

BD

VETO #16

CHAPTER \_\_\_\_\_

LAWS OF 20 02

SENATE BILL 4117A

ASSEMBLY BILL \_\_\_\_\_

4117--A

2001-2002 Regular Sessions

**IN SENATE**

April 2, 2001

Introduced by Sen. LEIBELL -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- recommitted to the Committee on Civil Service and Pensions in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to retirement for members who are security hospital treatment assistants

*A 9900 Destito*

DATE RECEIVED BY GOVERNOR:

AUG 08 2002

ACTION MUST BE TAKEN BY:

AUG 29 2002

DATE GOVERNOR'S ACTION TAKEN:

AUG 20 2002

000001

---

---

SENATE VOTE     \_\_\_ Y \_\_\_ N

HOME RULE MESSAGE     \_\_\_ Y \_\_\_ N

DATE \_\_\_\_\_

ASSEMBLY VOTE     \_\_\_ Y \_\_\_ N

DATE \_\_\_\_\_

000002

---



STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 4117-A, entitled:

AUG 20 2002

**V E T O # 16**

“AN ACT to amend the retirement and social security law, in relation to retirement for members who are security hospital treatment assistants”

NOT APPROVED

This bill would amend the Retirement and Social Security Law to provide that Security Hospital Treatment Assistants (SHTAs) employed by the Office of Mental Health (OMH) who are enrolled in a special 25-year plan would be allowed to utilize any other past service credit earned in any other title at OMH, capped at 10 years of additional service credit. It is estimated that the bill could result in an average cost of \$22,000 for each employee that claims this prior service credit. Such costs would be borne by the State as a one-time payment. The bill would take effect immediately.

In recognition of the important and dangerous jobs that SHTAs perform, current law entitles SHTAs to be members of a 25-year retirement plan, a preferred special plan that permits retirement after 25 years of service without regard to age. This bill, however, would permit SHTAs to use credit from time spent in any OMH title toward obtaining 25 years of service, including credit earned in titles that restrict retirement based upon age. Accordingly, this bill would permit SHTAs to utilize service credit earned in a non-preferred retirement plan for purposes of accruing enough credit to retire after 25 years.

Members of other special preferred plans that permit retirement without regard to age in NYSLERS are not accorded this benefit, and approval of this legislation would undoubtedly lead to similar bills that would allow members of 25-year plans in NYSLERS and other systems to utilize prior service credit earned in non-preferred plans in order to achieve enough credit to retire. Indeed, I disapproved four bills last year that would have granted a similar benefit. See Veto No. 23 of 2001 (Rockland County DA investigators), Veto No. 30 of 2001 (New York City Correction Officers), Veto No. 37 of 2001 (New York City DA investigators) and Veto No. 45 of 2001 (Westchester DA investigators). Thus, while I appreciate the challenging and difficult jobs that SHTAs perform, I am constrained to disapprove this bill based upon this fundamental concern.

The bill is disapproved.

000003

54117



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER  
Attorney General

Legislative Bureau

TO: COUNSEL TO THE GOVERNOR

Re: SENATE 4117-A

ASSEMBLY

Inasmuch as this bill does not appear to relate to the functions of the Department of Law, I am not commenting thereon. However, if there is a particular aspect of the bill upon which you wish comment, please advise me.

**ELIOT SPITZER  
ATTORNEY GENERAL**

Date: July 16, 2002

000004

BD

54117

B-201

BUDGET REPORT ON BILLS

Session Year 2002

SENATE:  
No. 4117-A

Introduced by:  
Senator Leibell

ASSEMBLY:  
No.

Law: Retirement and Social Security

Sections: 89

Division of the Budget recommendation on the above bill:

Approve: \_\_\_\_\_ Veto:  X  No Objection: \_\_\_\_\_ No Recommendation: \_\_\_\_\_

1. Subject and Purpose:

This bill would authorize new prior service pension benefits for Security Hospital Treatment Assistants (SHTA) employed by the Office of Mental Health.

2. Summary of Provisions:

Effective immediately, this bill would amend the Retirement and Social Security Law to allow prior service in any title with the Office of Mental Health to be considered creditable under the SHTA 25-year retirement plan. The plan does not currently provide credit for service in positions unrelated to State institutional security.

3. Legislative History:

This bill was introduced in previous years, but was never enacted by the Legislature.

