

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Senate Bill 439

By Senators Nelson, Oliverio, Azinger, Barrett,
Clements, Grady, Hamilton, Hunt, Phillips, Plymale,
Queen, Chapman, Stuart, Woelfel, Takubo, and
Deeds

[Passed March 9, 2024, in effect from passage]

1 AN ACT to amend and reenact §16-5V-2, §16-5V-5, §16-5V-6, §16-5V-8, and §16-5V-14a of the
2 Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two
3 new sections, designated §16-5V-6c and §16-5V-6d, all relating to the Emergency Medical
4 Services Retirement System; defining terms; updating terms to comply with federal laws;
5 authorizing certain 911 personnel to be members of the Emergency Medical Services
6 Retirement System under certain circumstances; requiring costs of the vote to participate
7 be borne by participating employers in relative proportion to members employed; providing
8 for transfer of assets pertaining to 911 personnel; requiring certain computations to be
9 made by the Consolidated Public Retirement Board; requiring administrative costs of the
10 Consolidated Public Retirement Board for transfer of assets pertaining to 911 personnel be
11 borne by participating employers in relative proportion to members transferred; terminating
12 liability of the Public Employees Retirement System in certain circumstances; authorizing
13 use of certain funds for purchase of service credit; and providing for purchase of service
14 credit.

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-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 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 (3) For 911 personnel with assets transferred pursuant to §16-5V-6d of this code who did
19 not elect to pay back higher past contributions with interest, "accrued benefit" means, on behalf of
20 the member, two percent per year of the member's final average salary for all credited service that
21 was credited as a result of transferred assets. Additionally, two and three-quarter percent for the
22 first 20 years of new credited service earned from date of membership in this plan will be credited.
23 Additionally, two percent per year for 21 through 25 years of new credited service earned from date
24 of membership in this plan and one and one-half percent per year for each year over 25 years
25 earned from date of membership in this plan will be credited. A maximum benefit of 90 percent of a
26 member's final average salary may be paid. A member's accrued benefit may not exceed the limits
27 of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this
28 code.

29 (4) For 911 personnel with assets transferred pursuant to §16-5V-6d of this code who did
30 elect to pay back higher past contributions, with interest, for eligible 911 service credit, "accrued
31 benefit" means on behalf of the member two percent per year of the member's final average salary
32 for all non-911 credited service that was credited as a result of transferred assets. Additionally, two
33 and three-quarter percent for the first 20 years of 911 credited service will be credited. Additionally,
34 two percent per year for 21 through 25 years of 911 credited service and one and one-half percent
35 per year for each year over 25 years of 911 credited service will be credited. A maximum benefit of

36 90 percent of a member's final average salary may be paid. A member's accrued benefit may not
37 exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of
38 §16-5V-12 of this code.

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

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

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

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

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

59 (g) "Annuity starting date" means the first day of the month for which an annuity is payable
60 after submission of a retirement application. For purposes of this subsection, if retirement income
61 payments commence after the normal retirement age, "retirement" means the first day of the

62 month following or coincident with the latter of the last day the member worked in covered
63 employment or the member's normal retirement age and after completing proper written
64 application for retirement on an application supplied by the board.

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

66 (i) "Contributing service" or "contributory service" means service rendered by a member
67 while employed by a participating public employer for which the member made contributions to the
68 plan. Contributory service that was transferred in full from the Public Employees Retirement
69 System will qualify as contributory service in this plan.

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

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

73 (l) "Covered employment" means: (1) Employment as a full-time emergency medical
74 technician, emergency medical technician/paramedic, or emergency medical services/registered
75 nurse, and the active performance of the duties required of emergency medical services officers;
76 or (2) employment as a full-time employee of a county 911 public safety answering point; or (3)
77 employment as a full-time county firefighter; or (4) the period of time during which active duties are
78 not performed but disability benefits are received under this article; or (5) concurrent employment
79 by an emergency medical services officer, 911 personnel, or county firefighter in a job or jobs in
80 addition to his or her employment as an emergency medical services officer, 911 personnel, or
81 county firefighter where the secondary employment requires the emergency medical services
82 officer, 911 personnel, or county firefighter to be a member of another retirement system which is
83 administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That
84 the emergency medical services officer, 911 personnel, or county firefighter contributes to the fund
85 created in this article the amount specified as the member's contribution in §16-5V-8 of this code.

