

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 418

(By Senators Jenkins and McCabe)

[Originating in the Committee on Finance;
reported March 22, 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; defining terms; making technical corrections; correction of participating public employer errors by the Consolidated Public Retirement Board; clarifying eligibility requirements for commencement of benefits; specifying that the board must provide an estimation of benefits upon a

member's request; providing that a member must have at least ten years of contributing service to qualify for nonservice-connected disability retirement; specifying that the total nonservice-connected disability award received by a member shall be based on his or her 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 retiree 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 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
2 or the context clearly requires a different meaning:

3 (a) “Accrued benefit” means on behalf of any member
4 two and six-tenths percent per year of the member’s final
5 average salary for the first twenty years of credited service.
6 Additionally, two percent per year for twenty-one through
7 twenty-five years and one percent per year for twenty-six
8 through thirty years will be credited with a maximum benefit
9 of sixty-seven percent. A member’s accrued benefit may not

10 exceed the limits of Section 415 of the Internal Revenue
11 Code and is subject to the provisions of section twelve of this
12 article.

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

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

26 (b) "Accumulated contributions" means the sum of all
27 retirement contributions deducted from the compensation of

28 a member, or paid on his or her behalf as a result of covered
29 employment, together with regular interest on the deducted
30 amounts.

31 (c) “Active military duty” means full-time active duty
32 with any branch of the armed forces of the United States,
33 including service with the National Guard or reserve military
34 forces when the member has been called to active full-time
35 duty and has received no compensation during the period of
36 that duty from any board or employer other than the armed
37 forces.

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

42 (e) “Annual compensation” means the wages paid to the
43 member during covered employment within the meaning of
44 Section 3401(a) of the Internal Revenue Code, but
45 determined without regard to any rules that limit the

46 remuneration included in wages based upon the nature or
47 location of employment or services performed during the
48 plan year plus amounts excluded under Section 414(h)(2) of
49 the Internal Revenue Code and less reimbursements or other
50 expense allowances, cash or noncash fringe benefits or both,
51 deferred compensation and welfare benefits. Annual
52 compensation for determining benefits during any
53 determination period may not exceed \$100,000 as adjusted
54 ~~for cost of living in accordance with Section 401(a)(17)(B)~~
55 the maximum compensation allowed as adjusted for cost of
56 living in accordance with section seven, article ten-d, chapter
57 five of this code and Section 401(a)(17) of the Internal
58 Revenue Code.

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

60 (g) “Annuity starting date” means the first day of the
61 month for which an annuity is payable after submission of a
62 retirement application. For purposes of this subsection, if
63 retirement income payments commence after the normal

64 retirement age, “retirement” means the first day of the month
65 following or coincident with the latter of the last day the
66 member worked in covered employment or the member’s
67 normal retirement age and after completing proper written
68 application for retirement on an application supplied by the
69 board.

70 (h) “Board” means the Consolidated Public Retirement
71 Board created under article ten-d, Chapter five of this code.

72 (i) “Contributing service” means service rendered by a
73 member while employed by a participating public employer
74 for which the member made contributions to the plan.

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

77 ~~(j)~~ (k) “Covered employment” means either: (1)
78 Employment as a full-time emergency medical technician,
79 emergency medical technician/paramedic or emergency
80 medical services/registered nurse and the active performance
81 of the duties required of emergency medical services

82 officers; ~~or~~ (2) the period of time during which active duties
83 are not performed but disability benefits are received under
84 this article; or (3) concurrent employment by an emergency
85 medical services officer in a job or jobs in addition to his or
86 her employment as an emergency medical services officer
87 where the secondary employment requires the emergency
88 medical services officer to be a member of another
89 retirement system which is administered by the ~~Consolidated~~
90 ~~Public Retirement~~ board pursuant to this code: *Provided,*
91 That the emergency medical services officer contributes to
92 the fund created in this article the amount specified as the
93 member's contribution in section eight of this article.

