

H. B. 2436

(By Delegates Cann, Smith, Paxton, Kominar,
Hall, C. Miller, Skaff, Rowan and Craig)

[Introduced January 12, 2011; referred to the Committee on Pensions and Retirement then Finance.]

**FISCAL
NOTE**

10 A BILL to amend and reenact §5-10-15 of the Code of West Virginia,
11 1931, as amended, relating to permitting the period of service
12 by veterans of the conflicts in Granada, El Salvador,
13 Somalia, Afghanistan, Iraq and the Panama Canal to be allowed
14 as military service credit for persons who are eligible for
15 public employees retirement benefits.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §5-10-15 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

19 ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

20 §5-10-15. Military service credit; qualified military service.

(a) (1) The Legislature recognizes the men and women of this state who have served in the Armed Forces of the United States during times of war, conflict and danger. It is the intent of this section to confer military service credit upon persons who are eligible at any time for public employees retirement benefits for

1 any time served in active duty in the Armed Forces of the United
2 States when the duty was during any period of compulsory military
3 service or during a period of armed conflict, as defined in this
4 section.

5 (2) In addition to any benefit provided by federal law, any
6 member of the retirement system who has previously served in or
7 enters the active service of the Armed Forces of the United States
8 during any period of compulsory military service or during a period
9 of armed conflict shall receive credited service for the time spent
10 in the Armed Forces of the United States, not to exceed five years
11 if the member:

12 (A) Has been honorably discharged from the Armed Forces; and

13 (B) Substantiates by appropriate documentation or evidence his
14 or her active military service and entry into military service
15 during any period of compulsory military service or during periods
16 of armed conflict.

17 (3) Any member of the retirement system who enters the active
18 service of the Armed Forces of the United States during any period
19 of compulsory military service or during a period of armed conflict
20 shall receive the credit provided by this section regardless of
21 whether he or she was a public employee at the time of entering the
22 military service.

23 (4) If a member of the Public Employees Retirement System
24 enters the active service of the United States and serves during

1 any period of compulsory military service or during any period of
2 armed conflict, during the period of the armed service and until
3 the member's return to the employ of a participating public
4 employer, the member's contributions to the retirement system is
5 suspended and any credit balance remaining in the member's deposit
6 fund shall be accumulated at regular interest: *Provided, That*
7 notwithstanding any provision in this article to the contrary, if
8 an employee of a participating political subdivision serving in the
9 military service during any period of compulsory military service
10 or armed conflict has accumulated credited service prior to the
11 last entry into military service, in an amount that, added to the
12 time in active military service while an employee equals nine or
13 more years, and the member is unable to resume employment with a
14 participating employer upon completion of duty due to death during
15 or as a result of active service, all time spent in active military
16 service, up to and including a total of five years, is considered
17 to be credited service and death benefits are vested in the member:
18 *Provided, however, That* the active service during the time the
19 member is an employee must be as a result of an order or call to
20 duty, and not as a result of volunteering for assignment or
21 volunteering to extend the time in service beyond the time required
22 by order or call.

23 (5) No member may receive duplicate credit for service for a
24 period of compulsory military service which falls under a period of

1 armed conflict.

2 (6) In any case of doubt as to the period of service to be
3 credited a member under the provisions of this section, the Board
4 of Trustees have final power to determine the period.

5 (7) The board may consider a petition by any member whose tour
6 of duty, in a territory that would reasonably be considered hostile
7 and dangerous, was extended beyond the period in which an armed
8 conflict was officially recognized, if that tour of duty commenced
9 during a period of armed conflict, and the member was assigned to
10 duty stations within the hostile territory throughout the period
11 for which service credit is being sought. The board has the
12 authority to evaluate the facts and circumstances peculiar to the
13 petition, and rule on whether granting service credit for the
14 extended tour of duty is consistent with the objectives of this
15 article. In that determination, the board may grant full credit
16 for the period under petition subject to the limitations otherwise
17 applicable, or to grant credit for any part of the period as the
18 board considers appropriate, or to deny credit altogether.

