

1 **H. B. 2468**

2
3 (By Delegates Rodighiero and Reynolds)

4 [Introduced January 13, 2011; referred to the
5 Committee on Veterans' Affairs and Homeland Security then
6 Pensions and Retirement then Finance.]

**FISCAL
NOTE**

7
8
9
10
11 A BILL to amend and reenact §5-10-15 of the Code of West Virginia,
12 1931, as amended; and to amend and reenact §29-6-10 of said
13 code, all relating to providing benefits for those who have
14 served in the military service; providing service credits for
15 purposes of public employment retirement for service in any
16 branch of the military including the West Virginia National
17 Guard and Reserve; and awarding additional testing credit
18 points in civil service examinations for members of the
19 National Guard and Reserve who are applying for state
20 employment.

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

22 That §5-10-15 of the Code of West Virginia, 1931, as amended,
23 be amended and reenacted; and that §29-6-10 of said code be amended
24 and reenacted, all to read as follows:

1 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**
2 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD**
3 **OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS,**
4 **OFFICES, PROGRAMS, ETC.**

5 **ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

6 **§5-10-15. Military service credit; qualified military service.**

7 (a) (1) The Legislature recognizes the men and women of this
8 state who have served in the Armed Forces of the United States
9 during times of war, conflict and danger. It is the intent of this
10 section to confer military service credit upon persons who are
11 eligible at any time for public employees retirement benefits for
12 any time served in active duty in the Armed Forces of the United
13 States when the duty was during any period of compulsory military
14 service or during a period of armed conflict, as defined in this
15 section.

16 (2) In addition to any benefit provided by federal law, any
17 member of the retirement system who has previously served in or
18 enters the active service of the Armed Forces of the United States
19 during any period of compulsory military service or during a period
20 of armed conflict shall receive credited service for the time spent
21 in the Armed Forces of the United States, not to exceed five years
22 if the member:

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

1 (B) Substantiates by appropriate documentation or evidence his
2 or her active military service and entry into military service
3 during any period of compulsory military service or during periods
4 of armed conflict.

5 (3) Any member of the retirement system who enters the active
6 service of the Armed Forces of the United States during any period
7 of compulsory military service or during a period of armed conflict
8 shall receive the credit provided by this section regardless of
9 whether he or she was a public employee at the time of entering the
10 military service.

11 (4) If a member of the Public Employees Retirement System
12 enters the active service of the United States and serves during
13 any period of compulsory military service regardless of being
14 activated, on standby for call up or activation during such times,
15 including the Vietnam Conflict, or during any period of armed
16 conflict, during the period of the armed service and until the
17 member's return to the employ of a participating public employer,
18 the member's contributions to the retirement system is suspended
19 and any credit balance remaining in the member's deposit fund shall
20 be accumulated at regular interest: *Provided*, That notwithstanding
21 any provision in this article to the contrary, if an employee of a
22 participating political subdivision serving in the military service
23 during any period of compulsory military service or armed conflict
24 has accumulated credited service prior to the last entry into

1 military service, in an amount that, added to the time in active
2 military service while an employee equals nine or more years, and
3 the member is unable to resume employment with a participating
4 employer upon completion of duty due to death during or as a result
5 of active service, all time spent in active military service, up to
6 and including a total of five years, is considered to be credited
7 service and death benefits are vested in the member: *Provided,*
8 *however,* That the active service during the time the member is an
9 employee must be as a result of an order or call to duty, and not
10 as a result of volunteering for assignment or volunteering to
11 extend the time in service beyond the time required by order or
12 call.

13 (5) No member may receive duplicate credit for service for a
14 period of compulsory military service which falls under a period of
15 armed conflict.

16 (6) In any case of doubt as to the period of service to be
17 credited a member under the provisions of this section, the board
18 of trustees have final power to determine the period.

19 (7) The board may consider a petition by any member whose tour
20 of duty, in a territory that would reasonably be considered hostile
21 and dangerous, was extended beyond the period in which an armed
22 conflict was officially recognized, if that tour of duty commenced
23 during a period of armed conflict, and the member was assigned to
24 duty stations within the hostile territory throughout the period

1 for which service credit is being sought. The board has the
2 authority to evaluate the facts and circumstances peculiar to the
3 petition, and rule on whether granting service credit for the
4 extended tour of duty is consistent with the objectives of this
5 article. In that determination, the board may grant full credit
6 for the period under petition subject to the limitations otherwise
7 applicable, or to grant credit for any part of the period as the
8 board considers appropriate, or to deny credit altogether.