86 (m) "Credited service" means the sum of a member's years of service, active military duty,
87 disability service, service transferred from the Public Employees Retirement System, and accrued

88 annual and sick leave service.

89 (n) "Dependent child" means either:

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

91 (A) A natural child of the member;

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

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

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

97 (2) Any unmarried child under age 23:

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

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

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

103 (o) "Dependent parent" means the father or mother of the member who was claimed as a
104 dependent by the member for federal income tax purposes at the time of the member's death.

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

108 (q) "Early retirement age" means age 45 or over and completion of 20 years of contributory
109 service.

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

111 (s) "Emergency medical services officer" means an individual employed by the state,
112 county or other political subdivision as a medical professional who is qualified to respond to
113 medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as

114 defined by the West Virginia Office of Emergency Medical Services. This definition is construed to
115 include employed ambulance providers and other services such as law enforcement, rescue, or
116 fire department personnel who primarily perform these functions and are not provided any other
117 credited service benefits or retirement plans. These persons may hold the rank of emergency
118 medical technician/basic, emergency medical technician/paramedic, emergency medical
119 services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical
120 Services and the Consolidated Public Retirement Board.

121 (t) "Employer error" means an omission, misrepresentation, or deliberate act in violation of
122 relevant provisions of the West Virginia Code, the West Virginia Code of State Rules, or the
123 relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by
124 the participating public employer that has resulted in an underpayment or overpayment of
125 contributions required.

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

135 (v) "Full-time employment" means permanent employment of an employee by a
136 participating public employer in a position which normally requires 12 months per year service and
137 requires at least 1,040 hours per year service in that position.

138 (w) "Fund" means the West Virginia Emergency Medical Services Retirement Fund
139 created by this article.

140 (x) "Hour of service" means:

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

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

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

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

161 (z) "Member" means either: (1) A person first hired as an emergency medical services
162 officer by an employer which is a participating public employer of the Emergency Medical Services
163 Retirement System after the effective date of this article, as defined in subsection (r) of this
164 section; or (2) an emergency medical services officer of an employer which is a participating public
165 employer of the Public Employees Retirement System first hired prior to the effective date and who

166 elects to become a member pursuant to this article; or (3) a person first hired by a county 911
167 public safety answering center after the participating public employer elects to participate in the
168 Emergency Medical Services Retirement System; or (4) a county firefighter hired on or after June
169 10, 2022; or (5) a county firefighter of an employer which is a participating public employer of the
170 Public Employees Retirement System first hired prior to June 10, 2022, and who elects to become
171 a member pursuant to §16-5V-6a of this code; or (6) a person first hired by a county 911 public
172 safety answering center prior to July 1, 2022, and who elects to become a member pursuant to
173 §16-5V-6c of this code. A member shall remain a member until the benefits to which he or she is
174 entitled under this article are paid or forfeited.

175 (aa) "Monthly salary" means the W-2 reportable compensation received by a member
176 during the month.

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

183 (cc) "Normal retirement age" means the first to occur of the following:

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

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

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

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

192 service.

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

198 (ee) "Plan" means the West Virginia Emergency Medical Services Retirement System
199 established by this article.

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

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

209 (hh) "Public Employees Retirement System" means the West Virginia Public Employees
210 Retirement System created by West Virginia Code.

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

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

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

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

220 (mm) "Retirement income payments" means the monthly retirement income payments
221 payable under the plan.

222 (nn) "Spouse" means the person to whom the member is legally married on the annuity
223 starting date.

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

226 (pp) "Totally disabled" means a member's inability to engage in substantial gainful activity
227 by reason of any medically determined physical or mental impairment that can be expected to
228 result in death or that has lasted or can be expected to last for a continuous period of not less than
229 12 months.

230 For purposes of this subsection:

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

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

244 (qq) "Year of service" means a member shall, except in his or her first and last years of
245 covered employment, be credited with years of service credit based upon the hours of service
246 performed as covered employment and credited to the member during the plan year based upon
247 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

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

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

259 (rr) "911 personnel" means an individual employed in full-time employment with a county
260 911 public safety answering point.

