STATE OF NEW YORK

3101

2021-2022 Regular Sessions

IN SENATE

January 27, 2021

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:

Section 1. The retirement and social security law is amended by adding a new section 607-j to read as follows:

§ 607-j. Performance of duty, disability retirement for chief fire marshals, assistant chief fire marshals, division supervising fire marshals, supervising fire marshals, fire marshals and fire marshal trainees in Nassau county. a. The county of Nassau shall make the benefits provided herein available to chief fire marshals, assistant chief fire marshals, division supervising fire marshals, supervising fire marshals, fire marshals and fire marshal trainees in the employ of Nassau county.

b. A member shall be entitled to retirement for disability incurred in the performance of duty if, at the time application therefor is filed, he or she is:

1. Physically or mentally incapacitated for performance of duty as the natural and proximate result of a disability, not caused by his or her own willful negligence sustained in such service and while actually a member of the retirement system; and

2. Actually in service upon which his or her membership is based. However, in a case where a member is discontinued from service, either voluntarily or involuntarily, subsequent to sustaining a disability in such service, application may be made not later than two years after the 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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meets the requirements of subdivision a of this section and this subdivision.

c. Application for a performance of duty disability retirement allowance for such a member may be made by:

1. Such member; or

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

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

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

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

(b) The particulars thereof; and

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

(d) His or her alleged disability.

2. The notice herein required need not be given:

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

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

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

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

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

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

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

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

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

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

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

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

§ 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 2021 legislative session, we anticipate that there will be an increase of approximately $27,000 in the annual contributions of Nassau County for the fiscal year ending March 31, 2022. In future years, this cost will vary as the billing rates and salaries of the affected members change.

In addition to the annual contributions discussed above, there will be an immediate past service cost of approximately $154,000 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, 2022. If Nassau County elects to amortize this cost over a 10 year period, the cost for the first year including interest would be approximately $20,300.

These estimated costs above are based on 50 fire marshals employed by Nassau County having a total annual salary of approximately $5.2 million for the fiscal year ending March 31, 2020.

Summary of relevant resources:

Membership data as of March 31, 2020 was used in measuring the impact of the proposed change, the same data used in the April 1, 2020 actuarial valuation. Distributions and other statistics can be found in the 2020 Report of the Actuary and the 2020 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2020 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, 2020 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 December 28, 2020, and intended for use only during the 2021 Legislative Session, is Fiscal Note No. 2021-12, prepared by the Actuary for the New York State and Local Retirement System.