

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4487

BY DELEGATES FOLK, WALTERS, KURCABA AND MARCUM

[Introduced February 11, 2016; Referred
to the Committee on Pensions and Retirement then
Finance.]

1 A BILL to amend and reenact §5-10-2 and §5-10-14 of the Code of West Virginia, 1931, as
 2 amended; and to amend and reenact §18-7A-17a of said code, all relating to state
 3 retirement systems; defining compensation and employee for the Public Employees
 4 Retirement System; requiring payment of reinstatement interest in the Public Employees
 5 Retirement System in certain circumstances; and providing that failure of employee to pay
 6 the Teachers Retirement System according to a contract to purchase military service
 7 credit is to be treated as an overpayment or excess contribution pursuant to the article.

Be it enacted by the Legislature of West Virginia:

1 That §5-10-2 and §5-10-14 of the Code of West Virginia, 1931, as amended, be amended
 2 and reenacted; and that §18-7A-17a of said code be amended and reenacted, all to read as
 3 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.

§5-10-2. Definitions.

1 Unless a different meaning is clearly indicated by the context, the following words and
 2 phrases as used in this article have the following meanings:

3 (1) "Accumulated contributions" means the sum of all amounts deducted from the
 4 compensations of a member and credited to his or her individual account in the members' deposit
 5 fund, together with regular interest on the contributions;

6 (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on
 7 behalf of a retired member;

8 (3) "Actuarial equivalent" means a benefit of equal value computed upon the basis of a
9 mortality table and regular interest adopted by the board of trustees from time to time: *Provided,*
10 That when used in the context of compliance with the federal maximum benefit requirements of
11 Section 415 of the Internal Revenue Code, actuarial equivalent shall be computed using the
12 mortality tables and interest rates required to comply with those requirements;

13 (4) "Annuity" means an annual amount payable by the retirement system throughout the
14 life of a person. All annuities shall be paid in equal monthly installments, rounding to the upper
15 cent for any fraction of a cent;

16 (5) "Annuity reserve" means the present value of all payments to be made to a retirant or
17 beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other
18 tables of experience, and regular interest, adopted by the board of trustees from time to time;

19 (6) "Beneficiary" means any person, except a retirant, who is entitled to, or will be entitled
20 to, an annuity or other benefit payable by the retirement system;

21 (7) "Board of Trustees" or "board" means the Board of Trustees of the West Virginia
22 Consolidated Public Retirement System;

23 (8) "Compensation" means the remuneration paid a member by a participating public
24 employer for personal services rendered by the member to the participating public employer. In
25 the event a member's remuneration is not all paid in money, his or her participating public
26 employer shall fix the value of the portion of the remuneration which is not paid in money:
27 Provided, That members hired in a position for the first time on or after July 1, 2014, who receive
28 nonmonetary remuneration shall not have nonmonetary remuneration included in compensation
29 for retirement purposes and nonmonetary remuneration may not be used in calculating a
30 member's final average salary. Any lump sum or other payments paid to members that do not
31 constitute regular salary or wage payments are not considered compensation for the purpose of
32 withholding contributions for the system or for the purpose of calculating a member's final average
33 salary. These payments include, but are not limited to, attendance or performance bonuses, one-

34 time flat fee or lump sum payments, payments paid as a result of excess budget, or employee
35 recognition payments. The board shall have final power to decide whether the payments shall be
36 considered compensation for purposes of this article;

37 (9) "Contributing service" means service rendered by a member within this state and for
38 which the member made contributions to a public retirement system account of this state, to the
39 extent credited him or her as provided by this article;

40 (10) "Credited service" means the sum of a member's prior service credit, military service
41 credit, workers' compensation service credit and contributing service credit standing to his or her
42 credit as provided in this article;

