

# WEST VIRGINIA LEGISLATURE

2016 MAR 21 P 5:47  
**2016 REGULAR SESSION**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4487**

(BY DELEGATES FOLK, WALTERS,  
KURCABA AND MARCUM)

[Passed March 10, 2016; in effect ninety days from passage.]

HB 4487

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1 AN ACT to amend and reenact §5-10-2 and §5-10-14 of the Code of West Virginia, 1931, as  
2 amended; and to amend and reenact §18-7A-17a of said code, all relating to state  
3 retirement systems; defining compensation and employee for the Public Employees  
4 Retirement System; requiring payment of reinstatement interest in the Public Employees  
5 Retirement System in certain circumstances; authorizing purchase of retroactive service  
6 credit under certain circumstances and with certain restrictions; and providing that failure  
7 of employee to pay the Teachers Retirement System according to a contract to purchase  
8 military service credit is to be treated as an overpayment or excess contribution pursuant  
9 to the article.

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

1 That §5-10-2 and §5-10-14 of the Code of West Virginia, 1931, as amended, be amended  
2 and reenacted; and that §18-7A-17a of said code be amended and reenacted, all to read as  
3 follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE  
GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;  
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,  
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

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

**§5-10-2. Definitions.**

1 Unless a different meaning is clearly indicated by the context, the following words and  
2 phrases as used in this article have the following meanings:

3 (1) "Accumulated contributions" means the sum of all amounts deducted from the  
4 compensations of a member and credited to his or her individual account in the members' deposit  
5 fund, together with regular interest on the contributions;

6 (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on  
7 behalf of a retired member;

8 (3) "Actuarial equivalent" means a benefit of equal value computed upon the basis of a  
9 mortality table and regular interest adopted by the board of trustees from time to time: *Provided*,  
10 That when used in the context of compliance with the federal maximum benefit requirements of  
11 Section 415 of the Internal Revenue Code, actuarial equivalent shall be computed using the  
12 mortality tables and interest rates required to comply with those requirements;

13 (4) "Annuity" means an annual amount payable by the retirement system throughout the  
14 life of a person. All annuities shall be paid in equal monthly installments, rounding to the upper  
15 cent for any fraction of a cent;

16 (5) "Annuity reserve" means the present value of all payments to be made to a retirant or  
17 beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other  
18 tables of experience, and regular interest, adopted by the board of trustees from time to time;

19 (6) "Beneficiary" means any person, except a retirant, who is entitled to, or will be entitled  
20 to, an annuity or other benefit payable by the retirement system;

21 (7) "Board of Trustees" or "board" means the Board of Trustees of the West Virginia  
22 Consolidated Public Retirement System;

23 (8) "Compensation" means the remuneration paid a member by a participating public  
24 employer for personal services rendered by the member to the participating public employer. In  
25 the event a member's remuneration is not all paid in money, his or her participating public  
26 employer shall fix the value of the portion of the remuneration which is not paid in money:  
27 *Provided*, That members hired in a position for the first time on or after July 1, 2014, who receive  
28 nonmonetary remuneration shall not have nonmonetary remuneration included in compensation  
29 for retirement purposes and nonmonetary remuneration may not be used in calculating a  
30 member's final average salary. Any lump sum or other payments paid to members that do not  
31 constitute regular salary or wage payments are not considered compensation for the purpose of

32 withholding contributions for the system or for the purpose of calculating a member's final average  
33 salary. These payments include, but are not limited to, attendance or performance bonuses, one-  
34 time flat fee or lump sum payments, payments paid as a result of excess budget, or employee  
35 recognition payments. The board shall have final power to decide whether the payments shall be  
36 considered compensation for purposes of this article;

37 (9) "Contributing service" means service rendered by a member within this state and for  
38 which the member made contributions to a public retirement system account of this state, to the  
39 extent credited him or her as provided by this article;

