

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 2802**

5 (By Delegates Pethtel, Jones, Craig, Canterbury,  
6 Kump, Lynch and Stowers)

7 [Passed April 2, 2013; in effect ninety days from passage.]  
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9

10 AN ACT to amend and reenact §16-5V-2, §16-5V-8, §16-5V-11, §16-5V-  
11 20, §16-5V-21 and §16-5V-24 of the Code of West Virginia,  
12 1931, as amended, and to amend said code by adding thereto two  
13 new sections, designated §16-5V-8a and §16-5V-35, all relating  
14 to the Emergency Medical Services Retirement System; modifying  
15 the definition of annual compensation as it relates to  
16 determining benefits; adding a definition for contributing  
17 service to this article; adding a definition for the terms  
18 retire and retirement to this article; providing for  
19 correction of participating public employer errors by the  
20 board; providing eligibility requirements for commencement of  
21 benefits; specifying that the board must be in receipt of a  
22 request for estimation of benefits prior to providing a member  
23 with an explanation of their estimated gross monthly annuity  
24 and a retirement application; providing that a member shall

1 have at least ten years of contributing service to qualify for  
2 nonduty related disability retirement; specifying that the  
3 total nonduty disability award received by a member shall be  
4 based on their average monthly compensation during the twelve  
5 month period immediately preceding the disability award;  
6 providing that all costs associated with disability benefit  
7 examinations shall be paid from the board's expense fund;  
8 providing that disability benefits shall cease on the first  
9 day of the month following termination of disability by the  
10 board; requiring annual disability recertification for a  
11 retirant who is less than sixty years of age during the first  
12 five years of retirement and once every three years  
13 thereafter; providing that if a member who is receiving a  
14 nonduty disability benefit dies the surviving spouse shall  
15 receive the average monthly compensation received by the  
16 member prior to the disability award; and providing for the  
17 annuity calculation for a member who returns to covered  
18 employment after retirement.

19 *Be it enacted by the Legislature of West Virginia:*

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

1 **ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.**

2 **§16-5V-2. Definitions.**

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

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

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

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

1 will also be increased from sixty-seven percent to seventy percent.

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

6 (c) "Active military duty" means full-time active duty with  
7 any branch of the Armed Forces of the United States, including  
8 service with the National Guard or reserve military forces when the  
9 member has been called to active full-time duty and has received no  
10 compensation during the period of that duty from any board or  
11 employer other than the Armed Forces.

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

16 (e) "Annual compensation" means the wages paid to the member  
17 during covered employment within the meaning of Section 3401(a) of  
18 the Internal Revenue Code, but determined without regard to any  
19 rules that limit the remuneration included in wages based upon the  
20 nature or location of employment or services performed during the  
21 plan year plus amounts excluded under Section 414(h)(2) of the  
22 Internal Revenue Code and less reimbursements or other expense  
23 allowances, cash or noncash fringe benefits or both, deferred  
24 compensation and welfare benefits. Annual compensation for

1 determining benefits during any determination period may not exceed  
2 the maximum compensation allowed as adjusted for cost of living in  
3 accordance with section seven, article ten-d, chapter five of this  
4 code and Section 401(a) (17) of the Internal Revenue Code.

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

6 (g) "Annuity starting date" means the first day of the month  
7 for which an annuity is payable after submission of a retirement  
8 application. For purposes of this subsection, if retirement income  
9 payments commence after the normal retirement age, "retirement"  
10 means the first day of the month following or coincident with the  
11 latter of the last day the member worked in covered employment or  
12 the member's normal retirement age and after completing proper  
13 written application for "retirement" on an application supplied by  
14 the board.

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

16 (i) "Contributing service" or "contributory service" means  
17 service rendered by a member while employed by a participating  
18 public employer for which the member made contributions to the  
19 plan.

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

22 (k) "Covered employment" means either: (1) Employment as a  
23 full-time emergency medical technician, emergency medical  
24 technician/paramedic or emergency medical services/registered nurse

1 and the active performance of the duties required of emergency  
2 medical services officers; or (2) the period of time during which  
3 active duties are not performed but disability benefits are  
4 received under this article; or (3) concurrent employment by an  
5 emergency medical services officer in a job or jobs in addition to  
6 his or her employment as an emergency medical services officer  
7 where the secondary employment requires the emergency medical  
8 services officer to be a member of another retirement system which  
9 is administered by the Consolidated Public Retirement Board  
10 pursuant to this code: Provided, That the emergency medical  
11 services officer contributes to the fund created in this article  
12 the amount specified as the member's contribution in section eight  
13 of this article.

