

7113--A

2015-2016 Regular Sessions

I N   A S S E M B L Y

April 23, 2015

---

Introduced by M. of A. ABBATE, MILLER -- Multi-Sponsored by -- M. of A. GOLDFEDER -- read once and referred to the Committee on Governmental Employees -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to providing accidental disability retirement benefits for chief fire marshals, assistant chief fire marshals, division supervising fire marshals, supervising fire marshals, fire marshals and fire marshal trainees in Nassau county

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The retirement and social security law is amended by adding  
2     a new section 607-i to read as follows:  
3     S 607-I. PERFORMANCE OF DUTY, DISABILITY RETIREMENT FOR CHIEF FIRE  
4     MARSHALS, ASSISTANT CHIEF FIRE MARSHALS, DIVISION SUPERVISING FIRE  
5     MARSHALS, SUPERVISING FIRE MARSHALS, FIRE MARSHALS AND FIRE MARSHAL  
6     TRAINEES IN NASSAU COUNTY. A. THE COUNTY OF NASSAU SHALL MAKE THE BENE-  
7     FITS PROVIDED HEREIN AVAILABLE TO CHIEF FIRE MARSHALS, ASSISTANT CHIEF  
8     FIRE MARSHALS, DIVISION SUPERVISING FIRE MARSHALS, SUPERVISING FIRE  
9     MARSHALS, FIRE MARSHALS AND FIRE MARSHAL TRAINEES IN THE EMPLOY OF  
10    NASSAU COUNTY.  
11    B. A MEMBER SHALL BE ENTITLED TO RETIREMENT FOR DISABILITY INCURRED IN  
12    THE PERFORMANCE OF DUTY IF, AT THE TIME APPLICATION THEREFOR IS FILED,  
13    HE OR SHE IS:  
14    1. PHYSICALLY OR MENTALLY INCAPACITATED FOR PERFORMANCE OF DUTY AS THE  
15    NATURAL AND PROXIMATE RESULT OF A DISABILITY, NOT CAUSED BY HIS OR HER  
16    OWN WILLFUL NEGLIGENCE SUSTAINED IN SUCH SERVICE AND WHILE ACTUALLY A  
17    MEMBER OF THE RETIREMENT SYSTEM; AND  
18    2. ACTUALLY IN SERVICE UPON WHICH HIS OR HER MEMBERSHIP IS BASED.  
19    HOWEVER, IN A CASE WHERE A MEMBER IS DISCONTINUED FROM SERVICE, EITHER  
20    VOLUNTARILY OR INVOLUNTARILY, SUBSEQUENT TO SUSTAINING A DISABILITY IN

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

LBD10180-03-5

1 SUCH SERVICE, APPLICATION MAY BE MADE NOT LATER THAN TWO YEARS AFTER THE  
2 MEMBER IS FIRST DISCONTINUED FROM SERVICE; AND PROVIDED THAT THE MEMBER  
3 MEETS THE REQUIREMENTS OF SUBDIVISION A OF THIS SECTION AND THIS SUBDI-  
4 VISION.

5 C. APPLICATION FOR A PERFORMANCE OF DUTY DISABILITY RETIREMENT ALLOW-  
6 ANCE FOR SUCH A MEMBER MAY BE MADE BY:

7 1. SUCH MEMBER; OR

8 2. THE HEAD OF THE DEPARTMENT IN WHICH SUCH MEMBER IS EMPLOYED; OR

9 3. ANY PERSON ACTING ON BEHALF OF AND AUTHORIZED BY SUCH MEMBER.

10 D. 1. AFTER THE FILING OF SUCH AN APPLICATION, SUCH MEMBER SHALL BE  
11 GIVEN ONE OR MORE MEDICAL EXAMINATIONS. NO SUCH APPLICATION SHALL BE  
12 APPROVED, HOWEVER, UNLESS THE MEMBER OR SOME OTHER PERSON ON HIS OR HER  
13 BEHALF SHALL HAVE FILED WRITTEN NOTICE IN THE OFFICE OF THE COMPTROLLER  
14 WITHIN NINETY DAYS AFTER SUCH OCCURRENCE WHICH IS THE BASIS FOR THE  
15 DISABILITY INCURRED IN THE PERFORMANCE OF DUTY, SETTING FORTH:

16 (A) THE TIME AND THE PLACE OF SUCH OCCURRENCE; AND

17 (B) THE PARTICULARS THEREOF; AND

18 (C) THE NATURE AND EXTENT OF THE MEMBER'S INJURIES; AND

19 (D) HIS OR HER ALLEGED DISABILITY.

