

1                   **Senate Bill No. 300**

2                   (By Senators Gaunch, Trump and Stollings)

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4 [Introduced January 26, 2015; referred to the Committee on Pensions; and then to the Committee  
5                   on Finance.]  
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10 A BILL to amend and reenact §5-10-15 of the Code of West Virginia, 1931, as amended, relating  
11                 to availability of military service credit for members of the West Virginia Public Employees  
12                 Retirement System; clarifying that Title 10 and Title 32 National Guard service qualify for  
13                 military service credit; awarding up to five years of noncontributory military service credit  
14                 for any time served in active military duty for persons who first became employees of  
15                 participating public employer prior to July 1, 2015; providing that persons who first become  
16                 employees of participating public employer on or after July 1, 2015, may purchase military  
17                 service credit for eligible periods, but may not receive noncontributory military service  
18                 credit; clarifying prohibition on use of military service to obtain military service credit in  
19                 more than one retirement system administered by the board; clarifying applicability of federal  
20                 law to purchases of qualified military service; eliminating applicability of liberality clause  
21                 to the board's decisions to grant or deny requests for military service credit; and other  
22                 technical clarifications and corrections.

1 *Be it enacted by the Legislature of West Virginia:*

2       That §5-10-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted  
3 to read as follows:

4 **ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

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

6       (a)(1) The Legislature recognizes the men and women of this state who have served in the  
7 Armed Forces of the United States during times of war, conflict and danger. It is the intent of this  
8 subsection to confer military service credit upon persons who are eligible at any time for public  
9 employees retirement benefits for any time served in active duty in the Armed Forces of the United  
10 States, ~~when the duty was during any period of compulsory military service or during a period of~~  
11 ~~armed conflict, as defined in this section regardless of whether such person was a public employee~~  
12 at the time of entering the military service.

13       (2) In addition to any benefit provided by federal law, any member of the retirement system  
14 who has previously served in or enters the active service of the Armed Forces of the United States,  
15 including active duty in the National Guard performed pursuant to Title 10 or Title 32 of the United  
16 States Code, during any period of compulsory military service or during a period of armed conflict  
17 shall receive credited service for the time spent in the Armed Forces of the United States, not to  
18 exceed five years if the member:

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

20           (B) Substantiates by appropriate documentation or evidence his or her active military service.

21 ~~and entry into military service during any period of compulsory military service or during periods~~  
22 ~~of armed conflict~~

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

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

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

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

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

14           (8) The Board of Trustees may propose legislative rules for promulgation in accordance with  
15 the provisions of article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to administer  
16 the provisions of this section.

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

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

1           (2) "Spanish-American War" means the period beginning on the twenty-first day of April,  
2 one thousand eight hundred ninety-eight, and ending on the fourth day of July, one thousand nine  
3 hundred two, and includes the Philippine Insurrection, the Boxer Rebellion, and in the case of a  
4 veteran who served with the United States Military forces engaged in hostilities in the Moro  
5 Province, means the period beginning on the twenty-first day of April, one thousand eight hundred  
6 ninety-eight, and ending on the fifteenth day of July, one thousand nine hundred three.

7           (3) "The Mexican border period" means the period beginning on the ninth day of May, one  
8 thousand nine hundred sixteen, and ending on the fifth day of April, one thousand nine hundred  
9 seventeen, in the case of a veteran who during the period served in Mexico, on its borders or in the  
10 waters adjacent to it.

11           (4) "World War I" means the period beginning on the sixth day of April, one thousand nine  
12 hundred seventeen, and ending on the eleventh day of November, one thousand nine hundred  
13 eighteen, and in the case of a veteran who served with the United States Military forces in Russia,  
14 means the period beginning on the sixth day of April, one thousand nine hundred seventeen, and  
15 ending on the first day of April, one thousand nine hundred twenty.

16           (5) "World War II" means the period beginning on the seventh day of December, one  
17 thousand nine hundred forty-one, and ending on the thirty-first day of December, one thousand nine  
18 hundred forty-six.

19           (6) "Korean conflict" means the period beginning on the twenty-seventh day of June, one  
20 thousand nine hundred fifty, and ending on the thirty-first day of January, one thousand nine hundred  
21 fifty-five.

22           (7) "The Vietnam era" means the period beginning on the twenty-eighth day of February, one

1 thousand nine hundred sixty-one, and ending on the seventh day of May, one thousand nine hundred  
2 seventy-five, in the case of a veteran who served in the Republic of Vietnam during that period; and  
3 the fifth day of August, one thousand nine hundred sixty-four, and ending on the seventh day of May,  
4 one thousand nine hundred seventy-five, in all other cases.

5 (8) "Persian Gulf War" means the period beginning on the second day of August, one  
6 thousand nine hundred ninety, and ending on the eleventh day of April, one thousand nine hundred  
7 ninety-one.

8 (b) Subsection (a) shall not apply to any member who first becomes an employee of a  
9 participating public employer on or after July 1, 2015. This subsection (b) shall not apply to any  
10 member who first became an employee of a participating public employer before July 1, 2015.

