

COMMITTEE SUBSTITUTE

FOR

H. B. 2802

(BY DELEGATE(S) PETHTEL, JONES, CRAIG, CANTERBURY,
KUMP, LYNCH AND STOWERS)

(Originating in the House Committee on Finance.)

[March 21, 2013]

A BILL to amend and reenact §16-5V-2, §16-5V-8, §16-5V-11, §16-5V-20, §16-5V-21 and §16-5V-24 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated §16-5V-8a and §16-5V-35, all relating to the Emergency Medical Services Retirement System; modifying the definition of annual compensation as it relates to determining benefits; adding a definition for contributing service to this article; adding a definition for the terms retire and retirement to this

article; providing for correction of participating public employer errors by the board; providing eligibility requirements for commencement of benefits; specifying that the board must be in receipt of a request for estimation of benefits prior to providing a member with an explanation of their estimated gross monthly annuity and a retirement application; providing that a member shall have at least ten years of contributing service to qualify for nonduty related disability retirement; specifying that the total nonduty disability award received by a member shall be based on their average monthly compensation during the twelve month period immediately preceding the disability award; providing that all costs associated with disability benefit examinations shall be paid from the board's expense fund; providing that disability benefits shall cease on the first day of the month following termination of disability by the board; requiring annual disability recertification for a retirant who is less than sixty years of age during the first five years of retirement and once every three years thereafter; providing that if a member who is receiving a nonduty disability benefit dies the surviving spouse shall receive the average monthly compensation received by the member prior to the disability award; and providing for the annuity calculation for

a member who returns to covered employment after retirement.

Be it enacted by the Legislature of West Virginia:

That §16-5V-2, §16-5V-8, §16-5V-11, §16-5V-20, §16-5V-21 and §16-5V-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §16-5V-8a and §16-5V-35, all to read as follows:

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-2. Definitions.

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

3 (a) “Accrued benefit” means on behalf of any member two
4 and six-tenths percent per year of the member’s final average
5 salary for the first twenty years of credited service. Additionally,
6 two percent per year for twenty-one through twenty-five years
7 and one percent per year for twenty-six through thirty years will
8 be credited with a maximum benefit of sixty-seven percent. A
9 member’s accrued benefit may not exceed the limits of Section
10 415 of the Internal Revenue Code and is subject to the provisions
11 of section twelve of this article.

12 (1) The board may upon the recommendation of the board's
13 actuary increase the employees' contribution rate to ten and
14 five-tenths percent should the funding of the plan not reach
15 seventy percent funded by July 1, 2012. The board shall decrease
16 the contribution rate to eight and one-half percent once the plan
17 funding reaches the seventy percent support objective as of any
18 later actuarial valuation date.

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

25 (b) "Accumulated contributions" means the sum of all
26 retirement contributions deducted from the compensation of a
27 member, or paid on his or her behalf as a result of covered
28 employment, together with regular interest on the deducted
29 amounts.

30 (c) "Active military duty" means full-time active duty with
31 any branch of the Armed Forces of the United States, including

32 service with the National Guard or reserve military forces when
33 the member has been called to active full-time duty and has
34 received no compensation during the period of that duty from
35 any board or employer other than the Armed Forces.

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

40 (e) "Annual compensation" means the wages paid to the
41 member during covered employment within the meaning of
42 Section 3401(a) of the Internal Revenue Code, but determined
43 without regard to any rules that limit the remuneration included
44 in wages based upon the nature or location of employment or
45 services performed during the plan year plus amounts excluded
46 under Section 414(h)(2) of the Internal Revenue Code and less
47 reimbursements or other expense allowances, cash or noncash
48 fringe benefits or both, deferred compensation and welfare
49 benefits. Annual compensation for determining benefits during
50 any determination period may not exceed ~~\$100,000 as adjusted~~
51 ~~for cost-of-living in accordance with Section 401(a)(17)(B) the~~

52 maximum compensation allowed as adjusted for cost of living in
53 accordance with section seven, article ten-d, chapter five of this
54 code and Section 401(a)(17) of the Internal Revenue Code.

55 (f) “Annual leave service” means accrued annual leave.

