

STATE OF NEW YORK

9640

IN ASSEMBLY

January 29, 2020

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

AN ACT to amend the retirement and social security law, in relation to discharged LGBT veterans

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

Section 1. Paragraph a of subdivision 29 of section 2 of the retirement and social security law is amended to read as follows:

a. (1) Has been honorably discharged or released therefrom under honorable circumstances, or (2) has a qualifying condition, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service, or (3) is a discharged LGBT veteran, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service, and

§ 2. Paragraph d of subdivision 29-a of section 2 of the retirement and social security law, as amended by chapter 528 of the laws of 1964, is amended to read as follows:

d. Credit under this section shall not accrue to a person who is released from active duty under conditions other than honorable, unless such person has a qualifying condition, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service, or is a discharged LGBT veteran, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service.

§ 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

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

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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, nineteen hundred forty-five, 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, nineteen hundred forty-five, and who (i) was discharged or released therefrom under honorable conditions, or (ii) has a qualifying condition, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service, 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 (iv) was discharged or released therefrom under honorable conditions, or (v) has a qualifying condition, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service, or (vi) is a discharged LGBT veteran, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service, or of any person who:

a. (i) Has been honorably discharged or released therefrom under honorable circumstances, or (ii) has a qualifying condition, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service, 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, nineteen hundred forty-five, 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, nineteen hundred forty-five, and who (i) was discharged or released therefrom under honorable conditions, or (ii) has a qualifying condition, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service, 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 (iv) was discharged or released there-

1 from under honorable conditions, or (v) has a qualifying condition, as
2 defined in section three hundred fifty of the executive law, and has
3 received a discharge other than bad conduct or dishonorable from such
4 service, or (vi) is a discharged LGBT veteran, as defined in section
5 three hundred fifty of the executive law, and has received a discharge
6 other than bad conduct or dishonorable from such service, by a person
7 who was a resident of New York state at the time of entry into such
8 service and at the time of being discharged therefrom (vii) under honor-
9 able circumstances, or (viii) with a qualifying condition, as defined in
10 section three hundred fifty of the executive law, and received a
11 discharge other than bad conduct or dishonorable from such service, or
12 (ix) as a discharged LGBT veteran, as defined in section three hundred
13 fifty of the executive law, and received a discharge other than bad
14 conduct or dishonorable from such service, or, if not a resident of this
15 state at such times was then or thereafter became an employee of a
16 participating employer created by and deriving its powers from an agree-
17 ment between this state and any other state, and was a resident of such
18 other state at the time of entry into and discharge from such service,
19 and who makes the payments required by subdivision k of section forty-
20 one of this article.

21 However, no military service shall be creditable under this paragraph
22 two in the case of a member under an existing plan permitting retirement
23 upon twenty years of creditable service who is receiving a federal
24 pension (other than for disability) based upon a minimum of twenty years
25 of full time active military service in the armed forces of the United
26 States nor shall any military service be creditable in the case of a
27 member under any other plan who is receiving a military pension (other
28 than for disability) for military service in the armed forces of the
29 United States.

30 § 4. Subparagraph (c) of paragraph 8 of subdivision a of section 80-a
31 of the retirement and social security law, as added by chapter 219 of
32 the laws of 1968, is amended to read as follows:

33 (c) In the case of a senator or assemblyman, service, not in excess of
34 three years and not otherwise creditable under subparagraph (b) of this
35 paragraph ~~eight~~, rendered on active duty in the armed forces of the
36 United States during the period commencing July first, nineteen hundred
37 forty, and terminating December thirty-first, nineteen hundred forty-
38 six, by a person who (i) was a resident of the state at the time of
39 entry into service and at the time of being discharged therefrom under
40 honorable circumstances, or (ii) has a qualifying condition, as defined
41 in section three hundred fifty of the executive law, and was a resident
42 of the state at the time of entry into service and at the time of
43 receiving a discharge other than bad conduct or dishonorable from such
44 service, or (iii) is a discharged LGBT veteran, as defined in section
45 three hundred fifty of the executive law, and was a resident of the
46 state at the time of entry into service and at the time of receiving a
47 discharge other than bad conduct or dishonorable from such service.

