

1 **Senate Bill No. 418**

2 (By Senators Jenkins and McCabe)

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4 [Introduced March 4, 2013; referred to the Committee on Pensions;
5 and then to the Committee on Finance.]

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**FISCAL
NOTE**

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10 A BILL 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"; adding a definition for the terms "retire" and
18 "retirement"; making technical corrections; correction of
19 participating public employer errors by the board; clarifying
20 eligibility requirements for commencement of benefits;
21 specifying that the board must be in receipt of a request for
22 estimation of benefits prior to providing a member with an
23 explanation of their estimated gross monthly annuity and a

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

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

21 That §16-5V-2, §16-5V-8, §16-5V-11, §16-5V-20, §16-5V-21 and
22 §16-5V-24 of the Code of West Virginia, 1931, as amended, be
23 amended and reenacted; and that said code be amended by adding

1 thereto two new sections, designated §16-5V-8a and §16-5V-35, all
2 to read as follows:

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

4 **§16-5V-2. Definitions.**

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

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

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

23 (2) Upon reaching the seventy-five percent actuarial funded

1 level, as of an actuarial valuation date, the board shall increase
2 the two and six-tenths percent to two and three-quarter percent for
3 the first twenty years of credited service. The maximum benefit
4 will also be increased from sixty-seven percent to seventy percent.

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

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

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

19 (e) "Annual compensation" means the wages paid to the member
20 during covered employment within the meaning of Section 3401(a) of
21 the Internal Revenue Code, but determined without regard to any
22 rules that limit the remuneration included in wages based upon the
23 nature or location of employment or services performed during the

1 plan year plus amounts excluded under Section 414(h)(2) of the
2 Internal Revenue Code and less reimbursements or other expense
3 allowances, cash or noncash fringe benefits or both, deferred
4 compensation and welfare benefits. Annual compensation for
5 determining benefits during any determination period may not exceed
6 \$100,000 ~~as adjusted for cost of living in accordance with Section~~
7 ~~401(a)(17)(B)~~ the maximum compensation allowed as adjusted for cost
8 of living in accordance with section seven, article ten-d, chapter
9 five of this code and Section 401(a)(17) of the Internal Revenue
10 Code.

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

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

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

22 (i) "Contributing service" means service rendered by a member
23 while employed by a participating public employer for which the

1 member made contributions to the plan.

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

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

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

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

- 1 (1) An unmarried person under age eighteen who is:
- 2 (A) A natural child of the member;
- 3 (B) A legally adopted child of the member;
- 4 (C) A child who at the time of the member's death was living
5 with the member while the member was an adopting parent during any
6 period of probation; or
- 7 (D) A stepchild of the member residing in the member's
8 household at the time of the member's death; or
- 9 (2) Any unmarried child under age twenty-three:
- 10 (A) Who is enrolled as a full-time student in an accredited
11 college or university;
- 12 (B) Who was claimed as a dependent by the member for federal
13 income tax purposes at the time of member's death; and
- 14 (C) Whose relationship with the member is described in
15 paragraph (A), (B) or (C), subdivision (1) of this subsection.
- 16 ~~(m)~~ (n) "Dependent parent" means the father or mother of the
17 member who was claimed as a dependent by the member for federal
18 income tax purposes at the time of the member's death.
- 19 ~~(n)~~ (o) "Disability service" means service received by a
20 member, expressed in whole years, fractions thereof or both, equal
21 to one half of the whole years, fractions thereof, or both, during
22 which time a member receives disability benefits under this
23 article.

1 ~~(o)~~ (p) "Early retirement age" means age forty-five or over
2 and completion of twenty years of contributory service.

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

4 ~~(q)~~ (r) "Emergency medical services officer" means an
5 individual employed by the state, county or other political
6 subdivision as a medical professional who is qualified to respond
7 to medical emergencies, aids the sick and injured and arranges or
8 transports to medical facilities, as defined by the West Virginia
9 Office of Emergency Medical Services. This definition is construed
10 to include employed ambulance providers and other services such as
11 law enforcement, rescue or fire department personnel who primarily
12 perform these functions and are not provided any other credited
13 service benefits or retirement plans. These persons may hold the
14 rank of emergency medical technician/basic, emergency medical
15 technician/paramedic, emergency medical services/registered nurse,
16 or others as defined by the West Virginia Office of Emergency
17 Medical Services and the Consolidated Public Retirement Board.