40 (10) "Credited service" means the sum of a member's prior service credit, military service  
41 credit, workers' compensation service credit and contributing service credit standing to his or her  
42 credit as provided in this article;

43 (11) "Employee" means any person who serves regularly as an officer or employee, full  
44 time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment,  
45 in the service of, and whose compensation is payable, in whole or in part, by any political  
46 subdivision, or an officer or employee whose compensation is calculated on a daily basis and  
47 paid monthly or on completion of assignment, including technicians and other personnel  
48 employed by the West Virginia National Guard whose compensation, in whole or in part, is paid  
49 by the federal government: *Provided*, That an employee of the Legislature whose term of  
50 employment is otherwise classified as temporary and who is employed to perform services  
51 required by the Legislature for its regular sessions or during the interim between regular sessions  
52 and who has been or is employed during regular sessions or during the interim between regular  
53 sessions in seven or more consecutive calendar years, as certified by the clerk of the house in  
54 which the employee served, is an employee, any provision to the contrary in this article  
55 notwithstanding, and is entitled to credited service in accordance with provisions of section  
56 fourteen of this article: *Provided, however*, That members of the legislative body of any political  
57 subdivision and judges of the state Court of Claims are employees receiving one year of service

58 credit for each one-year term served and prorated service credit for any partial term served,  
59 anything contained in this article to the contrary notwithstanding: *Provided further*, That only a  
60 compensated board member of a participating public employer appointed to a board of a  
61 nonlegislative body for the first time on or after July 1, 2014, who normally is required to work  
62 twelve months per year and one thousand forty hours of service per year is an employee. In any  
63 case of doubt as to who is an employee within the meaning of this article, the board of trustees  
64 shall decide the question;

65 (12) "Employer error" means an omission, misrepresentation or violation of relevant  
66 provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the  
67 relevant provisions of both the West Virginia Code and of the West Virginia Code of State  
68 Regulations by the participating public employer that has resulted in an underpayment or  
69 overpayment of contributions required. A deliberate act contrary to the provisions of this section  
70 by a participating public employer does not constitute employer error;

71 (13) "Final average salary" means either of the following: *Provided*, That salaries for  
72 determining benefits during any determination period may not exceed the maximum  
73 compensation allowed as adjusted for cost of living in accordance with section seven, article ten-  
74 d of this chapter and Section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That  
75 the provisions of section twenty-two-h of this article are not applicable to the amendments made  
76 to this subdivision during the 2011 regular session of the Legislature;

77 (A) The average of the highest annual compensation received by a member, including a  
78 member of the Legislature who participates in the retirement system in the year 1971 or thereafter,  
79 during any period of three consecutive years of credited service contained within the member's  
80 fifteen years of credited service immediately preceding the date his or her employment with a  
81 participating public employer last terminated: *Provided*, That for persons who were first hired on  
82 or after July 1, 2015, any period of five consecutive years of contributing service contained within  
83 the member's fifteen years of credited service immediately preceding the date his or her  
84 employment with a participating public employer last terminated; or

85 (B) If the member has less than five years of credited service, the average of the annual  
86 rate of compensation received by the member during his or her total years of credited service;  
87 and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision,  
88 of a member of the Legislature who participates in the retirement system as a member of the  
89 Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation  
90 (the total of all compensation paid under sections two, three, four and five, article two-a, chapter  
91 four of this code), in the year 1971, or in any year thereafter, plus any other compensation he or  
92 she receives in any year from any other participating public employer including the State of West  
93 Virginia, without any multiple in excess of one times his or her actual legislative compensation  
94 and other compensation, shall be used: *Provided*, That final average salary for any former  
95 member of the Legislature or for any member of the Legislature in the year 1971 who, in either  
96 event, was a member of the Legislature on November 30, 1968, or November 30, 1969, or  
97 November 30, 1970, or on November 30 in any one or more of those three years and who  
98 participated in the retirement system as a member of the Legislature in any one or more of those  
99 years means: (i) Either, notwithstanding the provisions of this subdivision preceding this proviso,  
100 \$1,500 multiplied by eight, plus the highest other compensation the former member or member  
101 received in any one of the three years from any other participating public employer including the  
102 State of West Virginia; or (ii) final average salary determined in accordance with paragraph (A) or  
103 (B) of this subdivision, whichever computation produces the higher final average salary, and in  
104 determining the annual compensation under subparagraph (ii) of this paragraph, the legislative  
105 compensation of the former member shall be computed on the basis of \$1,500 multiplied by eight,  
106 and the legislative compensation of the member shall be computed on the basis set forth in the  
107 provisions of this subdivision immediately preceding this paragraph or on the basis of \$1,500  
108 multiplied by eight, whichever computation as to the member produces the higher annual  
109 compensation;

