

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2802**

4 (By Delegates Pethtel, Jones, Craig, Canterbury,

5 Kump, Lynch and Stowers)

6 (Originating in the House Committee on Finance.)

7
8 [March 21, 2013]

9
10 A BILL to amend and reenact §16-5V-2, §16-5V-8, §16-5V-11, §16-5V-
11 20, §16-5V-21 and §16-5V-24 of the Code of West Virginia,
12 1931, as amended, and to amend said code by adding thereto two
13 new sections, designated §16-5V-8a and §16-5V-35, all relating
14 to the Emergency Medical Services Retirement System; modifying
15 the definition of annual compensation as it relates to
16 determining benefits; adding a definition for contributing
17 service to this article; adding a definition for the terms
18 retire and retirement to this article; providing for
19 correction of participating public employer errors by the
20 board; providing eligibility requirements for commencement of
21 benefits; specifying that the board must be in receipt of a
22 request for estimation of benefits prior to providing a member
23 with an explanation of their estimated gross monthly annuity
24 and a retirement application; providing that a member shall

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

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

20 That §16-5V-2, §16-5V-8, §16-5V-11, §16-5V-20, §16-5V-21 and
21 §16-5V-24 of the Code of West Virginia, 1931, as amended, be
22 amended and reenacted; and that said code be amended by adding
23 thereto two new sections, designated §16-5V-8a and §16-5V-35, all
24 to read as follows:

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

2 **§16-5V-2. Definitions.**

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

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

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

21 (2) Upon reaching the seventy-five percent actuarial funded
22 level, as of an actuarial valuation date, the board shall increase
23 the two and six-tenths percent to two and three-quarter percent for
24 the first twenty years of credited service. The maximum benefit

1 will also be increased from sixty-seven percent to seventy percent.

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

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

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

16 (e) "Annual compensation" means the wages paid to the member
17 during covered employment within the meaning of Section 3401(a) of
18 the Internal Revenue Code, but determined without regard to any
19 rules that limit the remuneration included in wages based upon the
20 nature or location of employment or services performed during the
21 plan year plus amounts excluded under Section 414(h)(2) of the
22 Internal Revenue Code and less reimbursements or other expense
23 allowances, cash or noncash fringe benefits or both, deferred
24 compensation and welfare benefits. Annual compensation for

1 determining benefits during any determination period may not exceed
2 ~~\$100,000 as adjusted for cost of living in accordance with Section~~
3 ~~401(a)(17)(B)~~ the maximum compensation allowed as adjusted for cost
4 of living in accordance with section seven, article ten-d, chapter
5 five of this code and Section 401(a)(17) of the Internal Revenue
6 Code.

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

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

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

18 (i) "Contributing service" or "contributory service" means
19 service rendered by a member while employed by a participating
20 public employer for which the member made contributions to the
21 plan.

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

24 ~~(j)~~ (k) "Covered employment" means either: (1) Employment as

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

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

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

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

21 (A) A natural child of the member;

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

23 (C) A child who at the time of the member's death was living
24 with the member while the member was an adopting parent during any

1 period of probation; or

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

4 (2) Any unmarried child under age twenty-three:

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

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

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

11 ~~(m)~~ (n) "Dependent parent" means the father or mother of the
12 member who was claimed as a dependent by the member for federal
13 income tax purposes at the time of the member's death.

14 ~~(n)~~ (o) "Disability service" means service received by a
15 member, expressed in whole years, fractions thereof or both, equal
16 to one half of the whole years, fractions thereof, or both, during
17 which time a member receives disability benefits under this
18 article.

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

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

22 ~~(q)~~ (r) "Emergency medical services officer" means an
23 individual employed by the state, county or other political
24 subdivision as a medical professional who is qualified to respond

1 to medical emergencies, aids the sick and injured and arranges or
2 transports to medical facilities, as defined by the West Virginia
3 Office of Emergency Medical Services. This definition is construed
4 to include employed ambulance providers and other services such as
5 law enforcement, rescue or fire department personnel who primarily
6 perform these functions and are not provided any other credited
7 service benefits or retirement plans. These persons may hold the
8 rank of emergency medical technician/basic, emergency medical
9 technician/paramedic, emergency medical services/registered nurse,
10 or others as defined by the West Virginia Office of Emergency
11 Medical Services and the Consolidated Public Retirement Board.

12 ~~(r)~~ (s) "Employer error" means an omission, misrepresentation
13 or violation of relevant provisions of the West Virginia Code or of
14 the West Virginia Code of State Rules or the relevant provisions of
15 both the West Virginia Code and of the West Virginia Code of State
16 Rules by the participating public employer that has resulted in an
17 underpayment or overpayment of contributions required. A deliberate
18 act contrary to the provisions of this article by a participating
19 public employer does not constitute employer error.

20 ~~(s)~~ (t) "Final average salary" means the average of the
21 highest annual compensation received for covered employment by the
22 member during any five consecutive plan years within the member's
23 last ten years of service while employed, prior to any disability
24 payment. If the member did not have annual compensation for the

1 five full plan years preceding the member's attainment of normal
2 retirement age and during that period the member received
3 disability benefits under this article, then "final average salary"
4 means the average of the monthly salary determined paid to the
5 member during that period as determined under section nineteen of
6 this article multiplied by twelve. "Final average salary" does not
7 include any lump sum payment for unused, accrued leave of any kind
8 or character.

