

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 418**

4 (By Senators Jenkins and McCabe)

5 _____
6 [Originating in the Committee on Finance;
7 reported March 22, 2013.]
8 _____

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10
11 A BILL to amend and reenact §16-5V-2, §16-5V-8, §16-5V-11, §16-5V-
12 20, §16-5V-21 and §16-5V-24 of the Code of West Virginia,
13 1931, as amended; and to amend said code by adding thereto two
14 new sections, designated §16-5V-8a and §16-5V-35, all relating
15 to the Emergency Medical Services Retirement System; defining
16 terms; making technical corrections; correction of
17 participating public employer errors by the Consolidated
18 Public Retirement Board; clarifying eligibility requirements
19 for commencement of benefits; specifying that the board must
20 provide an estimation of benefits upon a member's request;
21 providing that a member must have at least ten years of
22 contributing service to qualify for nonservice-connected
23 disability retirement; specifying that the total nonservice-
24 connected disability award received by a member shall be based

on his or her average monthly compensation during the twelve-month period immediately preceding the disability award; providing that all costs associated with disability benefit examinations shall be paid from the board's expense fund; providing that disability benefits shall cease on the first day of the month following termination of disability by the board; requiring annual disability recertification for a retirant who is less than sixty years of age during the first five years of retirement and once every three years thereafter; providing that if a member who is receiving a nonduty disability benefit dies the surviving spouse shall receive the average monthly compensation received by the member prior to the disability award; and annuity calculation for a member who returns to covered employment after retirement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-2. Definitions.

As used in this article, unless a federal law or regulation or

1 the context clearly requires a different meaning:

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

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

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

23 (b) "Accumulated contributions" means the sum of all
24 retirement contributions deducted from the compensation of a

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

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

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

13 (e) "Annual compensation" means the wages paid to the member
14 during covered employment within the meaning of Section 3401(a) of
15 the Internal Revenue Code, but determined without regard to any
16 rules that limit the remuneration included in wages based upon the
17 nature or location of employment or services performed during the
18 plan year plus amounts excluded under Section 414(h)(2) of the
19 Internal Revenue Code and less reimbursements or other expense
20 allowances, cash or noncash fringe benefits or both, deferred
21 compensation and welfare benefits. Annual compensation for
22 determining benefits during any determination period may not exceed
23 ~~\$100,000 as adjusted for cost of living in accordance with Section~~
24 ~~401(a)(17)(B)~~ the maximum compensation allowed as adjusted for cost

1 of living in accordance with section seven, article ten-d, chapter
2 five of this code and Section 401(a)(17) of the Internal Revenue
3 Code.

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

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

14 (h) "Board" means the Consolidated Public Retirement Board
15 created under article ten-d, Chapter five of this code.

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

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

21 ~~(j)~~ (k) "Covered employment" means ~~either~~: (1) Employment as
22 a full-time emergency medical technician, emergency medical
23 technician/paramedic or emergency medical services/registered nurse
24 and the active performance of the duties required of emergency

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

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

16 ~~(l)~~ (m) "Dependent child" means either:

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

18 (A) A natural child of the member;

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

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

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

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

2 (A) Who is enrolled as a full-time student in an accredited

3 college or university;

4 (B) Who was claimed as a dependent by the member for federal

5 income tax purposes at the time of member's death; and

6 (C) Whose relationship with the member is described in

7 paragraph (A), (B) or (C), subdivision (1) of this subsection.

8 ~~(m)~~ (n) "Dependent parent" means the father or mother of the

9 member who was claimed as a dependent by the member for federal

10 income tax purposes at the time of the member's death.

11 ~~(n)~~ (o) "Disability service" means service received by a

12 member, expressed in whole years, fractions thereof or both, equal

13 to one half of the whole years, fractions thereof, or both, during

14 which time a member receives disability benefits under this

15 article.

16 ~~(o)~~ (p) "Early retirement age" means age forty-five or over

17 and completion of twenty years of contributory service.

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

19 ~~(q)~~ (r) "Emergency medical services officer" means an

20 individual employed by the state, county or other political

21 subdivision as a medical professional who is qualified to respond

22 to medical emergencies, aids the sick and injured and arranges or

23 transports to medical facilities, as defined by the West Virginia

24 Office of Emergency Medical Services. This definition is construed

1 to include employed ambulance providers and other services such as
2 law 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 ~~(r)~~ (s) "Employer error" means an omission, misrepresentation
10 or violation of relevant provisions of ~~the West Virginia Code~~ this
11 code or of the West Virginia Code of State Rules or the relevant
12 provisions of both ~~the West Virginia Code and of the West Virginia~~
13 ~~Code of State Rules~~ by the participating public employer that has
14 resulted in an underpayment or overpayment of required
15 contributions ~~required~~. A deliberate act contrary to the provisions
16 of this article by a participating public employer does not
17 constitute employer error.

