WEST VIRGINIA CODE CHAPTER 16 ARTICLE 5V

WV Legislature

§16-5V-1. Title.

This article is known and may be cited as the "West Virginia Emergency Medical Services Retirement System Act."

WV Legislature

§16-5V-2. Definitions.

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

(a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year of the member's final average salary for the first 20 years of credited service. Additionally, two percent per year for 21 through 25 years and one and one-half percent per year for each year over 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

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

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

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

(4) For 911 personnel, home confinement officers, or emergency medical services officers with assets transferred pursuant to §16-5V-6d, §16-5V-6f, or §16-5V-6g of this code who did elect to pay back higher past contributions, with interest, for eligible 911 service credit, home confinement officer service credit or emergency medical services officer service credit" "accrued benefit" means on behalf of the member two percent per year of the member's final average salary for all non-911 credited service, non-home confinement officer service credit or emergency medical services officer credited service that was credited as a result of transferred assets. Additionally, two and three-quarter percent for the first 20 years of 911 credited service, home confinement officer credited service or emergency medical

www.legislature

services officer credit service will be credited. Additionally, two percent per year for 21 through 25 years of 911 credited service, home confinement officer credited service or emergency medical services officer credit service and one and one-half percent per year for each year over 25 years of 911 credited service, home confinement officer credited service or emergency medical services officer credit service will be credited. A maximum benefit of 90 percent of a member's final average salary may be paid. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

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

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

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

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

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

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

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

(i) "Bona fide separation from service upon retirement" means that a retirant has completely

WV Legislature

terminated any employment relationship with any participating public employer in the system for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with a participating employer. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary, or leased employee basis.

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

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

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

(m) "Covered employment" means: (1) Employment as a full-time emergency medical technician, emergency medical technician/paramedic, or emergency medical services/registered nurse, and the active performance of the duties required of emergency medical services officers; or (2) employment as a full-time employee of a county 911 public safety answering point; or (3) employment as a full-time county home confinement officer; or (4) employment as a full-time county firefighter; or (5) the period of time during which active duties are not performed but disability benefits are received under this article; or (6) concurrent employment by an emergency medical services officer, 911 personnel, home confinement officer, or county firefighter in a job or jobs in addition to his or her employment as an emergency medical services officer, 911 personnel, home confinement officer, or county firefighter where the secondary employment requires the emergency medical services officer, 911 personnel, home confinement officer, or county firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the emergency medical services officer, 911 personnel, home confinement officer, or county firefighter contributes to the fund created in this article the amount specified as the member’s contribution in §16-5V-8 of this code.

(n) "Credited service" means the sum of a member's years of service, active military duty, disability service, service transferred from the Public Employees Retirement System and accrued annual and sick leave service.

(o) "Dependent child" means either:

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

(A) A natural child of the member;

WV Legislature

(B) A legally adopted child of the member;

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

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

(2) Any unmarried child under age 23:

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

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

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

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

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

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

(s) "Effective date" means January 1, 2008.

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

(u) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, the West Virginia Code of State Rules, or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State

WV Legislature

Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

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

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

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

(y) "Home confinement officer" means an individual employed in full-time employment as a home confinement officer or home incarceration supervisor with a county sheriff’s office or by a county commission.

(z) "Hour of service" means:

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

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

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

wv Legislature

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

(bb) "Member" means either: (1) A person first hired as an emergency medical services officer by an employer which is a participating public employer of the Emergency Medical Services Retirement System after the effective date of this article, as defined in subsection (s) of this section; or (2) an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article; or (3) a person first hired by a county 911 public safety answering center after the participating public employer elects to participate in the Emergency Medical Services Retirement System; or (4) a home confinement officer hired on or after July 1, 2025, employed by a participating public employer and who is not participating in the Deputy Sheriffs Retirement System; or (5) a home confinement officer who elects to participate pursuant to §16-5V-6f of this code and who is employed by a participating public employer; or (6) a county firefighter hired on or after June 10, 2022; or (7) a county firefighter of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to June 10, 2022, and who elects to become a member pursuant to §16-5V-6a of this code; or (8) a person first hired by a county 911 public safety answering center prior to July 1, 2022, and who elects to become a member pursuant to §16-5V-6c of this code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

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

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

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

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

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

(3) While still in covered employment, attainment of at least age 60 years and completion of

10 years of regular contributory service; or

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

(ff) "Participating public employer" means: (1) Any county commission, political subdivision, or county 911 public safety answering point in the state which has elected to cover its emergency medical services officers or 911 personnel, as defined in this article, under the West Virginia Emergency Medical Services Retirement System; or (2) any county sheriff's office or county commission who employs full-time home confinement officers; or (3) any county commission who employs county firefighters or full-time home confinement officers.

