

STATE OF NEW YORK

5898--A

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. GAUGHRAN -- 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

AN ACT to amend the retirement and social security law, in relation to disability retirement benefits for certain participants in World Trade Center rescue, recovery, or cleanup operations

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

1 Section 1. Paragraph 4 of subdivision d of section 605 of the retire-
2 ment and social security law is renumbered paragraph 5 and a new para-
3 graph 4 is added to read as follows:

4 4. Notwithstanding any other law, rule or regulation to the contrary,
5 any member who had an active membership when such member participated in
6 World Trade Center rescue, recovery, or cleanup operations, as such
7 participation is defined in section two of this chapter, who incurred a
8 qualifying World Trade Center condition, as defined in section two of
9 this chapter, that is determined to have been incurred in the perform-
10 ance and discharge of duty and is the natural and proximate result of an
11 accident not caused by such member's own willful negligence, shall be
12 paid a performance of duty disability retirement allowance equal to
13 three-quarters of final average salary. The payment of such pension
14 shall be subject to the provisions of section sixty-four of this chap-
15 ter.

16 § 2. Section 507 of the retirement and social security law is amended
17 by adding a new subdivision h-1 to read as follows:

18 h-1. Notwithstanding any other law, rule or regulation to the contra-
19 ry, any member who had an active membership when such member partic-
20 ipated in World Trade Center rescue, recovery, or cleanup operations, as
21 such participation is defined in section two of this chapter, who
22 incurred a qualifying World Trade Center condition, as defined in

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

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section two of this chapter, that is determined to have been incurred in the performance and discharge of duty and is the natural and proximate result of an accident not caused by such member's own willful negligence, shall be paid a performance of duty disability retirement allowance equal to three-quarters of final average salary. The payment of such pension shall be subject to the provisions of section sixty-four of this chapter.

§ 3. This act shall take effect immediately and apply to all active members who are determined to have incurred a qualifying World Trade Center condition in the performance and discharge of duty that is the natural and proximate result of an accident not caused by such member's own willful negligence prior to the effective date of this act.

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

This bill would amend the benefits of certain members of public retirement systems who are subject to the provisions of Article 14 or Article 15 of the Retirement and Social Security Law who contract any form of disease or disability related to exposure to any elements in connection with the World Trade Center rescue, recovery or cleanup operations. The annual accidental disability benefit would be 75% of a member's final average salary less workers compensation, regardless of a member's plan coverage. Currently, eligible members receive the accidental disability benefit specified in the plan under which they are covered, which for most Article 14 and 15 members is 1/3 of final average salary. This improved benefit would be payable only to current members or their beneficiaries. Current retirees and their beneficiaries would not be affected by this bill.

If this bill is enacted, the cost of the revised benefit will depend upon the applicant's age, service, salary, plan, and benefit type otherwise payable, but is expected to cost up to 4 times final average salary per individual.

Insofar as this bill would affect the New York State and Local Employees' Retirement System, there are currently 610 active members, with a combined salary of \$6.4 million, who have filed an Application for World Trade Center Notice who could potentially receive benefits under this bill.

A precise cost for future years cannot be determined at this time. However, pursuant to Section 25 of the Retirement and Social Security Law, any increased cost would be borne entirely by the State of New York and would require an itemized appropriation sufficient to pay the cost of the provision. Every year a cost will be determined (and billed to the State) based on those benefiting from this provision.

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 April 18, 2019, and intended for use only during the 2019 Legislative Session, is Fiscal Note No. 2019-102, prepared by the Actuary for the New York State and Local Retirement System.

This bill would amend Sections 507 and 605 of the Retirement and Social Security Law to allow any member of the New York State Teachers' Retirement System who had an active membership when such member participated in the World Trade Center rescue, recovery, or cleanup operations and who incurred a qualifying World Trade Center condition determined to have been incurred in the performance and discharge of duty to receive a performance of duty disability retirement benefit equal to 75% of final average salary. Currently an active member would receive an accidental disability retirement benefit which is generally one-third of final average salary. Members who become disabled or die as a result of a qualifying World Trade Center condition are assumed to have become disabled or died as a result of an accidental or on-the-job disability or death. This bill would take effect immediately and apply to all active members who are determined to have incurred a qualifying World Trade Center condition in the performance and discharge of duty prior to the effective date of this act.

The cost, or additional present value of benefits, is estimated to be, on average, \$320,000 for each member who receives this performance of duty disability retirement benefit. Although the potential increase in an affected member's benefit is estimated to be large, the additional annual cost to the employers of members of the New York State Teachers' Retirement System is estimated to be negligible if this bill is enacted because it is anticipated there would be few applications received for this performance of duty disability retirement benefit from our membership.