94 ~~(k)~~ (l) "Credited service" means the sum of a member's
95 years of service, active military duty, disability service and
96 accrued annual and sick leave service.

97 ~~(h)~~ (m) "Dependent child" means either:

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

99 (A) A natural child of the member;

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

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

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

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

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

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

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

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

118 ~~(n)~~ (o) “Disability service” means service received by a
119 member, expressed in whole years, fractions thereof or both,
120 equal to one half of the whole years, fractions thereof, or
121 both, during which time a member receives disability
122 benefits under this article.

123 ~~(o)~~ (p) “Early retirement age” means age forty-five or
124 over and completion of twenty years of contributory service.

125 ~~(p)~~ (q) “Effective date” means January 1, 2008.

126 ~~(q)~~ (r) “Emergency medical services officer” means an
127 individual employed by the state, county or other political
128 subdivision as a medical professional who is qualified to
129 respond to medical emergencies, aids the sick and injured
130 and arranges or transports to medical facilities, as defined by
131 the West Virginia Office of Emergency Medical Services.
132 This definition is construed to include employed ambulance
133 providers and other services such as law enforcement, rescue
134 or fire department personnel who primarily perform these
135 functions and are not provided any other credited service

136 benefits or retirement plans. These persons may hold the
137 rank of emergency medical technician/basic, emergency
138 medical technician/paramedic, emergency medical
139 services/registered nurse, or others as defined by the West
140 Virginia Office of Emergency Medical Services and the
141 ~~Consolidated Public Retirement~~ board.

142 (r) (s) “Employer error” means an omission,
143 misrepresentation or violation of relevant provisions of ~~the~~
144 ~~West Virginia Code~~ this code or of the West Virginia Code
145 of State Rules or the relevant provisions of both ~~the West~~
146 ~~Virginia Code and of the West Virginia Code of State Rules~~
147 by the participating public employer that has resulted in an
148 underpayment or overpayment of required contributions
149 ~~required~~. A deliberate act contrary to the provisions of this
150 article by a participating public employer does not constitute
151 employer error.

152 (s) (t) “Final average salary” means the average of the
153 highest annual compensation received for covered

154 employment by the member during any five consecutive plan
155 years within the member's last ten years of service while
156 employed, prior to any disability payment. If the member did
157 not have annual compensation for the five full plan years
158 preceding the member's attainment of normal retirement age
159 and during that period the member received disability
160 benefits under this article, then "final average salary" means
161 the average of the monthly salary determined paid to the
162 member during that period as determined under section
163 twenty-two of this article multiplied by twelve. "Final
164 average salary" does not include any lump sum payment for
165 unused, accrued leave of any kind or character.

166 (t) (u) "Full-time employment" means permanent
167 employment of an employee by a participating public
168 employer in a position which normally requires twelve
169 months per year service and requires at least one thousand
170 forty hours per year service in that position.

171 ~~(t)~~ (v) “Fund” means the West Virginia Emergency
172 Medical Services Retirement Fund created by this article.

173 ~~(v)~~ (w) “Hour of service” means:

174 (1) Each hour for which a member is paid or entitled to
175 payment for covered employment during which time active
176 duties are performed. These hours shall be credited to the
177 member for the plan year in which the duties are performed;
178 ~~and~~

179 (2) Each hour for which a member is paid or entitled to
180 payment for covered employment during a plan year but
181 where no duties are performed due to vacation, holiday,
182 illness, incapacity including disability, layoff, jury duty,
183 military duty, leave of absence or any combination thereof
184 and without regard to whether the employment relationship
185 has terminated. Hours under this subdivision shall be
186 calculated and credited pursuant to West Virginia Division
187 of Labor rules. A member will not be credited with any hours
188 of service for any period of time he or she is receiving
189 benefits under section nineteen or twenty of this article; and

190 (3) Each hour for which back pay is either awarded or
191 agreed to be paid by the employing county commission or
192 political subdivision, irrespective of mitigation of damages.
193 The same hours of service shall not be credited both under
194 subdivision (1) or (2) of this subsection and under this
195 subdivision. Hours under this paragraph shall be credited to
196 the member for the plan year or years to which the award or
197 agreement pertains, rather than the plan year in which the
198 award, agreement or payment is made.

