

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4152

**FISCAL
NOTE**

BY DELEGATE WALTERS (SOLE SPONSOR-
RESIGNED 3/7/18)

[Introduced January 16, 2018; Referred
to the Committee on Pensions and Retirement then
Finance.]

1 A BILL to amend and reenact §7-14D-2 of the Code of West Virginia, 1931, as amended; to
 2 amend and reenact §8-22A-2 of said code; and to amend and reenact §16-5V-2 of said
 3 code, all relating to the treatment of overtime hours under the Deputy Sheriff Retirement
 4 System, the West Virginia Municipal Police Officers and Firefighters Retirement System
 5 and the Emergency Medical Services Retirement System.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-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 one-quarter percent of the
 4 member's final average salary multiplied by the member's years of credited service. A member's
 5 accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is
 6 subject to the provisions of §7-14D-9a of this code.

7 (b) "Accumulated contributions" means the sum of all amounts deducted from the
 8 compensation of a member, or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code,
 9 either pursuant to §7-14D-7 of this code or §5-10-29 of this code as a result of covered
 10 employment together with regular interest on the deducted amounts.

11 (c) "Active member" means a member who is active and contributing to the plan.

12 (d) "Active military duty" means full-time active duty with any branch of the Armed Forces
 13 of the United States, including service with the National Guard or Reserve military forces when
 14 the member has been called to active full-time duty and has received no compensation during the
 15 period of that duty from any board or employer other than the Armed Forces.

16 (e) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the

17 mortality table and interest rates as set and adopted by the retirement board in accordance with
18 the provisions of this article: *Provided*, That when used in the context of compliance with the
19 federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial
20 equivalent" shall be computed using the mortality tables and interest rates required to comply with
21 those requirements.

22 (f) "Annual compensation" means the wages paid to the member during covered
23 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined
24 without regard to any rules that limit the remuneration included in wages based upon the nature
25 or location of employment or services performed during the plan year plus amounts excluded
26 under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
27 allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits.
28 Annual compensation for determining benefits during any determination period may not exceed
29 the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of
30 this code and Section 401(a)(17) of the Internal Revenue Code. For members first hired after
31 June 30, 2018, "annual compensation" does not include compensation paid for overtime hours.

32 (g) "Annual leave service" means accrued annual leave.

33 (h) "Annuity starting date" means the first day of the first calendar month following receipt
34 of the retirement application by the board or the required beginning date, if earlier: *Provided*, That
35 the member has ceased covered employment and reached early or normal retirement age.

36 (i) "Base salary" means a member's cash compensation exclusive of overtime from
37 covered employment during the last twelve months of employment. Until a member has worked
38 twelve months, annualized base salary is used as base salary.

39 (j) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-
40 1 *et seq.* of this code.

41 (k) "County commission" has the meaning ascribed to it in §7-1-1 of this code.

42 (l) "Covered employment" means either: (1) Employment as a deputy sheriff and the active

43 performance of the duties required of a deputy sheriff; or (2) the period of time which active duties
44 are not performed but disability benefits are received under §7-14D-14 or §7-14D-15 of this code;
45 or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her
46 employment as a deputy sheriff where the secondary employment requires the deputy sheriff to
47 be a member of another retirement system which is administered by the Consolidated Public
48 Retirement Board pursuant to §5-10D-1 *et seq.* of this code: Provided, That the deputy sheriff
49 contributes to the fund created in §7-14D-6 of this code the amount specified as the deputy
50 sheriff's contribution in §7-14D-7 of this code.

51 (m) "Credited service" means the sum of a member's years of service, active military duty,
52 disability service and annual leave service.

53 (n) "Deputy sheriff" means an individual employed as a county law-enforcement deputy
54 sheriff in this state and as defined by §7-14-2 of this code.

55 (o) "Dependent child" means either:

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

57 (A) A natural child of the member;

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

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

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

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

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

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

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

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

71 (q) "Disability service" means service credit received by a member, expressed in whole
72 years, fractions thereof or both, equal to one half of the whole years, fractions thereof or both,
73 during which time a member receives disability benefits under §7-14D-14 or §7-14D-15 of this
74 code.

75 (r) "Early retirement age" means age forty or over and completion of twenty years of
76 service.

77 (s) "Employer error" means an omission, misrepresentation, or violation of relevant
78 provisions of the West Virginia Code or of the West Virginia Code of State ~~Regulations~~ Rules or
79 the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
80 ~~Regulations~~ Rules by the participating public employer that has resulted in an underpayment or
81 overpayment of contributions required. A deliberate act contrary to the provisions of this section
82 by a participating public employer does not constitute employer error.