§16-5V-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 emergency medical services officers, county firefighters, or 911 personnel
3 eligible to retire under the provisions of this plan. Nothing in this article may be construed to permit
4 a county to substitute this plan for 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, the board shall administer the plan to fulfill this
15 intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article
16 referencing or relating to these federal qualification requirements is effective as of the date
17 required by federal law. The board may propose rules for promulgation and amend or repeal
18 conflicting rules in accordance with the authority granted to the board pursuant to §5-10D-1 of this
19 code to assure compliance with the requirements of this section.

20 (d) The board shall determine any costs incurred by the board attributable to the voluntary
21 transfer of members of the Public Employees Retirement System to the plan pursuant to the
22 provisions of §16-5V-6c and §16-5V-6d of this code. These costs include the cost to make
23 necessary modifications to the existing line of business computer system, and any personnel
24 costs, including employee benefits. The board shall determine the pro rata share of each
25 participating public 911 employer liable for these costs pursuant to this article. Each participating

26 911 employer shall pay the board its pro rata share. The board is authorized to receive funds from
27 the participating public 911 employers as required by this section for purposes of paying costs as
28 set forth in this article.

§16-5V-6.

Members.

1 (a) Any emergency medical services officer, county firefighter, or 911 personnel hired on or
2 after the effective date the participating public employer elected to become a participating public
3 employer shall be a member of this retirement plan as a condition of employment and upon
4 membership does not qualify for membership in any other retirement system administered by the
5 board, so long as he or she remains employed in covered employment: *Provided*, That any
6 emergency medical services officer, county firefighter, or 911 personnel who has concurrent
7 employment in an additional job or jobs which would require the emergency medical services
8 officer, county firefighter, or 911 personnel to be a member of the West Virginia Deputy Sheriffs
9 Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement
10 System, or the West Virginia Natural Resources Police Officer Retirement System shall participate
11 in only one retirement system administered by the board, and the retirement system applicable to
12 the concurrent employment for which the employee has the earliest date of hire shall prevail.

13 (b) Any emergency medical services officer employed in covered employment by an
14 employer which is currently a participating public employer of the Public Employees Retirement
15 System shall notify in writing both the county commission in the county or officials in the political
16 subdivision in which he or she is employed and the board of his or her desire to become a member
17 of the plan by December 31, 2007. Any emergency medical services officer who elects to become
18 a member of the plan ceases to be a member, or have any credit for covered employment in any
19 other retirement system administered by the board, and shall continue to be ineligible for
20 membership in any other retirement system administered by the board so long as the emergency
21 medical services officer remains employed in covered employment by an employer which is
22 currently a participating public employer of this plan: *Provided*, That any emergency medical

23 services officer who does not affirmatively elect to become a member of the plan continues to be
24 eligible for any other retirement system as is, from time to time, offered to other county employees
25 but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

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

37 (d) Any emergency medical services officer employed in covered employment on the
38 effective date of this article who has timely elected to transfer into this plan as provided in
39 subsection (b) of this section shall be given credited service at the time of transfer for all credited
40 service then standing to the emergency medical services officer's service credit in the Public
41 Employees Retirement System regardless of whether the credited service (as that term is defined
42 in §5-10-2 of this code) was earned as an emergency medical services officer. All credited service
43 standing to the transferring emergency medical services officer's credit in the Public Employees
44 Retirement System at the time of transfer into this plan shall be transferred into the plan created by
45 this article and the transferring emergency medical services officer shall be given the same credit
46 for the purposes of this article for all service transferred from the Public Employees Retirement
47 System as that transferring emergency medical services officer would have received from the
48 Public Employees Retirement System as if the transfer had not occurred. In connection with each

49 transferring emergency medical services officer receiving credit for prior employment as provided
50 in this subsection, a transfer from the Public Employees Retirement System to this plan shall be
51 made pursuant to the procedures described in this article: *Provided*, That any member of this plan
52 who has elected to transfer from the Public Employees Retirement System into this plan pursuant
53 to subsection (b) of this section may not, after having transferred into and becoming an active
54 member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in
55 which the member was not in covered employment as an emergency medical services officer and
56 which service was withdrawn from the Public Employees Retirement System prior to his or her
57 elective transfer into this plan.