11 (1) A member who first becomes an employee of a participating public employer on or after  
12 July 1, 2015, may purchase up to sixty months of military service credit for time served in active  
13 military duty prior to first becoming an employee of a participating public employer if all of the  
14 following conditions are met:

15 (A) The member has completed at least twelve consecutive months of contributory service  
16 upon first becoming an employee of a participating public employer;

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

19 (C) The member pays to the retirement system the actuarial reserve lump sum purchase  
20 amount within thirty-six months after the date on which employer and employee contributions are  
21 first received by the retirement system for the member and while he or she continues to be in the  
22 employ of a participating public employer and contributing to the retirement system.

1       (2) Notwithstanding subsection (b)(1)(A), a member who first becomes an employee of a  
2 participating public employer on or after July 1, 2015, but who does not remain employed and  
3 contributing to the retirement system for at least twelve consecutive months after his or her initial  
4 employment, shall be considered to have met the requirement of subsection (b)(1)(A) the first time  
5 he or she becomes an employee of a participating public employer and completes at least twelve  
6 consecutive months of contributing service. Such a member shall be considered to have met the  
7 requirement of subsection (b)(1)(C) if he or she pays to the retirement system the actuarial reserve  
8 lump sum purchase amount within thirty-six months after the date on which employer and employee  
9 contributions are first received by the retirement system for the member the first time he or she  
10 becomes an employee of a participating public employer and completes at least twelve consecutive  
11 months of contributing service, and while he or she continues to be in the employ of a participating  
12 public employer and contributing to the retirement system.

13       (3) Notwithstanding subsection (b)(1)(A), a member who first becomes an employee of a  
14 participating public employer on or after July 1, 2015, as an elected official, shall be considered to  
15 have met the requirement of subsection (b)(1)(A) after remaining employed for the first twelve  
16 consecutive months of his or her term and first becoming an employee, regardless of whether a salary  
17 is paid to the employee for each such month. An elected official who does not elect to begin  
18 participating in the retirement system upon first becoming an employee of a participating public  
19 employer as an elected official shall not be eligible to purchase military service credit pursuant to  
20 subsection (b)(1).

21       (4) A member who first becomes an employee of a participating public employer on or after  
22 July 1, 2015, may purchase military service credit for active military duty performed on or after the

1 date he or she first becomes an employee of a participating public employer only if all of the  
2 following conditions are met: *Provided*, That the maximum military service credit such member  
3 may purchase shall take into account any military service credit purchased for active military duty  
4 pursuant to subsection (b)(1) in addition to any military service credit purchased pursuant to this  
5 subsection (b)(4):

6       (A) The member was an employee of a participating public employer, terminated  
7 employment and experienced a break in contributing service in the retirement system of one or more  
8 months, performed active military service while not an employee of the participating public  
9 employer and not contributing to the retirement system, then again becomes an employee of a  
10 participating public employer and completes at least twelve consecutive months of contributory  
11 service;

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

14       (C) The member pays to the retirement system the actuarial reserve lump sum purchase  
15 amount within thirty-six months after the date on which employer and employee contributions are  
16 first received by the retirement system for the member after he or she again becomes an employee  
17 of a participating public employer immediately following the period of active military duty and break  
18 in service and completes at least twelve consecutive months of contributory service, and while he  
19 or she continues to be in the employ of a participating public employer and contributing to the  
20 retirement system.

21       (5) Notwithstanding subsection (b)(4)(A), a member who otherwise meets the requirements  
22 of subsection (b)(4)(A), but who does not remain employed and contributing to the retirement system

1 for at least twelve consecutive months when he or she first becomes an employee of a participating  
2 public employer after the period of active military duty and break in service, shall be considered to  
3 have met the requirement of subsection (b)(4)(A) the first time he or she again becomes an employee  
4 of a participating public employer and completes at least twelve consecutive months of contributing  
5 service. Such a member shall be considered to have met the requirement of subsection (b)(4)(C) if  
6 he or she pays to the retirement system the actuarial reserve lump sum purchase amount within  
7 thirty-six months after the date on which employer and employee contributions are first received by  
8 the retirement system for the member for the first time he or she again becomes an employee of a  
9 participating public employer and completes at least twelve consecutive months of contributing  
10 service, and while he or she continues to be in the employ of a participating public employer and  
11 contributing to the retirement system.

12       (6) Notwithstanding subsection (b)(4)(A), a member who becomes an employee of a  
13 participating public employer after such a period of active military duty and break in service as an  
14 elected official shall be considered to have met the requirement of subsection (b)(4)(A) after  
15 remaining employed for the first twelve consecutive months of his or her term after again becoming  
16 an employee, regardless of whether a salary is paid to the employee for each such month. Such an  
17 individual must elect to begin participating in the retirement system immediately upon again  
18 becoming an employee of a participating public employer after the period of active military duty and  
19 break in service.

20       (7) For purposes of this subsection (b), the following definitions shall apply:

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

1 inactive duty of any kind.