9 (8) The board of trustees may propose legislative rules for
10 promulgation in accordance with the provisions of article three,
11 chapter twenty-nine-a of this code to administer the provisions of
12 this section.

13 (b) For purposes of this section, the following definitions
14 apply:

15 (1) "Period of armed conflict" means the Spanish-American War,
16 the Mexican border period, World War I, World War II, the Korean
17 conflict, the Vietnam era, the Persian Gulf War and any other
18 period of armed conflict by the United States, including, but not
19 limited to, those periods sanctioned by a declaration of war by the
20 United States Congress or by executive or other order of the
21 President.

22 (2) "Spanish-American War" means the period beginning April
23 21, 1898, and ending July 4, 1902, and includes the Philippine
24 Insurrection, the Boxer Rebellion, and in the case of a veteran who

1 served with the United States Military forces engaged in
2 hostilities in the Moro Province, means the period beginning April
3 21, 1898, and ending July 15, 1903.

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

8 (4) "World War I" means the period beginning April 6, 1917,
9 and ending November 11, 1918, and in the case of a veteran who
10 served with the United States Military forces in Russia, means the
11 period beginning April 16, 1917, and ending April 1, 1920.

12 (5) "World War II" means the period beginning December 7,
13 1941, and ending December 31, 1946.

14 (6) "Korean conflict" means the period beginning June 27,
15 1950, and ending January 31, 1955.

16 (7) "The Vietnam era" means the period beginning February 28,
17 1961, and ending May 7, 1975, in the case of a veteran who served
18 in the Republic of Vietnam during that period; and August 5, 1964,
19 and ending May 7, 1975, in all other cases.

20 (8) "Persian Gulf War" means the period beginning August 2,
21 1990, and ending April 11, 1991.

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.

12 (d) The Legislature recognizes the service to the State of
13 West Virginia made by members of the West Virginia National Guard
14 while on active duty. Accordingly, service credit will be given
15 for active service in the West Virginia National Guard in
16 accordance with the following:

17 (1) One year service credit for two years' active duty with
18 the West Virginia National Guard;

19 (2) One and one-half years service credit for three years of
20 active duty;

21 (3) Three years' service credit for five years of active duty;
22 and

23 (4) A maximum service credit of four years for six years of
24 active duty.

1 **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

2 **ARTICLE 6. CIVIL SERVICE SYSTEM.**

3 **§29-6-10. Rules of division.**

4 The board ~~shall have the authority to~~ may propose, promulgate,
5 amend or repeal rules, according to chapter twenty-nine-a of this
6 code, to implement the provisions of this article:

7 (1) For the preparation, maintenance and revision of a
8 position classification plan for all positions in the classified
9 service and a position classification plan for all positions in the
10 classified-exempt service, based upon similarity of duties
11 performed and responsibilities assumed, so that the same
12 qualifications may reasonably be required for and the same schedule
13 of pay may be equitably applied to all positions in the same class.
14 Except for persons employed by the governing boards of higher
15 education, all persons receiving compensation as a wage or salary,
16 funded either in part or in whole by the state, are included in
17 either the position classification plan for classified service or
18 classified-exempt service. After each such classification plan has
19 been approved by the board, the director shall allocate the
20 position of every employee in the classified service to one of the
21 classes in the classified plan and the position of every employee
22 in the classified-exempt service to one of the positions in the
23 classified-exempt plan. Any employee affected by the allocation of
24 a position to a class shall, after filing with the director of

1 personnel a written request for reconsideration thereof in such
2 manner and form as the director may prescribe, be given a
3 reasonable opportunity to be heard thereon by the director. The
4 interested appointing authority shall be given like opportunity to
5 be heard.

6 (2) For a pay plan for all employees in the classified
7 service, after consultation with appointing authorities and the
8 state fiscal officers, and after a public hearing held by the
9 board. Such pay plan shall become effective only after it has been
10 approved by the Governor after submission to him or her by the
11 board. Amendments to the pay plan may be made in the same manner.
12 Each employee shall be paid at one of the rates set forth in the
13 pay plan for the class of position in which he or she is employed.
14 The principle of equal pay for equal work in the several agencies
15 of the state government shall be followed in the pay plan as
16 established hereby.

