

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 21

FISCAL
NOTE

BY SENATORS LINDSAY, JEFFRIES, AND ROMANO

[Introduced February 10, 2021; referred
to the Committee on Pensions; and then to the Committee
on Finance]

1 A BILL to amend and reenact §5-10A-2 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §5-10D-1 of said code; and to amend said code by adding thereto a new
3 article, designated §16-5VV-1, §16-5VV-2, §16-5VV-3, §16-5VV-4, §16-5VV-5, §16-5VV-
4 6, §16-5VV-7, §16-5VV-8, §16-5VV-9, §16-5VV-10, §16-5VV-11, §16-5VV-12, §16-5VV-
5 13, §16-5VV-14, §16-5VV-15, §16-5VV-16, §16-5VV-17, §16-5VV-18, §16-5VV-19, §16-
6 5VV-20, §16-5VV-21, §16-5VV-22, §16-5VV-23, §16-5VV-24, §16-5VV-25, §16-5VV-26,
7 §16-5VV-27, §16-5VV-28, §16-5VV-29, §16-5VV-30, §16-5VV-31, §16-5VV-32, §16-5VV-
8 33, §16-5VV-34, and §16-5VV-35, all relating to the Consolidated Public Retirement
9 Board; providing that board administer the Emergency Medical Services Retirement
10 System; establishing the Emergency Medical Services Retirement System; setting forth
11 definitions; including application of honorable service condition to plan participants;
12 providing effective dates and voting requirement; establishing federal qualification
13 requirements; providing for liberal construction; providing that plan is not a substitute for
14 Social Security; providing for and setting membership standards; setting forth required
15 contributions from members and employers; creating fund and providing for investments;
16 providing for transfer from Public Employees Retirement System; setting time limits;
17 setting forth notice requirements; providing for the commencement of benefits, federal law
18 maximum benefit limitations, minimum required distributions, and direct rollovers;
19 providing for retirement credited through member's use of accrued annual or sick leave;
20 providing for retirement benefits; setting forth annuity options; providing for refunds in
21 certain circumstances; providing for deferred retirement; providing for forfeitures of
22 benefits; providing awards and benefits for duty-related disability and for other causes;
23 requiring physical examinations; establishing criteria for termination of disability; providing
24 for prior disability; providing awards and benefits to surviving spouse and additional death
25 benefits and scholarships for dependent children; providing for burial benefit; prohibiting
26 double death benefits; establishing exemption from taxation, garnishment, and other

27 process; authorizing certain deductions; establishing the effect of qualified domestic
 28 relation orders; prohibiting fraud; establishing criminal penalties; requiring repayment in
 29 certain circumstances; providing for treatment of prior military service; establishing
 30 effective date of the system; providing voluntary employer participation; establishing
 31 starting date for benefits; limiting county liability; and providing for no forfeiture of benefits
 32 if system terminates.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
 GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
 BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
 COMMISSIONS, OFFICES, PROGRAMS, ETC.**

ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.

§5-10A-2. Definitions.

1 As used in this article:

2 (a) "Retirement plan" or "plan" means the Public Employees Retirement Act pursuant to
 3 §5-10-1 *et seq.* of this code; each municipal employees retirement plan pursuant to §8-22-1 *et*
 4 *seq.* of this code; each policemen's and firemen's pension and relief fund pursuant to §8-22-1 *et*
 5 *seq.* of this code; the West Virginia Municipal Police Officers and Firefighters Retirement System
 6 pursuant to §8-22A-1 *et seq.* of this code; the West Virginia State Police Death, Disability and
 7 Retirement Fund pursuant to §15-2-1 *et seq.* of this code; the West Virginia State Police
 8 Retirement System pursuant to §15-2A-1 *et seq.* of this code; the State Teachers Retirement
 9 System pursuant to article §18-7A-1 *et seq.* of this code; the Teachers' Defined Contribution
 10 Retirement System pursuant to §18-7B-1 *et seq.* of this code; the Deputy Sheriff Retirement
 11 System pursuant to article §7-14D-1 *et seq.* of this code; the higher education retirement plan and

12 supplemental retirement plans pursuant to §18-23-4a of this code; the Judges' Retirement System
13 pursuant to §51-9-1 *et seq.* of this code; the West Virginia Emergency Medical Services
14 Retirement System pursuant to §16-5V-1 *et seq.* of this code; the 911 Emergency Services
15 Retirement System established in §16-5VV-1 *et seq.* of this code; and any other plan established
16 pursuant to this code for the payment of pension, annuity, disability or other benefits to any person
17 by reason of his or her service as an officer or employee of this state or of any political subdivision,
18 agency or instrumentality thereof, whenever the plan is supported, in whole or in part, by public
19 funds.

20 (b) "Beneficiary" means any person eligible for or receiving benefits on account of the
21 service for a public employer by a participant or former participant in a retirement plan.

22 (c) "Benefits" means pension, annuity, disability or any other benefits granted pursuant to
23 a retirement plan.

24 (d) "Conviction" means a conviction on or after the effective date of this article in any
25 federal or state court of record whether following a plea of guilty, not guilty or nolo contendere
26 and whether or not the person convicted was serving as an officer or employee of a public
27 employer at the time of the conviction.

28 (e) "Former participant" means any person who is no longer eligible to receive any benefit
29 under a retirement plan because full distribution has occurred.

30 (f) "Less than honorable service" means:

31 (1) Impeachment and conviction of a participant or former participant under ~~the provisions~~
32 ~~of~~ section nine, article four of the Constitution of West Virginia, except for a misdemeanor;

33 (2) Conviction of a participant or former participant of a felony for conduct related to his or
34 her office or employment which he or she committed while holding the office or during the
35 employment; or

36 (3) Conduct of a participant or former participant which constitutes all of the elements of a
37 crime described in either subdivision (1) or (2) of this subsection but for which the participant or

38 former participant was not convicted because: (i) Having been indicted or having been charged
 39 in an information for the crime, he or she made a plea bargaining agreement pursuant to which
 40 he or she pleaded guilty to or nolo contendere to a lesser crime: *Provided*, That the lesser crime
 41 is a felony containing all the elements described in subdivision (1) or (2) of this subsection; or (ii)
 42 having been indicted or having been charged in an information for the crime, he or she was
 43 granted immunity from prosecution for the crime.

44 (g) "Participant" means any person eligible for or receiving any benefit under a retirement
 45 plan on account of his or her service as an officer or employee for a public employer.

46 (h) "Public employer" means the State of West Virginia and any political subdivision,
 47 agency or instrumentality thereof for which there is established a retirement plan.

48 (i) "Supervisory board" or "board" means the Consolidated Public Retirement Board; the
 49 board of trustees of any municipal retirement fund; the board of trustees of any policemen's or
 50 firemen's retirement plan; the governing board of any supplemental retirement plan instituted
 51 pursuant to authority granted by the previous provisions of §18-23-4A of this code; and any other
 52 board, commission or public body having the duty to supervise and operate any retirement plan.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-1. Consolidated Public Retirement Board continued; members; vacancies; investment of plan funds.

1 (a) The Consolidated Public Retirement Board is continued to administer all public
 2 retirement plans in this state. It shall administer the Public Employees Retirement System
 3 established in §5-10-1 *et seq.* of this code; the Teachers Retirement System established in §18-
 4 7A-1 *et seq.* of this code; the Teachers' Defined Contribution Retirement System created by §18-
 5 7B-1 *et seq.* of this code; the West Virginia State Police Death, Disability and Retirement Fund
 6 created by §15-2-1 *et seq.* of this code; the West Virginia State Police Retirement System created
 7 by §15-2A-1 *et seq.* of this code; the Deputy Sheriff Death, Disability and Retirement Fund created
 8 by §7-14D-1 *et seq.* of this code; the Judges' Retirement System created under §51-9-1 *et seq.*

9 of this code; the Emergency Medical Services Retirement System established in §16-5V-1 *et seq.*
10 of this code; the 911 Emergency Services Retirement System established in §16-5VV-1 *et seq.*
11 of this code; and the Municipal Police Officers and Firefighters Retirement System established in
12 §8-22A-1 *et seq.* of this code, and the West Virginia Division of Natural Resources Retirement
13 System created by §20-18-1 *et seq.* of this code.