43 (11) "Employee" means any person who serves regularly as an officer or employee, full
44 time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment,
45 in the service of, and whose compensation is payable, in whole or in part, by any political
46 subdivision, or an officer or employee whose compensation is calculated on a daily basis and
47 paid monthly or on completion of assignment, including technicians and other personnel
48 employed by the West Virginia National Guard whose compensation, in whole or in part, is paid
49 by the federal government: *Provided*, That an employee of the Legislature whose term of
50 employment is otherwise classified as temporary and who is employed to perform services
51 required by the Legislature for its regular sessions or during the interim between regular sessions
52 and who has been or is employed during regular sessions or during the interim between regular
53 sessions in seven or more consecutive calendar years, as certified by the clerk of the house in
54 which the employee served, is an employee, any provision to the contrary in this article
55 notwithstanding, and is entitled to credited service in accordance with provisions of section
56 fourteen of this article: *Provided, however*, That members of the legislative body of any political
57 subdivision and judges of the state Court of Claims are employees receiving one year of service
58 credit for each one-year term served and prorated service credit for any partial term served,
59 anything contained in this article to the contrary notwithstanding: *Provided further*, That only a

60 compensated board member of a participating public employer appointed to a board of a
61 nonlegislative body for the first time on or after July 1, 2014, who normally is required to work
62 twelve months per year and one thousand forty hours of service per year is an employee. In any
63 case of doubt as to who is an employee within the meaning of this article, the board of trustees
64 shall decide the question;

65 (12) "Employer error" means an omission, misrepresentation or violation of relevant
66 provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the
67 relevant provisions of both the West Virginia Code and of the West Virginia Code of State
68 Regulations by the participating public employer that has resulted in an underpayment or
69 overpayment of contributions required. A deliberate act contrary to the provisions of this section
70 by a participating public employer does not constitute employer error;

71 (13) "Final average salary" means either of the following: *Provided*, That salaries for
72 determining benefits during any determination period may not exceed the maximum
73 compensation allowed as adjusted for cost of living in accordance with section seven, article ten-
74 d of this chapter and Section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That
75 the provisions of section twenty-two-h of this article are not applicable to the amendments made
76 to this subdivision during the 2011 regular session of the Legislature;

77 (A) The average of the highest annual compensation received by a member, including a
78 member of the Legislature who participates in the retirement system in the year 1971 or thereafter,
79 during any period of three consecutive years of credited service contained within the member's
80 fifteen years of credited service immediately preceding the date his or her employment with a
81 participating public employer last terminated: *Provided*, That for persons who were first hired on
82 or after July 1, 2015, any period of five consecutive years of contributing service contained within
83 the member's fifteen years of credited service immediately preceding the date his or her
84 employment with a participating public employer last terminated ; or

85 (B) If the member has less than five years of credited service, the average of the annual

86 rate of compensation received by the member during his or her total years of credited service;
87 and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision,
88 of a member of the Legislature who participates in the retirement system as a member of the
89 Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation
90 (the total of all compensation paid under sections two, three, four and five, article two-a, chapter
91 four of this code), in the year 1971, or in any year thereafter, plus any other compensation he or
92 she receives in any year from any other participating public employer including the State of West
93 Virginia, without any multiple in excess of one times his or her actual legislative compensation
94 and other compensation, shall be used: *Provided*, That final average salary for any former
95 member of the Legislature or for any member of the Legislature in the year 1971 who, in either
96 event, was a member of the Legislature on November 30, 1968, or November 30, 1969, or
97 November 30, 1970, or on November 30 in any one or more of those three years and who
98 participated in the retirement system as a member of the Legislature in any one or more of those
99 years means: (i) Either, notwithstanding the provisions of this subdivision preceding this proviso,
100 \$1,500 multiplied by eight, plus the highest other compensation the former member or member
101 received in any one of the three years from any other participating public employer including the
102 State of West Virginia; or (ii) final average salary determined in accordance with paragraph (A) or
103 (B) of this subdivision, whichever computation produces the higher final average salary, and in
104 determining the annual compensation under subparagraph (ii) of this paragraph, the legislative
105 compensation of the former member shall be computed on the basis of \$1,500 multiplied by eight,
106 and the legislative compensation of the member shall be computed on the basis set forth in the
107 provisions of this subdivision immediately preceding this paragraph or on the basis of \$1,500
108 multiplied by eight, whichever computation as to the member produces the higher annual
109 compensation;

110 (14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended,
111 codified at Title 26 of the United States Code;

112 (15) "Limited credited service" means service by employees of the West Virginia
113 Educational Broadcasting Authority, in the employment of West Virginia University, during a
114 period when the employee made contributions to another retirement system, as required by West
115 Virginia University, and did not make contributions to the Public Employees Retirement System:
116 *Provided*, That while limited credited service can be used for the formula set forth in subsection
117 (e), section twenty-one of this article, it may not be used to increase benefits calculated under
118 section twenty-two of this article;

