WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2001

ENROLLED

House Bill No. 2516

(By Delegates Michael, Yeager, Manuel, Givens and H. White)

Passed April 14, 2001

In Effect Ninety Days from Passage
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.

(a)(1) The Legislature recognizes the men and women of this state who have served in the armed forces of the United States during times of war, conflict and danger. It is the intent of this section to confer military service credit upon persons who are eligible at any time for public employees retirement benefits for any time served in active duty in the armed forces of the United States when the duty was during any period of compulsory military service or during a period of armed conflict, as defined in this section.

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

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

(B) Substantiates by appropriate documentation or evidence his or her active military service and entry into military service during any period of compulsory military service or during periods of armed conflict.

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

(4) If a member of the public employees retirement system enters the active service of the United States and serves during any period of compulsory military service or during any period of armed conflict, during the period of the armed service and until the member’s return to the employ of a participating public employer, the member’s contributions to the retirement system is suspended and any credit balance remaining in the member’s deposit fund shall be accumulated at regular interest.

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

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

(7) The board is empowered to consider a petition by any member whose tour of duty, in a territory that would reasonably be considered hostile and dangerous, was extended beyond the period in which an armed conflict was officially recognized, if that tour of duty commenced during a period of armed conflict, and the member was assigned to duty stations within the hostile territory throughout the period for which service credit is being sought. The board has the authority to evaluate the facts and circumstances peculiar to the petition, and rule on whether granting service credit for the extended tour of duty is consistent with the objectives of this article. In that determination, the board is empowered to grant full credit for the period under petition subject to the limitations otherwise applicable, or to grant credit for any part of the period as the board considers appropriate, or to deny credit altogether.
(8) The board of trustees may propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to administer the provisions of this section.

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

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

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

(3) “The Mexican border period” means the period beginning on the ninth day of May, one thousand nine hundred sixteen, and ending on the fifth day of April, one thousand nine hundred seventeen, in the case of a veteran who during the period served in Mexico, on its borders or in the waters adjacent to it.

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

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

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

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

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

(c) 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. 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 section one, article ten-d of this chapter, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.
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 is approved this the 27th day of April, 2001.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/3/81
Time 6:40