110 (14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended,  
111 codified at Title 26 of the United States Code;

112 (15) "Limited credited service" means service by employees of the West Virginia  
113 Educational Broadcasting Authority, in the employment of West Virginia University, during a  
114 period when the employee made contributions to another retirement system, as required by West  
115 Virginia University, and did not make contributions to the Public Employees Retirement System:  
116 *Provided*, That while limited credited service can be used for the formula set forth in subsection  
117 (e), section twenty-one of this article, it may not be used to increase benefits calculated under  
118 section twenty-two of this article;

119 (16) "Member" means any person who has accumulated contributions standing to his or  
120 her credit in the members' deposit fund;

121 (17) "Participating public employer" means the State of West Virginia, any board,  
122 commission, department, institution or spending unit and includes any agency created by rule of  
23 the Supreme Court of Appeals having full-time employees, which for the purposes of this article  
124 is considered a department of state government; and any political subdivision in the state which  
125 has elected to cover its employees, as defined in this article, under the West Virginia Public  
126 Employees Retirement System;

127 (18) "Plan year" means the same as referenced in section forty-two of this article;

128 (19) "Political subdivision" means the State of West Virginia, a county, city or town in the  
129 state; a school corporation or corporate unit; any separate corporation or instrumentality  
130 established by one or more counties, cities or towns, as permitted by law; any corporation or  
131 instrumentality supported in most part by counties, cities or towns; and any public corporation  
132 charged by law with the performance of a governmental function and whose jurisdiction is  
133 coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency  
134 participating in the Public Employees Retirement System before July 1, 1997, is considered a  
135 political subdivision solely for the purpose of permitting those employees who are members of the

136 Public Employees Retirement System to remain members and continue to participate in the  
137 retirement system at their option after July 1, 1997: *Provided, however,* That the Regional  
138 Community Policing Institute which participated in the Public Employees Retirement System  
139 before July 1, 2000, is considered a political subdivision solely for the purpose of permitting those  
140 employees who are members of the Public Employees Retirement System to remain members  
141 and continue to participate in the Public Employees Retirement System after July 1, 2000;

142 (20) "Prior service" means service rendered prior to July 1, 1961, to the extent credited a  
143 member as provided in this article;

144 (21) "Regular interest" means the rate or rates of interest per annum, compounded  
145 annually, as the board of trustees adopts from time to time;

146 (22) "Required beginning date" means April 1 of the calendar year following the later of:  
147 (A) The calendar year in which the member attains age seventy and one-half years of age; or (B)  
148 the calendar year in which a member who has attained the age seventy and one-half years of age  
149 and who ceases providing service covered under this system to a participating employer;

150 (23) "Retirant" means any member who commences an annuity payable by the retirement  
151 system;

152 (24) "Retirement" means a member's withdrawal from the employ of a participating public  
153 employer and the commencement of an annuity by the retirement system;

154 (25) "Retirement system" or "system" means the West Virginia Public Employees  
155 Retirement System created and established by this article;

156 (26) "Retroactive service" means: (1) Service between July 1, 1961, and the date an  
157 employer decides to become a participating member of the Public Employees Retirement System;  
158 (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost  
159 in accordance with 162 CSR 5.13; and (3) service of any member of a legislative body or  
160 employees of the State Legislature whose term of employment is otherwise classified as

161 temporary for which the employee is eligible, but for which the employee did not elect to participate  
162 at that time;

163 (27) "Service" means personal service rendered to a participating public employer by an  
164 employee of a participating public employer; and

165 (28) "State" means the State of West Virginia.