119 (16) "Member" means any person who has accumulated contributions standing to his or
120 her credit in the members' deposit fund;

121 (17) "Participating public employer" means the State of West Virginia, any board,
122 commission, department, institution or spending unit and includes any agency created by rule of
123 the Supreme Court of Appeals having full-time employees, which for the purposes of this article
124 is considered a department of state government; and any political subdivision in the state which
125 has elected to cover its employees, as defined in this article, under the West Virginia Public
126 Employees Retirement System;

127 (18) "Plan year" means the same as referenced in section forty-two of this article;

128 (19) "Political subdivision" means the State of West Virginia, a county, city or town in the
129 state; a school corporation or corporate unit; any separate corporation or instrumentality
130 established by one or more counties, cities or towns, as permitted by law; any corporation or
131 instrumentality supported in most part by counties, cities or towns; and any public corporation
132 charged by law with the performance of a governmental function and whose jurisdiction is
133 coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency
134 participating in the Public Employees Retirement System before July 1, 1997, is considered a
135 political subdivision solely for the purpose of permitting those employees who are members of the
136 Public Employees Retirement System to remain members and continue to participate in the
137 retirement system at their option after July 1, 1997: *Provided, however*, That the Regional

138 Community Policing Institute which participated in the Public Employees Retirement System
139 before July 1, 2000, is considered a political subdivision solely for the purpose of permitting those
140 employees who are members of the Public Employees Retirement System to remain members
141 and continue to participate in the Public Employees Retirement System after July 1, 2000;

142 (20) "Prior service" means service rendered prior to July 1, 1961, to the extent credited a
143 member as provided in this article;

144 (21) "Regular interest" means the rate or rates of interest per annum, compounded
145 annually, as the board of trustees adopts from time to time;

146 (22) "Required beginning date" means April 1 of the calendar year following the later of:
147 (A) The calendar year in which the member attains age seventy and one-half years of age; or (B)
148 the calendar year in which a member who has attained the age seventy and one-half years of age
149 and who ceases providing service covered under this system to a participating employer;

150 (23) "Retirant" means any member who commences an annuity payable by the retirement
151 system;

152 (24) "Retirement" means a member's withdrawal from the employ of a participating public
153 employer and the commencement of an annuity by the retirement system;

154 (25) "Retirement system" or "system" means the West Virginia Public Employees
155 Retirement System created and established by this article;

156 (26) "Retroactive service" means: (1) Service between July 1, 1961, and the date an
157 employer decides to become a participating member of the Public Employees Retirement System;
158 (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost
159 in accordance with 162 CSR 5.13; and (3) service of any member of a legislative body or
160 employees of the State Legislature whose term of employment is otherwise classified as
161 temporary for which the employee is eligible, but for which the employee did not elect to participate
162 at that time;

163 (27) "Service" means personal service rendered to a participating public employer by an

164 employee of a participating public employer; and

165 (28) "State" means the State of West Virginia.

§5-10-14. Service credit; retroactive provisions.

1 (a) The board of trustees shall credit each member with the prior service and contributing
2 service to which he or she is entitled based upon rules adopted by the board of trustees and
3 based upon the following:

4 (1) In no event may less than ten days of service rendered by a member in any calendar
5 month be credited as a month of service: *Provided*, That for employees of the State Legislature
6 whose term of employment is otherwise classified as temporary and who are employed to perform
7 services required by the Legislature for its regular sessions or during the interim between regular
8 sessions and who have been or are ~~se~~ employed during regular sessions or during the interim
9 between regular sessions in seven consecutive calendar years, service credit of one month shall
10 be awarded for each ten days employed in the interim between regular sessions, which interim
11 days shall be cumulatively calculated so that any ten days, regardless of calendar month or year,
12 shall be calculated toward any award of one month of service credit;

13 (2) Except for hourly employees, and those persons who first become members of the
14 retirement system on or after July 1, 2015, ten or more months of service credit earned in any
15 calendar year shall be credited as a year of service: *Provided*, That no more than one year of
16 service may be credited to any member for all service rendered by him or her in any calendar
17 year and no days may be carried over by a member from one calendar year to another calendar
18 year where the member has received a full-year credit for that year; and

19 (3) Service may be credited to a member who was employed by a political subdivision if
20 his or her employment occurred within a period of thirty years immediately preceding the date the
21 political subdivision became a participating public employer.

