

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2173**

BY DELEGATES RODIGHIERO AND HICKS

[Introduced February 8, 2017; Referred  
to the Committee on Veterans' Affairs and Homeland  
Security then Finance.]

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

*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; 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.**

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 section 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 when the duty was during any period of compulsory military service or during a period of  
 6 armed conflict, as defined in this section.

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 States

9 during any period of compulsory military service or during a period of armed conflict shall receive  
10 credited service for the time spent in the Armed Forces of the United States, not to exceed five  
11 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 and entry into military service during any period of compulsory military service or during  
15 periods of armed conflict.

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

20 (4) If a member of the Public Employees Retirement System enters the active service of  
21 the United States and serves during any period of compulsory military service regardless of being  
22 activated, on standby for call up or activation during such times, including the Vietnam Conflict,  
23 or during any period of armed conflict, during the period of the armed service and until the  
24 member's return to the employ of a participating public employer, the member's contributions to  
25 the retirement system is suspended and any credit balance remaining in the member's deposit  
26 fund shall be accumulated at regular interest: *Provided*, That notwithstanding any provision in  
27 this article to the contrary, if an employee of a participating political subdivision serving in the  
28 military service during any period of compulsory military service or armed conflict has  
29 accumulated credited service prior to the last entry into military service, in an amount that, added  
30 to the time in active military service while an employee equals nine or more years, and the  
31 member is unable to resume employment with a participating employer upon completion of duty  
32 due to death during or as a result of active service, all time spent in active military service, up to  
33 and including a total of five years, is considered to be credited service and death benefits are  
34 vested in the member: *Provided, however*, That the active service during the time the member is

35 an employee must be as a result of an order or call to duty, and not as a result of volunteering for  
36 assignment or volunteering to extend the time in service beyond the time required by order or call.

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

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

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

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

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

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

60 (2) "Spanish-American War" means the period beginning April 21, 1898, and ending July  
61 4, 1902, and includes the Philippine Insurrection, the Boxer Rebellion, and in the case of a veteran

62 who served with the United States Military forces engaged in hostilities in the Moro Province,  
63 means the period beginning April 21, 1898, and ending July 15, 1903.

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

67 (4) "World War I" means the period beginning April 6, 1917, and ending November 11,  
68 1918, and in the case of a veteran who served with the United States Military forces in Russia,  
69 means the period beginning April 16, 1917, and ending April 1, 1920.

70 (5) "World War II" means the period beginning December 7, 1941, and ending December  
71 31, 1946.

72 (6) "Korean conflict" means the period beginning June 27, 1950, and ending January 31,  
73 1955.

74 (7) "The Vietnam era" means the period beginning February 28, 1961, and ending May 7,  
75 1975, in the case of a veteran who served in the Republic of Vietnam during that period; and  
76 August 5, 1964, and ending May 7, 1975, in all other cases.

77 (8) "Persian Gulf War" means the period beginning August 2, 1990, and ending April 11,  
78 1991.

79 (c) Notwithstanding the preceding provisions of this section, contributions, benefits and  
80 service credit with respect to qualified military service shall be provided in accordance with  
81 Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military  
82 service" has the same meaning as in Section 414(u) of the Internal Revenue Code. No military  
83 service credit may be used in more than one retirement system administered by the Consolidated  
84 Public Retirement Board and once used in any system, may not be used again in any other  
85 system. The board is authorized to determine all questions and make all decisions relating to this  
86 section and, pursuant to the authority granted to the board in section one, article ten-d of this  
87 chapter, may promulgate rules relating to contributions, benefits and service credit to comply with  
88 Section 414(u) of the Internal Revenue Code.

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

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

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

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

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

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

**ARTICLE 6. CIVIL SERVICE SYSTEM.**

**§29-6-10. Rules of division.**

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

3           (1) For the preparation, maintenance and revision of a position classification plan for all  
 4 positions in the classified service and a position classification plan for all positions in the classified-  
 5 exempt service, based upon similarity of duties performed and responsibilities assumed, so that  
 6 the same qualifications may reasonably be required for and the same schedule of pay may be  
 7 equitably applied to all positions in the same class. Except for persons employed by the governing  
 8 boards of higher education, all persons receiving compensation as a wage or salary, funded either  
 9 in part or in whole by the state, are included in either the position classification plan for classified  
 10 service or classified-exempt service. After each such classification plan has been approved by  
 11 the board, the director shall allocate the position of every employee in the classified service to  
 12 one of the classes in the classified plan and the position of every employee in the classified-  
 13 exempt service to one of the positions in the classified-exempt plan. Any employee affected by  
 14 the allocation of a position to a class shall, after filing with the director of personnel a written  
 15 request for reconsideration thereof in such manner and form as the director may prescribe, be

16 given a reasonable opportunity to be heard thereon by the director. The interested appointing  
17 authority shall be given like opportunity to be heard.

