WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2285

(By Mr. Speaker (Mr. Kiss) and Delegates Varner, Michael, Leach, Kominar, H.K. White and L. Williams)

Passed February 21, 2005

In Effect from Passage
AN ACT providing for the payment of the veterans bonus to veterans of the Kosovo, Afghanistan, and Iraq conflicts, and for the administration thereof; designating the division of veterans affairs to administer provisions of act; providing powers and duties of the director of the division; authorizing adoption of rules and regulations; authorizing appointment of veterans advisory committee; setting forth qualifications to receive bonus; providing definitions; providing for payment of bonus to relatives of deceased veterans; specifying amounts of bonus; setting forth periods to apply and receive bonus; providing for determination of validity of each claim for bonus by director; providing for a certified list of eligible veterans and relatives of deceased veterans; providing for review of decision of director by board of review; authorizing appointment of additional boards of review and compensation for members; providing for judicial review of
decisions of board of review; creation of veterans bonus fund; exempting bonus from taxation; excluding bonus from certain debt collection actions; prohibiting claim for bonus from assignment; limiting charges for services provided in connection with application for bonus; and prohibiting certain acts and providing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

PAYMENT OF VETERANS BONUS.

§1. Division of veterans affairs to administer act; veterans advisory committee.

The West Virginia division of veterans affairs is hereby designated as the state agency to administer the provisions of this act. The director of the division of veterans affairs shall do all things necessary for the proper administration thereof. The director, with the advice and consent of the veterans council, may adopt and promulgate such reasonable rules and regulations, not inconsistent herewith, as may be necessary to effect the purposes of this act, including regulations concerning evidence or other data required to establish eligibility and qualifications for the bonus as herein provided. The director shall prepare and furnish all necessary forms which shall be distributed by him or her through such veterans and other organizations as he or she may deem most practicable.

The division of veterans affairs shall, insofar as possible, utilize the personnel, supplies and equipment of the division in the administration of this act. The division may employ such additional personnel as may be necessary for the proper administration of this act, subject, however, to the approval of the secretary of the department of military affairs and public safety who must also approve the salaries and other compensation for such personnel.
The governor may appoint a veterans advisory committee, consisting of representatives of veterans organizations chartered under acts of Congress and operating in this state, to advise and counsel the director in the administration of this act. Such committee shall meet on the call of the director at such times and places as he or she may specify.

§2. Veterans entitled to bonus.

In grateful recognition of their services in time of grave national emergency, a cash bonus as herein provided shall be paid to veterans of the Kosovo, Afghanistan, and Iraq conflicts. The bonus shall be paid to (1) Veterans of the armed forces of the United States who served on active duty in areas of conflict in Iraq, or were members of reserve components called to active duty by the President of the United States under Title 10, United States Code section 12301, 12302, 12303 or 12304 during the Iraqi War, between the nineteenth day of March, two thousand three and the date determined by the President or Congress of the United States as the end of the involvement of the United States armed forces in Iraq, both dates inclusive; or (2) veterans, active service members, or members of reserve components of the armed forces of the United States, who served on active duty in one of the military operations for which he or she received a campaign badge or expeditionary medal during the periods hereinafter described. For purposes of this act, periods of active duty in a campaign or expedition are designated as: The conflict in Kosovo between the twentieth day of November, one thousand nine hundred ninety-five and the thirty-first day of December, two thousand, both dates inclusive; and the conflict in Afghanistan, between the seventh day of October, two thousand one and the date determined by the President or Congress of the United States as the end of the involvement of the United States armed forces in Afghanistan, both dates inclusive. For purposes of this act, not more than one
bonus may be paid to or on behalf of the service of a veteran. In order to be eligible to receive a bonus, a veteran must have been a bona fide resident of the State of West Virginia at the time of his or her entry into active service and for a period of at least six months immediately prior thereto, and has not been separated from service under conditions other than honorable.

The bonus shall also be paid to any veteran otherwise qualified pursuant to this amendment, who was discharged within ninety days after entering the armed forces because of a service-connected disability.

As used in this act, “armed forces” means the army, navy, air force, marine corps and coast guard of the United States.

As used in this act, “active duty” means full-time active service in the armed forces with full duty pay status, but shall not include time absent from leave, absent over leave, while in confinement or any other time classified by the respective branches of the armed forces as “bad” or “lost” time.

For purposes of this act, “active service” shall mean the person’s active duty as a member of one of the armed forces during the periods of conflict referred to herein.

As used in this act, “bona fide resident” shall mean any person who, at the time of his or her entry into active service as such is defined herein, was a legal resident of the state of West Virginia. Evidence of legal residence shall be shown by the presentation of evidence that the person filed a West Virginia personal income tax for the tax year immediately preceding his or her entry into active service or proof that he or she maintained a permanent place of abode in West Virginia at the time of his or her entry into active service and for a period of at least six months prior to entry into active service.
§3. Payment of bonus to relatives of deceased veterans.

