STATE OF NEW YORK

10537

IN ASSEMBLY

July 6, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Abbate) -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to establishing a presumption relating to lung conditions incurred by deputy sheriffs in cities of one million or more

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

Section 1. The general municipal law is amended by adding a new section 207-r to read as follows:

§ 207-r. Disabilities of deputy sheriff members of a retirement system in certain cases. 1. Notwithstanding the provisions of any general, special or local law or administrative code to the contrary, but except for the purposes of the workers' compensation law and the labor law, any condition of impairment of health caused by diseases of the lung, resulting in total or partial disability or death to a person performing the duties of a deputy sheriff in cities of one million or more where such employees are drawn from competitive civil service lists, who successfully passed a physical examination on entry into the service of such agency, which examination failed to reveal any evidence of such condition, shall be presumptive evidence that it was incurred in the performance and discharge of duty, unless the contrary be proved by competent evidence.

2. Notwithstanding any other provision of law, a deputy sheriff member retiring pursuant to the provisions of subdivision one of this section shall receive a pension equal to three-fourths of his or her final average salary.

§ 2. This act shall take effect immediately.

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

SUMMARY OF BILL: This proposed legislation, as it relates to the New York City Retirement Systems and Pension Funds (NYCRS), would add a new General Municipal Law (GML) Section 207-r to provide certain Deputy Sheriff members of the New York City Employees' Retirement System (NYCERS) a rebuttable statutory presumption that a partial or total

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

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disability or death related to a lung disease was incurred in the performance of duty.

The presumption of causation could be rebutted by competent evidence to the contrary such as identifying lung disease upon physical examination at hire.

Effective Date: Upon enactment.

IMPACT ON BENEFITS PAYABLE: Currently, a Deputy Sheriff who becomes disabled or dies due to lung disease would be eligible for an applicable ordinary disability retirement, generally a lifetime payment of 1/3 of salary, or an lump sum ordinary death benefit, respectively.

Those eligible to receive the performance of duty disability retirement under the proposed legislation would receive a benefit similar to the current accidental disability retirement afforded to Deputy Sheriffs.

The current accidental disability benefit for Tier 4 and Tier 6 NYCERS Deputy Sheriff members is equal to:

* 75% of final average compensation, where
* the average compensation is computed using five consecutive years of wages, less
* any applicable Workers' Compensation benefit.

Under the proposed legislation, if enacted, the performance of duty disability benefit for NYCERS Deputy Sheriff members who are disabled from lung disease would be equal to:

* 75% of Final Average Salary (FAS), where
* FAS is defined as 3-Year FAS for Tier 4 and 5-Year FAS for Tier 6, without
* an explicit Workers' Compensation offset.

The ordinary death benefit for Tier 4 and Tier 6 NYCERS Deputy Sheriff members is a lump sum payment equal to 3 times the member's salary multiplied by the member's years of service, up to a maximum of 3 years. The performance of duty death benefit is generally equal to a lifetime benefit of 50% of a member's wages earned during the last year of service, payable to certain beneficiaries.

FINANCIAL IMPACT - OVERVIEW: There is no data available to estimate the number of members who might develop and become disabled or die as a result of 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 could potentially be diagnosed with disabling lung disease and who would benefit from the proposed legislation.

In determining the increase in the PVFB for members who could benefit from the presumption provided by the proposed legislation upon disability, it has been assumed that 50% of the members would have retired under an Ordinary Disability Retirement (ODR) benefit, and the remaining 50% of members would have continued working and eventually retired for service if the proposed legislation were not passed.

In determining the increase in the PVFB for beneficiaries who could benefit from the presumption provided by the proposed legislation upon death, it has been assumed that 100% of such members would be eligible for an Ordinary Death Benefit 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 the disabling 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 Present Value of future employer contributions by approximately $394,900, on average for each occurrence of Performance of Duty Disability Retirement due to lung disease and $336,100, on average for each occurrence of Performance of Duty Death due to lung disease.

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 no data currently available to estimate the number of members who might be diagnosed with 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 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 Administrative Code of the City of New York. 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) 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 $46,700 for each Performance of Duty Disability Retirement due to lung disease and by approximately $39,700 for each Performance of Duty Death due to lung disease.

With respect to the timing, increases in employer contributions would depend upon when members would retire or die due to lung disease but, generally, increased employer contributions will first occur the second fiscal year following approval of the performance of duty disability or death 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 132 NYCERS Deputy Sheriffs as of June 30, 2021 had an average age of approximately 42.8 years, average service of approximately 12.6 years, and an average salary of approximately $85,200.

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 2022-56 dated May 19, 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.