4. Arguments in Support:

Many SHTAs previously worked as Mental Health Treatment Assistants (MHTA). According to sponsors of the legislation, when SHTAs were granted a 25-year service retirement plan in 1989 it was not known that prior service as a MHTA would not be credited in the 25-year plan. This situation is arguably unfair and should be corrected by allowing MHTA and other prior service in OMH be credited in the 25-year retirement plan.

5. Arguments in Opposition:

a. The bill would result in an unbudgeted cost to the State of at least \$1 million. This estimate is based on eligibility information provided by sponsors of the bill. Past experience has shown that sponsors of pension legislation often underestimate the true financial exposure. Given the current fiscal climate, even if the benefit improvement was justified, it should not be approved until the costs are verified and properly accounted for in the State budget.

- b. Approval of this bill would raise equity concerns from State correction officers, who share the same pension plan and union representation as SHTA personnel. Providing similar benefits to correction officers would likely be far more expensive.
- c. Law enforcement personnel across the State participate in 20-year or 25-year service retirement plans. These plans typically do not provide retirement credit for non-law enforcement service, which is arguably justified for cost and employee retention reasons. Providing service credit for non-law enforcement service would be a very expensive enhancement to an already generous benefit. This bill, for example, would cost \$22,000 for each employee eligible for the benefit. Counting non-law enforcement service toward 25-year service retirement eligibility would also expedite the retirement of experienced law enforcement professionals. Such loss is not desirable considering the expense of recruitment and training. Moreover, there is a value to the public in retaining experienced public safety staff.

6. Other State Agencies Interested:

The Office of Mental Health opposes the bill.

7. Other Interested Groups:

The New York State Correctional Officers and Police Benevolent Association supports the bill.

8. Budget Implications:

Based on information provided by sponsors of this legislation, it is expected that the State would incur a one-time cost of \$1,034,000. However, as discussed above, the true cost of the bill is likely higher.

9. Recommendation: Veto.

This bill would authorize new prior service pension benefits for Security Hospital Treatment Assistants (SHTA), who are employed by the Office of Mental Health, by crediting prior service in any title within the Office of Mental Health under the SHTA 25-year retirement plan.

The Division recommends disapproval primarily because the bill would result in an unbudgeted cost to the State of at least \$1 million, which is inadvisable given the current fiscal situation. Beyond immediate costs, the bill raises equity concerns with correction officers who share the same pension plan and would not receive similar benefits under the bill. There are also broader concerns with establishing a new policy to credit non-law enforcement service in a 25-year service retirement plan, as it would create an expensive precedent for retirement plans of law enforcement professionals across the State and encourage the loss of valuable experience in public safety services.

000006

RR

S4117



STATE OF NEW YORK  
GOVERNOR'S OFFICE OF  
EMPLOYEE RELATIONS

Legal Division  
2 Empire State Plaza, 13th Floor  
Albany, New York 12223-1250  
518/473-4596  
www.goer.state.ny.us

MEMORANDUM

John V. Currier, Acting Director

July 17, 2002

TO: Hon. James M. McGuire  
FROM: Walter J. Pellegrini  
SUBJECT: S.4117

This Bill would allow those persons employed by the Office of Mental Health as Security Hospital Treatment Assistants (SHTA's) and who are enrolled in the special 25 year retirement plan for that title to have service in any other title at OMH count as service in this special retirement plan.

Despite concerns over the cost of the measure, the Office of Employee Relations is opposed to this bill because it would allow service outside of special retirement plan that was created for a specific class of employee to count as service in that plan. Allowing service outside of a special plan to count as service inside a special plan is contrary to the accepted intent behind such plans, which is to reward an employee with a retirement benefit after the completion of 25 years of service, regardless of age, in recognition of the hazardous nature of the job. Enactment of this bill could embolden other employees who are members of special retirement plans to seek similar measures thus diluting the stringent service requirements contained in most plans.

For the above reasons, the Office of Employee Relations objects to this proposal.

000007



WB/mc

J:\LEG\Bill Busler\Legislation\S.3435.wpd

060008



**New York State Governor's Office of Employee Relations**  
*Over 30 Years of Service through Labor Relations Excellence*

54117



STATE OF NEW YORK  
OFFICE OF MENTAL HEALTH

**COUNSEL**

JAMES L. STONE, MSW  
Commissioner

44 HOLLAND AVENUE  
ALBANY, NEW YORK 12229  
(518) 474-1331 • FAX (518) 473-7863 • TDD (518) 473-2714

JOHN V. TAURIELLO  
Deputy Commissioner and Counsel

July 30, 2002

Honorable James M. McGuire  
Counsel to the Governor  
New York State Capital, Room 225  
Albany, NY 12224

**Re: Senate Bill # 4117 - A**

Dear Mr. McGuire:

The Office of Mental Health (OMH) has opposes the above bill, which is before the Governor for executive action.