**§5-10-14. Service credit; retroactive provisions.**

1 (a) The board of trustees shall credit each member with the prior service and contributing  
2 service to which he or she is entitled based upon rules adopted by the board of trustees and  
3 based upon the following:

4 (1) In no event may less than ten days of service rendered by a member in any calendar  
5 month be credited as a month of service: *Provided*, That for employees of the State Legislature  
6 whose term of employment is otherwise classified as temporary and who are employed to perform  
7 services required by the Legislature for its regular sessions or during the interim between regular  
8 sessions and who have been or are employed during regular sessions or during the interim  
9 between regular sessions in seven consecutive calendar years, service credit of one month shall  
10 be awarded for each ten days employed in the interim between regular sessions, which interim  
11 days shall be cumulatively calculated so that any ten days, regardless of calendar month or year,  
12 shall be calculated toward any award of one month of service credit;

13 (2) Except for hourly employees, and those persons who first become members of the  
14 retirement system on or after July 1, 2015, ten or more months of service credit earned in any  
15 calendar year shall be credited as a year of service: *Provided*, That no more than one year of  
16 service may be credited to any member for all service rendered by him or her in any calendar  
17 year and no days may be carried over by a member from one calendar year to another calendar  
18 year where the member has received a full-year credit for that year; and

19 (3) Service may be credited to a member who was employed by a political subdivision if  
20 his or her employment occurred within a period of thirty years immediately preceding the date the  
21 political subdivision became a participating public employer.

22           (b) The board of trustees shall grant service credit to employees of boards of health, the  
23 Clerk of the House of Delegates and the Clerk of the State Senate or to any former and present  
24 member of the State Teachers Retirement System who have been contributing members in the  
25 Public Employees Retirement System for more than three years, for service previously credited  
26 by the State Teachers Retirement System and shall require the transfer of the member's  
27 accumulated contributions to the system and shall also require a deposit, with reinstatement  
28 interest as set forth in the board's Rule, Refund, Reinstatement, Retroactive Service, Loan and  
29 Correction of Error Interest Factors, 162 C. S. R. 7, of any withdrawals of contributions any time  
30 prior to the member's retirement. Repayment of withdrawals shall be as directed by the Board of  
31 Trustees.

32           (c) Court reporters who are acting in an official capacity, although paid by funds other than  
33 the county commission or State Auditor, may receive prior service credit for time served in that  
34 capacity.

35           (d) Active members who previously worked in Comprehensive Employment and Training  
36 Act (CETA) may receive service credit for time served in that capacity: *Provided*, That in order to  
37 receive service credit under the provisions of this subsection the following conditions must be  
38 met: (1) The member must have moved from temporary employment with the participating  
39 employer to permanent full-time employment with the participating employer within one hundred  
40 twenty days following the termination of the member's CETA employment; (2) the board must  
41 receive evidence that establishes to a reasonable degree of certainty as determined by the board  
42 that the member previously worked in CETA; and (3) the member shall pay to the board an  
43 amount equal to the employer and employee contribution plus interest at the amount set by the  
44 board for the amount of service credit sought pursuant to this subsection: *Provided, however*,  
45 That the maximum service credit that may be obtained under the provisions of this subsection is  
46 two years: *Provided further*, That a member must apply and pay for the service credit allowed  
47 under this subsection and provide all necessary documentation by March 31, 2003: *And provided*

48 *further*, That the board shall exercise due diligence to notify affected employees of the provisions  
49 of this subsection.