20 2. THE NOTICE HEREIN REQUIRED NEED NOT BE GIVEN:

21 (A) IF THE NOTICE OF SUCH OCCURRENCE SHALL BE FILED IN ACCORDANCE WITH  
22 THE PROVISIONS OF THE WORKERS' COMPENSATION LAW OF ANY STATE WITHIN  
23 WHICH A PARTICIPATING EMPLOYER IN NASSAU COUNTY SHALL HAVE ITS EMPLOYEES  
24 LOCATED OR PERFORMING FUNCTIONS AND DUTIES WITHIN THE NORMAL SCOPE OF  
25 THEIR EMPLOYMENT; OR

26 (B) IF THE APPLICATION FOR PERFORMANCE OF DUTY DISABILITY RETIREMENT  
27 IS FILED WITHIN ONE YEAR AFTER THE DATE OF THE OCCURRENCE WHICH FORMS  
28 THE BASIS FOR THE APPLICATION; OR

29 (C) IF A FAILURE TO FILE NOTICE HAS BEEN EXCUSED FOR GOOD CAUSE SHOWN  
30 AS PROVIDED BY RULES AND REGULATIONS PROMULGATED BY THE COMPTROLLER.

31 E. IF THE COMPTROLLER DETERMINES THAT THE MEMBER IS PHYSICALLY OR  
32 MENTALLY INCAPACITATED FOR THE PERFORMANCE OF DUTY PURSUANT TO SUBDIVI-  
33 SION B OF THIS SECTION AND OUGHT TO BE RETIRED, SUCH MEMBER SHALL BE SO  
34 RETIRED. SUCH RETIREMENT SHALL BE EFFECTIVE AS OF A DATE APPROVED BY THE  
35 COMPTROLLER.

36 F. THE ANNUAL RETIREMENT ALLOWANCE PAYABLE UPON RETIREMENT FOR DISA-  
37 BILITY INCURRED IN THE PERFORMANCE OF DUTY SHALL BE A PENSION OF  
38 ONE-HALF OF HIS OR HER FINAL AVERAGE SALARY PLUS AN ANNUITY WHICH SHALL  
39 BE THE ACTUARIAL EQUIVALENT OF THE MEMBER'S ACCUMULATED CONTRIBUTIONS,  
40 IF ANY.

41 G. IF THE MEMBER, AT THE TIME OF THE FILING OF AN APPLICATION UNDER  
42 THE PROVISIONS OF SUBDIVISION C OF THIS SECTION, IS ELIGIBLE FOR A  
43 SERVICE RETIREMENT BENEFIT, THEN AND IN THAT EVENT, HE OR SHE MAY SIMUL-  
44 TANEOUSLY FILE AN APPLICATION FOR SERVICE RETIREMENT IN ACCORDANCE WITH  
45 THE PROVISIONS OF SECTION SEVENTY OF THIS CHAPTER, PROVIDED THAT THE  
46 MEMBER INDICATES ON THE APPLICATION FOR SERVICE RETIREMENT THAT SUCH  
47 APPLICATION IS FILED WITHOUT PREJUDICE TO THE APPLICATION FOR THE  
48 RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE OF DUTY.

49 H. ANY BENEFIT PROVIDED PURSUANT TO THIS SECTION SHALL NOT BE CONSID-  
50 ERED AS AN ACCIDENTAL DISABILITY BENEFIT WITHIN THE MEANING OF SECTION  
51 SIXTY-FOUR OF THIS CHAPTER.

52 I. ANY BENEFIT PAYABLE PURSUANT TO THE WORKERS' COMPENSATION LAW TO A  
53 MEMBER RECEIVING A DISABILITY ALLOWANCE PURSUANT TO THIS SECTION SHALL  
54 BE IN ADDITION TO SUCH RETIREMENT FOR DISABILITY INCURRED IN PERFORMANCE  
55 OF DUTY ALLOWANCE.

1 J. A FINAL DETERMINATION OF THE COMPTROLLER THAT THE MEMBER IS NOT  
2 ENTITLED TO RETIREMENT BENEFITS PURSUANT TO THIS SECTION SHALL NOT IN  
3 ANY RESPECT BE, OR CONSTITUTE, A DETERMINATION WITH REGARD TO BENEFITS  
4 PAYABLE PURSUANT TO SECTION TWO HUNDRED SEVEN-A OF THE GENERAL MUNICIPAL  
5 LAW.

6 S 2. All costs associated with implementing the provisions of this act  
7 shall be borne by Nassau county.

8 S 3. This act shall take effect immediately.

FISCAL NOTE. - Pursuant to Legislative law, section 50:

This bill would grant any Nassau County Tier 3, 4, 5 and 6 chief fire marshal, assistant fire marshal, division supervising fire marshal, supervising fire marshal, fire marshal and fire marshal trainee an enhanced disability benefit for injuries sustained in the performance of duty. The benefit for a performance of duty disability would be 50% of final average salary.

If this bill is enacted during the 2015 session, there will be an estimated increase of approximately \$33,000 in the annual contributions of Nassau County for the fiscal year ending March 31, 2015.

In addition to the annual contributions discussed above, there will be an immediate past service cost of approximately \$221,000 which would 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, 2016.

These estimated costs above are based on 45 fire marshals employed by Nassau County with a total estimated annual salary of approximately \$4.8 million for the fiscal year ending March 31, 2014.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2014 actuarial valuation. Distributions and other statistics can be found in the 2014 Report of the Actuary and the 2014 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2010, 2011, 2012, 2013 and 2014 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, 2014 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 estimate, dated April 2, 2015, and intended for use only during the 2015 Legislative Session, is Fiscal Note No. 2015-76, prepared by the Actuary for the New York State and Local Employees' Retirement System.