

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Senate Bill 452

By Senators Nelson and Hunt

[Passed March 08, 2023; in effect 90 days from
passage]

1 AN ACT to amend and reenact §16-5V-2 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §16-5V-36, all relating to the
3 Emergency Medical Services Retirement System; defining and amending terms related to
4 county firefighters, medical examination, and 911 personnel; and adding a severability
5 section.

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 over
6 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit may
7 not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions
8 of §16-5V-12 of this code.

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 one-
12 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 90 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 of
22 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 or
31 location of employment or services performed during the plan year plus amounts excluded under
32 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 the
47 plan.

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

49 (k) "County firefighter" means an individual employed in full-time employment as a
50 firefighter with a county commission.

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

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

66 (n) "Dependent child" means either:

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

68 (A) A natural child of the member;

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

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

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

74 (2) Any unmarried child under age 23:

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

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

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

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

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

85 (q) "Early retirement age" means age 45 or over and completion of 20 years of contributory
86 service.

87 (r) "Effective date" means January 1, 2008.

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

96 services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical
97 Services and the Consolidated Public Retirement Board.

98 (t) "Employer error" means an omission, misrepresentation, or deliberate act in violation of
99 relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the
100 relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by
101 the participating public employer that has resulted in an underpayment or overpayment of
102 contributions required.

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

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

115 (w) "Fund" means the West Virginia Emergency Medical Services Retirement Fund
116 created by this article.

117 (x) "Hour of service" means:

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

121 (2) Each hour for which a member is paid or entitled to payment for covered employment

122 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity
123 including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and
124 without regard to whether the employment relationship has terminated. Hours under this
125 subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A
126 member will not be credited with any hours of service for any period of time he or she is receiving
127 benefits under §16-5V-19 or §16-5V-20 of this code; and

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

134 (y) "Medical examination" means an in-person or virtual examination of a member's
135 physical or mental health, or both, by a physician or physicians selected or approved by the board;
136 or, at the discretion of the board, a medical record review of the member's physical or mental
137 health, or both, by a physician selected or approved by the board.

138 (z) "Member" means either: (1) A person first hired as an emergency medical services
139 officer by an employer which is a participating public employer of the Emergency Medical Services
140 Retirement System after the effective date of this article, as defined in subsection (r) of this
141 section; or (2) an emergency medical services officer of an employer which is a participating public
142 employer of the Public Employees Retirement System first hired prior to the effective date and who
143 elects to become a member pursuant to this article; or (3) or a person first hired by a county 911
144 public safety answering center after the participating public employer elects to participate in the
145 Emergency Medical Services Retirement System; or (4) a county firefighter hired on or after June
146 10, 2022; or (5) a county firefighter of an employer which is a participating public employer of the
147 Public Employees Retirement System first hired prior to June 10, 2022, and who elects to become

148 a member pursuant to §16-5V-6a of this code. A member shall remain a member until the benefits
149 to which he or she is entitled under this article are paid or forfeited.

150 (aa) "Monthly salary" means the W-2 reportable compensation received by a member
151 during the month.

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

158 (cc) "Normal retirement age" means the first to occur of the following:

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

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

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

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

168 (dd) "Participating public employer" means: (1) Any county commission, political
169 subdivision, or county 911 public safety answering point in the state which has elected to cover its
170 emergency medical services officers or 911 personnel, as defined in this article, under the West
171 Virginia Emergency Medical Services Retirement System; or (2) any county commission who
172 employs county firefighters.

173 (ee) "Plan" means the West Virginia Emergency Medical Services Retirement System
174 established by this article.

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

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

184 (hh) "Public Employees Retirement System" means the West Virginia Public Employee's
185 Retirement System created by West Virginia Code.

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

188 (jj) "Required beginning date" means April 1 of the calendar year following the later of: (1)
189 The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if
190 born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise
191 separates from covered employment.

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

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

195 (mm) "Retirement income payments" means the monthly retirement income payments
196 payable under the plan.

197 (nn) "Spouse" means the person to whom the member is legally married on the annuity
198 starting date.

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

201 (pp) "Totally disabled" means a member's inability to engage in substantial gainful activity
202 by reason of any medically determined physical or mental impairment that can be expected to
203 result in death or that has lasted or can be expected to last for a continuous period of not less than
204 12 months.

205 For purposes of this subsection:

206 (1) A member is totally disabled only if his or her physical or mental impairment or
207 impairments is so severe that he or she is not only unable to perform his or her previous work as an
208 emergency medical services officer, 911 personnel or county firefighter but also cannot,
209 considering his or her age, education and work experience, engage in any other kind of substantial
210 gainful employment which exists in the state regardless of whether: (A) The work exists in the
211 immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member
212 would be hired if he or she applied for work. For purposes of this article, substantial gainful
213 employment is the same definition as used by the United States Social Security Administration.

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

218 (qq) "Year of service" means a member shall, except in his or her first and last years of
219 covered employment, be credited with years of service credit based upon the hours of service
220 performed as covered employment and credited to the member during the plan year based upon
221 the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0

500 to 999	1/3
1,000 to 1499	2/3
1,500 or more	1

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

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

233 (rr) "911 personnel" means an individual employed in full-time employment with a county
234 911 public safety answering point.

§16-5V-36.

Severability.

1 If any part of this article is declared unconstitutional by a court of competent jurisdiction,
2 such decision shall not affect the validity of the remaining provisions of this article in its entirety.