

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 801

FISCAL
NOTE

BY SENATORS PALUMBO, STOLLINGS, AND ROMANO

[Introduced February 17, 2020; referred
to the Committee on Pensions; and then to the
Committee on Finance]

1 A BILL to amend and reenact §18-7A-17a of the Code of West Virginia, 1931, as amended,
 2 relating to providing a 12-month window to permit members of the State Teachers
 3 Retirement System to purchase qualified military service credits that had been previously
 4 forfeited.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-17a. Qualified military service.

1 (a) Except as provided in subsection (b) of this section, for the purpose of this article, the
 2 retirement board shall grant prior service credit to members of the retirement system who were
 3 honorably discharged from active duty service in any of the armed forces of the United States in
 4 any period of national emergency within which a federal Selective Service Act was in effect. For
 5 purposes of this section, "armed forces" includes Women's Army Corps, women's appointed
 6 volunteers for emergency service, Army Nurse Corps, SPARS, Women's Reserve and other
 7 similar units officially part of the military service of the United States. The military service is
 8 considered equivalent to public school teaching, and the salary equivalent for each year of that
 9 service is the actual salary of the member as a teacher for his or her first year of teaching after
 10 discharge from military service. Prior service credit for military service shall not exceed 10 years
 11 for any one member, nor shall it exceed 25 percent of total service at the time of retirement.
 12 Notwithstanding the preceding provisions of this subsection, contributions, benefits and service
 13 credit with respect to qualified military service shall be provided in accordance with Section 414(u)
 14 of the Internal Revenue Code. For purposes of this section, "qualified military service" has the
 15 same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is
 16 authorized to determine all questions and make all decisions relating to this section and, pursuant
 17 to the authority granted to the retirement board in §5-10D-1 of this code, may promulgate rules
 18 relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal
 19 Revenue Code. No military service credit may be used in more than one retirement system

20 administered by the Consolidated Public Retirement Board.

21 (b) Subsection (a) of this section does not apply to any member who first becomes an
22 employee of a participating public employer on or after July 1, 2015. This subsection applies to
23 any member who first became an employee of a participating public employer on or after July 1,
24 2015, and also applies to any member who became an employee of a participating public
25 employer before July 1, ~~2015~~ 2020, and is unable to meet the requirements of subsection (a) of
26 this section.

27 (1) Any member may purchase up to 60 months of military service credit for time served
28 in active military duty prior to first becoming an employee of a participating public employer if all
29 of the following conditions are met:

30 (A) The member has completed a complete fiscal year of contributory service;

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

33 (C) The employee pays to the retirement system the actuarial reserve purchase amount
34 within 48 months after the date on which employer and employee contributions are first received
35 by the retirement system for the member and while he or she continues to be in the employ of a
36 participating public employer and contributing to the retirement system, or within 48 months of
37 July 1, ~~2015~~ 2020, whichever is later: *Provided*, That any employee who ceases employment with
38 a participating public employer before completing the required actuarial reserve purchase amount
39 in full shall not be eligible to purchase the military service.

40 (2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first
41 becomes an employee of a participating public employer on or after July 1, 2015, but who does
42 not remain employed and contributing to the retirement system for at least a complete fiscal year
43 after his or her initial employment, shall be considered to have met the requirement of said
44 paragraph the first time he or she becomes an employee of a participating public employer and
45 completes at least a complete fiscal year of contributing service. Such a member shall be

46 considered to have met the requirement of paragraph (C) of said subdivision if he or she pays to
47 the retirement system the actuarial reserve purchase amount within 48 months after the date on
48 which employer and employee contributions are first received by the retirement system for the
49 member the first time he or she becomes an employee of a participating public employer and
50 completes at least a complete fiscal year of contributing service, and while he or she continues to
51 be in the employ of a participating public employer and contributing to the retirement system.

52 (3) A member who first becomes an employee of a participating public employer on or
53 after July 1, 2015, may purchase military service credit for active military duty performed on or
54 after the date he or she first becomes an employee of a participating public employer only if all of
55 the following conditions are met: *Provided*, That the maximum military service credit such member
56 may purchase shall take into account any military service credit purchased for active military duty
57 pursuant to subdivision (1) of this subsection in addition to any military service credit purchased
58 pursuant to this subdivision:

59 (A) The member was an employee of a participating public employer, terminated
60 employment and experienced a break in contributing service in the retirement system of one or
61 more months, performed active military service while not an employee of the participating public
62 employer and not contributing to the retirement system, then again becomes an employee of a
63 participating public employer and completes at least a complete fiscal year of contributory service;

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

66 (C) The member pays to the retirement system the actuarial reserve purchase amount
67 within 48 months after the date on which employer and employee contributions are first received
68 by the retirement system for the member after he or she again becomes an employee of a
69 participating public employer immediately following the period of active military duty and break in
70 service and completes at least a complete fiscal year of contributory service, and while he or she
71 continues to be in the employ of a participating public employer and contributing to the retirement

72 system.

