

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Enrolled**

## **Senate Bill 563**

BY SENATORS GAUNCH, BLAIR, LEONHARDT, PLYMALE

AND WALTERS

[Passed March 11, 2016;

in effect 90 days from passage]

1 AN ACT to amend and reenact §16-5V-2 of the Code of West Virginia, 1931, as amended, relating  
2 to definition of “accrued benefit” as it applies to West Virginia Emergency Medical Services  
3 Retirement System; and increasing retirement benefit multiplier for members with more  
4 than twenty-five years of credited service.

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

1 That §16-5V-2 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

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

**§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 twenty years of credited service. Additionally,  
5 two percent per year for twenty-one through twenty-five years and one and one-half percent per  
6 year for each year over twenty-five years will be credited with a maximum benefit of sixty-seven  
7 percent. A member’s accrued benefit may not exceed the limits of Section 415 of the Internal  
8 Revenue Code and is subject to the provisions of section twelve of this article.

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

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

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

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

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

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

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

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

44 application for retirement on an application supplied by the board.

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

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

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

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

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

63 (m) "Dependent child" means either:

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

65 (A) A natural child of the member;

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

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

69 (D) A stepchild of the member residing in the member's household at the time of the

70 member's death; or

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

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

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

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

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

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

82 (p) "Early retirement age" means age forty-five or over and completion of twenty years of  
83 contributory service.

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

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

95 (s) "Employer error" means an omission, misrepresentation or violation of relevant

96 provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant  
97 provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the  
98 participating public employer that has resulted in an underpayment or overpayment of  
99 contributions required. A deliberate act contrary to the provisions of this article by a participating  
100 public employer does not constitute employer error.

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

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

113 (v) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created  
114 by this article.

115 (w) "Hour of service" means:

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

119 (2) Each hour for which a member is paid or entitled to payment for covered employment  
120 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity  
121 including disability, layoff, jury duty, military duty, leave of absence or any combination thereof

122 and without regard to whether the employment relationship has terminated. Hours under this  
123 subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A  
124 member will not be credited with any hours of service for any period of time he or she is receiving  
125 benefits under section nineteen or twenty of this article; and

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

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

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

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

148 (aa) "Normal retirement age" means the first to occur of the following:

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

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

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

156 (4) Attainment of age sixty-two years and completion of five or more years of regular  
157 contributory service.

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

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

168 (dd) "Plan" means the West Virginia Emergency Medical Services Retirement System  
169 established by this article.

170 (ee) "Plan year" means the twelve-month period commencing on January 1 of any  
171 designated year and ending the following December 31.

172 (ff) "Public Employees Retirement System" means the West Virginia Public Employee's  
173 Retirement System created by West Virginia Code.

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

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

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

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

182 (kk) "Retirement income payments" means the monthly retirement income payments  
183 payable under the plan.

184 (ll) "Spouse" means the person to whom the member is legally married on the annuity  
185 starting date.

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

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

192 For purposes of this subsection:

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

199 For purposes of this article, substantial gainful employment is the same definition as used by the

200 United States Social Security Administration.

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

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

209	Hours of Service	Year of Service Credited.
210	Less than 500 .....	0
211	500 to 999 . .....	1/3
212	1,000 to 1,499 .....	2/3
213	1,500 or more .....	1

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

220 Years of service which are credited to a member prior to his or her receipt of accumulated  
221 contributions upon termination of employment pursuant to section eighteen of this article or  
222 section thirty, article ten, chapter five of this code, shall be disregarded for all purposes under this  
223 plan unless the member repays the accumulated contributions with interest pursuant to section  
224 eighteen of this article or has prior to the effective date made the repayment pursuant to section  
225 eighteen, article ten, chapter five of this code.

