

# STATE OF NEW YORK

3813

2019-2020 Regular Sessions

## IN SENATE

February 15, 2019

Introduced by Sen. KAPLAN -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

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 § 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  
21 such service, application may be made not later than two years after the  
22 member is first discontinued from service; and provided that the member

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

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1 meets the requirements of subdivision a of this section and this subdivi-  
2 vision.

3 c. Application for a performance of duty disability retirement allow-  
4 ance for such a member may be made by:

5 1. Such member; or

6 2. The head of the department in which such member is employed; or

7 3. Any person acting on behalf of and authorized by such member.

8 d. 1. After the filing of such an application, such member shall be  
9 given one or more medical examinations. No such application shall be  
10 approved, however, unless the member or some other person on his or her  
11 behalf shall have filed written notice in the office of the comptroller  
12 within ninety days after such occurrence which is the basis for the  
13 disability incurred in the performance of duty, setting forth:

14 (a) The time and the place of such occurrence; and

15 (b) The particulars thereof; and

16 (c) The nature and extent of the member's injuries; and

17 (d) His or her alleged disability.

18 2. The notice herein required need not be given:

19 (a) If the notice of such occurrence shall be filed in accordance with  
20 the provisions of the workers' compensation law of any state within  
21 which a participating employer in Nassau county shall have its employees  
22 located or performing functions and duties within the normal scope of  
23 their employment; or

24 (b) If the application for performance of duty disability retirement  
25 is filed within one year after the date of the occurrence which forms  
26 the basis for the application; or

27 (c) If a failure to file notice has been excused for good cause shown  
28 as provided by rules and regulations promulgated by the comptroller.

29 e. If the comptroller determines that the member is physically or  
30 mentally incapacitated for the performance of duty pursuant to subdivi-  
31 sion b of this section and ought to be retired, such member shall be so  
32 retired. Such retirement shall be effective as of a date approved by the  
33 comptroller.

34 f. The annual retirement allowance payable upon retirement for disa-  
35 bility incurred in the performance of duty shall be a pension of one-  
36 half of his or her final average salary plus an annuity which shall be  
37 the actuarial equivalent of the member's accumulated contributions, if  
38 any.

39 g. If the member, at the time of the filing of an application under  
40 the provisions of subdivision c of this section, is eligible for a  
41 service retirement benefit, then and in that event, he or she may simul-  
42 taneously file an application for service retirement in accordance with  
43 the provisions of section seventy of this chapter, provided that the  
44 member indicates on the application for service retirement that such  
45 application is filed without prejudice to the application for the  
46 retirement for disability incurred in performance of duty.

47 h. Any benefit provided pursuant to this section shall not be consid-  
48 ered as an accidental disability benefit within the meaning of section  
49 sixty-four of this chapter.

50 i. Any benefit payable pursuant to the workers' compensation law to a  
51 member receiving a disability allowance pursuant to this section shall  
52 be in addition to such retirement for disability incurred in performance  
53 of duty allowance.

54 j. A final determination of the comptroller that the member is not  
55 entitled to retirement benefits pursuant to this section shall not in  
56 any respect be, or constitute, a determination with regard to benefits

1 payable pursuant to section two hundred seven-a of the general municipal  
2 law.

3 § 2. All costs associated with implementing the provisions of this act  
4 shall be borne by Nassau county.

5 § 3. All past service costs incurred due to implementing the  
6 provisions of this act will be borne by Nassau County, and may be amor-  
7 tized over a 10 year period.

8 § 4. 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 chief 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 2019 legislative session, we anticipate that there will be an increase of approximately \$30,000 in the annual contributions of Nassau County for the fiscal year ending March 31, 2020. In future years, this cost will vary as the billing rates and salary of affected members change.

In addition to the annual contributions discussed above, there will be an immediate past service cost of approximately \$197,000 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, 2020. If Nassau County elects to amortize this cost over a 10 year period, the cost for the first year would be approximately \$26,000.

These estimated costs above are based on 35 fire marshals employed by Nassau County with a total estimated annual salary of approximately \$4.4 million for the fiscal year ending March 31, 2018.

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, 2018 actuarial valuation. Distributions and other statistics can be found in the 2018 Report of the Actuary and the 2018 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2015, 2016, 2017 and 2018 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, 2018 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 February 6, 2019, and intended for use only during the 2019 Legislative Session, is Fiscal Note No. 2019-43, prepared by the Actuary for the New York State and Local Retirement System.