WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4688

By Delegates Barrett, Hardy, Storch, Graves, Householder, and Criss

[Introduced February 15, 2022; Referred to the Committee on Finance]

A BILL to amend and reenact §16-5V-2 and §16-5V-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-5V-6a, all relating to transferring employed county firefighters from the Public Employees Retirement System to the Emergency Medical Services Retirement System; defining and declaring county firefighters as a member of the Emergency Medical Services Retirement System; requiring notice to be given to covered firefighters; providing for persons not currently employed as firefighter to elect to transfer upon rehire; providing for transfer of assets pertaining to county firefighters; requiring certain computations to be made by the Consolidated Public Retirement Board; terminating liability of the Public Employees Retirement System; and providing for purchase of service time through payment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-2. Definitions.

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

(a) “Accrued benefit” means on behalf of any member two and six-tenths percent per year of the member’s final average salary for the first 20 years of credited service. Additionally, two percent per year for 21 through 25 years and one and one-half percent per year for each year over 25 years will be credited with a maximum benefit of 67 percent. A member’s accrued benefit may not exceed the limits of section 415 of the Internal Revenue Code and is subject to the provisions of section 12 of this article.

(1) The board may, upon the recommendation of the board’s actuary, increase the employees’ contribution rate to 10 and 5/10 percent should the funding of the plan not reach 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and one-half percent once the plan funding reaches the 70 percent support objective as of any later actuarial valuation date.

(2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date, the board shall increase the two and six-tenths percent to two and three-quarter percent for the first 20 years of credited service. The maximum benefit will also be increased from 67 percent to 90 percent.

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

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

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

(e) “Annual compensation” means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and section 401(a)(17) of the Internal Revenue Code.

(f) “Annual leave service” means accrued annual leave.

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

(h) “Board” means the Consolidated Public Retirement Board.

(i) “Contributing service” or “contributory service” means service rendered by a member while employed by a participating public employer for which the member made contributions to the plan.

(j) “County commission or political subdivision” has the meaning ascribed to it in this code.

(k) “Covered employment” means either: (1) Employment as a full-time emergency medical technician, emergency medical technician/paramedic or emergency medical services/registered nurse and the active performance of the duties required of emergency medical services officers; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by an emergency medical services officer in a job or jobs in addition to his or her employment as an emergency medical services officer where the secondary employment requires the emergency medical services officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided,* That the emergency medical services officer contributes to the fund created in this article the amount specified as the member’s contribution in section eight of this article.

(l) “Credited service” means the sum of a member’s years of service, active military duty, disability service and accrued annual and sick leave service.

(m) “Dependent child” means either:

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

(A) A natural child of the member;

(B) A legally adopted child of the member;

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

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

(2) Any unmarried child under age 23:

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

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

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

(n) “Dependent parent” means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member’s death.

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

(p) “Early retirement age” means age 45 or over and completion of 20 years of contributory service.

(q) “Effective date” means January 1, 2008.

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

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

(t) “Final average salary” means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member’s last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member’s attainment of normal retirement age and during that period the member received disability benefits under this article, then “final average salary” means the average of the monthly salary determined paid to the member during that period as determined under section nineteen of this article multiplied by 12. Final average salary does not include any lump sum payment for unused, accrued leave of any kind or character.

(u) “Full-time employment” means permanent employment of an employee by a participating public employer in a position which normally requires twelve months per year service and requires at least 1,040 hours per year service in that position.

(v) “Fund” means the West Virginia Emergency Medical Services Retirement Fund created by this article.

(w) “Hour of service” means:

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

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

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

(x) “Member” means a person first hired as an emergency medical services officer, or as a county firefighter, by an employer which is a participating public employer of the Public Employees Retirement System or the Emergency Medical Services Retirement System after the effective date of this article, as defined in subsection (q) of this section, or an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(y) “Monthly salary” means the W-2 reportable compensation received by a member during the month.

