S T A T E O F N E W Y O R K

1367

2009-2010 Regular Sessions

I N S E N A T E

January 29, 2009

Introduced by Sen. O. JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, the military law, the retirement and social security law and the real property tax law, in relation to extending the date of the end of service in World War II until December 31, 1946

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The opening paragraph of subdivision 6 of section 503 of the education law, as amended by chapter 616 of the laws of 1995, is amended to read as follows:

Credit for service in war after world war I, which shall mean military service during the period commencing the first day of July, nineteen hundred forty, and terminating the thirtieth day of June, nineteen hundred forty-seven, or during the period commencing the twenty-seventh day of June, nineteen hundred fifty, and terminating the thirty-first day of January, nineteen hundred fifty-five, or during both such periods, as a member of the armed forces of the United States, of any person who has been honorably discharged or released under honorable circumstances from such service, or service by one who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to [August fifteenth] DECEMBER THIRTY-FIRST, nineteen hundred [forty-five] FORTY-SIX, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign"

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

LBD06097-01-9

voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the Department of Defense or who served as a United States civilian employed by the American Field Service and served overseas under United States Armies and United States Army Groups in world war II during the period of armed conflict, December seventh, nineteen hundred forty-one through [May eighth] DECEMBER THIRTY-FIRST, nineteen hundred [forty-five] FORTY-SIX, and who was discharged or released therefrom under honorable conditions, or who served as a United States civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates and served overseas as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during the period of armed conflict, December fourteenth, nineteen hundred forty-one through August fourteenth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions, and who was a teacher in the public schools of this state at the time of his entrance into the armed forces of the United States, provided no compensation was received under the provisions of section two hundred forty-two of the military law, and who returned to public school teaching following discharge or completion of advanced education provided under servicemen's readjustment act of nineteen hundred forty-four, or who following such discharge or release entered into a service which would qualify him pursuant to section forty-three of the retirement and social security law to transfer his membership in the New York state teachers' retirement system, shall be provided as follows, any provisions of section two hundred forty-three of the military law to the contrary notwithstanding.

S 2. Paragraph (b) of subdivision 1 of section 243 of the military law, as amended by chapter 248 of the laws of 2001, is amended to read as follows:

(b) The term "military duty" shall mean military service in the military, naval, aviation or marine service of the United States subsequent to July first, nineteen hundred forty, or service under the selective training and service act of nineteen hundred forty, or the national guard and reserve officers mobilization act of nineteen hundred forty, or any other act of congress supplementary or amendatory thereto, or any similar act of congress hereafter enacted and irrespective of the fact that such service was entered upon following a voluntary enlistment therefor or was required under one of the foregoing acts of congress, or service with the United States public health service as a commissioned officer, or service with the American Red Cross while with the armed forces of the United States on foreign service, or service with the special services section of the armed forces of the United States on foreign service, or service in the merchant marine which shall consist of service as an officer or member of the crew on or in connection with a vessel documented under the laws of the United States or a vessel owned by, chartered to, or operated by or for the account or use of the government of the United States, or service by one who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transpor-

tation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to [August fifteenth] DECEMBER THIRTY-FIRST, nineteen hundred [forty-five] FORTY-SIX, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the Department of Defense, or who served as a United States civilian employed by the American Field Service and served overseas under United States Armies and United States Army Groups in world war II during the period of armed conflict, December seventh, nineteen hundred forty-one through [May eighth] DECEMBER THIRTY-FIRST, nineteen hundred [forty-five] FORTY-SIX, and who was discharged or released therefrom under honorable conditions, or who served as a United States civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates and served overseas as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during the period of armed conflict, December fourteenth, nineteen hundred forty-one through August fourteenth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions; or service in police duty on behalf of the United States government in a foreign country, if such person is a police officer, as defined by section 1.20 of the criminal procedure law, and if such police officer obtained the prior consent of his or her public employer to absent himself or herself from his or her position to engage in the performance of such service; or as an enrollee in the United States maritime service on active duty and, to such extent as may be prescribed by or under the laws of the United States, any period awaiting assignment to such service and any period of education or training for such service in any school or institution under the jurisdiction of the United States government, but shall not include temporary and intermittent gratuitous service in any reserve or auxiliary force. It shall include time spent in reporting for and returning from military duty and shall be deemed to commence when the public employee leaves his position and to end when he is reinstated to his position, provided such reinstatement is within ninety days after the termination of military duty, as hereinafter defined. Notwithstanding the foregoing provisions of this paragraph, the term "military duty" shall not include any of the foregoing services entered upon voluntarily on or after January first, nineteen hundred forty-seven and before June twenty-fifth, nineteen hundred fifty; and, on or after July first, nineteen hundred seventy, the term "military duty" shall not include any voluntary service in excess of four years performed after that date, or the total of any voluntary services, additional or otherwise, in excess of four years performed after that date, shall not exceed five years, if the service in excess of four years is at the request and for the convenience of the federal government, except if such voluntary service is performed during a period of war, or national emergency declared by the president.

