

1 **H. B. 2802**

2  
3 (By Delegates Pethtel, Jones, Craig, Canterbury,  
4 Kump, Lynch and Stowers)

5 [Introduced March 4, 2013; referred to the  
6 Committee on Pensions and Retirement then Finance.]

7 **FISCAL**  
8 **NOTE**

9  
10 A BILL to amend and reenact §16-5V-2, §16-5V-8, §16-5V-11, §16-5V-  
11 20, §16-5V-21 and §16-5V-24 of the Code of West Virginia,  
12 1931, as amended, and to amend said code by adding thereto two  
13 new sections, designated §16-5V-8a and §16-5V-35, all relating  
14 to the Emergency Medical Services Retirement System; modifying  
15 the definition of annual compensation as it relates to  
16 determining benefits; adding a definition for contributing  
17 service to this article; adding a definition for the terms  
18 retire and retirement to this article; making technical  
19 corrections in section two of this article; adding a new  
20 section to this article relating to correction of  
21 participating public employer errors by the board; clarifying  
22 eligibility requirements for commencement of benefits;  
23 specifying that the board must be in receipt of a request for

1 estimation of benefits prior to providing a member with an  
2 explanation of their estimated gross monthly annuity and a  
3 retirement application; providing that a member shall have at  
4 least ten years of contributing service to qualify for nonduty  
5 related disability retirement; specifying that the total  
6 nonduty disability award received by a member shall be based  
7 on their average monthly compensation during the twelve month  
8 period immediately preceding the disability award; providing  
9 that all costs associated with disability benefit examinations  
10 shall be paid from the board's expense fund; providing that  
11 disability benefits shall cease on the first day of the month  
12 following termination of disability by the board; requiring  
13 annual disability recertification for a retirant who is less  
14 than sixty years of age during the first five years of  
15 retirement and once every three years thereafter; providing  
16 that if a member who is receiving a nonduty disability benefit  
17 dies the surviving spouse shall receive the average monthly  
18 compensation received by the member prior to the disability  
19 award; and adding a new section to this article relating to  
20 the annuity calculation for a member who returns to covered  
21 employment after retirement.

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

23 That §16-5V-2, §16-5V-8, §16-5V-11, §16-5V-20, §16-5V-21 and

1 §16-5V-24 of the Code of West Virginia, 1931, as amended, be  
2 amended and reenacted; and that said code be amended by adding  
3 thereto two new sections, designated §16-5V-8a and §16-5V-35, all  
4 to read as follows:

5 **ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.**

6 **§16-5V-2. Definitions.**

7 As used in this article, unless a federal law or regulation or  
8 the context clearly requires a different meaning:

9 (a) "Accrued benefit" means on behalf of any member two and  
10 six-tenths percent per year of the member's final average salary  
11 for the first twenty years of credited service. Additionally, two  
12 percent per year for twenty-one through twenty-five years and one  
13 percent per year for twenty-six through thirty years will be  
14 credited with a maximum benefit of sixty-seven percent. A member's  
15 accrued benefit may not exceed the limits of Section 415 of the  
16 Internal Revenue Code and is subject to the provisions of section  
17 twelve of this article.

18 (1) The board may upon the recommendation of the board's  
19 actuary increase the employees' contribution rate to ten and  
20 five-tenths percent should the funding of the plan not reach  
21 seventy percent funded by July 1, 2012. The board shall decrease  
22 the contribution rate to eight and one-half percent once the plan  
23 funding reaches the seventy percent support objective as of any

1 later actuarial valuation date.

2       (2) Upon reaching the seventy-five percent actuarial funded  
3 level, as of an actuarial valuation date, the board shall increase  
4 the two and six-tenths percent to two and three-quarter percent for  
5 the first twenty years of credited service. The maximum benefit  
6 will also be increased from sixty-seven percent to seventy percent.

7       (b) "Accumulated contributions" means the sum of all  
8 retirement contributions deducted from the compensation of a  
9 member, or paid on his or her behalf as a result of covered  
10 employment, together with regular interest on the deducted amounts.

11       (c) "Active military duty" means full-time active duty with  
12 any branch of the Armed Forces of the United States, including  
13 service with the National Guard or reserve military forces when the  
14 member has been called to active full-time duty and has received no  
15 compensation during the period of that duty from any board or  
16 employer other than the Armed Forces.