18 ~~(r)~~ (s) "Employer error" means an omission, misrepresentation
19 or violation of relevant provisions of the West Virginia Code or of
20 the West Virginia Code of State Rules or the relevant provisions of
21 both the West Virginia Code and of the West Virginia Code of State
22 Rules by the participating public employer that has resulted in an
23 underpayment or overpayment of contributions required. A deliberate

1 act contrary to the provisions of this article by a participating
2 public employer does not constitute employer error.

3 ~~(s)~~ (t) "Final average salary" means the average of the
4 highest annual compensation received for covered employment by the
5 member during any five consecutive plan years within the member's
6 last ten years of service while employed, prior to any disability
7 payment. If the member did not have annual compensation for the
8 five full plan years preceding the member's attainment of normal
9 retirement age and during that period the member received
10 disability benefits under this article, then "final average salary"
11 means the average of the monthly salary determined paid to the
12 member during that period as determined under section twenty-two of
13 this article multiplied by twelve. "Final average salary" does not
14 include any lump sum payment for unused, accrued leave of any kind
15 or character.

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

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

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

23 (1) Each hour for which a member is paid or entitled to

1 payment for covered employment during which time active duties are
2 performed. These hours shall be credited to the member for the plan
3 year in which the duties are performed; and

4 (2) Each hour for which a member is paid or entitled to
5 payment for covered employment during a plan year but where no
6 duties are performed due to vacation, holiday, illness, incapacity
7 including disability, layoff, jury duty, military duty, leave of
8 absence or any combination thereof and without regard to whether
9 the employment relationship has terminated. Hours under this
10 subdivision shall be calculated and credited pursuant to West
11 Virginia Division of Labor rules. A member will not be credited
12 with any hours of service for any period of time he or she is
13 receiving benefits under section nineteen or twenty of this
14 article; and

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

23 ~~(w)~~ (x) "Member" means a person first hired as an emergency

1 medical services officer by an employer which is a participating
2 public employer of the Public Employees Retirement System or the
3 Emergency Medical Services Retirement System after the effective
4 date of this article, as defined in subsection (p) of this section,
5 or an emergency medical services officer of an employer which is a
6 participating public employer of the Public Employees Retirement
7 System first hired prior to the effective date and who elects to
8 become a member pursuant to this article. A member shall remain a
9 member until the benefits to which he or she is entitled under this
10 article are paid or forfeited.

11 ~~(x)~~ (y) "Monthly salary" means the W-2 reportable compensation
12 received by a member during the month.

13 ~~(y)~~ (z) "Normal form" means a monthly annuity which is one
14 twelfth of the amount of the member's accrued benefit which is
15 payable for the member's life. If the member dies before the sum of
16 the payments he or she receives equals his or her accumulated
17 contributions on the annuity starting date, the named beneficiary
18 shall receive in one lump sum the difference between the
19 accumulated contributions at the annuity starting date and the
20 total of the retirement income payments made to the member.

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

23 (1) Attainment of age fifty years and the completion of twenty

1 or more years of regular contributory service, excluding active
2 military duty, disability service and accrued annual and sick leave
3 service;

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

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

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

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

17 ~~(bb)~~ (cc) "Political subdivision" means a county, city or town
18 in the state; any separate corporation or instrumentality
19 established by one or more counties, cities or towns, as permitted
20 by law; any corporation or instrumentality supported in most part
21 by counties, cities or towns; and any public corporation charged by
22 law with the performance of a governmental function and whose
23 jurisdiction is coextensive with one or more counties, cities or

1 towns: Provided, That any public corporation established under
2 section four, article fifteen, chapter seven of this code is
3 considered a political subdivision solely for the purposes of this
4 article.

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

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

10 ~~(ee)~~ (ff) "Public Employees Retirement System" means the West
11 Virginia Public Employee's Retirement System created by West
12 Virginia Code.

