

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2415

FISCAL
NOTE

2015 Carryover

(BY DELEGATES P. SMITH, RODIGHIERO, TRECOST,
ELDRIDGE, CAMPBELL, LYNCH, AND LONGSTRETH)

[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, relating
 2 to removing the armed conflict requirement before state employees may receive credit for
 3 time served in the Armed Forces of the United States; and prohibiting those employees
 4 who were not honorably discharged from receiving that credit.

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 to read as follows:

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 or during any period~~
22 ~~of armed conflict~~, during the period of ~~the armed~~ service and until the member's return to the
23 employ of a participating public employer, the member's contributions to the retirement system is
24 suspended and any credit balance remaining in the member's deposit fund shall be accumulated
25 at regular interest: *Provided*, That notwithstanding any provision in this article to the contrary, if
26 an employee of a participating political subdivision serving in the military service ~~during any period~~
27 ~~of compulsory military service or armed conflict~~ has accumulated credited service prior to the last
28 entry into military service, in an amount that, added to the time in active military service while an
29 employee equals nine or more years, and the member is unable to resume employment with a
30 participating employer upon completion of duty due to death during or as a result of active service,
31 all time spent in active military service, up to and including a total of five years, is considered to
32 be credited service and death benefits are vested in the member. ~~*Provided, however*, That the~~
33 ~~active service during the time the member is an employee must be as a result of an order or call~~
34 ~~to duty, and not as a result of volunteering for assignment or volunteering to extend the time in~~
35 ~~service beyond the time required by order or call.~~

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

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

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

50 ~~(8) (7)~~ The Board of Trustees may propose legislative rules for promulgation in accordance
51 with the provisions of article three, chapter twenty-nine-a of this code to administer the provisions
52 of this section.

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

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

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

63 ~~(3) "The Mexican border period" means the period beginning on May 9, 1916, and ending~~

64 ~~on April 5, 1917, in the case of a veteran who during the period served in Mexico, on its borders~~
65 ~~or in the waters adjacent to it.~~

66 ~~(4) "World War I" means the period beginning on April 6, 1917, and ending on November~~
67 ~~11, 1918, and in the case of a veteran who served with the United States Military forces in Russia,~~
68 ~~means the period beginning on April 6, 1917, and ending on April 1, 1920.~~

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

71 ~~(6) "Korean conflict" means the period beginning on June 27, 1950, and ending on January~~
72 ~~31, 1955.~~

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

76 ~~(8) "Persian Gulf War" means the period beginning on August 2, 1990, and ending on April~~
77 ~~11, 1991.~~

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

88 contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue
89 Code.

NOTE: The purpose of this bill is to remove the requirement that those 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.