

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2374

2015 Carryover

(BY DELEGATES RODIGHIERO AND HICKS)

[INTRODUCED JANUARY 13, 2016; REFERRED TO THE
Committee on Veterans Affairs' and Homeland
Security then Finance.]

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

Be it enacted by the Legislature of West Virginia:

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

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

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

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

7 (2) In addition to any benefit provided by federal law, any member of the retirement system

8 who has previously served in or enters the active service of the Armed Forces of the United States
9 during any period of compulsory military service or during a period of armed conflict shall receive
10 credited service for the time spent in the Armed Forces of the United States, not to exceed five
11 years if the member:

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

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

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

20 (4) If a member of the Public Employees Retirement System enters the active service of
21 the United States and serves during any period of compulsory military service regardless of being
22 activated, on standby for call up or activation during such times, including the Vietnam Conflict,
23 or during any period of armed conflict, during the period of the armed service and until the
24 member's return to the employ of a participating public employer, the member's contributions to
25 the retirement system is suspended and any credit balance remaining in the member's deposit
26 fund shall be accumulated at regular interest: *Provided, That* notwithstanding any provision in
27 this article to the contrary, if an employee of a participating political subdivision serving in the
28 military service during any period of compulsory military service or armed conflict has
29 accumulated credited service prior to the last entry into military service, in an amount that, added
30 to the time in active military service while an employee equals nine or more years, and the
31 member is unable to resume employment with a participating employer upon completion of duty

32 due to death during or as a result of active service, all time spent in active military service, up to
33 and including a total of five years, is considered to be credited service and death benefits are
34 vested in the member: *Provided, however,* That the active service during the time the member
35 is an employee must be as a result of an order or call to duty, and not as a result of volunteering
36 for assignment or volunteering to extend the time in service beyond the time required by order or
37 call.

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

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

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

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

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

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

61 (2) "Spanish-American War" means the period beginning April 21, 1898, and ending July
62 4, 1902, and includes the Philippine Insurrection, the Boxer Rebellion, and in the case of a veteran
63 who served with the United States Military forces engaged in hostilities in the Moro Province,
64 means the period beginning April 21, 1898, and ending July 15, 1903.

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

68 (4) "World War I" means the period beginning April 6, 1917, and ending November 11,
69 1918, and in the case of a veteran who served with the United States Military forces in Russia,
70 means the period beginning April 16, 1917, and ending April 1, 1920.

71 (5) "World War II" means the period beginning December 7, 1941, and ending December
72 31, 1946.

73 (6) "Korean conflict" means the period beginning June 27, 1950, and ending January 31,
74 1955.

75 (7) "The Vietnam era" means the period beginning February 28, 1961, and ending May 7,
76 1975, in the case of a veteran who served in the Republic of Vietnam during that period; and
77 August 5, 1964, and ending May 7, 1975, in all other cases.

78 (8) "Persian Gulf War" means the period beginning August 2, 1990, and ending April 11,
79 1991.

80 (c) Notwithstanding the preceding provisions of this section, contributions, benefits and
 81 service credit with respect to qualified military service shall be provided in accordance with
 82 Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military
 83 service" has the same meaning as in Section 414(u) of the Internal Revenue Code. No military
 84 service credit may be used in more than one retirement system administered by the Consolidated
 85 Public Retirement Board and once used in any system, may not be used again in any other
 86 system. The board is authorized to determine all questions and make all decisions relating to
 87 this section and, pursuant to the authority granted to the board in section one, article ten-d of this
 88 chapter, may promulgate rules relating to contributions, benefits and service credit to comply with
 89 Section 414(u) of the Internal Revenue Code.

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

- 93 (1) One year service credit for two years' active duty with the West Virginia National Guard;
- 94 (2) One and one-half years service credit for three years of active duty;
- 95 (3) Three years' service credit for five years of active duty; and
- 96 (4) A maximum service credit of four years for six years of active duty.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-10. Rules of division.