83 (t) "Effective date" means July 1, 1998.

84 (u) "Final average salary" means the average of the highest annual compensation
85 received for covered employment by the member during any five consecutive plan years within
86 the member's last ten years of service. If the member did not have annual compensation for the
87 five full plan years preceding the member's attainment of normal retirement age and during that
88 period the member received disability benefits under §7-14D-14 or §7-14D-15 of this code then
89 "final average salary" means the average of the monthly salary determined paid to the member
90 during that period as determined under §7-14D-17 of this code multiplied by twelve. For members
91 first hired after June 30, 2018, "final average salary" does not include compensation paid for
92 overtime hours.

93 (v) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to
94 §7-14D-6 of this code.

95 (w) "Hour of service" means:

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

99 (2) Each hour for which a member is paid or entitled to payment for covered employment
100 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity
101 including disability, layoff, jury duty, military duty, leave of absence or any combination thereof
102 and without regard to whether the employment relationship has terminated. Hours under this
103 paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A
104 member will not be credited with any hours of service for any period of time he or she is receiving
105 benefits under §7-14D-14 or §7-14D-15 of this code; ~~and~~

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

112 (4) For members first hired after June 30, 2018, "hour of service" does not include overtime
113 hours.

114 (x) "Member" means a person first hired as a deputy sheriff after the effective date of this
115 article, as defined in subsection (t) of this section, or a deputy sheriff first hired prior to the effective
116 date and who elects to become a member pursuant to §7-14D-5 or §7-14D-17 of this code. A
117 member shall remain a member until the benefits to which he or she is entitled under this article
118 are paid or forfeited or until cessation of membership pursuant to §7-14D-5 of this code.

119 (y) "Monthly salary" means the portion of a member's annual compensation which is paid
120 to him or her per month.

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

127 (aa) "Normal retirement age" means the first to occur of the following: (1) Attainment of
128 age fifty years and the completion of twenty or more years of service; (2) while still in covered
129 employment, attainment of at least age fifty years and when the sum of current age plus years of
130 service equals or exceeds seventy years; (3) while still in covered employment, attainment of at
131 least age sixty years and completion of five years of service; or (4) attainment of age sixty-two
132 years and completion of five or more years of service.

133 (bb) "Partially disabled" means a member's inability to engage in the duties of deputy
134 sheriff by reason of any medically determinable physical or mental impairment that can be
135 expected to result in death or that has lasted or can be expected to last for a continuous period
136 of not less than twelve months. A member may be determined partially disabled for the purposes
137 of this article and maintain the ability to engage in other gainful employment which exists within
138 the state but which ability would not enable him or her to earn an amount at least equal to two
139 thirds of the average annual compensation earned by all active members of this plan during the
140 plan year ending as of the most recent June 30, as of which plan data has been assembled and
141 used for the actuarial valuation of the plan.

142 (cc) "Public Employees Retirement System" means the West Virginia Public Employees
143 Retirement System created by §5-10-1 *et seq.* of this code.

144 (dd) "Plan" means the West Virginia Deputy Sheriff Death, Disability and Retirement Plan
145 established by this article.

146 (ee) "Plan year" means the twelve-month period commencing on July 1 of any designated

147 year and ending the following June 30.

148 (ff) "Qualified public safety employee" means any employee of a participating state or
149 political subdivision who provides police protection, firefighting services or emergency medical
150 services for any area within the jurisdiction of the state or political subdivision, or such other
151 meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury
152 Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

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

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

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

160 (jj) "Retirement income payments" means the annual retirement income payments
161 payable under the plan.

162 (kk) "Spouse" means the person to whom the member is legally married on the annuity
163 starting date.

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

166 (mm) "Totally disabled" means a member's inability to engage in substantial gainful activity
167 by reason of any medically determined physical or mental impairment that can be expected to
168 result in death or that has lasted or can be expected to last for a continuous period of not less
169 than twelve months. For purposes of this subdivision:

170 (1) A member is totally disabled only if his or her physical or mental impairment or
171 impairments are so severe that he or she is not only unable to perform his or her previous work
172 as a deputy sheriff but also cannot, considering his or her age, education and work experience,

173 engage in any other kind of substantial gainful employment which exists in the state regardless
 174 of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific
 175 job vacancy exists; or (C) the member would be hired if he or she applied for work.

176 (2) "Physical or mental impairment" is an impairment that results from an anatomical,
 177 physiological or psychological abnormality that is demonstrated by medically accepted clinical
 178 and laboratory diagnostic techniques. A member's receipt of Social Security disability benefits
 179 creates a rebuttable presumption that the member is totally disabled for purposes of this plan.
 180 Substantial gainful employment rebuts the presumption of total disability.