48 § 5. Subdivision (i) of section 89-a of the retirement and social
49 security law, as added by chapter 996 of the laws of 1966 and such
50 section as renumbered by chapter 1059 of the laws of 1968, is amended to
51 read as follows:

52 (i) In computing the twenty-five years of total service of a member
53 pursuant to this section full credit shall be given and full allowance
54 shall be made for service of such member in time of war after world war
55 I as defined in section two of this chapter, provided such member at the
56 time of his entrance into the military service of the United States was

1 then a resident of this state and in the service of a sheriffs depart-
2 ment and (1) had been honorably discharged or released under honorable
3 circumstances from such military service, or (2) has a qualifying condi-
4 tion, as defined in section three hundred fifty of the executive law,
5 and received a discharge other than bad conduct or dishonorable from
6 such service, or (3) is a discharged LGBT veteran, as defined in section
7 three hundred fifty of the executive law, and received a discharge other
8 than bad conduct or dishonorable from such service, and such member
9 returned to the service of a sheriffs department within the time limited
10 by section two of this chapter.

11 § 6. Paragraph a of subdivision 29 of section 302 of the retirement
12 and social security law, as added by chapter 1000 of the laws of 1966,
13 is amended to read as follows:

14 a. (1) Has been honorably discharged or released therefrom under
15 honorable circumstances, or (2) has a qualifying condition, as defined
16 in section three hundred fifty of the executive law, and has received a
17 discharge other than bad conduct or dishonorable from such service, or
18 (3) is a discharged LGBT veteran, as defined in section three hundred
19 fifty of the executive law, and has received a discharge other than bad
20 conduct or dishonorable from such service, and

21 § 7. Paragraph d of subdivision 29-a of section 302 of the retirement
22 and social security law, as added by chapter 1000 of the laws of 1966,
23 is amended to read as follows:

24 d. Credit under this section shall not accrue to a person who is
25 released from active duty under conditions other than honorable, unless
26 such person has a qualifying condition, as defined in section three
27 hundred fifty of the executive law, and has received a discharge other
28 than bad conduct or dishonorable from such service, or is a discharged
29 LGBT veteran, as defined in section three hundred fifty of the executive
30 law, and has received a discharge other than bad conduct or dishonorable
31 from such service.

32 § 8. Subdivision 31 of section 302 of the retirement and social secu-
33 rity law, as amended by chapter 616 of the laws of 1995, subparagraph c
34 of paragraph 1 as amended by chapter 476 of the laws of 2018, is amended
35 to read as follows:

36 31. "Service in world war II." (1) Military service during the period
37 commencing July first, nineteen hundred forty, and terminating December
38 thirty-first, nineteen hundred forty-six, as a member of the armed forc-
39 es of the United States, or service by one who was employed by the War
40 Shipping Administration or Office of Defense Transportation or their
41 agents as a merchant seaman documented by the United States Coast Guard
42 or Department of Commerce, or as a civil servant employed by the United
43 States Army Transport Service (later redesignated as the United States
44 Army Transportation Corps, Water Division) or the Naval Transportation
45 Service; and who served satisfactorily as a crew member during the peri-
46 od of armed conflict, December seventh, nineteen hundred forty-one, to
47 August fifteenth, nineteen hundred forty-five, aboard merchant vessels
48 in oceangoing, i.e., foreign, intercoastal, or coastwise service as such
49 terms are defined under federal law (46 USCA 10301 & 10501) and further
50 to include "near foreign" voyages between the United States and Canada,
51 Mexico, or the West Indies via ocean routes, or public vessels in ocean-
52 going service or foreign waters and who has received a Certificate of
53 Release or Discharge from Active Duty and a discharge certificate, or an
54 Honorable Service Certificate/Report of Casualty, from the Department of
55 Defense, or service by one who served as a United States civilian
56 employed by the American Field Service and served overseas under United