56 (g) “Annuity starting date” means the first day of the month
57 for which an annuity is payable after submission of a retirement
58 application. For purposes of this subsection, if retirement income
59 payments commence after the normal retirement age,
60 “retirement” means the first day of the month following or
61 coincident with the latter of the last day the member worked in
62 covered employment or the member’s normal retirement age and
63 after completing proper written application for “retirement” on
64 an application supplied by the board.

65 (h) “Board” means the Consolidated Public Retirement
66 Board.

67 (i) “Contributing service” or “contributory service” means
68 service rendered by a member while employed by a participating
69 public employer for which the member made contributions to the
70 plan.

71 ~~(i)~~(j) “County commission or political subdivision” has the
72 meaning ascribed to it in this code.

73 ~~(j)~~ (k) “Covered employment” means either: (1)
74 Employment as a full-time emergency medical technician,
75 emergency medical technician/paramedic or emergency medical
76 services/registered nurse and the active performance of the
77 duties required of emergency medical services officers; or (2)
78 the period of time during which active duties are not performed
79 but disability benefits are received under this article; or (3)
80 concurrent employment by an emergency medical services
81 officer in a job or jobs in addition to his or her employment as an
82 emergency medical services officer where the secondary
83 employment requires the emergency medical services officer to
84 be a member of another retirement system which is administered
85 by the Consolidated Public Retirement Board pursuant to this
86 code: *Provided*, That the emergency medical services officer
87 contributes to the fund created in this article the amount
88 specified as the member’s contribution in section eight of this
89 article.

90 ~~(k)~~ (l) “Credited service” means the sum of a member’s
91 years of service, active military duty, disability service and
92 accrued annual and sick leave service.

93 ~~(m)~~ (m) “Dependent child” means either:

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

95 (A) A natural child of the member;

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

97 (C) A child who at the time of the member’s death was
98 living with the member while the member was an adopting
99 parent during any period of probation; or

100 (D) A stepchild of the member residing in the member’s
101 household at the time of the member’s death; or

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

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

105 (B) Who was claimed as a dependent by the member for
106 federal income tax purposes at the time of the member’s death;
107 and

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

110 ~~(m)~~ (n) “Dependent parent” means the father or mother of
111 the member who was claimed as a dependent by the member for
112 federal income tax purposes at the time of the member’s death.

113 (Ⓣ) (o) “Disability service” means service received by a
114 member, expressed in whole years, fractions thereof or both,
115 equal to one half of the whole years, fractions thereof, or both,
116 during which time a member receives disability benefits under
117 this article.

118 (Ⓣ) (p) “Early retirement age” means age forty-five or over
119 and completion of twenty years of contributory service.

120 (Ⓣ) (q) “Effective date” means January 1, 2008.

121 (Ⓣ) (r) “Emergency medical services officer” means an
122 individual employed by the state, county or other political
123 subdivision as a medical professional who is qualified to respond
124 to medical emergencies, aids the sick and injured and arranges
125 or transports to medical facilities, as defined by the West
126 Virginia Office of Emergency Medical Services. This definition
127 is construed to include employed ambulance providers and other
128 services such as law enforcement, rescue or fire department
129 personnel who primarily perform these functions and are not
130 provided any other credited service benefits or retirement plans.
131 These persons may hold the rank of emergency medical
132 technician/basic, emergency medical technician/paramedic,

133 emergency medical services/registered nurse, or others as
134 defined by the West Virginia Office of Emergency Medical
135 Services and the Consolidated Public Retirement Board.

136 ~~(r)~~ (s) “Employer error” means an omission,
137 misrepresentation or violation of relevant provisions of the West
138 Virginia Code or of the West Virginia Code of State Rules or the
139 relevant provisions of both the West Virginia Code and of the
140 West Virginia Code of State Rules by the participating public
141 employer that has resulted in an underpayment or overpayment
142 of contributions required. A deliberate act contrary to the
143 provisions of this article by a participating public employer does
144 not constitute employer error.

145 ~~(s)~~ (t) “Final average salary” means the average of the
146 highest annual compensation received for covered employment
147 by the member during any five consecutive plan years within the
148 member’s last ten years of service while employed, prior to any
149 disability payment. If the member did not have annual
150 compensation for the five full plan years preceding the member’s
151 attainment of normal retirement age and during that period the
152 member received disability benefits under this article, then “final

153 average salary” means the average of the monthly salary
154 determined paid to the member during that period as determined
155 under section nineteen of this article multiplied by twelve. “Final
156 average salary” does not include any lump sum payment for
157 unused, accrued leave of any kind or character.