14 (b) The membership of the Consolidated Public Retirement Board consists of:

15 (1) The Governor or his or her designee;

16 (2) The State Treasurer or his or her designee;

17 (3) The State Auditor or his or her designee;

18 (4) The Secretary of the Department of Administration or his or her designee;

19 (5) Four residents of the state, who are not members, retirants or beneficiaries of any of
20 the public retirement systems, to be appointed by the Governor, with the advice and consent of
21 the Senate; and

22 (6) A member, annuitant or retirant of the Public Employees Retirement System who is or
23 was a state employee; a member, annuitant or retirant of the Public Employees Retirement
24 System who is not or was not a state employee; a member, annuitant or retirant of the Teachers
25 Retirement System; a member, annuitant or retirant of the West Virginia State Police Death,
26 Disability and Retirement Fund; a member, annuitant or retirant of the West Virginia State Police
27 Retirement System; a member, annuitant or retirant of the Deputy Sheriff Death, Disability and
28 Retirement Fund; a member, annuitant or retirant of the Teachers' Defined Contribution
29 Retirement System; a member, annuitant or retirant of the Emergency Medical Services
30 Retirement System; one person who is a member, annuitant or retirant of a municipal policemen's
31 or firemen's pension and relief fund or the West Virginia Municipal Police Officers and Firefighters
32 Retirement System, and beginning as soon as practicable after January 1, 2022, one person who
33 is a member, annuitant or retirant of the West Virginia Division of Natural Resources Police Officer
34 Retirement System, all to be appointed by the Governor, with the advice and consent of the

35 Senate. The Governor shall choose the member representing the municipal policemen's or
36 firemen's pension and relief fund or the West Virginia Municipal Police Officers and Firefighters
37 Retirement System from two names submitted by the state's largest organization of professional
38 police officers and two names submitted by the state's largest organization of professional
39 firefighters. Representation of the municipal police officers and firefighters shall alternate after
40 each term on the board between persons having police officer and firefighter affiliation so that
41 each professional group is represented on the board every other term.

42 All appointees to the board shall have recognized competence or significant experience
43 in pension management or administration, actuarial analysis, institutional management or
44 accounting. Those members appointed prior to January 1, 2010, shall be considered to have met
45 these qualifications. One trustee shall be an attorney experienced in finance and pension matters
46 and one trustee shall be a certified public accountant. Each member of the board ~~must~~ shall
47 complete annual fiduciary training and timely complete any conflict of interest forms required to
48 serve as a trustee.

49 (c) The appointed members of the board shall serve five-year terms. A member appointed
50 pursuant to subdivision (6), subsection (b) of this section ceases to be a member of the board if
51 he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed
52 membership, the Governor, within 60 days, shall fill the vacancy by appointment for the unexpired
53 term. No more than seven appointees may be of the same political party.

54 (d) The Consolidated Public Retirement Board has all the powers, duties, responsibilities
55 and liabilities of the Public Employees Retirement System established pursuant to §5-10-1 *et*
56 *seq.*; of this code; the Teachers Retirement System established pursuant to §18-7A-1 *et seq.* of
57 this code; the Teachers' Defined Contribution Retirement System established pursuant to §18-
58 7B-1 *et seq.* of this code; the West Virginia State Police Death, Disability and Retirement Fund
59 created pursuant to §15-2-1 *et seq.* of this code; the West Virginia State Police Retirement System
60 created by §15-2A-1 *et seq.*; of this code; the Deputy Sheriff Death, Disability and Retirement

61 Fund created pursuant to §7-14D-1 *et seq.* of this code; the Judges' Retirement System created
62 pursuant to §51-9-1 *et seq.* of this code; the Emergency Medical Services Retirement System
63 established in §16-5V-1 *et seq.* of this code; the 911 Emergency Services Retirement System
64 established in §16-5VV-1 *et seq.* of this code and the Municipal Police Officers and Firefighters
65 Retirement System created pursuant to §8-22A-1 *et seq.* of this code,
66 and the West Virginia Division of Natural Resources Police Officers Retirement System created
67 and established pursuant to ~~article~~ §20-18-1 *et seq.* of this code and their appropriate governing
68 boards.

69 (e) The Consolidated Public Retirement Board may propose rules for legislative approval,
70 in accordance with §29A-3-1 *et seq.* of this code, necessary to effectuate its powers, duties and
71 responsibilities: *Provided*, That the board may adopt any or all of the rules, previously
72 promulgated, of a retirement system which it administers.

73 (f) (1) The Consolidated Public Retirement Board shall continue to transfer all funds
74 received for the benefit of the retirement systems, including, but not limited to, all employer and
75 employee contributions, to the West Virginia Investment Management Board: *Provided*, That the
76 employer and employee contributions of the Teachers' Defined Contribution Retirement System,
77 established in §18-7B-3 of this code, and voluntary deferred compensation funds invested by the
78 West Virginia Consolidated Public Retirement Board pursuant to §5-10B-5 of this code may not
79 be transferred to the West Virginia Investment Management Board.

80 (2) The board may recover from a participating employer that fails to pay any amount due
81 a retirement system in a timely manner the contribution due and an additional amount not to
82 exceed interest or other earnings lost as a result of the untimely payment, or a reasonable
83 minimum fee, whichever is greater, as provided by legislative rule promulgated pursuant to ~~the~~
84 ~~provisions of~~ §29A-3-1 *et seq.* of this code. Any amounts recovered shall be administered in the
85 same manner in which the amount due is required to be administered.

86 (g) Notwithstanding any provision of this code or any legislative rule to the contrary, all

87 assets of the public retirement plans set forth in subsection (a) of this section shall be held in trust.
 88 The Consolidated Public Retirement Board is a trustee for all public retirement plans, except with
 89 regard to the investment of funds: *Provided*, That the Consolidated Public Retirement Board is a
 90 trustee with regard to the investments of the Teachers' Defined Contribution Retirement System
 91 and any other assets of the public retirement plans administered by the Consolidated Public
 92 Retirement Board as set forth in subsection (a) of this section for which no trustee has been
 93 expressly designated in this code.

94 (h) The board may employ the West Virginia Investment Management Board to provide
 95 investment management consulting services for the investment of funds in the Teachers' Defined
 96 Contribution Retirement System.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5VV. 911 EMERGENCY SERVICES RETIREMENT SYSTEM ACT.

§16-5VV-1. Title.

1 This article is known and may be cited as the "West Virginia 911 Emergency Services
 2 Retirement System Act."

§16-5VV-2. Definitions.

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

3 (a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year
 4 of the member's final average salary for the first 20 years of credited service. Additionally, two
 5 percent per year for 21 through 25 years and one percent per year for 26 through 30 years will be
 6 credited with a maximum benefit of 67 percent. A member's accrued benefit may not exceed the
 7 limits of Section 415 of the Internal Revenue Code and is subject to §16-5VV-12 of this code.

8 (1) The board may, upon the recommendation of the board actuary, increase the
 9 employees' contribution rate to 10 and five-tenths percent should the funding of the plan not reach

10 70 percent funded by July 1, 2026. The board shall decrease the contribution rate to eight and
11 one-half percent once the plan funding reaches the 70 percent support objective as of any later
12 actuarial valuation date.

13 (2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date,
14 the board shall increase the two and six-tenths percent to two and three-quarter percent for the
15 first 20 years of credited service. The maximum benefit will also be increased from 67 percent to
16 70 percent.

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

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

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

27 (e) "Annual compensation" means the wages paid to the member during covered
28 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined
29 without regard to any rules that limit the remuneration included in wages based upon the nature
30 or location of employment or services performed during the plan year plus amounts excluded
31 under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
32 allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits.
33 Annual compensation for determining benefits during any determination period may not exceed
34 \$100,000 as adjusted for cost-of-living in accordance with Section 401(a)(17)(B) of the Internal
35 Revenue Code.

