

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2533

**FISCAL
NOTE**

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AND PYLES

[Introduced January 21, 2019; Referred
to the Committee on Pensions and Retirement then
Finance.]

1 A BILL to amend and reenact §5-10-15 of the Code of West Virginia, 1931, as amended, relating
2 to permitting a West Virginia public employee who first becomes an employee of a
3 participating public employer on or after July 1, 2015, and who has received an honorable
4 discharge, a general discharge under honorable conditions or a medical discharge from
5 the Armed Forces of the United States, to purchase up to 60 months of military service
6 credit for retirement purposes.

Be it enacted by the Legislature of West Virginia:

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) §5-10-15(a) of this code does not apply to any member who first becomes an employee
30 of a participating public employer on or after July 1, 2015. This subsection does not apply to any
31 member who first became an employee of a participating public employer before July 1, 2015.

32 (1) A member who first becomes an employee of a participating public employer on or
33 after July 1, 2015, may purchase up to 60 months of military service credit for time served in active
34 military duty prior to first becoming an employee of a participating public employer if all of the
35 following conditions are met:

36 (A) The member has completed at least 12 consecutive months of contributory service
37 upon first becoming an employee of a participating public employer;

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

40 (C) The employee pays to the retirement system the actuarial reserve purchase amount
41 within 48 months after the date on which employer and employee contributions are first received
42 by the retirement system for the member and while he or she continues to be in the employ of a
43 participating public employer and contributing to the retirement system: *Provided*, That any

44 employee who ceases employment with a participating public employer before completing the
45 required actuarial reserve purchase amount in full shall not be eligible to purchase the military
46 service.

47 (2) Notwithstanding §5-10-15(b)(1)(A) of this code, a member who first becomes an
48 employee of a participating public employer on or after July 1, 2015, but who does not remain
49 employed and contributing to the retirement system for at least 12 consecutive months after his
50 or her initial employment, shall be considered to have met the requirement of §5-10-15(b)(1)(A)
51 of this code the first time he or she becomes an employee of a participating public employer and
52 completes at least 12 consecutive months of contributing service. Such a member shall be
53 considered to have met the requirement of §5-10-15(b)(1)(C) of this code if he or she pays to the
54 retirement system the actuarial reserve purchase amount within 48 months after the date on which
55 employer and employee contributions are first received by the retirement system for the member
56 the first time he or she becomes an employee of a participating public employer and completes
57 at least 12 consecutive months of contributing service, and while he or she continues to be in the
58 employ of a participating public employer and contributing to the retirement system.

59 (3) Notwithstanding §5-10-15(b)(1)(A) of this code, a member who first becomes an
60 employee of a participating public employer on or after July 1, 2015, as an elected official, shall
61 be considered to have met the requirement of §5-10-15(b)(1)(A) of this code after remaining
62 employed for the first 12 consecutive months of his or her term and first becoming an employee,
63 regardless of whether a salary is paid to the employee for each such month. An elected official
64 who does not elect to begin participating in the retirement system upon first becoming an
65 employee of a participating public employer as an elected official is not eligible to purchase military
66 service credit pursuant to §5-10-15(b)(1) of this code.

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

70 the following conditions are met: *Provided*, That the maximum military service credit such member
71 may purchase shall take into account any military service credit purchased for active military duty
72 pursuant to §5-10-15(b)(1) of this code in addition to any military service credit purchased
73 pursuant to this subdivision:

74 (A) The member was an employee of a participating public employer, terminated
75 employment and experienced a break in contributing service in the retirement system of one or
76 more months, performed active military service while not an employee of the participating public
77 employer and not contributing to the retirement system, then again becomes an employee of a
78 participating public employer and completes at least 12 consecutive months of contributory
79 service;

80 (B) The member does not qualify for military service credit for such active military duty
81 pursuant to §5-10-15(d) of this code; and

82 (C) The member pays to the retirement system the actuarial reserve lump sum purchase
83 amount within 48 months after the date on which employer and employee contributions are first
84 received by the retirement system for the member after he or she again becomes an employee
85 of a participating public employer immediately following the period of active military duty and break
86 in service and completes at least 12 consecutive months of contributory service and while he or
87 she continues to be in the employ of a participating public employer and contributing to the
88 retirement system.