1 States Armies and United States Army Groups in world war II during the
2 period of armed conflict, December seventh, nineteen hundred forty-one
3 through May eighth, nineteen hundred forty-five, and who (i) was
4 discharged or released therefrom under honorable conditions, or (ii) has
5 a qualifying condition, as defined in section three hundred fifty of the
6 executive law, and has received a discharge other than bad conduct or
7 dishonorable from such service, or (iii) is a discharged LGBT veteran,
8 as defined in section three hundred fifty of the executive law, and has
9 received a discharge other than bad conduct or dishonorable from such
10 service, or service by one who served as a United States civilian Flight
11 Crew and Aviation Ground Support Employee of Pan American World Airways
12 or one of its subsidiaries or its affiliates and served overseas as a
13 result of Pan American's contract with Air Transport Command or Naval
14 Air Transport Service during the period of armed conflict, December
15 fourteenth, nineteen hundred forty-one through August fourteenth, nine-
16 teen hundred forty-five, and who (iv) was discharged or released there-
17 from under honorable conditions, or (v) has a qualifying condition, as
18 defined in section three hundred fifty of the executive law, and has
19 received a discharge other than bad conduct or dishonorable from such
20 service, or (vi) is a discharged LGBT veteran, as defined in section
21 three hundred fifty of the executive law, and has received a discharge
22 other than bad conduct or dishonorable from such service, or of any
23 person who:

24 a. (i) Has been honorably discharged or released therefrom under
25 honorable circumstances, or (ii) has a qualifying condition, as defined
26 in section three hundred fifty of the executive law, and has received a
27 discharge other than bad conduct or dishonorable from such service, or
28 (iii) is a discharged LGBT veteran, as defined in section three hundred
29 fifty of the executive law, and has received a discharge other than bad
30 conduct or dishonorable from such service, and

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

37 c. Was either a member of the New York state and local employees'
38 retirement system and an employee of the state or of a participating
39 employer of such system at the time he or she entered such armed forces
40 or became such employee and such member while in such armed forces on or
41 before July first, nineteen hundred forty-eight, or became such employee
42 while in such armed forces and subsequently became such member on or
43 before July first, nineteen hundred forty-eight, or was an employee of
44 an employer which was not a participating employer at the time he or she
45 entered such armed forces but which elected to become a participating
46 employer while he or she was absent on military duty, or was an employee
47 of the state or of a participating employer or was a teacher as defined
48 in article eleven of the education law at the time of his or her
49 entrance into the armed forces and became a member of the police and
50 fire retirement system subsequent to separation or discharge from the
51 armed services, and

52 d. Returned to the employment of the state or a participating employ-
53 er, within one year following discharge or release or completion of
54 advanced education provided under the servicemen's readjustment act of
55 nineteen hundred forty-four, certified on a world war II military
56 service certificate, and allowable as provided in section forty-one of

1 this article. Such service shall not include any periods during which
2 civil compensation was received by the member under the provisions of
3 section two hundred forty-two of the military law, or section six of
4 chapter six hundred eight of the laws of nineteen hundred fifty-two; or

5 (2) Military service, not in excess of three years and not otherwise
6 creditable under paragraph one hereof, rendered on active duty in the
7 armed forces of the United States during the period commencing July
8 first, nineteen hundred forty, and terminating December thirty-first,
9 nineteen hundred forty-six, or service by one who was employed by the
10 War Shipping Administration or Office of Defense Transportation or their
11 agents as a merchant seaman documented by the United States Coast Guard
12 or Department of Commerce, or as a civil servant employed by the United
13 States Army Transport Service (later redesignated as the United States
14 Army Transportation Corps, Water Division) or the Naval Transportation
15 Service; and who served satisfactorily as a crew member during the peri-
16 od of armed conflict, December seventh, nineteen hundred forty-one, to
17 August fifteenth, nineteen hundred forty-five, aboard merchant vessels
18 in oceangoing, i.e., foreign, intercoastal, or coastwise service as such
19 terms are defined under federal law (46 USCA 10301 & 10501) and further
20 to include "near foreign" voyages between the United States and Canada,
21 Mexico, or the West Indies via ocean routes, or public vessels in ocean-
22 going service or foreign waters and who has received a Certificate of
23 Release or Discharge from Active Duty and a discharge certificate, or an
24 Honorable Service Certificate/Report of Casualty, from the Department of
25 Defense, or service by one who served as a United States civilian
26 employed by the American Field Service and served overseas under United
27 States Armies and United States Army Groups in world war II during the
28 period of armed conflict, December seventh, nineteen hundred forty-one
29 through May eighth, nineteen hundred forty-five, and who (i) was
30 discharged or released therefrom under honorable conditions, or (ii) has
31 a qualifying condition, as defined in section three hundred fifty of the
32 executive law, and has received a discharge other than bad conduct or
33 dishonorable from such service, or (iii) is a discharged LGBT veteran,
34 as defined in section three hundred fifty of the executive law, and has
35 received a discharge other than bad conduct or dishonorable from such
36 service, or service by one who served as a United States civilian Flight
37 Crew and Aviation Ground Support Employee of Pan American World Airways
38 or one of its subsidiaries or its affiliates and served overseas as a
39 result of Pan American's contract with Air Transport Command or Naval
40 Air Transport Service during the period of armed conflict, December
41 fourteenth, nineteen hundred forty-one through August fourteenth, nine-
42 teen hundred forty-five, and who (iv) was discharged or released there-
43 from under honorable conditions, or (v) has a qualifying condition, as
44 defined in section three hundred fifty of the executive law, and has
45 received a discharge other than bad conduct or dishonorable from such
46 service, or (vi) is a discharged LGBT veteran, as defined in section
47 three hundred fifty of the executive law, and has received a discharge
48 other than bad conduct or dishonorable from such service, or by a person
49 who was a resident of New York state at the time of entry into such
50 service and at the time of being discharged therefrom (vii) under honor-
51 able circumstances, or (viii) with a qualifying condition, as defined in
52 section three hundred fifty of the executive law, and received a
53 discharge other than bad conduct or dishonorable from such service, or
54 (ix) as a discharged LGBT veteran, as defined in section three hundred
55 fifty of the executive law, and received a discharge other than bad
56 conduct or dishonorable from such service, or, if not a resident of this