S 3. Subdivision 31 of section 2 of the retirement and social security law, as amended by chapter 616 of the laws of 1995, is amended to read as follows:

31. "Service in world war II." (1) Military service during the period commencing July first, nineteen hundred forty, and terminating December thirty-first, nineteen hundred forty-six, as a member of the armed forces of the United States, or service by one who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to [August fifteenth] DECEMBER THIRTY-FIRST, nineteen hundred [forty-five] FORTY-SIX, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the Department of Defense, or service by one who served as a United States civilian employed by the American Field Service and served overseas under United States Armies and United States Army Groups in world war II during the period of armed conflict, December seventh, nineteen hundred forty-one through [May eighth] DECEMBER THIRTY-FIRST, nineteen hundred [forty-five] FORTY-SIX, and who was discharged or released therefrom under honorable conditions, or service by one who served as a United States civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates and served overseas as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during the period of armed conflict, December fourteenth, nineteen hundred forty-one through August fourteenth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions or of any person who:

a. Has been honorably discharged or released therefrom under honorable circumstances, and

b. Was a resident of this state at the time of his entrance into such armed forces, or, if not a resident of this state at that time, was then or thereafter became an employee of a participating employer created by and deriving its powers from an agreement between this state and any other state and was a resident of such other state at the time of his entrance into such armed forces, and

c. Was either a member of the retirement system and an employee of the state or of a participating employer at the time he entered such armed forces or became such employee and such member while in such armed forces on or before July first, nineteen hundred forty-eight, or became such employee while in such armed forces and subsequently became such member on or before July first, nineteen hundred forty-eight, or was an employee of an employer which was not a participating employer at the time he entered such armed forces but which elected to become a participating employer while he was absent on military duty, or was an employee of the state or of a participating employer or was a teacher as defined in article eleven of the education law at the time of his entrance into the armed forces and became a member of the retirement system subsequent to separation or discharge from the armed services, and

d. Returned to the employment of the state or a participating employer, within one year following discharge or release or completion of advanced education provided under the servicemen's readjustment act of nineteen hundred forty-four, certified on a world war II military service certificate, and allowable as provided in section forty-one of this article. Such service shall not include any periods during which civil compensation was received by the member under the provisions of section two hundred forty-two of the military law, or section six of chapter six hundred eight of the laws of nineteen hundred fifty-two; or

(2) Military service, not in excess of three years and not otherwise creditable under paragraph one hereof, rendered on active duty in the armed forces of the United States during the period commencing July first, nineteen hundred forty, and terminating December thirty-first, nineteen hundred forty-six, or service by one who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to [August fifteenth] DECEMBER THIRTY-FIRST, nineteen hundred [forty-five] FORTY-SIX, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the Department of Defense, or service by one who served as a United States civilian employed by the American Field Service and served overseas under United States Armies and United States Army Groups in world war II during the period of armed conflict, December seventh, nineteen hundred forty-one through [May eighth] DECEMBER THIRTY-FIRST, nineteen hundred [forty-five] FORTY-SIX, and who was discharged or released therefrom under honorable conditions, or service by one who served as a United States civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates and served overseas as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during the period of armed conflict, December fourteenth, nineteen hundred forty-one through August fourteenth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions, by a person who was a resident of New York state at the time of entry into such service and at the time of being discharged therefrom under honorable circumstances, or, if not a resident of this state at such times was then or thereafter became an employee of a participating employer created by and deriving its powers from an agreement between this state and any other state, and was a resident of such other state at the time of entry into and discharge from such service, and who makes the payments required by subdivision k of section forty-one of this article.

However, no military service shall be creditable under this paragraph two in the case of a member under an existing plan permitting retirement upon twenty years of creditable service who is receiving a federal pension (other than for disability) based upon a minimum of twenty years

of full time active military service in the armed forces of the United States nor shall any military service be creditable in the case of a member under any other plan who is receiving a military pension (other than for disability) for military service in the armed forces of the United States.

