

# STATE OF NEW YORK

6749

2023-2024 Regular Sessions

## IN ASSEMBLY

May 8, 2023

Introduced by M. of A. PHEFFER AMATO -- read once and referred to the  
Committee on Governmental Employees

AN ACT to amend the general municipal law, in relation to disabilities  
of deputy sheriff members of a retirement system in certain cities

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. The general municipal law is amended by adding a new  
2 section 207-r to read as follows:

3 § 207-r. Disabilities of deputy sheriff members of a retirement system  
4 in certain cities. 1. Notwithstanding the provisions of any general,  
5 special or local law or administrative code to the contrary, but except  
6 for the purposes of the workers' compensation law and the labor law, any  
7 condition of impairment of health caused by diseases of the lung,  
8 resulting in total or partial disability or death to a paid employee  
9 performing the duties of a deputy sheriff in the sheriff's department of  
10 a city with a population of one million or more where such employee is  
11 drawn from competitive civil service lists, or any retired member of  
12 such department who retired from a title whose duties are those of a  
13 deputy sheriff and has been retired for five or less years, who success-  
14 fully passed a physical examination on entry into the service of such  
15 department, which examination failed to reveal any evidence of such  
16 condition, shall be presumptive evidence that it was incurred in the  
17 performance and discharge of duty, unless the contrary be proved by  
18 competent evidence.

19 2. Notwithstanding any other provision of law, a deputy sheriff member  
20 retiring pursuant to the provisions of subdivision one of this section  
21 shall receive a pension equal to three-fourths of his or her final aver-  
22 age salary, and a retired member who has been retired for five years or  
23 less and would have been able to retire pursuant to the provisions of  
24 subdivision one of this section if such subdivision had been in force at  
25 the time of such retired member's retirement, shall be entitled to

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

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1 receive a pension equal to three-fourths of his or her final average  
 2 salary and have his or her pension recalculated commencing with the  
 3 later of the effective date of this section or the first day that  
 4 diseases of the lung resulted in the full or partial disability of such  
 5 retired member.

6 § 2. This act shall take effect immediately.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

SUMMARY OF BILL: This proposed legislation, as it relates to the New York City Retirement Systems and Pension Funds (NYCRS), would add a new General Municipal Law (GML) Section 207-r to provide certain Deputy Sheriff members or retirees (within five years of their respective retirement dates) of the New York City Employees' Retirement System (NYCERS) a rebuttable statutory presumption that a qualifying partial or total disability or death related to a lung disease was incurred in the performance of duty.

The presumption of causation could be rebutted by competent evidence to the contrary.

Effective Date: Upon enactment.

IMPACT ON BENEFITS PAYABLE: Currently, a New York City Deputy Sheriff who becomes disabled or dies due to lung disease would be eligible for an applicable ordinary disability retirement, generally a lifetime payment of 1/3 of salary, or a lump sum ordinary death benefit, respectively.

Those eligible to receive the performance of duty disability retirement under the proposed legislation would receive a benefit similar to the current accidental disability retirement afforded to Deputy Sheriffs.

The current accidental disability benefit for Tier 4 and Tier 6 NYCERS Deputy Sheriff members is equal to:

- \* 75% of final average compensation, where
- \* the average compensation is computed using five consecutive years of wages, less
- \* any applicable Workers' Compensation benefit.

Under the proposed legislation, the performance of duty disability benefit for NYCERS Deputy Sheriff members who are disabled from lung disease would be equal to:

- \* 75% of Final Average Salary (FAS), where
- \* FAS is defined as 3-Year FAS for Tier 4 and 5-Year FAS for Tier 6, without
- \* an explicit Workers' Compensation offset.

The ordinary death benefit for Tier 4 and Tier 6 NYCERS Deputy Sheriff members is a lump sum payment equal to three times the member's salary multiplied by the member's years of service, up to a maximum of three years. The performance of duty death benefit is generally equal to a lifetime benefit of 50% of a member's wages earned during the last year of service, payable to certain beneficiaries.

FINANCIAL IMPACT - OVERVIEW: There is no data available to estimate the number of members and eligible retirees who might develop and become disabled or die due to lung disease, and potentially benefit from this proposed legislation. Therefore, the estimated financial impact has been calculated on a per event basis equal to the increase in the present value of future employer contributions for an average member who could potentially be diagnosed with disabling lung disease and who would benefit from the proposed legislation.

