

**H. B. 2415**

(By Delegates P. Smith, Rodighiero, Trecoast, Eldridge, Campbell,  
Lynch, Williams and Longstreth)

[Introduced January 27, 2015; 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 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~~

1 ~~armed conflict, as defined in this section.~~

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

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

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

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

15 (4) If a member of the Public Employees Retirement System enters the active service of the  
16 United States ~~and serves during any period of compulsory military service or during any period of~~  
17 ~~armed conflict~~, during the period of ~~the armed~~ service and until the member's return to the employ  
18 of a participating public employer, the member's contributions to the retirement system is suspended  
19 and any credit balance remaining in the member's deposit fund shall be accumulated at regular  
20 interest: *Provided*, That notwithstanding any provision in this article to the contrary, if an employee  
21 of a participating political subdivision serving in the military service ~~during any period of~~  
22 ~~compulsory military service or armed conflict~~ has accumulated credited service prior to the last entry

1 into military service, in an amount that, added to the time in active military service while an  
2 employee equals nine or more years, and the member is unable to resume employment with a  
3 participating employer upon completion of duty due to death during or as a result of active service,  
4 all time spent in active military service, up to and including a total of five years, is considered to be  
5 credited service and death benefits are vested in the member. ~~Provided, however, That the active~~  
6 ~~service during the time the member is an employee must be as a result of an order or call to duty, and~~  
7 ~~not as a result of volunteering for assignment or volunteering to extend the time in service beyond~~  
8 ~~the time required by order or call.~~

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

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

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

22 (8) (7) The Board of Trustees may propose legislative rules for promulgation in accordance

1 with the provisions of article three, chapter twenty-nine-a of this code to administer the provisions  
2 of this section.

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

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

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

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

16 ~~(4) "World War I" means the period beginning on April 6, 1917, and ending on November~~  
17 ~~11, 1918, and in the case of a veteran who served with the United States Military forces in Russia,~~  
18 ~~means the period beginning on April 6, 1917, and ending on April 1, 1920.~~

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

21 ~~(6) "Korean conflict" means the period beginning on June 27, 1950, and ending on January~~  
22 ~~31, 1955.~~

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

4       ~~(8) “Persian Gulf War” means the period beginning on August 2, 1990, and ending on April~~  
 5 ~~11, 1991.~~

6       ~~(c)~~ (b) Notwithstanding the preceding provisions of this section, contributions, benefits and  
 7 service credit with respect to qualified military service shall be provided in accordance with Section  
 8 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has  
 9 the same meaning as in Section 414(u) of the Internal Revenue Code. No military service credit may  
 10 be used in more than one retirement system administered by the Consolidated Public Retirement  
 11 Board and once used in any system, may not be used again in any other system. No military service  
 12 credit may be used if the member was, or has been, dishonorably discharged from the Armed Forces  
 13 of the United States. The board is authorized to determine all questions and make all decisions  
 14 relating to this section and, pursuant to the authority granted to the board in section one, article ten-d  
 15 of this chapter, may promulgate rules relating to contributions, benefits and service credit to comply  
 16 with Section 414(u) of the Internal 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.