158 (†) (u) “Full-time employment” means permanent
159 employment of an employee by a participating public employer
160 in a position which normally requires twelve months per year
161 service and requires at least one thousand forty hours per year
162 service in that position.

163 (†) (v) “Fund” means the West Virginia Emergency Medical
164 Services Retirement Fund created by this article.

165 (†) (w) “Hour of service” means:

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

170 (2) Each hour for which a member is paid or entitled to
171 payment for covered employment during a plan year but where
172 no duties are performed due to vacation, holiday, illness,

173 incapacity including disability, layoff, jury duty, military duty,
174 leave of absence or any combination thereof and without regard
175 to whether the employment relationship has terminated. Hours
176 under this subdivision shall be calculated and credited pursuant
177 to West Virginia Division of Labor rules. A member will not be
178 credited with any hours of service for any period of time he or
179 she is receiving benefits under section nineteen or twenty of this
180 article; and

181 (3) Each hour for which back pay is either awarded or agreed
182 to be paid by the employing county commission or political
183 subdivision, irrespective of mitigation of damages. The same
184 hours of service shall not be credited both under subdivision (1)
185 or (2) of this subsection and under this subdivision. Hours under
186 this paragraph shall be credited to the member for the plan year
187 or years to which the award or agreement pertains, rather than
188 the plan year in which the award, agreement or payment is made.

189 ~~(w)~~ (x) "Member" means a person first hired as an
190 emergency medical services officer by an employer which is a
191 participating public employer of the Public Employees
192 Retirement System or the Emergency Medical Services

193 Retirement System after the effective date of this article, as
194 defined in subsection ~~(p)~~ (q) of this section, or an emergency
195 medical services officer of an employer which is a participating
196 public employer of the Public Employees Retirement System
197 first hired prior to the effective date and who elects to become a
198 member pursuant to this article. A member shall remain a
199 member until the benefits to which he or she is entitled under
200 this article are paid or forfeited.

201 ~~(x)~~ (y) “Monthly salary” means the W-2 reportable
202 compensation received by a member during the month.

203 ~~(y)~~ (z) “Normal form” means a monthly annuity which is
204 one twelfth of the amount of the member’s accrued benefit
205 which is payable for the member’s life. If the member dies
206 before the sum of the payments he or she receives equals his or
207 her accumulated contributions on the annuity starting date, the
208 named beneficiary shall receive in one lump sum the difference
209 between the accumulated contributions at the annuity starting
210 date and the total of the retirement income payments made to the
211 member.

212 ~~(z)~~ (aa) “Normal retirement age” means the first to occur of
213 the following:

214 (1) Attainment of age fifty years and the completion of
215 twenty or more years of regular contributory service, excluding
216 active military duty, disability service and accrued annual and
217 sick leave service;

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

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

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

226 ~~(aa)~~ (bb) “Participating public employer” means any county
227 commission or political subdivision in the state which has
228 elected to cover its emergency medical services officers, as
229 defined in this article, under the West Virginia Emergency
230 Medical Services Retirement System.

231 ~~(bb)~~ (cc) “Political subdivision” means a county, city or
232 town in the state; any separate corporation or instrumentality
233 established by one or more counties, cities or towns, as permitted

234 by law; any corporation or instrumentality supported in most part
235 by counties, cities or towns; and any public corporation charged
236 by law with the performance of a governmental function and
237 whose jurisdiction is coextensive with one or more counties,
238 cities or towns: *Provided*, That any public corporation
239 established under section four, article fifteen, chapter seven of
240 this code is considered a political subdivision solely for the
241 purposes of this article.

242 ~~(cc)~~ (dd) “Plan” means the West Virginia Emergency
243 Medical Services Retirement System established by this article.

244 ~~(dd)~~ (ee) “Plan year” means the twelve-month period
245 commencing on January 1 of any designated year and ending the
246 following December 31.

247 ~~(cc)~~ (ff) “Public Employees Retirement System” means the
248 West Virginia Public Employee’s Retirement System created by
249 West Virginia Code.

