

VETO MESSAGE - No. 41

TO THE ASSEMBLY:

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

Assembly Bill Number 8052, 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 (RSSL) to enhance the heart disease disability presumption (otherwise known as "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 of 50% of final average salary (FAS) with a presumption that heart disease was caused in the line of duty, while firefighters in PFRS have an "accidental" disability heart bill benefit of 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. Further, the bill 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 this bill would result in an increase in annual contributions of \$7.7 million to the State and \$8.6 million to local governments. This bill would take effect immediately.

Supporters of the bill contend that the legislative intent underlying 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, requiring members to: (1) submit proof of an actual work-related accident; and (2) submit notice of such accident to the employer. See: *Matter of Weiss v. Levitt*, 55 A.D.2d 724 (3rd Dep't.1976); *Matter of Acciavatti v. Levitt*, 57 A.D.2d 131 (3rd Dep't. 1977).

Supporters also argue that this bill would promote parity between members of the New York State and New York City Retirement Systems, since the courts have upheld New York City's administration of this benefit, which does not require proof of an accident.

The Division of the Budget (DOB) opposes this bill for two primary reasons. First, the bill would impose upon the State and local governments an unbudgeted fiscal impact of \$16.3 million annually - \$7.7 million to the State and \$8.6 to local governments - during a time when rising pension costs are already burdening local governments and property taxpayers. Second, DOB contends that the State has no obligation to conform its criteria for disability retirement with the policies of the New York Retirement Systems, especially given that the latter does not provide its police and fire members with a 50% performance of duty benefit.

I withheld my approval from an identical bill last year because it would have: (1) undermined existing criteria for awarding heart bill benefits that have been upheld in numerous courts as appropriate and fair; and (2) caused equity problems with other benefits, such as the lung disease presumption benefit for firefighters, which only pays a pension equal to 50% of FAS. See: Veto No. 317 of 2004. While I appreciate the difficult and demanding jobs that these dedicated law enforcement and fire personnel perform, I am once again constrained to disapprove the bill based upon the concerns set forth herein.

The bill is disapproved.

(signed) GEORGE E. PATAKI