22 (b) The board of trustees shall grant service credit to employees of boards of health, the
23 Clerk of the House of Delegates and the Clerk of the State Senate or to any former and present

24 member of the State Teachers Retirement System who have been contributing members in the
25 Public Employees Retirement System for more than three years, for service previously credited
26 by the State Teachers Retirement System and shall require the transfer of the member's
27 accumulated contributions to the system and shall also require a deposit, with reinstatement
28 interest as set forth in the board's Rule, Refund, Reinstatement, Retroactive Service, Loan and
29 Correction of Error Interest Factors, 162 C. S. R. 7, of any withdrawals of contributions any time
30 prior to the member's retirement. Repayment of withdrawals shall be as directed by the Board of
31 Trustees.

32 (c) Court reporters who are acting in an official capacity, although paid by funds other than
33 the county commission or State Auditor, may receive prior service credit for time served in that
34 capacity.

35 (d) Active members who previously worked in Comprehensive Employment and Training
36 Act (CETA) may receive service credit for time served in that capacity: *Provided*, That in order to
37 receive service credit under the provisions of this subsection the following conditions must be
38 met: (1) The member must have moved from temporary employment with the participating
39 employer to permanent full-time employment with the participating employer within one hundred
40 twenty days following the termination of the member's CETA employment; (2) the board must
41 receive evidence that establishes to a reasonable degree of certainty as determined by the board
42 that the member previously worked in CETA; and (3) the member shall pay to the board an
43 amount equal to the employer and employee contribution plus interest at the amount set by the
44 board for the amount of service credit sought pursuant to this subsection: *Provided, however*,
45 That the maximum service credit that may be obtained under the provisions of this subsection is
46 two years: *Provided further*, That a member must apply and pay for the service credit allowed
47 under this subsection and provide all necessary documentation by March 31, 2003: *And provided*
48 *further*, That the board shall exercise due diligence to notify affected employees of the provisions
49 of this subsection.

50 (e) (1) Employees of the State Legislature whose terms of employment are otherwise
51 classified as temporary and who are employed to perform services required by the Legislature for
52 its regular sessions or during the interim time between regular sessions shall receive service
53 credit for the time served in that capacity in accordance with the following: For purposes of this
54 section, the term "regular session" means day one through day sixty of a sixty-day legislative
55 session or day one through day thirty of a thirty-day legislative session. Employees of the State
56 Legislature whose term of employment is otherwise classified as temporary and who are
57 employed to perform services required by the Legislature for its regular sessions or during the
58 interim time between regular sessions and who have been or are employed during regular
59 sessions or during the interim time between regular sessions in seven consecutive calendar
60 years, as certified by the clerk of the house in which the employee served, shall receive service
61 credit of six months for all regular sessions served, as certified by the clerk of the house in which
62 the employee served, or shall receive service credit of three months for each regular thirty-day
63 session served prior to 1971: *Provided*, That employees of the State Legislature whose term of
64 employment is otherwise classified as temporary and who are employed to perform services
65 required by the Legislature for its regular sessions and who have been or are employed during
66 the regular sessions in thirteen consecutive calendar years as either temporary employees or full-
67 time employees or a combination thereof, as certified by the clerk of the house in which the
68 employee served, shall receive a service credit of twelve months for each regular session served,
69 as certified by the clerk of the house in which the employee served: *Provided, however*, That the
70 amendments made to this subsection during the 2002 regular session of the Legislature only
71 apply to employees of the Legislature who are employed by the Legislature as either temporary
72 employees or full-time employees as of January 1, 2002, or who become employed by the
73 Legislature as temporary or full-time employees for the first time after January 1, 2002. Employees
74 of the State Legislature whose terms of employment are otherwise classified as temporary and
75 who are employed to perform services required by the Legislature during the interim time between

