WEST VIRGINIA CODE: §18-7A-17A

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

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

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

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

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

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

(C) The employee pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first

received by the retirement system for the member and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system, or within 48 months of July 1, 2015, whichever is later: *Provided*, That any employee who ceases employment with a participating public employer before completing the required actuarial reserve purchase amount in full shall not be eligible to purchase the military service.

(2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, but who does not remain employed and contributing to the retirement system for at least a complete fiscal year after his or her initial employment, shall be considered to have met the requirement of said paragraph the first time he or she becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service. Such a member shall be considered to have met the requirement of paragraph (C) of said subdivision if he or she pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member the first time he or she becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

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

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

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

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

contributing to the retirement system.

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

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

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

(B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing at 7.5 percent from the calculation month through the purchase month, compounded monthly.

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

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

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

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

(G) "Purchase annuity rate" means the actuarial lump sum annuity factor calculated as of the calculation month based on the following actuarial assumptions: Interest rate of 7.5 percent;

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mortality of the 1971 group annuity mortality table, 50 percent blended male and female rates, applied on a unisex basis to all members; if purchase age is under age 62, a deferred annuity factor with payments commencing at age 62; and if purchase age is 62 or over, an immediate annuity factor with payments starting at the purchase age.

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

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

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

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

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

(8) To receive credit, a member must submit a request to purchase military service credit to the board, on such form or in such other manner as shall be required by the board, within the complete fiscal year period required by subdivision (1), (2), (3) or (4) of this subsection, as applicable. The board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the member within the 48-month period required by said subdivisions, as applicable. A member purchasing military service credit pursuant to

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this subsection must do so in a single, lump sum payment: *Provided*, That the board may accept partial, installment or other similar payments if the employee executes a contract with the board specifying the amount of military service to be purchased and the payments required: *Provided, however*, That any failure to pay the contract amount in accordance with this section shall be treated as an overpayment or excess contribution subject to §18-7A-14c of this code and no military service shall be credited.

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

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

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

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

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

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

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