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

- 3 (1) For the preparation, maintenance and revision of a position classification plan for all
 4 positions in the classified service and a position classification plan for all positions in the classified-

5 exempt service, based upon similarity of duties performed and responsibilities assumed, so that
6 the same qualifications may reasonably be required for and the same schedule of pay may be
7 equitably applied to all positions in the same class. Except for persons employed by the
8 governing boards of higher education, all persons receiving compensation as a wage or salary,
9 funded either in part or in whole by the state, are included in either the position classification plan
10 for classified service or classified-exempt service. After each such classification plan has been
11 approved by the board, the director shall allocate the position of every employee in the classified
12 service to one of the classes in the classified plan and the position of every employee in the
13 classified-exempt service to one of the positions in the classified-exempt plan. Any employee
14 affected by the allocation of a position to a class shall, after filing with the director of personnel a
15 written request for reconsideration thereof in such manner and form as the director may prescribe,
16 be given a reasonable opportunity to be heard thereon by the director. The interested appointing
17 authority shall be given like opportunity to be heard.

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

25 (3) For open competitive examinations to test the relative fitness of applicants for the
26 respective positions in the classified service. Such examinations need not be held until after the
27 rules have been adopted, the service classified and a pay plan established, but shall be held not
28 later than one year after this article takes effect. Such examinations shall be announced publicly

29 at least fifteen days in advance of the date fixed for the filing of applications therefor, and may be
30 advertised through the press, radio and other media. The director may, however, in his or her
31 discretion, continue to receive applications and examine candidates long enough to assure a
32 sufficient number of eligibles to meet the needs of the service and may add the names of
33 successful candidates to existing eligible lists in accordance with their respective ratings.

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

37 An additional three points shall be awarded to a member of the National Guard and
38 Reserve with two years of service. A member with four years of service shall be awarded an
39 additional four points and a member with five or more years of service shall be awarded an
40 additional five points.

41 (4) For promotions within the classified service which shall give appropriate consideration
42 to the applicant's qualifications, record of performance, seniority and his or her score on a written
43 examination, when such examination is practicable. An advancement in rank or grade or an
44 increase in salary beyond the maximum fixed for the class shall constitute a promotion. When
45 any benefit such as a promotion, wage increase or transfer is to be awarded, or when a withdrawal
46 of a benefit such as a reduction in pay, a layoff or job termination is to be made, and a choice is
47 required between two or more employees in the classified service as to who will receive the benefit
48 or have the benefit withdrawn, and if some or all of the eligible employees have substantially equal
49 or similar qualifications, consideration shall be given to the level of seniority of each of the
50 respective employees as a factor in determining which of the employees will receive the benefit
51 or have the benefit withdrawn, as the case may be. When an employee classified in a secretarial
52 or clerical position has, irrespective of job classification, actual job experience related to the

53 qualifications for a managerial or supervisory position, the division shall consider the experience
54 as qualifying experience for the position. The division in its classification plan may, for
55 designated classifications, permit substitution of qualifying experience for specific educational or
56 training requirements at a rate determined by the division.

57 (5) For layoffs by classification for reason of lack of funds or work, or abolition of a position,
58 or material changes in duties or organization, or any loss of position because of the provisions of
59 this subdivision and for recall of employees so laid off, consideration shall be given to an
60 employee's seniority as measured by permanent employment in the classified service or a state
61 agency. In the event that the agency wishes to lay off a more senior employee, the agency must
62 demonstrate that the senior employee cannot perform any other job duties held by less senior
63 employees within that agency in the job class or any other equivalent or lower job class for which
64 the senior employee is qualified: *Provided*, That if an employee refuses to accept a position in
65 a lower job class, such employee shall retain all rights of recall as hereinafter provided.

