

FEB 24 1999

STATE GOVERNMENT

HOUSE FILE

385

BY RICHARDSON

Passed House, Date _____ Passed Senate, Date _____
 Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
 Approved _____

A BILL FOR

1 An Act providing special service members of the Iowa public
 2 employees' retirement system with disability benefits.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

HF 385

1 Section 1. NEW SECTION. 97B.50A DISABILITY BENEFITS FOR
2 SPECIAL SERVICE MEMBERS.

3 1. DEFINITIONS. For purposes of this section, unless the
4 context otherwise provides:

5 a. "Member" means a vested member who is classified as a
6 special service member under section 97B.1A, subsection 22, at
7 the time of the alleged disability.

8 b. "Net disability retirement allowance" means the amount
9 determined by subtracting the amount paid during the previous
10 calendar year by the member for health insurance or similar
11 health care coverage for the member and the member's
12 dependents from the amount of the member's disability
13 retirement allowance paid for that year pursuant to this
14 section.

15 c. "Reemployment comparison amount" means an amount equal
16 to the current covered wages of an active special service
17 member at the same position on the salary scale within the
18 rank or position the member held at the time the member
19 received a disability retirement allowance pursuant to this
20 section. If the rank or position held by the member at the
21 time of retirement pursuant to this section is abolished, the
22 amount shall be computed by the department as though the rank
23 or position had not been abolished and salary increases had
24 been granted on the same basis as granted to other ranks or
25 positions by the former employer of the member. The
26 reemployment comparison amount shall not be less than the
27 three-year average covered wage of the member.

28 2. IN-SERVICE DISABILITY RETIREMENT ALLOWANCE.

29 a. A member who is injured in the performance of the
30 member's duties, and otherwise meets the requirements of this
31 subsection, shall receive an in-service disability retirement
32 allowance under the provisions of this subsection, in lieu of
33 a monthly retirement allowance as provided in section 97B.49A,
34 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable.

35 b. Upon application of a member, a member who has become

1 totally and permanently incapacitated for duty in the member's
2 special service occupation as the natural and proximate result
3 of an injury, disease, or exposure occurring or aggravated
4 while in the actual performance of duty shall be eligible to
5 retire under this subsection, provided that the medical board,
6 designated under subsection 9, shall certify that the member
7 is mentally or physically incapacitated for further
8 performance of duty, that the incapacity is likely to be
9 permanent, and that the member should be retired. The
10 department shall make the final determination, based on the
11 medical evidence received, of a member's total and permanent
12 disability. However, if a person's membership in the system
13 first commenced on or after the effective date of this Act,
14 the member shall not be eligible for benefits with respect to
15 a disability which would not exist, but for a medical
16 condition that was known to exist on the date that membership
17 commenced. A member who is denied a benefit under this
18 subsection, by reason of a finding by the department that the
19 member is not mentally or physically incapacitated for the
20 further performance of duty, shall be entitled to be restored
21 to active service in the same or comparable special service
22 position held by the member immediately prior to the
23 application for disability benefits.

24 c. "Disease" under this subsection means heart disease or
25 any disease of the lungs or respiratory tract and shall be
26 presumed to have been contracted while on active duty as a
27 result of strain, exposure, or the inhalation of noxious
28 fumes, poison, or gases. However, if a person's membership in
29 the system first commenced on or after the effective date of
30 this Act, and the heart disease or disease of the lungs or
31 respiratory tract would not exist, but for a medical condition
32 that was known to exist on the date that membership commenced,
33 the presumption established in this paragraph shall not apply.

34 d. Upon retirement for an in-service disability as
35 provided by this subsection, a member shall receive the

1 greater of a monthly in-service disability retirement
2 allowance calculated under this subsection or a monthly
3 retirement allowance as provided in section 97B.49A, 97B.49B,
4 97B.49C, 97B.49D, or 97B.49G, as applicable. The monthly in-
5 service disability allowance calculated under this subsection
6 shall consist of an allowance equal to one-twelfth of sixty
7 percent of the member's three-year average covered wage or its
8 actuarial equivalent as provided under section 97B.51.

9 3. ORDINARY DISABILITY RETIREMENT ALLOWANCE.

10 a. A member who otherwise meets the requirements of this
11 subsection shall receive an ordinary disability retirement
12 allowance under the provisions of this subsection, in lieu of
13 a monthly retirement allowance as provided in section 97B.49A,
14 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable.