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

63 (f) Notwithstanding any other provisions of this article, any individual who is a leased
64 employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee"
65 means any individual who performs services as an independent contractor or pursuant to an
66 agreement with an employee leasing organization or similar organization. If a question arises
67 regarding the status of an individual as a leased employee, the board has final power to decide the
68 question.

§16-5V-6c. 911 personnel.

1 (a) In accordance with the provisions of this article, the board shall administer the
2 voluntary transfer of 911 personnel who are members of the Public Employees Retirement System
3 to the Emergency Medical Services Retirement System.

4 (b) 911 personnel, employed by a participating public employer, who are actively
5 contributing members of the Public Employees Retirement System shall be eligible to participate

6 in a vote directly to the board pursuant to subsection (c) of this section: *Provided*, That the 911
7 personnel are employed with a participating public employer in the month prior to the election and
8 for the duration of the election and that their participating public employer does not choose to opt-
9 out of this option to transfer existing employees. The board will notify all participating public
10 employers with 911 personnel of their option to opt-out of transferring existing employees prior to
11 the election. Participating public employers with 911 personnel have until June 28, 2024, to opt
12 out. Participating public employers with 911 personnel who opt out and Public Employees
13 Retirement System employers who are not participating public employers in this plan in the month
14 prior to the election will be barred from future options to transfer existing 911 personnel into this
15 plan for a period of no less than three years from the election and must pay any future transfer
16 costs to the board. In addition, for any future transfers, the board will calculate the initial pro rata
17 share of costs that would have been assessed at the initial transfer and those costs must be paid
18 to the plan.

19 (c) The election period for the vote shall conclude on August 30, 2024. All election forms
20 received by the board on or before August 30, 2024, shall be counted, and any members eligible to
21 vote who do not submit an election form to the board prior to or on August 30, 2024, shall be
22 counted as not electing to transfer to the plan. If at least 75 percent of members eligible to vote
23 pursuant to subsection (b) of this section affirmatively elect to transfer to the plan within the period
24 provided in this subsection, then the board shall notify the employers of all members who
25 affirmatively elected to do so during that period, and contributions to the plan shall begin during
26 October 2024 for those electing to transfer. If more than 25 percent of those members eligible to
27 vote pursuant to subsection (b) of this section do not affirmatively elect to transfer to the plan within
28 that period, the Public Employees Retirement System continues as the retirement system for all
29 911 members eligible to vote. The vote pursuant to this subsection shall be directly to the board
30 and the results shall be unknown to all employers until the time period for voting ends: *Provided*,
31 That any employee eligible to vote pursuant to subsection (b) of this section shall have access

32 through his or her employer to educational materials regarding the vote provided by the board. All
33 members who complete an election form and all participating public employers with 911 personnel
34 eligible to vote shall be notified in writing by the board by September 30, 2024, of the results of the
35 election.

36 (d) Any costs incurred by the board attributable to this section shall be borne by all 911
37 personnel employers of persons eligible to transfer in proportion to the number of persons
38 employed by that employer who are eligible to transfer. The board shall determine its costs
39 incurred attributable to this election to transfer and shall determine the pro rata share of these
40 costs to be borne by the 911 personnel participating employers.

41 (e) Notwithstanding any other provision of this article to the contrary, a person employed as
42 911 personnel may be a member of this retirement plan subject to the provisions of this section.
43 Full-time employment as 911 personnel satisfies the definition of "covered employment" as
44 defined in this article.

45 (f) Any 911 personnel who elects to become a member of the plan does not qualify for
46 active membership in any other retirement system administered by the board, so long as he or she
47 remains employed in covered employment: *Provided*, That any 911 personnel who has concurrent
48 employment in an additional job or jobs which would require the 911 personnel to be an active
49 member of the West Virginia Deputy Sheriffs Retirement System, the West Virginia Municipal
50 Police Officers and Firefighters Retirement System, or the West Virginia Natural Resources Police
51 Officer Retirement System shall actively participate in only one retirement system administered by
52 the board, and the retirement system applicable to the concurrent employment for which the
53 employee has the earliest date of hire shall prevail. Any 911 personnel shall continue to receive his
54 or her accrued benefit of other retirement systems administered by the board, except in the case of
55 Public Employees Retirement System, when credit and assets are transferred to the Emergency
56 Services Retirement System.

