

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.

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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 ty 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

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

8 § 7. Subdivision t of section 604 of the retirement and social securi-
9 ty law, as added by chapter 295 of the laws of 2007, is amended to read
10 as follows:

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

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

25 A member employed as a chief fire marshal, assistant chief fire
26 marshal, division supervising fire marshal, supervising fire marshal,
27 fire marshal or fire marshal trainee in Nassau county shall be entitled
28 to an accidental disability retirement allowance if, at the time appli-
29 cation therefor is filed, such member is:

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

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

37 § 605-f. Disability benefits; certain disabilities. Notwithstanding
38 any provision of this chapter or of any general, special or local law to
39 the contrary, any member who is a county fire marshal, fire marshal,
40 supervising fire marshal, division supervising fire marshal, assistant
41 chief fire marshal, chief fire marshal, assistant fire marshal, or fire
42 marshal trainee employed by Nassau county who contracts any condition of
43 impairment of health caused by diseases of the heart, resulting in disa-
44 bility or death to such county fire marshal, fire marshal, supervising
45 fire marshal, division supervising fire marshal, assistant chief fire
46 marshal, chief fire marshal, assistant fire marshal, or fire marshal
47 trainee, presently employed, and who shall have sustained such disabili-
48 ty while so employed, shall be presumptive evidence that such disability
49 was incurred in the performance and discharge of duty and the natural
50 and proximate result of an accident, unless the contrary be proved by
51 competent evidence; provided, however, that prior to entry into service,
52 such county fire marshal, fire marshal, supervising fire marshal, divi-
53 sion supervising fire marshal, assistant chief fire marshal, chief fire
54 marshal, assistant fire marshal, or fire marshal trainee successfully
55 passed a physical examination which failed to disclose evidence of any
56 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.