50 (e) (1) Employees of the State Legislature whose terms of employment are otherwise  
51 classified as temporary and who are employed to perform services required by the Legislature for  
52 its regular sessions or during the interim time between regular sessions shall receive service  
53 credit for the time served in that capacity in accordance with the following: For purposes of this  
54 section, the term "regular session" means day one through day sixty of a sixty-day legislative  
55 session or day one through day thirty of a thirty-day legislative session. Employees of the State  
56 Legislature whose term of employment is otherwise classified as temporary and who are  
57 employed to perform services required by the Legislature for its regular sessions or during the  
58 interim time between regular sessions and who have been or are employed during regular  
59 sessions or during the interim time between regular sessions in seven consecutive calendar  
60 years, as certified by the clerk of the house in which the employee served, shall receive service  
61 credit of six months for all regular sessions served, as certified by the clerk of the house in which  
62 the employee served, or shall receive service credit of three months for each regular thirty-day  
63 session served prior to 1971: *Provided*, That employees of the State Legislature whose term of  
64 employment is otherwise classified as temporary and who are employed to perform services  
65 required by the Legislature for its regular sessions and who have been or are employed during  
66 the regular sessions in thirteen consecutive calendar years as either temporary employees or full-  
67 time employees or a combination thereof, as certified by the clerk of the house in which the  
68 employee served, shall receive a service credit of twelve months for each regular session served,  
69 as certified by the clerk of the house in which the employee served: *Provided, however*, That the  
70 amendments made to this subsection during the 2002 regular session of the Legislature only  
71 apply to employees of the Legislature who are employed by the Legislature as either temporary  
72 employees or full-time employees as of January 1, 2002, or who become employed by the  
73 Legislature as temporary or full-time employees for the first time after January 1, 2002. Employees

74 of the State Legislature whose terms of employment are otherwise classified as temporary and  
75 who are employed to perform services required by the Legislature during the interim time between  
76 regular sessions shall receive service credit of one month for each ten days served during the  
77 interim between regular sessions, which interim days shall be cumulatively calculated so that any  
78 ten days, regardless of calendar month or year, shall be calculated toward any award of one  
79 month of service credit: *Provided further*, That no more than one year of service may be credited  
80 to any temporary legislative employee for all service rendered by that employee in any calendar  
81 year and no days may be carried over by a temporary legislative employee from one calendar  
82 year to another calendar year where the member has received a full year credit for that year.  
83 Service credit awarded for legislative employment pursuant to this section shall be used for the  
84 purpose of calculating that member's retirement annuity, pursuant to section twenty-two of this  
85 article, and determining eligibility as it relates to credited service, notwithstanding any other  
86 provision of this section. Certification of employment for a complete legislative session and for  
87 interim days shall be determined by the clerk of the house in which the employee served, based  
88 upon employment records. Service of fifty-five days of a regular session constitutes an absolute  
89 presumption of service for a complete legislative session and service of twenty-seven days of a  
90 thirty-day regular session occurring prior to 1971 constitutes an absolute presumption of service  
91 for a complete legislative session. Once a legislative employee has been employed during regular  
92 sessions for seven consecutive years or has become a full-time employee of the Legislature, that  
93 employee shall receive the service credit provided in this section for all regular and interim  
94 sessions and interim days worked by that employee, as certified by the clerk of the house in which  
95 the employee served, regardless of when the session or interim legislative employment occurred:  
96 *And provided further*, That regular session legislative employment for seven consecutive years  
97 may be served in either or both houses of the Legislature.

98 (2) For purposes of this section, employees of the Joint Committee on Government and  
99 Finance are entitled to the same benefits as employees of the House of Delegates or the Senate:

100 *Provided*, That for joint committee employees whose terms of employment are otherwise  
101 classified as temporary, employment in preparation for regular sessions, certified by the legislative  
102 manager as required by the Legislature for its regular sessions, shall be considered the same as  
103 employment during regular sessions to meet service credit requirements for sessions served.