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

37 (g) "Annuity starting date" means the first day of the month for which an annuity is payable
38 after submission of a retirement application. For purposes of this subsection, if retirement income
39 payments commence after the normal retirement age, "retirement" means the first day of the
40 month following or coincident with the latter of the last day the member worked in covered
41 employment or the member's normal retirement age and after completing proper written
42 application for the "retirement" on an application supplied by the board.

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

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

45 (j) "Covered employment" means either: (1) Employment as a 911 emergency services
46 officer; or (2) the period of time during which active duties are not performed but disability benefits
47 are received under this article; or (3) concurrent employment by a 911 emergency services officer
48 in a job or jobs in addition to his or her employment as a 911 emergency services officer where
49 the secondary employment requires the 911 emergency services officer to be a member of
50 another retirement system which is administered by the Consolidated Public Retirement Board
51 pursuant to this code: *Provided*, That the 911 emergency services officer contributes to the fund
52 created in this article the amount specified as the member's contribution in §16-5VV-8 of this
53 code.

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

56 (l) "911 emergency services officer" means an individual employed by the state, county or
57 other political subdivision as a dispatch professional that is qualified to respond or aid in the
58 response of emergency and nonemergency calls and/or the dispatching of public safety personnel
59 for law enforcement, fire services, and emergency medical services.

60 (m) "Dependent child" means either:

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

- 62 (A) A natural child of the member;
- 63 (B) A legally adopted child of the member;
- 64 (C) A child who at the time of the member's death was living with the member while the
65 member was an adopting parent during any period of probation; or
- 66 (D) A stepchild of the member residing in the member's household at the time of the
67 member's death; or
- 68 (2) Any unmarried child under age 23:
- 69 (A) Who is enrolled as a full-time student in an accredited college or university;
- 70 (B) Who was claimed as a dependent by the member for federal income tax purposes at
71 the time of member's death; and
- 72 (C) Whose relationship with the member is described in paragraph (A), (B) or (C),
73 subdivision (1) of this subsection.
- 74 (n) "Dependent parent" means the father or mother of the member who was claimed as a
75 dependent by the member for federal income tax purposes at the time of the member's death.
- 76 (o) "Disability service" means service received by a member, expressed in whole years,
77 fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during
78 which time a member receives disability benefits under this article.
- 79 (p) "Effective date" means January 1, 2022.
- 80 (q) "Final average salary" means the average of the highest annual compensation
81 received for covered employment by the member during any five consecutive plan years within
82 the member's last 10 years of service while employed, prior to any disability payment. If the
83 member did not have annual compensation for the five full plan years preceding the member's
84 attainment of normal retirement age and, during that period, the member received disability
85 benefits under this article then "final average salary" means the average of the monthly salary
86 determined paid to the member during that period as determined under §16-5VV-22 of this code
87 multiplied by 12. "Final average salary" does not include any lump sum payment for unused,

88 accrued leave of any kind or character.

89 (r) "Fund" means the West Virginia 911 Emergency Services Retirement Fund created by
90 this article.

91 (s) "Hour of service" means:

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

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

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

108 (t) "Member" means a person first hired as a 911 emergency services officer by an
109 employer which is a participating public employer of the Public Employees Retirement System or
110 the 911 Emergency Services Retirement System after the effective date of this article, as defined
111 in subsection (p) of this section, or a 911 emergency services officer of an employer which is a
112 participating public employer of the Public Employees Retirement System first hired prior to the
113 effective date and who elects to become a member pursuant to this article. A member shall remain

114 a member until the benefits to which he or she is entitled under this article are paid or forfeited.

115 (u) "Monthly salary" means the W-2 reportable compensation received by a member
116 during the month.

117 (v) "Normal form" means a monthly annuity which is one-twelfth of the amount of the
118 member's accrued benefit which is payable for the member's life. If the member dies before the
119 sum of the payments he or she receives equals his or her accumulated contributions on the
120 annuity starting date, the named beneficiary shall receive in one lump sum the difference between
121 the accumulated contributions at the annuity starting date and the total of the retirement income
122 payments made to the member.

123 (w) "Normal retirement age" means the first to occur of the following:

124 (1) Attainment of age 50 years and the completion of 20 or more years of regular
125 contributory service, excluding active military duty, disability service and accrued annual and sick
126 leave service.

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

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

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

133 (x) "Public Employees Retirement System" means the West Virginia Public Employee's
134 Retirement System created by West Virginia Code.

135 (y) "Plan" means the West Virginia Emergency Medical Services Retirement System
136 established by this article.

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

139 (aa) "Regular interest" means the rate or rates of interest per annum, compounded

140 annually, as the board adopts in accordance with the provisions of this article.

141 (bb) "Retirement income payments" means the monthly retirement income payments
142 payable under the plan.

143 (cc) "Spouse" means the person to whom the member is legally married on the annuity
144 starting date.

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

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

151 For purposes of this subsection:

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

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

164 (ff) "Year of service" means a member shall, except in his or her first and last years of
165 covered employment, be credited with years of service credit based upon the hours of service

166 performed as covered employment and credited to the member during the plan year based upon
167 the following schedule:

168 Hours of Service Year of Service Credited

169 Less than 500 0

170 500 to 999 1/3

171 1,000 to 1,499 2/3

172 1,500 or more 1

173 During a member’s first and last years of covered employment, the member shall be
174 credited with one-twelfth of a year of service for each month during the plan year in which the
175 member is credited with an hour of service. A member is not entitled to credit for years of service
176 for any time period during which he or she received disability payments under §16-5VV-19 or §16-
177 5VV-20 of this code. Except as specifically excluded, years of service include covered
178 employment prior to the effective date.

179 Years of service which are credited to a member prior to his or her receipt of accumulated
180 contributions upon termination of employment pursuant to §16-5VV-18 of this code or §5-10-30
181 of this code, shall be disregarded for all purposes under this plan unless the member repays the
182 accumulated contributions with interest pursuant to §16-5VV-18 of this code or had prior to the
183 effective date made the repayment pursuant to §5-10-18 of this code.

184 (gg) “Required beginning date” means April 1 of the calendar year following the later of:
185 (1) The calendar year in which the member attains age 70 and one-half; or (2) the calendar year
186 in which he or she retires or otherwise separates from covered employment; or (3) for members
187 who are covered under the Public Employees Retirement System, their service shall be
188 recognized upon transfer of asset from the Public Employees Retirement System according to
189 §16-5VV-9 of this code. Prior service for members not covered under the Public Employees
190 Retirement System shall be recognized only upon repayment of amounts covered under §16-
191 5VV-6 of this code.

§16-5VV-3. Meaning of terms.

1 Any term used in this article has the same meaning as when used in a comparable context
 2 in the laws of the United States, unless a different meaning is clearly required. Any reference in
 3 this article to the Internal Revenue Code means the Internal Revenue Code of 1986, as amended.

§16-5VV-4. Creation and administration of West Virginia Emergency Medical Services**Retirement System; specification of actuarial assumptions.**

1 There is hereby created the West Virginia 911 Emergency Service Retirement System.
 2 The purpose of this system is to provide for the orderly retirement of 911 emergency services
 3 officers who become superannuated because of age or permanent disability and to provide
 4 certain survivor death benefits. The retirement system shall come into effect January 1, 2022
 5 Provided, That at least 70 percent of all eligible 911 emergency services officers and at least 85
 6 percent of the eligible 911 emergency services officers who are currently active members of the
 7 Public Employees Retirement System elect to participate in this plan by December 31, 2020. If
 8 this level of participation is not reached, then all of the provisions of this article are void and of no
 9 force and effect. All business of the system shall be transacted in the name of the West Virginia
 10 911 Emergency Services Retirement System. The board shall specify and adopt all actuarial
 11 assumptions for the plan at its first meeting of every calendar year or as soon thereafter as may
 12 be practicable, which assumptions shall become part of the plan.

§16-5VV-5. Article to be liberally construed; supplements federal social security; federal qualification requirements.

