

# STATE OF NEW YORK

---

5533

2023-2024 Regular Sessions

## IN ASSEMBLY

March 16, 2023

---

Introduced by M. of A. PHEFFER AMATO -- Multi-Sponsored by -- M. of A. SILLITTI -- 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:

1 Section 1. Section 63-g of the retirement and social security law, as  
2 added by chapter 714 of the laws of 2021, is amended to read as follows:  
3 § 63-g. Disability benefits; certain disabilities. Notwithstanding any  
4 provision of this chapter or of any general, special or local law to the  
5 contrary, any member who is a county fire marshal, fire marshal, super-  
6 vising fire marshal, division supervising fire marshal, assistant chief  
7 fire marshal, chief fire marshal, assistant fire marshal, or fire  
8 marshal trainee employed by Nassau county who contracts any condition of  
9 impairment of health caused by diseases of the heart, resulting in disa-  
10 bility or death to such county fire marshal, fire marshal, supervising  
11 fire marshal, division supervising fire marshal, assistant chief fire  
12 marshal, chief fire marshal, assistant fire marshal, or fire marshal  
13 trainee, presently employed, and who shall have sustained such disabili-  
14 ty while so employed, shall be presumptive evidence that such disability  
15 was incurred in the performance and discharge of duty and the natural  
16 and proximate result of an accident, unless the contrary be proved by  
17 competent evidence; provided, however, that prior to entry into service,  
18 such county fire marshal, fire marshal, supervising fire marshal, divi-  
19 sion supervising fire marshal, assistant chief fire marshal, chief fire  
20 marshal, assistant fire marshal, or fire marshal trainee successfully

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

LBD01827-02-3

1 passed a physical examination which failed to disclose evidence of any  
2 disease or other impairment of the heart.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 s. The service retirement benefit specified in section six hundred  
50 four of this article shall be payable to members with twenty-five years  
51 of creditable service, without regard to age, who are employed in the  
52 county of Nassau as a county fire marshal, supervising fire marshal,  
53 fire marshal, assistant fire marshal, assistant chief fire marshal ~~[or]~~,  
54 chief fire marshal or division supervising fire marshal as defined in  
55 section eighty-nine-w of this chapter if: (i) such members have met the  
56 minimum service requirements upon retirement, and (ii) in the case of a

1 member subject to the provisions of article fourteen of this chapter,  
2 such member files an election therefor which provides that he or she  
3 will be subject to the provisions of this article and to none of the  
4 provisions of such article fourteen. Such election, which shall be  
5 irrevocable, shall be in writing, duly executed and shall be filed with  
6 the comptroller within one year of the effective date of this subdivi-  
7 sion or within one year after entering the employment with such county  
8 upon which eligibility is based, whichever comes later. For the purposes  
9 of this subdivision, the term "creditable service" shall have the mean-  
10 ing as so defined in both sections eighty-nine-w and six hundred one of  
11 this chapter.

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

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

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

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

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

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

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

1 sion supervising fire marshal, assistant chief fire marshal, chief fire  
2 marshal, assistant fire marshal, or fire marshal trainee successfully  
3 passed a physical examination which failed to disclose evidence of any  
4 disease or other impairment of the heart.

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

7 § 606-c. Death benefits for fire marshals employed by Nassau county.

8 a. As used in this section, the term "fire marshal" shall mean a member  
9 who is employed by Nassau county with a title of county fire marshal,  
10 supervising fire marshal, fire marshal, assistant fire marshal, assist-  
11 ant chief fire marshal, chief fire marshal, or division supervising fire  
12 marshal.

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

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

25 a. The county of Nassau shall make the benefits provided herein avail-  
26 able to county fire marshals, chief fire marshals, assistant chief fire  
27 marshals, division supervising fire marshals, supervising fire marshals,  
28 fire marshals, assistant fire marshals and fire marshal trainees in the  
29 employ of Nassau county.

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

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

37 § 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 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 bill is enacted during the 2023 legislative session, we anticipate that there will be an increase of approximately \$5,400 in the annual contributions of Nassau County for the fiscal year ending March 31, 2024. In future years, this cost will vary as the billing rates and salary of the affected members change.

In addition to the annual contributions discussed above, there will be an immediate past service cost of approximately \$48,700 which will be borne by Nassau County as a one-time payment. This estimate assumes that payment will be made on February 1, 2024. If Nassau County elects to amortize this cost over a 10-year period, the cost for the first year including interest would be \$6,220.

These estimated costs are based on 44 affected members employed by Nassau County, with annual salary of approximately \$5.0 million as of March 31, 2022.

Summary of relevant resources:

Membership data as of March 31, 2022 was used in measuring the impact of the proposed change, the same data used in the April 1, 2022 actuarial valuation. Distributions and other statistics can be found in the 2022 Report of the Actuary and the 2022 Annual Comprehensive Financial Report.

The actuarial assumptions and methods used are described in the 2020, 2021, and 2022 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, 2022 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 January 31, 2023, and intended for use only during the 2023 Legislative Session, is Fiscal Note No. 2023-21, prepared by the Actuary for the New York State and Local Retirement System.