250 ~~(gg)~~ (gg) “Regular interest” means the rate or rates of interest
251 per annum, compounded annually, as the board adopts in
252 accordance with the provisions of this article.

253 ~~(gg)~~ (hh) “Required beginning date” means April 1 of the
254 calendar year following the later of: (1) The calendar year in

255 which the member attains age seventy and one-half; or (2) the
256 calendar year in which he or she retires or otherwise separates
257 from covered employment.

258 ~~(hh)~~ (ii) “Retirant” means any member who commences an
259 annuity payable by the plan.

260 (jj) “Retire” or “retirement” means a member’s withdrawal
261 from the employ of a participating public employer and the
262 commencement of an annuity by the plan.

263 ~~(ii)~~ (kk) “Retirement income payments” means the monthly
264 retirement income payments payable under the plan.

265 ~~(jj)~~ (ll) “Spouse” means the person to whom the member is
266 legally married on the annuity starting date.

267 ~~(kk)~~ (mm) “Surviving spouse” means the person to whom
268 the member was legally married at the time of the member’s
269 death and who survived the member.

270 ~~(ll)~~ (nn) “Totally disabled” means a member’s inability to
271 engage in substantial gainful activity by reason of any medically
272 determined physical or mental impairment that can be expected
273 to result in death or that has lasted or can be expected to last for
274 a continuous period of not less than twelve months.

275 For purposes of this subsection:

276 (1) A member is totally disabled only if his or her physical
277 or mental impairment or impairments is so severe that he or she
278 is not only unable to perform his or her previous work as an
279 emergency medical services officer but also cannot, considering
280 his or her age, education and work experience, engage in any
281 other kind of substantial gainful employment which exists in the
282 state regardless of whether: (A) The work exists in the
283 immediate area in which the member lives; (B) a specific job
284 vacancy exists; or (C) the member would be hired if he or she
285 applied for work. For purposes of this article, substantial gainful
286 employment is the same definition as used by the United States
287 Social Security Administration.

288 (2) “Physical or mental impairment” is an impairment that
289 results from an anatomical, physiological or psychological
290 abnormality that is demonstrated by medically accepted clinical
291 and laboratory diagnostic techniques. The board may require
292 submission of a member’s annual tax return for purposes of
293 monitoring the earnings limitation.

294 ~~(mm)~~ (oo) “Year of service” means a member shall, except
295 in his or her first and last years of covered employment, be

296 credited with years of service credit based upon the hours of
297 service performed as covered employment and credited to the
298 member during the plan year based upon the following schedule:

299 Hours of Service Year of Service Credited.

300 Less than 500 0

301 500 to 999 1/3

302 1,000 to 1,4992/3

303 1,500 or more 1

304 During a member's first and last years of covered
305 employment, the member shall be credited with one twelfth of
306 a year of service for each month during the plan year in which
307 the member is credited with an hour of service for which
308 contributions were received by the fund. A member is not
309 entitled to credit for years of service for any time period during
310 which he or she received disability payments under section
311 nineteen or twenty of this article. Except as specifically
312 excluded, years of service include covered employment prior to
313 the effective date.

314 Years of service which are credited to a member prior to his
315 or her receipt of accumulated contributions upon termination of

316 employment pursuant to section eighteen of this article or
317 section thirty, article ten, chapter five of this code, shall be
318 disregarded for all purposes under this plan unless the member
319 repays the accumulated contributions with interest pursuant to
320 section eighteen of this article or has prior to the effective date
321 made the repayment pursuant to section eighteen, article ten,
322 chapter five of this code.

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

1 (a) There shall be deducted from the monthly salary of each
2 member and paid into the fund an amount equal to eight and
3 one-half percent of his or her monthly salary. An additional
4 amount shall be paid to the fund by the county commission or
5 political subdivision in which the member is employed in
6 covered employment in an amount determined by the board:
7 *Provided*, That in no year may the total of the employer
8 contributions provided in this section, to be paid by the county
9 commission or political subdivision, exceed ten and one-half
10 percent of the total payroll for the members in the employ of the
11 county commission or political subdivision.

