

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENGROSSED

Senate Bill 670

BY SENATORS NELSON, CLEMENTS, AZINGER, KARNES,

LINDSAY AND PLYMALE

[Originating in the Committee on Pensions; reported
on February 17, 2022]

1 A BILL to amend and reenact §16-5V-2 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §16-5V-6 of said code; and to amend and reenact §16-5V-31 of said code,
3 all relating to the inclusion of newly hired 911 personnel as members of the Emergency
4 Medical Services Retirement System.

Be it enacted by the Legislature of West Virginia:

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 the context clearly requires a
2 different meaning:

3 (a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year
4 of the member's final average salary for the first 20 years of credited service. Additionally, two
5 percent per year for 21 through 25 years and one and one-half percent per year for each year
6 over 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit
7 may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the
8 provisions of section twelve of this article.

9 (1) The board may, upon the recommendation of the board's actuary, increase the
10 employees' contribution rate to 10 and five-tenths percent should the funding of the plan not reach
11 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and
12 one-half percent once the plan funding reaches the 70 percent support objective as of any later
13 actuarial valuation date.

14 (2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date,
15 the board shall increase the two and six-tenths percent to two and three-quarter percent for the
16 first 20 years of credited service. The maximum benefit will also be increased from 67 percent to
17 ninety percent.

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

21 (c) "Active military duty" means full-time active duty with any branch of the armed forces
22 of the United States, including service with the National Guard or reserve military forces when the
23 member has been called to active full-time duty and has received no compensation during the
24 period of that duty from any board or employer other than the armed forces.

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

28 (e) "Annual compensation" means the wages paid to the member during covered
29 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined
30 without regard to any rules that limit the remuneration included in wages based upon the nature
31 or location of employment or services performed during the plan year plus amounts excluded
32 under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
33 allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits.
34 Annual compensation for determining benefits during any determination period may not exceed
35 the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of
36 this code and Section 401(a)(17) of the Internal Revenue Code.

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

38 (g) "Annuity starting date" means the first day of the month for which an annuity is payable
39 after submission of a retirement application. For purposes of this subsection, if retirement income
40 payments commence after the normal retirement age, "retirement" means the first day of the
41 month following or coincident with the latter of the last day the member worked in covered
42 employment or the member's normal retirement age and after completing proper written
43 application for retirement on an application supplied by the board.

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

45 (i) "Contributing service" or "contributory service" means service rendered by a member
46 while employed by a participating public employer for which the member made contributions to
47 the plan.

48 (j) "County commission or political subdivision" has the meaning ascribed to it in this code.

49 (k) "Covered employment" means either: (1) Employment as a full-time emergency
50 medical technician, emergency medical technician/paramedic, or emergency medical
51 services/registered nurse and the active performance of the duties required of emergency medical
52 services officers; or (2) the period of time during which active duties are not performed but
53 disability benefits are received under this article; or (3) concurrent employment by an emergency
54 medical services officer in a job or jobs in addition to his or her employment as an emergency
55 medical services officer where the secondary employment requires the emergency medical
56 services officer to be a member of another retirement system which is administered by the
57 Consolidated Public Retirement Board pursuant to this code: *Provided*, That the emergency
58 medical services officer contributes to the fund created in this article the amount specified as the
59 member's contribution in §16-5V-8 of this code; or (4) 911 personnel as defined in this section.

60 (l) "Credited service" means the sum of a member's years of service, active military duty,
61 disability service and accrued annual and sick leave service.

62 (m) "Dependent child" means either:

63 (1) An unmarried person under age 18 who is:

64 (A) A natural child of the member;

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

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

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

70 (2) Any unmarried child under age 23:

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

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

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

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

78 (o) "Disability service" means service received by a member, expressed in whole years,
79 fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during
80 which time a member receives disability benefits under this article.

81 (p) "Early retirement age" means age 45 or over and completion of 20 years of contributory
82 service.

83 (q) "Effective date" means January 1, 2008.