199 ~~(w)~~ (x) “Member” means a person first hired as an
200 emergency medical services officer by an employer which is
201 a participating public employer of the Public Employees
202 Retirement System or the Emergency Medical Services
203 Retirement System after the effective date of this article, as
204 defined in subsection ~~(p)~~ (q) of this section, or an emergency
205 medical services officer of an employer which is a
206 participating public employer of the Public Employees
207 Retirement System first hired prior to the effective date and

208 who elects to become a member pursuant to this article. A
209 member shall remain a member until the benefits to which he
210 or she is entitled under this article are paid or forfeited.

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

213 ~~(y)~~ (z) “Normal form” means a monthly annuity which is
214 one twelfth of the amount of the member’s accrued benefit
215 which is payable for the member’s life. If the member dies
216 before the sum of the payments he or she receives equals his
217 or her accumulated contributions on the annuity starting date,
218 the named beneficiary shall receive in one lump sum the
219 difference between the accumulated contributions at the
220 annuity starting date and the total of the retirement income
221 payments made to the member.

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

224 (1) Attainment of age fifty years and the completion of
225 twenty or more years of regular contributory service,

226 excluding active military duty, disability service and accrued
227 annual and sick leave service;

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

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

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

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

242 ~~(bb)~~ (cc) “Political subdivision” means a county, city or
243 town in the state; any separate corporation or instrumentality

244 established by one or more counties, cities or towns, as
245 permitted by law; any corporation or instrumentality
246 supported in most part by counties, cities or towns; and any
247 public corporation charged by law with the performance of
248 a governmental function and whose jurisdiction is
249 coextensive with one or more counties, cities or towns:
250 *Provided*, That any public corporation established under
251 section four, article fifteen, chapter seven of this code is
252 considered a political subdivision solely for the purposes of
253 this article.

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

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

260 ~~(ee)~~ (ff) “Public Employees Retirement System” means
261 the West Virginia Public Employee’s Retirement System
262 created by West Virginia Code.

263 ~~(ff)~~ (gg) “Regular interest” means the rate or rates of
264 interest per annum, compounded annually, ~~as adopted by the~~
265 board ~~adopts~~ in accordance with the provisions of this article.

266 ~~(gg)~~ (hh) “Required beginning date” means April 1 of the
267 calendar year following the later of: (1) The calendar year in
268 which the member attains age seventy and one half; or (2)
269 the calendar year in which he or she retires or otherwise
270 separates from covered employment.

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

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

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

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

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

283 ~~(H)~~ (nn) “Totally disabled” means a member’s inability
284 to engage in substantial gainful activity by reason of any
285 medically determined physical or mental impairment that can
286 be expected to result in death or that has lasted or can be
287 expected to last for a continuous period of not less than
288 twelve months.

289 For purposes of this subsection:

290 (1) A member is totally disabled only if his or her
291 physical or mental impairment or impairments is so severe
292 that he or she is not only unable to perform his or her
293 previous work as an emergency medical services officer but
294 also cannot, considering his or her age, education and work
295 experience, engage in any other kind of substantial gainful
296 employment which exists in the state regardless of whether:
297 (A) The work exists in the immediate area in which the

298 member lives; (B) A specific job vacancy exists; or (C) the
299 member would be hired if he or she applied for work. For
300 purposes of this article, “substantial gainful employment” is
301 the same definition as used by the United States Social
302 Security Administration.