S 4. Subdivision 31 of section 302 of the retirement and social security law, as amended by chapter 616 of the laws of 1995, is amended to read as follows:

31. "Service in world war II." (1) Military service during the period commencing July first, nineteen hundred forty, and terminating December thirty-first, nineteen hundred forty-six, as a member of the armed forces of the United States, or service by one who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to [August fifteenth] DECEMBER THIRTY-FIRST, nineteen hundred [forty-five] FORTY-SIX, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the Department of Defense, or service by one who served as a United States civilian employed by the American Field Service and served overseas under United States Armies and United States Army Groups in world war II during the period of armed conflict, December seventh, nineteen hundred forty-one through [May eighth] DECEMBER THIRTY-FIRST, nineteen hundred [forty-five] FORTY-SIX, and who was discharged or released therefrom under honorable conditions, or service by one who served as a United States civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates and served overseas as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during the period of armed conflict, December fourteenth, nineteen hundred forty-one through August fourteenth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions, or of any person who:

a. Has been honorably discharged or released therefrom under honorable circumstances, and

b. Was a resident of this state at the time of his entrance into such armed forces, or, if not a resident of this state at that time, was then or thereafter became an employee of a participating employer created by and deriving its powers from an agreement between this state and any other state and was a resident of such other state at the time of his entrance into such armed forces, and

c. Was either a member of the New York state and local employees' retirement system and an employee of the state or of a participating employer of such system at the time he entered such armed forces or became such employee and such member while in such armed forces on or before July first, nineteen hundred forty-eight, or became such employee while in such armed forces and subsequently became such member on or

before July first, nineteen hundred forty-eight, or was an employee of an employer which was not a participating employer at the time he entered such armed forces but which elected to become a participating employer while he was absent on military duty, or was an employee of the state or of a participating employer or was a teacher as defined in article eleven of the education law at the time of his entrance into the armed forces and became a member of the policemen's and firemen's retirement system subsequent to separation or discharge from the armed services, and

d. Returned to the employment of the state or a participating employer, within one year following discharge or release or completion of advanced education provided under the servicemen's readjustment act of nineteen hundred forty-four, certified on a world war II military service certificate, and allowable as provided in section forty-one of this article. Such service shall not include any periods during which civil compensation was received by the member under the provisions of section two hundred forty-two of the military law, or section six of chapter six hundred eight of the laws of nineteen hundred fifty-two; or

(2) Military service, not in excess of three years and not otherwise creditable under paragraph one hereof, rendered on active duty in the armed forces of the United States during the period commencing July first, nineteen hundred forty, and terminating December thirty-first, nineteen hundred forty-six, or service by one who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to [August fifteenth] DECEMBER THIRTY-FIRST, nineteen hundred [forty-five] FORTY-SIX, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the Department of Defense, or service by one who served as a United States civilian employed by the American Field Service and served overseas under United States Armies and United States Army Groups in world war II during the period of armed conflict, December seventh, nineteen hundred forty-one through [May eighth] DECEMBER THIRTY-FIRST, nineteen hundred [forty-five] FORTY-SIX, and who was discharged or released therefrom under honorable conditions, or service by one who served as a United States civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates and served overseas as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during the period of armed conflict, December fourteenth, nineteen hundred forty-one through August fourteenth, nineteen hundred forty-five, and who was discharged or released therefrom under honorable conditions, or by a person who was a resident of New York state at the time of entry into such service and at the time of being discharged therefrom under honorable circumstances, or, if not a resident of this state at such times was then or thereafter became an employee of a

participating employer created by and deriving its powers from an agreement between this state and any other state, and was a resident of such other state at the time of entry into and discharge from such service, and who makes the payments required by subdivision k of section three hundred forty-one of this chapter.

However, no military service shall be creditable under this paragraph two in the case of a member under an existing plan permitting retirement upon twenty years of creditable service who is receiving a federal pension (other than for disability) based upon a minimum of twenty years of military service in the armed forces of the United States nor shall such military service be creditable in the case of a member under any other plan who is receiving a military pension (other than for disability) for such service.

S 5. Paragraph (a) of subdivision 4-a of section 458 of the real property tax law, as amended by chapter 616 of the laws of 1995, is amended to read as follows:

(a) by a person who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to [August fifteenth] DECEMBER THIRTY-FIRST, nineteen hundred [forty-five] FORTY-SIX, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the department of defense;

S 6. Subparagraph (ii) of paragraph (e) of subdivision 1 of section 458-a of the real property tax law, as amended by chapter 384 of the laws of 2008, is amended to read as follows:

(ii) who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to [August fifteenth] DECEMBER THIRTY-FIRST, nineteen hundred [forty-five] FORTY-SIX, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the department of defense,

S 7. This act shall take effect immediately.