181 (nn) "Year of service". -- A member shall, except in his or her first and last years of covered
 182 employment, be credited with year of service credit based upon the hours of service performed
 183 as covered employment and credited to the member during the plan year based upon the following
 184 schedule:

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

190 During a member's first and last years of covered employment, the member shall be
 191 credited with one twelfth of a year of service for each month during the plan year in which the
 192 member is credited with an hour of service. A member is not entitled to credit for years of service
 193 for any time period during which he or she received disability payments under §7-14D-14 or §7-
 194 14D-15 of this code. Except as specifically excluded, years of service include covered
 195 employment prior to the effective date. Years of service which are credited to a member prior to
 196 his or her receipt of accumulated contributions upon termination of employment pursuant to §7-
 197 14D-13 of this code or §5-10-30 of this code, shall be disregarded for all purposes under this plan
 198 unless the member repays the accumulated contributions with interest pursuant to §7-14D-13 of

199 this code or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.
 200 For members first hired after June 30, 2018, in calculating years of service overtime hours
 201 may not be included

CHAPTER 8. MUNICIPAL CORPORATIONS.

**ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND
 FIREFIGHTERS RETIREMENT SYSTEM.**

§8-22A-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 percent per year for twenty-
 6 six through thirty years will be credited with a maximum benefit of sixty-seven percent of a
 7 member's final average salary. A member's accrued benefit may not exceed the limits of Section
 8 415 of the Internal Revenue Code and is subject to the provisions of §8-22A-10 of this code.

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

12 (c) "Active military duty" means full-time duty in the active military service of the United
 13 States Army, Navy, Air Force, Coast Guard or Marine Corps. The term does not include regularly
 14 required training or other duty performed by a member of a reserve component or National Guard
 15 unless the member can substantiate that he or she was called into the full-time active military
 16 service of the United States and has received no compensation during the period of that duty from
 17 any board or employer other than the Armed Forces.

18 (d) "Actuarial equivalent" means a benefit of equal value computed on the basis of the

19 mortality table and interest rates as set and adopted by the board in accordance with the
20 provisions of this article: *Provided*, That when used in the context of compliance with the federal
21 maximum benefit requirements of Section 415 of the Internal Revenue Code, “actuarial
22 equivalent” shall be computed using the mortality tables and interest rates required to comply with
23 those requirements.

24 (e) “Annual compensation” means the wages paid to the member during covered
25 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined
26 without regard to any rules that limit the remuneration included in wages based on the nature or
27 location of employment or services performed during the plan year plus amounts excluded under
28 Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
29 allowances, cash or noncash fringe benefits, or both, deferred compensation and welfare benefits.
30 Annual compensation for determining benefits during any determination period may not exceed
31 the maximum compensation allowed as adjusted for cost-of-living in accordance with §5-10D-7
32 of this code and Section 401(a) (17) of the Internal Revenue Code. For members first hired after
33 June 30, 2018, "annual compensation" does not include compensation paid for overtime hours.

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

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

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

42 (i) “Covered employment” means either: (1) Employment as a full-time municipal police
43 officer or firefighter and the active performance of the duties required of that employment; (2) the
44 period of time during which active duties are not performed but disability benefits are received

45 under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job
46 or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan
47 where the secondary employment requires the police officer or firefighter to be a member of
48 another retirement system which is administered by the Consolidated Public Retirement Board
49 pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created
50 in this article the amount specified as the member's contribution in §8-22A-8 of this code.

51 (j) "Credited service" means the sum of a member's years of service, active military duty
52 and disability service.

53 (k) "Dependent child" means either: (1) An unmarried person under age eighteen who is:
54 (A) A natural child of the member; (B) a legally adopted child of the member; (C) a child who at
55 the time of the member's death was living with the member while the member was an adopting
56 parent during any period of probation; or (D) a stepchild of the member residing in the member's
57 household at the time of the member's death; or (2) Any unmarried child under age twenty-three:
58 (A) Who is enrolled as a full-time student in an accredited college or university; (B) who was
59 claimed as a dependent by the member for federal income tax purposes at the time of the
60 member's death; and (C) whose relationship with the member is described in paragraph (A), (B)
61 or (C), subdivision (1) of this subsection.

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

64 (m) "Disability service" means service credit received by a member, expressed in whole
65 years, fractions thereof, or both, equal to one half of the whole years, fractions thereof, or both,
66 during which time a member receives disability benefits under this article.

67 (n) "Effective date" means January 1, 2010.