The bonus to which any deceased veteran would have been entitled, if living, shall be paid to the following surviving relatives of the veteran, if the relatives are residents of the State when the application is made and if the relatives are living at the time payment is made: Any unremarried widow or widower, or, if none, all children, stepchildren and adopted children under the age of eighteen, or, if none, any parent, stepparent, adoptive parent or person standing in loco parentis. The categories of persons listed shall be treated as separate categories listed in order of entitlement and where there is more than one member of a class, the bonus shall be paid to each member according to his or her proportional share. Where a deceased veteran’s death was connected with the service and resulted from the service during the time period specified, however, the surviving relatives shall be paid, in accordance with the same order of entitlement, the sum of two thousand dollars in lieu of any bonus to which the deceased might have been entitled if living.

As used in this act, “unremarried widow” or “unremarried widower” means the spouse of a deceased veteran, legally married to the veteran at the time of his or her death, who has not remarried at the time of making application.

As used in this act, “child” means the natural child, adopted child or stepchild of the deceased veteran upon whose service eligibility is derived and who has not attained the age of eighteen years at the time of making application.

As used in this act, “parent” means either of the natural, step, or adoptive father or mother of, or person standing in loco parentis to, the deceased veteran upon whose service eligibility is derived.
§4. Amount of bonus.

The amount of the bonus shall be six hundred dollars per eligible veteran who was in active service, inside the combat zone in Kosovo, Afghanistan or Iraq as designated by the President or Congress of the United States at anytime during the dates specified hereinabove. In the case of the Iraqi War and the conflict in Afghanistan, the amount of bonus shall be four hundred dollars per eligible veteran who was in active service outside the combat zone designated by the President or Congress of the United States during the dates specified hereinabove. For purposes of this act, not more than one bonus shall be paid to or on behalf of the service of any one veteran. In the event any veteran is eligible to receive more than one bonus, the veteran shall receive the greater bonus.

§5. Limitation on time of filing application.

No bonus may be paid to any person, otherwise entitled thereto, unless application therefor shall be filed with the division of veterans affairs. No bonus may be paid to any person, otherwise entitled thereto, for service periods of active duty in a campaign or expedition in the conflict in Kosovo within the time periods contained hereinabove. unless application therefor shall be filed with the division of veterans affairs on or before the thirtieth day of June, two thousand six. No bonus may be paid to any person, otherwise entitled thereto, for service periods of active duty in a campaign or expedition in the conflict in Afghanistan within the time periods contained hereinabove or for service on active duty in areas of conflict in Iraq or for active duty service of reserve components called by the President of the United States as described hereinabove, unless application therefor shall be filed within one year of the end of such veteran’s service.
§6. Determination of director of the validity of claims.

Upon receipt of an application for benefits hereunder, the director shall, as soon as may be practicable, determine the validity of the claim. If the determination is made that an applicant is eligible for a bonus, the director shall mail to the applicant a notification of such determination. If the determination is made that no benefits hereunder are payable, then the director shall mail to the applicant a notification denying benefits and citing the reason or reasons for such denial.

Any applicant who is aggrieved by any such determination of the director may demand that his or her claim be reviewed as hereinafter provided. Such demand for review shall be filed with the director, in writing, within sixty days after the date on which the notice of award or notice of denial was mailed to the applicant. Upon receipt of such demand for review, the director shall certify the demand, together with all files and records relating to the application, to a board of review. Unless such demand for review is duly filed with the director, all findings and orders of the director with reference to such claim shall be final and conclusive upon the applicant.

If the director determines that an applicant is eligible for a bonus, he or she shall certify that finding to the governor. The governor shall then create a list of veterans and relatives of deceased veterans eligible to receive such bonus and certify such list to the Legislature at any regular or special session.


For the purposes of this act, the veterans council of the division of veterans affairs is hereby designated as the "Veterans Bonus Board of Review." Under rules and regulations adopted by the veterans council, any one or more members of the board of review may conduct hearings on a demand by an
applicant for review of the determination of the director, and
may report his or her or their findings thereon, together with the
entire record of the case, to the board of review for its final
determination and decision.

If the number of demands for review hereunder becomes
too numerous to be handled expeditiously by the veterans
council, the governor, upon the recommendation of the council,
may appoint one or more additional boards of review. Addi-
tional boards shall consist of not more than five members, one
of whom shall be a lawyer, who shall have the same qualifica-
tions as the members of the veterans council, and who shall
serve at the will and pleasure of the governor for such time as
may be necessary for the purposes of this act. Each such
additional board of review shall have the same authority and its
final decision shall have the same force and effect as that of the
veterans council under the provisions of this act.

