

VETO MESSAGE - No. 381

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 6961, entitled:

"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"

NOT APPROVED

This bill would amend the Retirement and Social Security Law to enhance the heart disease disability presumption (otherwise known as the "heart bill" benefits) for police officers, firefighters and other public employees who are members of the New York State and Local Employees' Retirement System ("ERS") or the New York State and Local Police and Fire Retirement System ("PFRS"). Current law provides police officers in PFRS with a "performance of duty" heart bill benefit equal to 50% of final average salary ("FAS") with a presumption that the heart disease was caused in the line of duty, while firefighters in PFRS have an "accidental" disability heart bill benefit equal to 75% of FAS. This bill would conform the PFRS police officer heart bill benefit to that of PFRS firefighters by deeming the heart bill benefit to be an "accidental" disability benefit equal to 75% of FAS. The bill also would eliminate the requirements that applicants: (1) establish that the member sustained an accident or other incident related to the performance of duty; and (2) provide notice of such accident to the employer. The Actuary of ERS and PFRS estimates that the bill would result in an increase in annual pension contributions of \$7.6 million to the State and \$8.2 million to local governments. The bill would take effect immediately.

Supporters of the bill contend that the purpose of the heart bill benefit was to award accidental disability benefits to members without requiring proof of a work-related accident. However, the courts have disagreed and held that members must submit: (1) proof of an actual work-related accident; and (2) notice of such accident to the employer. See *Matter of Weiss v. Levit*, 55 A.D.2d 724 (3rd Dep't. 1975); *Matter of Acciavatti v. Levitt*, 57 A.D.2d 131 (3rd Dep't. 1977).

I withheld my approval from identical bills in each of the last two years based on the following objections: (1) the bill would have undermined existing criteria for awarding heart bill benefits that have been

upheld in numerous courts as appropriate and fair; and (2) the bill would have caused equity problems with other benefits, such as the lung disease presumption benefit for firefighters that only pays a pension equal to 50% of FAS. See Veto No. 41 of 2005 and Veto No. 317 of 2004. Further, I noted that extending the heart bill benefits in the manner proposed by this bill would have a substantial unbudgeted fiscal impact on the State and local governments. Indeed, this bill would result in almost \$16 million in increased pension costs. Thus, while I appreciate the difficult and demanding jobs that these dedicated law enforcement and fire personnel perform, in the absence of any compelling new facts or circumstances, I am again constrained to disapprove the bill.

The bill is disapproved.

(signed) GEORGE E. PATAKI