84 (r) "Emergency medical services officer" means an individual employed by the state,
85 county or other political subdivision as a medical professional who is qualified to respond to
86 medical emergencies, aids the sick and injured and arranges or transports to medical facilities,
87 as defined by the West Virginia Office of Emergency Medical Services. This definition is construed
88 to include employed ambulance providers and other services such as law enforcement, rescue
89 or fire department personnel who primarily perform these functions and are not provided any other
90 credited service benefits or retirement plans. These persons may hold the rank of emergency
91 medical technician/basic, emergency medical technician/paramedic, emergency medical
92 services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical
93 Services and the Consolidated Public Retirement Board.

94 (s) "Employer error" means an omission, misrepresentation or violation of relevant
95 provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant

96 provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the
97 participating public employer that has resulted in an underpayment or overpayment of
98 contributions required. A deliberate act contrary to the provisions of this article by a participating
99 public employer does not constitute employer error.

100 (t) "Final average salary" means the average of the highest annual compensation received
101 for covered employment by the member during any five consecutive plan years within the
102 member's last 10 years of service while employed, prior to any disability payment. If the member
103 did not have annual compensation for the five full plan years preceding the member's attainment
104 of normal retirement age and during that period the member received disability benefits under this
105 article, then "final average salary" means the average of the monthly salary determined paid to
106 the member during that period as determined under §16-5V-19 of this code multiplied by 12. Final
107 average salary does not include any lump sum payment for unused, accrued leave of any kind or
108 character.

109 (u) "Full-time employment" means permanent employment of an employee by a
110 participating public employer in a position which normally requires 12 months per year service
111 and requires at least 1,040 hours per year service in that position.

112 (v) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created
113 by this article.

114 (w) "Hour of service" means:

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

118 (2) Each hour for which a member is paid or entitled to payment for covered employment
119 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity
120 including disability, layoff, jury duty, military duty, leave of absence or any combination thereof
121 and without regard to whether the employment relationship has terminated. Hours under this

122 subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A
123 member will not be credited with any hours of service for any period of time he or she is receiving
124 benefits under §16-5V-19 or §16-5V-20 of this code; and

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

131 (x) "Member" means a person first hired as an emergency medical services officer by an
132 employer which is a participating public employer of the Public Employees Retirement System or
133 the Emergency Medical Services Retirement System after the effective date of this article, as
134 defined in subsection (q) of this section, or an emergency medical services officer of an employer
135 which is a participating public employer of the Public Employees Retirement System first hired
136 prior to the effective date and who elects to become a member pursuant to this article. A member
137 shall remain a member until the benefits to which he or she is entitled under this article are paid
138 or forfeited.

139 (y) "Monthly salary" means the W-2 reportable compensation received by a member
140 during the month.

141 (z) "Normal form" means a monthly annuity which is one twelfth of the amount of the
142 member's accrued benefit which is payable for the member's life. If the member dies before the
143 sum of the payments he or she receives equals his or her accumulated contributions on the
144 annuity starting date, the named beneficiary shall receive in one lump sum the difference between
145 the accumulated contributions at the annuity starting date and the total of the retirement income
146 payments made to the member.

147 (aa) "Normal retirement age" means the first to occur of the following:

148 (1) Attainment of age 50 years and the completion of 20 or more years of regular
149 contributory service, excluding active military duty, disability service and accrued annual and sick
150 leave service;

151 (2) While still in covered employment, attainment of at least age 50 years and when the
152 sum of current age plus regular contributory years of service equals or exceeds 70 years;

153 (3) While still in covered employment, attainment of at least age 60 years and completion
154 of 10 years of regular contributory service; or

155 (4) Attainment of age 62 years and completion of five or more years of regular contributory
156 service.

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

160 (cc) "Political subdivision" means a county, city, or town in the state; any separate
161 corporation or instrumentality established by one or more counties, cities, or towns, as permitted
162 by law; any corporation or instrumentality supported in most part by counties, cities, or towns; and
163 any public corporation charged by law with the performance of a governmental function and
164 whose jurisdiction is coextensive with one or more counties, cities, or towns: *Provided*, That any
165 public corporation established under §7-15-4 of this code is considered a political subdivision
166 solely for the purposes of this article.

167 (dd) "Plan" means the West Virginia Emergency Medical Services Retirement System
168 established by this article.

169 (ee) "Plan year" means the 12-month period commencing on January 1 of any designated
170 year and ending the following December 31.

