STATE OF NEW YORK

7004

2021-2022 Regular Sessions

IN ASSEMBLY

April 19, 2021

Introduced by M. of A. ABBATE -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to certain medical presumptions applicable to members of the New York state and local employees' retirement system

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

Section 1. Subdivision 2 of section 363-a of the retirement and social security law, as amended by chapter 437 of the laws of 2016, is amended to read as follows:

2. Notwithstanding any provision of this chapter or of any general, special, or local law to the contrary, any condition of impairment of health caused by diseases of the heart, resulting in disability or death to a police officer, presently employed, and who shall have sustained such disability while so employed, shall be presumptive evidence that it was incurred in the performance and discharge of duty **and the natural and proximate result of an accident**, unless the contrary be proved by competent evidence.

§ 2. The retirement and social security law is amended by adding a new section 809 to read as follows:

§ 809. Effect and rebuttal of certain medical presumptions pertaining to diseases of the heart. a. This section shall apply to certain applications for disability retirement allowances made by or on behalf of a member of the New York state and local employees' retirement system or the New York state and local police and fire retirement system. It shall apply only to applications that are subject under this chapter to a provision that any condition of impairment of health caused by a disease of the heart, resulting in disability, shall be presumptive evidence that such disability was incurred in the performance and discharge of duty and the natural and proximate result of an accident.

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

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b. Notwithstanding any other provision of law to the contrary an application for an accidental disability retirement allowance that is based on a permanent incapacity caused by a disease of the heart, shall not be required to allege or establish:

(1) that the member sustained an accident or other incident related to the performance and discharge of duty; or

(2) that notice was provided thereof.

c. Notwithstanding any other provision of law to the contrary, the presumptions referred to in subdivision a of this section may be rebutted only by competent evidence that the disability is not the natural and proximate result of the performance and discharge of duty.

§ 3. The amendment made to subdivision 2 of section 363-a of the retirement and social security law by section one of this act shall not affect, impair or invalidate any temporary right, privilege or benefit conferred pursuant to the provisions of a general, special or local law (other than pursuant to articles 14 and 15 of the retirement and social security law) for any member of a public retirement system or pension plan funded by the state or one of its political subdivisions, nor shall any amendment thereto affect the application of such provisions as extended by the provisions of section 480 of the retirement and social security law.

§ 4. This act shall take effect immediately.

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

This bill would amend the Retirement and Social Security Law (RSSL) to

1) Eliminate certain eligibility requirements for awarding accidental disability benefits, when the disability is related to diseases of the heart, for members in the New York State and Local Employees' Retirement System (ERS) and the New York State and Local Police and Fire Retirement System (PFRS). Accidental disability benefits would be granted even where

a. the member did not sustain an accident,

b. the member's incapacitation is unrelated to any accident, or

c. the member failed to provide notice thereof.

The heart presumption could continue to be rebutted by competent evidence that the disability is not the result of the performance and discharge of duty.

2) Increase disability benefits payable to police officers in PFRS, who become incapacitated due to diseases of the heart, by providing an accidental disability benefit equal to 75% of salary less workers' compensation. Currently, police officers are eligible for a performance-of-duty (POD) disability benefit equal to 50% of salary less workers' compensation.

3) Increase the death benefits payable on behalf of a deceased police officer in PFRS, whose death results from diseases of the heart, by providing the special accidental death benefit equal to more than 100% of salary less workers' compensation and social security benefits payable to eligible beneficiary(ies). Currently the death benefit would be the continuance afforded under the POD disability retirement.

Insofar as this bill will affect the New York State and Local Retirement System (NYSLRS), more accidental disability benefits and accidental death benefits would be granted. The cost of the revised benefit will depend upon the applicant's age, service, salary, plan, and benefit type otherwise payable.

The number of retirees who could be affected by this legislation cannot be readily determined. However, every active member of PFRS will

be covered, as well as members of ERS who are Uniformed Court Peace Officers in the Unified Court System.

If this bill is enacted during the 2021 legislative session, we anticipate that there will be an increase of approximately $5.3 million in the annual contributions to NYSLRS for the fiscal year ending March 31, 2022. This cost would be shared by the State of New York (the State) and local participating employers of PFRS as follows:

a. $1.9 million borne annually by the State ($800,000 to PFRS and $1.1 million to ERS), and

b. $3.4 million borne by the local participating employers in PFRS. In future years, these annual costs will vary as the salary of affected members change.

In addition to the annual contributions discussed above, there will be an immediate past service cost to ERS of approximately $13.9 million which will be borne by the State as a one-time payment. This estimate is based on the assumption that payment will be made on March 1, 2022.

Further, we anticipate that the number of accidental disability applications will result in a large increase in the administrative cost to process these applications and litigate anticipated disputes.

Estimated costs arising in PFRS are based upon 32,888 members with an approximate salary of $3.9 billion as of March 31, 2020. Estimated costs arising in ERS are based upon 5,824 members with an approximate salary of $528 million as of March 31, 2020.

Summary of relevant resources:

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 April 8, 2021, and intended for use only during the 2021 Legislative Session, is Fiscal Note No. 2021-123, prepared by the Actuary for the New York State and Local Retirement System.