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

17 (m) "Dependent child" means either:

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

19 (A) A natural child of the member;

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

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

24 (D) A stepchild of the member residing in the member's

1 household at the time of the member's death; or

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

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

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

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

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

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

16 (p) "Early retirement age" means age forty-five or over and  
17 completion of twenty years of contributory service.

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

19 (r) "Emergency medical services officer" means an individual  
20 employed by the state, county or other political subdivision as a  
21 medical professional who is qualified to respond to medical  
22 emergencies, aids the sick and injured and arranges or transports  
23 to medical facilities, as defined by the West Virginia Office of  
24 Emergency Medical Services. This definition is construed to include

1 employed ambulance providers and other services such as law  
2 enforcement, rescue or fire department personnel who primarily  
3 perform these functions and are not provided any other credited  
4 service benefits or retirement plans. These persons may hold the  
5 rank of emergency medical technician/basic, emergency medical  
6 technician/paramedic, emergency medical services/registered nurse,  
7 or others as defined by the West Virginia Office of Emergency  
8 Medical Services and the Consolidated Public Retirement Board.

9 (s) "Employer error" means an omission, misrepresentation or  
10 violation of relevant provisions of the West Virginia Code or of  
11 the West Virginia Code of State Rules or the relevant provisions of  
12 both the West Virginia Code and of the West Virginia Code of State  
13 Rules by the participating public employer that has resulted in an  
14 underpayment or overpayment of contributions required. A deliberate  
15 act contrary to the provisions of this article by a participating  
16 public employer does not constitute employer error.

17 (t) "Final average salary" means the average of the highest  
18 annual compensation received for covered employment by the member  
19 during any five consecutive plan years within the member's last ten  
20 years of service while employed, prior to any disability payment.  
21 If the member did not have annual compensation for the five full  
22 plan years preceding the member's attainment of normal retirement  
23 age and during that period the member received disability benefits  
24 under this article, then "final average salary" means the average



1 of the monthly salary determined paid to the member during that  
2 period as determined under section nineteen of this article  
3 multiplied by twelve. "Final average salary" does not include any  
4 lump sum payment for unused, accrued leave of any kind or  
5 character.

6 (u) "Full-time employment" means permanent employment of an  
7 employee by a participating public employer in a position which  
8 normally requires twelve months per year service and requires at  
9 least one thousand forty hours per year service in that position.

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

12 (w) "Hour of service" means:

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

17 (2) Each hour for which a member is paid or entitled to  
18 payment for covered employment during a plan year but where no  
19 duties are performed due to vacation, holiday, illness, incapacity  
20 including disability, layoff, jury duty, military duty, leave of  
21 absence or any combination thereof and without regard to whether  
22 the employment relationship has terminated. Hours under this  
23 subdivision shall be calculated and credited pursuant to West  
24 Virginia Division of Labor rules. A member will not be credited

1 with any hours of service for any period of time he or she is  
2 receiving benefits under section nineteen or twenty of this  
3 article; and

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

12 (x) "Member" means a person first hired as an emergency  
13 medical services officer by an employer which is a participating  
14 public employer of the Public Employees Retirement System or the  
15 Emergency Medical Services Retirement System after the effective  
16 date of this article, as defined in subsection (q) of this section,  
17 or an emergency medical services officer of an employer which is a  
18 participating public employer of the Public Employees Retirement  
19 System first hired prior to the effective date and who elects to  
20 become a member pursuant to this article. A member shall remain a  
21 member until the benefits to which he or she is entitled under this  
22 article are paid or forfeited.

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

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

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

11           (1) Attainment of age fifty years and the completion of twenty  
12 or more years of regular contributory service, excluding active  
13 military duty, disability service and accrued annual and sick leave  
14 service;

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

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

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

23           (bb) "Participating public employer" means any county  
24 commission or political subdivision in the state which has elected

1 to cover its emergency medical services officers, as defined in  
2 this article, under the West Virginia Emergency Medical Services  
3 Retirement System.