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

309 ~~(mm)~~ (oo) “Year of service” means a member shall,
310 except in his or her first and last years of covered
311 employment, be credited with years of service credit based
312 upon the hours of service performed as covered employment
313 and credited to the member during the plan year based upon
314 the following schedule:

315	Hours of Service	Year of Service Credited.
316	Less than 500.	Year0
317	500 to 999.	Year1/3
318	1,000 to 1,499.	Year2/3
319	1,500 or more.	Year1

320 (1) During a member's first and last years of covered
321 employment, the member shall be credited with one twelfth
322 of a year of service for each month during the plan year in
323 which the member is credited with an hour of service for
324 which contributions were received by the fund. A member is
325 not entitled to credit for years of service for any time period
326 during which he or she received disability payments under
327 section nineteen or twenty of this article. Except as
328 specifically excluded, years of service include covered
329 employment prior to the effective date.

330 (2) Years of service which are credited to a member prior
331 to his or her receipt of accumulated contributions upon
332 termination of employment pursuant to section eighteen of

333 this article or section thirty, article ten, chapter five of this
334 code, shall be disregarded for all purposes under this plan
335 unless the member repays the accumulated contributions
336 with interest pursuant to section eighteen of this article or has
337 prior to the effective date made the repayment pursuant to
338 section eighteen, article ten, 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
13 in an additional job or jobs and the additional employment
14 requires the emergency medical services officer to be a
15 member of another retirement system which is administered
16 by the ~~Consolidated Public Retirement~~ board pursuant to
17 article ten-d, chapter five of this code shall contribute to the
18 fund the sum of eight and one-half percent of his or her
19 monthly salary earned as an emergency medical services
20 officer as well as the sum of eight and one-half percent of his
21 or her monthly salary earned from any additional
22 employment which ~~additional employment~~ requires the
23 emergency medical services officer to be a member of
24 another retirement system which is administered by the
25 ~~Consolidated Public Retirement~~ board pursuant to article
26 ten-d, chapter five of this code. An additional percent of the
27 monthly salary of each member shall be paid to the fund by
28 the concurrent employer by which the member is employed
29 in an amount determined by the board: *Provided*, That in no

30 year may the total of the employer contributions provided in
31 this section, to be paid by the concurrent employer, exceed
32 ten and one-half percent of the payroll for the concurrent
33 member employees.

34 (c) All required deposits shall be remitted to the board no
35 later than fifteen days following the end of the calendar
36 month for which the deposits are required. If the board, upon
37 the recommendation of the ~~board~~ board's actuary, finds that
38 the benefits provided by this article can be actuarially funded
39 with a lesser contribution, then the board shall reduce the
40 required member and employer contributions proportionally.
41 Any county commission or political subdivision which fails
42 to make any payment due the Emergency Medical Services
43 Retirement Fund by the fifteenth day following the end of
44 each calendar month in which contributions are due may be
45 required to pay the actuarial rate of interest lost on the total
46 amount owed for each day the payment is delinquent.
47 Accrual of the loss of earnings owed by the delinquent

48 county commission or political subdivision commences after
49 the fifteenth day following the end of the calendar month in
50 which contributions are due and continues until receipt of the
51 delinquent amount. Interest compounds daily and the
52 minimum surcharge is \$50.

53 ~~(d) If any change or employer error in the records of any~~
54 ~~participating public employer or the retirement system results~~
55 ~~in any member receiving from the system more or less than~~
56 ~~he or she would have been entitled to receive had the records~~
57 ~~been correct, the board shall correct the error and as far as is~~
58 ~~practicable shall adjust the payment of the benefit in a~~
59 ~~manner that the actuarial equivalent of the benefit to which~~
60 ~~the member was correctly entitled shall be paid. Any~~
61 ~~employer error resulting in an underpayment to the~~
62 ~~retirement system may be corrected by the member remitting~~
63 ~~the required employee contribution and the participating~~
64 ~~public employer remitting the required employer~~
65 ~~contribution. Interest shall accumulate in accordance with~~

