

SENATE BILL 591

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By: **Senator McFadden (Chair, Joint Committee on Pensions)**

Introduced and read first time: February 6, 2009

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **State Retirement and Pension System – Military Service Credit –**
3 **Clarification and Simplification**

4 FOR the purpose of altering the definition of “military service” as it relates to service
5 credit for members of State or local retirement or pension systems to include
6 active and inactive duty for training; providing certain death and disability
7 benefits to certain individuals who are members of a State or local retirement or
8 pension system who die or becomes disabled on or after a certain date while
9 performing certain military service; requiring a State or local retirement or
10 pension system to provide certain benefits to certain individuals depending on
11 certain choices the State or local retirement system may make with regard to
12 the distribution of certain benefits; clarifying that certain members of the
13 Maryland National Guard who are on active or inactive duty for training that
14 interrupts the member’s service may receive a certain amount of service credit
15 under certain circumstances; repealing certain obsolete language; and generally
16 relating to clarifying and simplifying the military service credit provisions for
17 the State or local retirement or pension systems.

18 BY repealing and reenacting, with amendments,
19 Article – State Personnel and Pensions
20 Section 38–101(d), 38–102, and 38–103(d)
21 Annotated Code of Maryland
22 (2004 Replacement Volume and 2008 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article – State Personnel and Pensions**

26 38–101.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (d) "Military service" means:

2 (1) induction into the armed forces of the United States for training
3 and service under the Selective Training and Service Act of 1940 or a subsequent act
4 of a similar nature;

5 (2) membership in a reserve component of the armed forces of the
6 United States:

7 (I) on active duty or ordered or assigned to active duty; **OR**

8 (II) **ON ACTIVE DUTY FOR TRAINING OR INACTIVE DUTY FOR**
9 **TRAINING THAT INTERRUPTS A MEMBER'S SERVICE;**

10 (3) enlistment into the armed forces of the United States;

11 (4) membership in the Maryland National Guard; or

12 (5) with respect to a person separated from employment on or after
13 July 1, 1991, active duty with the commissioned corps of the Public Health Service, the
14 National Oceanic and Atmospheric Administration, or the Coast and Geodetic Survey
15 from:

16 (i) December 7, 1941, to December 31, 1946, both inclusive;

17 (ii) June 25, 1950, to January 31, 1955, both inclusive; or

18 (iii) December 22, 1961, to May 7, 1975, both inclusive.

19 38-102.

20 (A) [During] **EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF**
21 **THIS SECTION, DURING** a period that a member of a State or local retirement or
22 pension system is absent from employment for military service, the member or the
23 member's estate, under a State or local retirement or pension system, is not entitled
24 to:

25 (1) ordinary disability benefits;

26 (2) accidental disability benefits;

27 (3) death benefits;

28 (4) optional allowances; or

29 (5) other disability or death benefits.

1 **(B) (1) THIS SUBSECTION APPLIES TO AN INDIVIDUAL WHO:**

2 **(I) IS A MEMBER OF A STATE OR LOCAL RETIREMENT OR**
3 **PENSION SYSTEM AS DEFINED IN § 37-101(R) OF THIS ARTICLE; AND**

4 **(II) DIES ON OR AFTER JANUARY 1, 2007, WHILE**
5 **PERFORMING QUALIFIED MILITARY SERVICE AS DEFINED IN CHAPTER 43,**
6 **TITLE 38 OF THE UNITED STATES CODE.**

7 **(2) TO THE EXTENT REQUIRED BY § 401(A)(37) OF THE INTERNAL**
8 **REVENUE CODE, AN INDIVIDUAL DESCRIBED UNDER PARAGRAPH (1) OF THIS**
9 **SUBSECTION SHALL RECEIVE ANY ADDITIONAL BENEFITS THAT THE SYSTEM**
10 **PROVIDES FOR ANY MEMBER WHO RESUMES EMPLOYMENT AFTER COMPLETING**
11 **MILITARY SERVICE AND THEN DIES, INCLUDING ANY DEATH BENEFITS THAT**
12 **ARE CONTINGENT ON A MEMBER'S DEATH WHILE EMPLOYED.**

13 **(C) (1) THIS SUBSECTION APPLIES TO AN INDIVIDUAL WHO:**

14 **(I) IS A MEMBER OF A STATE OR LOCAL RETIREMENT OR**
15 **PENSION SYSTEM AS DEFINED IN § 37-101(R) OF THIS ARTICLE; AND**

