

**H. B. 2374**

(By Delegates Rodighiero and Hicks)

[Introduced January 26, 2015; referred to the

Committee on Veterans Affairs' and Homeland Security then Finance.]

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

*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; 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.**

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

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

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

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

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

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

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

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

22           (7) The board may consider a petition by any member whose tour of duty, in a territory that

1 would reasonably be considered hostile and dangerous, was extended beyond the period in which  
2 an armed conflict was officially recognized, if that tour of duty commenced during a period of armed  
3 conflict, and the member was assigned to duty stations within the hostile territory throughout the  
4 period for which service credit is being sought. The board has the authority to evaluate the facts and  
5 circumstances peculiar to the petition, and rule on whether granting service credit for the extended  
6 tour of duty is consistent with the objectives of this article. In that determination, the board may  
7 grant full credit for the period under petition subject to the limitations otherwise applicable, or to  
8 grant credit for any part of the period as the board considers appropriate, or to deny credit altogether.

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

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

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

18 (2) "Spanish-American War" means the period beginning April 21, 1898, and ending July  
19 4, 1902, and includes the Philippine Insurrection, the Boxer Rebellion, and in the case of a veteran  
20 who served with the United States Military forces engaged in hostilities in the Moro Province, means  
21 the period beginning April 21, 1898, and ending July 15, 1903.

22 (3) "The Mexican border period" means the period beginning May 9, 1916, and ending April

1 5, 1917, in the case of a veteran who during the period served in Mexico, on its borders or in the  
2 waters adjacent to it.

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

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

8 (6) "Korean conflict" means the period beginning June 27, 1950, and ending January 31,  
9 1955.

10 (7) "The Vietnam era" means the period beginning February 28, 1961, and ending May 7,  
11 1975, in the case of a veteran who served in the Republic of Vietnam during that period; and August  
12 5, 1964, and ending May 7, 1975, in all other cases.

13 (8) "Persian Gulf War" means the period beginning August 2, 1990, and ending April 11,  
14 1991.

15 (c) Notwithstanding the preceding provisions of this section, contributions, benefits and  
16 service credit with respect to qualified military service shall be provided in accordance with Section  
17 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has  
18 the same meaning as in Section 414(u) of the Internal Revenue Code. No military service credit may  
19 be used in more than one retirement system administered by the Consolidated Public Retirement  
20 Board and once used in any system, may not be used again in any other system. The board is  
21 authorized to determine all questions and make all decisions relating to this section and, pursuant  
22 to the authority granted to the board in section one, article ten-d of this chapter, may promulgate

1 rules relating to contributions, benefits and service credit to comply with Section 414(u) of the  
2 Internal Revenue Code.

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

6 (1) One year service credit for two years' active duty with the West Virginia National Guard;

7 (2) One and one-half years service credit for three years of active duty;

8 (3) Three years' service credit for five years of active duty; and

9 (4) A maximum service credit of four years for six years of active duty.

## 10 **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### 11 **ARTICLE 6. CIVIL SERVICE SYSTEM.**

#### 12 **§29-6-10. Rules of division.**

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

15 (1) For the preparation, maintenance and revision of a position classification plan for all  
16 positions in the classified service and a position classification plan for all positions in the classified-  
17 exempt service, based upon similarity of duties performed and responsibilities assumed, so that the  
18 same qualifications may reasonably be required for and the same schedule of pay may be equitably  
19 applied to all positions in the same class. Except for persons employed by the governing boards of  
20 higher education, all persons receiving compensation as a wage or salary, funded either in part or in  
21 whole by the state, are included in either the position classification plan for classified service or  
22 classified-exempt service. After each such classification plan has been approved by the board, the

1 director shall allocate the position of every employee in the classified service to one of the classes  
2 in the classified plan and the position of every employee in the classified-exempt service to one of  
3 the positions in the classified-exempt plan. Any employee affected by the allocation of a position  
4 to a class shall, after filing with the director of personnel a written request for reconsideration thereof  
5 in such manner and form as the director may prescribe, be given a reasonable opportunity to be heard  
6 thereon by the director. The interested appointing authority shall be given like opportunity to be  
7 heard.

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

15 (3) For open competitive examinations to test the relative fitness of applicants for the  
16 respective positions in the classified service. Such examinations need not be held until after the rules  
17 have been adopted, the service classified and a pay plan established, but shall be held not later than  
18 one year after this article takes effect. Such examinations shall be announced publicly at least fifteen  
19 days in advance of the date fixed for the filing of applications therefor, and may be advertised  
20 through the press, radio and other media. The director may, however, in his or her discretion,  
21 continue to receive applications and examine candidates long enough to assure a sufficient number  
22 of eligibles to meet the needs of the service and may add the names of successful candidates to

1 existing eligible lists in accordance with their respective ratings.