17 (3) For open competitive examinations to test the relative
18 fitness of applicants for the respective positions in the
19 classified service. Such examinations need not be held until after
20 the rules have been adopted, the service classified and a pay plan
21 established, but shall be held not later than one year after this
22 article takes effect. Such examinations shall be announced
23 publicly at least fifteen days in advance of the date fixed for the
24 filing of applications therefor, and may be advertised through the

1 press, radio and other media. The director may, however, in his or
2 her discretion, continue to receive applications and examine
3 candidates long enough to assure a sufficient number of eligibles
4 to meet the needs of the service and may add the names of
5 successful candidates to existing eligible lists in accordance with
6 their respective ratings.

7 An additional five points shall be awarded to the score of any
8 examination successfully completed by a veteran. A disabled
9 veteran shall be entitled to an additional ten points, rather than
10 five points as aforesaid, upon successful completion of any
11 examination.

12 An additional three points shall be awarded to a member of the
13 National Guard and Reserve with two years of service. A member
14 with four years of service shall be awarded an additional four
15 points and a member with five or more years of service shall be
16 awarded an additional five points.

17 (4) For promotions within the classified service which shall
18 give appropriate consideration to the applicant's qualifications,
19 record of performance, seniority and his or her score on a written
20 examination, when such examination is practicable. An advancement
21 in rank or grade or an increase in salary beyond the maximum fixed
22 for the class shall constitute a promotion. When any benefit such
23 as a promotion, wage increase or transfer is to be awarded, or when
24 a withdrawal of a benefit such as a reduction in pay, a layoff or

1 job termination is to be made, and a choice is required between two
2 or more employees in the classified service as to who will receive
3 the benefit or have the benefit withdrawn, and if some or all of
4 the eligible employees have substantially equal or similar
5 qualifications, consideration shall be given to the level of
6 seniority of each of the respective employees as a factor in
7 determining which of the employees will receive the benefit or have
8 the benefit withdrawn, as the case may be. When an employee
9 classified in a secretarial or clerical position has, irrespective
10 of job classification, actual job experience related to the
11 qualifications for a managerial or supervisory position, the
12 division shall consider the experience as qualifying experience for
13 the position. The division in its classification plan may, for
14 designated classifications, permit substitution of qualifying
15 experience for specific educational or training requirements at a
16 rate determined by the division.

17 (5) For layoffs by classification for reason of lack of funds
18 or work, or abolition of a position, or material changes in duties
19 or organization, or any loss of position because of the provisions
20 of this subdivision and for recall of employees so laid off,
21 consideration shall be given to an employee's seniority as measured
22 by permanent employment in the classified service or a state
23 agency. In the event that the agency wishes to lay off a more
24 senior employee, the agency must demonstrate that the senior

1 employee cannot perform any other job duties held by less senior
2 employees within that agency in the job class or any other
3 equivalent or lower job class for which the senior employee is
4 qualified: *Provided*, That if an employee refuses to accept a
5 position in a lower job class, such employee shall retain all
6 rights of recall as hereinafter provided.

7 (6) For recall of employees, recall shall be by reverse order
8 of layoff to any job class that the employee has previously held or
9 a lower class in the series within the agency as that job class
10 becomes vacant. An employee will retain his or her place on the
11 recall list for the same period of time as his or her seniority on
12 the date of his or her layoff or for a period of two years,
13 whichever is less. No new employees shall be hired for any vacancy
14 in his or her job class or in a lower job class in the series until
15 all eligible employees on layoff are given the opportunity to
16 refuse that job class. An employee shall be recalled onto jobs
17 within the county wherein his or her last place of employment is
18 located or within a county contiguous thereto. Any laid-off
19 employee who is eligible for a vacant position shall be notified by
20 certified mail of the vacancy. It ~~shall be~~ is the responsibility
21 of the employee to notify the agency of any change in his or her
22 address.

23 Notwithstanding any other provision of the code to the
24 contrary, except for the provisions of section seven, article two,

1 chapter five-b of this code, when filling vacancies at state
2 agencies the directors of state agencies shall, for a period of
3 twelve months after the layoff of a permanent classified employee
4 in another agency, give preference to qualified permanent
5 classified employees based on seniority and fitness over all but
6 existing employees of the agency or its facilities: *Provided*, That
7 employment of these persons who are qualified and who were
8 permanently employed immediately prior to their layoff shall not
9 supersede the recall rights of employees who have been laid off in
10 such agency or facility.