12 (b) Any active member who has concurrent employment in
13 an additional job or jobs and the additional employment requires

14 the emergency medical services officer to be a member of
15 another retirement system which is administered by the
16 Consolidated Public Retirement Board pursuant to article ten-d,
17 chapter five of this code shall contribute to the fund the sum of
18 eight and one-half percent of his or her monthly salary earned as
19 an emergency medical services officer as well as the sum of
20 eight and one-half percent of his or her monthly salary earned
21 from any additional employment which additional employment
22 requires the emergency medical services officer to be a member
23 of another retirement system which is administered by the
24 Consolidated Public Retirement Board pursuant to article ten-d,
25 chapter five of this code. An additional percent of the monthly
26 salary of each member shall be paid to the fund by the
27 concurrent employer by which the member is employed in an
28 amount determined by the board: *Provided*, That in no year may
29 the total of the employer contributions provided in this section,
30 to be paid by the concurrent employer, exceed ten and one-half
31 percent of the payroll for the concurrent member employees.

32 (c) All required deposits shall be remitted to the board no
33 later than fifteen days following the end of the calendar month
34 for which the deposits are required. If the board upon the

35 recommendation of the board actuary finds that the benefits
36 provided by this article can be actuarially funded with a lesser
37 contribution, then the board shall reduce the required member
38 and employer contributions proportionally. Any county
39 commission or political subdivision which fails to make any
40 payment due the Emergency Medical Services Retirement Fund
41 by the fifteenth day following the end of each calendar month in
42 which contributions are due may be required to pay the actuarial
43 rate of interest lost on the total amount owed for each day the
44 payment is delinquent. Accrual of the loss of earnings owed by
45 the delinquent county commission or political subdivision
46 commences after the fifteenth day following the end of the
47 calendar month in which contributions are due and continues
48 until receipt of the delinquent amount. Interest compounds daily
49 and the minimum surcharge is \$50.

50 ~~(d) If any change or employer error in the records of any~~
51 ~~participating public employer or the retirement system results in~~
52 ~~any member receiving from the system more or less than he or~~
53 ~~she would have been entitled to receive had the records been~~
54 ~~correct, the board shall correct the error and as far as is~~

55 ~~practicable shall adjust the payment of the benefit in a manner~~
56 ~~that the actuarial equivalent of the benefit to which the member~~
57 ~~was correctly entitled shall be paid. Any employer error resulting~~
58 ~~in an underpayment to the retirement system may be corrected~~
59 ~~by the member remitting the required employee contribution and~~
60 ~~the participating public employer remitting the required~~
61 ~~employer contribution. Interest shall accumulate in accordance~~
62 ~~with the Legislative Rule 162 CSR 7 retirement board~~
63 ~~reinstatement interest, and any accumulating interest owed on~~
64 ~~the employee and employer contributions resulting from the~~
65 ~~employer error shall be the responsibility of the participating~~
66 ~~public employer. The participating public employer may remit~~
67 ~~total payment and the employee reimburse the participating~~
68 ~~public employer through payroll deduction over a period~~
69 ~~equivalent to the time period during which the employer error~~
70 ~~occurred.~~

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

1 (a) General rule: If any change or employer error in the
2 records of any participating public employer or the plan results
3 in any member, retirant or beneficiary receiving from the plan

4 more or less than he or she would have been entitled to receive
5 had the records been correct, the board shall correct the error. If
6 correction of the error occurs after the effective retirement date
7 of a retirant, and as far as is practicable, the board shall adjust
8 the payment of the benefit in a manner that the actuarial
9 equivalent of the benefit to which the retirant was correctly
10 entitled shall be paid.

11 (b) Underpayments: Any error resulting in an underpayment
12 to the retirement system of required contributions may be
13 corrected by the member or retirant remitting the required
14 employee contribution and the participating public employer
15 remitting the required employer contribution. Interest shall
16 accumulate in accordance with the Legislative Rule 162 CSR 7
17 concerning retirement board refund, reinstatement, retroactive
18 service, loan and employer error interest factors and any
19 accumulating interest owed on the employee and employer
20 contributions resulting from an employer error shall be the
21 responsibility of the participating public employer. The
22 participating public employer may remit total payment and the
23 employee reimburse the participating public employer through

24 payroll deduction over a period equivalent to the time period
25 during which the employer error occurred. If the correction of an
26 error involving an underpayment of required contributions to the
27 retirement system will result in increased payments to a retirant,
28 including increases to payments already made, any adjustments
29 shall be made only after the board receives full payment of all
30 required employee and employer contributions, including
31 interest.