1 (a) The provisions of this article shall be liberally construed so as to provide a general
 2 retirement system for 911 emergency services officers eligible to retire under the provisions of
 3 this plan. Nothing in this article may be construed to permit a county to substitute this plan for
 4 federal social security now in force in West Virginia.

5 (b) The board shall administer the plan in accordance with its terms and may construe the
 6 terms and determine all questions arising in connection with the administration, interpretation and

7 application of the plan. The board may sue and be sued, contract and be contracted with and
8 conduct all the business of the system in the name of the plan. The board may employ those
9 persons it considers necessary or desirable to administer the plan. The board shall administer the
10 plan for the exclusive benefit of the members and their beneficiaries subject to the specific
11 provisions of the plan.

12 (c) The plan is intended to meet the federal qualification requirements of Section 401(a)
13 and related sections of the Internal Revenue Code as applicable to governmental plans.
14 Notwithstanding any other provision of state law to the contrary, the board shall administer the
15 plan to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any
16 provision of this article referencing or relating to these federal qualification requirements is
17 effective as of the date required by federal law. The board may propose rules for promulgation
18 and amend or repeal conflicting rules in accordance with the authority granted to the board
19 pursuant to §5-1D-1 of this code to assure compliance with the requirements of this section.

§16-5VV-6. Members.

1 (a) Any 911 emergency services officer first employed by a county or political subdivision
2 in covered employment after the effective date of this article shall be a member of this retirement
3 system and plan and upon such membership does not qualify for membership in any other
4 retirement system administered by the board, as long as he or she remains employed in covered
5 employment.

6 (b) Any 911 emergency services officer employed in covered employment by an employer
7 which is currently a participating public employer of the Public Employees Retirement System
8 shall notify in writing, both the county commission in the county or officials in their political
9 subdivision in which he or she is employed and the board, of his or her desire to become a
10 member of the plan by December 31, 2021. Any 911 emergency services officer who elects to
11 become a member of the plan ceases to be a member or have any credit for covered employment
12 in any other retirement system administered by the board and shall continue to be ineligible for

13 membership in any other retirement system administered by the board as long as the 911
14 emergency services officer remains employed in covered employment by an employer which is
15 currently a participating public employer of the Public Employees Retirement System in this plan:
16 Provided, That any 911 emergency services officer who does not affirmatively elect to become a
17 member of the plan continues to be eligible for any other retirement system as is from time to time
18 offered to other county employees but is ineligible for this plan regardless of any subsequent
19 termination of employment and rehire.

20 (c) Any 911 emergency services officer who was employed as a 911 emergency services
21 officer prior to the effective date, but was not employed on the effective date of this article, shall
22 become a member upon rehire as a 911 emergency services officer. For purposes of this section,
23 the member's years of service and credited service prior to the effective date may not be counted
24 for any purposes under this plan unless: (1) The 911 emergency services officer has not received
25 the return of his or her accumulated contributions in the Public Employees Retirement Fund
26 System pursuant to §5-10-30 of this code; or (2) the accumulated contributions returned to the
27 member from the Public Employees Retirement System have been repaid pursuant to this article.
28 If the conditions of subdivision (1) or (2) of this subsection are met, all years of the 911 emergency
29 services officer's covered employment shall be counted as years of service for the purposes of
30 this article. Each transferring 911 emergency services officer shall be given credited service for
31 the purposes of this article for all covered employment transferred from the Public Employees
32 Retirement System regardless of whether the credited service (as that term is defined in §5-10-2
33 of this code) was earned as a 911 emergency services officer. All service in the Public Employees
34 Retirement System accrued by a transferring 911 emergency services officer shall be transferred
35 into the plan created by this article and the transferring 911 emergency services officer shall be
36 given the same credit for the purposes of this article for all covered service which is transferred
37 from the Public Employees Retirement System as that transferring 911 emergency services
38 officer would have received from the Public Employees Retirement System if the transfer had not

39 occurred. In connection with each 911 emergency services officer receiving credit for prior
40 employment provided in this subsection, a transfer from Public Employees Retirement System to
41 this plan shall be made pursuant to the procedures described in this article.

42 (d) Once made, the election made under this section is irrevocable. All 911 emergency
43 services officers employed by an employer which is a participating public employer of the Public
44 Employees Retirement System after the effective date and 911 emergency services officers
45 electing to become members as described in this section shall be members as a condition of
46 employment and shall make the contributions required by this article.

47 (e) Notwithstanding any other provisions of this article, any individual who is a leased
48 employee is not eligible to participate in the plan. For purposes of this plan, a “leased employee”
49 means any individual who performs services as an independent contractor or pursuant to an
50 agreement with an employee leasing organization or similar organization. If a question arises
51 regarding the status of an individual as a leased employee, the board has final power to decide
52 the question.

§16-5VV-7. Creation of Fund; investments.

1 (a) There is hereby created the “West Virginia 911 Emergency Services Retirement Fund”
2 for the benefit of the members of the retirement system created pursuant to this article and the
3 dependents of any deceased or retired member of the system.

4 (b) All moneys paid into and accumulated in the fund, except amounts designated by the
5 board for payment of benefits as provided in this article, shall be held in trust and invested in the
6 consolidated pensions fund administered by the West Virginia Investment Management Board as
7 provided by law.

§16-5VV-8. Members’ contributions; employer contributions.

1 There shall be deducted from the monthly salary of each member and paid into the fund
2 an amount equal to eight and one-half percent of his or her monthly salary. Any active member
3 who has concurrent employment in an additional job or jobs and such additional employment

4 requires the 911 emergency services officer to be a member of another retirement system which
5 is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 et seq. of this
6 code shall contribute to the fund the sum of eight and one-half percent of his or her monthly salary
7 earned as a 911 emergency services officer as well as the sum of eight and one-half percent of
8 his or her monthly salary earned from any additional employment which additional employment
9 requires the 911 emergency services officer to be a member of another retirement system which
10 is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 et seq. of this
11 code. An additional 10 and one-half percent of the monthly salary of each member shall be paid
12 to the fund by the concurrent employer by which the member is employed. All required deposits
13 shall be remitted to the board no later than 15 days following the end of the calendar month for
14 which the deposits are required. If the board upon the recommendation of the board actuary finds
15 that the benefits provided by this article can be actuarially funded with a lesser contribution, then
16 the board shall reduce the required member and employer contributions proportionally.

§16-5VV-9. Transfer from Public Employees Retirement System.

1 (a) The Consolidated Retirement Board shall, within 180 days of the effective date of the
2 transfer of a 911 emergency services officer from the Public Employees Retirement System to
3 the plan, transfer assets from the Public Employees Retirement System Trust Fund into the West
4 Virginia Emergency Medical Services Trust Fund.

5 (b) The amount of assets to be transferred for each transferring 911 emergency services
6 officer shall be computed as of January 1, 2022, using July 1, 2021, actuarial valuation of the
7 Public Employees Retirement System, and updated with seven and one-half percent annual
8 interest to the date of the actual asset transfer. The market value of the assets of the transferring
9 911 emergency services officer in the Public Employees Retirement System shall be determined
10 as of the end of the month preceding the actual transfer. To determine the computation of the
11 asset share to be transferred the board shall:

12 (1) Compute the market value of the Public Employees Retirement System assets as of

13 July 1, 2019, actuarial valuation date, under the actuarial valuation approved by the board;

14 (2) Compute the actuarial accrued liabilities for all Public Employees Retirement System
15 retirees, beneficiaries, disabled retirees and terminated inactive members as of July 1, 2021,
16 actuarial valuation date;

17 (3) Compute the market value of active member assets in the Public Employees
18 Retirement System as of July 1, 2021, by reducing the assets value under subdivision one by the
19 inactive liabilities under subdivision (2) of this subsection;

20 (4) Compute the actuarial accrued liability for all active Public Employees Retirement
21 System members as of July 1, 2021, actuarial valuation date approved by the board;

22 (5) Compute the funded percentage of the active members' actuarial accrued liabilities
23 under the Public Employees Retirement System as of July 1, 2021, by dividing the active
24 members' market value of assets under subdivision (3) of this section by the active members'
25 actuarial accrued liabilities under subdivision (4) of this subsection;

26 (6) Compute the actuarial accrued liabilities under the Public Employees Retirement
27 System as of July 1, 2021, for active 911 emergency services officers transferring to the 911
28 Emergency Services Retirement System;

29 (7) Determine the assets to be transferred from the Public Employees Retirement System
30 to the 911 Emergency Services Retirement System by multiplying the active members' funded
31 percentage determined under subdivision (5) of this subsection by the transferring active
32 members' actuarial accrued liabilities under the Public Employees Retirement System under
33 subdivision (6) of this subsection and adjusting such asset transfer amount by interest at seven
34 and five-tenths percent for the period from the calculation date of July 1, 2021, through the first
35 day of the month in which the asset transfer is to be completed.

