§ 363-bb. State police accidental disability retirement allowance. a. A member may elect to receive an accidental disability retirement allowance as provided under this section in lieu of the benefits provided under section three hundred sixty-three-b of this title if, at the time application therefor is filed, he or she is:

1. Physically or mentally incapacitated for performance of duty as the natural and proximate result of an accident not caused by his or her own willful negligence sustained in such service and while actually a member of the New York state and local police and fire retirement system, and

2. Actually in service upon which his or her membership is based. However, in a case if a member is discontinued from service subsequent to the accident, either voluntarily or involuntarily, application may be made not later than two years after the member is first discontinued from service and provided that the member meets the requirements of paragraph one of this subdivision.

b. Application for an accidental disability retirement allowance for such a member may be made by:

1. Such member, or

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

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

c. 1. After the filing of such an application such member shall be given one or more medical examinations. No such application shall be approved, however, unless the member or some other person on his or her behalf shall have filed written notice in the office of the comptroller within ninety days after the accident, setting forth:

(a) The time when and the place where such accident occurred,

(b) The particulars thereof,

(c) The nature and extent of the member's injuries, and

(d) His or her alleged incapacity.

2. The notice required by this section need not be given:

(a) If notice of such accident shall be filed in accordance with the provisions of the workers' compensation law of any state within which a participating employer shall have its employees located or performing functions and duties within the normal scope of their employment, or

(b) If the application for accidental disability retirement is filed within one year after the date of such accident, or

(c) If a failure to file notice has been excused for good cause shown as provided by rules and regulations promulgated by the comptroller.

d. If the comptroller determines that the member is physically or mentally incapacitated for the performance of duty and ought to be retired for accidental disability, such member shall be so retired. Such retirement shall be effective as of a date approved by the comptroller.

e. Notwithstanding any other provision of law, the retirement allowance payable upon accidental disability retirement shall consist of:

1. An annuity which shall be the actuarial equivalent of the member's accumulated contributions, plus

2. A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, plus

3. A pension of three-quarters of his or her final average salary. The payment of such pension shall be subject to the provisions of section three hundred sixty-four of this title.

f. If the member, at the time of filing of an application under the provisions of subdivision b of this section, is eligible for a service retirement benefit, then and in that event, he or she 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 applicant for accidental

disability retirement.

g. For purposes of this section, the term "accident" shall have the same meaning and be interpreted in the same manner as such term is defined and/or interpreted to mean in section three hundred sixty-three of this title, as amended.

h. 1. (a) Notwithstanding any provisions of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, any condition or impairment of health caused by a qualifying condition or impairment of health resulting in disability to a member who participated in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours shall be presumptive evidence that it was incurred in the performance and discharge of duty and the natural and proximate result of an accident not caused by such member's own willful negligence, unless the contrary be proved by competent evidence. A member shall be eligible for the presumption provided for under this paragraph notwithstanding the fact that the member did not participate in World Trade Center recovery and cleanup operations for a minimum of forty hours, provided that: (i) the member participated in the rescue, recovery, or cleanup operations at the World Trade Center site between September eleventh, two thousand one and September twelfth, two thousand one; (ii) the member sustained a documented physical injury at the World Trade Center site between September eleventh, two thousand one and September twelfth, two thousand one that is a qualifying condition or impairment of health resulting in disability to the member that prevented the member from continuing to participate in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours; and (iii) the documented physical injury that resulted in a disability to the member that prevented the member from continuing to participate in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours is the qualifying condition or impairment of health which the member seeks to be eligible for the presumption provided for under this paragraph.

(b) In order to be eligible for the presumption provided for under subparagraph (a) of this paragraph, a member must have successfully passed a physical examination for entry into public service which failed

to disclose evidence of the qualifying condition or impairment of health that formed the basis for the disability.

(c) For purposes of this subdivision, "qualifying condition or impairment of health" shall include:

(i) Diseases of the upper respiratory tract and mucosae, including conditions such as conjunctivitis, rhinitis, sinusitis, pharyngitis, laryngitis, vocal cord disease, upper airway hyper-reactivity and tracheo-bronchitis, or a combination of such conditions;

(ii) Diseases of the lower respiratory tract, including but not limited to bronchitis, asthma, reactive airway dysfunction syndrome, and different types of pneumonitis, such as hypersensitivity, granulomatous, or eosinophilic;

(iii) Diseases of the gastroesophageal tract, including esophagitis and reflux disease, either acute or chronic, caused by exposure or aggravated by exposure;

(iv) Diseases of the psychological axis, including post-traumatic stress disorder, anxiety, depression, or any combination of such conditions;

(v) Diseases of the skin such as contact dermatitis or burns, either acute or chronic in nature, infectious, irritant, allergic, idiopathic or non-specific reactive in nature, caused by exposure or aggravated by exposure; or

(vi) New onset diseases resulting from exposure as such diseases occur in the future including cancer, chronic obstructive pulmonary disease, asbestos-related disease, heavy metal poisoning, musculoskeletal disease and chronic psychological disease;

(d) For purposes of this subdivision, "participated in World Trade Center rescue, recovery or cleanup operations" shall mean any member who:

(i) participated in the rescue, recovery, or clean up operations at the World Trade Center site between September eleventh, two thousand one and September twelfth, two thousand two, or

(ii) worked at the Fresh Kills Land Fill in New York between September eleventh, two thousand one and September twelfth, two thousand two, or

(iii) worked at the New York city morgue or the temporary morgue on pier locations on the west side of Manhattan between September eleventh, two thousand one and September twelfth, two thousand two, or

(iv) manned the barges between the west side of Manhattan and the Fresh Kills Land Fill in New York between September eleventh, two thousand one and September twelfth, two thousand two. For the purposes of this subdivision, "World Trade Center site" shall mean anywhere below a line starting from the Hudson River and Canal Street; east on Canal Street to Pike Street; south on Pike Street to the East River; and extending to the lower tip of Manhattan.