4 (cc) "Political subdivision" means a county, city or town in  
5 the state; any separate corporation or instrumentality established  
6 by one or more counties, cities or towns, as permitted by law; any  
7 corporation or instrumentality supported in most part by counties,  
8 cities or towns; and any public corporation charged by law with the  
9 performance of a governmental function and whose jurisdiction is  
10 coextensive with one or more counties, cities or towns: Provided,  
11 That any public corporation established under section four, article  
12 fifteen, chapter seven of this code is considered a political  
13 subdivision solely for the purposes of this article.

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

16 (ee) "Plan year" means the twelve-month period commencing on  
17 January 1 of any designated year and ending the following December  
18 31.

19 (ff) "Public Employees Retirement System" means the West  
20 Virginia Public Employee's Retirement System created by West  
21 Virginia Code.

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

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

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

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

11 (kk) "Retirement income payments" means the monthly retirement  
12 income payments payable under the plan.

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

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

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

23 For purposes of this subsection:

24 (1) A member is totally disabled only if his or her physical

1 or mental impairment or impairments is so severe that he or she is  
2 not only unable to perform his or her previous work as an emergency  
3 medical services officer but also cannot, considering his or her  
4 age, education and work experience, engage in any other kind of  
5 substantial gainful employment which exists in the state regardless  
6 of whether: (A) The work exists in the immediate area in which the  
7 member lives; (B) a specific job vacancy exists; or (c) the member  
8 would be hired if he or she applied for work. For purposes of this  
9 article, substantial gainful employment is the same definition as  
10 used by the United States Social Security Administration.

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

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

22 Hours of Service	Year of Service Credited.
23 Less than 500 .....	0
24 500 to 999 .....	1/3

1 1,000 to 1,499 .....2/3

2 1,500 or more ..... 1

3 During a member's first and last years of covered employment,  
4 the member shall be credited with one twelfth of a year of service  
5 for each month during the plan year in which the member is credited  
6 with an hour of service for which contributions were received by  
7 the fund. A member is not entitled to credit for years of service  
8 for any time period during which he or she received disability  
9 payments under section nineteen or twenty of this article. Except  
10 as specifically excluded, years of service include covered  
11 employment prior to the effective date.

12 Years of service which are credited to a member prior to his  
13 or her receipt of accumulated contributions upon termination of  
14 employment pursuant to section eighteen of this article or section  
15 thirty, article ten, chapter five of this code, shall be  
16 disregarded for all purposes under this plan unless the member  
17 repays the accumulated contributions with interest pursuant to  
18 section eighteen of this article or has prior to the effective date  
19 made the repayment pursuant to section eighteen, article ten,  
20 chapter five of this code.

21 **§16-5V-8. Members' contributions; employer contributions.**

22 (a) There shall be deducted from the monthly salary of each  
23 member and paid into the fund an amount equal to eight and one-half  
24 percent of his or her monthly salary. An additional amount shall be

1 paid to the fund by the county commission or political subdivision  
2 in which the member is employed in covered employment in an amount  
3 determined by the board: Provided, That in no year may the total of  
4 the employer contributions provided in this section, to be paid by  
5 the county commission or political subdivision, exceed ten and  
6 one-half percent of the total payroll for the members in the employ  
7 of the county commission or political subdivision.

8 (b) Any active member who has concurrent employment in an  
9 additional job or jobs and the additional employment requires the  
10 emergency medical services officer to be a member of another  
11 retirement system which is administered by the Consolidated Public  
12 Retirement Board pursuant to article ten-d, chapter five of this  
13 code shall contribute to the fund the sum of eight and one-half  
14 percent of his or her monthly salary earned as an emergency medical  
15 services officer as well as the sum of eight and one-half percent  
16 of his or her monthly salary earned from any additional employment  
17 which additional employment requires the emergency medical services  
18 officer to be a member of another retirement system which is  
19 administered by the Consolidated Public Retirement Board pursuant  
20 to article ten-d, chapter five of this code. An additional percent  
21 of the monthly salary of each member shall be paid to the fund by  
22 the concurrent employer by which the member is employed in an  
23 amount determined by the board: Provided, That in no year may the  
24 total of the employer contributions provided in this section, to be



1 paid by the concurrent employer, exceed ten and one-half percent of  
2 the payroll for the concurrent member employees.