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

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

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

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

13 ~~(v)~~ (w) "Hour of service" means:

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

18 (2) Each hour for which a member is paid or entitled to
19 payment for covered employment during a plan year but where no
20 duties are performed due to vacation, holiday, illness, incapacity
21 including disability, layoff, jury duty, military duty, leave of
22 absence or any combination thereof and without regard to whether
23 the employment relationship has terminated. Hours under this
24 subdivision shall be calculated and credited pursuant to West

1 Virginia Division of Labor rules. A member will not be credited
2 with any hours of service for any period of time he or she is
3 receiving benefits under section nineteen or twenty of this
4 article; and

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

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

24 ~~(x)~~ (y) "Monthly salary" means the W-2 reportable compensation

1 received by a member during the month.

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

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

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

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

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

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

24 ~~(aa)~~ (bb) "Participating public employer" means any county

1 commission or political subdivision in the state which has elected
2 to cover its emergency medical services officers, as defined in
3 this article, under the West Virginia Emergency Medical Services
4 Retirement System.

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

16 ~~(cc)~~ (dd) "Plan" means the West Virginia Emergency Medical
17 Services Retirement System established by this article.

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

21 ~~(ee)~~ (ff) "Public Employees Retirement System" means the West
22 Virginia Public Employee's Retirement System created by West
23 Virginia Code.

24 ~~(ff)~~ (gg) "Regular interest" means the rate or rates of

1 interest per annum, compounded annually, ~~as~~ adopted by the board
2 ~~adopts~~ in accordance with the provisions of this article.

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

8 ~~(hh)~~ (ii) "Retirant" means any member who commences an annuity
9 payable by the plan.

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

13 ~~(ii)~~ (kk) "Retirement income payments" means the monthly
14 retirement income payments payable under the plan.

15 ~~(jj)~~ (ll) "Spouse" means the person to whom the member is
16 legally married on the annuity starting date.

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

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

For purposes of this subsection:

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

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

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

Hours of Service	Year of Service Credited.
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1	Less than 500..	0
2	500 to 999.	1/3
3	1,000 to 1,499.	2/3
4	1,500 or more..	1

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

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

23 **§16-5V-8. Members' contributions; employer contributions.**

24 (a) There shall be deducted from the monthly salary of each

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

10 (b) Any active member who has concurrent employment in an
11 additional job or jobs and the additional employment requires the
12 emergency medical services officer to be a member of another
13 retirement system which is administered by the ~~Consolidated Public~~
14 ~~Retirement~~ board pursuant to article ten-d, chapter five of this
15 code shall contribute to the fund the sum of eight and one-half
16 percent of his or her monthly salary earned as an emergency medical
17 services officer as well as the sum of eight and one-half percent
18 of his or her monthly salary earned from any additional employment
19 which ~~additional employment~~ requires the emergency medical services
20 officer to be a member of another retirement system which is
21 administered by the ~~Consolidated Public Retirement~~ board pursuant
22 to article ten-d, chapter five of this code. An additional percent
23 of the monthly salary of each member shall be paid to the fund by
24 the concurrent employer by which the member is employed in an

1 amount determined by the board: *Provided*, That in no year may the
2 total of the employer contributions provided in this section, to be
3 paid by the concurrent employer, exceed ten and one-half percent of
4 the payroll for the concurrent member employees.

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

22 ~~(d) If any change or employer error in the records of any~~
23 ~~participating public employer or the retirement system results in~~
24 ~~any member receiving from the system more or less than he or she~~

~~1 would have been entitled to receive had the records been correct,
2 the board shall correct the error and as far as is practicable
3 shall adjust the payment of the benefit in a manner that the
4 actuarial equivalent of the benefit to which the member was
5 correctly entitled shall be paid. Any employer error resulting in
6 an underpayment to the retirement system may be corrected by the
7 member remitting the required employee contribution and the
8 participating public employer remitting the required employer
9 contribution. Interest shall accumulate in accordance with the
10 Legislative Rule 162-CSR-7 retirement board reinstatement interest,
11 and any accumulating interest owed on the employee and employer
12 contributions resulting from the employer error shall be the
13 responsibility of the participating public employer. The
14 participating public employer may remit total payment and the
15 employee reimburse the participating public employer through
16 payroll deduction over a period equivalent to the time period
17 during which the employer error occurred.~~

18 §16-5V-8a. Correction of errors; underpayments; overpayments.