66 (6) For recall of employees, recall shall be by reverse order of layoff to any job class that
67 the employee has previously held or a lower class in the series within the agency as that job class
68 becomes vacant. An employee will retain his or her place on the recall list for the same period
69 of time as his or her seniority on the date of his or her layoff or for a period of two years, whichever
70 is less. No new employees shall be hired for any vacancy in his or her job class or in a lower job
71 class in the series until all eligible employees on layoff are given the opportunity to refuse that job
72 class. An employee shall be recalled onto jobs within the county wherein his or her last place of
73 employment is located or within a county contiguous thereto. Any laid-off employee who is
74 eligible for a vacant position shall be notified by certified mail of the vacancy. It ~~shall be~~ is the
75 responsibility of the employee to notify the agency of any change in his or her address.

76 Notwithstanding any other provision of the code to the contrary, except for the provisions

77 of section seven, article two, chapter five-b of this code, when filling vacancies at state agencies
78 the directors of state agencies shall, for a period of twelve months after the layoff of a permanent
79 classified employee in another agency, give preference to qualified permanent classified
80 employees based on seniority and fitness over all but existing employees of the agency or its
81 facilities: *Provided*, That employment of these persons who are qualified and who were
82 permanently employed immediately prior to their layoff shall not supersede the recall rights of
83 employees who have been laid off in such agency or facility.

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

90 For the establishment of eligible lists for preference as provided in subdivision (6) of this
91 section, a list shall be provided according to seniority. An appointed authority shall make the
92 selection of the most senior qualified person: *Provided*, That eligibility for appointment from any
93 such list shall continue not longer than one year and shall cease immediately upon appointment
94 to a classified position.

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

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

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

106 (11) For keeping records of performance of all employees in the classified service, which
107 service records may be considered in determining salary increases and decreases provided in
108 the pay plan; as a factor in promotion tests; as a factor in determining the order of layoffs because
109 of lack of funds or work and in reinstatement; and as a factor in demotions, discharges and
110 transfers.

111 (12) For discharge or reduction in rank or grade only for cause of employees in the
112 classified service. Discharge or reduction of these employees shall take place only after the
113 person to be discharged or reduced has been presented with the reasons for such discharge or
114 reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or
115 upon request to appear personally and reply to the appointing authority or his or her deputy:
116 *Provided*, That upon an involuntary discharge for cause, the employer may require immediate
117 separation from the workplace, or the employee may elect immediate separation. If separation
118 is required by the employer in lieu of any advance notice of discharge, or if immediate separation
119 is elected by an employee who receives notice of an involuntary discharge for cause, the
120 employee is entitled to receive severance pay attributable to time the employee otherwise would
121 have worked, up to a maximum of 15 calendar days following separation. Receipt of severance
122 pay does not affect any other right to which the employee is entitled with respect to the discharge.
123 The statement of reasons and the reply shall be filed as a public record with the director.
124 Notwithstanding the foregoing provisions of this subdivision, no permanent employee shall may

125 be discharged from the classified service for absenteeism upon using all entitlement to annual
126 leave and sick leave when ~~such~~ the use has been due to illness or injury as verified by a
127 physician's certification or for other extenuating circumstances beyond the employee's control
128 unless his or her disability is of ~~such~~ a nature as to permanently incapacitate him or her from the
129 performance of the duties of his or her position. Upon exhaustion of annual leave and sick leave
130 credits for the reasons specified herein and with certification by a physician that the employee is
131 unable to perform his or her duties, a permanent employee shall be granted a leave of absence
132 without pay for a period not to exceed six months if ~~such~~ the employee is not permanently unable
133 to satisfactorily perform the duties of his or her position.

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

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

138 The provisions of this section are subject to any modifications contained in chapter five-f
139 of this code. The board may include in the rules provided ~~for~~ in this article such provisions as
140 are necessary to conform to regulations and standards of any federal agency governing the
141 receipt and use of federal grants-in-aid by any state agency, anything in this article to the contrary
142 notwithstanding. The board and the director shall see that rules and practices meeting such
143 standards are in effect 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.