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

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

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

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

20 (2) Each hour for which a member is paid or entitled to
21 payment for covered employment during a plan year but where no
22 duties are performed due to vacation, holiday, illness, incapacity
23 including disability, layoff, jury duty, military duty, leave of
24 absence or any combination thereof and without regard to whether

1 the employment relationship has terminated. Hours under this
2 subdivision shall be calculated and credited pursuant to West
3 Virginia Division of Labor rules. A member will not be credited
4 with any hours of service for any period of time he or she is
5 receiving benefits under section nineteen or twenty of this
6 article; and

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

15 ~~(w)~~ (x) "Member" means a person first hired as an emergency
16 medical services officer by an employer which is a participating
17 public employer of the Public Employees Retirement System or the
18 Emergency Medical Services Retirement System after the effective
19 date of this article, as defined in subsection ~~(p)~~ (q) of this
20 section, or an emergency medical services officer of an employer
21 which is a participating public employer of the Public Employees
22 Retirement System first hired prior to the effective date and who
23 elects to become a member pursuant to this article. A member shall
24 remain a member until the benefits to which he or she is entitled

1 under this article are paid or forfeited.

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

4 ~~(y)~~ (z) "Normal form" means a monthly annuity which is one
5 twelfth of the amount of the member's accrued benefit which is
6 payable for the member's life. If the member dies before the sum of
7 the payments he or she receives equals his or her accumulated
8 contributions on the annuity starting date, the named beneficiary
9 shall receive in one lump sum the difference between the
10 accumulated contributions at the annuity starting date and the
11 total of the retirement income payments made to the member.

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

14 (1) Attainment of age fifty years and the completion of twenty
15 or more years of regular contributory service, excluding active
16 military duty, disability service and accrued annual and sick leave
17 service;

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

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

24 (4) Attainment of age sixty-two years and completion of five

1 or more years of regular contributory service.

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

7 ~~(bb)~~ (cc) "Political subdivision" means a county, city or town
8 in the state; any separate corporation or instrumentality
9 established by one or more counties, cities or towns, as permitted
10 by law; any corporation or instrumentality supported in most part
11 by counties, cities or towns; and any public corporation charged by
12 law with the performance of a governmental function and whose
13 jurisdiction is coextensive with one or more counties, cities or
14 towns: Provided, That any public corporation established under
15 section four, article fifteen, chapter seven of this code is
16 considered a political subdivision solely for the purposes of this
17 article.

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

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

23 ~~(ee)~~ (ff) "Public Employees Retirement System" means the West
24 Virginia Public Employee's Retirement System created by West

1 Virginia Code.

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

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

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

12 (jj) "Retire" or "retirement" means a member's withdrawal from
13 the employ of a participating public employer and the commencement
14 of an annuity by the plan.

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

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

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

22 ~~(ll)~~ (nn) "Totally disabled" means a member's inability to
23 engage in substantial gainful activity by reason of any medically
24 determined physical or mental impairment that can be expected to

1 result in death or that has lasted or can be expected to last for
2 a continuous period of not less than twelve months.

3 For purposes of this subsection:

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

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

21 ~~(mm)~~ (oo) "Year of service" means a member shall, except in
22 his or her first and last years of covered employment, be credited
23 with years of service credit based upon the hours of service
24 performed as covered employment and credited to the member during

1 the plan year based upon the following schedule:

2 Hours of Service	Year of Service Credited.
3 Less than 500	0
4 500 to 999	1/3
5 1,000 to 1,499	2/3
6 1,500 or more	1

7 During a member's first and last years of covered employment,
8 the member shall be credited with one twelfth of a year of service
9 for each month during the plan year in which the member is credited
10 with an hour of service for which contributions were received by
11 the fund. A member is not entitled to credit for years of service
12 for any time period during which he or she received disability
13 payments under section nineteen or twenty of this article. Except
14 as specifically excluded, years of service include covered
15 employment prior to the effective date.

16 Years of service which are credited to a member prior to his
17 or her receipt of accumulated contributions upon termination of
18 employment pursuant to section eighteen of this article or section
19 thirty, article ten, chapter five of this code, shall be
20 disregarded for all purposes under this plan unless the member
21 repays the accumulated contributions with interest pursuant to
22 section eighteen of this article or has prior to the effective date
23 made the repayment pursuant to section eighteen, article ten,
24 chapter five of this code.

1 **§16-5V-8. Members' contributions; employer contributions.**

2 (a) There shall be deducted from the monthly salary of each
3 member and paid into the fund an amount equal to eight and one-half
4 percent of his or her monthly salary. An additional amount shall be
5 paid to the fund by the county commission or political subdivision
6 in which the member is employed in covered employment in an amount
7 determined by the board: Provided, That in no year may the total of
8 the employer contributions provided in this section, to be paid by
9 the county commission or political subdivision, exceed ten and
10 one-half percent of the total payroll for the members in the employ
11 of the county commission or political subdivision.

