

H. B. 2929

(By Delegates J. Nelson, R. Phillips, Longstreth and McGeehan)

[Introduced February 24, 2015; 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 availability of military service credit for members of the West Virginia Public Employees Retirement System; clarifying that active service under Title 10 and Title 32 of the United States Code, and active state service in the West Virginia National Guard qualify for military service credit; clarifying the methodology for awarding military service credit, clarifying the prohibition on use of military service to obtain military service credit in more than one retirement system administered by the board; clarifying applicability of liberality clause to the board's decisions to grant or deny requests for military service credit; and making other technical clarifications and corrections.

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.

1 **§5-10-15. Military service credit; qualified military service.**

2 (a)(1) The Legislature recognizes the men and women of this state who have served in the
 3 Armed Forces of the United States during times of war, conflict and danger. The Legislature further
 4 recognizes the men and women who have dedicated themselves to the defense and service of this
 5 state through their service in the West Virginia National Guard. It is the intent of this section to
 6 confer military service credit upon persons who are eligible at any time for public employees
 7 retirement benefits for any time served in active duty in the Armed Forces of the United States ~~when~~
 8 ~~the duty was during any period of compulsory military service or during a period of armed conflict,~~
 9 ~~as defined in this section~~ or in the West Virginia National Guard, when they meet the requirements
 10 of this section.

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

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

17 (B) Substantiates by appropriate documentation or evidence his or her active military service.
 18 ~~and entry into military service 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 service of the Armed Forces
 21 of the United States ~~during any period of compulsory military service or during a period of armed~~
 22 ~~conflict~~ shall receive the credit provided by this section regardless of whether he or she was a public

1 employee at the time of entering the military service.

2 (4) Any member of the retirement system who enters the active service of the Armed Forces
 3 of the United States or the State of West Virginia shall receive one month of military service credit
 4 for each three hundred-sixty hours of active duty performed within a calendar year. For purposes
 5 of this section, a day of active duty shall be considered twenty-four hours in duration.

6 (5) In addition to any benefit provided by federal law, any member of the retirement system
 7 who retires from the West Virginia National Guard with an honorable discharge and who has served
 8 at least twenty qualifying years in the military service, including service in the National Guard, and
 9 who is entitled to a federal military retirement, shall in addition to any other military service credit
 10 due under this section be entitled to receive credit as follows: For at least twenty years, but less than
 11 twenty-five years of service, two years credit; for at least twenty-five years, but less than thirty years
 12 of service, three years credit; and for thirty or more years of service, five years credit. In no event,
 13 however, may a member receive more than five years of military service credit under this section.

14 ~~(4)~~ (6) If a member of the Public Employees Retirement System enters the active service of
 15 the United States ~~and serves during any period of compulsory military service or during any period~~
 16 ~~of armed conflict,~~ during the period of the ~~armed~~ active service and until the member's return to the
 17 employ of a participating public employer, the member's contributions to the retirement system is
 18 suspended and any credit balance remaining in the member's deposit fund shall be accumulated at
 19 regular interest: *Provided*, That notwithstanding any provision in this article to the contrary, if an
 20 employee of a participating political subdivision serving in the military service ~~during any period~~
 21 ~~of compulsory military service or armed conflict~~ has accumulated credited service prior to the last
 22 entry into military service, in an amount that, added to the time in active military service while an

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

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

10 ~~(6)~~ (7) In any case of doubt as to the period of service to be credited a member under the
11 provisions of this section, the board of trustees have final power to determine the period.

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

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

1 section.

2 (b) For purposes of this section: ~~the following definitions apply~~

3 (1) ~~“Period of armed conflict” means the Spanish-American War, the Mexican border period;~~
4 ~~World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War and any~~
5 ~~other period of armed conflict by the United States, including, but not limited to, those periods~~
6 ~~sanctioned by a declaration of war by the United States Congress or by executive or other order of~~
7 ~~the President.~~

8 (2) ~~“Spanish-American War” means the period beginning on April 21, 1898, and ending on~~
9 ~~July 4, 1902, and includes the Philippine Insurrection, the Boxer Rebellion, and in the case of a~~
10 ~~veteran who served with the United States Military forces engaged in hostilities in the Moro~~
11 ~~Province, means the period beginning on April 21, 1998, and ending on July 15, 1903.~~

