§ 363-b. State police disability retirement allowance. a. Every member or officer of the division of state police in the executive department who becomes physically or mentally incapacitated for the performance of duty prior to July first, nineteen hundred seventy-four, shall be covered by the provisions of this section in lieu of the provisions of section three hundred sixty-two or three hundred sixty-three of this article; except, however, any such member or officer who last entered or reentered the New York state and local police and fire retirement system or transferred total service credits as defined in subdivision thirty-four of section three hundred two of this article to such system prior to service in the division of state police, or, in the case of a member in a collective negotiating unit consisting of members of the state police below the rank of lieutenant and established pursuant to article fourteen of the civil service law, last entered or reentered service in the division prior to May thirtieth, nineteen hundred seventy-two, shall be entitled to apply for disability retirement pursuant to such sections and to receive the benefit so payable in lieu of the benefit payable pursuant to this section.

b. Eligibility. A member or officer shall be entitled to a state police disability retirement allowance if, at the time application therefor is filed, he is:

1. Under age sixty, and

2. (a) Physically or mentally incapacitated for performance of duty as the natural and proximate result of a disability not caused by his or her own willful negligence sustained in such service and while actually a member of the police and fire retirement system, or

(b) Physically or mentally incapacitated for performance of duty as a result of a disability that was not sustained in such service, and has at least five years of total service credit in the division, and

3. Actually in service upon which his membership is based, or, have been discontinued from service, either voluntarily or involuntarily for not more than ninety days provided the member was disabled prior to such discontinuance, or is a vested member incapacitated as a result of a

qualifying World Trade Center condition as defined in section two of this chapter. However, in a case where a member is discontinued from service, either voluntarily or involuntarily, subsequent to sustaining a disability in such service, application may be made not later than two years after the member is discontinued from service and provided that the member meets the requirements of subdivisions a and b of this section.

c. Application. Application for a state police disability retirement allowance may be made by:

1. Such member, or

2. The superintendent of state police or his designee, or

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

d. Verification of disability. 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 pursuant to subdivision b of this section and ought to be retired, he shall be so retired. Such retirement shall be effective as of a date approved by the comptroller.

e. Upon retirement pursuant to this section one of the following retirement allowances shall be payable:

1. If a member has completed twenty or more years of creditable service and is eligible for service retirement his retirement allowance shall be equal to that which he would have received in the case of service retirement.

2. If a member is not eligible for a service retirement as specified in paragraph one of this subdivision, his retirement allowance shall consist of:

(a) An annuity which shall be the actuarial equivalent of the member's

accumulated contributions attributable to service rendered prior to April first, nineteen hundred sixty as provided pursuant to paragraph four of subdivision b of section three hundred eighty-one-b of this article plus

(b) A pension which together with such annuity provides an allowance equal to one-half of his final average salary.

3. Notwithstanding the provisions of this subdivision, a member transferred to the division of state police pursuant to a chapter of the laws of nineteen hundred ninety-seven who files for a disability retirement under this section for a physical or mental incapacity attributable to an injury or incident which occurred prior to such transfer, shall be eligible to file for the disability retirement benefits attributable to the plan applicable to such member before the transfer. In the case of a member transferred to the division pursuant to said chapter who files for a disability retirement under this section for a physical or mental incapacity attributable to an injury or incident which occurs after such transfer, for the purposes of calculating service credit required by subparagraph (b) of paragraph two of subdivision b of this section, service in the capital police force in the office of general services shall be considered service in the division.

f. If the member, at the time of the filing of an application under the provisions of subdivision c hereof, is eligible for a service retirement benefit, then and in that event, he may simultaneously file an application for service retirement in accordance with the provisions of section three hundred eighty-one-b 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 the state police disability retirement allowance.

g. Any benefit provided pursuant to this section shall not be considered as an accidental disability benefit within the meaning of section three hundred sixty-four of this article. Any benefits payable pursuant to the workmen's compensation law to a member or officer receiving a disability allowance pursuant to this section shall be in

addition to such state police disability allowance, provided, however, that in the event the disabled retired member is also entitled to disability benefits under the federal social security act, and the sum of the disability retirement allowance, supplemental retirement allowance, workmen's compensation benefit, and the primary social security disability insurance benefit exceeds final salary, as defined in subdivision e, section four hundred two of this article, that portion of the pension which increases the combined benefit above final salary shall be suspended for the duration of the period that the combined benefit would so exceed final salary.