

1 **Senate Bill No. 275**

2 (By Senator Cann)

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4 [Introduced January 8, 2014; referred to the Committee on
5 Pensions; and then to the Committee on Finance.]

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7 **FISCAL**
8 **NOTE**

9
10 A BILL to amend and reenact §5-10-15 of the Code of West Virginia,
11 1931, as amended, relating to adding veterans of the conflicts
12 in Granada, El Salvador, Somalia, Afghanistan, Iraq and the
13 Panama Canal to those veterans who are eligible for military
14 service credit for public employees' retirement benefit
15 purposes; defining terms; and modifying the definition of a
16 term.

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

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

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

21 **§5-10-15. Military service credit; qualified military service.**

22 (a) (1) The Legislature recognizes the men and women of this
23 state who have served in the Armed Forces of the United States

1 during times of war, conflict and danger. It is the intent of this
2 section to confer military service credit upon persons who are
3 eligible at any time for public employees retirement benefits for
4 any time served in active duty in the Armed Forces of the United
5 States when the duty was during any period of compulsory military
6 service or during a period of armed conflict, as defined in this
7 section.

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

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

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

20 (3) Any member of the retirement system who enters the active
21 service of the Armed Forces of the United States during any period
22 of compulsory military service or during a period of armed conflict
23 shall receive the credit provided by this section regardless of

1 whether he or she was a public employee at the time of entering the
2 military service.

3 (4) If a member of the Public Employees Retirement System
4 enters the active service of the United States and serves during
5 any period of compulsory military service or during any period of
6 armed conflict, during the period of the armed service and until
7 the member's return to the employ of a participating public
8 employer, the member's contributions to the retirement system is
9 suspended and any credit balance remaining in the member's deposit
10 fund shall be accumulated at regular interest: *Provided, That*
11 notwithstanding any provision in this article to the contrary, if
12 an employee of a participating political subdivision serving in the
13 military service during any period of compulsory military service
14 or armed conflict has accumulated credited service prior to the
15 last entry into military service, in an amount that, added to the
16 time in active military service while an employee equals nine or
17 more years, and the member is unable to resume employment with a
18 participating employer upon completion of duty due to death during
19 or as a result of active service, all time spent in active military
20 service, up to and including a total of five years, is considered
21 to be credited service and death benefits are vested in the member:
22 *Provided, however, That* the active service during the time the
23 member is an employee must be as a result of an order or call to

1 duty, and not as a result of volunteering for assignment or
2 volunteering to extend the time in service beyond the time required
3 by order or call.

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

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

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

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

5 (b) For purposes of this section, the following definitions
6 apply:

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

16 (2) "Spanish-American War" means the period beginning on April
17 21, 1898, and ending on July 4, 1902, and includes the Philippine
18 Insurrection, the Boxer Rebellion, and in the case of a veteran who
19 served with the United States Military Forces engaged in
20 hostilities in the Moro Province, means the period beginning on
21 April 21, 1898, and ending on July 15, 1903.

22 (3) "The Mexican border period" means the period beginning on
23 May 9, 1916, and ending on April 5, 1917, in the case of a veteran

1 who during the period served in Mexico, on its borders or in the
2 waters adjacent to it.

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

7 (5) "World War II" means the period beginning on December 7,
8 1941, and ending on December 31, 1946.

9 (6) "Korean conflict" means the period beginning on June 27,
10 1950, and ending on January 31, 1955.

11 (7) "The Vietnam era" means the period beginning on February
12 28, 1961, and ending on May 7, 1975, in the case of a veteran who
13 served in the Republic of Vietnam during that period; and August 5,
14 1964, and ending on May 7, 1975, in all other cases.

15 (8) "Persian Gulf War" means the period beginning on August 2,
16 1990, and ending on ~~April 11, 1991~~ January 2, 1992.

17 (9) "Granada conflict" means the period beginning on October
18 23, 1983 and ending on November 21, 1983.

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

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

23 (12) "Somalia conflict" means the period beginning June 5,

1 1992 and ending on March 31, 1994.

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

4 (14) "Iraq conflict" means a period beginning on March 19,
5 2003 and ending on a date yet to be determined.

6 (c) Notwithstanding the preceding provisions of this section,
7 contributions, benefits and service credit with respect to
8 qualified military service shall be provided in accordance with
9 Section 414(u) of the Internal Revenue Code. For purposes of this
10 section, "qualified military service" has the same meaning as in
11 Section 414(u) of the Internal Revenue Code. No military service
12 credit may be used in more than one retirement system administered
13 by the Consolidated Public Retirement Board and once used in any
14 system, may not be used again in any other system. The board is
15 authorized to determine all questions and make all decisions
16 relating to this section and, pursuant to the authority granted to
17 the board in section one, article ten-d of this chapter, may
18 promulgate rules relating to contributions, benefits and service
19 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 conflict be allowed as military service credit for persons who are eligible for public employees retirement benefits. The bill defines those conflicts and

modifies the dates of another conflict.

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