*** § 607-j. Performance of duty, disability retirement for chief fire marshals, assistant chief fire marshals, division supervising fire marshals, su**pervising fire marshals, fire marshals and fire marshal trainees in Nassau county. 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.

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 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.

* NB There are 3 § 607-j's