Member data is from the System's most recent actuarial valuation files, consisting of data provided by the employers to the Retirement System. Data distributions and statistics can be found in the System's Comprehensive Annual Financial Report (CAFR). System assets are as reported in the System's financial statements, and can also be found in the CAFR. Actuarial assumptions and methods are provided in the System's Actuarial Valuation Report.

The source of this estimate is Fiscal Note 2019-26 dated May 10, 2019 prepared by the Actuary of the New York State Teachers' Retirement System and is intended for use only during the 2019 Legislative Session. I, Richard A. Young, am the Actuary for the New York State Teachers' Retirement System. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

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

SUMMARY OF BILL: With respect to the New York City Pension Funds and Retirement Systems (NYCRS), the proposed legislation would amend provisions of the Retirement and Social Security Law (RSSL) to grant to active NYCRS members, who are subject to RSSL Articles 14 or 15 and incur a World Trade Center (WTC) Qualifying Condition, a performance of duty disability retirement equivalent to 75% of the member's Final Average Salary (FAS).

Effective Date: Upon Enactment.

IMPACT ON BENEFITS PAYABLE: Under the proposed legislation, the benefits for active members of NYCERS who retire after the effective date with a WTC Qualifying Condition would equal a retirement allowance of:

- * 75% multiplied by FAS,

Reduced by:

- * 100% of Workers' Compensation benefits (if any) payable (as required by RSSL Section 64).

Please note that, generally, uniformed WTC retirees are currently entitled to a 75% of FAS benefit (i.e. members of the New York City Police Pension Fund (POLICE), the New York City Fire Pension Fund (FIRE), and Sanitation, Correction, EMT, and Deputy Sheriff members of the New York City Employees' Retirement System (NYCERS)). Therefore, the application of the proposed legislation would likely be limited to active Tier 3 and 4 civilian members of NYCERS, the Teachers' Retirement System of the City of New York (NYCTRS), and the New York City Board of Education Retirement System (BERS).

Although certain NYCERS members are ineligible for Workers' Compensation benefits and therefore would not have their benefit subject to an offset, for purposes of this Fiscal Note, it is assumed that the Workers' Compensation offset provisions cited in Sections 1 and 2 of the proposed legislation would not apply to NYCERS members because such members are not paid retirement benefits under RSSL Article 2, which is a requirement for the application of the offset provision contained in RSSL Section 64.

FINANCIAL IMPACT - OVERVIEW: Although there are currently approximately 8,000 submitted WTC Notice of Participation Forms for applicable active members of NYCERS, TRS, and BERS, the number of members from this group, and any additional eligible members who could potentially benefit from this proposed legislation in the future cannot be readily determined. 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 approved for WTC benefits and who is assumed to benefit from the proposed legislation. In determining the increase in the PVFB for members who are assumed to benefit from the proposed legislation, it has been assumed that 50% of the members who would retire with a WTC benefit were those who would have retired under an Ordinary Disability Retirement (ODR) benefit and that the remaining 50% of members who would retire with a WTC benefit were those who would have continued working 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.

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 \$240,000, on average, for each occurrence of WTC benefits provided under this 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 each member.

As there is insufficient data currently available to estimate the number of members who might be approved for WTC benefits, 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 \$28,000 for each WTC benefit provided under this proposed legislation. With respect to the timing, increases in employer contributions would depend upon when members would retire but, generally, increased employer contributions will first occur the second fiscal year following approval of the WTC benefit.

For example, if 10 members who would benefit from the proposed legislation are approved for WTC benefits in the fiscal year ending June 30, 2019, then employer contributions could increase by about \$280,000 per year starting in fiscal year 2021.

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

- * The initial, additional administrative costs of the NYCERS to implement the proposed legislation.

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

CENSUS DATA: A large majority of the active NYCERS members who have submitted WTC notices and who could potentially benefit from the proposed legislation are members of NYCERS. Therefore, 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.

The approximate 8,000 active members who have submitted WTC Notice of Participation Forms are a subset of the 61,985 active members in NYCERS as of June 30, 2018 whose date of appointment is prior to September 11, 2001 and are not currently entitled to a WTC benefit equal to 75% of FAS and, therefore, could potentially benefit from the proposed legislation. These 61,985 active members had an average age of approximately 55.9 years, average service of approximately 22.0 years, and an average salary of approximately \$81,900. This group consisted of 61,966 Tier 4 members and 19 Tier 6 members.

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 Confer-

ence 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 2019-30 dated June 7, 2019 was prepared by the Chief Actuary for the New York City Employees' Retirement System, the New York City Teachers' Retirement System, and the New York City Board of Education Retirement System. This estimate is intended for use only during the 2019 Legislative Session.