57 (g) Any 911 personnel who was employed as 911 personnel prior to July 1, 2024, but was

58 not employed on July 1, 2024, shall become a member upon rehire as 911 personnel. For
59 purposes of this section, the member's years of service and credited service prior to July 1, 2024,
60 may be counted so long as the 911 personnel has not received the return of his or her accumulated
61 contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The
62 member may request in writing to have his or her accumulated contributions and employer
63 contributions from covered employment in the Public Employees Retirement System transferred
64 to the plan and will receive two percent of the member's final average salary for each year
65 transferred. If the conditions of this subsection are met, all years of the 911 personnel's covered
66 employment shall be counted as years of service for the purposes of this article.

67 (h) Any 911 personnel employed in covered employment on July 1, 2024, who has timely
68 elected to transfer into this plan as provided in subsection (b) of this section shall be given credited
69 service at the time of transfer for all credited service then standing to the 911 personnel's service
70 credit in the Public Employees Retirement System regardless of whether the credited service, as
71 defined in §5-10-2 of this code, was earned as a 911 personnel. All credited service standing to the
72 transferring 911 personnel's credit in the Public Employees Retirement System at the time of
73 transfer into this plan shall be transferred into the plan created by this article, and the transferring
74 911 personnel shall be given the same credit for the purposes of this article for all service
75 transferred from the Public Employees Retirement System as that transferring 911 personnel
76 would have received from the Public Employees Retirement System as if the transfer had not
77 occurred but with accrued benefit multipliers subject to the provisions of §16-5V-12 of this code. In
78 connection with each transferring 911 personnel receiving credit for prior employment as provided
79 in this subsection, a transfer from the Public Employees Retirement System to this plan shall be
80 made pursuant to the procedures described in this article: *Provided*, That any member of this plan
81 who has elected to transfer from the Public Employees Retirement System into this plan pursuant
82 to subsection (g) of this section may not, after having transferred into and becoming an active
83 member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in

84 which the member was not in covered employment as a 911 personnel and which service was
85 withdrawn from the Public Employees Retirement System prior to his or her elective transfer into
86 this plan.

87 (i) Once made, the election made under this section is irrevocable. All 911 personnel
88 electing to become members as described in this section, shall be members as a condition of
89 employment and shall make the contributions required by this article.

§16-5V-6d. Transfer of 911 personnel assets from Public Employees Retirement System.

1 (a) If at least 75 percent of those actively contributing members of the Public Employees
2 Retirement System currently employed as 911 personnel eligible to vote affirmatively elect to
3 transfer to the Emergency Medical Services Retirement System within the period provided in §16-
4 5V-6c of this code, then the board shall transfer to the Emergency Medical Services Retirement
5 System all members who affirmatively elected to do so during that period. If more than 25 percent
6 of actively contributing members of the Public Employees Retirement System currently employed
7 as 911 personnel eligible to vote do not affirmatively elect to transfer to the Emergency Medical
8 Services Retirement System within that period, the Public Employees Retirement System
9 continues as the retirement system for all 911 members eligible to vote. Any costs incurred by the
10 board attributable to this section shall be borne by all employers of persons transferring. The
11 board shall determine its costs incurred attributable to this transfer and shall determine the pro rata
12 share of these costs to be borne by the participating public 911 personnel employers.

13 (b) The Consolidated Public Retirement Board shall transfer assets from the Public
14 Employees Retirement System Trust Fund into the West Virginia Emergency Medical Services
15 Trust Fund no later than December 31, 2024.