171 (ff) "Public Employees Retirement System" means the West Virginia Public Employee's
172 Retirement System created by West Virginia Code.

173 (gg) "Regular interest" means the rate or rates of interest per annum, compounded
174 annually, as the board adopts in accordance with the provisions of this article.

175 (hh) "Required beginning date" means April 1 of the calendar year following the later of:
176 (1) The calendar year in which the member attains age 70 and one-half; or (2) the calendar year
177 in which he or she retires or otherwise separates from covered employment.

178 (ii) "Retirant" means any member who commences an annuity payable by the plan.

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

181 (kk) "Retirement income payments" means the monthly retirement income payments
182 payable under the plan.

183 (ll) "Spouse" means the person to whom the member is legally married on the annuity
184 starting date.

185 (mm) "Surviving spouse" means the person to whom the member was legally married at
186 the time of the member's death and who survived the member.

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

191 For purposes of this subsection:

192 (1) A member is totally disabled only if his or her physical or mental impairment or
193 impairments is so severe that he or she is not only unable to perform his or her previous work as
194 an emergency medical services officer but also cannot, considering his or her age, education and
195 work experience, engage in any other kind of substantial gainful employment which exists in the
196 state regardless of whether: (A) The work exists in the immediate area in which the member lives;
197 (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

198 For purposes of this article, substantial gainful employment is the same definition as used by the
199 United States Social Security Administration.

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

204 (oo) "Year of service" means a member shall, except in his or her first and last years of
205 covered employment, be credited with years of service credit based upon the hours of service
206 performed as covered employment and credited to the member during the plan year based upon
207 the following schedule:

| 208 | Hours of Service | Year of Service Credited. |
|-----|----------------------|---------------------------|
| 209 | Less than 500 | 0 |
| 210 | 500 to 999 | 1/3 |
| 211 | 1,000 to 1,499 | 2/3 |
| 212 | 1,500 or more | 1 |

213 During a member's first and last years of covered employment, the member shall be
214 credited with one twelfth of a year of service for each month during the plan year in which the
215 member is credited with an hour of service for which contributions were received by the fund. A
216 member is not entitled to credit for years of service for any time period during which he or she
217 received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically
218 excluded, years of service include covered employment prior to the effective date.

219 Years of service which are credited to a member prior to his or her receipt of accumulated
220 contributions upon termination of employment pursuant to §16-5V-18 of this code or §5-10-30 of
221 this code, shall be disregarded for all purposes under this plan unless the member repays the
222 accumulated contributions with interest pursuant to §16-5V-18 of this code or has prior to the
223 effective date made the repayment pursuant to §5-10-18 of this code.

224 (pp) “911 personnel” means an individual employed in fulltime employment with a county
225 911 public safety answering point.

§16-5V-6. Members.

1 (a) Any emergency medical services officer first employed by a county or political
2 subdivision in covered employment after the effective date of this article or 911 personnel hired
3 on or after July 1, 2022, by a participating public employer shall be a member of this retirement
4 plan as a condition of employment and upon membership does not qualify for membership in any
5 other retirement system administered by the board, so long as he or she remains employed in
6 covered employment: *Provided*, That any emergency medical services officer or 911 personnel
7 who has concurrent employment in an additional job or jobs which would require the emergency
8 medical services officer or 911 personnel to be a member of the West Virginia Deputy Sheriff
9 Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement
10 System, or the West Virginia Natural Resources Police Officer Retirement System shall
11 participate in only one retirement system administered by the board, and the retirement system
12 applicable to the concurrent employment for which the employee has the earliest date of hire shall
13 prevail.