76 regular sessions shall receive service credit of one month for each ten days served during the
77 interim between regular sessions, which interim days shall be cumulatively calculated so that any
78 ten days, regardless of calendar month or year, shall be calculated toward any award of one
79 month of service credit: *Provided further*, That no more than one year of service may be credited
80 to any temporary legislative employee for all service rendered by that employee in any calendar
81 year and no days may be carried over by a temporary legislative employee from one calendar
82 year to another calendar year where the member has received a full year credit for that year.
83 Service credit awarded for legislative employment pursuant to this section shall be used for the
84 purpose of calculating that member's retirement annuity, pursuant to section twenty-two of this
85 article, and determining eligibility as it relates to credited service, notwithstanding any other
86 provision of this section. Certification of employment for a complete legislative session and for
87 interim days shall be determined by the clerk of the house in which the employee served, based
88 upon employment records. Service of fifty-five days of a regular session constitutes an absolute
89 presumption of service for a complete legislative session and service of twenty-seven days of a
90 thirty-day regular session occurring prior to 1971 constitutes an absolute presumption of service
91 for a complete legislative session. Once a legislative employee has been employed during regular
92 sessions for seven consecutive years or has become a full-time employee of the Legislature, that
93 employee shall receive the service credit provided in this section for all regular and interim
94 sessions and interim days worked by that employee, as certified by the clerk of the house in which
95 the employee served, regardless of when the session or interim legislative employment occurred:
96 *And provided further*, That regular session legislative employment for seven consecutive years
97 may be served in either or both houses of the Legislature.

98 (2) For purposes of this section, employees of the Joint Committee on Government and
99 Finance are entitled to the same benefits as employees of the House of Delegates or the Senate:
100 *Provided*, That for joint committee employees whose terms of employment are otherwise
101 classified as temporary, employment in preparation for regular sessions, certified by the legislative

102 manager as required by the Legislature for its regular sessions, shall be considered the same as
103 employment during regular sessions to meet service credit requirements for sessions served.

104 (f) Any employee may purchase retroactive service credit for periods of employment in
105 which contributions were not deducted from the employee's pay. In the purchase of service credit
106 for employment prior to 1989 in any department, including the Legislature, which operated from
107 the General Revenue Fund and which was not expressly excluded from budget appropriations in
108 which blanket appropriations were made for the state's share of public employees' retirement
109 coverage in the years prior to 1989, the employee shall pay the employee's share. Other
110 employees shall pay the state's share and the employee's share to purchase retroactive service
111 credit. Where an employee purchases service credit for employment which occurred after 1988,
112 that employee shall pay for the employee's share and the employer shall pay its share for the
113 purchase of retroactive service credit: *Provided*, That no legislative employee and no current or
114 former member of the Legislature may be required to pay any interest or penalty upon the
115 purchase of retroactive service credit in accordance with the provisions of this section where the
116 employee was not eligible to become a member during the years for which he or she is purchasing
117 retroactive credit or had the employee attempted to contribute to the system during the years for
118 which he or she is purchasing retroactive service credit and ~~such~~ the contributions would have
119 been refused by the board: *Provided, however*, That a current legislative employee purchasing
120 retroactive credit under this section does so within twenty-four months of ~~becoming a member of~~
121 beginning contributions to the retirement system or no later than December 31, ~~2008~~ 2013,
122 whichever occurs last: *Provided further*, That once a legislative employee becomes a member of
123 the retirement system, he or she may purchase retroactive service credit for any time he or she
124 was employed by the Legislature and did not receive service credit. Any service credit purchased
125 shall be credited as six months for each sixty-day session worked, three months for each thirty-
126 day session worked or twelve months for each sixty-day session for legislative employees who
127 have been employed during regular sessions in thirteen consecutive calendar years, as certified

128 by the clerk of the house in which the employee served, and credit for interim employment as
129 provided in this subsection: *And provided further*, That this legislative service credit shall also be
130 used for months of service in order to meet the sixty-month requirement for the payments of a
131 temporary legislative employee member's retirement annuity: *And provided further*, That no
132 legislative employee may be required to pay for any service credit beyond the actual time he or
133 she worked regardless of the service credit which is credited to him or her pursuant to this section:
134 *And provided further*, That any legislative employee may request a recalculation of his or her
135 credited service to comply with the provisions of this section at any time.