16 **(II) BECOMES DISABLED OR DIES ON OR AFTER JANUARY 1,**
17 **2007, WHILE PERFORMING QUALIFIED MILITARY SERVICE AS DEFINED IN**
18 **CHAPTER 43, TITLE 38 OF THE UNITED STATES CODE.**

19 **(2) (I) TO THE EXTENT PERMITTED BY § 414(U)(8) OF THE**
20 **INTERNAL REVENUE CODE, A STATE OR LOCAL RETIREMENT OR PENSION**
21 **SYSTEM MAY PROVIDE THAT, FOR BENEFIT ACCRUAL PURPOSES, AN INDIVIDUAL**
22 **DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE TREATED**
23 **AS HAVING RETURNED TO EMPLOYMENT ON THE DAY BEFORE THE DEATH OR**
24 **DISABILITY AND THEN TERMINATED ON THE DATE OF DEATH OR DISABILITY.**

25 **(II) IF A STATE OR LOCAL RETIREMENT OR PENSION**
26 **SYSTEM PROVIDES BENEFITS UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH,**
27 **THE SYSTEM MAY CHOOSE TO PROVIDE EITHER PARTIAL OR FULL BENEFITS,**
28 **BUT WHICHEVER OPTION IS CHOSEN, IT SHALL BE APPLIED TO ALL SIMILARLY**
29 **SITUATED MEMBERS IN A REASONABLY EQUIVALENT MANNER.**

30 **(D) (1) THIS SUBSECTION APPLIES TO AN INDIVIDUAL WHO:**

31 **(I) IS A MEMBER OF A STATE OR LOCAL RETIREMENT OR**
32 **PENSION SYSTEM AS DEFINED IN § 37-101(R) OF THIS ARTICLE; AND**

1 (II) ON OR AFTER JANUARY 1, 2009, RECEIVES
2 DIFFERENTIAL WAGE PAYMENTS FROM AN EMPLOYER WHILE PERFORMING
3 QUALIFIED MILITARY SERVICE AS DEFINED IN CHAPTER 43, TITLE 38 OF THE
4 UNITED STATES CODE.

5 (2) (I) TO THE EXTENT PERMITTED BY § 3401(H) OF THE
6 INTERNAL REVENUE CODE, AN INDIVIDUAL DESCRIBED UNDER PARAGRAPH (1)
7 OF THIS SUBSECTION SHALL BE TREATED AS EMPLOYED BY THE EMPLOYER
8 DESCRIBED IN PARAGRAPH (1)(II) OF THIS SUBSECTION WHILE PERFORMING
9 QUALIFIED MILITARY SERVICE AND THE DIFFERENTIAL WAGE PAYMENTS SHALL
10 BE TREATED AS COMPENSATION.

11 (II) TO THE EXTENT PERMITTED BY § 414(U)(12) OF THE
12 INTERNAL REVENUE CODE, A STATE OR LOCAL RETIREMENT OR PENSION
13 SYSTEM MAY PROVIDE BENEFITS TO THE INDIVIDUAL BASED ON THE
14 DIFFERENTIAL WAGE PAYMENTS.

15 (III) IF A STATE OR LOCAL RETIREMENT OR PENSION
16 SYSTEM PROVIDES BENEFITS UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH,
17 THE BENEFITS SHALL BE PROVIDED TO ALL SIMILARLY SITUATED MEMBERS IN
18 A REASONABLY EQUIVALENT MANNER.

19 38-103.

20 (d) (1) Subject to paragraph (2)(i) of this subsection, a member of a State
21 or local retirement or pension system shall receive service credit for a period of
22 absence from employment while in military service if:

23 (i) the employment of the member under subsection (a)(2) of
24 this section is active or the employee is reinstated as a regular employee on a leave of
25 absence; and

26 (ii) membership in a State or local retirement or pension system
27 is a requirement of employment.

28 (2) (i) For an absence for military service [on or after January 1,
29 1946], service credit for the military service may not exceed 5 years.

30 (ii) 1. This subparagraph applies only to a member of a
31 State system.

32 2. Subject to subparagraph (i) of this paragraph and in
33 addition to any service credit received under paragraph (1) of this subsection, a
34 member of the Maryland National Guard who has been activated under Title 10 of the
35 United States Code, AND WHO IS ON ACTIVE OR INACTIVE DUTY FOR TRAINING

1 **THAT INTERRUPTS THE MEMBER'S SERVICE** shall receive service credit at the rate
2 of 4 months for each full year for military service, not to exceed a total of 36 months.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 July 1, 2009.