

H. B. 2339

(By Delegates M. Smith, Ferro, Longstreth and D. Poling)
[Introduced February 13, 2013; 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 removing the armed conflict
requirement before state employees may receive credit for time
served in the Armed Forces of the United States; and
prohibiting those employees who were not honorably discharged
from receiving that credit.

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.

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

(a) (1) ~~The Legislature recognizes the men and women of this
state who have served in the Armed Forces of the United States
during times of war, conflict and danger. It is the intent of this
section to confer military service credit upon persons who are~~

1 eligible at any time for public employees retirement benefits for
2 any time served in active duty in the Armed Forces of the United
3 States. ~~when the duty was during any period of compulsory military~~
4 ~~service or during a period of armed conflict, as defined in this~~
5 ~~section.~~

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

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

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

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

24 (4) If a member of the Public Employees Retirement System

1 enters the active service of the United States ~~and serves during~~
2 ~~any period of compulsory military service or during any period of~~
3 ~~armed conflict,~~ during the period of ~~the armed~~ service and until
4 the member's return to the employ of a participating public
5 employer, the member's contributions to the retirement system is
6 suspended and any credit balance remaining in the member's deposit
7 fund shall be accumulated at regular interest: *Provided, That*
8 notwithstanding any provision in this article to the contrary, if
9 an employee of a participating political subdivision serving in the
10 military service ~~during any period of compulsory military service~~
11 ~~or armed conflict~~ has accumulated credited service prior to the
12 last entry into military service, in an amount that, added to the
13 time in active military service while an employee equals nine or
14 more years, and the member is unable to resume employment with a
15 participating employer upon completion of duty due to death during
16 or as a result of active service, all time spent in active military
17 service, up to and including a total of five years, is considered
18 to be credited service and death benefits are vested in the member.
19 ~~*Provided, however, That the active service during the time the*~~
20 ~~member is an employee must be as a result of an order or call to~~
21 ~~duty, and not as a result of volunteering for assignment or~~
22 ~~volunteering to extend the time in service beyond the time required~~
23 ~~by order or call.~~

24 (5) No member may receive duplicate credit for service. ~~for a~~

1 ~~period of compulsory military service which falls under a period of~~
2 ~~armed conflict.~~

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

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

20 ~~(8)~~ (7) The Board of Trustees may propose legislative rules
21 for promulgation in accordance with the provisions of article
22 three, chapter twenty-nine-a of this code to administer the
23 provisions of this section.

24 ~~(b) For purposes of this section, the following definitions~~

1 apply:

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

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

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

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

23 ~~(5) "World War II" means the period beginning on December 7,~~
24 ~~1941, and ending on December 31, 1946.~~

1 ~~(6) "Korean conflict" means the period beginning on June 27,~~
2 ~~1950, and ending on January 31, 1955.~~

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

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

9 ~~(e)~~ (b) Notwithstanding the preceding provisions of this
10 section, contributions, benefits and service credit with respect to
11 qualified military service shall be provided in accordance with
12 Section 414(u) of the Internal Revenue Code. For purposes of this
13 section, "qualified military service" has the same meaning as in
14 Section 414(u) of the Internal Revenue Code. No military service
15 credit may be used in more than one retirement system administered
16 by the Consolidated Public Retirement Board and once used in any
17 system, may not be used again in any other system. No military
18 service credit may be used if the member was, or has been,
19 dishonorably discharged from the Armed Forces of the United States.
20 The board is authorized to determine all questions and make all
21 decisions relating to this section and, pursuant to the authority
22 granted to the board in section one, article ten-d of this chapter,
23 may promulgate rules relating to contributions, benefits and
24 service credit to comply with Section 414(u) of the Internal

1 Revenue 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.