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

25 (3) For open competitive examinations to test the relative fitness of applicants for the  
26 respective positions in the classified service. Such examinations need not be held until after the  
27 rules have been adopted, the service classified and a pay plan established, but shall be held not  
28 later than one year after this article takes effect. Such examinations shall be announced publicly  
29 at least fifteen days in advance of the date fixed for the filing of applications therefor, and may be  
30 advertised through the press, radio and other media. The director may, however, in his or her  
31 discretion, continue to receive applications and examine candidates long enough to assure a  
32 sufficient number of eligibles to meet the needs of the service and may add the names of  
33 successful candidates to existing eligible lists in accordance with their respective ratings.

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

37 An additional three points shall be awarded to a member of the National Guard and  
38 Reserve with two years of service. A member with four years of service shall be awarded an  
39 additional four points and a member with five or more years of service shall be awarded an  
40 additional five points.

41           (4) For promotions within the classified service which shall give appropriate consideration  
42 to the applicant's qualifications, record of performance, seniority and his or her score on a written  
43 examination, when such examination is practicable. An advancement in rank or grade or an  
44 increase in salary beyond the maximum fixed for the class shall constitute a promotion. When  
45 any benefit such as a promotion, wage increase or transfer is to be awarded, or when a withdrawal  
46 of a benefit such as a reduction in pay, a layoff or job termination is to be made, and a choice is  
47 required between two or more employees in the classified service as to who will receive the benefit  
48 or have the benefit withdrawn, and if some or all of the eligible employees have substantially equal  
49 or similar qualifications, consideration shall be given to the level of seniority of each of the  
50 respective employees as a factor in determining which of the employees will receive the benefit  
51 or have the benefit withdrawn, as the case may be. When an employee classified in a secretarial  
52 or clerical position has, irrespective of job classification, actual job experience related to the  
53 qualifications for a managerial or supervisory position, the division shall consider the experience  
54 as qualifying experience for the position. The division in its classification plan may, for designated  
55 classifications, permit substitution of qualifying experience for specific educational or training  
56 requirements at a rate determined by the division.

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



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

76 Notwithstanding any other provision of the code to the contrary, except for the provisions  
77 of section seven, article two, chapter five-b of this code, when filling vacancies at state agencies  
78 the directors of state agencies shall, for a period of twelve months after the layoff of a permanent  
79 classified employee in another agency, give preference to qualified permanent classified  
80 employees based on seniority and fitness over all but existing employees of the agency or its  
81 facilities: *Provided*, That employment of these persons who are qualified and who were  
82 permanently employed immediately prior to their layoff shall not supersede the recall rights of  
83 employees who have been laid off in such agency or facility.

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

90 For the establishment of eligible lists for preference as provided in subdivision (6) of this  
91 section, a list shall be provided according to seniority. An appointed authority shall make the

92 selection of the most senior qualified person: *Provided*, That eligibility for appointment from any  
93 such list shall continue not longer than one year and shall cease immediately upon appointment  
94 to a classified position.

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

99 (9) For a period of probation not to exceed one year before appointment or promotion may  
100 be made complete within the classified service.

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

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

111 (12) For discharge or reduction in rank or grade only for cause of employees in the  
112 classified service. Discharge or reduction of these employees shall take place only after the  
113 person to be discharged or reduced has been presented with the reasons for such discharge or  
114 reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or  
115 upon request to appear personally and reply to the appointing authority or his or her deputy:  
116 *Provided*, That upon an involuntary discharge for cause, the employer may require immediate  
117 separation from the workplace, or the employee may elect immediate separation. If separation is

118 required by the employer in lieu of any advance notice of discharge, or if immediate separation is  
119 elected by an employee who receives notice of an involuntary discharge for cause, the employee  
120 is entitled to receive severance pay attributable to time the employee otherwise would have  
121 worked, up to a maximum of 15 calendar days following separation. Receipt of severance pay  
122 does not affect any other right to which the employee is entitled with respect to the discharge.  
123 The statement of reasons and the reply shall be filed as a public record with the director.  
124 Notwithstanding the foregoing provisions of this subdivision, no permanent employee shall may  
125 be discharged from the classified service for absenteeism upon using all entitlement to annual  
126 leave and sick leave when ~~such~~ the use has been due to illness or injury as verified by a  
127 physician's certification or for other extenuating circumstances beyond the employee's control  
128 unless his or her disability is of ~~such~~ a nature as to permanently incapacitate him or her from the  
129 performance of the duties of his or her position. Upon exhaustion of annual leave and sick leave  
130 credits for the reasons specified herein and with certification by a physician that the employee is  
131 unable to perform his or her duties, a permanent employee shall be granted a leave of absence  
132 without pay for a period not to exceed six months if ~~such~~ the employee is not permanently unable  
133 to satisfactorily perform the duties of his or her position.

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

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

138 The provisions of this section are subject to any modifications contained in chapter five-f  
139 of this code. The board may include in the rules provided ~~for~~ in this article such provisions as are  
140 necessary to conform to regulations and standards of any federal agency governing the receipt  
141 and use of federal grants-in-aid by any state agency, anything in this article to the contrary  
142 notwithstanding. The board and the director shall see that rules and practices meeting such  
143 standards 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. The bill provides 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 a heading or the present law and underscoring indicates new language that would be added.