17       (d) "Actuarial equivalent" means a benefit of equal value  
18 computed upon the basis of the mortality table and interest rates  
19 as set and adopted by the board in accordance with the provisions  
20 of this article.

21       (e) "Annual compensation" means the wages paid to the member  
22 during covered employment within the meaning of Section 3401(a) of  
23 the Internal Revenue Code, but determined without regard to any

1 rules that limit the remuneration included in wages based upon the  
2 nature or location of employment or services performed during the  
3 plan year plus amounts excluded under Section 414(h)(2) of the  
4 Internal Revenue Code and less reimbursements or other expense  
5 allowances, cash or noncash fringe benefits or both, deferred  
6 compensation and welfare benefits. Annual compensation for  
7 determining benefits during any determination period may not exceed  
8 ~~\$100,000 as adjusted for cost of living in accordance with Section~~  
9 ~~401(a)(17)(B)~~ the maximum compensation allowed as adjusted for cost  
10 of living in accordance with section seven, article ten-d, chapter  
11 five of this code and Section 401(a)(17) of the Internal Revenue  
12 Code.

13 (f) "Annual leave service" means accrued annual leave.

14 (g) "Annuity starting date" means the first day of the month  
15 for which an annuity is payable after submission of a retirement  
16 application. For purposes of this subsection, if retirement income  
17 payments commence after the normal retirement age, "retirement"  
18 means the first day of the month following or coincident with the  
19 latter of the last day the member worked in covered employment or  
20 the member's normal retirement age and after completing proper  
21 written application for "retirement" on an application supplied by  
22 the board.

23 (h) "Board" means the Consolidated Public Retirement Board.

1        (i) "Contributing service" means service rendered by a member  
2 while employed by a participating public employer for which the  
3 member made contributions to the plan.

4        ~~(i)~~ (j) "County commission or political subdivision" has the  
5 meaning ascribed to it in this code.

6        ~~(j)~~ (k) "Covered employment" means either: (1) Employment as  
7 a full-time emergency medical technician, emergency medical  
8 technician/paramedic or emergency medical services/registered nurse  
9 and the active performance of the duties required of emergency  
10 medical services officers; or (2) the period of time during which  
11 active duties are not performed but disability benefits are  
12 received under this article; or (3) concurrent employment by an  
13 emergency medical services officer in a job or jobs in addition to  
14 his or her employment as an emergency medical services officer  
15 where the secondary employment requires the emergency medical  
16 services officer to be a member of another retirement system which  
17 is administered by the Consolidated Public Retirement Board  
18 pursuant to this code: Provided, That the emergency medical  
19 services officer contributes to the fund created in this article  
20 the amount specified as the member's contribution in section eight  
21 of this article.

22        ~~(k)~~ (l) "Credited service" means the sum of a member's years  
23 of service, active military duty, disability service and accrued

1 annual and sick leave service.

2 ~~(i)~~ (m) "Dependent child" means either:

3 (1) An unmarried person under age eighteen who is:

4 (A) A natural child of the member;

5 (B) A legally adopted child of the member;

6 (C) A child who at the time of the member's death was living  
7 with the member while the member was an adopting parent during any  
8 period of probation; or

9 (D) A stepchild of the member residing in the member's  
10 household at the time of the member's death; or

11 (2) Any unmarried child under age twenty-three:

12 (A) Who is enrolled as a full-time student in an accredited  
13 college or university;

14 (B) Who was claimed as a dependent by the member for federal  
15 income tax purposes at the time of member's death; and

16 (C) Whose relationship with the member is described in  
17 paragraph (A), (B) or (C), subdivision (1) of this subsection.

18 ~~(m)~~ (n) "Dependent parent" means the father or mother of the  
19 member who was claimed as a dependent by the member for federal  
20 income tax purposes at the time of the member's death.

21 ~~(n)~~ (o) "Disability service" means service received by a  
22 member, expressed in whole years, fractions thereof or both, equal  
23 to one half of the whole years, fractions thereof, or both, during

1 which time a member receives disability benefits under this  
2 article.