89 (5) Notwithstanding §5-10-15(b)(4)(A) of this code, a member who otherwise meets the
90 requirements of ~~said~~ that paragraph, but who does not remain employed and contributing to the
91 retirement system for at least 12 consecutive months when he or she first becomes an employee
92 of a participating public employer after the period of active military duty and break in service, shall
93 be considered to have met the requirement of §5-10-15(b)(4)(A) of this code the first time he or
94 she again becomes an employee of a participating public employer and completes at least 12
95 consecutive months of contributing service. Such a member shall be considered to have met the

96 requirement of §5-10-15(b)(4)(C) of this code if he or she pays to the retirement system the
97 actuarial reserve lump sum purchase amount within 48 months after the date on which employer
98 and employee contributions are first received by the retirement system for the member for the first
99 time he or she again becomes an employee of a participating public employer and completes at
100 least 12 consecutive months of contributing service, and while he or she continues to be in the
101 employ of a participating public employer and contributing to the retirement system.

102 (6) Notwithstanding §5-10-15(b)(4)(A) of this code, a member who becomes an employee
103 of a participating public employer after such a period of active military duty and break in service
104 as an elected official shall be considered to have met the requirement of §5-10-15(b)(4)(A) of this
105 code after remaining employed for the first 12 consecutive months of his or her term after again
106 becoming an employee, regardless of whether a salary is paid to the employee for each such
107 month. Such an individual must elect to begin participating in the retirement system immediately
108 upon again becoming an employee of a participating public employer after the period of active
109 military duty and break in service.

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

111 (A) "Active military duty" means full-time active duty in the Armed Forces of the United
112 States for a period of 30 or more consecutive calendar days. Active military duty does not include
113 inactive duty of any kind.

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

121 (C) "Armed Forces of the United States" means the Army, Navy, Air Force, Marine Corps

122 and Coast Guard, the reserve components thereof, and the National Guard of the United States
123 or the National Guard of a state or territory when members of the same are on full-time active
124 duty pursuant to Title 10 or Title 32 of the United States Code.

125 (D) "Calculation month" means the month immediately following the month in which the
126 member completes the 12 consecutive months of contributory service with a participating public
127 employer required by this subsection, as applicable.

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

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

132 (G) "Purchase annuity rate" means the actuarial lump sum annuity factor calculated as of
133 the calculation month based on the following actuarial assumptions: Interest rate of seven and
134 one-half percent; mortality of the 1971 group annuity mortality table, 50 percent blended male and
135 female rates, applied on a unisex basis to all members; if purchase age is under age 62, a
136 deferred annuity factor with payments commencing at age 62; and if purchase age is 62 or over,
137 an immediate annuity factor with payments starting at the purchase age.

138 (H) "Purchase average monthly salary" means the average monthly salary of the member
139 during the months two through 12 of the 12 consecutive month period required by this subsection
140 ~~of this section~~, as applicable.

141 (I) "Purchase military service" means the amount of military service being purchased by
142 the employee in months up to the 60-month maximum, calculated in accordance with §5-10-
143 15(b)(9) of this code.

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

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

156 (9) To calculate the amount of military service credit a member may purchase, the board
157 shall add the total number of days in each period of a member's active military duty eligible to be
158 purchased, divide the total by 30, and round up or down to the nearest integer (fractions of 0.5
159 shall be rounded up), in order to yield the total number of months of military service credit a
160 member may purchase, subject to the 60-month maximum. A member may purchase all or part
161 of the maximum amount of military service credit he or she is eligible for in one-month increments.

162 (10) To receive credit, a member must submit a request to purchase military service credit
163 to the board, on such form or in such other manner as shall be required by the board, within the
164 12 consecutive month period required by this subsection, as applicable. The board shall then
165 calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the
166 member within the 48-month period required by this subsection, as applicable. A member
167 purchasing military service credit pursuant to this subsection must do so in a single, lump sum
168 payment: *Provided*, That the board may accept partial, installment or other similar payments if the
169 employee executes a contract with the board specifying the amount of military service to be
170 purchased and the payments required: *Provided, however*, That any failure to pay the contract
171 amount in accordance with this section shall be treated as an overpayment or excess contribution
172 subject to §5-10-44 of this code and no military service shall be credited.

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

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

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

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

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

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

191 (e) In any case of doubt as to the period of service to be credited a member under the
192 provisions of this section, the board has final power to determine the period. Notwithstanding the
193 provisions of §5-10-3a of this code, the provisions of this section are not subject to liberal
194 construction. The board is authorized to determine all questions and make all decisions relating
195 to this section and, pursuant to the authority granted to the board in §5-10D-1 of this code, may
196 propose rules to administer this section for legislative approval in accordance with the provisions
197 of §29A-3-1 *et seq.* of this code.

NOTE: The purpose of this bill is to permit a West Virginia public employee who first

becomes an employee of a participating public employer on or after July 1, 2015, and who has received an honorable discharge, a general discharge under honorable conditions or a medical discharge from the Armed Forces of the United States, to purchase up to 60 months of military service credit for retirement purposes.

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