16 (c) The amount of assets to be transferred for each transferring 911 personnel shall be
17 computed using the July 1, 2023, actuarial valuation of the Public Employees Retirement System,
18 and updated with 7.25 percent annual interest to the date of the actual asset transfer. The market
19 value of the assets of the transferring 911 personnel in the Public Employees Retirement System

20 shall be determined as of the end of the month preceding the actual transfer. To determine the
21 computation of the asset share to be transferred the board shall:

22 (1) Compute the market value of the Public Employees Retirement System assets as of
23 July 1, 2023, actuarial valuation date under the actuarial valuation approved by the board;

24 (2) Compute the actuarial accrued liabilities for all Public Employees Retirement System
25 retirees, beneficiaries, disabled retirees, and terminated inactive members as of July 1, 2023,
26 actuarial valuation date;

27 (3) Compute the market value of active member assets in the Public Employees
28 Retirement System as of July 1, 2023, by reducing the assets value under subdivision (1) of this
29 subsection by the inactive liabilities under subdivision (2) of this subsection;

30 (4) Compute the actuarial accrued liability for all active Public Employees Retirement
31 System members as of July 1, 2023, actuarial valuation date approved by the board;

32 (5) Compute the funded percentage of the active members' actuarial accrued liabilities
33 under the Public Employees Retirement System as of July 1, 2023, by dividing the active
34 members' market value of assets under subdivision (3) of this subsection by the active members'
35 actuarial accrued liabilities under subdivision (4) of this subsection;

36 (6) Compute the actuarial accrued liabilities under the Public Employees Retirement
37 System as of July 1, 2023, for active 911 personnel transferring to the Emergency Medical
38 Services Retirement System;

39 (7) Determine the assets to be transferred from the Public Employees Retirement System
40 to the Emergency Medical Services Retirement System by multiplying the active members' funded
41 percentage determined under subdivision (5) of this subsection by the transferring active
42 members' actuarial accrued liabilities under the Public Employees Retirement System under
43 subdivision (6) of this subsection and adjusting the asset transfer amount by interest at 7.25
44 percent for the period from the calculation date of July 1, 2023, through the first day of the month in
45 which the asset transfer is to be completed.

46 (d) Once a 911 personnel has elected to transfer from the Public Employees Retirement
47 System, transfer of that amount as calculated in accordance with the provisions of subsection (c)
48 of this section by the Public Employees Retirement System shall operate as a complete bar to any
49 further liability to the Public Employees Retirement System and constitutes an agreement
50 whereby the transferring 911 personnel forever indemnifies and holds harmless the Public
51 Employees Retirement System from providing him or her any form of retirement benefit
52 whatsoever until that emergency medical services officer obtains other employment which would
53 make him or her eligible to reenter the Public Employees Retirement System with no credit
54 whatsoever for the amounts transferred to the Emergency Medical Services Retirement System.

55 (e) 911 personnel who timely elected to transfer into this plan may request in writing that
56 the Consolidated Public Retirement Board compute a quote of the amount owed for the member's
57 transferred 911 service to be eligible for the 2.75 percent multiplier. The quote shall be provided to
58 the member within 60 days of the board's receipt of the written request and the employer's
59 verification of 911 service. Other Public Employees Retirement System employment is eligible for
60 transfer, but only at the 2 percent multiplier. To determine the computation of the quote provided,
61 the board shall:

62 (1) Compute the contributions made by each 911 personnel for eligible 911 years under
63 Public Employees Retirement System.

64 (2) Compute the contributions that would have been required under Emergency Medical
65 Services Retirement System for eligible 911 years.

66 (3) Compute the difference with interest at 7.25 percent that each 911 personnel would
67 have been required to pay had he or she originally participated in Emergency Medical Services
68 Retirement System for eligible 911 years.

69 (4) Full reinstatement amount must be repaid no later than December 31, 2029, or prior to
70 the member's effective retirement date, whichever occurs first.

71 (f) Commencement of retirement for transferring 911 personnel may occur on or after

72 January 1, 2025.

73 (g) Any administrative costs to the board associated with this transfer shall be borne by the
74 participating public 911 personnel employers of the transferring members, in relative proportion to
75 the number of members employed.

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

1 (a) 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. An additional amount
3 shall be paid to the fund by the county commission or political subdivision in which the member is
4 employed in covered employment in an amount determined by the board: *Provided*, That in no
5 year may the total of the employer contributions provided in this section, to be paid by the county
6 commission or political subdivision, exceed 10 and one-half percent of the total payroll for the
7 members in the employ of the county commission or political subdivision.