136 (g) (1) Notwithstanding any provision to the contrary, the seven consecutive calendar
137 years requirement and the thirteen consecutive calendar years requirement and the service credit
138 requirements set forth in this section shall be applied retroactively to all periods of legislative
139 employment prior to the passage of this section, including any periods of legislative employment
140 occurring before the seven consecutive and thirteen consecutive calendar years referenced in
141 this section: *Provided*, That the employee has not retired prior to the effective date of the
142 amendments made to this section in the 2002 regular session of the Legislature.

143 (2) The requirement of seven consecutive years and the requirement of thirteen
144 consecutive years apply retroactively to all legislative employment prior to the effective date of
145 the 2006 amendments to this section.

146 (h) The board of trustees shall grant service credit to any former or present member of the
147 State Police Death, Disability and Retirement Fund who has been a contributing member of this
148 system for more than three years for service previously credited by the State Police Death,
149 Disability and Retirement Fund if the member transfers all of his or her contributions to the State
150 Police Death, Disability and Retirement Fund to the system created in this article, including
151 repayment of any amounts withdrawn any time from the State Police Death, Disability and
152 Retirement Fund by the member seeking the transfer allowed in this subsection: *Provided*, That
153 there shall be added by the member to the amounts transferred or repaid under this subsection

154 an amount which shall be sufficient to equal the contributions he or she would have made had
155 the member been under the Public Employees Retirement System during the period of his or her
156 membership in the State Police Death, Disability and Retirement Fund, excluding contributions
157 on lump sum payment for annual leave, plus interest at a rate determined by the board.

158 (i) The provisions of section twenty-two-h of this article are not applicable to the
159 amendments made to this section during the 2006 regular session.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-17a. Qualified military service.

1 (a) Except as provided in subsection (b) of this section, for the purpose of this article, the
2 retirement board shall grant prior service credit to members of the retirement system who were
3 honorably discharged from active duty service in any of the Armed Forces of the United States in
4 any period of national emergency within which a federal Selective Service Act was in effect. For
5 purposes of this section, "Armed Forces" includes Women's Army Corps, women's appointed
6 volunteers for emergency service, Army Nurse Corps, SPARS, Women's Reserve and other
7 similar units officially part of the military service of the United States. The military service is
8 considered equivalent to public school teaching, and the salary equivalent for each year of that
9 service is the actual salary of the member as a teacher for his or her first year of teaching after
10 discharge from military service. Prior service credit for military service shall not exceed ten years
11 for any one member, nor shall it exceed twenty-five percent of total service at the time of
12 retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits
13 and service credit with respect to qualified military service shall be provided in accordance with
14 Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military
15 service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement
16 board is authorized to determine all questions and make all decisions relating to this section and,

17 pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five
18 of this code, may promulgate rules relating to contributions, benefits and service credit to comply
19 with Section 414(u) of the Internal Revenue Code. No military service credit may be used in more
20 than one retirement system administered by the Consolidated Public Retirement Board.

21 (b) Subsection (a) of this section does not apply to any member who first becomes an
22 employee of a participating public employer on or after July 1, 2015. This subsection applies to
23 any member who first became an employee of a participating public employer on or after July 1,
24 2015, and also applies to any member who became an employee of a participating public
25 employer before July 1, 2015, and is unable to meet the requirements of subsection (a) of this
26 section.

27 (1) Any member may purchase up to sixty months of military service credit for time served
28 in active military duty prior to first becoming an employee of a participating public employer if all
29 of the following conditions are met:

30 (A) The member has completed a complete fiscal year of contributory service;

31 (B) The active military duty occurs prior to the date on which the member first becomes
32 an employee of a participating public employer; and

33 (C) The employee pays to the retirement system the actuarial reserve purchase amount
34 within forty-eight months after the date on which employer and employee contributions are first
35 received by the retirement system for the member and while he or she continues to be in the
36 employ of a participating public employer and contributing to the retirement system, or within forty-
37 eight months of July 1, 2015, whichever is later: *Provided*, That any employee who ceases
38 employment with a participating public employer before completing the required actuarial reserve
39 purchase amount in full shall not be eligible to purchase the military service.

