenue one, maintenance supervisor signals one, maintenance supervisor stores one, maintenance supervisor structure A carpentry one buses, maintenance supervisor structure A carpentry one, maintenance supervisor structure B masonry one, maintenance supervisor structure B masonry one buses, maintenance supervisor structure C ironwork one, maintenance supervisor structure C ironwork one buses, maintenance supervisor structure D sheetmetal one, maintenance supervisor structure E plumbing one, maintenance supervisor structure E plumbing one buses, maintenance supervisor structure F painting one, maintenance supervisor structure F painting one buses, maintenance supervisor structure H air cooling and heating one, maintenance supervisor structure H air cooling and heating one buses, maintenance supervisor surface one, maintenance supervisor telephones one, maintenance supervisor track equipment one, maintenance supervisor track one, maintenance supervisor ventilation and drainage one, maintenance supervisor ventilation one buses, powers and signals supervisor, Staten Island railway operations supervisor, storeroom supervisor, superintendent administration and timekeeping, supervisor infrastructure, supervisor maintenance, supervisor station one, train service supervisor, transit property protection supervisor one, yard dispatcher rapid transit operations, collection supervisor revenue two, dispatcher one surface Queens, maintenance supervisor car equipment two, maintenance supervisor

electric equipment two, maintenance supervisor electric power two, maintenance supervisor elevated two, maintenance supervisor lighting two, maintenance supervisor power cables two, maintenance supervisor power distribution two, maintenance supervisor revenue two, maintenance supervisor signals two, maintenance supervisor structure A carpenter two, maintenance supervisor structure B masonry two, maintenance supervisor structure C ironwork two, maintenance supervisor structure D sheetmetal two, maintenance supervisor structure E plumbing two, maintenance supervisor structure F painting two, maintenance supervisor structure H air cool two, maintenance supervisor surface one Queens, maintenance supervisor telephones two, maintenance supervisor track equipment two, maintenance supervisor track two, maintenance supervisor ventilation two, supervisor station two, transit property protection two, car inspector assignment A, car inspector assignment B, car inspector B 01-E, car maintainer B, car maintainer B 01-E, car maintainer C, cleaner (labor) station maintenance helper, cleaner (transit authority labor) amalgamated transit union Q1056, cleaner (transit authority labor) amalgamated transit union S1726, cleaner (transit authority labor) TWU Local 100 01-D, cleaner/ station maintenance helper, collecting agent, collecting agent 01-F, conductor (construction and flagging), conductor, light maintainer, maintainer (electronic equipment), maintainer one (revenue equipment), mechanical maintainer C, power cable maintainer, power distribution maintainer, power electronic maintainer, power electronic technician, power maintainer B, quality control specialist, railroad stock worker one, railroad stock worker two, railroad track cleaner, road car inspector, signal maintainer, station agent non automated fare collection, station agent automated fare collection, station agent paid as collecting agent, structure maintainer A, structure maintainer B, structure maintainer C, structure maintainer D, structure maintainer E, structure maintainer F, structure maintainer G, TA electronic helper power distribution 01-F, TA electronic mechanical maintenance (ventilation) 01-E, TA electronic helper lighting 01-F, TA electronic helper power 01-F, TA electronic helper signals 01-F, TA electronic mechanical maintenance 01-E, TA electronic mechanical maintenance heating ventilation and cooling 01-E, TA property protection agent 01-F, telephone maintainer, tower operator, track equipment maintainer, track worker, track worker (specialist), train operator (revenue vehicles), train operator (yard), transit electronic helper elevated, transit electronic helper lighting, transit electronic helper power, transit electronic helper power distribution, transit electronic helper signals, transit electrical apprentice, transit electronic mechanical maintainer elevated, transit electronic mechanical maintainer heating ventilation and cooling, transit electronic mechanical maintainer ventilation, transit property protection agent, transit railcar technical specialist one, transit railcar technical specialist one operations, transit railcar technical specialist two, transit railcar technical specialist two operations, transit railcar technical specialist three, transit railcar technical specialist three operations, transit railcar technical specialist four, transit railcar technical specialist four operations and transit railcar technical specialist intern.

b. A New York city member shall be entitled to disability retirement allowance, if, at the time application therefor is filed, such member is physically incapacitated for performance of duty as a result of any condition of impairment of health caused by diseases of the lung while so employed and as a result of his or her employment.

**c. Notwithstanding any provision of this chapter or of any general, special or local law to the contrary, any New York city member who is diagnosed with any condition of impairment of health caused by diseases of the lung, resulting in disability to such member, presently employed, and who shall have sustained such disability while so employed, shall have such diagnosis be presumptive evidence that such disability was incurred in the performance and discharge of duty, unless the contrary be proven by competent evidence.**

**d. The annual retirement allowance payable shall be equal to the three-quarters of his or her final average salary, subject to section 13-176 of this chapter.**

§ 3. This act shall take effect immediately.

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

SUMMARY OF BILL: This proposed legislation would amend the Retirement and Social Security Law (RSSL) to add a new Section 605-f and the Administrative Code of the City of New York (ACCNY) to add a new Section 13-168.1 to provide a rebuttable statutory presumption to members of the New York City Employees' Retirement System (NYCERS) working in certain enumerated titles as employees of the New York City Transit Authority (Transit) who become physically incapacitated due to lung disease and provide a performance of duty disability retirement benefit equivalent to 75% of the member's Final Average Salary (FAS).