19 (a) General rule: If any change or employer error in the
20 records of any participating public employer or the plan results in
21 any member, retirant or beneficiary receiving from the plan more or
22 less than he or she would have been entitled to receive had the
23 records been correct, the board shall correct the error. If
24 correction of the error occurs after the effective retirement date

1 of a retirant, and as far as is practicable, the board shall adjust
2 the payment of the benefit in a manner that the actuarial
3 equivalent of the benefit to which the retirant was correctly
4 entitled shall be paid.

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

24 (c) Overpayments: (1) When mistaken or excess employer

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

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

1 **§16-5V-11. Retirement; commencement of benefits.**

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

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

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

23 (a) Any member ~~who after the effective date of this article~~
24 ~~and~~ with ten or more years of contributing service and who during

1 covered employment: (1) Has been or becomes totally disabled from
2 any cause other than those set forth in section nineteen of this
3 article and not due to vicious habits, intemperance or willful
4 misconduct on his or her part; and (2) in the opinion of two
5 physicians after medical examination, one of whom shall be named by
6 the board, he or she is by reason of the disability unable to
7 perform adequately the duties required of an emergency medical
8 services officer, is entitled to receive and shall be paid from the
9 fund in monthly installments, the compensation set forth in, either
10 subsection (b) or (c) of this 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 ~~the shorter period~~, if the member has not
15 worked all twelve months during the twelve-month period immediately
16 preceding the disability award, the average of the months in which
17 compensation was received for the twelve-month period shall be
18 used.

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

22 (d) The board shall propose legislative rules for promulgation
23 in accordance with the provisions of article three, chapter
24 twenty-nine-a of this code concerning member disability payments so

1 as to ensure that the payments do not exceed one hundred percent of
2 the average current salary for the position last held by the
3 member.

4 (e) The disability benefit payments will begin the first day
5 of the month following termination of employment and receipt of the
6 disability retirement application by the Consolidated Public
7 Retirement Board. ~~Provided, That no member may receive disability~~
8 ~~benefit payments set forth in this section before January 1, 2011.~~

9 **§16-5V-21. Same - Physical examinations; termination of**
10 **disability.**

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

1 for emergency medical services in West Virginia, the member could
2 be so employed as an emergency medical services officer; or (3)
3 other facts exist to demonstrate that the member is no longer
4 totally disabled, then the disability benefits shall cease
5 ~~Benefits shall cease once the member has been found to be no longer~~
6 ~~totally disabled.~~ the first day of the month following board's
7 action.

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

12 ~~(b)~~ **(c)** If a retirant refuses to submit to a medical
13 examination or submit a statement by his or her physician
14 certifying continued disability in any period, his or her
15 disability annuity may be discontinued by the board until the
16 retirant complies. If the refusal continues for one year, all the
17 retirant's rights in and to the annuity may be revoked by the
18 board.

19 **§16-5V-24. Awards and benefits to surviving spouse - When member**
20 **dies from nonservice-connected causes.**

21 (a) If a member who has been a member for at least ten years,
22 while in covered employment after the effective date of this
23 article, has died or dies from any cause other than those specified
24 in section twenty-three of this article and not due to vicious

1 habits, intemperance or willful misconduct on his or her part, the
2 fund shall pay annually in equal monthly installments to the
3 surviving spouse during his or her lifetime, a sum equal to the
4 greater of: (1) One half of the annual compensation received in the
5 preceding twelve-month employment period by the deceased member; or
6 (2) if the member dies after his or her early or normal retirement
7 age, the monthly amount which the spouse would have received had
8 the member retired the day before his or her death, elected a one
9 hundred percent joint and survivor annuity with the spouse as the
10 joint annuitant, and then died. Where the member is receiving
11 disability benefits under this article at the time of his or her
12 death, the ~~most recent monthly compensation determined under~~
13 ~~section twenty-two of this article~~ average monthly compensation
14 received in the plan year prior to disability shall be substituted
15 for the annual compensation in subdivision (1) of this subsection.

16 (b) Benefits for a surviving spouse received under this
17 section, or other sections of this article are in lieu of receipt
18 of any other benefits under this article for the spouse or any
19 other person or under the provisions of any other state retirement
20 system based upon the member's covered employment.

21 **§16-5V-35. Return to covered employment by retirant.**

22 The annuity of any member who retires under the provisions of
23 this article and who resumes service in covered employment shall be
24 suspended while the member continues in covered employment. The

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