(z) “Normal form” means a monthly annuity which is 1/12 of the amount of the member’s accrued benefit which is payable for the member’s life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(aa) “Normal retirement age” means the first to occur of the following:

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

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

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

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

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

(cc) “Political subdivision” means a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided,* That any public corporation established under section four, article 15, chapter seven of this code is considered a political subdivision solely for the purposes of this article.

(dd) “Plan” means the West Virginia Emergency Medical Services Retirement System established by this article.

(ee) “Plan year” means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(ff) “Public Employees Retirement System” means the West Virginia Public Employee’s Retirement System created by West Virginia Code.

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

(hh) “Required beginning date” means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age 70 and 1/2; or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(ii) “Retirant” means any member who commences an annuity payable by the plan.

(jj) Retire or retirement means a members withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

(kk) “Retirement income payments” means the monthly retirement income payments payable under the plan.

(ll) “Spouse” means the person to whom the member is legally married on the annuity starting date.

(mm) “Surviving spouse” means the person to whom the member was legally married at the time of the member’s death and who survived the member.

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

For purposes of this subsection:

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

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

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

Hours of Service Year of Service Credited.

Less than 500 0

500 to 999 1/3

1,000 to 1,499 2/3

1,500 or more 1

During a member’s first and last years of covered employment, the member shall be credited with 1/12 of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section 19 or 20 of this article. Except as specifically excluded, years of service include covered employment prior to the effective date.

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

§16-5V-6a. County Firefighter Members.

(a) Any county firefighter first employed by a county after the effective date of the revisions to this article made in the 2022 legislative session, shall be a member of this retirement plan by virtue of that employment and upon membership does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment.

(b) Any county firefighter employed in covered employment by an employer which is currently a participating public employer of the Public Employees Retirement System shall notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan by December 31, 2023. Any county firefighter who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the county firefighter remains employed in covered employment by an employer which is currently a participating public employer of this plan: *Provided,* That any county firefighter who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is, from time to time, offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any county firefighter who was employed as a county firefighter prior to the effective date, but was not employed on the effective date of this article, shall become a member upon rehire as an county firefighter. For purposes of this section, the member’s years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless the county firefighter has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan. If the conditions of this subsection are met, all years of the county firefighter’s covered employment shall be counted as years of service for the purposes of this article.

(d) Any county firefighter employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be given credited service at the time of transfer for all credited service then standing to the county firefighter‘s service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in §5-10-2 of this code) was earned as a county firefighter. All credited service standing to the transferring county firefighter’s credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article and the transferring county firefighter shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring county firefighter would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring county firefighter receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: *Provided,* That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as a county firefighter and which service was withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(e) Once made, the election made under this section is irrevocable. All county firefighters employed by an employer which is a participating public employer of the Public Employees Retirement System after the effective date and county firefighters electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by this article.

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

(a) The Consolidated Public Retirement Board shall, within one hundred eighty days of the effective date of the transfer of ~~an emergency medical services officer~~ a county firefighter from the Public Employees Retirement System to the plan, transfer assets from the Public Employees Retirement System Trust Fund into the West Virginia Emergency Medical Services Trust Fund.

(b) Except as provided in subsection (e) of this section, the amount of assets to be transferred for each transferring ~~emergency medical services officer~~ county firefighter shall be computed as of January 1, ~~2008~~ 2023, using July 1, ~~2007~~ 2022, actuarial valuation of the Public Employees Retirement System, and updated with seven and one-half percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring emergency medical services officer in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

(1) Compute the market value of the Public Employees Retirement System assets as of July 1, ~~2007~~ 2022, actuarial valuation date under the actuarial valuation approved by the board;

(2) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries, disabled retirees and terminated inactive members as of July 1, ~~2007~~ 2022, actuarial valuation date;

(3) Compute the market value of active member assets in the Public Employees Retirement System as of July 1, ~~2007~~ 2022, by reducing the assets value under subdivision (1) of this subsection by the inactive liabilities under subdivision (2) of this subsection;

(4) Compute the actuarial accrued liability for all active Public Employees Retirement System members as of July 1, ~~2007~~ 2022, actuarial valuation date approved by the board;