40 (2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first
41 becomes an employee of a participating public employer on or after July 1, 2015, but who does
42 not remain employed and contributing to the retirement system for at least a complete fiscal year

43 after his or her initial employment, shall be considered to have met the requirement of said
44 paragraph the first time he or she becomes an employee of a participating public employer and
45 completes at least a complete fiscal year of contributing service. Such a member shall be
46 considered to have met the requirement of paragraph (C) of said subdivision if he or she pays to
47 the retirement system the actuarial reserve purchase amount within forty-eight months after the
48 date on which employer and employee contributions are first received by the retirement system
49 for the member the first time he or she becomes an employee of a participating public employer
50 and completes at least a complete fiscal year of contributing service, and while he or she
51 continues to be in the employ of a participating public employer and contributing to the retirement
52 system.

53 (3) A member who first becomes an employee of a participating public employer on or
54 after July 1, 2015, may purchase military service credit for active military duty performed on or
55 after the date he or she first becomes an employee of a participating public employer only if all of
56 the following conditions are met: *Provided*, That the maximum military service credit such member
57 may purchase shall take into account any military service credit purchased for active military duty
58 pursuant to subdivision (1) of this subsection in addition to any military service credit purchased
59 pursuant to this subdivision:

60 (A) The member was an employee of a participating public employer, terminated
61 employment and experienced a break in contributing service in the retirement system of one or
62 more months, performed active military service while not an employee of the participating public
63 employer and not contributing to the retirement system, then again becomes an employee of a
64 participating public employer and completes at least a complete fiscal year of contributory service;

65 (B) The member does not qualify for military service credit for such active military duty
66 pursuant to subsection (d) of this section; and

67 (C) The member pays to the retirement system the actuarial reserve purchase amount
68 within forty-eight months after the date on which employer and employee contributions are first

69 received by the retirement system for the member after he or she again becomes an employee
70 of a participating public employer immediately following the period of active military duty and break
71 in service and completes at least a complete fiscal year of contributory service, and while he or
72 she continues to be in the employ of a participating public employer and contributing to the
73 retirement system.

74 (4) Notwithstanding paragraph (A), subdivision (3) of this subsection, a member who
75 otherwise meets the requirements of said paragraph, but who does not remain employed and
76 contributing to the retirement system for at least a complete fiscal year when he or she first
77 becomes an employee of a participating public employer after the period of active military duty
78 and break in service, shall be considered to have met the requirement of said paragraph the first
79 time he or she again becomes an employee of a participating public employer and completes at
80 least a complete fiscal year of contributing service. Such a member shall be considered to have
81 met the requirement of paragraph (C) of said subdivision if he or she pays to the retirement system
82 the actuarial reserve purchase amount within forty-eight months after the date on which employer
83 and employee contributions are first received by the retirement system for the member for the first
84 time he or she again becomes an employee of a participating public employer and completes at
85 least a complete fiscal year of contributing service, and while he or she continues to be in the
86 employ of a participating public employer and contributing to the retirement system.

87 (5) For purposes of this subsection, the following definitions shall apply:

88 (A) "Active military duty" means full-time active duty in the Armed Forces of the United
89 States for a period of thirty or more consecutive calendar days. Active military duty does not
90 include inactive duty of any kind.

91 (B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by
92 the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing
93 at seven and one-half percent from the calculation month through the purchase month,
94 compounded monthly.

95 (C) "Armed forces of the United States" means the Army, Navy, Air Force, Marine Corps,
96 and Coast Guard, the reserve components thereof, and the National Guard of the United States
97 or the National Guard of a state or territory when members of the same are on full-time active
98 duty pursuant to Title 10 or Title 32 of the United States Code.

99 (D) "Calculation month" means the month immediately following the month in which the
100 member completes a complete fiscal year of contributory service with a participating public
101 employer required by subdivision (1), (2), (3) or (4) of this subsection, as applicable.

102 (E) "Purchase accrued benefit" means two percent times the purchase military service
103 times the purchase average monthly salary.

104 (F) "Purchase age" means the age of the employee in years and completed months as of
105 the first day of the calculation month.

106 (G) "Purchase annuity rate" means the actuarial lump sum annuity factor calculated as of
107 the calculation month based on the following actuarial assumptions: Interest rate of seven and
108 one-half percent; mortality of the 1971 group annuity mortality table, fifty percent blended male
109 and female rates, applied on a unisex basis to all members; if purchase age is under age sixty-
110 two, a deferred annuity factor with payments commencing at age sixty-two; and if purchase age
111 is sixty-two or over, an immediate annuity factor with payments starting at the purchase age.