68 (o) "Final average salary" means the average of the highest annual compensation
69 received for covered employment by the member during any five consecutive plan years within
70 the member's last ten years of service while employed, prior to any disability payment. If the

71 member did not have annual compensation for the five full plan years preceding the member's
72 attainment of normal retirement age and during that period the member received disability benefits
73 under this article, then "final average salary" means the average of the monthly compensation
74 which the member was receiving in the plan year prior to the initial disability. "Final average salary"
75 does not include any lump sum payment for unused, accrued leave of any kind or character. For
76 members first hired after June 30, 2018, "final average salary" does not include compensation
77 paid for overtime hours.

78 (p) "Full-time employment" means permanent employment of an employee by a
79 participating municipality in a position which normally requires twelve months per year service
80 and requires at least one thousand forty hours per year service in that position.

81 (q) "Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement
82 Fund created by this article.

83 (r) "Hour of service" means: (1) Each hour for which a member is paid or entitled to
84 payment for covered employment during which time active duties are performed. These hours
85 shall be credited to the member for the plan year in which the duties are performed; (2) each hour
86 for which a member is paid or entitled to payment for covered employment during a plan year but
87 where no duties are performed due to vacation, holiday, illness, incapacity including disability,
88 layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to
89 whether the employment relationship has terminated. Hours under this subdivision shall be
90 calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be
91 credited with any hours of service for any period of time he or she is receiving benefits under §8-
92 22A-17 or §8-22A-18 of this code; and (3) each hour for which back pay is either awarded or
93 agreed to be paid by the employing municipality, irrespective of mitigation of damages. The same
94 hours of service shall not be credited both under subdivision (1) or (2) of this subsection and under
95 this subdivision. Hours under this paragraph shall be credited to the member for the plan year or
96 years to which the award or agreement pertains, rather than the plan year in which the award,

97 agreement or payment is made. For members first hired after June 30, 2018, "hour of service"
98 does not include overtime hours.

99 (s) "Member" means, except as provided in §8-22A-32 or §8-22A-33 of this code, a person
100 hired as a municipal police officer or municipal firefighter, as defined in this section, by a
101 participating municipal employer on or after January 1, 2010. A member shall remain a member
102 until the benefits to which he or she is entitled under this article are paid or forfeited.

103 (t) "Monthly salary" means the W-2 reportable compensation received by a member during
104 the month. For members first hired after June 30, 2018, "monthly salary" does not include
105 compensation paid for overtime hours.

106 (u) "Municipality" has the meaning ascribed to it in this code.

107 (v)(1) "Municipal police officer" means an individual employed as a member of a paid
108 police department by a West Virginia municipality or municipal subdivision which has established
109 and maintains a municipal policemen's pension and relief fund, and who is not a member of, and
110 not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-
111 22-16 of this code: *Provided*, That municipal police officer also means an individual employed as
112 a member of a paid police department by a West Virginia municipality or municipal subdivision
113 which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid
114 police department does not mean a department whose employees are paid nominal salaries or
115 wages or are paid only for services actually rendered on an hourly basis.

116 (2) "Municipal firefighter" means an individual employed as a member of a paid fire
117 department by a West Virginia municipality or municipal subdivision which has established and
118 maintains a municipal firemen's pension and relief fund, and who is not a member of, and not
119 eligible for membership in, a municipal firemen's pension and relief fund as provided in §8-22-16
120 of this code: *Provided*, That municipal firefighter also means an individual employed as a member
121 of a paid fire department by a West Virginia municipality or municipal subdivision which is
122 authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid fire

123 department does not mean a department whose employees are paid nominal salaries or wages
124 or are paid only for services actually rendered on an hourly basis.

125 (w) "Municipal subdivision" means any separate corporation or instrumentality established
126 by one or more municipalities, as permitted by law; and any public corporation charged by law
127 with the performance of a governmental function and whose jurisdiction is coextensive with one
128 or more municipalities.

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

135 (y) "Normal retirement age" means the first to occur of the following: (1) Attainment of age
136 fifty years and the completion of twenty or more years of regular contributory service; (2) while
137 still in covered employment, attainment of at least age fifty years and when the sum of current
138 age plus regular contributory service equals or exceeds seventy years; (3) while still in covered
139 employment, attainment of at least age sixty years and completion of ten years of regular
140 contributory service; or (4) attainment of age sixty-two years and completion of five or more years
141 of regular contributory service.

142 (z) "Plan" means the West Virginia Municipal Police Officers and Firefighters Retirement
143 System established by this article.

