

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

### **Introduced**

## **House Bill 3242**

By Delegates Storch, Marple, E. Pritt, Kump, C. Pritt,

Anderson, and Hornbuckle

[By Request of the Consolidated Public Retirement  
Board]

[Introduced February 03, 2023; Referred to the  
Committee on Pensions and Retirement then  
Finance]

1 A BILL to amend and reenact §16-5V-2 of the Code of West Virginia, 1931, as amended; and to  
2 amend said code by adding thereto a new section, designated §16-5V-36, all relating to the  
3 Emergency Medical Services Retirement System; defining and amending terms related to  
4 county firefighters, medical examination, and 911 personnel; and adding a severability  
5 section.

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

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

**§16-5V-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 10ths 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 and one-half percent per year for each year over  
6 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit may  
7 not exceed the limits of section 415 of the Internal Revenue Code and is subject to the provisions  
8 of §16-5V-12 of this code.

9 (1) The board may, upon the recommendation of the board's actuary, increase the  
10 employees' contribution rate to 10 and five-tenths percent should the funding of the plan not reach  
11 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and one-  
12 half percent once the plan funding reaches the 70 percent support objective as of any later  
13 actuarial valuation date.

14 (2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date,  
15 the board shall increase the two and six-tenths percent to two and three-quarter percent for the  
16 first 20 years of credited service. The maximum benefit will also be increased from 67 percent to  
17 90 percent.

18 (b) "Accumulated contributions" means the sum of all retirement contributions deducted

19 from the compensation of a member, or paid on his or her behalf as a result of covered  
20 employment, together with regular interest on the deducted amounts.

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

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

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

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

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

44 (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) "County firefighter" means an individual employed in full-time employment as a firefighter with a county commission.

(l) "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) employment as a full-time employee of a county 911 public safety answering point; or (3) employment as a full-time county firefighter; or (4) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) (5) concurrent employment by an emergency medical services officer, 911 personnel or county firefighter in a job or jobs in addition to his or her employment as an emergency medical services officer, 911 personnel or county firefighter where the secondary employment requires the emergency medical services officer, 911 personnel or county firefighter 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, 911 personnel or county firefighter contributes to the fund created in this article the amount specified as the member's contribution in §16-5V-8 of this code.

~~(h)~~ (m) "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)~~ (n) "Dependent child" means either:

(1) An unmarried person under age 18 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)~~ (o) "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.

~~(e)~~ (p) "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)~~ (q) "Early retirement age" means age 45 or over and completion of 20 years of contributory service.

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

~~(r)~~ (s) "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

97 services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical  
98 Services and the Consolidated Public Retirement Board.

99 ~~(s)~~ (t) "Employer error" means an omission, misrepresentation or deliberate act in violation  
100 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the  
101 relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by  
102 the participating public employer that has resulted in an underpayment or overpayment of  
103 contributions required.

104 ~~(t)~~ (u) "Final average salary" means the average of the highest annual compensation  
105 received for covered employment by the member during any five consecutive plan years within the  
106 member's last 10 years of service while employed, prior to any disability payment. If the member  
107 did not have annual compensation for the five full plan years preceding the member's attainment  
108 of normal retirement age and during that period the member received disability benefits under this  
109 article, then "final average salary" means the average of the monthly salary determined paid to the  
110 member during that period as determined under §16-5V-19 of this code multiplied by 12. Final  
111 average salary does not include any lump sum payment for unused, accrued leave of any kind or  
112 character.

113 ~~(u)~~ (v) "Full-time employment" means permanent employment of an employee by a  
114 participating public employer in a position which normally requires 12 months per year service and  
115 requires at least 1040 hours per year service in that position.

116 ~~(v)~~ (w) "Fund" means the West Virginia Emergency Medical Services Retirement Fund  
117 created by this article.

118 ~~(w)~~ (x) "Hour of service" means:

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

122 (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 §16-5V-19 or §16-5V-20 of this code; 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.

(y) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

~~(x)~~ (z) "Member" means either: (1) a person first hired as an emergency medical services officer 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 (2) 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; or (3) or a person first hired by a county 911 public safety answering center after the participating public employer elects to participate in the Emergency Medical Services Retirement System; or (4) a county firefighter hired on or after June 10, 2022; or (5) a county firefighter of an employer which is a participating public employer of the Public Employees

149 Retirement System first hired prior to June 10, 2022, and who elects to become a member  
150 pursuant to section six-a of this article. A member shall remain a member until the benefits to  
151 which he or she is entitled under this article are paid or forfeited.