3 ~~(o)~~ (p) "Early retirement age" means age forty-five or over  
4 and completion of twenty years of contributory service.

5 ~~(p)~~ (q) "Effective date" means January 1, 2008.

6 ~~(q)~~ (r) "Emergency medical services officer" means an  
7 individual employed by the state, county or other political  
8 subdivision as a medical professional who is qualified to respond  
9 to medical emergencies, aids the sick and injured and arranges or  
10 transports to medical facilities, as defined by the West Virginia  
11 Office of Emergency Medical Services. This definition is construed  
12 to include employed ambulance providers and other services such as  
13 law enforcement, rescue or fire department personnel who primarily  
14 perform these functions and are not provided any other credited  
15 service benefits or retirement plans. These persons may hold the  
16 rank of emergency medical technician/basic, emergency medical  
17 technician/paramedic, emergency medical services/registered nurse,  
18 or others as defined by the West Virginia Office of Emergency  
19 Medical Services and the Consolidated Public Retirement Board.

20 ~~(r)~~ (s) "Employer error" means an omission, misrepresentation  
21 or violation of relevant provisions of the West Virginia Code or of  
22 the West Virginia Code of State Rules or the relevant provisions of  
23 both the West Virginia Code and of the West Virginia Code of State

1 Rules by the participating public employer that has resulted in an  
2 underpayment or overpayment of contributions required. A deliberate  
3 act contrary to the provisions of this article by a participating  
4 public employer does not constitute employer error.

5 ~~(s)~~ (t) "Final average salary" means the average of the  
6 highest annual compensation received for covered employment by the  
7 member during any five consecutive plan years within the member's  
8 last ten years of service while employed, prior to any disability  
9 payment. If the member did not have annual compensation for the  
10 five full plan years preceding the member's attainment of normal  
11 retirement age and during that period the member received  
12 disability benefits under this article, then "final average salary"  
13 means the average of the monthly salary determined paid to the  
14 member during that period as determined under section twenty-two of  
15 this article multiplied by twelve. "Final average salary" does not  
16 include any lump sum payment for unused, accrued leave of any kind  
17 or character.

18 ~~(t)~~ (u) "Full-time employment" means permanent employment of  
19 an employee by a participating public employer in a position which  
20 normally requires twelve months per year service and requires at  
21 least one thousand forty hours per year service in that position.

22 ~~(u)~~ (v) "Fund" means the West Virginia Emergency Medical  
23 Services Retirement Fund created by this article.

1       ~~(v)~~ (w) "Hour of service" means:

2           (1) Each hour for which a member is paid or entitled to  
3 payment for covered employment during which time active duties are  
4 performed. These hours shall be credited to the member for the plan  
5 year in which the duties are performed; and

6           (2) Each hour for which a member is paid or entitled to  
7 payment for covered employment during a plan year but where no  
8 duties are performed due to vacation, holiday, illness, incapacity  
9 including disability, layoff, jury duty, military duty, leave of  
10 absence or any combination thereof and without regard to whether  
11 the employment relationship has terminated. Hours under this  
12 subdivision shall be calculated and credited pursuant to West  
13 Virginia Division of Labor rules. A member will not be credited  
14 with any hours of service for any period of time he or she is  
15 receiving benefits under section nineteen or twenty of this  
16 article; and

17           (3) Each hour for which back pay is either awarded or agreed  
18 to be paid by the employing county commission or political  
19 subdivision, irrespective of mitigation of damages. The same hours  
20 of service shall not be credited both under subdivision (1) or (2)  
21 of this subsection and under this subdivision. Hours under this  
22 paragraph shall be credited to the member for the plan year or  
23 years to which the award or agreement pertains, rather than the

1 plan year in which the award, agreement or payment is made.

2       ~~(w)~~ (x) "Member" means a person first hired as an emergency  
3 medical services officer by an employer which is a participating  
4 public employer of the Public Employees Retirement System or the  
5 Emergency Medical Services Retirement System after the effective  
6 date of this article, as defined in subsection (p) of this section,  
7 or an emergency medical services officer of an employer which is a  
8 participating public employer of the Public Employees Retirement  
9 System first hired prior to the effective date and who elects to  
10 become a member pursuant to this article. A member shall remain a  
11 member until the benefits to which he or she is entitled under this  
12 article are paid or forfeited.