19 (8) The Board of Trustees may propose legislative rules for
20 promulgation in accordance with the provisions of article three,
21 chapter twenty-nine-a of this code to administer the provisions of
22 this section.

23 (b) For purposes of this section, the following definitions
24 apply:

1 (1) "Period of armed conflict" means the Spanish-American War,
2 the Mexican border period, World War I, World War II, the Korean
3 conflict, the Vietnam era, the Persian Gulf War, the Granada
4 conflict, the Panama conflict, the El Salvador conflict, the
5 Somalia conflict, the Afghanistan conflict, the Iraq conflict and
6 any other period of armed conflict by the United States, including,
7 but not limited to, those periods sanctioned by a declaration of
8 war by the United States Congress or by executive or other order of
9 the President.

10 (2) "Spanish-American War" means the period beginning on April
11 21, 1898, and ending on July 4, 1902, and includes the Philippine
12 Insurrection, the Boxer Rebellion, and in the case of a veteran who
13 served with the United States Military Forces engaged in
14 hostilities in the Moro Province, means the period beginning on
15 April 21, 1898, and ending on July 15, 1903.

16 (3) "The Mexican border period" means the period beginning on
17 May 9, 1916, and ending on April 5, 1917, in the case of a veteran
18 who during the period served in Mexico, on its borders or in the
19 waters adjacent to it.

20 (4) "World War I" means the period beginning on April 6, 1917,
21 and ending on November 11, 1918, and in the case of a veteran who
22 served with the United States Military forces in Russia, means the
23 period beginning on April 6, 1917, and ending on April 1, 1920.

24 (5) "World War II" means the period beginning on December 7,

1 1941, and ending on December 31, 1946.

2 (6) "Korean conflict" means the period beginning on June 27,
3 1950, and ending on January 31, 1955.

4 (7) "The Vietnam era" means the period beginning on February
5 28, 1961, and ending on May 7, 1975, in the case of a veteran who
6 served in the Republic of Vietnam during that period; and August 5,
7 1964, and ending on May 7, 1975, in all other cases.

8 (8) "Persian Gulf War" means the period beginning on August 2,
9 1990, and ending on ~~April 11, 1991~~ January 2, 1992.

10 (9) "Granada conflict" means the period beginning on October
11 23, 1983 and ending on November 21, 1983.

12 (10) "Panama conflict" means the period beginning on December
13 20, 1989 and ending on January 31, 1990.

14 (11) "El Salvador conflict" means the period beginning on
15 January 1, 1981 and ending on February 1, 1992.

16 (12) "Somalia conflict" means the period beginning June 5,
17 1992 and ending on March 31, 1994.

18 (13) "Afghanistan conflict" means the period beginning on
19 December 5, 2001 and ending on a date yet to be determined.

20 (14) "Iraq conflict" means a period beginning on March 19,
21 2003 and ending on a date yet to be determined.

22 (c) Notwithstanding the preceding provisions of this section,
23 contributions, benefits and service credit with respect to
24 qualified military service shall be provided in accordance with

1 Section 414(u) of the Internal Revenue Code. For purposes of this
2 section, "qualified military service" has the same meaning as in
3 Section 414(u) of the Internal Revenue Code. No military service
4 credit may be used in more than one retirement system administered
5 by the Consolidated Public Retirement Board and once used in any
6 system, may not be used again in any other system. The board is
7 authorized to determine all questions and make all decisions
8 relating to this section and, pursuant to the authority granted to
9 the board in section one, article ten-d of this chapter, may
10 promulgate rules relating to contributions, benefits and service
11 credit to comply with Section 414(u) of the Internal Revenue Code.

NOTE: The purpose of this bill is to permit the period of service by veterans of the conflicts in Granada, El Salvador, Somalia, Afghanistan, Iraq and the Panama Canal be allowed as military service credit for persons who are eligible for public employees retirement benefits.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.