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

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

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

23 (jj) "Retire" or "retirement" means a member's withdrawal from

1 the employ of a participating public employer and the commencement
2 of an annuity by the plan.

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

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

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

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

15 For purposes of this subsection:

16 (1) A member is totally disabled only if his or her physical
17 or mental impairment or impairments is so severe that he or she is
18 not only unable to perform his or her previous work as an emergency
19 medical services officer but also cannot, considering his or her
20 age, education and work experience, engage in any other kind of
21 substantial gainful employment which exists in the state regardless
22 of whether: (A) The work exists in the immediate area in which the
23 member lives; (B) a specific job vacancy exists; or © the member

1 would be hired if he or she applied for work. For purposes of this
2 article, substantial gainful employment is the same definition as
3 used by the United States Social Security Administration.

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

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

15 Hours of Service Year of Service Credited.

16 Less than 500 0

17 500 to 999 1/3

18 1,000 to 1,4992/3

19 1,500 or more 1

20 During a member's first and last years of covered employment,
21 the member shall be credited with one twelfth of a year of service
22 for each month during the plan year in which the member is credited
23 with an hour of service for which contributions were received by

1 the fund. A member is not entitled to credit for years of service
2 for any time period during which he or she received disability
3 payments under section nineteen or twenty of this article. Except
4 as specifically excluded, years of service include covered
5 employment prior to the effective date.

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

15 **§16-5V-8. Members' contributions; employer contributions.**

16 (a) There shall be deducted from the monthly salary of each
17 member and paid into the fund an amount equal to eight and one-half
18 percent of his or her monthly salary. An additional amount shall be
19 paid to the fund by the county commission or political subdivision
20 in which the member is employed in covered employment in an amount
21 determined by the board: Provided, That in no year may the total of
22 the employer contributions provided in this section, to be paid by
23 the county commission or political subdivision, exceed ten and

1 one-half percent of the total payroll for the members in the employ
2 of the county commission or political subdivision.

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

22 (c) All required deposits shall be remitted to the board no
23 later than fifteen days following the end of the calendar month for

1 which the deposits are required. If the board upon the
2 recommendation of the board actuary finds that the benefits
3 provided by this article can be actuarially funded with a lesser
4 contribution, then the board shall reduce the required member and
5 employer contributions proportionally. Any county commission or
6 political subdivision which fails to make any payment due the
7 Emergency Medical Services Retirement Fund by the fifteenth day
8 following the end of each calendar month in which contributions are
9 due may be required to pay the actuarial rate of interest lost on
10 the total amount owed for each day the payment is delinquent.
11 Accrual of the loss of earnings owed by the delinquent county
12 commission or political subdivision commences after the fifteenth
13 day following the end of the calendar month in which contributions
14 are due and continues until receipt of the delinquent amount.
15 Interest compounds daily and the minimum surcharge is \$50.

16 ~~(d) If any change or employer error in the records of any~~
17 ~~participating public employer or the retirement system results in~~
18 ~~any member receiving from the system more or less than he or she~~
19 ~~would have been entitled to receive had the records been correct,~~
20 ~~the board shall correct the error and as far as is practicable~~
21 ~~shall adjust the payment of the benefit in a manner that the~~
22 ~~actuarial equivalent of the benefit to which the member was~~
23 ~~correctly entitled shall be paid. Any employer error resulting in~~

~~1 an underpayment to the retirement system may be corrected by the
2 member remitting the required employee contribution and the
3 participating public employer remitting the required employer
4 contribution. Interest shall accumulate in accordance with the
5 Legislative Rule 162 CSR 7 retirement board reinstatement interest,
6 and any accumulating interest owed on the employee and employer
7 contributions resulting from the employer error shall be the
8 responsibility of the participating public employer. The
9 participating public employer may remit total payment and the
10 employee reimburse the participating public employer through
11 payroll deduction over a period equivalent to the time period
12 during which the employer error occurred.~~

13 §16-5V-8a. Correction of errors; underpayments; overpayments.