36 (c) Once a 911 Emergency Services Officer has elected to transfer from the Public
37 Employees Retirement System, transfer of that amount as calculated in accordance with the
38 provisions of subsection (b) of this section by the Public Employees Retirement System shall

39 operate as a complete bar to any further liability to the Public Employees Retirement System, and
40 constitutes an agreement whereby the transferring 911 emergency services officer forever
41 indemnifies and holds harmless the Public Employees Retirement System from providing him or
42 her any form of retirement benefit whatsoever until such time as that 911 emergency services
43 officer obtains other employment which would make him or her eligible to reenter the Public
44 Employees Retirement System with no credit whatsoever for the amounts transferred to the
45 Emergency Medical Services Retirement System.

46 (d) Eligible 911 emergency services officers that transfer from plans other than the Public
47 Employees Retirement System shall have service recognized under this plan through the
48 purchase of the service through payment by the member of 60 percent of the actuarial accrued
49 liabilities which would result if the service is fully credited under the 911 Emergency Services
50 Retirement System. The purchase of the service shall begin within 12 months of the effective date
51 and full payment shall be made within 60 months by either equal monthly or a one-time lump sum
52 payment.

§16-5VV-10. Notice requirements; test case.

1 (a) Each county commission or political subdivision shall prepare a written notice to be
2 delivered to each 911 emergency services officer employed prior to July 1, 2021. This notice shall
3 clearly and accurately explain the benefits, financial implications and consequences to an 911
4 emergency services officer of electing to participate in the retirement plan created in this article,
5 including the consequences and financial implications in regard to the benefits under the Public
6 Employees Insurance Plan as set forth in this code for those 911 emergency services officers
7 employed by a county commission or political subdivision which participates in that insurance
8 plan. This notice shall be distributed to each 911 emergency services officer and the county or
9 political subdivision shall obtain a signed receipt from each 911 emergency services officer
10 acknowledging that the 911 emergency services officer was provided a copy of the notice required
11 in this subsection. If a 911 emergency services officer makes the election provided in §16-5VV-6

12 of this code, he or she shall be considered to have made a voluntary, informed decision in regard
13 to the election to participate in the retirement system created in this article.

14 (b) Nothing in this section may be construed to alter, affect or change any of the rights and
15 benefits of any 911 emergency services officer who has insurance coverage under §5-16-1 et
16 seq. of this code as a result of being a spouse or dependent of a participant who is the primary
17 insured under §5-16-1 et seq. of this code.

18 (c) Nothing contained in this section may be construed to affect or pertain to any life
19 insurance coverage under §5-16-1 et seq. of this code.

§16-5VV-11. Retirement; commencement of benefits.

1 (a) Except for duty disability retirement, no member may retire before January 1, 2024.

2 (b) A member may retire and commence to receive retirement income payments on the
3 first day of the calendar month following written application for his or her voluntary petition for
4 retirement coincident with or next following the later of the date the member ceases employment,
5 or the date the member attains early or normal retirement age, in an amount as provided under
6 this article: *Provided*, That retirement income payments under this plan are subject to the
7 provisions of this article. Upon receipt of the petition, the board shall promptly provide the member
8 with an explanation of his or her optional forms of retirement benefits and upon receipt of properly
9 executed forms from the member, the board shall process member's request for and commence
10 payments as soon as administratively feasible.

§16-5VV-12. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or state law, the board shall administer
2 the retirement system in compliance with the limitations of Section 415 of the Internal Revenue
3 Code and regulations under that section to the extent applicable to governmental plans so that
4 no annuity or other benefit provided under this system shall exceed those limitations. The extent
5 to which any annuity or other benefit payable under this retirement system shall be reduced as
6 compared with the extent to which an annuity, contributions or other benefits under any other

7 defined benefit plans or defined contribution plans required to be taken into consideration under
8 Section 415 of the Internal Revenue Code shall be reduced, shall be determined by the board in
9 a manner that maximizes the aggregate benefits payable to the member. If the reduction is under
10 this retirement system, the board shall advise affected members of any additional limitation on
11 the annuities required by this section.

§16-5VV-13. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution of a member's or beneficiary's
2 interest and take precedence over any inconsistent provisions of this plan. This section applies to
3 plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the
4 contrary, the payment of benefits under this article shall be determined and made in accordance
5 with Section 401(a)(9) of the Internal Revenue Code and its regulations. For this purpose, the
6 following provisions apply:

7 (a) The payment of benefits under the plan to any member shall be distributed to him or
8 her not later than the required beginning date, or be distributed to him or her commencing not
9 later than the required beginning date, in accordance with regulations prescribed under Section
10 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the
11 member and his or her beneficiary or over a period not extending beyond the life expectancy of
12 the member and his or her beneficiary.

13 (b) If a member dies after distribution to him or her has commenced pursuant to this
14 section but before his or her entire interest in the plan has been distributed, then the remaining
15 portion of that interest shall be distributed at least as rapidly as under the method of distribution
16 being used at the date of his or her death.

17 (c) If a member dies before distribution to him or her has commenced, then his or her
18 entire interest in the plan shall be distributed by December 31 of the calendar year containing the
19 fifth anniversary of the member's death, except as follows:

20 (1) If a member's interest is payable to a beneficiary, distributions may be made over the

21 life of that beneficiary or over a period certain not greater than the life expectancy of the
22 beneficiary, commencing on or before December 31 of the calendar year immediately following
23 the calendar year in which the member died; or

24 (2) If the member's beneficiary is the surviving spouse, the date distributions are required
25 to begin shall be no later than the later of:

26 (A) December 31 of the calendar year in which the member would have attained age 70
27 and one-half; or

28 (B) The earlier of: (i) December 31 of the calendar year following the calendar year in
29 which the member died; or (ii) December 31 of the calendar year following the calendar year in
30 which the spouse died.

§16-5VV-14. Direct rollovers.

1 This section applies to distributions made on or after January 1, 2021. Notwithstanding
2 any provision of this article to the contrary that would otherwise limit a distributee's election under
3 this plan, a distributee may elect, at the time and in the manner prescribed by the board, to have
4 any portion of an eligible rollover distribution that is equal to at least \$500 paid directly to an
5 eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section,
6 the following definitions apply:

7 (1) "Eligible rollover distribution" means any distribution of all or any portion of the balance
8 to the credit of the distributee, except that an eligible rollover distribution does not include any of
9 the following: (A) Any distribution that is one of a series of substantially equal periodic payments
10 not less frequently than annually made for the life or life expectancy of the distributee or the joint
11 lives or the joint life expectancies of the distributee and the distributee's designated beneficiary,
12 or for a specified period of 10 years or more; (B) any distribution to the extent such distribution is
13 required under Section 401(a)(9) of the Internal Revenue Code; (C) the portion of any distribution
14 that is not includable in gross income determined without regard to the exclusion for net unrealized
15 appreciation with respect to employer securities; (D) any hardship distribution described in

16 Section 401(k) (2) (B) (i) (iv) of the Internal Revenue Code; and (E) any other distribution or
17 distributions reasonably expected to total less than \$200 during a year.