104 (f) Any employee may purchase retroactive service credit for periods of employment in  
105 which contributions were not deducted from the employee's pay. In the purchase of service credit  
106 for employment prior to 1989 in any department, including the Legislature, which operated from  
107 the General Revenue Fund and which was not expressly excluded from budget appropriations in  
108 which blanket appropriations were made for the state's share of public employees' retirement  
109 coverage in the years prior to 1989, the employee shall pay the employee's share. Other  
110 employees shall pay the state's share and the employee's share to purchase retroactive service  
111 credit. Where an employee purchases service credit for employment which occurred after 1988,  
112 that employee shall pay for the employee's share and the employer shall pay its share for the  
113 purchase of retroactive service credit: *Provided*, That no legislative employee and no current or  
114 former member of the Legislature may be required to pay any interest or penalty upon the  
115 purchase of retroactive service credit in accordance with the provisions of this section where the  
116 employee was not eligible to become a member during the years for which he or she is purchasing  
117 retroactive credit or had the employee attempted to contribute to the system during the years for  
118 which he or she is purchasing retroactive service credit and the contributions would have been  
119 refused by the board: *Provided, however*, That a current legislative employee purchasing  
120 retroactive credit under this section shall do so within twenty-four months of beginning  
121 contributions to the retirement system as a legislative employee or no later than December 31,  
122 2016, whichever occurs later: *Provided further*, That once a legislative employee becomes a  
123 member of the retirement system, he or she may purchase retroactive service credit for any time  
124 he or she was employed by the Legislature and did not receive service credit. Any service credit  
125 purchased shall be credited as six months for each sixty-day session worked, three months for

126 each thirty-day session worked or twelve months for each sixty-day session for legislative  
127 employees who have been employed during regular sessions in thirteen consecutive calendar  
128 years, as certified by the clerk of the house in which the employee served, and credit for interim  
129 employment as provided in this subsection: *And provided further*, That this legislative service  
130 credit shall also be used for months of service in order to meet the sixty-month requirement for  
131 the payments of a temporary legislative employee member's retirement annuity: *And provided*  
132 *further*, That no legislative employee may be required to pay for any service credit beyond the  
133 actual time he or she worked regardless of the service credit which is credited to him or her  
134 pursuant to this section: *And provided further*, That any legislative employee may request a  
135 recalculation of his or her credited service to comply with the provisions of this section at any time.

136 (g) (1) Notwithstanding any provision to the contrary, the seven consecutive calendar  
137 years requirement and the thirteen consecutive calendar years requirement and the service credit  
138 requirements set forth in this section shall be applied retroactively to all periods of legislative  
139 employment prior to the passage of this section, including any periods of legislative employment  
140 occurring before the seven consecutive and thirteen consecutive calendar years referenced in  
141 this section: *Provided*, That the employee has not retired prior to the effective date of the  
142 amendments made to this section in the 2002 regular session of the Legislature.

143 (2) The requirement of seven consecutive years and the requirement of thirteen  
144 consecutive years apply retroactively to all legislative employment prior to the effective date of  
145 the 2006 amendments to this section.

146 (h) The board of trustees shall grant service credit to any former or present member of the  
147 State Police Death, Disability and Retirement Fund who has been a contributing member of this  
148 system for more than three years for service previously credited by the State Police Death,  
149 Disability and Retirement Fund if the member transfers all of his or her contributions to the State  
150 Police Death, Disability and Retirement Fund to the system created in this article, including  
151 repayment of any amounts withdrawn any time from the State Police Death, Disability and

152 Retirement Fund by the member seeking the transfer allowed in this subsection: *Provided*, That  
153 there shall be added by the member to the amounts transferred or repaid under this subsection  
154 an amount which shall be sufficient to equal the contributions he or she would have made had  
155 the member been under the Public Employees Retirement System during the period of his or her  
156 membership in the State Police Death, Disability and Retirement Fund, excluding contributions  
157 on lump sum payment for annual leave, plus interest at a rate determined by the board.