15 b. Upon application of a member, a member who has become
16 totally and permanently incapacitated for duty in the member's
17 special service occupation shall be eligible to retire under
18 this subsection, provided that the medical board, designated
19 under subsection 9, shall certify that the member is mentally
20 or physically incapacitated for further performance of duty,
21 that the incapacity is likely to be permanent, and that the
22 member should be retired. The department shall make the final
23 determination, based on the medical evidence received, of a
24 member's total and permanent disability. However, if a
25 person's membership in the system first commenced on or after
26 the effective date of this Act, the member shall not be
27 eligible for benefits with respect to a disability which would
28 not exist, but for a medical condition that was known to exist
29 on the date that membership commenced. A member who is denied
30 a benefit under this subsection, by reason of a finding by the
31 department that the member is not mentally or physically
32 incapacitated for the further performance of duty, shall be
33 entitled to be restored to active service in the same or
34 comparable special service position held by the member
35 immediately prior to the application for disability benefits.

1 c. Upon retirement for an ordinary disability as provided
2 by this subsection, a member shall receive the greater of a
3 monthly ordinary disability retirement allowance calculated
4 under this subsection or a monthly retirement allowance as
5 provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or
6 97B.49G, as applicable. The monthly ordinary disability
7 allowance calculated under this subsection shall consist of an
8 allowance equal to one-twelfth of fifty percent of the
9 member's three-year average covered wage or its actuarial
10 equivalent as provided under section 97B.51.

11 | 4. WAIVER OF ALLOWANCE. A member receiving a disability
12 retirement allowance under this section may file an
13 application to receive benefits pursuant to section 97B.50,
14 subsection 2, in lieu of receiving a disability retirement
15 allowance under the provisions of this section, if the member
16 becomes eligible for benefits under section 97B.50, subsection
17 2. An application to receive benefits pursuant to section
18 97B.50, subsection 2, shall be filed with the department
19 within sixty days of becoming eligible for benefits pursuant
20 to that section or the member shall be ineligible to elect
21 coverage under that section. On the first of the month
22 following the month in which a member's application is
23 approved by the department, the member's election of coverage
24 under section 97B.50, subsection 2, shall become effective and
25 the member's eligibility to receive a disability retirement
26 allowance pursuant to this section shall cease. Benefits
27 payable pursuant to section 97B.50, subsection 2, shall be
28 calculated using the option choice the member selected for
29 payment of a disability retirement allowance pursuant to this
30 section. An application to elect coverage under section
31 97B.50, subsection 2, is irrevocable upon approval by the
32 department.

33 | 5. OFFSET TO ALLOWANCE. Notwithstanding any provisions to
34 the contrary in state law, or any applicable contract or
35 policy, any amounts which may be paid or payable by the

1 employer under the provisions of any workers' compensation,
2 unemployment compensation, or other law to a member, and any
3 disability payments the member receives pursuant to the
4 federal Social Security Act, 42 U.S.C. § 423 et seq., shall be
5 offset against and payable in lieu of any retirement allowance
6 payable pursuant to this section on account of the same
7 disability.

8 6. REEXAMINATION OF MEMBERS RETIRED ON ACCOUNT OF
9 DISABILITY.

10 a. Once each year during the first five years following
11 the retirement of a member under this section, and once in
12 every three-year period thereafter, the department may, and
13 upon the member's application shall, require any member
14 receiving an in-service or ordinary disability retirement
15 allowance who has not yet attained the age of fifty-five years
16 to undergo a medical examination as arranged by the medical
17 board designated under subsection 9. The examination shall be
18 made by the medical board or by an additional physician or
19 physicians designated by the medical board. If any member
20 receiving an in-service or ordinary disability retirement
21 allowance who has not attained the age of fifty-five years
22 refuses to submit to the medical examination, the allowance
23 may be discontinued until the member's withdrawal of the
24 refusal, and should the member's refusal continue for one
25 year, all rights in and to the member's disability retirement
26 allowance shall be revoked by the department.

27 b. If a member is determined under paragraph "a", to be no
28 longer eligible for in-service or ordinary disability
29 benefits, all benefits paid under this section shall cease.
30 The member shall be eligible to receive benefits calculated
31 under section 97B.49B or 97B.49C, as applicable, when the
32 member reaches age fifty-five.