66 ~~the Legislative Rule 162 CSR 7 retirement board~~
67 ~~reinstatement interest, and any accumulating interest owed~~
68 ~~on the employee and employer contributions resulting from~~
69 ~~the employer error shall be the responsibility of the~~
70 ~~participating public employer. The participating public~~
71 ~~employer may remit total payment and the employee~~
72 ~~reimburse the participating public employer through payroll~~
73 ~~deduction over a period equivalent to the time period during~~
74 ~~which the employer error 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
3 results in any member, retirant or beneficiary receiving from
4 the plan more or less than he or she would have been entitled
5 to receive had the records been correct, the board shall
6 correct the error. If correction of the error occurs after the
7 effective retirement date of a retirant, and as far as is
8 practicable, the board shall adjust the payment of the benefit

9 in a manner that the actuarial equivalent of the benefit to
10 which the retirant was correctly entitled shall be paid.

11 (b) Underpayments: Any error resulting in an
12 underpayment to the retirement system of required
13 contributions may be corrected by the member or retirant
14 remitting the required employee contribution and the
15 participating public employer remitting the required
16 employer contribution. Interest shall accumulate in
17 accordance with the board's rule, Refund, Reinstatement,
18 Retroactive Service, Loan And Employer Error Interest
19 Factors, 162 CSR 7, and any accumulating interest owed on
20 the employee and employer contributions resulting from an
21 employer error is the responsibility of the participating public
22 employer. The participating public employer may remit total
23 payment and the employee reimburse the participating public
24 employer through payroll deduction over a period equivalent
25 to the time period during which the employer error occurred.
26 If the correction of an error involving an underpayment of

27 required contributions to the retirement system will result in
28 increased payments to a retirant, including increases to
29 payments already made, any adjustments shall be made only
30 after the board receives full payment of all required
31 employee and employer contributions, including interest.

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

41 (2) When mistaken or excess employee contributions,
42 including any overpayments, have been made to the
43 retirement system, due to error or other reason, the board has
44 sole authority for determining the means of return, offset or

45 credit to or for the benefit of the employee of the amounts,
46 and may use any means authorized or permitted under the
47 provisions of Section 401(a), et seq. of the Internal Revenue
48 Code and guidance issued thereunder applicable to
49 governmental plans. Alternatively, in its full and complete
50 discretion, the board may require the participating public
51 employer to pay the employee the amounts as wages, with
52 the board crediting the participating public employer with a
53 corresponding amount to offset against its future
54 contributions to the plan: *Provided*, That the wages paid to
55 the employee shall not be considered compensation for any
56 purposes under this article. Earnings or interest shall not be
57 returned, offset or credited under any of the means used by
58 the board for returning mistaken or excess employee
59 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) ~~▲~~ On or after the date a member attains early or
4 normal retirement age, a member may retire and commence
5 to receive retirement income payments on the first day of the
6 calendar month following termination of employment and
7 receipt of his or her written application for ~~his or her~~
8 ~~voluntary petition for retirement coincident with or next~~
9 ~~following the later of the date the member ceases~~
10 ~~employment, or the date the member attains early or normal~~
11 ~~retirement age, retirement~~ in an amount as provided under
12 this article: *Provided*, That retirement income payments
13 under this plan are subject to the provisions of this article.
14 Upon receipt of ~~the petition~~ a request for estimation of
15 benefits, the board shall promptly provide the member with
16 an explanation of his or her optional forms of retirement
17 benefits and ~~upon~~ the estimated gross monthly annuity. Upon
18 receipt of properly executed retirement application forms
19 from the member, the board shall process the member's
20 request for and commence payments as soon as
21 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~~
2 ~~article and~~ with ten or more years of contributing service and
3 who during covered employment: (1) Has been or becomes
4 totally disabled from any cause other than those set forth in
5 section nineteen of this article and not due to vicious habits,
6 intemperance or willful misconduct on his or her part; and
7 (2) in the opinion of two physicians after medical
8 examination, one of whom shall be named by the board, he
9 or she is by reason of the disability unable to perform
10 adequately the duties required of an emergency medical
11 services officer, is entitled to receive and shall be paid from
12 the fund in monthly installments, the compensation set forth
13 in, either subsection (b) or (c) of this section.