(e) In order to be eligible for consideration for such presumption, such member must file either a written and sworn statement with the member's retirement system on a form provided by such system, or as allowed by the member's retirement system, electronically submit a statement on a form provided by such system through a secure online portal maintained by the member's retirement system that has duly validated the member's identity, indicating the dates and locations of employment. Such statement must be filed not later than four years following the effective date of chapter one hundred four of the laws of two thousand five.

(f) The comptroller is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

2. (a) Notwithstanding the provisions of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a member who participated in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours, and subsequently retired on a service retirement, an ordinary disability retirement, a performance of duty disability retirement or a state police disability retirement pursuant to section three hundred sixty-three-b of this title and subsequent to such retirement incurred a disability caused by any qualifying condition or impairment of the health which the comptroller determines to have been caused by such member's having participated in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours, upon such determination by the comptroller it shall be presumed that such disability was incurred in the performance and discharge of duty as the natural and proximate result of an accident not caused by such member's own willful negligence, and that the member would have been physically or mentally incapacitated for the performance and discharge of duty of the position

from which he or she retired had the condition been known and fully developed at the time of the member's retirement, unless the contrary is proven by competent evidence. A member shall be eligible for the presumption provided for under this paragraph notwithstanding the fact that the member did not participate in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours, provided that: (i) the member participated in the rescue, recovery, or cleanup operations at the World Trade Center site between September eleventh, two thousand one and September twelfth, two thousand one; (ii) the member sustained a documented physical injury at the World Trade Center site between September eleventh, two thousand one and September twelfth, two thousand one that is a qualifying condition or impairment of health resulting in disability to the member that prevented the member from continuing to participate in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours; and (iii) the documented physical injury that resulted in a disability to the member that prevented the member from continuing to participate in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours is the qualifying condition or impairment of health which the member seeks to be eligible for the presumption provided for under this paragraph.

(b) The reclassification provided for in subparagraph (a) of this paragraph shall not be granted, unless:

(i) the member files either a written and sworn statement with the member's retirement system on a form provided by such system, or as allowed by the member's retirement system, electronically submits a statement on a form provided by such system through a secure online portal maintained by the member's retirement system that has duly validated the member's identity, indicating the dates and locations of employment within four years following the effective date of chapter one hundred four of the laws of two thousand five; and

(ii) the member must have successfully passed a physical examination for entry into public service which failed to disclose evidence of the qualifying condition or impairment of health that formed the basis for the disability.

(c) The comptroller shall consider a reclassification of the member's retirement as an accidental disability retirement effective as of the

date of such reclassification.

(d) Such member's retirement option shall not be changed as a result of such reclassification.

(e) The member's former employer at the time of the member's retirement shall have an opportunity to be heard on the member's application for reclassification by the comptroller according to procedures developed by the comptroller.

(f) The comptroller is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

i. Notwithstanding any other provision of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a retiree who: (1) has met the criteria of subdivision h of this section and retired on a service or disability retirement, or would have met the criteria if not already retired on an accidental disability; and (2) has not been retired for more than twenty-five years; and (3) dies from a qualifying condition or impairment of health, as defined in subparagraph (c) of paragraph one of subdivision h of this section, that is determined by the applicable head of the retirement system or applicable medical board to have been caused by such retiree's participation in the World Trade Center rescue, recovery or cleanup operations, as defined in subparagraph (d) of paragraph one of subdivision h of this section, then unless the contrary be proven by competent evidence, such retiree shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part. Such retiree's eligible beneficiary, as set forth in section three hundred sixty-one of this title, shall be entitled to an accidental death benefit as provided by section three hundred sixty-one of this title, however, for the purposes of determining the salary base upon which the accidental death benefit is calculated, the retiree shall be deemed to have died on the date of his or her retirement. Upon the retiree's death, the eligible beneficiary shall make a written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in section three hundred sixty-one of this title requesting conversion of such retiree's service or disability retirement benefit to an accidental

death benefit. At the time of such conversion, the eligible beneficiary shall relinquish all rights to the prospective benefits payable under the service or disability retirement benefit, including any post-retirement death benefits, since the retiree's death. If the eligible beneficiary is not the only beneficiary receiving or entitled to receive a benefit under the service or disability retirement benefit (including, but not limited to, post-retirement death benefits or benefits paid or payable pursuant to the retiree's option selection), the accidental death benefit payments to the eligible beneficiary will be reduced by any amounts paid or payable to any other beneficiary.

j. Notwithstanding any other provision of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a member who: (1) has met the criteria of subdivision h of this section; and (2) dies in active service from a qualifying condition or impairment of health, as defined in subparagraph (c) of paragraph one of subdivision h of this section, that is determined by the applicable head of the retirement system or applicable medical board to have been caused by such member's participation in the World Trade Center rescue, recovery or cleanup operations, as defined in subparagraph (d) of paragraph one of subdivision h of this section, then unless the contrary be proven by competent evidence, such member shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part. Such member's eligible beneficiary, as set forth in section three hundred sixty-one of this title, shall be entitled to an accidental death benefit provided he or she makes written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in section three hundred sixty-one of this title.