

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 452**

BY SENATORS NELSON AND HUNT

[Introduced January 24, 2023; referred  
to the Committee on Pensions; and then to the  
Committee on Finance]



1 A BILL 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  
3 the Emergency Medical Services Retirement System; defining and amending terms  
4 related to county firefighters, medical examination, and 911 personnel; and adding a  
5 severability 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  
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 §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  
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 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  
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) "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;  
54 or (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  
56 are not performed but disability benefits are received under this article; or ~~(3)~~ (5) concurrent  
57 employment by an emergency medical services officer, 911 personnel or county firefighter in a  
58 job or jobs in addition to his or her employment as an emergency medical services officer, 911  
59 personnel or county firefighter where the secondary employment requires the emergency medical  
60 services officer, 911 personnel or county firefighter to be a member of another retirement system  
61 which is administered by the Consolidated Public Retirement Board pursuant to this  
62 code: *Provided*, That the emergency medical services officer, 911 personnel or county firefighter  
63 contributes to the fund created in this article the amount specified as the member's contribution  
64 in §16-5V-8 of this code.

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

67 ~~(n)~~ (n) "Dependent child" means either:

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

69 (A) A natural child of the member;

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

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

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

75 (2) Any unmarried child under age 23:

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

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

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

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

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

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

88 ~~(q)~~ (r) "Effective date" means January 1, 2008.

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

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

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

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

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

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

118 ~~(w)~~ (x) "Hour of service" means:

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

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

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

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

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



148 firefighter of an employer which is a participating public employer of the Public Employees  
149 Retirement System first hired prior to June 10, 2022, and who elects to become a member  
150 pursuant to §16-5V-6a of this code. A member shall remain a member until the benefits to which  
151 he or she is entitled under this article are paid or forfeited.

152 ~~(y)~~ (aa) "Monthly salary" means the W-2 reportable compensation received by a member  
153 during the month.

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

160 ~~(aa)~~ (cc) "Normal retirement age" means the first to occur of the following:

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

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

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

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

170 ~~(bb)~~ (dd) "Participating public employer" means: (1) Any county commission, ~~or~~ political  
171 subdivision, or county 911 public safety answering point in the state which has elected to cover  
172 its emergency medical services officers or 911 personnel, as defined in this article, under the

173 West Virginia Emergency Medical Services Retirement System; or (2) any county commission  
174 who employs county firefighters.

175 ~~(ee)~~ (ee) "Plan" means the West Virginia Emergency Medical Services Retirement System  
176 established by this article.

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

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

186 ~~(ff)~~ (hh) "Public Employees Retirement System" means the West Virginia Public  
187 Employee's Retirement System created by West Virginia Code.

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

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

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

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

197 ~~(kk)~~ (mm) "Retirement income payments" means the monthly retirement income payments  
198 payable under the plan.

199           ~~(H)~~ (nn) "Spouse" means the person to whom the member is legally married on the annuity  
200 starting date.

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

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

207           For purposes of this subsection:

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

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

220           ~~(oo)~~ (qq) "Year of service" means a member shall, except in his or her first and last years  
221 of covered employment, be credited with years of service credit based upon the hours of service  
222 performed as covered employment and credited to the member during the plan year based upon  
223 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

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

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

235           (rr) "911 personnel" means an individual employed in full-time employment with a county  
 236 911 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 it entirety.