13       ~~(x)~~ (y) "Monthly salary" means the W-2 reportable compensation  
14 received by a member during the month.

15       ~~(y)~~ (z) "Normal form" means a monthly annuity which is one  
16 twelfth of the amount of the member's accrued benefit which is  
17 payable for the member's life. If the member dies before the sum of  
18 the payments he or she receives equals his or her accumulated  
19 contributions on the annuity starting date, the named beneficiary  
20 shall receive in one lump sum the difference between the  
21 accumulated contributions at the annuity starting date and the  
22 total of the retirement income payments made to the member.

23       ~~(z)~~ (aa) "Normal retirement age" means the first to occur of

1 the following:

2 (1) Attainment of age fifty years and the completion of twenty  
3 or more years of regular contributory service, excluding active  
4 military duty, disability service and accrued annual and sick leave  
5 service;

6 (2) While still in covered employment, attainment of at least  
7 age fifty years and when the sum of current age plus regular  
8 contributory years of service equals or exceeds seventy years;

9 (3) While still in covered employment, attainment of at least  
10 age sixty years and completion of ten years of regular contributory  
11 service; or

12 (4) Attainment of age sixty-two years and completion of five  
13 or more years of regular contributory service.

14 ~~(aa)~~ (bb) "Participating public employer" means any county  
15 commission or political subdivision in the state which has elected  
16 to cover its emergency medical services officers, as defined in  
17 this article, under the West Virginia Emergency Medical Services  
18 Retirement System.

19 ~~(bb)~~ (cc) "Political subdivision" means a county, city or town  
20 in the state; any separate corporation or instrumentality  
21 established by one or more counties, cities or towns, as permitted  
22 by law; any corporation or instrumentality supported in most part  
23 by counties, cities or towns; and any public corporation charged by

1 law with the performance of a governmental function and whose  
2 jurisdiction is coextensive with one or more counties, cities or  
3 towns: Provided, That any public corporation established under  
4 section four, article fifteen, chapter seven of this code is  
5 considered a political subdivision solely for the purposes of this  
6 article.

7 ~~(cc)~~ (dd) "Plan" means the West Virginia Emergency Medical  
8 Services Retirement System established by this article.

9 ~~(dd)~~ (ee) "Plan year" means the twelve-month period commencing  
10 on January 1 of any designated year and ending the following  
11 December 31.

12 ~~(ee)~~ (ff) "Public Employees Retirement System" means the West  
13 Virginia Public Employee's Retirement System created by West  
14 Virginia Code.

15 ~~(ff)~~ (gg) "Regular interest" means the rate or rates of  
16 interest per annum, compounded annually, as the board adopts in  
17 accordance with the provisions of this article.

18 ~~(gg)~~ (hh) "Required beginning date" means April 1 of the  
19 calendar year following the later of: (1) The calendar year in  
20 which the member attains age seventy and one-half; or (2) the  
21 calendar year in which he or she retires or otherwise separates  
22 from covered employment.

23 ~~(hh)~~ (ii) "Retirant" means any member who commences an annuity

1 payable by the plan.

2 (jj) "Retire" or "retirement" means a member's withdrawal from  
3 the employ of a participating public employer and the commencement  
4 of an annuity by the plan.

5 ~~(ii)~~ (kk) "Retirement income payments" means the monthly  
6 retirement income payments payable under the plan.

7 ~~(jj)~~ (ll) "Spouse" means the person to whom the member is  
8 legally married on the annuity starting date.

9 ~~(kk)~~ (mm) "Surviving spouse" means the person to whom the  
10 member was legally married at the time of the member's death and  
11 who survived the member.

12 ~~(ll)~~ (nn) "Totally disabled" means a member's inability to  
13 engage in substantial gainful activity by reason of any medically  
14 determined physical or mental impairment that can be expected to  
15 result in death or that has lasted or can be expected to last for  
16 a continuous period of not less than twelve months.