In determining the increase in the present value for members who could benefit from the presumption provided by the proposed legislation upon

disability, it has been assumed that 50% of the members would have retired under an Ordinary Disability Retirement (ODR) benefit, and the remaining 50% of members would have continued working and eventually retired for service if the proposed legislation were not passed.

In determining the increase in the present value for beneficiaries who could benefit from the presumption provided by the proposed legislation upon death, it has been assumed that 100% of such members would be eligible for an Ordinary Death Benefit if the proposed legislation were not passed.

With respect to an individual member, the additional cost of this proposed legislation could vary greatly depending on the member's length of service, age, and salary history. In particular, the increase due to the proposed legislation would be greater for a member who is not yet eligible for an ODR benefit when the disabling lung disease is diagnosed.

**FINANCIAL IMPACT - PRESENT VALUES:** Based on the census data and the actuarial assumptions and methods described herein, the enactment of this proposed legislation would increase the present value of future employer contributions by approximately \$426,700, on average, for each occurrence of Performance of Duty Disability Retirement due to lung disease and \$349,000, on average, for each occurrence of Performance of Duty Death due to lung disease.

**FINANCIAL IMPACT - ANNUAL EMPLOYER CONTRIBUTIONS:** Enactment of this proposed legislation would increase employer contributions, where such amount would depend on the number of members affected as well as other characteristics including the age, years of service, and salary history of each member.

Based on the actuarial assumptions and methods described herein, the enactment of this proposed legislation is estimated to increase annual employer contributions by approximately \$50,500 for each Performance of Duty Disability Retirement due to lung disease and by approximately \$41,300 for each Performance of Duty Death due to lung disease.

As there is no data currently available to estimate the number of members who might be diagnosed with lung disease, the financial impact would be recognized at the time of event. Consequently, changes in employer contributions have been estimated assuming that the increase in the present value of future employer contributions will be financed over a closed 15-year period (14 payments under the One-Year Lag Methodology) using level dollar payments.

With respect to the timing, increases in employer contributions would depend upon when members would retire or die due to lung disease but, generally, increased employer contributions will first occur the second fiscal year following approval of the performance of duty disability or death benefit.

**CENSUS DATA:** The estimates presented herein are based on the census data used in the June 30, 2022 actuarial valuation of NYCERS to determine the Preliminary Fiscal Year 2024 employer contributions.

The 146 NYCERS Deputy Sheriffs as of June 30, 2022 had an average age of approximately 42.0 years, average service of approximately 11.6 years, and an average salary of approximately \$85,700.

There are approximately 34 retired NYCERS Deputy Sheriffs as of June 30, 2022 who retired between July 1, 2017 and June 30, 2022 and are receiving a pension benefit, other than Accidental Disability or Accidental Death, and could potentially benefit from the proposed legislation. These retired members had an average age of approximately 58.5 years and an average pension benefit of approximately \$64,900.

ACTUARIAL ASSUMPTIONS AND METHODS: The estimates presented herein have been calculated based on the actuarial assumptions and methods used for the Preliminary Fiscal Year 2024 employer contributions of NYCERS.

RISK AND UNCERTAINTY: The costs presented in this Fiscal Note depend highly on the realization of the actuarial assumptions used, demographics of the impacted population and other factors such as investment, contribution, and other risks. If actual experience deviates from actuarial assumptions, the actual costs could differ from those presented herein.

Costs are also dependent on the actuarial methods used, and therefore different actuarial methods could produce different results. Quantifying these risks is beyond the scope of this Fiscal Note.

Not measured in this Fiscal Note are the following:

- \* The initial additional administrative costs to implement the proposed legislation.

- \* The impact of this proposed legislation on Other Postemployment Benefit costs.

STATEMENT OF ACTUARIAL OPINION: I, Marek Tyszkiewicz, am the Chief Actuary for, and independent of, the New York City Retirement Systems and Pension Funds. I am an Associate of the Society of Actuaries and a Member of the American Academy of Actuaries. I am a member of NYCERS but do not believe it impairs my objectivity and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein. To the best of my knowledge, the results contained herein have been prepared in accordance with generally accepted actuarial principles and procedures and with the Actuarial Standards of Practice issued by the Actuarial Standards Board.

FISCAL NOTE IDENTIFICATION: This Fiscal Note 2023-23 dated April 5, 2023 was prepared by the Chief Actuary for the New York City Employees' Retirement System. This estimate is intended for use only during the 2023 Legislative Session.