18 (2) "Eligible retirement plan" means an individual retirement account described in Section
19 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b)
20 of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue
21 Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts
22 the distributee's eligible rollover distribution: *Provided*, That in the case of an eligible rollover
23 distribution to the surviving spouse, an eligible retirement plan is an individual retirement account
24 or individual retirement annuity.

25 (3) "Distributee" means an employee or former employee. In addition, the employee's or
26 former employee's surviving spouse and the employee's or former employee's spouse or former
27 spouse who is the alternate payee under a qualified domestic relations order, as defined in
28 Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees
29 with regard to the interest of the spouse or former spouse.

30 (4) "Direct rollover" means a payment by the plan to the eligible retirement plan.

§16-5VV-15. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

1 (a) This section applies to rollovers and transfers as specified in this section made on or
2 after January 1, 2022. Notwithstanding any provision of this article to the contrary that would
3 otherwise prohibit or limit rollovers and plan transfers to this system, the plan shall accept the
4 following rollovers and plan transfers on behalf of a member solely for the purpose of purchasing
5 permissive service credit, in whole or in part, as otherwise provided in this article or for the
6 repayment of withdrawn or refunded contributions, in whole and in part, with respect to a previous
7 forfeiture of service credit as otherwise provided in this article: (A) One or more rollovers within
8 the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement
9 account described in Section 408(a) of the Internal Revenue Code or from an individual retirement

10 annuity described in Section 408(b) of the Internal Revenue Code; (B) one or more rollovers
11 described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified
12 under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of
13 the Internal Revenue Code; (C) one or more rollovers described in Section 457(e)(16) of the
14 Internal Revenue Code from a governmental plan described in Section 457 of the Internal
15 Revenue Code; or (D) direct trustee-to-trustee transfers or rollovers from a plan that is qualified
16 under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of
17 the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal
18 Revenue Code: *Provided*, That any rollovers or transfers pursuant to this section shall be
19 accepted by the system only if made in cash or other asset permitted by the board and only in
20 accordance with such policies, practices and procedures established by the board from time to
21 time. For purposes of this section, the following definitions apply:

22 (1) "Permissive service credit" means service credit which is permitted to be purchased
23 under the terms of the retirement system by voluntary contributions in an amount which does not
24 exceed the amount necessary to fund the benefit attributable to the period of service for which
25 the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal
26 Revenue Code.

27 (2) "Repayment of withdrawn or refunded contributions" means the payment into the
28 retirement system of the funds required pursuant to this article for the reinstatement of service
29 credit previously forfeited on account of any refund or withdrawal of contributions permitted in this
30 article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

31 (b) Nothing in this section may be construed as permitting rollovers or transfers into this
32 system or any other system administered by the retirement board other than as specified in this
33 section and no rollover or transfer shall be accepted into the system in an amount greater than
34 the amount required for the purchase of permissive service credit or repayment of withdrawn or
35 refunded contributions.

36 (c) Nothing in this section shall be construed as permitting the purchase of service credit
37 or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

§16-5VV-16. Retirement credited service through member's use, as option, of accrued annual or sick leave days.

1 Any member accruing annual leave or sick leave days may, after the effective date of this
2 section, elect to use the days at the time of retirement to acquire additional credited service in this
3 retirement system: *Provided*, That the accrued annual or sick leave may not be used to purchase
4 health insurance under the Public Employees Insurance Agency until the member reaches the
5 age of 55. The days shall be applied on the basis of two workdays' credit granted for each one
6 day of accrued annual or sick leave days, with each month of retirement service credit to equal
7 20 workdays and with any remainder of 10 workdays or more to constitute a full month of
8 additional credit and any remainder of less than 10 workdays to be dropped and not used,
9 notwithstanding any provisions of the code to the contrary. The credited service shall be allowed
10 and not considered to controvert the requirement of no more than 12 months' credited service in
11 any year's period.

§16-5VV-17. Retirement benefits.

1 This section provides for the adjustment of a member's accrued benefit to reflect the
2 difference in age, in years and months, between the member's annuity starting date and the date
3 the member attains normal retirement age. This age adjustment shall be made based upon the
4 normal form of benefit and shall be the actuarial equivalent of the accrued benefit at the member's
5 normal retirement age. The member shall receive the age adjusted retirement income in the
6 normal form or in an actuarial equivalent amount in an optional form as provided under this
7 chapter. The first day of the calendar month following the month of birth shall be used in lieu of
8 any birth date that does not fall on the first day of a calendar month.

9 (a) *Normal retirement.* -- A member whose annuity starting date is the date the member
10 attains normal retirement age, is entitled to his or her accrued benefit without adjustment for age

11 at commencement. To the extent that a member's starting date is later than his or her normal
12 retirement age, the amount of that member's retirement income benefit shall be adjusted as
13 provided in subsection (c) of this section.

14 (b) *Early retirement.* -- A member who ceases covered employment and has attained early
15 retirement age while in covered employment may elect in writing by completion of an application
16 for retirement required by and submitted to the board to receive retirement income payments
17 commencing on the first day of the month coincident with or following the date the member ceases
18 covered employment and submits the proper application to the board. "Normal retirement age"
19 for such a member is the first day of the calendar month coincident with or next following the
20 month in which the member attains the age of 50 years. If the member's annuity starting date is
21 prior to the date the member attains normal retirement age, his or her accrued benefit is reduced
22 to the actuarial equivalent benefit amount based on the years and months by which his or her
23 annuity starting date precedes the date he or she attains normal retirement age. If the member's
24 annuity starting date is later than the date the member attains the age of 50 years, the accrued
25 benefit is adjusted as provided in subsection (c) of this section.

26 (c) *Late retirement.* -- A member whose annuity starting date is later than the date the
27 member attains normal retirement age shall receive retirement income payments in the normal
28 form which is the benefit to which he or she is entitled according to his or her accrued benefit
29 based on his or her final average salary and credited service at the time of his or her actual
30 retirement and following the completion of an application for retirement as required by the board.

31 (d) *Retirement benefits.* -- Shall be paid monthly in an amount equal to one twelfth of the
32 retirement income payments elected and at those times established by the board.
33 Notwithstanding any other provision of the plan, a member who is married on the annuity starting
34 date will receive his or her retirement income payments in the form of a 66 and two-thirds percent
35 joint and survivor annuity with his or her spouse unless prior to the annuity starting date the
36 spouse waives the form of benefit.

§16-5VV-18. Annuity options.

1 Prior to the effective date of retirement, but not after that date, a member may elect to
2 receive retirement income payments in the normal form, or the actuarial equivalent of the normal
3 form from the following options:

4 (a) Option A -- Contingent joint and survivor annuity. -- A life annuity payable during the
5 joint lifetime of the member and his or her beneficiary who shall be a natural person with an
6 insurable interest in the member's life. Upon the death of the member, the benefit shall continue
7 as a life annuity to the beneficiary in an amount equal to 50 percent, 66 and two-thirds percent,
8 75 percent or 100 percent of the amount paid while both were living as selected by the member.
9 If the beneficiary dies first, the monthly amount of benefits may not be reduced, but shall be paid
10 at the amount that was in effect before the death of the beneficiary. If the retiring member is
11 married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the
12 spouse.

13 (b) Option B -- Ten years certain and life annuity. -- A life annuity payable during the
14 member's lifetime but in any event for a minimum of 10 years. If the member dies before the
15 expiration of 10 years, the remaining payments shall be made to a designated beneficiary, if any,
16 or otherwise to the member's estate.

§16-5VV-19. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

1 (a) Any member who terminates covered employment and is not eligible to receive
2 disability benefits under this article is, by written request filed with the board, entitled to receive
3 from the fund the member's accumulated contributions. Except as provided in subsection (b) of
4 this section, upon withdrawal the member shall forfeit his or her accrued benefit and cease to be
5 a member.

6 (b) Any member who withdraws accumulated contributions from either this plan or the
7 Public Employees Retirement System and thereafter becomes reemployed in covered

8 employment may not receive any credited service for the prior covered employment unless
9 following his or her return to covered employment, the member redeposits in the fund the amount
10 of the accumulated contributions withdrawn from previous covered employment, together with
11 interest on the accumulated contributions at the rate determined by the board from the date of
12 withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on
13 account of his or her former covered employment as if no refund had been made. The repayment
14 shall be made in a lump sum within 60 months of the 911 emergency services officer's
15 reemployment or if later, within 60 months of the effective date of this article.