17 For purposes of this subsection:

18 (1) A member is totally disabled only if his or her physical  
19 or mental impairment or impairments is so severe that he or she is  
20 not only unable to perform his or her previous work as an emergency  
21 medical services officer but also cannot, considering his or her  
22 age, education and work experience, engage in any other kind of  
23 substantial gainful employment which exists in the state regardless

1 of whether: (A) The work exists in the immediate area in which the  
 2 member lives; (B) a specific job vacancy exists; or © the member  
 3 would be hired if he or she applied for work. For purposes of this  
 4 article, substantial gainful employment is the same definition as  
 5 used by the United States Social Security Administration.

6 (2) "Physical or mental impairment" is an impairment that  
 7 results from an anatomical, physiological or psychological  
 8 abnormality that is demonstrated by medically accepted clinical and  
 9 laboratory diagnostic techniques. The board may require submission  
 10 of a member's annual tax return for purposes of monitoring the  
 11 earnings limitation.

12 ~~(mm)~~ (oo) "Year of service" means a member shall, except in  
 13 his or her first and last years of covered employment, be credited  
 14 with years of service credit based upon the hours of service  
 15 performed as covered employment and credited to the member during  
 16 the plan year based upon the following schedule:

17 Hours of Service Year of Service Credited.

18 Less than 500 ..... 0

19 500 to 999 ..... 1/3

20 1,000 to 1,499 .....2/3

21 1,500 or more ..... 1

22 During a member's first and last years of covered employment,  
 23 the member shall be credited with one twelfth of a year of service

1 for each month during the plan year in which the member is credited  
2 with an hour of service for which contributions were received by  
3 the fund. A member is not entitled to credit for years of service  
4 for any time period during which he or she received disability  
5 payments under section nineteen or twenty of this article. Except  
6 as specifically excluded, years of service include covered  
7 employment prior to the effective date.

8       Years of service which are credited to a member prior to his  
9 or her receipt of accumulated contributions upon termination of  
10 employment pursuant to section eighteen of this article or section  
11 thirty, article ten, chapter five of this code, shall be  
12 disregarded for all purposes under this plan unless the member  
13 repays the accumulated contributions with interest pursuant to  
14 section eighteen of this article or has prior to the effective date  
15 made the repayment pursuant to section eighteen, article ten,  
16 chapter five of this code.

17 **§16-5V-8. Members' contributions; employer contributions.**

18       (a) There shall be deducted from the monthly salary of each  
19 member and paid into the fund an amount equal to eight and one-half  
20 percent of his or her monthly salary. An additional amount shall be  
21 paid to the fund by the county commission or political subdivision  
22 in which the member is employed in covered employment in an amount  
23 determined by the board: Provided, That in no year may the total of

1 the employer contributions provided in this section, to be paid by  
2 the county commission or political subdivision, exceed ten and  
3 one-half percent of the total payroll for the members in the employ  
4 of the county commission or political subdivision.

5 (b) Any active member who has concurrent employment in an  
6 additional job or jobs and the additional employment requires the  
7 emergency medical services officer to be a member of another  
8 retirement system which is administered by the Consolidated Public  
9 Retirement Board pursuant to article ten-d, chapter five of this  
10 code shall contribute to the fund the sum of eight and one-half  
11 percent of his or her monthly salary earned as an emergency medical  
12 services officer as well as the sum of eight and one-half percent  
13 of his or her monthly salary earned from any additional employment  
14 which additional employment requires the emergency medical services  
15 officer to be a member of another retirement system which is  
16 administered by the Consolidated Public Retirement Board pursuant  
17 to article ten-d, chapter five of this code. An additional percent  
18 of the monthly salary of each member shall be paid to the fund by  
19 the concurrent employer by which the member is employed in an  
20 amount determined by the board: Provided, That in no year may the  
21 total of the employer contributions provided in this section, to be  
22 paid by the concurrent employer, exceed ten and one-half percent of  
23 the payroll for the concurrent member employees.

