

# STATE OF NEW YORK

5278

2021-2022 Regular Sessions

## IN ASSEMBLY

February 12, 2021

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

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

LBD05266-02-1

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, 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

1 c. Was either a member of the retirement system and an employee of the  
2 state or of a participating employer at the time he entered such armed  
3 forces or became such employee and such member while in such armed forc-  
4 es on or before July first, nineteen hundred forty-eight, or became such  
5 employee while in such armed forces and subsequently became such member  
6 on or before July first, nineteen hundred forty-eight, or was an employ-  
7 ee of an employer which was not a participating employer at the time he  
8 entered such armed forces but which elected to become a participating  
9 employer while he was absent on military duty, or was an employee of the  
10 state or of a participating employer or was a teacher as defined in  
11 article eleven of the education law at the time of his entrance into the  
12 armed forces and became a member of the retirement system subsequent to  
13 separation or discharge from the armed services, and

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

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

1 result of Pan American's contract with Air Transport Command or Naval  
2 Air Transport Service during the period of armed conflict, December  
3 fourteenth, nineteen hundred forty-one through August fourteenth, nine-  
4 teen hundred forty-five, and who (iv) was discharged or released there-  
5 from under honorable conditions, or (v) has a qualifying condition, as  
6 defined in section three hundred fifty of the executive law, and has  
7 received a discharge other than bad conduct or dishonorable from such  
8 service, or (vi) is a discharged LGBT veteran, as defined in section  
9 three hundred fifty of the executive law, and has received a discharge  
10 other than bad conduct or dishonorable from such service, by a person  
11 who was a resident of New York state at the time of entry into such  
12 service and at the time of being discharged therefrom (vii) under honor-  
13 able circumstances, or (viii) with a qualifying condition, as defined in  
14 section three hundred fifty of the executive law, and received a  
15 discharge other than bad conduct or dishonorable from such service, or  
16 (ix) as a discharged LGBT veteran, as defined in section three hundred  
17 fifty of the executive law, and received a discharge other than bad  
18 conduct or dishonorable from such service, or, if not a resident of this  
19 state at such times was then or thereafter became an employee of a  
20 participating employer created by and deriving its powers from an agree-  
21 ment between this state and any other state, and was a resident of such  
22 other state at the time of entry into and discharge from such service,  
23 and who makes the payments required by subdivision k of section forty-  
24 one of this article.

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

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

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

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

(i) In computing the twenty-five years of total service of a member pursuant to this section full credit shall be given and full allowance shall be made for service of such member in time of war after world war I as defined in section two of this chapter, provided such member at the time of his entrance into the military service of the United States was then a resident of this state and in the service of a sheriffs department and (1) had been honorably discharged or released under honorable circumstances from such military service, or (2) has a qualifying condition, as defined in section three hundred fifty of the executive law, and 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 received a discharge other than bad conduct or dishonorable from such service, and such member returned to the service of a sheriffs department within the time limited by section two of this chapter.

§ 6. Paragraph a of subdivision 29 of section 302 of the retirement and social security law, as added by chapter 1000 of the laws of 1966, 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

§ 7. Paragraph d of subdivision 29-a of section 302 of the retirement and social security law, as added by chapter 1000 of the laws of 1966, 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.

§ 8. Subdivision 31 of section 302 of the retirement and social security law, as amended by chapter 616 of the laws of 1995, subparagraph c of paragraph 1 as amended by chapter 476 of the laws of 2018, 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, 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 ocean-



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

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

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

42 c. Was either a member of the New York state and local employees'  
43 retirement system and an employee of the state or of a participating  
44 employer of such system at the time he or she entered such armed forces  
45 or became such employee and such member while in such armed forces on or  
46 before July first, nineteen hundred forty-eight, or became such employee  
47 while in such armed forces and subsequently became such member on or  
48 before July first, nineteen hundred forty-eight, or was an employee of  
49 an employer which was not a participating employer at the time he or she  
50 entered such armed forces but which elected to become a participating  
51 employer while he or she was absent on military duty, or was an employee  
52 of the state or of a participating employer or was a teacher as defined  
53 in article eleven of the education law at the time of his or her  
54 entrance into the armed forces and became a member of the police and  
55 fire retirement system subsequent to separation or discharge from the  
56 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 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 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 (vii) under honorable circumstances, or (viii) with a qualifying condition, as defined in

1 section three hundred fifty of the executive law, and received a  
2 discharge other than bad conduct or dishonorable from such service, or  
3 (ix) as a discharged LGBT veteran, as defined in section three hundred  
4 fifty of the executive law, and received a discharge other than bad  
5 conduct or dishonorable from such service, or, if not a resident of this  
6 state at such times was then or thereafter became an employee of a  
7 participating employer created by and deriving its powers from an agree-  
8 ment between this state and any other state, and was a resident of such  
9 other state at the time of entry into and discharge from such service,  
10 and who makes the payments required by subdivision k of section three  
11 hundred forty-one of this chapter.

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

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

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

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

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

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 veter-  
an as defined in 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 addi-  
tional service credit granted by this bill. Tier 6 members would be  
required to make a payment of six percent of their most recent compen-  
sation per year of additional service credit.

If this bill is enacted during the 2021 legislative session, insofar  
as this proposal affects the New York State and Local Employees' Retire-  
ment System (ERS), it is estimated that the past service cost will aver-  
age approximately 15% (12% for Tier 6) of an affected members' compen-  
sation 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:

Membership data as of March 31, 2020 was used in measuring the impact of the proposed change, the same data used in the April 1, 2020 actuarial valuation. Distributions and other statistics can be found in the 2020 Report of the Actuary and the 2020 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2020 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, 2020 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 21, 2021, and intended for use only during the 2021 Legislative Session, is Fiscal Note No. 2021-39, prepared by the Actuary for the New York State and Local Retirement System.