16 (c) Every member who completes 60 months of covered employment is eligible, upon
17 cessation of covered employment, to either withdraw his or her accumulated contributions in
18 accordance with this section, or to choose not to withdraw his or her accumulated contribution
19 and to receive retirement income payments upon attaining early or normal retirement age.

20 (d) Notwithstanding any other provision of this article, forfeitures under the plan may not
21 be applied to increase the benefits any member would otherwise receive under the plan.

§16-5VV-20. Awards and benefits for disability -- Duty related.

1 (a) Any member who after the effective date of this article and during covered employment:
2 (1) Has been or becomes totally disabled by injury, illness or disease; and (2) the disability is a
3 result of an occupational risk or hazard inherent in or peculiar to the services required of members;
4 or (3) the disability was incurred while performing emergency medical services functions during
5 either scheduled work hours or at any other time; and (4) in the opinion of two physicians after
6 medical examination, one of whom shall be named by the board, the member is by reason of the
7 disability unable to perform adequately the duties required of an 911 emergency services officer,
8 is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of
9 the member, or if sooner until the member attains normal retirement age or until the disability
10 sooner terminates, the compensation under this section.

11 (b) If the member is totally disabled, the member shall receive 90 percent of his or her

12 average monthly compensation for the 12-month period preceding the member's disability, or the
13 shorter period if the member has not worked 12 months.

14 (c) If the member remains totally disabled until attaining 65 years of age, the member shall
15 then receive the retirement benefit provided in §16-5VV-16 and §16-5VV-17 of this code.

§16-5VV-21. Same -- Due to other causes.

1 (a) Any member who, after the effective date of this article and during covered
2 employment: (1) Has been or becomes totally disabled from any cause other than those set forth
3 in §16-5VV-19 of this code and not due to vicious habits, intemperance or willful misconduct on
4 his or her part; and (2) in the opinion of two physicians after medical examination, one of whom
5 shall be named by the board, he or she is by reason of the disability unable to perform adequately
6 the duties required of an 911 emergency services officer, is entitled to receive and shall be paid
7 from the fund in monthly installments during the lifetime of the member, or if sooner until the
8 member attains normal retirement age, or until the disability sooner terminates the compensation
9 set forth in, either subsection (b) or (c) of this section.

10 (b) If the member is totally disabled, he or she shall receive 66 and two-thirds percent of
11 his or her average monthly compensation for the 12-month period preceding the disability, or the
12 shorter period, if the member has not worked 12 months.

13 (c) If the member remains totally disabled until attaining 60 years of age, then the member
14 shall receive the retirement benefit provided in §16-5VV-16 and §16-5VV-17 of this code.

15 (d) The board shall propose legislative rules for promulgation in accordance with §29A-3-
16 1 et seq. of this code concerning member disability payments so as to ensure that the payments
17 do not exceed 100 percent of the average current salary for the position last held by the member.

§16-5VV-22. Same -- Physical examinations; termination of disability.

1 The board may require any member who has applied for or is receiving disability benefits
2 under this article to submit to a physical examination, mental examination or both, by a physician
3 or physicians selected or approved by the board and may cause all costs incident to the

4 examination and approved by the board to be paid from the fund. The costs may include hospital,
 5 laboratory, X ray, medical and physicians' fees. A report of the findings of any physician shall be
 6 submitted in writing to the board for its consideration. If, from the report, independent information,
 7 or from the report and any hearing on the report, the board is of the opinion and finds that: (1)
 8 The member has become reemployed as a 911 emergency services officer; (2) a physician who
 9 has examined the member has found that considering the opportunities for 911 emergency
 10 services in West Virginia, the member could be so employed as a 911 emergency services officer;
 11 or (3) other facts exist to demonstrate that the member is no longer totally disabled, then the
 12 disability benefits shall cease. Benefits shall cease once the member has been found to be no
 13 longer totally disabled: *Provided*, That the board shall require annual recertification.

§16-5VV-23. Prior disability.

1 Any 911 emergency services officer who became totally disabled as a result of illness or
 2 injury incurred in the line of duty prior to the effective date of this article may be a member of the
 3 plan at his or her election and is entitled to disability, death and retirement benefits under this
 4 article in lieu of any other disability, death or retirement benefits provided solely in conjunction
 5 with a retirement system of this state or his or her county of employment: *Provided*, That the 911
 6 emergency services officer would have been eligible for disability under §16-5VV-20 had that
 7 section been in effect at the time of the disability. The amounts of the benefits shall be determined
 8 as if the disability first commenced after the effective date of this article with monthly
 9 compensation equal to that average monthly compensation which the member was receiving in
 10 the plan year prior to the initial disability. For the purposes of this section, benefits paid pursuant
 11 to chapter 23 of this code are not death or retirement benefits provided solely in conjunction with
 12 a retirement system of this state or county of this state.

§16-5VV-24. Awards and benefits to surviving spouse -- When member dies in performance of duty, etc.

1 (a) The surviving spouse of any member who, after the effective date of this article while

2 in covered employment, has died or dies by reason of injury, illness or disease resulting from an
3 occupational risk or hazard inherent in or peculiar to the service required of members, while the
4 member was or is engaged in the performance of his or her duties as an 911 emergency services
5 officer, or the survivor spouse of a member who dies from any cause while receiving benefits
6 pursuant to §16-5VV-19 of this code, is entitled to receive and shall be paid from the fund benefits
7 as determined in subsection (b) of this section: To the surviving spouse annually, in equal monthly
8 installments during his or her lifetime an amount equal to the greater of: (1) Two thirds of the
9 annual compensation received in the preceding 12-month period by the deceased member; or (2)
10 if the member dies after his or her early or normal retirement age, the monthly amount which the
11 spouse would have received had the member retired the day before his or her death, elected a
12 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

13 (b) Benefits for a surviving spouse received under this section, §16-5VV-26 and §16-5VV-
14 27 of this code are in lieu of receipt of any other benefits under this article for the spouse or any
15 other person or under the provisions of any other state retirement system based upon the
16 member's covered employment.

§16-5VV-25. Same -- When member dies from nonservice-connected causes.

1 (a) If a member who has been a member for at least 10 years, while in covered
2 employment after the effective date of this article, has died or dies from any cause other than
3 those specified in §16-5VV-24 of this code and not due to vicious habits, intemperance or willful
4 misconduct on his or her part, the fund shall pay annually in equal monthly installments to the
5 surviving spouse during his or her lifetime, a sum equal to the greater of: (1) One half of the annual
6 compensation received in the preceding 12-month employment period by the deceased member;
7 or (2) if the member dies after his or her early or normal retirement age, the monthly amount which
8 the spouse would have received had the member retired the day before his or her death, elected
9 a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.
10 Where the member is receiving disability benefits under this article at the time of his or her death,

11 the most recent monthly compensation determined under §16-5VV-23 of this code shall be
12 substituted for the annual compensation in subdivision (1) of this subsection.

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

§16-5VV-26. Additional death benefits and scholarships -- Dependent children.

1 (a) In addition to the spouse death benefits in this article, the surviving spouse is entitled
2 to receive and there shall be paid to the spouse \$100 monthly for each dependent child.

3 (b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly
4 to each dependent child a sum equal to 100 percent of the spouse's entitlement under this article
5 divided by the number of dependent children. If there is neither a surviving spouse nor a
6 dependent child, the fund shall pay in equal monthly installments to the dependent parents of the
7 deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse,
8 without children, would have received: *Provided*, That when there is only one dependent parent
9 surviving, that parent is entitled to receive during his or her lifetime one-half the amount which
10 both parents, if living, would have been entitled to receive.