1           (c) All required deposits shall be remitted to the board no  
2 later than fifteen days following the end of the calendar month for  
3 which the deposits are required. If the board upon the  
4 recommendation of the board actuary finds that the benefits  
5 provided by this article can be actuarially funded with a lesser  
6 contribution, then the board shall reduce the required member and  
7 employer contributions proportionally. Any county commission or  
8 political subdivision which fails to make any payment due the  
9 Emergency Medical Services Retirement Fund by the fifteenth day  
10 following the end of each calendar month in which contributions are  
11 due may be required to pay the actuarial rate of interest lost on  
12 the total amount owed for each day the payment is delinquent.  
13 Accrual of the loss of earnings owed by the delinquent county  
14 commission or political subdivision commences after the fifteenth  
15 day following the end of the calendar month in which contributions  
16 are due and continues until receipt of the delinquent amount.  
17 Interest compounds daily and the minimum surcharge is \$50.

18           ~~(d) If any change or employer error in the records of any~~  
19 ~~participating public employer or the retirement system results in~~  
20 ~~any member receiving from the system more or less than he or she~~  
21 ~~would have been entitled to receive had the records been correct,~~  
22 ~~the board shall correct the error and as far as is practicable~~  
23 ~~shall adjust the payment of the benefit in a manner that the~~

~~1 actuarial equivalent of the benefit to which the member was  
2 correctly entitled shall be paid. Any employer error resulting in  
3 an underpayment to the retirement system may be corrected by the  
4 member remitting the required employee contribution and the  
5 participating public employer remitting the required employer  
6 contribution. Interest shall accumulate in accordance with the  
7 Legislative Rule 162 CSR 7 retirement board reinstatement interest,  
8 and any accumulating interest owed on the employee and employer  
9 contributions resulting from the employer error shall be the  
10 responsibility of the participating public employer. The  
11 participating public employer may remit total payment and the  
12 employee reimburse the participating public employer through  
13 payroll deduction over a period equivalent to the time period  
14 during which the employer error occurred.~~

15 **§16-5V-8a. Correction of errors; underpayments; overpayments.**

16 (a) General rule: If any change or employer error in the  
17 records of any participating public employer or the plan results in  
18 any member, retirant or beneficiary receiving from the plan more or  
19 less than he or she would have been entitled to receive had the  
20 records been correct, the board shall correct the error. If  
21 correction of the error occurs after the effective retirement date  
22 of a retirant, and as far as is practicable, the board shall adjust  
23 the payment of the benefit in a manner that the actuarial

1 equivalent of the benefit to which the retirant was correctly  
2 entitled shall be paid.

3 (b) Underpayments: Any error resulting in an underpayment to  
4 the retirement system of required contributions may be corrected by  
5 the member or retirant remitting the required employee contribution  
6 and the participating public employer remitting the required  
7 employer contribution. Interest shall accumulate in accordance with  
8 the Legislative Rule 162 CSR 7 concerning retirement board refund,  
9 reinstatement, retroactive service, loan and employer error  
10 interest factors and any accumulating interest owed on the employee  
11 and employer contributions resulting from an employer error shall  
12 be the responsibility of the participating public employer. The  
13 participating public employer may remit total payment and the  
14 employee reimburse the participating public employer through  
15 payroll deduction over a period equivalent to the time period  
16 during which the employer error occurred. If the correction of an  
17 error involving an underpayment of required contributions to the  
18 retirement system will result in increased payments to a retirant,  
19 including increases to payments already made, any adjustments shall  
20 be made only after the board receives full payment of all required  
21 employee and employer contributions, including interest.

22 (c) Overpayments: (1) When mistaken or excess employer  
23 contributions, including any overpayments, have been made to the

1 retirement system by a participating public employer, due to error  
2 or other reason, the board shall credit the participating public  
3 employer with an amount equal to the erroneous contributions, to be  
4 offset against the participating public employer's future liability  
5 for employer contributions to the system. Earnings or interest  
6 shall not be credited to the employer.

7       (2) When mistaken or excess employee contributions, including  
8 any overpayments, have been made to the retirement system, due to  
9 error or other reason, the board shall have sole authority for  
10 determining the means of return, offset or credit to or for the  
11 benefit of the employee of the amounts, and may use any means  
12 authorized or permitted under the provisions of Section 401(a), et  
13 seq. of the Internal Revenue Code and guidance issued thereunder  
14 applicable to governmental plans. Alternatively, in its full and  
15 complete discretion, the board may require the participating public  
16 employer to pay the employee the amounts as wages, with the board  
17 crediting the participating public employer with a corresponding  
18 amount to offset against its future contributions to the plan:  
19 Provided, That the wages paid to the employee shall not be  
20 considered compensation for any purposes under this article.  
21 Earnings or interest shall not be returned, offset, or credited  
22 under any of the means utilized by the board for returning mistaken  
23 or excess employee contributions, including any overpayments, to an

1 employee.

