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# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 4391**

(By Delegates Givens, Sparks, Manuel,  
Yeager, Linch, Modesitt and H. White)



Passed March 10, 2000

In Effect Ninety Days from Passage

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## H. B. 4391

(BY DELEGATES GIVENS, SPARKS, MANUEL,  
YEAGER, LINCH, MODESITT AND H. WHITE)

[Passed March 10, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section fifteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifteen-b, all relating to public employees retirement; granting service credit for persons entering the active service of the armed forces of the United States during periods of compulsory military service; granting service credit for persons in the active service of the armed forces of the United States during periods of armed conflict; requirements needed to qualify for credit; defining terms; and authorizing legislative rules.

*Be it enacted by the Legislature of West Virginia:*

That section fifteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by

adding thereto a new section, designated section fifteen-b, all to read as follows:

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

**§5-10-15. Military service credit; periods of compulsory military service.**

1 (a)(1) In addition to any benefit provided by federal law,  
2 any member of the retirement system who has previously  
3 served in or enters the active service of the armed forces of the  
4 United States during any period of compulsory military service  
5 shall receive credited service for said time spent in the armed  
6 forces of the United States, not to exceed five years if such  
7 member:

8 (A) Has been honorably discharged from the armed forces;

9 (B) Substantiates by appropriate documentation or evidence  
10 his or her active military service and entry therein during any  
11 period of compulsory military service; and

12 (C) Pays to the members' deposit fund the amount he or she  
13 may have withdrawn therefrom, together with regular interest  
14 from the date of withdrawal to the date of repayment.

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

21 (3) No member may receive the credit described in this  
22 section for any period for which the member has received credit  
23 under section ten-b of this article.

24 (b) In any case of doubt as to the period of service to be  
25 credited a member under the provisions of this section, the  
26 board of trustees shall have final power to determine such  
27 period.

28 (c) During the period of such armed service and until the  
29 member's return to the employ of a participating public  
30 employer, the member's contributions to the retirement system  
31 shall be suspended and any credit balance remaining in the  
32 members' deposit fund shall be accumulated at regular interest.

**§5-10-15b. Military service credit; periods of armed conflict.**

1 (a) The Legislature hereby recognizes the men and women  
2 of this state who have served in the armed forces of the United  
3 States during times of war, conflict and danger. It is the intent  
4 of this section to confer upon persons who are eligible at any  
5 time for public employees retirement benefits military service  
6 credits for any time served in active duty in the armed forces of  
7 the United States when such duty was during periods of armed  
8 conflict.

9 (b)(1) In addition to any benefit provided by federal law,  
10 any member of the retirement system who has previously  
11 served in or enters the active service of the armed forces of the  
12 United States during any period of armed conflict shall receive  
13 credited service for said time spent in active duty in the armed  
14 forces of the United States during the period of armed conflict,  
15 not to exceed five years if such member:

16 (A) Has been honorably discharged from the armed forces;

17 (B) Substantiates by appropriate documentation or evidence  
18 his or her active military service during periods of armed  
19 conflict; and

20 (C) Pays to the members' deposit fund the amount he or she  
21 may have withdrawn therefrom, together with regular interest  
22 from the date of withdrawal to the date of repayment.

23 (2) Any member of the retirement system who previously  
24 served on active military duty during a period of armed conflict  
25 shall receive the credit provided by this section regardless of  
26 whether he or she was a public employee at the time of service.

27 (3) No member may receive the credit described in this  
28 section for any period for which the member has received credit  
29 under section ten of this article.

30 (c) In any case of doubt as to the period of service to be  
31 credited a member under the provisions of this section, the  
32 board of trustees shall have final power to determine such  
33 period.

34 (d) If a member of the public employees retirement system  
35 enters the active service of the United States and serves during  
36 any period of armed conflict, during the period of such armed  
37 service and until the member's return to the employ of a  
38 participating public employer, the member's contributions to  
39 the retirement system shall be suspended and any credit balance  
40 remaining in the members' deposit fund shall be accumulated  
41 at regular interest.

42 (e) For purposes of this section, the following definitions  
43 shall apply:

44 (1) "Period of armed conflict" means the Spanish-American  
45 War, the Mexican border period, World War I, World War II,  
46 the Korean conflict, the Vietnam era, the Persian Gulf War, and  
47 any other period of armed conflict by the United States,  
48 including, but not limited to, those periods sanctioned by a  
49 declaration of war by the United States Congress or by execu-  
50 tive or other order of the president.