11 (c) Any person qualifying as a dependent child under this, in addition to any other benefits
12 due under this or other sections of this article, is entitled to receive a scholarship to be applied to
13 the career development education of that person. This sum, up to but not exceeding \$6,000 per
14 year, shall be paid from the fund to any university or college in this state or to any trade or
15 vocational school or other entity in this state approved by the board, to offset the expenses of
16 tuition, room and board, books, fees or other costs incurred in a course of study at any of these
17 institutions so long as the recipient makes application to the board on an approved form and under
18 such rules as the board may provide, and maintains scholastic eligibility as defined by the
19 institution or the board. The board may propose legislative rules for promulgation in accordance

20 with §29A-3-1 et seq. of this code which define age requirements, physical and mental
21 requirements, scholastic eligibility, disbursement methods, institutional qualifications and other
22 requirements as necessary and not inconsistent with this section.

§16-5VV-27. Burial benefit.

1 Any member who dies as a result of any service related illness or injury after the effective
2 date is entitled to a lump sum burial benefit of \$5,000. If the member is married, the burial benefit
3 shall be paid to the member's spouse. If the member is not married, the burial benefit shall be
4 paid to the member's estate for the purposes of paying burial expenses, settling the member's
5 final affairs, or both.

§16-5VV-28. Double death benefits prohibited.

1 A surviving spouse is not entitled to receive simultaneous death benefits under this article
2 as a result of the death of two or more members to whom the spouse was married. Any spouse
3 who becomes eligible for a subsequent death benefit under this article while receiving a death
4 benefit under this article shall receive the higher benefit, but not both.

§16-5VV-29. Right to benefits not subject to execution, etc.; assignments prohibited;
deductions for group insurance; setoffs for fraud; exception for certain domestic
relations orders; benefits exempt from taxes.

1 The right of a person to any benefit provided for in this article may not be subject to
2 execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other
3 process whatsoever, nor shall any assignment thereof be enforceable in any court except that the
4 benefits or contributions under this system shall be subject to "qualified domestic relations orders"
5 as that term is defined in Section 414(p) of the Internal Revenue Code as applicable to
6 governmental plans: *Provided*, That if a member is covered by a group insurance or prepayment
7 plan participated in by a participating public employer, and if he or she is permitted to, and elects
8 to, continue such coverage as a retirant, he or she may authorize the board of trustees to have
9 deducted from his or her annuity the payments required of him or her to continue coverage under

10 such group insurance or prepayment plan: *Provided, however,* That a participating public
11 employer may setoff for any claim arising from embezzlement by, or fraud of, a member, retirant
12 or beneficiary. The assets of the retirement system are hereby exempt from state, county and
13 municipal taxes.

§16-5VV-30. Fraud; penalties; and repayment.

1 Any person who knowingly makes any false statement or who falsifies or permits to be
2 falsified any record of the retirement system in any attempt to defraud that system is guilty of a
3 misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$1,000, by
4 confinement in jail not to exceed one year, or by both fine and confinement. Any increased benefit
5 received by any person as a result of the falsification or fraud shall be returned to the fund upon
6 demand by the board.

§16-5VV-31. Credit toward retirement for member's prior military service; credit toward
retirement when member has joined armed forces in time of armed conflict;
qualified military service.

1 (a) Any member who has previously served on active military duty is entitled to receive
2 additional years of service for the purpose of determining his or her years of credited service for
3 a period equal to the active military duty not to exceed five years, subject to the following:

4 (1) That he or she has been honorably discharged from the armed forces;

5 (2) That he or she substantiates by appropriate documentation or evidence his or her
6 period of active military duty; and

7 (3) That he or she is receiving no benefits from any other retirement system for his or her
8 active military duty.

9 (b) In addition, any member who while in covered employment was commissioned,
10 enlisted or inducted into the armed forces of the United States or, being a member of the reserve
11 officers' corps, was called to active duty in the armed forces between September 1, 1940, and
12 the close of hostilities in World War II, or between June 27, 1950, and the close of the armed

13 conflict in Korea on July 27, 1953, between August 1, 1964, and the close of the armed conflict in
14 Vietnam, or during any other period of armed conflict by the United States whether sanctioned by
15 a declaration of war by Congress or by executive or other order of the President, is entitled to and
16 shall receive credited service, for a period equal to the full time that he or she has or, pursuant to
17 that commission, enlistment, induction or call, shall have served with the armed forces subject to
18 the following:

19 (1) That he or she has been honorably discharged from the armed forces;

20 (2) That within 90 days after honorable discharge from the armed forces, he or she
21 presented himself or herself to the county commission or other political subdivision and offered to
22 resume service as a 911 emergency services officer; and

23 (3) That he or she has made no voluntary act, whether by reenlistment, waiver of
24 discharge, acceptance of commission or otherwise, to extend or participate in extension of the
25 period of service with the armed forces beyond the period of service for which he or she was
26 originally commissioned, enlisted, inducted or called.

27 (c) The total amount of service allowable under subsections (a) and (b) of this section may
28 not exceed five years.

29 (d) Any service credit allowed under this section may be credited one time only for each
30 911 emergency services officer, regardless of any changes in job title or responsibilities.

31 (e) Notwithstanding any provision of this section to the contrary, contributions, benefits
32 and service credit with respect to qualified military service shall be provided in accordance with
33 Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military
34 service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The
35 Retirement Board is authorized to determine all questions and make all decisions relating to this
36 section and, pursuant to the authority granted to the board in §5-10D-1 of this code, may
37 promulgate rules relating to contributions, benefits and service credit to comply with Section
38 414(u) of the Internal Revenue Code.

§16-5VV-32. How a county commission or political subdivision becomes a participating public employer.

1 Any county commission or political subdivision employing 911 emergency services officers
2 may by a three-fifths vote of its governing body, or by a majority vote of its electors, elect to
3 become a participating public employer and thereby include its 911 emergency services officers
4 in the membership of the plan. The clerk or secretary of each such county commission or political
5 subdivision electing to become a participating public employer shall certify the determination of
6 the county commission or political subdivision to the Consolidated Public Retirement Board within
7 10 days from and after the vote of the governing body or the canvass of votes upon such action.
8 Once a county commission or political subdivision elects to participate in the plan, the action is
9 final and it may not, later, elect to terminate its participation in the plan.

§16-5VV-33. Effective date; report to Joint Committee on Government and Finance; special starting date for benefits.

1 (a) The provisions of this article become effective January 1, 2021: *Provided*, That no
2 payout of any benefits may be made to any person prior to January 1, 2024: *Provided, however*,
3 That members who retired due to a disability may begin receiving the benefits at the rate and in
4 the amount specified in this article, from this fund after June 30, 2021: *Provided further*, That until
5 June 30, 2021, those members who retired due to a disability may draw benefits from this fund at
6 the rate and in the amount set forth in §5-10-25 of this code.

7 (b) During the 18-month period before the payout of benefits begins, the Joint Committee
8 on Government and Finance shall cause an interim study or studies to be conducted on potential
9 effects of the implementation of this retirement system, including, but not limited to, potential
10 funding mechanisms to provide health insurance coverage for retirees in the 50 to 55 age group:
11 *Provided*, That after the effective date of this provision, the Director of the Public Employees
12 Insurance Agency shall propose a rule for legislative approval in accordance with §29A-3-1 *et*
13 *seq.* of this code governing the funding of health insurance coverage for retirees under the plan

14 provided in this article who are in the 50 to 55 year age group, which rule may be filed as an
15 emergency rule: *Provided, however,* That any rule filed as an emergency rule pursuant to this
16 subsection shall be refiled at the earliest opportunity as a legislative rule for review and
17 promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code.

§16-5VV-34. Limitation of county liability.

1 No county which has timely met all of its obligations under this article is liable for any
2 payments or contributions to the 911 emergency services retirement plan which are owed to the
3 plan by another county or counties.

§16-5VV-35. Benefits not forfeited if system terminates.

1 If the retirement system is terminated or contributions are completely discontinued, the
2 rights of all members to benefits accrued or contributions made to the date of the termination or
3 discontinuance, to the extent then funded, are not forfeited.

NOTE: The purpose of this bill is to establish a 911 Emergency Services Retirement System.

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