2 **§16-5V-11. Retirement; commencement of benefits.**

3 (a) Except for duty disability retirement, no member may  
4 retire before January 1, 2011.

5 (b) ~~¶~~ On or after the date a member attains early or normal  
6 retirement age, a member may retire and commence to receive  
7 retirement income payments on the first day of the calendar month  
8 following termination of employment and receipt of his or her  
9 written application for ~~his or her voluntary petition for~~  
10 ~~retirement coincident with or next following the later of the date~~  
11 ~~the member ceases employment, or the date the member attains early~~  
12 ~~or normal retirement age,~~ retirement in an amount as provided under  
13 this article: Provided, That retirement income payments under this  
14 plan are subject to the provisions of this article. Upon receipt of  
15 ~~the petition~~ a request for estimation of benefits, the board shall  
16 promptly provide the member with an explanation of his or her  
17 optional forms of retirement benefits and ~~upon~~ the estimated gross  
18 monthly annuity. Upon receipt of properly executed retirement  
19 application forms from the member, the board shall process member's  
20 request for and commence payments as soon as administratively  
21 feasible.

22 **§16-5V-20. Awards and benefits for disability -- Due to other**  
23 **causes.**

1 (a) Any member ~~who after the effective date of this article~~  
2 ~~and~~ with ten or more years of contributing service and who during  
3 covered employment: (1) Has been or becomes totally disabled from  
4 any cause other than those set forth in section nineteen of this  
5 article and not due to vicious habits, intemperance or willful  
6 misconduct on his or her part; and (2) in the opinion of two  
7 physicians after medical examination, one of whom shall be named by  
8 the board, he or she is by reason of the disability unable to  
9 perform adequately the duties required of an emergency medical  
10 services officer, is entitled to receive and shall be paid from the  
11 fund in monthly installments, the compensation set forth in, either  
12 subsection (b) or (c) of this section.

13 (b) If the member is totally disabled, he or she shall receive  
14 sixty-six and two-thirds percent of his or her average monthly  
15 compensation for the twelve-month period immediately preceding the  
16 disability award, or ~~the shorter period~~, if the member has not  
17 worked all twelve months during the twelve month period immediately  
18 preceding the disability award, the average of the months in which  
19 compensation was received for the twelve month period shall be  
20 used.

21 (c) If the member remains totally disabled until attaining  
22 sixty years of age, then the member shall receive the retirement  
23 benefit provided in sections sixteen and seventeen of this article.

1 (d) The board shall propose legislative rules for promulgation  
2 in accordance with the provisions of article three, chapter  
3 twenty-nine-a of this code concerning member disability payments so  
4 as to ensure that the payments do not exceed one hundred percent of  
5 the average current salary for the position last held by the  
6 member.

7 (e) The disability benefit payments will begin the first day  
8 of the month following termination of employment and receipt of the  
9 disability retirement application by the Consolidated Public  
10 Retirement Board. ~~Provided, That no member may receive disability~~  
11 ~~benefit payments set forth in this section before January 1, 2011.~~

12 **§16-5V-21. Same -- Physical examinations; termination of**  
13 **disability.**

14 (a) The board may require any member who has applied for or is  
15 receiving disability benefits under this article to submit to a  
16 physical examination, mental examination or both, by a physician or  
17 physicians selected or approved by the board. ~~and may cause all~~  
18 All costs incident to ~~the~~ any examination ~~and approved by the board~~  
19 ~~to~~ by a board selected physician shall be paid from the board's  
20 expense fund. The costs may include hospital, laboratory, X-ray,  
21 medical and physicians' fees. A report of the findings of any  
22 physician shall be submitted in writing to the board for its  
23 consideration. If, from the report, independent information, or

1 from the report and any hearing on the report, the board is of the  
2 opinion and finds that: (1) The member has become reemployed as an  
3 emergency medical services officer; (2) a physician who has  
4 examined the member has found that considering the opportunities  
5 for emergency medical services in West Virginia, the member could  
6 be so employed as an emergency medical services officer; or (3)  
7 other facts exist to demonstrate that the member is no longer  
8 totally disabled, then the disability benefits shall cease the  
9 first day of the month following board action. ~~Benefits shall cease~~  
10 ~~once the member has been found to be no longer totally disabled.~~

11 (b) The board shall require annual recertification for a  
12 disabled retirant, who has not attained age sixty, at least once  
13 each year during the first five years following his or her  
14 retirement and at least once in each three year period thereafter.

