

H. B. 3097

(By Delegates Smith, Cann, Ferro, Longstreth,
D. Poling, Shaver, Varner, Walker, Martin,
Michael and Rodighiero)

[Introduced February 10, 2011; referred to the
Committee on Veterans' Affairs and Homeland Security then
Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §5-10-15 of the Code of West Virginia,
1931, as amended, relating to removing the armed conflict
requirement before state employees may receive credit for time
served in the Armed Forces of the United States; and
prohibiting those employees who were not honorably discharged
from receiving that credit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

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

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

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

9 (B) Substantiates by appropriate documentation or evidence his
10 or her active military service. ~~and entry into military service~~
11 ~~during any period of compulsory military service or during periods~~
12 ~~of armed conflict.~~

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

19 (4) If a member of the Public Employees Retirement System
20 enters the active service of the United States ~~and serves during~~
21 ~~any period of compulsory military service or during any period of~~
22 ~~armed conflict,~~ during the period of ~~the armed~~ service and until
23 the member's return to the employ of a participating public
24 employer, the member's contributions to the retirement system is
25 suspended and any credit balance remaining in the member's deposit
26 fund shall be accumulated at regular interest: *Provided, That*
27 notwithstanding any provision in this article to the contrary, if

1 an employee of a participating political subdivision serving in the
2 military service ~~during any period of compulsory military service~~
3 ~~or armed conflict~~ has accumulated credited service prior to the
4 last entry into military service, in an amount that, added to the
5 time in active military service while an employee equals nine or
6 more years, and the member is unable to resume employment with a
7 participating employer upon completion of duty due to death during
8 or as a result of active service, all time spent in active military
9 service, up to and including a total of five years, is considered
10 to be credited service and death benefits are vested in the
11 member. ~~Provided, however, That the active service during the time~~
12 ~~the member is an employee must be as a result of an order or call~~
13 ~~to duty, and not as a result of volunteering for assignment or~~
14 ~~volunteering to extend the time in service beyond the time required~~
15 ~~by order or call.~~

16 (5) No member may receive duplicate credit for service. ~~for a~~
17 ~~period of compulsory military service which falls under a period of~~
18 ~~armed conflict.~~

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

22 ~~(7) The Board may consider a petition by any member whose tour~~
23 ~~of duty, in a territory that would reasonably be considered hostile~~
24 ~~and dangerous, was extended beyond the period in which an armed~~
25 ~~conflict was officially recognized, if that tour of duty commenced~~
26 ~~during a period of armed conflict, and the member was assigned to~~
27 ~~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) (7)~~ The Board of Trustees may propose legislative rules
10 for promulgation in accordance with the provisions of article
11 three, chapter twenty-nine-a of this code to administer the
12 provisions of 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 on April
23 21, 1898, and ending on July 4, 1902, and includes the Philippine
24 Insurrection, the Boxer Rebellion, and in the case of a veteran who
25 served with the United States Military forces engaged in
26 hostilities in the Moro Province, means the period beginning on
27 April 21, 1998, and ending on July 15, 1903.~~

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

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

9 ~~(5) "World War II" means the period beginning on December 7,~~
10 ~~1941, and ending on December 31, 1946.~~

11 ~~(6) "Korean conflict" means the period beginning on June 27,~~
12 ~~1950, and ending on January 31, 1955.~~

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

17 ~~(8) "Persian Gulf War" means the period beginning on August 2,~~
18 ~~1990, and ending on April 11, 1991.~~

19 ~~(c)~~ (b) Notwithstanding the preceding provisions of this
20 section, contributions, benefits and service credit with respect to
21 qualified military service shall be provided in accordance with
22 Section 414(u) of the Internal Revenue Code. For purposes of this
23 section, "qualified military service" has the same meaning as in
24 Section 414(u) of the Internal Revenue Code. No military service
25 credit may be used in more than one retirement system administered
26 by the Consolidated Public Retirement Board and once used in any
27 system, may not be used again in any other system. No military

1 service credit may be used if the member was, or has been,
2 dishonorably discharged from the Armed Forces of the United States.

3 The board is authorized to determine all questions and make all
4 decisions relating to this section and, pursuant to the authority
5 granted to the board in section one, article ten-d of this chapter,
6 may promulgate rules relating to contributions, benefits and
7 service credit to comply with Section 414(u) of the Internal
8 Revenue Code.

NOTE: The purpose of this bill is to remove the requirement that who are eligible for public employees retirement benefits and who have served in the Armed Forces of the United States must have served during a time of armed conflict before up to five years of that service may be credited to those employees' years of service for retirement benefits. The bill also prohibits any time from being credited if that person was dishonorably discharged.

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