3 (c) All required deposits shall be remitted to the board no  
4 later than fifteen days following the end of the calendar month for  
5 which the deposits are required. If the board upon the  
6 recommendation of the board actuary finds that the benefits  
7 provided by this article can be actuarially funded with a lesser  
8 contribution, then the board shall reduce the required member and  
9 employer contributions proportionally. Any county commission or  
10 political subdivision which fails to make any payment due the  
11 Emergency Medical Services Retirement Fund by the fifteenth day  
12 following the end of each calendar month in which contributions are  
13 due may be required to pay the actuarial rate of interest lost on  
14 the total amount owed for each day the payment is delinquent.  
15 Accrual of the loss of earnings owed by the delinquent county  
16 commission or political subdivision commences after the fifteenth  
17 day following the end of the calendar month in which contributions  
18 are due and continues until receipt of the delinquent amount.  
19 Interest compounds daily and the minimum surcharge is \$50.

20  
21 **§16-5V-8a. Correction of errors; underpayments; overpayments.**

22 (a) General rule: If any change or employer error in the  
23 records of any participating public employer or the plan results in  
24 any member, retirant or beneficiary receiving from the plan more or

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

8 (b) Underpayments: Any error resulting in an underpayment to  
9 the retirement system of required contributions may be corrected by  
10 the member or retirant remitting the required employee contribution  
11 and the participating public employer remitting the required  
12 employer contribution. Interest shall accumulate in accordance with  
13 the Legislative Rule 162 CSR 7 concerning retirement board refund,  
14 reinstatement, retroactive service, loan and employer error  
15 interest factors and any accumulating interest owed on the employee  
16 and employer contributions resulting from an employer error shall  
17 be the responsibility of the participating public employer. The  
18 participating public employer may remit total payment and the  
19 employee reimburse the participating public employer through  
20 payroll deduction over a period equivalent to the time period  
21 during which the employer error occurred. If the correction of an  
22 error involving an underpayment of required contributions to the  
23 retirement system will result in increased payments to a retirant,  
24 including increases to payments already made, any adjustments shall

1 be made only after the board receives full payment of all required  
2 employee and employer contributions, including interest.

3 (c) Overpayments: (1) When mistaken or excess employer  
4 contributions, including any overpayments, have been made to the  
5 retirement system by a participating public employer, due to error  
6 or other reason, the board shall credit the participating public  
7 employer with an amount equal to the erroneous contributions, to be  
8 offset against the participating public employer's future liability  
9 for employer contributions to the system. Earnings or interest  
10 shall not be credited to the employer.

11 (2) When mistaken or excess employee contributions, including  
12 any overpayments, have been made to the retirement system, due to  
13 error or other reason, the board shall have sole authority for  
14 determining the means of return, offset or credit to or for the  
15 benefit of the employee of the amounts, and may use any means  
16 authorized or permitted under the provisions of Section 401(a), et  
17 seq. of the Internal Revenue Code and guidance issued thereunder  
18 applicable to governmental plans. Alternatively, in its full and  
19 complete discretion, the board may require the participating public  
20 employer to pay the employee the amounts as wages, with the board  
21 crediting the participating public employer with a corresponding  
22 amount to offset against its future contributions to the plan:  
23 Provided, That the wages paid to the employee shall not be  
24 considered compensation for any purposes under this article.

1 Earnings or interest shall not be returned, offset, or credited  
2 under any of the means utilized by the board for returning mistaken  
3 or excess employee contributions, including any overpayments, to an  
4 employee.

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

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

8 (b) On or after the date a member attains early or normal  
9 retirement age, a member may retire and commence to receive  
10 retirement income payments on the first day of the calendar month  
11 following termination of employment and receipt of his or her  
12 written application for retirement in an amount as provided under  
13 this article: Provided, That retirement income payments under this  
14 plan are subject to the provisions of this article. Upon receipt of  
15 a request for estimation of benefits, the board shall promptly  
16 provide the member with an explanation of his or her optional forms  
17 of retirement benefits and the estimated gross monthly annuity.  
18 Upon receipt of properly executed retirement application forms from  
19 the member, the board shall process member's request for and  
20 commence payments as soon as administratively feasible.