14 (b) If the member is totally disabled, he or she shall
15 receive sixty-six and two-thirds percent of his or her average
16 monthly compensation for the twelve-month period
17 immediately preceding the disability award, ~~or the shorter~~

18 ~~period~~, if the member has not worked all twelve months
19 during the twelve-month period immediately preceding the
20 disability award, the average of the months in which
21 compensation was received for the twelve-month period shall
22 be used.

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

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

33 (e) The disability benefit payments will begin the first
34 day of the month following termination of employment and
35 receipt of the disability retirement application by the

36 Consolidated Public Retirement Board. ~~Provided, That no~~
37 ~~member may receive disability benefit payments set forth in~~
38 ~~this section before January 1, 2011.~~

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

1 (a) The board may require any member who has applied
2 for or is receiving disability benefits under this article to
3 submit to a physical examination, mental examination or
4 both, by a physician or physicians selected or approved by
5 the board. ~~and may cause all~~ All costs incident to ~~the~~ any
6 ~~examination and approved by the board to~~ by a board-
7 selected physician shall be paid from the board's expense
8 fund. The costs may include hospital, laboratory, X-ray,
9 medical and physicians' fees. A report of the findings of any
10 physician shall be submitted in writing to the board for its
11 consideration. If, from the report, independent information,
12 or from the report and any hearing on the report, the board is
13 of the opinion and finds that: (1) The member has become

14 reemployed as an emergency medical services officer; (2) a
15 physician who has examined the member has found that
16 considering the opportunities for emergency medical services
17 in West Virginia, the member could be so employed as an
18 emergency medical services officer; or (3) other facts exist
19 to demonstrate that the member is no longer totally disabled,
20 then the disability benefits shall cease ~~Benefits shall cease~~
21 ~~once the member has been found to be no longer totally~~
22 ~~disabled.~~ the first day of the month following board's action.

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

28 (b) (c) If a retirant refuses to submit to a medical
29 examination or submit a statement by his or her physician
30 certifying continued disability in any period, his or her
31 disability annuity may be discontinued by the board until the

32 retirant complies. If the refusal continues for one year, all the
33 retirant's rights in and to the annuity may be revoked by the
34 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
3 of this article, has died or dies from any cause other than
4 those specified in section twenty-three of this article and not
5 due to vicious habits, intemperance or willful misconduct on
6 his or her part, the fund shall pay annually in equal monthly
7 installments to the surviving spouse during his or her
8 lifetime, a sum equal to the greater of: (1) One half of the
9 annual compensation received in the preceding twelve-month
10 employment period by the deceased member; or (2) if the
11 member dies after his or her early or normal retirement age,
12 the monthly amount which the spouse would have received
13 had the member retired the day before his or her death,

14 elected a one hundred percent joint and survivor annuity with
15 the spouse as the joint annuitant, and then died. Where the
16 member is receiving disability benefits under this article at
17 the time of his or her death, the ~~most recent monthly~~
18 ~~compensation determined under section twenty-two of this~~
19 ~~article~~ average monthly compensation received in the plan
20 year prior to disability shall be substituted for the annual
21 compensation in subdivision (1) of this subsection.

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

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

1 The annuity of any member who retires under the
2 provisions of this article and who resumes service in covered
3 employment shall be suspended while the member continues

4 in covered employment. The monthly annuity payment for
5 the month in which the service resumes shall be prorated to
6 the date of commencement of service, and the member shall
7 again become a contributing member during resumption of
8 service. At the conclusion of resumed service in covered
9 employment, the member shall have his or her annuity
10 recalculated to take into account the entirety of service in
11 covered employment.