33 7. REEMPLOYMENT.

34 a. If a member receiving a disability retirement allowance
35 is returned to covered employment, the member's disability

1 retirement allowance shall cease, the member shall again
2 become an active member, and shall contribute thereafter at
3 the same rate payable by similarly classified members. If a
4 member receiving a disability retirement allowance returns to
5 special service employment, the period of time the member
6 received a disability retirement allowance shall constitute
7 eligible service as defined in section 97B.49B, subsection 1,
8 or section 97B.49C, subsection 1, as applicable. Upon
9 subsequent retirement, the member's retirement allowance shall
10 be calculated as provided in section 97B.48A.

11 | b. (1) If a member receiving a disability retirement
12 allowance is engaged in a gainful occupation that is not
13 covered employment, the member's disability retirement
14 allowance shall be reduced, if applicable, as provided in this
15 paragraph "b".

16 | (2) If the member is engaged in a gainful occupation
17 paying more than the difference between the member's net
18 disability retirement allowance and one and one-half times the
19 reemployment comparison amount for that member, the amount of
20 the member's disability retirement allowance shall be reduced
21 to an amount such that the member's net disability retirement
22 allowance plus the amount earned by the member shall equal one
23 and one-half times the reemployment comparison amount for that
24 member.

25 | (3) The member shall submit sufficient documentation to
26 the system to permit the system to determine the member's net
27 disability retirement allowance and earnings from a gainful
28 occupation that is not covered employment for the applicable
29 year.

30 | (4) This paragraph "b" does not apply to a member who is
31 at least fifty-five years of age and who would have completed
32 a sufficient number of years of service if the member had
33 remained in active special service employment. For purposes
34 of this subparagraph, a sufficient number of years of service
35 shall be twenty-five for a special service member as described

1 in section 97B.49B or twenty-two years of service for a
2 special service member as described in section 97B.49C.

3 8. DEATH BENEFITS. A member who is receiving an in-
4 service or ordinary disability retirement allowance under this
5 section shall be treated as having elected a lifetime monthly
6 retirement allowance with death benefits payable under section
7 97B.52, subsection 2, unless the member elects an optional
8 form of benefit provided under section 97B.51, which shall be
9 actuarially equivalent to the lifetime monthly retirement
10 allowance provided under this section.

11 9. MEDICAL BOARD. The system shall designate a medical
12 board to be composed of three physicians from the university
13 of Iowa hospitals and clinics who shall arrange for and pass
14 upon the medical examinations required under the provisions of
15 this section and shall report in writing to the department the
16 conclusions and recommendations upon all matters duly referred
17 to the medical board. Each report of a medical examination
18 under this section shall include the medical board's findings
19 as to the extent of the member's physical impairment. Except
20 as required by this section, each report shall be confidential
21 and shall be maintained in accordance with the federal
22 Americans with Disabilities Act, and any other state or
23 federal law containing requirements for confidentiality of
24 medical records.

25 10. LIABILITY OF THIRD PARTIES -- SUBROGATION.

26 a. If a member receives an injury for which benefits are
27 payable under this section, and if the injury is caused under
28 circumstances creating a legal liability for damages against a
29 third party other than the system, the member or the member's
30 legal representative may maintain an action for damages
31 against the third party. If a member or a member's legal
32 representative commences such an action, the plaintiff member
33 or representative shall serve a copy of the original notice
34 upon the system not less than ten days before the trial of the
35 action, but a failure to serve the notice does not prejudice

1 the rights of the system, and the following rights and duties
2 ensue:

3 | (1) The system shall be indemnified out of the recovery of
4 damages to the extent of benefit payments made by the system,
5 with legal interest, except that the plaintiff member's
6 attorney fees may be first allowed by the district court.

7 | (2) The system has a lien on the damage claim against the
8 third party and on any judgment on the damage claim for
9 benefits for which the system is liable. In order to continue
10 and preserve the lien, the system shall file a notice of the
11 lien within thirty days after receiving a copy of the original
12 notice in the office of the clerk of the district court in
13 which the action is filed.