14 (b) Any emergency medical services officer employed in covered employment by an
15 employer which is currently a participating public employer of the Public Employees Retirement
16 System shall notify in writing both the county commission in the county or officials in the political
17 subdivision in which he or she is employed and the board of his or her desire to become a member
18 of the plan by December 31, 2007. Any emergency medical services officer who elects to become
19 a member of the plan ceases to be a member or have any credit for covered employment in any
20 other retirement system administered by the board and shall continue to be ineligible for
21 membership in any other retirement system administered by the board so long as the emergency
22 medical services officer remains employed in covered employment by an employer which is
23 currently a participating public employer of this plan: *Provided*, That any emergency medical

24 services officer who does not affirmatively elect to become a member of the plan continues to be
25 eligible for any other retirement system as is, from time to time, offered to other county employees
26 but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

27 (c) Any emergency medical services officer who was employed as an emergency medical
28 services officer prior to the effective date, but was not employed on the effective date of this
29 article, shall become a member upon rehire as an emergency medical services officer. For
30 purposes of this section, the member's years of service and credited service prior to the effective
31 date shall not be counted for any purposes under this plan unless the emergency medical services
32 officer has not received the return of his or her accumulated contributions in the Public Employees
33 Retirement System pursuant to §5-10-30 of this code. The member may request in writing to have
34 his or her accumulated contributions and employer contributions from covered employment in the
35 Public Employees Retirement System transferred to the plan. If the conditions of this subsection
36 are met, all years of the emergency medical services officer's covered employment shall be
37 counted as years of service for the purposes of this article.

38 (d) Any emergency medical services officer employed in covered employment on the
39 effective date of this article who has timely elected to transfer into this plan as provided in
40 subsection (b) of this section shall be given credited service at the time of transfer for all credited
41 service then standing to the emergency medical services officer's service credit in the Public
42 Employees Retirement System regardless of whether the credited service (as that term is defined
43 in §5-10-2 of this code) was earned as an emergency medical services officer. All credited service
44 standing to the transferring emergency medical services officer's credit in the Public Employees
45 Retirement System at the time of transfer into this plan shall be transferred into the plan created
46 by this article and the transferring emergency medical services officer shall be given the same
47 credit for the purposes of this article for all service transferred from the Public Employees
48 Retirement System as that transferring emergency medical services officer would have received
49 from the Public Employees Retirement System as if the transfer had not occurred. In connection

50 with each transferring emergency medical services officer receiving credit for prior employment
51 as provided in this subsection, a transfer from the Public Employees Retirement System to this
52 plan shall be made pursuant to the procedures described in this article: *Provided*, That any
53 member of this plan who has elected to transfer from the Public Employees Retirement System
54 into this plan pursuant to subsection (b) of this section may not, after having transferred into and
55 becoming an active member of this plan, reinstate to his or her credit in this plan any service credit
56 relating to periods in which the member was not in covered employment as an emergency medical
57 services officer and which service was withdrawn from the Public Employees Retirement System
58 prior to his or her elective transfer into this plan.

59 (e) Once made, the election made under this section is irrevocable. All emergency medical
60 services officers employed by an employer which is a participating public employer of the Public
61 Employees Retirement System after the effective date and emergency medical services officers
62 electing to become members as described in this section shall be members as a condition of
63 employment and shall make the contributions required by this article.

64 (f) Notwithstanding any other provisions of this article, any individual who is a leased
65 employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee"
66 means any individual who performs services as an independent contractor or pursuant to an
67 agreement with an employee leasing organization or similar organization. If a question arises
68 regarding the status of an individual as a leased employee, the board has final power to decide
69 the question.

**~~§16-5V-31. How a county commission or political subdivision becomes a participating
public employer. How a county commission, political subdivision, or county 911
public safety answering point becomes a participating public employer.~~**

1 Any county commission, ~~or~~ political subdivision, or county 911 public safety answering
2 point employing emergency medical services officers or 911 personnel may by a three-fifths vote
3 of its governing body, or by a majority vote of its electors, elect to become a participating public

4 employer and thereby include its emergency medical services officers and 911 personnel in the
5 membership of the plan. The clerk or secretary of each such county commission, ~~or~~ political
6 subdivision, or county 911 public safety answering point governing board electing to become a
7 participating public employer shall certify the determination of the county commission, ~~or~~ political
8 subdivision, or county 911 public safety answering point governing board to the Consolidated
9 Public Retirement Board within 10 days from and after the vote of the governing body or the
10 canvass of votes upon such action. Once a county commission, ~~or~~ political subdivision, or county
11 911 public safety answering point governing board elects to participate in the plan, the action is
12 final and it may not, at a later date, elect to terminate its participation in the plan.