2       (B) "Actuarial reserve lump sum purchase amount" means the purchase annuity rate  
3 multiplied by the purchase accrued benefit, calculated as of the calculation month, plus annual  
4 interest accruing at seven and one-half percent from the calculation month through the purchase  
5 month, compounded monthly.

6       (C) "Armed Forces of the United States" means the Army, Navy, Air Force, Marine Corps,  
7 and Coast Guard, the Reserve components thereof, and the National Guard of the United States or  
8 the National Guard of a State or Territory when members of the same are on full-time active duty  
9 pursuant to Title 10 or Title 32 of the United States Code.

10       (D) "Calculation month" means the month immediately following the month in which the  
11 member completes the twelve consecutive months of contributory service with a participating public  
12 employer required by subsection (b)(1)(A), (b)(2), (b)(3), (b)(4)(A), (b)(5) or (b)(6) of this section,  
13 as applicable.

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

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

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

1 annuity factor with payments starting at the purchase age.

2       (H) "Purchase average monthly salary" means the average monthly salary of the member  
3 during the months two through twelve of the twelve consecutive month period required by  
4 subsection (b)(1)(A), (b)(2), (b)(3), (b)(4)(A), (b)(5) or (b)(6) of this section, as applicable.

5       (I) "Purchase military service" means the amount of military service being purchased by the  
6 employee in months up to the sixty month maximum, calculated in accordance with subsection (b)(9)  
7 of this section.

8       (J) "Purchase month" means the month in which the employee deposits the actuarial reserve  
9 lump sum purchase amount into the plan trust fund in full payment of the service credit being  
10 purchased.

11       (8) A member may purchase military service credit for a period of active military duty  
12 pursuant to this subsection only if the member received an honorable discharge for such period.  
13 Anything other than an honorable discharge, including, but not limited to, a general or under  
14 honorable conditions discharge, an entry-level separation discharge, an other than honorable  
15 conditions discharge, or a dishonorable discharge, shall disqualify the member from receiving  
16 military service credit for such period of service.

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

1       (10) To receive credit, a member must submit a request to purchase military service credit  
2 to the board, on such form or in such other manner as shall be required by the board, within the  
3 twelve consecutive month period required by subsection (b)(1)(A), (b)(2), (b)(3), (b)(4)(A), (b)(5)  
4 or (b)(6) of this section, as applicable. The board shall then calculate the actuarial reserve lump sum  
5 purchase amount, which amount must be paid by the member within the thirty-six month period  
6 required by subsection (b)(1)(C), (b)(2), (b)(4)(C), or (b)(5) of this section, as applicable. A member  
7 purchasing military service credit pursuant to this subsection must do so in a single, lump sum  
8 payment; the board shall not accept partial, installment or other similar payments.

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

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

13       (13) If a member who has purchased military service credit pursuant to this subsection is  
14 eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of this  
15 article, he or she shall also receive a refund of the actuarial reserve lump sum purchase amount he  
16 or she paid to the retirement system to purchase military service credit, together with regular interest  
17 on such amount.

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

21       (d) Notwithstanding the preceding provisions of this section, contributions, benefits and  
22 service credit with respect to qualified military service shall be provided in accordance with Section

1 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and  
2 Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may  
3 be amended from time to time. For purposes of this section, “qualified military service” has the  
4 same meaning as in Section 414(u) of the Internal Revenue Code. ~~No military service credit may~~  
5 ~~be used in more than one retirement system administered by the Consolidated Public Retirement~~  
6 ~~Board and once used in any system, may not be used again in any other system.~~

7       (e) In any case of doubt as to the period of service to be credited a member under the  
8 provisions of this section, the board has final power to determine the period. Notwithstanding the  
9 provisions of section three-a, article ten of this chapter, the provisions of this section shall not be  
10 subject to liberal construction. The board is authorized to determine all questions and make all  
11 decisions relating to this section and, pursuant to the authority granted to the board in section one,  
12 article ten-d of this chapter, may ~~promulgate rules relating to contributions, benefits and service~~  
13 ~~credit to comply with Section 414(u) of the Internal Revenue Code~~ propose rules to administer this  
14 section for legislative approval in accordance with the provisions of article three, chapter twenty-  
15 nine-a of this code.

NOTE: The purpose of this bill is to clarify the type of National Guard service eligible for noncontributory military service credit and to award up to five years of noncontributory military service credit to individuals who first became an employee of a PERS participating public employer before July 1, 2015; to prohibit individuals who first become an employee of a participating public employer on or after July 1, 2015 from receiving noncontributory military service credit, but allow them to purchase up to five years of military service credit; to clarify the prohibition on multiple uses of a period of military service to obtain military service credit in more than one plan administered by the board; to clarify the applicability of federal law and regulations to purchases of qualified military service; to eliminate the applicability of the liberality clause to the board’s decisions to grant or deny applications for military service credit; and to make other technical clarifications and corrections.

Strike-throughs indicate language that would be stricken from the present law, and

underscoring indicates new language that would be added.