14 | b. If a member fails to bring an action for damages
15 against a third party within thirty days after the system
16 requests the member in writing to do so, the system is
17 subrogated to the rights of the member and may maintain the
18 action against the third party, and may recover damages for
19 the injury to the same extent that the member may recover
20 damages for the injury. If the system recovers damages in the
21 action, the court shall enter judgment for distribution of the
22 recovery as follows:

23 | (1) A sum sufficient to repay the system for the amount of
24 such benefits actually paid by the system up to the time of
25 the entering of the judgment.

26 | (2) A sum sufficient to pay the system the present worth,
27 computed at the interest rate provided in section 535.3 for
28 court judgments and decrees, of the future payments of such
29 benefits, for which the system is liable, but the sum is not a
30 final adjudication of the future payment which the member is
31 entitled to receive.

32 | (3) Any balance shall be paid to the member.

33 | c. Before a settlement is effective between the system and
34 a third party who is liable for any injury, the member must
35 consent in writing to the settlement; and if the settlement is

1 between the member and a third party, the system must consent
2 in writing to the settlement; or on refusal to consent, in
3 either case, the district court in the county in which either
4 the employer of the member or the system is located must
5 approve the settlement in writing.

6 d. For purposes of subrogation under this section, a
7 payment made to an injured member or the member's legal
8 representative, by or on behalf of a third party or the third
9 party's principal or agent, who is liable for, connected with,
10 or involved in causing the injury to the member, shall be
11 considered paid as damages because the injury was caused under
12 circumstances creating a legal liability against the third
13 party, whether the payment is made under a covenant not to
14 sue, compromise settlement, denial of liability, or is
15 otherwise made.

16 11. DOCUMENT SUBMISSIONS. A member retired under this
17 section, in order to be eligible for continued receipt of
18 retirement benefits, shall submit to the department any
19 documentation the department may reasonably request which will
20 provide information needed to determine payments to the member
21 under this section.

22 12. EXPENSES. The expenses incurred in the administration
23 of this section by the system shall be paid through additional
24 contributions as determined pursuant to section 97B.49B,
25 subsection 3, or section 97B.49C, subsection 3, as applicable.

26 13. APPLICABILITY -- RETROACTIVITY.

27 a. This section applies to a member who becomes disabled
28 on or after the effective date of this Act, and also applies
29 to a member who becomes disabled prior to the effective date
30 of this Act, if the member has not terminated special service
31 employment before the effective date of this Act.

32 b. To qualify for benefits under this section, a member
33 must file a completed application with the department within
34 one year of the member's termination of employment. A member
35 eligible for a disability retirement allowance under this

1 section is entitled to receipt of retroactive adjustment
2 payments for no more than six months immediately preceding the
3 month in which the completed application for receipt of a
4 disability retirement allowance under this section is
5 approved.

6 EXPLANATION

7 This bill provides for disability retirement benefits for
8 special service members of the Iowa public employees'
9 retirement system (IPERS). A special service member of IPERS
10 for purposes of this bill includes a person who is a member of
11 a protection occupation or who is a sheriff, deputy sheriff,
12 or airport fire fighter.

13 The new Code section provides that an eligible special
14 service member of IPERS who becomes disabled for duty while in
15 the performance of the member's duty is entitled to an in-
16 service disability retirement allowance equal to the greater
17 of 1/12 of 60 percent of the member's three-year average
18 covered wage or what the member would receive under a normal
19 retirement. For purposes of establishing an in-service
20 disability, heart or lung disease is presumed to have been
21 contracted while on duty. The new Code section also provides
22 that a member who becomes disabled and unable to perform the
23 person's job is entitled to an ordinary disability retirement
24 allowance equal to the greater of 1/12 of 50 percent of the
25 member's three-year average covered wage or what the member
26 would receive under a normal retirement. For both disability
27 retirements, the department of personnel makes the decision as
28 to whether the person is totally disabled. The new Code
29 section also has provisions for offsets to disability
30 allowances, reexamination of members on disability,
31 reemployment, death benefits, establishing the medical board,
32 and subrogation. The new Code section provides that the costs
33 of administering the disability program shall be paid through
34 contributions from the special service employees and their
35 employers in the same manner as additional benefits are paid.

1 (The employer pays 60 percent and the employee pays 40
2 percent). The new Code section, applies to a special service
3 member who became disabled prior to the effective date of the
4 bill, if the member did not terminate the special service
5 employment before the effective date of the bill.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35