15 ~~(b)~~ (c) If a retirant refuses to submit to a medical  
16 examination or submit a statement by his or her physician  
17 certifying continued disability in any period, his or her  
18 disability annuity may be discontinued by the board until the  
19 retirant complies. If the refusal continues for one year, all the  
20 retirant's rights in and to the annuity may be revoked by the  
21 board.

22 **§16-5V-24. Awards and benefits to surviving spouse -- When member**  
23 **dies from nonservice-connected causes.**

1           (a) If a member who has been a member for at least ten years,  
2 while in covered employment after the effective date of this  
3 article, has died or dies from any cause other than those specified  
4 in section twenty-three of this article and not due to vicious  
5 habits, intemperance or willful misconduct on his or her part, the  
6 fund shall pay annually in equal monthly installments to the  
7 surviving spouse during his or her lifetime, a sum equal to the  
8 greater of: (1) One half of the annual compensation received in the  
9 preceding twelve-month employment period by the deceased member; or  
10 (2) if the member dies after his or her early or normal retirement  
11 age, the monthly amount which the spouse would have received had  
12 the member retired the day before his or her death, elected a one  
13 hundred percent joint and survivor annuity with the spouse as the  
14 joint annuitant, and then died. Where the member is receiving  
15 disability benefits under this article at the time of his or her  
16 death, the ~~most recent monthly compensation determined under~~  
17 ~~section twenty-two of this article~~ average monthly compensation  
18 received in the plan year prior to disability shall be substituted  
19 for the annual compensation in subdivision (1) of this subsection.

20           (b) Benefits for a surviving spouse received under this  
21 section, or other sections of this article are in lieu of receipt  
22 of any other benefits under this article for the spouse or any  
23 other person or under the provisions of any other state retirement

1 system based upon the member's covered employment.

2 **§16-5V-35. Return to covered employment by retirant.**

3 The annuity of any member who retires under the provisions of  
4 this article and who resumes service in covered employment shall be  
5 suspended while the member continues in covered employment. The  
6 monthly annuity payment for the month in which the service resumes  
7 shall be pro-rated to the date of commencement of service, and the  
8 member shall again become a contributing member during resumption  
9 of service. At the conclusion of resumed service in covered  
10 employment the member shall have his or her annuity recalculated to  
11 take into account the entirety of service in covered employment.

NOTE: The purpose of this bill is to modify the definition of "annual compensation" in Article 5V; to add a definition for "contributing service" to Article 5V; to add a definition for the terms "retire" and "retirement" to Article 5V; to renumber subsections (i) through (oo), Section 2; to delete provisions relating to correction of employer errors in Section 8 and to add a new section relating to correction of employer errors to Article 5V; to clarify eligibility requirements for commencement of benefits; to require a member to request a benefit estimate from the board prior to receiving an explanation of benefits and retirement packet; to require that a member have at least ten years of contributing service to qualify for nonduty disability; to specify that the total nonduty disability award be based upon the average monthly compensation received during the twelve month period immediately preceding disability; to provide that all costs associated with disability benefit examinations be paid from the board's expense fund; to cease disability benefits on the first day of the month following termination of disability by the board; to require annual disability recertification for a retirant who is less than sixty years of age; to provide that if a member dies

while receiving a nonduty disability benefit the surviving spouse shall receive the average monthly compensation received by the member prior to disability; and to add a new section to Article 5V relating to the annuity calculation for a member who returns to covered employment after retirement.

This bill was recommended for introduction and passage during the 2013 Regular Session of the Legislature by the Consolidated Public Retirement Board.

§16-5V-8a and §16-5V-35 are new; they have been completely underscored.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.