51 (2) "Spanish-American War" means the period beginning  
52 on the twenty-first day of April, one thousand eight hundred  
53 ninety-eight, and ending on the fourth day of July, one thousand  
54 nine hundred two, and includes the Philippine Insurrection, the  
55 Boxer Rebellion, and, in the case of a veteran who served with  
56 the United States military forces engaged in hostilities in the  
57 Moro Province, means the period beginning on the twenty-first  
58 day of April, one thousand eight hundred ninety-eight, and  
59 ending on the fifteenth day of July, one thousand nine hundred  
60 three.

61 (3) “The Mexican border period” means the period begin-  
62 ning on the ninth day of May, one thousand nine hundred  
63 sixteen, and ending on the fifth day of April, one thousand nine  
64 hundred seventeen, in the case of a veteran who during such  
65 period served in Mexico, on the borders thereof or in the waters  
66 adjacent thereto.

67 (4) “World War I” means the period beginning on the sixth  
68 day of April, one thousand nine hundred seventeen, and ending  
69 on the eleventh day of November, one thousand nine hundred  
70 eighteen, and, in the case of a veteran who served with the  
71 United States military forces in Russia, means the period  
72 beginning on the sixth day of April, one thousand nine hundred  
73 seventeen, and ending on the first day of April, one thousand  
74 nine hundred twenty,

75 (5) “World War II” means the period beginning on the  
76 seventh day of December, one thousand nine hundred forty-one,  
77 and ending on the thirty-first day of December, one thousand  
78 nine hundred forty-six.

79 (6) “Korean conflict” means the period beginning on the  
80 twenty-seventh day of June, one thousand nine hundred fifty,  
81 and ending on the thirty-first day of January, one thousand nine  
82 hundred fifty-five.

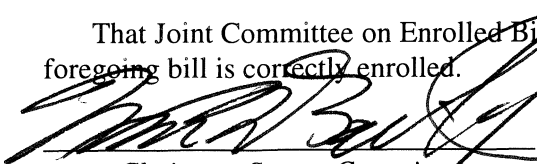
83 (7) “The Vietnam era” means the period beginning on the  
84 twenty-eighth day of February, one thousand nine hundred  
85 sixty-one, and ending on the seventh day of May, one thousand  
86 nine hundred seventy-five, in the case of a veteran who served  
87 in the Republic of Vietnam during that period; and the fifth day  
88 of August, one thousand nine hundred sixty-four, and ending on  
89 the seventh day of May, one thousand nine hundred seventy-  
90 five, in all other cases.

91 (8) “Persian Gulf War” means the period beginning on the  
92 second day of August, one thousand nine hundred ninety, and  
93 ending on the eleventh day of April, one thousand nine hundred  
94 ninety-one.

95       (9) The board is empowered to consider a petition by any  
96 member whose tour of duty, in territory that would reasonably  
97 be considered hostile and dangerous, was extended beyond the  
98 period in which an armed conflict was officially recognized, if  
99 that tour of duty commenced during a period of armed conflict,  
100 and the member was assigned to duty stations within the hostile  
101 territory throughout the period for which service credit is being  
102 sought. The board has the authority to evaluate the facts and  
103 circumstances peculiar to the petition, and rule on whether  
104 granting service credit for the extended tour of duty is consis-  
105 tent with the objectives of this article. In that determination, the  
106 board is empowered to grant full credit for the period under  
107 petition subject to the limitations otherwise applicable, or to  
108 grant credit for any part of the period as the board deems  
109 appropriate, or to deny credit altogether.

110       (f) The board of trustees may propose legislative rules for  
111 promulgation in accordance with the provisions of article three,  
112 chapter twenty-nine-a of this code to administer the provisions  
113 of this section.

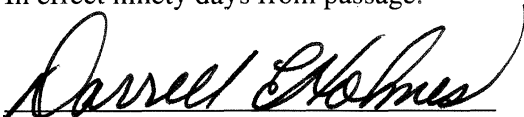
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

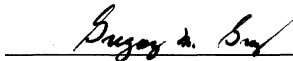
  
Chairman Senate Committee

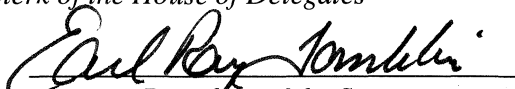
  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

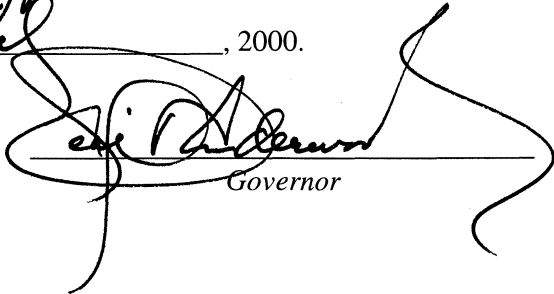
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approval this the 4th  
day of April, 2000.

  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/24/10

Time \_\_\_\_\_