12 (b) Any active member who has concurrent employment in an
13 additional job or jobs and the additional employment requires the
14 emergency medical services officer to be a member of another
15 retirement system which is administered by the Consolidated Public
16 Retirement Board pursuant to article ten-d, chapter five of this
17 code shall contribute to the fund the sum of eight and one-half
18 percent of his or her monthly salary earned as an emergency medical
19 services officer as well as the sum of eight and one-half percent
20 of his or her monthly salary earned from any additional employment
21 which additional employment requires the emergency medical services
22 officer to be a member of another retirement system which is
23 administered by the Consolidated Public Retirement Board pursuant
24 to article ten-d, chapter five of this code. An additional percent

1 of the monthly salary of each member shall be paid to the fund by
2 the concurrent employer by which the member is employed in an
3 amount determined by the board: Provided, That in no year may the
4 total of the employer contributions provided in this section, to be
5 paid by the concurrent employer, exceed ten and one-half percent of
6 the payroll for the concurrent member employees.

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

24 ~~(d) If any change or employer error in the records of any~~

1 ~~participating public employer or the retirement system results in~~
2 ~~any member receiving from the system more or less than he or she~~
3 ~~would have been entitled to receive had the records been correct,~~
4 ~~the board shall correct the error and as far as is practicable~~
5 ~~shall adjust the payment of the benefit in a manner that the~~
6 ~~actuarial equivalent of the benefit to which the member was~~
7 ~~correctly entitled shall be paid. Any employer error resulting in~~
8 ~~an underpayment to the retirement system may be corrected by the~~
9 ~~member remitting the required employee contribution and the~~
10 ~~participating public employer remitting the required employer~~
11 ~~contribution. Interest shall accumulate in accordance with the~~
12 ~~Legislative Rule 162 CSR 7 retirement board reinstatement interest,~~
13 ~~and any accumulating interest owed on the employee and employer~~
14 ~~contributions resulting from the employer error shall be the~~
15 ~~responsibility of the participating public employer. The~~
16 ~~participating public employer may remit total payment and the~~
17 ~~employee reimburse the participating public employer through~~
18 ~~payroll deduction over a period equivalent to the time period~~
19 ~~during which the employer error occurred.~~

20 **§16-5V-8a. Correction of errors; underpayments; overpayments.**

21 (a) General rule: If any change or employer error in the
22 records of any participating public employer or the plan results in
23 any member, retirant or beneficiary receiving from the plan more or
24 less than he or she would have been entitled to receive had the

1 records been correct, the board shall correct the error. If
2 correction of the error occurs after the effective retirement date
3 of a retirant, and as far as is practicable, the board shall adjust
4 the payment of the benefit in a manner that the actuarial
5 equivalent of the benefit to which the retirant was correctly
6 entitled shall be paid.

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

1 employee and employer contributions, including interest.

2 (c) Overpayments: (1) When mistaken or excess employer
3 contributions, including any overpayments, have been made to the
4 retirement system by a participating public employer, due to error
5 or other reason, the board shall credit the participating public
6 employer with an amount equal to the erroneous contributions, to be
7 offset against the participating public employer's future liability
8 for employer contributions to the system. Earnings or interest
9 shall not be credited to the employer.

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

1 under any of the means utilized by the board for returning mistaken
2 or excess employee contributions, including any overpayments, to an
3 employee.

4 **§16-5V-11. Retirement; commencement of benefits.**

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

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

24 **§16-5V-20. Awards and benefits for disability -- Due to other**

1 **causes .**

2 (a) Any member ~~who after the effective date of this article~~
3 ~~and~~ with ten or more years of contributing service and who during
4 covered employment: (1) Has been or becomes totally disabled from
5 any cause other than those set forth in section nineteen of this
6 article and not due to vicious habits, intemperance or willful
7 misconduct on his or her part; and (2) in the opinion of two
8 physicians after medical examination, one of whom shall be named by
9 the board, he or she is by reason of the disability unable to
10 perform adequately the duties required of an emergency medical
11 services officer, is entitled to receive and shall be paid from the
12 fund in monthly installments, the compensation set forth in, either
13 subsection (b) or (c) of this section.

14 (b) If the member is totally disabled, he or she shall receive
15 sixty-six and two-thirds percent of his or her average monthly
16 compensation for the twelve-month period immediately preceding the
17 disability award, ~~or the shorter period,~~ if the member has not
18 worked all twelve months during the twelve month period immediately
19 preceding the disability award, the average of the months in which
20 compensation was received for the twelve month period shall be
21 used.

22 (c) If the member remains totally disabled until attaining
23 sixty years of age, then the member shall receive the retirement
24 benefit provided in sections sixteen and seventeen of this article.

1 (d) The board shall propose legislative rules for promulgation
2 in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code concerning member disability payments so
4 as to ensure that the payments do not exceed one hundred percent of
5 the average current salary for the position last held by the
6 member.

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

12 **§16-5V-21. Same -- Physical examinations; termination of**
13 **disability.**

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

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

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

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

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

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

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

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

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

24 The annuity of any member who retires under the provisions of

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