

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 480

**FISCAL
NOTE**

BY SENATOR CARMICHAEL

[Introduced February 2, 2016;

Referred to the Committee on Finance.]

1 A BILL to amend and reenact §5-10-15 of the Code of West Virginia, 1931, as amended, relating
2 to military general discharge as qualification for service credit towards pension benefits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

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

1 (a) (1) The Legislature recognizes the men and women of this state who have served in
2 the Armed Forces of the United States during times of war, conflict and danger. It is the intent of
3 this subsection to confer military service credit upon persons who are eligible at any time for public
4 employees retirement benefits for any time served in active duty in the Armed Forces of the United
5 States, regardless of whether the person was a public employee at the time of entering the military
6 service.

7 (2) In addition to any benefit provided by federal law, any member of the retirement system
8 who has previously served in or enters the active service of the Armed Forces of the United
9 States, including active duty in the National Guard performed pursuant to Title 10 or Title 32 of
10 the United States Code, shall receive credited service for the time spent in the Armed Forces of
11 the United States, not to exceed five years, if the member:

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

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

15 If a member of the retirement system enters the active service of the Armed Forces of the
16 United States, the member's contributions to the retirement system are suspended during the
17 period of the active service and until the member's return to the employ of a participating public
18 employer, and any credit balance remaining in the member's deposit fund shall accumulate
19 regular interest: *Provided*, That notwithstanding any provision in this article to the contrary, if an

20 employee of a participating political subdivision serving on active duty in the military has
21 accumulated credited service prior to the last entry into military service, in an amount that, added
22 to the time in active military service while an employee equals nine or more years, and the
23 member is unable to resume employment with a participating employer upon completion of duty
24 due to death during or as a result of active service, all time spent in active military service, up to
25 and including a total of five years, is considered to be credited service and death benefits are
26 vested in the member: *Provided, however,* That the active service during the time the member is
27 an employee must be as a result of an order or call to duty, and not as a result of volunteering for
28 assignment or volunteering to extend the time in service beyond the time required by order or call.

29 (b) Subsection (a) of this section does not apply to any member who first becomes an
30 employee of a participating public employer on or after July 1, 2015. This subsection does not
31 apply to any member who first became an employee of a participating public employer before July
32 1, 2015.

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

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

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

41 (C) The employee pays to the retirement system the actuarial reserve purchase amount
42 within forty-eight months after the date on which employer and employee contributions are first
43 received by the retirement system for the member and while he or she continues to be in the
44 employ of a participating public employer and contributing to the retirement system: *Provided,*
45 That any employee who ceases employment with a participating public employer before

46 completing the required actuarial reserve purchase amount in full shall not be eligible to purchase
47 the military service.

48 (2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first
49 becomes an employee of a participating public employer on or after July 1, 2015, but who does
50 not remain employed and contributing to the retirement system for at least twelve consecutive
51 months after his or her initial employment, shall be considered to have met the requirement of
52 paragraph (A), subdivision (1) of this subsection the first time he or she becomes an employee of
53 a participating public employer and completes at least twelve consecutive months of contributing
54 service. Such a member shall be considered to have met the requirement of paragraph (C),
55 subdivision (1) of this subsection if he or she pays to the retirement system the actuarial reserve
56 purchase amount within forty-eight months after the date on which employer and employee
57 contributions are first received by the retirement system for the member the first time he or she
58 becomes an employee of a participating public employer and completes at least twelve
59 consecutive months of contributing service, and while he or she continues to be in the employ of
60 a participating public employer and contributing to the retirement system.

61 (3) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first
62 becomes an employee of a participating public employer on or after July 1, 2015, as an elected
63 official, shall be considered to have met the requirement of paragraph (A), subdivision (1) of this
64 subsection after remaining employed for the first twelve consecutive months of his or her term
65 and first becoming an employee, regardless of whether a salary is paid to the employee for each
66 such month. An elected official who does not elect to begin participating in the retirement system
67 upon first becoming an employee of a participating public employer as an elected official is not
68 eligible to purchase military service credit pursuant to subdivision (1) of this subsection.

69 (4) A member who first becomes an employee of a participating public employer on or
70 after July 1, 2015, may purchase military service credit for active military duty performed on or
71 after the date he or she first becomes an employee of a participating public employer only if all of

72 the following conditions are met: *Provided*, That the maximum military service credit such
73 member may purchase shall take into account any military service credit purchased for active
74 military duty pursuant to subdivision (1) of this subsection in addition to any military service credit
75 purchased pursuant to this subdivision:

76 (A) The member was an employee of a participating public employer, terminated
77 employment and experienced a break in contributing service in the retirement system of one or
78 more months, performed active military service while not an employee of the participating public
79 employer and not contributing to the retirement system, then again becomes an employee of a
80 participating public employer and completes at least twelve consecutive months of contributory
81 service;

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

84 (C) The member pays to the retirement system the actuarial reserve lump sum purchase
85 amount within forty-eight months after the date on which employer and employee contributions
86 are first received by the retirement system for the member after he or she again becomes an
87 employee of a participating public employer immediately following the period of active military
88 duty and break in service and completes at least twelve consecutive months of contributory
89 service and while he or she continues to be in the employ of a participating public employer and
90 contributing to the retirement system.