32 (c) Overpayments: (1) When mistaken or excess employer
33 contributions, including any overpayments, have been made to
34 the retirement system by a participating public employer, due to
35 error or other reason, the board shall credit the participating
36 public employer with an amount equal to the erroneous
37 contributions, to be offset against the participating public
38 employer's future liability for employer contributions to the
39 system. Earnings or interest shall not be credited to the
40 employer.

41 (2) When mistaken or excess employee contributions,
42 including any overpayments, have been made to the retirement
43 system, due to error or other reason, the board shall have sole

44 authority for determining the means of return, offset or credit to
45 or for the benefit of the employee of the amounts, and may use
46 any means authorized or permitted under the provisions of
47 Section 401(a), et seq. of the Internal Revenue Code and
48 guidance issued thereunder applicable to governmental plans.
49 Alternatively, in its full and complete discretion, the board may
50 require the participating public employer to pay the employee
51 the amounts as wages, with the board crediting the participating
52 public employer with a corresponding amount to offset against
53 its future contributions to the plan: *Provided*, That the wages
54 paid to the employee shall not be considered compensation for
55 any purposes under this article. Earnings or interest shall not be
56 returned, offset, or credited under any of the means utilized by
57 the board for returning mistaken or excess employee
58 contributions, including any overpayments, to an employee.

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

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

3 (b) ~~A~~ On or after the date a member attains early or normal
4 retirement age, a member may retire and commence to receive

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

§16-5V-20. Awards and benefits for disability — Due to other 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
3 during covered employment: (1) Has been or becomes totally
4 disabled from any cause other than those set forth in section

5 nineteen of this article and not due to vicious habits,
6 intemperance or willful misconduct on his or her part; and (2) in
7 the opinion of two physicians after medical examination, one of
8 whom shall be named by the board, he or she is by reason of the
9 disability unable to perform adequately the duties required of an
10 emergency medical services officer, is entitled to receive and
11 shall be paid from the fund in monthly installments, the
12 compensation set forth in, either subsection (b) or (c) of this
13 section.

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

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

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

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

§16-5V-21. Same — Physical examinations; termination of disability.

1 (a) The board may require any member who has applied for
2 or is receiving disability benefits under this article to submit to
3 a physical examination, mental examination or both, by a
4 physician or physicians selected or approved by the board. ~~and~~
5 ~~may cause all~~ All costs incident to ~~the~~ any examination ~~and~~
6 ~~approved by the board to~~ by a board selected physician shall be
7 paid from the board's expense fund. The costs may include

8 hospital, laboratory, X-ray, medical and physicians' fees. A
9 report of the findings of any physician shall be submitted in
10 writing to the board for its consideration. If, from the report,
11 independent information, or from the report and any hearing on
12 the report, the board is of the opinion and finds that: (1) The
13 member has become reemployed as an emergency medical
14 services officer; (2) a physician who has examined the member
15 has found that considering the opportunities for emergency
16 medical services in West Virginia, the member could be so
17 employed as an emergency medical services officer; or (3) other
18 facts exist to demonstrate that the member is no longer totally
19 disabled, then the disability benefits shall cease the first day of
20 the month following board action. ~~Benefits shall cease once the~~
21 ~~member has been found to be no longer totally disabled.~~

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

26 (b) (c) If a retirant refuses to submit to a medical
27 examination or submit a statement by his or her physician

28 certifying continued disability in any period, his or her disability
29 annuity may be discontinued by the board until the retirant
30 complies. If the refusal continues for one year, all the retirant's
31 rights in and to the annuity may be revoked by the board.

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

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

16 article at the time of his or her death, the ~~most recent monthly~~
17 ~~compensation determined under section twenty-two of this~~
18 ~~article~~ average monthly compensation received in the plan year
19 prior to disability shall be substituted for the annual
20 compensation in subdivision (1) of this subsection.

21 (b) Benefits for a surviving spouse received under this
22 section, or other sections of this article are in lieu of receipt of
23 any other benefits under this article for the spouse or any other
24 person or under the provisions of any other state retirement
25 system based upon the member's covered employment.

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

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