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

146 (bb) "Qualified public safety employee" means any employee of a participating state or
147 political subdivision who provides police protection, firefighting services or emergency medical
148 services for any area within the jurisdiction of the state or political subdivision, or such other

149 meaning given to the term by Section 72(t) (10) (B) of the Internal Revenue Code or by Treasury
150 Regulation §1.401(a)-1(b) (2) (v) as they may be amended from time to time.

151 (cc) "Regular contributory service" means a member's credited service excluding active
152 military duty, disability service and accrued annual and sick leave service.

153 (dd) "Regular interest" means the rate or rates of interest per annum, compounded
154 annually, as the board adopts in accordance with the provisions of this article

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

158 (ff) "Retirement income payments" means the monthly retirement income payments
159 payable under the plan.

160 (gg) "Spouse" means the person to whom the member is legally married on the annuity
161 starting date.

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

164 (ii) "Totally disabled" means a member's inability to engage in substantial gainful activity
165 by reason of any medically determined physical or mental impairment that can be expected to
166 result in death or that has lasted or can be expected to last for a continuous period of not less
167 than twelve months. For purposes of this subsection: (1) A member is totally disabled only if his
168 or her physical or mental impairment or impairments is so severe that he or she is not only unable
169 to perform his or her previous work as a police officer or firefighter but also cannot, considering
170 his or her age, education and work experience, engage in any other kind of substantial gainful
171 employment which exists in the state regardless of whether: (A) The work exists in the immediate
172 area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be
173 hired if he or she applied for work. For purposes of this article, substantial gainful employment is
174 the same definition as used by the United States Social Security Administration; and (2) "Physical

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

179 (jj) “Vested” means eligible for retirement income payments after completion of five or
180 more years of regular contributory service.

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

185 Hours of Service	Year of Service Credited
186 Less than 500.....	0
187 500 to 999	1/3
188 1,000 to 1,499.	2/3
189 1,500 or more	1

190 During a member’s first and last years of covered employment, the member shall be
191 credited with one twelfth of a year of service for each month during the plan year in which the
192 member is credited with an hour of service for which contributions were received by the fund. A
193 member is not entitled to credit for years of service for any time period during which he or she
194 received disability payments under §8-22A-17 or §8-22A-18 of this code.

195 For members first hired after June 30, 2018, in calculating years of service overtime hours
196 may not be included.

CHAPTER 16. PUBLIC HEALTH.

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 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 §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 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
23 the 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 §5-10D-7 of
36 this code and Section 401(a)(17) of the Internal Revenue Code. For members first hired after
37 June 30, 2018, "annual compensation" does not include compensation paid for overtime hours.

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; (2) the period of time during which active duties are not performed but disability
54 benefits are received under this article; or (3) concurrent employment by an emergency medical
55 services officer in a job or jobs in addition to his or her employment as an emergency medical
56 services officer where the secondary employment requires the emergency medical services
57 officer to be a member of another retirement system which is administered by the Consolidated
58 Public Retirement Board pursuant to this code: *Provided*, That the emergency medical services
59 officer contributes to the fund created in this article the amount specified as the member's
60 contribution in §16-5V-8 of this code.

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 §16-5V-19 of this code multiplied by twelve.
108 Final average salary does not include any lump sum payment for unused, accrued leave of any
109 kind or character. For members first hired after June 30, 2018, "final average salary" does not
110 include compensation paid for overtime hours.

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

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

116 (w) "Hour of service" means:

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

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

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

131 to which the award or agreement pertains, rather than the plan year in which the award,
132 agreement or payment is made; and

133 (4) For members first hired after June 30, 2018, does not include overtime hours.

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

142 (y) "Monthly salary" means the W-2 reportable compensation received by a member
143 during the month. For members first hired after June 30, 2018, "monthly salary" does not include
144 compensation paid for overtime hours.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

185 (kk) "Retirement income payments" means the monthly retirement income payments
186 payable under the plan.

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

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

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

195 For purposes of this subsection:

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

202 For purposes of this article, substantial gainful employment is the same definition as used by the
203 United States Social Security Administration.

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

208 (oo) "Year of service" means a member shall, except in his or her first and last years of

209 covered employment, be credited with years of service credit based upon the hours of service
210 performed as covered employment and credited to the member during the plan year based upon
211 the following schedule:

212 Hours of Service	Year of Service Credited.
213 Less than 500	0
214 500 to 999	1/3
215 1,000 to 1,499	2/3
216 1,500 or more	1

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

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

228 For members first hired after June 30, 2018, in calculating years of service overtime hours
229 may not be included.

NOTE: The purpose of this bill is to remove overtime hours in making certain calculations under the Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System and the Emergency Medical Services Retirement System.

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