112 (H) "Purchase average monthly salary" means the average monthly salary of the member
113 during the number of months of the member's contract during the fiscal year of contributory
114 service required by subdivisions (1), (2), (3) and (4) of this subsection, as applicable. For any
115 member who first became an employee of a participating public employer before July 1, 2015,
116 the purchase average monthly salary means the average monthly salary of the member during
117 the number of months of the member's contract during his or her complete fiscal year of
118 contributory service on or after July 1, 2015.

119 (I) "Purchase military service" means the amount of military service being purchased by
120 the employee in months up to the sixty-month maximum, calculated in accordance with

121 subdivision (7) of this subsection.

122 (J) "Purchase month" means the month in which the employee deposits the actuarial
123 reserve lump sum purchase amount into the plan trust fund in full payment of the service credit
124 being purchased or makes the final payment of the actuarial reserve purchase amount into the
125 plan trust fund in full payment of the service credit being purchased.

126 (6) A member may purchase military service credit for a period of active military duty
127 pursuant to this subsection only if the member received an honorable discharge for the period.
128 Anything other than an honorable discharge, including, but not limited to, a general or under
129 honorable conditions discharge, an entry-level separation discharge, an other than honorable
130 conditions discharge or a dishonorable discharge, shall disqualify the member from receiving
131 military service credit for the period of service. The board shall require a member requesting
132 military service credit to provide official documentation establishing that the requirements set forth
133 in this subsection have been met.

134 (7) To calculate the amount of military service credit a member may purchase, the board
135 shall add the total number of days in each period of a member's active military duty eligible to be
136 purchased, divide the total by thirty, and round up or down to the nearest integer (fractions of 0.5
137 shall be rounded up), in order to yield the total number of months of military service credit a
138 member may purchase, subject to the sixty-month maximum. A member may purchase all or part
139 of the maximum amount of military service credit he or she is eligible for in one-month increments.

140 (8) To receive credit, a member must submit a request to purchase military service credit
141 to the board, on such form or in such other manner as shall be required by the board, within the
142 complete fiscal year period required by subdivision (1), (2), (3) or (4) of this subsection, as
143 applicable. The board shall then calculate the actuarial reserve lump sum purchase amount,
144 which amount must be paid by the member within the 48-month period required by said
145 subdivisions, as applicable. A member purchasing military service credit pursuant to this
146 subsection must do so in a single, lump sum payment: *Provided* , That the board may accept

147 partial, installment or other similar payments if the employee executes a contract with the board
148 specifying the amount of military service to be purchased and the payments required: *Provided,*
149 *however,* That any failure to pay the contract amount in accordance with this section shall be
150 treated as an overpayment or excess contribution subject to section ~~forty-four~~ fourteen-c of this
151 article and no military service shall be credited.

152 (9) The board shall require a member requesting military service credit to provide official
153 documentation establishing that the requirements set forth in this subsection have been met.

154 (10) Military service credit purchased pursuant to this subsection shall not be considered
155 contributing service credit or contributory service for purposes of this article.

156 (11) If a member who has purchased military service credit pursuant to this subsection is
157 eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of
158 this article, he or she shall also receive a refund of the actuarial reserve purchase amount he or
159 she paid to the retirement system to purchase military service credit, together with regular interest
160 on such amount.

161 (c) No period of military service shall be used to obtain credit in more than one retirement
162 system administered by the board and once used in any system, a period of military service may
163 not be used again in any other system.

164 (d) Notwithstanding the preceding provisions of this section, contributions, benefits and
165 service credit with respect to qualified military service shall be provided in accordance with
166 Section 414(u) of the Internal Revenue Code and the Federal Uniformed Services Employment
167 and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same
168 may be amended from time to time. For purposes of this section, "qualified military service" has
169 the same meaning as in Section 414(u) of the Internal Revenue Code.

170 (e) In any case of doubt as to the period of service to be credited a member under the
171 provisions of this section, the board has final power to determine the period. The board is
172 authorized to determine all questions and make all decisions relating to this section and, pursuant

173 to the authority granted to the board in section one, article ten-d of this chapter, may propose
174 rules to administer this section for legislative approval in accordance with the provisions of article
175 three, chapter twenty-nine-a of this code.

NOTE: The purpose of this bill is to correct items inadvertently changed in SB529 enacted during the 2015 Regular Session.

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