91 (5) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who
92 otherwise meets the requirements of said paragraph, but who does not remain employed and
93 contributing to the retirement system for at least twelve consecutive months when he or she first
94 becomes an employee of a participating public employer after the period of active military duty
95 and break in service, shall be considered to have met the requirement of paragraph (A),
96 subdivision (4) of this subsection the first time he or she again becomes an employee of a
97 participating public employer and completes at least twelve consecutive months of contributing

98 service. Such a member shall be considered to have met the requirement of paragraph (C),
99 subdivision (4) of this subsection if he or she pays to the retirement system the actuarial reserve
100 lump sum purchase amount within forty-eight months after the date on which employer and
101 employee contributions are first received by the retirement system for the member for the first
102 time he or she again becomes an employee of a participating public employer and completes at
103 least twelve consecutive months of contributing service, and while he or she continues to be in
104 the employ of a participating public employer and contributing to the retirement system.

105 (6) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who
106 becomes an employee of a participating public employer after such a period of active military duty
107 and break in service as an elected official shall be considered to have met the requirement of
108 paragraph (A), subdivision (4) of this subsection after remaining employed for the first twelve
109 consecutive months of his or her term after again becoming an employee, regardless of whether
110 a salary is paid to the employee for each such month. Such an individual must elect to begin
111 participating in the retirement system immediately upon again becoming an employee of a
112 participating public employer after the period of active military duty and break in service.

113 (7) For purposes of this subsection, the following definitions apply:

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

117 (B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by
118 the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing
119 at seven and one-half percent from the calculation month through the purchase month,
120 compounded monthly: *Provided*, That if the employee elects to pay the full purchase amount on
121 an installment or partial payment basis, the actuarial reserve purchase amount will include the
122 lump sum payment plus additional interest accruing at seven and one-half percent until the
123 purchase amount is paid in full.

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

128 (D) "Calculation month" means the month immediately following the month in which the
129 member completes the twelve consecutive months of contributory service with a participating
130 public employer required by this subsection, as applicable.

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

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

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

141 (H) "Purchase average monthly salary" means the average monthly salary of the member
142 during the months two through twelve of the twelve consecutive month period required by this
143 subsection of this section, as applicable.

144 (I) "Purchase military service" means the amount of military service being purchased by
145 the employee in months up to the sixty-month maximum, calculated in accordance with
146 subdivision (9) of this subsection.

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

150 payment of the service credit being purchased.

151 (8) A member may purchase military service credit for a period of active military duty
152 pursuant to this subsection only if the member received an honorable discharge or general
153 discharge under honorable conditions for such the period. Anything other than an honorable
154 discharge or general discharge under honorable conditions, including, but not limited to, ~~a general~~
155 ~~or under honorable conditions discharge~~, an entry-level separation discharge, an other than
156 honorable conditions discharge or a dishonorable discharge, shall disqualify the member from
157 receiving military service credit for the period of service.

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

164 (10) To receive credit, a member must submit a request to purchase military service credit
165 to the board, on such form or in such other manner as shall be required by the board, within the
166 twelve consecutive month period required by this subsection, as applicable. The board shall then
167 calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the
168 member within the forty-eight-month period required by this subsection, as applicable. A member
169 purchasing military service credit pursuant to this subsection must do so in a single, lump sum
170 payment: *Provided*, That the board may accept partial, installment or other similar payments if the
171 employee executes a contract with the board specifying the amount of military service to be
172 purchased and the payments required: *Provided, however*, That any failure to pay the contract
173 amount in accordance with this section shall be treated as an overpayment or excess contribution
174 subject to section forty-four of this article and no military service shall be credited.

175 (11) The board shall require a member requesting military service credit to provide official

176 documentation establishing that the requirements set forth in this subsection have been met.

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

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

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

187 (d) Notwithstanding the preceding provisions of this section, contributions, benefits and
188 service credit with respect to qualified military service shall be provided in accordance with
189 Section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment
190 and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same
191 may be amended from time to time. For purposes of this section, "qualified military service" has
192 the same meaning as in Section 414(u) of the Internal Revenue Code.

193 (e) In any case of doubt as to the period of service to be credited a member under the
194 provisions of this section, the board has final power to determine the period. Notwithstanding the
195 provisions of section three-a of this article, the provisions of this section are not subject to liberal
196 construction. The board is authorized to determine all questions and make all decisions relating
197 to this section and, pursuant to the authority granted to the board in section one, article ten-d of
198 this chapter, may propose rules to administer this section for legislative approval in accordance
199 with the provisions of article three, chapter twenty-nine-a of this code.

NOTE: The purpose of this bill is to provide that a military general discharge, under honorable circumstances, may be used to qualify a member of the retirement plan to purchase service credit for a period of active military duty.

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