1 state at such times was then or thereafter became an employee of a
2 participating employer created by and deriving its powers from an agree-
3 ment between this state and any other state, and was a resident of such
4 other state at the time of entry into and discharge from such service,
5 and who makes the payments required by subdivision k of section three
6 hundred forty-one of this chapter.

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

15 § 9. Subdivision 1 of section 1000 of the retirement and social secu-
16 rity law, as amended by chapter 41 of the laws of 2016, is amended to
17 read as follows:

18 1. A member, upon application to such retirement system, may obtain a
19 total not to exceed three years of service credit for up to three years
20 of military duty, as defined in section two hundred forty-three of the
21 military law, if the member (a) was honorably discharged from the mili-
22 tary, or (b) has a qualifying condition, as defined in section three
23 hundred fifty of the executive law, and has received a discharge other
24 than bad conduct or dishonorable from such service, or (c) is a
25 discharged LGBT veteran, as defined in section three hundred fifty of
26 the executive law, and has received a discharge other than bad conduct
27 or dishonorable from such service.

28 § 10. This act shall take effect one year after it shall have become a
29 law. Effective immediately, the addition, amendment and/or repeal of any
30 rule or regulation necessary for the implementation of this act on its
31 effective date are authorized to be made and completed on or before such
32 effective date.

FISCAL NOTE.--

This bill would extend the benefits of Section 1000 of Retirement and Social Security Law to any member of a public retirement system in New York State who has a qualifying condition or is a discharged LGBT veteran as defined section 350 of the Executive Law. The total service credit granted for any military service shall not exceed three years. Members must have at least five years of credited service (not including military service). Tier 1-5 members would be required to make a payment of three percent of their most recent compensation per year of additional service credit granted by this bill. Tier 6 members would be required to make a payment of six percent of their most recent compensation per year of additional service credit.

If this bill is enacted, insofar as this proposal affects the New York State and Local Employees' Retirement System (ERS), it is estimated that the past service cost will average approximately 15% (12% for Tier 6) of an affected members' compensation for each year of additional service credit that is purchased.

Insofar as this proposal affects the New York State and Local Police and Fire Retirement System (PFRS), it is estimated that the past service cost will average approximately 19% (16% for Tier 6) of an affected members' compensation for each year of additional service that is purchased.

The exact number of current members as well as future members who could be affected by this legislation cannot be readily determined.

ERS costs would be borne entirely by the State of New York. Since a member can apply for this service credit at any time prior to retirement, a precise cost can't be determined until each member, as well as future members, applies for the service credit. Every year a cost will be determined (and billed to the State) based on those benefiting from this provision.

PFRS costs would be shared by the State of New York and the participating employers in the PFRS.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2019 actuarial valuation. Distributions and other statistics can be found in the 2019 Report of the Actuary and the 2019 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2015, 2016, 2017, 2018 and 2019 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, 2019 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 22, 2020, and intended for use only during the 2020 Legislative Session, is Fiscal Note No. 2020-27, prepared by the Actuary for the New York State and Local Retirement System.