STATE OF NEW YORK

5201

2023-2024 Regular Sessions

IN ASSEMBLY

March 6, 2023

Introduced by M. of A. PHEFFER AMATO -- 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.

LBD08408-02-3

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 (NYSLERS) and the New York State and Local Police and Fire Retirement System (NYSLPFRS). 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 the NYSLPFRS, 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 disability benefit equal to 50% of salary less workers' compensation.

3. Increase the death benefits payable on behalf of a deceased police officer in the NYSLPFRS, 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 an eligible beneficiary or beneficiaries. Currently the death benefit would be the continuance afforded under the performance-of-duty disability retirement

Insofar as this bill affects 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 any benefit type otherwise payable. Further, we anticipate that the administrative costs to the NYSLRS, required to process applications and litigate anticipated disputes, will increase.

The number of members and retirees who could be affected by this legislation cannot be readily determined. However, every active member of the NYSLPFRS will be covered, as well as members of the NYSLERS including uniformed court officers and peace officers employed by the Unified Court System and fire marshals employed by Nassau County.

If this bill is enacted during the 2023 legislative session, we anticipate that there will be increases of approximately $1.2 million and $4.3 million in the annual contributions to the NYSLERS and to the NYSLPFRS, respectively, for the fiscal year ending March 31, 2024. These costs will be shared by the State of New York (the State), Nassau County, and other local participating employers in the NYSLPFRS as follows:

Employer	payment to the NYSLERS	payment to the NYSLPFRS
the State	$1.2 million	$900,000
Nassau County	$11,000	
all local participating employers in the NYSLPFRS		$3.4 million

In future years, these annual costs will vary as the salary of the affected members change.

In addition to the annual contributions discussed above, there will be immediate past service costs of approximately $12.5 million and $111,000 which will be borne by the State and Nassau County, respectively, as one-time payments. This estimate assumes that payment will be made by the State and Nassau County on March 1, 2024 and February 1, 2024, respectively.

Estimated costs arising in the NYSLERS are based on 6,287 affected members with annual salary of approximately $573 million as of March 31, 2022.

Estimated costs arising in the NYSLPFRS are based on 32,169 affected members with annual salary of approximately $3.88 billion as of March 31, 2022.

Summary of relevant resources:

Membership data as of March 31, 2022 was used in measuring the impact of the proposed change, the same data used in the April 1, 2022 actuarial valuation. Distributions and other statistics can be found in the 2022 Report of the Actuary and the 2022 Annual Comprehensive Financial Report.

The actuarial assumptions and methods used are described in the 2020, 2021, and 2022 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, 2022 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 February 24, 2023, and intended for use only during the 2023 Legislative Session, is Fiscal Note No. 2023-73, prepared by the Actuary for the New York State and Local Retirement System.