STATE OF NEW YORK

7966--A

2021-2022 Regular Sessions

IN ASSEMBLY

June 4, 2021

Introduced by M. of A. CUSICK -- 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 the eligibility of New York city transit authority employees for performance of duty disability retirement

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

Section 1. Section 607-b of the retirement and social security law is amended by adding a new subdivision a-1 to read as follows:

a-1. Any member of the New York city employees' retirement system who is employed by the New York city transit authority and who participated in World Trade Center rescue, recovery or cleanup operations, as defined in section two of this chapter, who, on or after September eleventh, two thousand one, becomes physically or mentally incapacitated for the performance of duties as the natural and proximate result of an injury sustained in the performance or discharge of his or her duties as a result of such participation in World Trade Center rescue, recovery or cleanup operations shall be paid a performance of duty disability retirement allowance equal to three-quarters of final average salary, subject to section 13-176 of the administrative code of the city of New York. Any member who has made application or who, after the effective date of this subdivision, makes application for such performance of duty pension shall be entitled to invoke the medical review procedure provided for in subdivision e of section six hundred five of this article, subject to the terms and conditions set forth in such subdivision.

§ 2. This act shall take effect immediately.

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

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

LBD03631-03-2

SUMMARY OF BILL: This proposed legislation would amend provisions of the Retirement and Social Security Law (RSSL) to grant New York City Transit Authority (NYCTA) active and retired employees, who are or were members of the New York City Employees' Retirement System (NYCERS) subject to RSSL Article 15, and have incurred a World Trade Center (WTC) Qualifying Condition, a performance of duty disability retirement equivalent to 75% of the member's Final Average Salary (FAS) prospectively as of the effective date. The proposed legislation would further permit such eligible NYCTA members and retirees to utilize the Final Medical Review procedures pursuant to RSSL Section 605-e to appeal from the NYCERS Medical Board WTC disability benefit determinations. Finally, the bill appears to inadvertently grant such eligible NYCTA members and retirees the ability to utilize the presumptions for infectious diseases pursuant to subsection b of RSSL Section 607-b. Costs associated with granting these presumptions have not been included in this Fiscal Note.

Effective Date: Upon enactment.

IMPACT ON BENEFITS: Currently, the WTC disability benefit for eligible NYCTA WTC retirees is generally equal to a lifetime payment of the greatest of 1/3 of FAS, 1/60th of FAS for each year of service, or the service retirement benefit, if eligible.

Under the proposed legislation, if enacted, the WTC disability benefit for eligible NYCTA WTC retirees would be revised to equal a retirement allowance of:

* 75% multiplied by FAS, less
* Any applicable Workers' Compensation benefit (as required by the Administrative Code of the City of New York (ACCNY) Section 13-176).

FINANCIAL IMPACT - OVERVIEW: The bill, if enacted, would provide increased benefits for 39 pensioners who have been approved for WTC benefits. The bill also potentially provides for increased benefits for an unknown number of future pensioners, who have submitted a qualified WTC Notice of Participation. Although there are currently approximately 1,300 active and retired NYCTA members who have submitted a qualified WTC Notice of Participation Form, the number of members from this group who could potentially benefit from this proposed legislation in the future cannot be readily determined.

The additional estimated financial impact for the unknown number of future pensioners who could benefit 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 could be approved for WTC benefits and who is assumed to benefit from the proposed legislation. In determining the increase in the PVFB for the future members who are assumed to benefit from the proposed legislation, it has been assumed that 50% of the members would have retired under the current Accidental Disability Retirement benefit and that the remaining 50% 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 for 39 pensioners who have been approved for WTC benefits by approximately $8.3 million.

In addition, the enactment of this proposed legislation would also increase the Present Value of future employer contributions by approximately $266,800, on average, for each additional approval of WTC bene-

fits for members who are assumed to 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 each member.

In accordance with Section 13-638.2(k-2) of the ACCNY, new Unfunded Accrued Liability (UAL) attributable to benefit changes are to be amortized as determined by the Actuary but are generally amortized over the remaining working lifetime of those impacted by the benefit changes.

For the purposes of this Fiscal Note, since the 39 pensioners who would benefit are retired, and therefore have no remaining working lifetime, the entire increase in UAL (or PVFB) of approximately $8.3 million would be recognized immediately.

In addition, since 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 for those NYCTA members not yet approved for WTC benefits have been estimated assuming that the increase in the Present Value of future employer contributions will be financed over the same time period used for actuarial losses in accordance with Section 13-638.2(k-2) of the ACCNY. Using this approach, the additional Present Value of future employer contributions would be amortized over a closed 15-year period (14 payments under the One-Year Lag Methodology (OYLM)) using level dollar payments.

Based on the actuarial assumptions and methods in effect as of June 30, 2021, the enactment of this proposed legislation is estimated to increase annual employer contributions by approximately $31,600, on average for each new WTC benefit provided under this proposed legislation.

CONTRIBUTION TIMING: For the purposes of this Fiscal Note, it is assumed that the changes in the PVFB and annual employer contributions for those already retired and receiving WTC benefits would be reflected for the first time in the Final June 30, 2021 actuarial valuation of NYCERS. In accordance with the OYLM used to determine employer contributions, the increase in employer contributions for these retirees would first be reflected in Fiscal Year 2023.

With respect to future retirees, 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.

CENSUS DATA: The estimates presented herein are based on the census data used in the Preliminary June 30, 2021 (Lag) actuarial valuation of NYCERS to determine the Preliminary Fiscal Year 2023 employer contributions.

The 39 NYCERS pensioners subject to Article 15 who are currently in receipt of WTC disability benefits had an average age of approximately 63.2 years and an average maximum retirement allowance of approximately $37,600.

The approximate 1,300 active members who have submitted WTC Notice of Participation Forms are a subset of the 10,734 NYCTA employees who are active members in NYCERS as of June 30, 2021 whose date of appointment is prior to September 11, 2001 and who are not currently entitled to a WTC benefit equal to 75% of FAS and, therefore, could potentially benefit from the proposed legislation. These 10,734 active members had an

average age of approximately 56.7 years, average service of approximately 23.4 years, and an average salary of approximately $97,700.

ACTUARIAL ASSUMPTIONS AND METHODS: The changes in the Present Value of future employer contributions and annual employer contributions presented herein have been calculated based on the actuarial assumptions and methods in effect for the Preliminary June 30, 2021 (Lag) actuarial valuations used to determine the Preliminary Fiscal Year 2023 employer contributions of NYCERS.

RISK AND UNCERTAINTY: The costs presented in this Fiscal Note depend highly on the realization of the actuarial assumptions used, as well as certain demographic characteristics of NYCERS and other exogenous factors such as investment, 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.

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.

STATEMENT OF ACTUARIAL OPINION: I, Michael J. Samet, am the Interim Chief Actuary for, and independent of, the New York City Retirement Systems and Pension Funds. I am a Fellow of the Society of Actuaries and a Member of the American Academy of 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 2022-63 dated May 25, 2022 was prepared by the Interim Chief Actuary for the New York City Employees' Retirement System. This estimate is intended for use only during the 2022 Legislative Session.