Upon receipt from the director of the files and records
relating to any claim, the board, or a member or members
thereof, as the case may be, shall fix a time and place for a
hearing thereon. The applicant shall be notified of the time and
place fixed and shall be informed of his or her right to demand
a public hearing if he or she so desires. At the hearing, the
claim shall be reexamined de novo and the submission of
additional evidence may be required or permitted. Upon the
conclusion of such hearing, the board of review, on the basis of
the record and the recommendations, if any, made by the
member or members who conducted the hearing, shall enter its
order reversing, affirming or modifying the determination made
by the director.

Any order so entered by the board shall be final and
conclusive upon the applicant and the director unless an
application is made for review to the West Virginia supreme
court of appeals as hereinafter provided. The board shall mail
to the applicant and to the director a copy of the order entered
by it in each case.

All notices and correspondence shall be directed to the
applicant at the address listed on his or her application and all
notices and correspondence to the director shall be addressed to
him or her at his or her office in the city of Charleston.

The director shall provide for each board of review such
clerical and stenographic assistants and such supplies as may be
necessary for the performance of its duties.

Each member of a board of review shall receive no salary,
but each member shall receive the same compensation and
expense reimbursement as is paid to members of the Legislature
for their interim duties as recommended by the citizens legisla-
tive compensation commission and authorized by law for each
day or portion thereof engaged in the discharge of official
duties.

§8. Court review of final orders of review board.

Within thirty days after notification of the entry of any final
order of a board of review, the director or the applicant affected
may petition for review of such order by the West Virginia
supreme court of appeals.

§9. Legislative appropriations paid into veterans bonus fund;
    expenditures; investment thereof; unexpended
    balance.

All money as appropriated by the Legislature for the
payment of a cash bonus to veterans as provided in the Veterans
Bonus Amendment of 2004 shall be paid into the veterans
bonus fund which is hereby created in the office of the state
treasurer and such fund shall be expended solely for the
payment of such veterans bonus. Except for such sums neces-
sary for current operating balances, such fund shall be invested
and reinvested by the West Virginia state board of investments
in accordance with the provisions of article six, chapter twelve
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended: Provided, That no such investment or
reinvestment shall adversely affect the current operating
balances of such fund. Any unexpended balance remaining in
this fund after payment of all eligible veterans and relatives of
deceased veterans as is from time to time established by the
certified list created by the Governor shall be available for
appropriation by the Legislature.

§10. Penalty for making false statements.

Any person who shall knowingly make any false or
misleading statement or representation, oral or written, in
support of any claim for a bonus under the provisions of this
act, shall be guilty of a felony, and, upon conviction thereof,
shall be punished by imprisonment in a state correctional
facility for not less than one nor more than five years.

§11. Penalty for filing more than one application.

Only one application shall be filed by any veteran or by any
person who claims to be entitled to a share of the bonus payable
in the case of any deceased veteran. Any person who, with
intent to defraud, violates the provisions of this section shall be
guilty of a felony, and, upon conviction thereof, shall be
punished by a fine of not less than five hundred dollars nor
more than one thousand dollars, or by imprisonment in a state
correctional facility for not less than one nor more than two
years, or by both such fine and imprisonment.

§12. Bonus payment not subject to taxation or legal process;
claim therefor not assignable.

The bonus provided by this act is hereby declared to be a
gift or gratuity made as a token of appreciation for the service
rendered by the veteran to the people of West Virginia in time
of grave national emergency and is in no sense compensation
for such services. The money received as such bonus shall be
exempt from taxation and such money, or any claim therefor,
shall not be subject to garnishment, attachment or levy of
execution. A claim for payment of a bonus under the provisions
of this act shall not be assignable for any purpose whatsoever.

§13. Collection of fees or charges; penalty.

No fee or charge shall be made by any person, attorney,
agent or representative for any service in connection with the
filing of an application for payment of a bonus hereunder,
except such fees as are provided by law for the performance of
official duties by a duly elected or appointed officer of this state
or a political subdivision thereof. No person shall, for a
consideration, discount or attempt to discount or advance
money upon any warrant issued for payment of any bonus
provided for in this act.

If an applicant shall employ an attorney to represent him or
her in connection with the prosecution of his or her claim
before a board of review, or before the supreme court of
appeals, the attorney shall file with the director an executed
copy of his or her contract of employment, and the total amount
of the fee therein provided shall not exceed twenty-five percent
of the amount under dispute.

Any person who violates any provision of this section shall
be guilty of a misdemeanor, and, upon conviction thereof, shall
be punished by fine of not less than twenty-five dollars nor
more than five hundred dollars, or by imprisonment in the
county or regional jail for not less than ten days nor more than
twelve months, or by both such fine and imprisonment.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy White  
Chairman Senate Committee

D. Ruby Buie  
Chairman House Committee

Originating in the House.

In effect from passage.

Darrell Helms  
Clerk of the Senate

Suyett D. Brown  
Clerk of the House of Delegates

Earl Ray Tomblin  
President of the Senate

Rob E. Ellis  
Speaker of the House of Delegates

The within is approved this the 25th day of January, 2005.

Robert E. Bentley  
Governor