This bill would amend the Retirement and Social Security Law (RSSL) in regard to retirement benefits for members employed by the Office of Mental Health (OMH) as Security Hospital Treatment Assistants (SHTA). The bill would provide full retirement credit to any member retiring as a SHTA for service in any title within OMH under the SHTA 25 year retirement plan.

OMH supports the intent of this bill, which is to allow appropriate service credit to those serving in the SHTA title who have prior OMH employment in another title. Subdivision 89(i) of the RSSL includes the SHTA title along with certain Department of Correctional Services (DoCS) titles and allows employees in these titles to retire after 25 years service with a pension equal to one half their final average salary. The inclusion of the SHTA title is a recognition that the stress and difficulty associated with the title is similar to these other positions.

This bill, however, would allow an employee to retire from the SHTA title after 25 years service with no limit as to the number of those years of service that were in other titles within OMH. For example, under this bill a SHTA retiring with one year of service in that title and 24 years in other OMH titles would be entitled to the same benefit as an employee with 25 years service as a SHTA. We are concerned about this inequity and its potential for abuse.

000009

We do recognize that there are employees in the SHTA title who are disadvantaged because they have previous service with OMH and are now in a retirement plan which requires 25 years minimum service in their title. In order to address this problem we would support allowing those in the SHTA title with service in other titles to elect to retire under the retirement plan that previously applied to them. We would also recommend that a reasonable minimum period of service in the SHTA title be required prior to becoming eligible for retirement under this section.

Thank you for the opportunity to comment on this proposal.

Sincerely,

JOHN V. TAURIELLO  
Deputy Commissioner and Counsel

000010

54117



# Law Enforcement Officers Union Council 82

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES AFL-CIO

HOLLIS V. CHASE BUILDING

63 COLVIN AVENUE, ALBANY, N.Y. 12206

(518) 489-8424 (518) 489-8430 FAX

July 17, 2002

James M. McGuire  
Counsel to the Governor  
New York State Capitol, Room 225  
Albany, New York 12224

Re: A. 9900/S. 4117

Dear Mr. McGuire:

Council 82 represents New York State's Security Supervisors bargaining unit which includes Security Hospital Treatment Assistant Supervisors . This legislation would allow Security Hospital Treatment Assistants to credit all employment with the Office of Mental Health toward their twenty-five year half pay retirement plan.

This legislation would allow security hospital treatment assistants ("SHTAs") to count prior service within the Office of Mental Health as creditable service time in the Section 89 Retirement Plan. In 1989, the Legislature added SHTAs to the Section 89 Retirement Plan. In doing so, it recognized the difficult and stressful nature of the job of a SHTA. Working in these positions requires constant contact with individuals convicted of serious crimes. Time spent by SHTAs in similar titles such as Mental Health Treatment Assistant ("MHTA"), is not currently creditable in the Section 89 Plan. While many MHTA became SHTAs, their time as an MHTA does not count toward retirement.

In addition, when the SHTAs were added to the Section 89 Plan it was not known that their prior time in OMH would become irrelevant for retirement purposes. This situation is unfair and should be corrected. This bill allows this and other time that SHTAs spent in a mental health title to be credited toward their retirement.

Security Hospital Treatment Assistants put their lives on the line each day. They work with convicted felons in over-crowded facilities. We urge Governor Pataki to sign this vital legislation.

Sincerely,

James F. Lyman  
President, Council 82

Cc: Council 82 Executive Committee

000011

34117 A. 9900

# LAW ENFORCEMENT OFFICERS UNION



## LEGISLATIVE SUPPORT MEMO

### PRIOR CREDITABLE RETIREMENT SERVICE FOR SECURITY HOSPITAL TREATMENT ASSISTANTS A. 9900/S. 4117

Council 82 represents New York State's Security Supervisors bargaining unit which includes Security Hospital Treatment Assistant Supervisors. This legislation would allow Security Hospital Treatment Assistants to credit all employment with the Office of Mental Health toward their twenty-five year half pay retirement plan.

