

# STATE OF NEW YORK

9738

## IN ASSEMBLY

March 28, 2022

Introduced by M. of A. ABBATE -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to providing certain death benefits to county fire marshals, supervising fire marshals, fire marshals, assistant fire marshals, assistant chief fire marshals, chief fire marshals and division supervising fire marshals employed by Nassau county

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 63-g of the retirement and social security law, as added by chapter 714 of the laws of 2021, is amended to read as follows:

§ 63-g. Disability benefits; certain disabilities. Notwithstanding any provision of this chapter or of any general, special or local law to the contrary, any member who is a county fire marshal, fire marshal, supervising fire marshal, division supervising fire marshal, assistant chief fire marshal, chief fire marshal, assistant fire marshal, or fire marshal trainee employed by Nassau county who contracts any condition of impairment of health caused by diseases of the heart, resulting in disability or death to such county fire marshal, fire marshal, supervising fire marshal, division supervising fire marshal, assistant chief fire marshal, chief fire marshal, assistant fire marshal, or fire marshal trainee, presently employed, and who shall have sustained such disability while so employed, shall be presumptive evidence that such disability was incurred in the performance and discharge of duty and the natural and proximate result of an accident, unless the contrary be proved by competent evidence; provided, however, that prior to entry into service, such county fire marshal, fire marshal, supervising fire marshal, division supervising fire marshal, assistant chief fire marshal, chief fire marshal, assistant fire marshal, or fire marshal trainee successfully passed a physical examination which failed to disclose evidence of any disease or other impairment of the heart.

§ 2. The retirement and social security law is amended by adding a new section 63-i to read as follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD14538-02-2

1 § 63-i. Death benefits for fire marshals employed by Nassau county.  
2 a. As used in this section, the term "fire marshal" shall mean a member  
3 who is employed by Nassau county with a title of county fire marshal,  
4 supervising fire marshal, fire marshal, assistant fire marshal, assist-  
5 ant chief fire marshal, chief fire marshal, and division supervising  
6 fire marshal.

7 b. Notwithstanding any provision of law to the contrary, where a fire  
8 marshal would have been entitled to a service retirement benefit at the  
9 time of his or her death and where his or her death occurs on or after  
10 the effective date of this section, the beneficiary or beneficiaries may  
11 elect to receive, in a lump sum, an amount payable which shall be equal  
12 to the pension reserve that would have been established had the member  
13 retired on the date of his or her death, or the value of the death bene-  
14 fit and the reserve-for-increased-take-home-pay, if any, whichever is  
15 greater.

16 § 3. Subdivisions a and j of section 89-w of the retirement and social  
17 security law, as added by chapter 295 of the laws of 2007, are amended  
18 to read as follows:

19 a. A member who serves as a county fire marshal, supervising fire  
20 marshal, fire marshal, assistant fire marshal, assistant chief fire  
21 marshal ~~[or]~~, chief fire marshal or division supervising fire marshal  
22 and is employed by the county of Nassau shall be eligible to retire  
23 pursuant to the provisions of this section. Such eligibility shall be an  
24 alternative to the eligibility provisions available under any other plan  
25 of this article to which such member is subject. The county executive of  
26 the county of Nassau shall certify to the comptroller, periodically and  
27 at such intervals of time as may be required of him or her and in such  
28 fashion as may be prescribed, the identity of the eligible county fire  
29 marshal, supervising fire marshals, fire marshals, assistant fire  
30 marshals, assistant chief fire marshals ~~[and]~~, chief fire marshals and  
31 division supervising fire marshals in his or her employ.

32 j. Notwithstanding any provision of this section or of any other  
33 provision of law to the contrary, county fire marshals, supervising fire  
34 marshals, fire marshals, assistant fire marshals, assistant chief fire  
35 marshals ~~[and]~~, chief fire marshals and division supervising fire  
36 marshals must serve five years within the Nassau county fire marshal  
37 department after the effective date of this section before they are  
38 eligible to retire under the provisions of the twenty-five year retire-  
39 ment plan.