In determining whether disabling lung disease was caused by employment for Transit, the diagnosis of lung disease would be presumptive evidence that such disability was incurred in the performance and discharge of duty, unless the contrary is proven by competent evidence.

Effective Date: Upon enactment.

IMPACT ON BENEFITS PAYABLE: Under the proposed legislation, the benefits for active members of NYCERS working in certain Transit titles who become physically incapacitated for performance of duty due to lung disease would be revised to equal a retirement allowance of:

* 75% multiplied by FAS,

Reduced by:

* 100% of Workers' Compensation benefits (if any) payable.

FINANCIAL IMPACT - OVERVIEW: There is no data available to estimate the number of members who might develop and become disabled by lung disease, and potentially benefit from this proposed legislation. Therefore, the estimated financial impact has been calculated on a per event basis equal to the increase in the Present Value of Future Benefits (PVFB) for an average member who is diagnosed with lung disease as the result of the enactment of the proposed legislation and who would benefit from the proposed legislation.

In determining the increase in the PVFB for members who could benefit from the proposed legislation, it has been assumed that 50% of the members who would retire with a performance of duty benefit equal to 75% of FAS were those who would have retired under an Ordinary Disability Retirement (ODR) benefit. It was further assumed that the remaining 50% of members who would retire with a 75% of FAS performance of duty retirement benefit due to lung disease under this bill were those who would have continued working and retired for service if the proposed legislation were not passed.

With respect to an individual member, the additional cost of this proposed legislation could vary greatly depending on the member's length of service, age, and salary history. In particular, the increase in PVFB due to the proposed legislation would be greater for a member who is not yet eligible for an ODR benefit when lung disease is diagnosed.

FINANCIAL IMPACT - PRESENT VALUES: Based on the census data and the actuarial assumptions and methods described herein, the enactment of this proposed legislation would increase the PVFB by approximately $350,000, on average for each occurrence of lung disease for members who would benefit from the proposed legislation.

FINANCIAL IMPACT - ANNUAL EMPLOYER CONTRIBUTIONS: Enactment of this proposed legislation would increase employer contributions, where such amount would depend on the number of members affected as well as other characteristics including the age, years of service, and salary history of the member.

As there is no data currently available to estimate the number of members who might be diagnosed with disabling lung disease, the financial impact would be recognized at the time of event. Consequently, changes in employer contributions have been estimated assuming that the increase in the PVFB will be financed over a time period comparable to that used for actuarial losses under the Entry Age Normal cost method. Using this approach, the additional PVFB would be amortized over a closed 15-year period (14 payments under the One-Year Lag Methodology) using level dollar payments.

Based on the Actuary's actuarial assumptions and methods in effect as of June 30, 2018, the enactment of this proposed legislation is estimated to increase annual employer contributions by approximately $41,400, on average for each performance of duty retirement benefit due to lung disease.

With respect to the timing, increases in employer contributions would depend upon when members would retire due to lung disease but, generally, increased employer contributions will first occur the second fiscal year following approval of the performance of duty disability benefit.

OTHER COSTS: Not measured in this Fiscal Note are the following:

* The initial, additional administrative costs of NYCERS and other New York City agencies to implement the proposed legislation.

* The impact of this proposed legislation on Other Postemployment Benefit (OPEB) costs.

CENSUS DATA: The estimates presented herein are based on the census data used in the Preliminary June 30, 2018 (Lag) actuarial valuation of NYCERS to determine the Preliminary Fiscal Year 2020 employer contributions.

There are 27,743 active Transit Authority employees in affected titles who participate in NYCERS as of June 30, 2018 who could potentially benefit from the proposed legislation. These 27,743 active Transit Authority members had an average age of approximately 48.6 years, average service of approximately 12.5 years, and an average salary of approximately $79,600.

ACTUARIAL ASSUMPTIONS AND METHODS: The changes in the PVFB and annual employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the June 30, 2018 (Lag) actuarial valuations used to determine the Preliminary Fiscal Year 2020 employer contributions of NYCERS.

RISK AND UNCERTAINTY: The costs presented in this Fiscal Note depend highly on the actuarial assumptions and methods used and are subject to change based on the realization of potential investment, demographic, contribution, and other risks. If actual experience deviates from actuarial assumptions, the actual costs could differ from those presented herein. Costs are also dependent on the actuarial methods used, and therefore different actuarial methods could produce different results. Quantifying these risks is beyond the scope of this Fiscal Note.

STATEMENT OF ACTUARIAL OPINION: I, Sherry S. Chan, am the Chief Actuary for, and independent of, the New York City Retirement Systems and Pension Funds. I am a Fellow of the Society of Actuaries, an Enrolled Actuary under the Employee Retirement Income and Security Act of 1974, a Member of the American Academy of Actuaries, and a Fellow of the Conference of Consulting Actuaries. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein. To the best of my knowledge, the results contained herein have been prepared in accordance with generally accepted actuarial principles and procedures and with the Actuarial Standards of Practice issued by the Actuarial Standards Board.

FISCAL NOTE IDENTIFICATION: This Fiscal Note 2019-39 dated June 18, 2019 was prepared by the Chief Actuary for the New York City Employees' Retirement System. This estimate is intended for use only during the 2019 Legislative Session.