# STATE OF NEW YORK

4408

2021-2022 Regular Sessions

# IN SENATE

February 4, 2021

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

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:**

Section 1. The retirement and social security law is amended by adding two new sections 63-g and 63-h to read as follows:

**§ 63-g. Performance of duty disability retirement. a. Any member of the retirement system employed by the division of military and naval affairs shall be eligible to retire pursuant to the provisions of this section if he or she is an airport firefighter apprentice, airport firefighter I, airport firefighter II, airport firefighter III or training and safety officer.**

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

**c. Application for a performance of duty disability retirement allowance for such a member may be made by:**

**1. Such member;**

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

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

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

f. If the member, at the time of the filing of an application under the provisions of subdivision c of this section, is eligible for a service retirement benefit, then and in that event, such member may simultaneously file an application for service retirement in accordance with the provisions of section seventy of this article, provided that the member indicates on the application for service retirement that such application is filed without prejudice to the application for performance of duty disability retirement.

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

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

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

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

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

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

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

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

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

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

c. Application for a performance of duty disability retirement allowance for such a member may be made by:

1. Such member;

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

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

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

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

f. If the member, at the time of the filing of an application under the provisions of subdivision c of this section, is eligible for a service retirement benefit, then and in that event, such member 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 performance of duty disability retirement.

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

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

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

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

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

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

§ 3. This act shall take effect immediately.

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

This bill would grant improved disability pensions to airport firefighters 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 2021 legislative session, we anticipate that there will be an increase of approximately $96,000 in the annual contributions of the State of New York for the fiscal year ending March 31, 2022. 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 $672,000 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, 2022.

These estimated costs are based on 61 members having an annual salary for the fiscal year ending March 31, 2020 of approximately $4.9 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.

Membership data as of March 31, 2020 was used in measuring the impact of the proposed change, the same data used in the April 1, 2020 actuarial valuation. Distributions and other statistics can be found in the 2020 Report of the Actuary and the 2020 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2020 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, 2020 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, 2021, and intended for use only during the 2021 Legislative Session, is Fiscal Note No. 2021-59, prepared by the Actuary for the New York State and Local Retirement System.