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

15 (4) ~~“World War I” means the period beginning on April 6, 1917, and ending on November~~
16 ~~11, 1918, and in the case of a veteran who served with the United States Military forces in Russia,~~
17 ~~means the period beginning on April 6, 1917, and ending on April 1, 1920.~~

18 (5) ~~“World War II” means the period beginning on December 7, 1941, and ending on~~
19 ~~December 31, 1946.~~

20 (6) ~~“Korean conflict” means the period beginning on June 27, 1950, and ending on January~~
21 ~~31, 1955.~~

22 (7) ~~“The Vietnam era” means the period beginning on the February 28, 1961, and ending on~~

1 ~~May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period; and~~
2 ~~August 5, 1964, and ending on May 7, 1975, in all other cases.~~

3 ~~(8) "Persian Gulf War" means the period beginning on August 2, 1990, and ending on April~~
4 ~~11, 1991.~~

5 (1) "Active service of the Armed Forces" means full-time active duty in the Armed Forces
6 of the United States, to include periods of full-time active duty for annual training in the National
7 Guard. Active service does not include inactive duty of any kind.

8 (2) "Armed Forces of the United States" means the Army, Navy, Air Force, Marine Corps,
9 and Coast Guard, the Reserve components thereof, and the National Guard of the United States or
10 the National Guard of a state or territory when members of the same are on full-time active duty
11 pursuant to Title 10 or Title 32 of the United States Code.

12 (3) "National Guard" means the Army National Guard and the Air National Guard of any
13 state or territory.

14 (4) "West Virginia National Guard" means the West Virginia Army National Guard and the
15 West Virginia Air National Guard.

16 (5) "West Virginia Army National Guard" means that part of the organized militia of West
17 Virginia, active and inactive, that:

18 (A) Is a land force;

19 (B) Is trained, and has its officers appointed, under the sixteenth clause of section 8, article
20 I, of the Constitution;

21 (C) Is organized, armed, and equipped wholly or partly at federal expense; and

22 (D) Is federally recognized.

1 (6) "Army National Guard of the United States" means the reserve component of the Army
2 all of whose members are members of the Army National Guard.

3 (7) "West Virginia Air National Guard" means that part of the organized militia of West
4 Virginia, active and inactive, that:

5 (A) Is an air force;

6 (B) Is trained, and has its officers appointed, under the sixteenth clause of section 8, article
7 I of the Constitution;

8 (C) Is organized, armed, and equipped wholly or partly at federal expense; and

9 (D) Is federally recognized.

10 (8) "Air National Guard of the United States" means the reserve component of the Air Force
11 all of whose members are members of the Air National Guard.

12 (9) "Active service of the State of West Virginia" means full-time state active duty in the
13 West Virginia Army National Guard or the West Virginia Air National Guard when such duty is in
14 a nontraining status and upon orders of the Adjutant General of the West Virginia National Guard
15 or the Governor of West Virginia, and which is funded entirely by the state.

16 (10) "Qualifying year" means any year in which a member earns the minimum number of
17 points required to receive credit for the year toward retired pay pursuant to Section 12732 of Title
18 10, United States Code.

19 (c) Notwithstanding the preceding provisions of this section, contributions, benefits and
20 service credit with respect to qualified military service shall be provided in accordance with Section
21 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has
22 the same meaning as in Section 414(u) of the Internal Revenue Code ~~No military service credit may~~

1 ~~be used in more than one retirement system administered by the Consolidated Public Retirement~~
2 ~~Board and once used in any system, may not be used again in any other system.~~ and the federal
3 Uniformed Services Employment and Reemployment Rights Act, and regulations promulgated
4 thereunder, as it may be amended from time to time. The board is authorized to determine all
5 questions and make all decisions relating to this section and, pursuant to the authority granted to the
6 board in section one, article ten-d of this chapter, may promulgate rules relating to contributions,
7 benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

8 (d) No period of military service credit may be used to obtain credit in more than one
9 retirement system administered by the board.

10 (e) The provision of this section shall be liberally construed to benefit the member seeking
11 military service credit.

NOTE: The purpose of this bill is to clarify the type of military service eligible for noncontributory military service credit; to clarify the methodology for awarding military service credit; to clarify the prohibition on use of military service to obtain military service credit in more than one retirement system administered by the board; to clarify applicability of liberality clause to the board's decisions to grant or deny requests for military service credit; and to make other technical clarifications and corrections.

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