158 (i) The provisions of section twenty-two-h of this article are not applicable to the  
159 amendments made to this section during the 2006 regular session.

## **CHAPTER 18. EDUCATION.**

### **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 ten years  
11 for any one member, nor shall it exceed twenty-five percent of total service at the time of  
12 retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits  
13 and service credit with respect to qualified military service shall be provided in accordance with  
14 Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military

15 service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement  
16 board is authorized to determine all questions and make all decisions relating to this section and,  
17 pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five  
18 of this code, may promulgate rules relating to contributions, benefits and service credit to comply  
19 with Section 414(u) of the Internal Revenue Code. No military service credit may be used in more  
20 than one retirement system 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, and is unable to meet the requirements of subsection (a) of this  
26 section.

27 (1) Any member may purchase up to sixty 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 forty-eight months after the date on which employer and employee contributions are first  
35 received by the retirement system for the member and while he or she continues to be in the  
36 employ of a participating public employer and contributing to the retirement system, or within forty-  
37 eight months of July 1, 2015, whichever is later: *Provided*, That any employee who ceases  
38 employment with a participating public employer before completing the required actuarial reserve  
39 purchase amount 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 forty-eight months after the  
48 date on which employer and employee contributions are first received by the retirement system  
49 for the member the first time he or she becomes an employee of a participating public employer  
50 and completes at least a complete fiscal year of contributing service, and while he or she  
51 continues to be in the employ of a participating public employer and contributing to the retirement  
52 system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

117 the number of months of the member's contract during his or her complete fiscal year of  
118 contributory service on or after July 1, 2015.

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

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

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

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

140 (8) To receive credit, a member must submit a request to purchase military service credit  
141 to the board, on such form or in such other manner as shall be required by the board, within the  
142 complete fiscal year period required by subdivision (1), (2), (3) or (4) of this subsection, as

143 applicable. The board shall then calculate the actuarial reserve lump sum purchase amount,  
144 which amount must be paid by the member within the 48-month period required by said  
145 subdivisions, as applicable. A member purchasing military service credit pursuant to this  
146 subsection must do so in a single, lump sum payment: *Provided* , That the board may accept  
147 partial, installment or other similar payments if the employee executes a contract with the board  
148 specifying the amount of military service to be purchased and the payments required: *Provided*,  
149 *however*, That any failure to pay the contract amount in accordance with this section shall be  
150 treated as an overpayment or excess contribution subject to section fourteen-c of this article and  
151 no military service shall be credited.

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

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

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

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

164 (d) Notwithstanding the preceding provisions of this section, contributions, benefits and  
165 service credit with respect to qualified military service shall be provided in accordance with  
166 Section 414(u) of the Internal Revenue Code and the Federal Uniformed Services Employment  
167 and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same

168 may be amended from time to time. For purposes of this section, "qualified military service" has  
169 the same meaning as in Section 414(u) of the Internal Revenue Code.

170 (e) In any case of doubt as to the period of service to be credited a member under the  
171 provisions of this section, the board has final power to determine the period. The board is  
172 authorized to determine all questions and make all decisions relating to this section and, pursuant  
173 to the authority granted to the board in section one, article ten-d of this chapter, may propose  
174 rules to administer this section for legislative approval in accordance with the provisions of article  
175 three, chapter twenty-nine-a of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled:

  
.....  
Chairman, House Committee

  
.....  
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

  
.....  
Clerk of the House of Delegates

.....  
Clerk of the Senate

  
.....  
Speaker of the House of Delegates

  
.....  
President of the Senate

The within is approved..... this the 21<sup>st</sup>.....  
day of March....., 2016.

  
.....  
Governor

**PRESENTED TO THE GOVERNOR**

MAR 16 2016

**Time** 9:45 am