11 (7) For the establishment of eligible lists for appointment
12 and promotion within the classified service, upon which lists shall
13 be placed the names of successful candidates in the order of their
14 relative excellence in the respective examinations. Eligibility
15 for appointment from any such list shall continue not longer than
16 three years. An appointing authority shall make his or her
17 selection from the top ten names on the appropriate lists of
18 eligibles, or may choose any person scoring at or above the
19 ninetieth percentile on the examination.

20 For the establishment of eligible lists for preference as
21 provided in subdivision (6) of this section, a list shall be
22 provided according to seniority. An appointed authority shall make
23 the selection of the most senior qualified person: *Provided*, That
24 eligibility for appointment from any such list shall continue not

1 longer than one year and shall cease immediately upon appointment
2 to a classified position.

3 (8) For the rejection of candidates or eligibles within the
4 classified service who fail to comply with reasonable requirements
5 in regard to such factors as age, physical condition, character,
6 training and experience who are addicted to alcohol or narcotics or
7 who have attempted any deception or fraud in connection with an
8 examination.

9 (9) For a period of probation not to exceed one year before
10 appointment or promotion may be made complete within the classified
11 service.

12 (10) For provisional employment without competitive
13 examination within the classified service when there is no
14 appropriate eligible list available. No such provisional
15 employment may continue longer than six months, nor shall
16 successive provisional appointments be allowed, except during the
17 first year after the effective date of this article, in order to
18 avoid stoppage of orderly conduct of the business of the state.

19 (11) For keeping records of performance of all employees in
20 the classified service, which service records may be considered in
21 determining salary increases and decreases provided in the pay
22 plan; as a factor in promotion tests; as a factor in determining
23 the order of layoffs because of lack of funds or work and in
24 reinstatement; and as a factor in demotions, discharges and

1 transfers.

2 (12) For discharge or reduction in rank or grade only for
3 cause of employees in the classified service. Discharge or
4 reduction of these employees shall take place only after the person
5 to be discharged or reduced has been presented with the reasons for
6 such discharge or reduction stated in writing, and has been allowed
7 a reasonable time to reply thereto in writing, or upon request to
8 appear personally and reply to the appointing authority or his or
9 her deputy: *Provided*, That upon an involuntary discharge for
10 cause, the employer may require immediate separation from the
11 workplace, or the employee may elect immediate separation. If
12 separation is required by the employer in lieu of any advance
13 notice of discharge, or if immediate separation is elected by an
14 employee who receives notice of an involuntary discharge for cause,
15 the employee is entitled to receive severance pay attributable to
16 time the employee otherwise would have worked, up to a maximum of
17 15 calendar days following separation. Receipt of severance pay
18 does not affect any other right to which the employee is entitled
19 with respect to the discharge. The statement of reasons and the
20 reply shall be filed as a public record with the director.
21 Notwithstanding the foregoing provisions of this subdivision, no
22 permanent employee ~~shall~~ may be discharged from the classified
23 service for absenteeism upon using all entitlement to annual leave
24 and sick leave when ~~such~~ the use has been due to illness or injury

1 as verified by a physician's certification or for other extenuating
2 circumstances beyond the employee's control unless his or her
3 disability is of ~~such~~ a nature as to permanently incapacitate him
4 or her from the performance of the duties of his or her position.
5 Upon exhaustion of annual leave and sick leave credits for the
6 reasons specified herein and with certification by a physician that
7 the employee is unable to perform his or her duties, a permanent
8 employee shall be granted a leave of absence without pay for a
9 period not to exceed six months if ~~such~~ the employee is not
10 permanently unable to satisfactorily perform the duties of his or
11 her position.

12 (13) For ~~such~~ other rules and administrative regulations, not
13 inconsistent with this article, as may be proper and necessary for
14 its enforcement.

15 (14) The board shall review and approve by rules the
16 establishment of all classified-exempt positions to assure
17 consistent interpretation of the provisions of this article.

18 The provisions of this section are subject to any
19 modifications contained in chapter five-f of this code. The board
20 may include in the rules provided ~~for~~ in this article such
21 provisions as are necessary to conform to regulations and standards
22 of any federal agency governing the receipt and use of federal
23 grants-in-aid by any state agency, anything in this article to the
24 contrary notwithstanding. The board and the director shall see

1 that rules and practices meeting such standards are in effect
2 continuously after the effective date of this article.

NOTE: The purpose of this bill is to provide rewards to those serving in the military by providing service credits, for purposes of public employment retirement, for service in any branch of the military including the West Virginia National Guard and Reserve; and providing additional testing credit points in civil service examinations for members of the National Guard and Reserve who are applying for state employment.

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