40 § 4. Subdivision a of section 445 of the retirement and social securi-  
41 ty law, as amended by chapter 245 of the laws of 2021, is amended to  
42 read as follows:

43 a. No member of a retirement system who is subject to the provisions  
44 of this article shall retire without regard to age, exclusive of retire-  
45 ment for disability, unless he or she is a police officer, an investi-  
46 gator member of the New York city employees' retirement system, fire-  
47 fighter, correction officer, a qualifying member as defined in section  
48 eighty-nine-t, as added by chapter six hundred fifty-seven of the laws  
49 of nineteen hundred ninety-eight, of this chapter, sanitation worker, a  
50 special officer (including persons employed by the city of New York in  
51 the title urban park ranger or associate urban park ranger), school  
52 safety agent, campus peace officer or a taxi and limousine commission  
53 inspector member of the New York city employees' retirement system or  
54 the New York city board of education retirement system, a dispatcher  
55 member of the New York city employees' retirement system, a police  
56 communications member of the New York city employees' retirement system,

1 an EMT member of the New York city employees' retirement system, a deputy  
2 sheriff member of the New York city employees' retirement system, a  
3 correction officer of the Westchester county correction department as  
4 defined in section eighty-nine-e of this chapter or employed in Suffolk  
5 county as a peace officer, as defined in section eighty-nine-s, as added  
6 by chapter five hundred eighty-eight of the laws of nineteen hundred  
7 ninety-seven, of this chapter, employed in Suffolk county as a  
8 correction officer, as defined in section eighty-nine-f of this chapter,  
9 or employed in Nassau county as a correction officer, uniformed  
10 correction division personnel, sheriff, undersheriff or deputy sheriff,  
11 as defined in section eighty-nine-g of this chapter, or employed in  
12 Nassau county as an ambulance medical technician, an ambulance medical  
13 technician/supervisor or a member who performs ambulance medical techni-  
14 cian related services, or a police medic, police medic supervisor or a  
15 member who performs police medic related services, as defined in section  
16 eighty-nine-s, as amended by chapter five hundred seventy-eight of the  
17 laws of nineteen hundred ninety-eight, of this chapter, or employed in  
18 Nassau county as a peace officer, as defined in section eighty-nine-s,  
19 as added by chapter five hundred ninety-five of the laws of nineteen  
20 hundred ninety-seven, of this chapter, or employed in Albany county as a  
21 sheriff, undersheriff, deputy sheriff, correction officer or identifica-  
22 tion officer, as defined in section eighty-nine-h of this chapter or is  
23 employed in St. Lawrence county as a sheriff, undersheriff, deputy sher-  
24 iff or correction officer, as defined in section eighty-nine-i of this  
25 chapter or is employed in Orleans county as a sheriff, undersheriff,  
26 deputy sheriff or correction officer, as defined in section  
27 eighty-nine-l of this chapter or is employed in Jefferson county as a  
28 sheriff, undersheriff, deputy sheriff or correction officer, as defined  
29 in section eighty-nine-j of this chapter or is employed in Onondaga  
30 county as a deputy sheriff-jail division competitively appointed or as a  
31 correction officer, as defined in section eighty-nine-k of this chapter  
32 or is employed in a county which makes an election under subdivision j  
33 of section eighty-nine-p of this chapter as a sheriff, undersheriff,  
34 deputy sheriff or correction officer as defined in such section eighty-  
35 nine-p or is employed in Broome County as a sheriff, undersheriff, depu-  
36 ty sheriff or correction officer, as defined in section eighty-nine-m of  
37 this chapter or is a Monroe county deputy sheriff-court security, or  
38 deputy sheriff-jailor as defined in section eighty-nine-n, as added by  
39 chapter five hundred ninety-seven of the laws of nineteen hundred nine-  
40 ty-one, of this chapter or is employed in Greene county as a sheriff,  
41 undersheriff, deputy sheriff or correction officer, as defined in  
42 section eighty-nine-o of this chapter or is a traffic officer with the  
43 town of Elmira as defined in section eighty-nine-q of this chapter or is  
44 employed by Suffolk county as a park police officer, as defined in  
45 section eighty-nine-r of this chapter or is a peace officer employed by  
46 a county probation department as defined in section eighty-nine-t, as  
47 added by chapter six hundred three of the laws of nineteen hundred nine-  
48 ty-eight, of this chapter or is employed in Rockland county as a deputy  
49 sheriff-civil as defined in section eighty-nine-v of this chapter as  
50 added by chapter four hundred forty-one of the laws of two thousand one,  
51 or is employed in Rockland county as a superior correction officer as  
52 defined in section eighty-nine-v of this chapter as added by chapter  
53 five hundred fifty-six of the laws of two thousand one or is a paramedic  
54 employed by the police department in the town of Tonawanda and retires  
55 under the provisions of section eighty-nine-v of this chapter, as added  
56 by chapter four hundred seventy-two of the laws of two thousand one, or