14 (a) General rule: If any change or employer error in the
15 records of any participating public employer or the plan results in
16 any member, retirant or beneficiary receiving from the plan more or
17 less than he or she would have been entitled to receive had the
18 records been correct, the board shall correct the error. If
19 correction of the error occurs after the effective retirement date
20 of a retirant, and as far as is practicable, the board shall adjust
21 the payment of the benefit in a manner that the actuarial
22 equivalent of the benefit to which the retirant was correctly
23 entitled shall be paid.

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

20 (c) Overpayments: (1) When mistaken or excess employer
21 contributions, including any overpayments, have been made to the
22 retirement system by a participating public employer, due to error
23 or other reason, the board shall credit the participating public

1 employer with an amount equal to the erroneous contributions, to be
2 offset against the participating public employer's future liability
3 for employer contributions to the system. Earnings or interest
4 shall not be credited to the employer.

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

23 **§16-5V-11. Retirement; commencement of benefits.**

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

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

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

22 (a) Any member ~~who after the effective date of this article~~
23 ~~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

1 twenty-nine-a of this code concerning member disability payments so
2 as to ensure that the payments do not exceed one hundred percent of
3 the average current salary for the position last held by the
4 member.

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

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

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

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

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

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

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

22 (a) If a member who has been a member for at least ten years,
23 while in covered employment after the effective date of this

1 article, has died or dies from any cause other than those specified
2 in section twenty-three of this article and not due to vicious
3 habits, intemperance or willful misconduct on his or her part, the
4 fund shall pay annually in equal monthly installments to the
5 surviving spouse during his or her lifetime, a sum equal to the
6 greater of: (1) One half of the annual compensation received in the
7 preceding twelve-month employment period by the deceased member; or
8 (2) if the member dies after his or her early or normal retirement
9 age, the monthly amount which the spouse would have received had
10 the member retired the day before his or her death, elected a one
11 hundred percent joint and survivor annuity with the spouse as the
12 joint annuitant, and then died. Where the member is receiving
13 disability benefits under this article at the time of his or her
14 death, the ~~most recent monthly compensation determined under~~
15 ~~section twenty-two of this article~~ average monthly compensation
16 received in the plan year prior to disability shall be substituted
17 for the annual compensation in subdivision (1) of this subsection.

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

23 **§16-5V-35. Return to covered employment by retirant.**

1 The annuity of any member who retires under the provisions of
2 this article and who resumes service in covered employment shall be
3 suspended while the member continues in covered employment. The
4 monthly annuity payment for the month in which the service resumes
5 shall be pro-rated to the date of commencement of service, and the
6 member shall again become a contributing member during resumption
7 of service. At the conclusion of resumed service in covered
8 employment the member shall have his or her annuity recalculated to
9 take into account the entirety of service in covered employment.

NOTE: The purpose of this bill is to modify the definition of "annual compensation" in Article 5V; to add a definition for "contributing service" to Article 5V; to add a definition for the terms "retire" and "retirement" to Article 5V; to renumber subsections (i) through (oo), Section 2; to delete provisions relating to correction of employer errors in Section 8 and to add a new section relating to correction of employer errors to Article 5V; to clarify eligibility requirements for commencement of benefits; to require a member to request a benefit estimate from the board prior to receiving an explanation of benefits and retirement packet; to require that a member have at least ten years of contributing service to qualify for nonduty disability; to specify that the total nonduty disability award be based upon the average monthly compensation received during the twelve month period immediately preceding disability; to provide that all costs associated with disability benefit examinations be paid from the board's expense fund; to cease disability benefits on the first day of the month following termination of disability by the board; to require annual disability recertification for a retirant who is less than sixty years of age; to provide that if a member dies while receiving a nonduty disability benefit the surviving spouse shall receive the average monthly compensation received by the member prior to disability; and to add a new section to Article 5V relating to the annuity calculation for a member who returns to

covered employment after retirement.

This bill was recommended for introduction and passage during the 2013 Regular Session of the Legislature by the Consolidated Public Retirement Board.

§16-5V-8a and §16-5V-35 are new; therefore, strike-throughs and underscoring have been omitted.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.