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

5 An additional three points shall be awarded to a member of the National Guard and Reserve  
6 with two years of service. A member with four years of service shall be awarded an additional four  
7 points and a member with five or more years of service shall be awarded an additional five points.

8 (4) For promotions within the classified service which shall give appropriate consideration  
9 to the applicant's qualifications, record of performance, seniority and his or her score on a written  
10 examination, when such examination is practicable. An advancement in rank or grade or an increase  
11 in salary beyond the maximum fixed for the class shall constitute a promotion. When any benefit  
12 such as a promotion, wage increase or transfer is to be awarded, or when a withdrawal of a benefit  
13 such as a reduction in pay, a layoff or job termination is to be made, and a choice is required between  
14 two or more employees in the classified service as to who will receive the benefit or have the benefit  
15 withdrawn, and if some or all of the eligible employees have substantially equal or similar  
16 qualifications, consideration shall be given to the level of seniority of each of the respective  
17 employees as a factor in determining which of the employees will receive the benefit or have the  
18 benefit withdrawn, as the case may be. When an employee classified in a secretarial or clerical  
19 position has, irrespective of job classification, actual job experience related to the qualifications for  
20 a managerial or supervisory position, the division shall consider the experience as qualifying  
21 experience for the position. The division in its classification plan may, for designated classifications,  
22 permit substitution of qualifying experience for specific educational or training requirements at a rate

1 determined by the division.

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

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

21 Notwithstanding any other provision of the code to the contrary, except for the provisions  
22 of section seven, article two, chapter five-b of this code, when filling vacancies at state agencies the

1 directors of state agencies shall, for a period of twelve months after the layoff of a permanent  
2 classified employee in another agency, give preference to qualified permanent classified employees  
3 based on seniority and fitness over all but existing employees of the agency or its facilities:  
4 *Provided*, That employment of these persons who are qualified and who were permanently employed  
5 immediately prior to their layoff shall not supersede the recall rights of employees who have been  
6 laid off in such agency or facility.

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

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

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

22 (9) For a period of probation not to exceed one year before appointment or promotion may

1 be made complete within the classified service.

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

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

11 (12) For discharge or reduction in rank or grade only for cause of employees in the classified  
12 service. Discharge or reduction of these employees shall take place only after the person to be  
13 discharged or reduced has been presented with the reasons for such discharge or reduction stated in  
14 writing, and has been allowed a reasonable time to reply thereto in writing, or upon request to appear  
15 personally and reply to the appointing authority or his or her deputy: *Provided*, That upon an  
16 involuntary discharge for cause, the employer may require immediate separation from the workplace,  
17 or the employee may elect immediate separation. If separation is required by the employer in lieu  
18 of any advance notice of discharge, or if immediate separation is elected by an employee who  
19 receives notice of an involuntary discharge for cause, the employee is entitled to receive severance  
20 pay attributable to time the employee otherwise would have worked, up to a maximum of 15  
21 calendar days following separation. Receipt of severance pay does not affect any other right to  
22 which the employee is entitled with respect to the discharge. The statement of reasons and the reply

1 shall be filed as a public record with the director. Notwithstanding the foregoing provisions of this  
2 subdivision, no permanent employee ~~shall~~ may be discharged from the classified service for  
3 absenteeism upon using all entitlement to annual leave and sick leave when ~~such~~ the use has been  
4 due to illness or injury as verified by a physician's certification or for other extenuating  
5 circumstances beyond the employee's control unless his or her disability is of ~~such~~ a nature as to  
6 permanently incapacitate him or her from the performance of the duties of his or her position. Upon  
7 exhaustion of annual leave and sick leave credits for the reasons specified herein and with  
8 certification by a physician that the employee is unable to perform his or her duties, a permanent  
9 employee shall be granted a leave of absence without pay for a period not to exceed six months if  
10 ~~such~~ the employee is not permanently unable to satisfactorily perform the duties of his or her  
11 position.

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

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

16 The provisions of this section are subject to any modifications contained in chapter five-f of  
17 this code. The board may include in the rules provided for in this article such provisions as are  
18 necessary to conform to regulations and standards of any federal agency governing the receipt and  
19 use of federal grants-in-aid by any state agency, anything in this article to the contrary  
20 notwithstanding. The board and the director shall see that rules and practices meeting such standards  
21 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.