This legislation would allow security hospital treatment assistants ("SHTAs") to count prior service within the Office of Mental Health as creditable service time in the Section 89 Retirement Plan. In 1989, the Legislature added SHTAs to the Section 89 Retirement Plan. In doing so, it recognized the difficult and stressful nature of the job of a SHTA. Working in these positions requires constant contact with individuals convicted of serious crimes. Time spent by SHTAs in similar titles such as Mental Health Treatment Assistant ("MHTA"), is not currently creditable in the Section 89 Plan. While many MHTA became SHTAs, their time as an MHTA does not count toward retirement.

In addition, when the SHTAs were added to the Section 89 Plan it was not known that their prior time in OMH would become irrelevant for retirement purposes. This situation is unfair and should be corrected. This bill allows this and other time that SHTAs spent in a mental health title to be credited toward their retirement.

Security Hospital Treatment Assistants put their lives on the line each day. They work with convicted felons in over-crowded facilities. We urge your support for this vital legislation

**RECEIVED**

JUL 15 2002

NEW YORK STATE  
EXECUTIVE CHAMBER  
COUNSEL

Respectfully Submitted,

*James F. Lyman*  
James F. Lyman  
President

AFSCME COUNCIL 82, AFL-CIO  
63 COLVIN AVENUE, ALBANY, NEW YORK 12206 (518) 489-8424

✓ 16

S 4117

**HINMAN  
STRAUB**  
ATTORNEYS AT LAW

121 STATE STREET  
ALBANY, NEW YORK 12207-1693  
TEL: 518-436-0751  
FAX: 518-436-4751  
E-MAIL: RECEPTION@HSPM.COM

August 13, 2002

James McGuire, Esq.  
Counsel to the Governor  
Executive Chamber  
New York State Capitol  
Albany, NY 12224

Re: S.4117-A/A.9900

Dear Mr. McGuire:

On behalf of the New York State Correctional Officers and Police Benevolent Association, Inc. ("NYSCOPBA"), which represents more than 25,000 members from various state law enforcement titles, including security hospital treatment assistants ("SHTAs"), we respectfully request that the Governor sign into law the above-referenced legislation which would authorize the transfer of prior service time with the Office of Mental Health ("OMH") for SHTAs. Specifically, the bill would permit SHTAs with prior service time in OMH titles to have such time credited in the § 89 retirement plan – a service based plan applicable state correctional officers and SHTAs.

In enacting § 89 of the Retirement and Social Security Law, the Legislature and the Governor recognized the difficult and stressful nature of the correctional officer and SHTA occupation. Working in these positions requires constant contact with individuals convicted of serious crimes or adjudicated criminally insane. As such, the § 89 plan was enacted to allow individuals to retire after 25 years of service in these positions with a one-half final average salary benefit.

Unfortunately, many SHTAs currently enrolled in § 89 of the Retirement and Social Security Law have prior service in OMH titles which cannot be credited toward retirement. For example, former narcotic addiction officers, secure care treatment aides ("SCTAs") and mental health therapy aides ("MHTAs"), who are now SHTAs, cannot use such prior service time toward retirement, notwithstanding that the prior positions were either very similar to that of an SHTA (i.e., MHTAs) or had a necessary law enforcement/security aspect to them (i.e., narcotic addition officers and SCTAs). Such an inequity necessitates enactment of this bill into law.

000013

Further evidencing the need to enact this legislation is the fact many SHTAs who joined the § 89 plan in 1989 did not realize that time spent in another OMH title would be eliminated for retirement purposes as a result of their joining such plan. Further, since the prior service time is limited to service at OMH and the practical affect is that the prior service related to positions of a similar nature as SHTA's, enactment of this legislation does not pave the trail for future legislation providing for the transfer of prior service between retirement plans.

The enactment of this legislation will ensure that SHTAs who: (i) have prior service which currently cannot be credited toward retirement; or (ii) were unaware of the consequences in joining the § 89 plan, are allowed to utilize prior service for retirement purposes. The state will also benefit from the enactment of this legislation since it will ensure that a young and vigorous workforce is maintained in the SHTA position.

For these reasons, on behalf of NYSCOPBA, we strongly support the enactment of this legislation and request that the Governor sign this measure into law.

Respectfully submitted,



HINMAN STRAUB P.C.

Legislative Counsel for New York State Correctional Officers  
and Police Benevolent Association, Inc.

000014