1 is a county fire marshal, supervising fire marshal, fire marshal,  
2 assistant fire marshal, assistant chief fire marshal [~~or~~], chief fire  
3 marshal, division supervising fire marshal or fire marshal trainee  
4 employed by the county of Nassau as defined in section eighty-nine-w of  
5 this chapter and is in a plan which permits immediate retirement upon  
6 completion of a specified period of service without regard to age.  
7 Except as provided in subdivision c of section four hundred forty-five-a  
8 of this article, subdivision c of section four hundred forty-five-b of  
9 this article, subdivision c of section four hundred forty-five-c of this  
10 article, subdivision c of section four hundred forty-five-d of this  
11 article, subdivision c of section four hundred forty-five-e of this  
12 article, subdivision c of section four hundred forty-five-f of this  
13 article and subdivision c of section four hundred forty-five-h of this  
14 article, a member in such a plan and such an occupation, other than a  
15 police officer or investigator member of the New York city employees'  
16 retirement system or a firefighter, shall not be permitted to retire  
17 prior to the completion of twenty-five years of credited service;  
18 provided, however, if such a member in such an occupation is in a plan  
19 which permits retirement upon completion of twenty years of service  
20 regardless of age, he or she may retire upon completion of twenty years  
21 of credited service and prior to the completion of twenty-five years of  
22 service, but in such event the benefit provided from funds other than  
23 those based on such a member's own contributions shall not exceed two  
24 per centum of final average salary per each year of credited service.

25 § 5. The retirement and social security law is amended by adding a new  
26 section 508-c to read as follows:

27 § 508-c. Death benefits for fire marshals employed by Nassau county.  
28 a. As used in this section, the term "fire marshal" shall mean a member  
29 who is employed by Nassau county with a title of county fire marshal,  
30 supervising fire marshal, fire marshal, assistant fire marshal, assist-  
31 ant chief fire marshal, chief fire marshal, or division supervising fire  
32 marshal.

33 b. Notwithstanding any provision of law to the contrary, where a fire  
34 marshal would have been entitled to a service retirement benefit at the  
35 time of his or her death and where his or her death occurs on or after  
36 the effective date of this section, the beneficiary or beneficiaries may  
37 elect to receive, in a lump sum, an amount payable which shall be equal  
38 to the pension reserve that would have been established had the member  
39 retired on the date of his or her death, or the value of the death bene-  
40 fit and the reserve-for-increased-take-home-pay, if any, whichever is  
41 greater.

42 § 6. Subdivision s of section 603 of the retirement and social securi-  
43 ty law, as added by chapter 295 of the laws of 2007, is amended to read  
44 as follows:

45 s. The service retirement benefit specified in section six hundred  
46 four of this article shall be payable to members with twenty-five years  
47 of creditable service, without regard to age, who are employed in the  
48 county of Nassau as a county fire marshal, supervising fire marshal,  
49 fire marshal, assistant fire marshal, assistant chief fire marshal [~~or~~],  
50 chief fire marshal or division supervising fire marshal as defined in  
51 section eighty-nine-w of this chapter if: (i) such members have met the  
52 minimum service requirements upon retirement, and (ii) in the case of a  
53 member subject to the provisions of article fourteen of this chapter,  
54 such member files an election therefor which provides that he or she  
55 will be subject to the provisions of this article and to none of the  
56 provisions of such article fourteen. Such election, which shall be

irrevocable, shall be in writing, duly executed and shall be filed with the comptroller within one year of the effective date of this subdivision or within one year after entering the employment with such county upon which eligibility is based, whichever comes later. For the purposes of this subdivision, the term "creditable service" shall have the meaning as so defined in both sections eighty-nine-w and six hundred one of this chapter.

§ 7. Subdivision t of section 604 of the retirement and social security law, as added by chapter 295 of the laws of 2007, is amended to read as follows:

t. The early service retirement benefit for a member who is employed in the county of Nassau as a county fire marshal, supervising fire marshal, fire marshal, assistant fire marshal, assistant chief fire marshal ~~[or]~~, chief fire marshal or division supervising fire marshal as defined in section eighty-nine-w of this chapter shall be a pension equal to one-fiftieth of final average salary times years of credited service at the completion of twenty-five years of service as such county fire marshal, supervising fire marshal, fire marshal, assistant fire marshal, assistant chief fire marshal ~~[or]~~, chief fire marshal or division supervising fire marshal, but not exceeding one-half of his or her final average salary.

§ 8. The opening paragraph of subdivision a and subdivision g of section 605-d of the retirement and social security law, as added by chapter 416 of the laws of 2013, are amended to read as follows:

A member employed as a chief fire marshal, assistant chief fire marshal, division supervising fire marshal, supervising fire marshal, fire marshal or fire marshal trainee in Nassau county shall be entitled to an accidental disability retirement allowance if, at the time application therefor is filed, such member is:

g. Notwithstanding any other provision of law, this section shall apply to chief fire marshals, assistant chief fire marshals, division supervising fire marshals, supervising fire marshals, fire marshals and fire marshal trainees in Nassau county who were hired on or after July twenty-seventh, nineteen hundred seventy-six.

