

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.

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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 veteran 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 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 during the 2021 legislative session, 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:

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.