(5) Compute the funded percentage of the active members’ actuarial accrued liabilities under the Public Employees Retirement System as of July 1, ~~2007~~ 2022, by dividing the active members’ market value of assets under subdivision (3) of this subsection by the active members’ actuarial accrued liabilities under subdivision (4) of this subsection;

(6) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of July 1, ~~2007~~ 2022, for ~~active emergency medical services officers~~ county firefighters transferring to the Emergency Medical Services Retirement System;

(7) Determine the assets to be transferred from the Public Employees Retirement System to the Emergency Medical Services Retirement System by multiplying the active members’ funded percentage determined under subdivision (5) of this subsection by the transferring active members' actuarial accrued liabilities under the Public Employees Retirement System under subdivision (6) of this subsection and adjusting the asset transfer amount by interest at seven and 5/10 percent for the period from the calculation date of July 1, ~~2007~~ 2022, through the first day of the month in which the asset transfer is to be completed.

(c) Once ~~an emergency medical services officer~~ a county firefighter has elected to transfer from the Public Employees Retirement System, transfer of that amount as calculated in accordance with the provisions of subsection (b) of this section, or subsection (e) if applicable, by the Public Employees Retirement System shall operate as a complete bar to any further liability to the Public Employees Retirement System and constitutes an agreement whereby the transferring emergency medical services officer forever indemnifies and holds harmless the Public Employees Retirement System from providing him or her any form of retirement benefit whatsoever until that ~~emergency medical services officer~~ county firefighter obtains other employment which would make him or her eligible to reenter the Public Employees Retirement System with no credit whatsoever for the amounts transferred to the Emergency Medical Services Retirement System.

(d) Eligible ~~emergency medical services officers~~ county firefighters that transfer from plans other than the Public Employees Retirement System shall have service recognized under this plan through the purchase of the service through payment by the member of 60 percent of the actuarial accrued liabilities which would result if the service is credited under the Emergency Medical Services Retirement System subject to the following:

(1) The service may be purchased in one-year increments of eligible service or for the total period of eligible service;

(2) Payment must begin within 12 months of the effective date of this article;

(3) Payment must be made in either a one-time lump sum payment received by the board no later than December 31, ~~2008~~ 2023, or in regular installment payments payable over 60 months with the initial installment received by the board on or before December 31, ~~2008~~ 2023;

(4) The rate of interest applicable to regular installment payments for the purchase of service shall be the actuarial interest rate assumption as approved by the board for completing the actuarial valuation for the plan year immediately preceding the first day of the plan year in which the service purchase is made, compounded per annum;

(5) Once payments commence, selection of the period of service being purchased may not be amended; and

(6) Service will be credited only upon receipt by the board of all payments due.

(e) Notwithstanding any provision of this code to the contrary, any Emergency Medical Services director who: (1) Is an active member of the Public Employees Retirement System; and (2)has, or obtains within one year of the effective date of the amendments to this section enacted during the 2012 regular session of the Legislature, basic or higher emergency management technician certification, is eligible to transfer service credit from the Public Employees Retirement System to the Emergency Medical Services Retirement System, upon payment of associated costs by the transferring director. The board shall compute the actuarially appropriate amount of any increased benefit cost of transfer to be borne by the transferring director to be paid according to terms established by the board. Any Emergency Medical Services director who transfers to the Emergency Medical Services Retirement System pursuant to the provisions of this subsection shall apply for the transfer to the board within one year of the effective date of the amendments to this section enacted during the 2012 regular session of the Legislature. Upon receipt of the total payment of all associated costs by the transferring director, the board shall compute the amount of assets to be transferred from the Public Employees Retirement System to the Emergency Medical Retirement System and shall transfer the assets within six months of the receipt of the application. Any director transferring into the retirement system as provided in this subsection is prohibited from retiring within three years of transfer.

NOTE: The purpose of this bill is to transfer county firefighters from the Public Employees Retirement System to the Emergency Medical 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.