73 (4) Notwithstanding paragraph (A), subdivision (3) of this subsection, a member who
74 otherwise meets the requirements of said paragraph, but who does not remain employed and
75 contributing to the retirement system for at least a complete fiscal year when he or she first
76 becomes an employee of a participating public employer after the period of active military duty
77 and break in service, shall be considered to have met the requirement of said paragraph the first
78 time he or she again becomes an employee of a participating public employer and completes at
79 least a complete fiscal year of contributing service. Such a member shall be considered to have
80 met the requirement of paragraph (C) of said subdivision if he or she pays to the retirement system
81 the actuarial reserve purchase amount within 48 months after the date on which employer and
82 employee contributions are first received by the retirement system for the member for the first
83 time he or she again becomes an employee of a participating public employer and completes at
84 least a complete fiscal year of contributing service, and while he or she continues to be in the
85 employ of a participating public employer and contributing to the retirement system.

86 (5) For purposes of this subsection, the following definitions shall apply:

87 (A) "Active military duty" means full-time active duty in the armed forces of the United
88 States for a period of 30 or more consecutive calendar days. Active military duty does not include
89 inactive duty of any kind.

90 (B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by
91 the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing
92 at seven and one-half percent from the calculation month through the purchase month,
93 compounded monthly.

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

98 (D) "Calculation month" means the month immediately following the month in which the
99 member completes a complete fiscal year of contributory service with a participating public
100 employer required by subdivision (1), (2), (3) or (4) of this subsection, as applicable.

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

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

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

111 (H) "Purchase average monthly salary" means the average monthly salary of the member
112 during the number of months of the member's contract during the fiscal year of contributory
113 service required by subdivisions (1), (2), (3) and (4) of this subsection, as applicable. For any
114 member who first became an employee of a participating public employer before July 1, 2015,
115 the purchase average monthly salary means the average monthly salary of the member during
116 the number of months of the member's contract during his or her complete fiscal year of
117 contributory service on or after July 1, ~~2015~~ 2019.

118 (I) "Purchase military service" means the amount of military service being purchased by
119 the employee in months up to the 60-month maximum, calculated in accordance with subdivision
120 (7) of this subsection.

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

124 plan trust fund in full payment of the service credit being purchased.

125 (6) A member may purchase military service credit for a period of active military duty
126 pursuant to this subsection only if the member received an honorable discharge for the period.
127 Anything other than an honorable discharge, including, but not limited to, a general or under
128 honorable conditions discharge, an entry-level separation discharge, an other than honorable
129 conditions discharge or a dishonorable discharge, shall disqualify the member from receiving
130 military service credit for the period of service. The board shall require a member requesting
131 military service credit to provide official documentation establishing that the requirements set forth
132 in this subsection have been met.

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

139 (8) To receive credit, a member must submit a request to purchase military service credit
140 to the board, on such form or in such other manner as shall be required by the board, within the
141 complete fiscal year period required by subdivision (1), (2), (3) or (4) of this subsection, as
142 applicable: Provided, That, a member who became an employee of a participating public
143 employer before July 1, 2015, who failed to submit a request to purchase military service credit
144 within the fiscal year period after July 1, 2015, as required by subdivision (1) or (4) of this
145 subsection, may during the period beginning July 1, 2020, and ending June 30, 2021, submit a
146 request to purchase military service credit previously forfeited by him or her by the failure to submit
147 a timely request. The payment under this subsection may be made by lump sum or paid over a
148 period of time not to exceed 60 months. Where the member elects to pay the required amount
149 other than by lump sum, the member is required to pay interest at the rate determined by the

150 board until all sums are fully paid. The board shall then calculate the actuarial reserve lump sum
151 purchase amount, which amount must be paid by the member within the 48-month period required
152 by said subdivisions, as applicable. A member purchasing military service credit pursuant to this
153 subsection must do so in a single, lump sum payment: *Provided*, That the board may accept
154 partial, installment or other similar payments if the employee executes a contract with the board
155 specifying the amount of military service to be purchased and the payments required: *Provided*,
156 *however*, That any failure to pay the contract amount in accordance with this section shall be
157 treated as an overpayment or excess contribution subject to §18-7A-14c of this code and no
158 military service shall be credited.

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

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

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

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

171 (d) Notwithstanding the preceding provisions of this section, contributions, benefits and
172 service credit with respect to qualified military service shall be provided in accordance with
173 Section 414(u) of the Internal Revenue Code and the Federal Uniformed Services Employment
174 and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same
175 may be amended from time to time. For purposes of this section, "qualified military service" has

176 the same meaning as in Section 414(u) of the Internal Revenue Code.

177 (e) In any case of doubt as to the period of service to be credited a member under the
178 provisions of this section, the board has final power to determine the period. The board is
179 authorized to determine all questions and make all decisions relating to this section and, pursuant
180 to the authority granted to the board in §18-10D-1 of this code, may propose rules to administer
181 this section for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this
182 code.

NOTE: The purpose of this bill is to open an enrollment period of 12 months in which certain members of the state teachers retirement system to purchase qualified military service credits that had been previously forfeited.

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