8 (b) Any active member who has concurrent employment in an additional job or jobs and the
9 additional employment requires the member 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 shall contribute to the fund the sum of eight and one-half percent of his or her monthly salary
12 earned as an emergency medical services officer, county firefighter, or 911 personnel as well as
13 the sum of eight and one-half percent of his or her monthly salary earned from any additional
14 employment which additional employment requires the emergency medical services officer,
15 county firefighter, or 911 personnel to be a member of another retirement system which is
16 administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this
17 code. An additional percent of the monthly salary of each member shall be paid to the fund by the
18 concurrent employer by which the member is employed in an amount determined by the board:
19 *Provided*, That in no year may the total of the employer contributions provided in this section, to be
20 paid by the concurrent employer, exceed 10 and one-half percent of the payroll for the concurrent
21 member employees.

22 (c) All required deposits shall be remitted to the board no later than 15 days following the
23 end of the calendar month for which the deposits are required. If the board upon the
24 recommendation of the board actuary finds that the benefits provided by this article can be
25 actuarially funded with a lesser contribution, then the board shall reduce the required member and
26 employer contributions proportionally. Any county commission or political subdivision which fails to
27 make any payment due the Emergency Medical Services Retirement Fund by the fifteenth day
28 following the end of each calendar month in which contributions are due may be required to pay
29 the actuarial rate of interest lost on the total amount owed for each day the payment is delinquent.
30 Accrual of the loss of earnings owed by the delinquent county commission or political subdivision
31 commences after the fifteenth day following the end of the calendar month in which contributions
32 are due and continues until receipt of the delinquent amount. Interest compounds daily and the
33 minimum surcharge is \$50.

§16-5V-14a. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

1 (a) Notwithstanding any provision of this article to the contrary that would otherwise
2 prohibit or limit rollovers and plan transfers to this system, the plan shall accept the following
3 rollovers and plan transfers on behalf of a member solely for the purpose of purchasing permissive
4 service credit, in whole or in part, as otherwise provided in this article or for the repayment of
5 withdrawn or refunded contributions, in whole and in part, with respect to a previous forfeiture of
6 service credit as otherwise provided in this article or for the purpose of paying higher contributions
7 with interest for credit towards eligible 911 service upon initial transfer into this plan: (A) One or
8 more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an
9 individual retirement account described in Section 408(a) of the Internal Revenue Code or from an
10 individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (B) one or
11 more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan
12 that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in

13 Section 403(b) of the Internal Revenue Code; (C) one or more rollovers described in Section
14 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the
15 Internal Revenue Code; or (D) direct trustee-to-trustee transfers or rollovers from a plan that is
16 qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section
17 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the
18 Internal 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 article, the following definitions and limitations 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 the
25 service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue
26 Code: *Provided*, That no more than five years of "nonqualified service credit", as defined in
27 Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service
28 credit allowed to be purchased (other than by means of a rollover or plan transfer), and no
29 nonqualified service credit may be included in any such purchase (other than by means of a
30 rollover or plan transfer) before the member has at least five years of participation in the retirement
31 system.

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

36 (3) Any contribution (other than by means of a rollover or plan transfer) to purchase
37 permissive service credit under any provision of this article must satisfy the special limitation rules
38 described in Section 415(n) of the Internal Revenue Code, and shall be automatically reduced,

39 limited, or required to be paid over multiple years if necessary to ensure such compliance. To the
40 extent any such purchased permissive service credit is qualified military service within the
41 meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the
42 Internal Revenue Code shall be applied to such purchase as described in Section 414(u)(1)(B) of
43 the Internal Revenue Code.

44 (4) For purposes of Section 415(b) of the Internal Revenue Code, the annual benefit
45 attributable to any rollover contribution accepted pursuant to this section shall be determined in
46 accordance with Treasury Regulation §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity
47 payments attributable to any rollover contribution provided under the retirement system over the
48 annual benefit so determined shall be taken into account when applying the accrued benefit
49 limitations of Section 415(b) of the Internal Revenue Code and section twelve of this article.

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

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