STATE OF NEW YORK

6373--A

2021-2022 Regular Sessions

IN ASSEMBLY

March 16, 2021

Introduced by M. of A. ABBATE, O'DONNELL -- read once and referred to the Committee on Governmental Employees -- recommitted to the Committee on Governmental Employees in accordance with Assembly Rule 3, sec. 2 -- 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 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:

Section 1. The retirement and social security law is amended by adding a new section 363-ee to read as follows:

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

1. Physically or mentally incapacitated for performance of duty as the natural and proximate result of an accident not caused by his or her own willful negligence sustained in such service and while actually a non-seasonally appointed member of the division of law enforcement in the department of environmental conservation, a police officer in the department of environmental conservation, an officer in the regional state park police, a forest ranger in the service of the department of environmental conservation which shall mean a person who serves on a full-time basis in the title of forest ranger I, forest ranger II, forest ranger III, assistant superintendent of forest fire control,

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

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superintendent of forest fire control or any successor titles or new titles in the forest ranger title series in the department of environmental conservation, or a university police officer appointed pursuant to paragraph l of subdivision two of section three hundred fifty-five of the education law, and

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

h. 1. (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, if any condition or impairment of health is caused by a qualifying World Trade Center condition as defined in section two of this chapter, it 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.

(b) The comptroller is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

2. (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, as defined in section two of this chapter, and subsequently retired on a service retirement, an ordinary disability retirement or a performance of duty disability retirement and subsequent to such retirement is determined by the comptroller to have a qualifying World Trade Center condition, as defined in section two of this chapter, 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.

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

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

(d) The member's former employer at the time of the member's retirement shall have an opportunity to be heard on the member's application for reclassification by the comptroller according to procedures developed by the comptroller.

(e) The comptroller is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

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 World Trade Center condition, as defined in section two of this chapter, as determined by the applicable head of the retirement system or applicable medical board, 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 World Trade Center condition, as defined in section two of this chapter, as 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 section two of this chapter, 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.

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

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

a. Every non-seasonally appointed sworn member or officer of the division of law enforcement in the department of environmental conservation and the regional state park police, every police officer in the department of environmental conservation, every forest ranger and every university police officer appointed pursuant to paragraph l of subdivision two of section three hundred fifty-five of the education law who becomes physically or mentally incapacitated for the performance of duty shall be covered by the provisions of this section in lieu of the provisions of section three hundred sixty-two or three hundred sixty-three of this [~~article~~] title; except, however, any such member or offi-

cer who last entered or reentered service in the department of environmental conservation or state park police, as the case may be, prior to September first, nineteen hundred ninety-seven, shall be entitled to apply for disability retirement pursuant to such sections and to receive the benefit so payable in lieu of the benefit payable pursuant to this section. **The benefits provided by this section for university police officers shall be in lieu of section three hundred sixty-three of this title.**

§ 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 2022 legislative session, we anticipate that there will be an increase of approximately $280,000 in the annual contributions of the State of New York for the fiscal year ending March 31, 2023. 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 $1.29 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, 2023.

These estimated costs are based on 528 affected members employed by the State of New York with annual salary of approximately $52.4 million as of March 31, 2021.

Summary of relevant resources:

Membership data as of March 31, 2021 was used in measuring the impact of the proposed change, the same data used in the April 1, 2021 actuarial valuation. Distributions and other statistics can be found in the 2021 Report of the Actuary and the 2021 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2020 and 2021 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, 2021 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 21, 2022, and intended for use only during the 2022 Legislative Session, is Fiscal Note No. 2022-51, prepared by the Actuary for the New York State and Local Retirement System.