§ 9. Section 605-f of the retirement and social security law, as added by chapter 714 of the laws of 2021, is amended to read as follows:

§ 605-f. Disability benefits; certain disabilities. Notwithstanding any provision of this chapter or of any general, special or local law to the contrary, any member who is a county fire marshal, fire marshal, supervising fire marshal, division supervising fire marshal, assistant chief fire marshal, chief fire marshal, assistant fire marshal, or fire marshal trainee employed by Nassau county who contracts any condition of impairment of health caused by diseases of the heart, resulting in disability or death to such county fire marshal, fire marshal, supervising fire marshal, division supervising fire marshal, assistant chief fire marshal, chief fire marshal, assistant fire marshal, or fire marshal trainee, presently employed, and who shall have sustained such disability while so employed, shall be presumptive evidence that such disability was incurred in the performance and discharge of duty and the natural and proximate result of an accident, unless the contrary be proved by competent evidence; provided, however, that prior to entry into service, such county fire marshal, fire marshal, supervising fire marshal, division supervising fire marshal, assistant chief fire marshal, chief fire marshal, assistant fire marshal, or fire marshal trainee successfully passed a physical examination which failed to disclose evidence of any disease or other impairment of the heart.

§ 10. The retirement and social security law is amended by adding a new section 606-c to read as follows:

§ 606-c. Death benefits for fire marshals employed by Nassau county.  
a. As used in this section, the term "fire marshal" shall mean a member who is employed by Nassau county with a title of county fire marshal, supervising fire marshal, fire marshal, assistant fire marshal, assistant chief fire marshal, chief fire marshal, or division supervising fire marshal.

b. Notwithstanding any provision of law to the contrary, where a fire marshal would have been entitled to a service retirement benefit at the time of his or her death and where his or her death occurs on or after the effective date of this section, the beneficiary or beneficiaries may elect to receive, in a lump sum, an amount payable which shall be equal to the pension reserve that would have been established had the member retired on the date of his or her death, or the value of the death benefit and the reserve-for-increased-take-home-pay, if any, whichever is greater.

§ 11. Subdivision a of section 607-j of the retirement and social security law, as added by chapter 524 of the laws of 2021, is amended to read as follows:

a. The county of Nassau shall make the benefits provided herein available to county fire marshals, chief fire marshals, assistant chief fire marshals, division supervising fire marshals, supervising fire marshals, fire marshals, assistant fire marshals and fire marshal trainees in the employ of Nassau county.

§ 12. All past service costs associated with implementing the provisions of this act shall be borne by the county of Nassau and may be amortized over a period of ten years.

§ 13. Notwithstanding any provision of law to the contrary, none of the provisions of this act shall be subject to the appropriation requirement of section twenty-five of the retirement and social security law.

§ 14. This act shall take effect immediately.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill would modify the in-service death benefit for retirement eligible tiers 3 through 6 members of the New York State and Local Employees' Retirement System who are employed by Nassau County in certain fire marshal job titles. The in-service death benefit will be the value of the pension reserve as if the member had retired on their date of death.

If this legislation is enacted during the 2022 legislative session, we anticipate that there will be an increase in the annual contributions of Nassau County of approximately \$5,900 for the fiscal year ending March 31, 2023. In the future, this cost will vary as the billing rates and salaries of those affected change.

In addition to the annual contributions discussed above, there will be an immediate past service cost of approximately \$58,700 which will be borne by Nassau County as a one-time payment. This estimate is based on the assumption that payment will be made on February 1, 2023. If Nassau County elects to amortize this cost over a 10-year period, the cost for the first year would be \$7,500.

These estimated costs are based on 49 affected members employed by Nassau County, with annual salary of approximately \$5.4 million as of March 31, 2021.

Summary of relevant resources:

Membership data as of March 31, 2021 was used in measuring the impact of the proposed change, the same data used in the April 1, 2021 actuarial valuation. Distributions and other statistics can be found in the 2021 Report of the Actuary and the 2021 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2020 and 2021 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes, Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2021 New York State and Local Retirement System Financial Statements and Supplementary Information.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This fiscal note does not constitute a legal opinion on the viability of the proposed change nor is it intended to serve as a substitute for the professional judgment of an attorney.

This estimate, dated March 10, 2022, and intended for use only during the 2022 Legislative Session, is Fiscal Note No. 2022-76, prepared by the Actuary for the New York State and Local Retirement System.