21 **§16-5V-20. Awards and benefits for disability -- Due to other**  
22 **causes.**

23 (a) Any member with ten or more years of contributing service  
24 and who during covered employment: (1) Has been or becomes totally

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

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

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

21 (d) The board shall propose legislative rules for promulgation  
22 in accordance with the provisions of article three, chapter  
23 twenty-nine-a of this code concerning member disability payments so  
24 as to ensure that the payments do not exceed one hundred percent of

1 the average current salary for the position last held by the  
2 member.

3 (e) The disability benefit payments will begin the first day  
4 of the month following termination of employment and receipt of the  
5 disability retirement application by the Consolidated Public  
6 Retirement Board.

7 **§16-5V-21. Same -- Physical examinations; termination of**  
8 **disability.**

9 (a) The board may require any member who has applied for or is  
10 receiving disability benefits under this article to submit to a  
11 physical examination, mental examination or both, by a physician or  
12 physicians selected or approved by the board. All costs incident  
13 to any examination by a board selected physician shall be paid from  
14 the board's expense fund. The costs may include hospital,  
15 laboratory, X-ray, medical and physicians' fees. A report of the  
16 findings of any physician shall be submitted in writing to the  
17 board for its consideration. If, from the report, independent  
18 information, or from the report and any hearing on the report, the  
19 board is of the opinion and finds that: (1) The member has become  
20 reemployed as an emergency medical services officer; (2) a  
21 physician who has examined the member has found that considering  
22 the opportunities for emergency medical services in West Virginia,  
23 the member could be so employed as an emergency medical services  
24 officer; or (3) other facts exist to demonstrate that the member is

1 no longer totally disabled, then the disability benefits shall  
2 cease the first day of the month following board action. (b) The  
3 board shall require recertification for a disabled retirant, who  
4 has not attained age sixty, at least once each year during the  
5 first five years following his or her retirement and at least once  
6 in each three year period thereafter.

7 (c) If a retirant refuses to submit to a medical examination  
8 or submit a statement by his or her physician certifying continued  
9 disability in any period, his or her disability annuity may be  
10 discontinued by the board until the retirant complies. If the  
11 refusal continues for one year, all the retirant's rights in and to  
12 the annuity may be revoked by the board.

13 **§16-5V-24. Awards and benefits to surviving spouse -- When member**  
14 **dies from nonservice-connected causes.**

15 (a) If a member who has been a member for at least ten years,  
16 while in covered employment after the effective date of this  
17 article, has died or dies from any cause other than those specified  
18 in section twenty-three of this article and not due to vicious  
19 habits, intemperance or willful misconduct on his or her part, the  
20 fund shall pay annually in equal monthly installments to the  
21 surviving spouse during his or her lifetime, a sum equal to the  
22 greater of: (1) One half of the annual compensation received in the  
23 preceding twelve-month employment period by the deceased member; or  
24 (2) if the member dies after his or her early or normal retirement

1 age, the monthly amount which the spouse would have received had  
2 the member retired the day before his or her death, elected a one  
3 hundred percent joint and survivor annuity with the spouse as the  
4 joint annuitant, and then died. Where the member is receiving  
5 disability benefits under this article at the time of his or her  
6 death, the average monthly compensation received in the plan year  
7 prior to disability shall be substituted for the annual  
8 compensation in subdivision (1) of this subsection.

9 (b) Benefits for a surviving spouse received under this  
10 section, or other sections of this article are in lieu of receipt  
11 of any other benefits under this article for the spouse or any  
12 other person or under the provisions of any other state retirement  
13 system based upon the member's covered employment.

14 **§16-5V-35. Return to covered employment by retirant.**

15 The annuity of any member who retires under the provisions of  
16 this article and who resumes service in covered employment shall be  
17 suspended while the member continues in covered employment. The  
18 monthly annuity payment for the month in which the service resumes  
19 shall be pro-rated to the date of commencement of service, and the  
20 member shall again become a contributing member during resumption  
21 of service. At the conclusion of resumed service in covered  
22 employment the member shall have his or her annuity recalculated to  
23 take into account the entirety of service in covered employment.