152 (y) ~~(aa)~~ "Monthly salary" means the W-2 reportable compensation received by a member  
153 during the month.

154 (z) ~~(bb)~~ "Normal form" means a monthly annuity which is one twelfth of the amount of the  
155 member's accrued benefit which is payable for the member's life. If the member dies before the  
156 sum of the payments he or she receives equals his or her accumulated contributions on the  
157 annuity starting date, the named beneficiary shall receive in one lump sum the difference between  
158 the accumulated contributions at the annuity starting date and the total of the retirement income  
159 payments made to the member.

160 ~~(aa)~~ ~~(cc)~~ "Normal retirement age" means the first to occur of the following:

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

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

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

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

170 ~~(bb)~~ ~~(dd)~~ "Participating public employer" means: (1) any county commission, or political  
171 subdivision, or county 911 public safety answering point in the state which has elected to cover its  
172 emergency medical services officers or 911 personnel, as defined in this article, under the West  
173 Virginia Emergency Medical Services Retirement System; or (2) any county commission who  
174 employs county firefighters.



175       ~~(cc)~~ (ee) "Plan" means the West Virginia Emergency Medical Services Retirement System  
176 established by this article.

177       ~~(dd)~~ (ff) "Plan year" means the 12-month period commencing on January 1 of any  
178 designated year and ending the following December 31.

179       ~~(ee)~~ (gg) "Political subdivision" means a county, city or town in the state; any separate  
180 corporation or instrumentality established by one or more counties, cities or towns, as permitted by  
181 law; any corporation or instrumentality supported in most part by counties, cities or towns; and any  
182 public corporation charged by law with the performance of a governmental function and whose  
183 jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any public  
184 corporation established under §7-15-4 of this code is considered a political subdivision solely for  
185 the purposes of this article.

186       ~~(ff)~~ (hh) "Public Employees Retirement System" means the West Virginia Public  
187 Employee's Retirement System created by West Virginia Code.

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

190       ~~(hh)~~ (jj) "Required beginning date" means April 1 of the calendar year following the later of:  
191 (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72  
192 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise  
193 separates from covered employment.

194       ~~(ii)~~ (kk) "Retirant" means any member who commences an annuity payable by the plan.

195       ~~(jj)~~ (ll) "Retire" or "retirement" means a member's withdrawal from the employ of a  
196 participating public employer and the commencement of an annuity by the plan.

197       ~~(kk)~~ (mm) "Retirement income payments" means the monthly retirement income payments  
198 payable under the plan.

199       ~~(ll)~~ (nn) "Spouse" means the person to whom the member is legally married on the annuity  
200 starting date.

~~(mm)~~ (oo) "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)~~ (pp) "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 12 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, 911 personnel or county firefighter 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.

~~(qq)~~ (qq) "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	Years of Service Credited
Less than 500	0

500 to 999	1/3
1000 to 1499	2/3
1500 or more	1

224 During a member's first and last years of covered employment, the member shall be  
 225 credited with one twelfth of a year of service for each month during the plan year in which the  
 226 member is credited with an hour of service for which contributions were received by the fund. A  
 227 member is not entitled to credit for years of service for any time period during which he or she  
 228 received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically  
 229 excluded, years of service include covered employment prior to the effective date.

230 Years of service which are credited to a member prior to his or her receipt of accumulated  
 231 contributions upon termination of employment pursuant to §16-5V-18 of this code or §5-10-30 of  
 232 this code, shall be disregarded for all purposes under this plan unless the member repays the  
 233 accumulated contributions with interest pursuant to section §16-5V-18 of this code or has prior to  
 234 the effective date made the repayment pursuant to §5-10-18 of this code.

235 (rr) "911 personnel" means an individual employed in full-time employment with a county  
 236 911 public safety answering point.

**§16-5V-36. Severability.**

1 If any part of this article is declared unconstitutional by a court of competent jurisdiction,  
 2 such decision shall not affect the validity of the remaining provisions of this article in its entirety.

NOTE: The purpose of this bill is to update definitions regarding county firefighters, medical examinations and 911 personnel, and to add a severability section.

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