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

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

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

(jj) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by West Virginia Code.

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

(ll) "Required beginning date" means April 1 of the calendar year following the later of:

(1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

WV Legislature

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

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

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

(oo) "Retirement income payments" means the monthly retirement income payments payable under the plan.

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

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

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

For purposes of this subsection:

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

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

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

www.Legislature

Hours of Service	Years of Service Credited
Less than 500	0
500 to 999	1/3
1000 to 1499	2/3
1500 or more	1

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

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

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

WV Legislature

§16-5V-3. Meaning of terms.

Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States, unless a different meaning is clearly required. Any reference in this article to the Internal Revenue Code means the Internal Revenue Code of 1986, as amended.

WV Legislature

§16-5V-4. Creation and administration of West Virginia Emergency Medical Services Retirement System; specification of actuarial assumptions.

There is hereby created the West Virginia Emergency Medical Services Retirement System. The purpose of this system is to provide for the orderly retirement of emergency medical services officers who become superannuated because of age or permanent disability and to provide certain survivor death benefits, and it is contemplated that substantially all of the members of the retirement system shall be qualified public safety employees as defined in section two of this article. The retirement system shall come into effect January 1, 2008: Provided, That at least seventy percent of all eligible emergency medical services officers and at least eighty-five percent of the eligible emergency medical services officers who are currently active members of the Public Employees Retirement System elect to participate in this plan by December 31, 2007. If this level of participation is not reached, then all of the provisions of this article are void and of no force and effect. All business of the system shall be transacted in the name of the West Virginia Emergency Medical Services Retirement System. The board shall specify and adopt all actuarial assumptions for the plan at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the plan.

WV Legislature

§16-5V-5. Article to be liberally construed; supplements federal Social Security; federal qualification requirements.

(a) The provisions of this article shall be liberally construed so as to provide a general retirement system for emergency medical services officers, county firefighters, or 911 personnel eligible to retire under the provisions of this plan. Nothing in this article may be construed to permit a county to substitute this plan for federal Social Security now in force in West Virginia.

(b) The board shall administer the plan in accordance with its terms and may construe the terms and determine all questions arising in connection with the administration, interpretation and application of the plan. The board may sue and be sued, contract and be contracted with and conduct all the business of the system in the name of the plan. The board may employ those persons it considers necessary or desirable to administer the plan. The board shall administer the plan for the exclusive benefit of the members and their beneficiaries subject to the specific provisions of the plan.

(c) The plan is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the plan to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements is effective as of the date required by federal law. The board may propose rules for promulgation and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to §5-10D-1 of this code to assure compliance with the requirements of this section.

(d) The board shall determine any costs incurred by the board attributable to the voluntary transfer of members of the Public Employees Retirement System to the plan pursuant to the provisions of §16-5V-6c and §16-5V-6d of this code. These costs include the cost to make necessary modifications to the existing line of business computer system, and any personnel costs, including employee benefits. The board shall determine the pro rata share of each participating public 911 employer liable for these costs pursuant to this article. Each participating 911 employer shall pay the board its pro rata share. The board is authorized to receive funds from the participating public 911 employers as required by this section for purposes of paying costs as set forth in this article.

WV Legislature

§16-5V-6. Members.

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

(b) Any emergency medical services officer employed in covered employment by an employer which is currently a participating public employer of the Public Employees Retirement System shall notify in writing both the county commission in the county or officials in the political subdivision in which he or she is employed and the board of his or her desire to become a member of the plan by December 31, 2007. Any emergency medical services officer who elects to become a member of the plan ceases to be a member, or have any credit for covered employment in any other retirement system administered by the board, and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the emergency medical services officer remains employed in covered employment by an employer which is currently a participating public employer of this plan: *Provided*, That any emergency medical services officer who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is, from time to time, offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

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

(d) Any emergency medical services officer employed in covered employment on the

WV Legislature

effective date of this article who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be given credited service at the time of transfer for all credited service then standing to the emergency medical services officer's service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in §5-10-2 of this code) was earned as an emergency medical services officer. All credited service standing to the transferring emergency medical services officer's credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article and the transferring emergency medical services officer shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring emergency medical services officer would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring emergency medical services officer receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: *Provided*, That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as an emergency medical services officer and which service was withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

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

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

WV Legislature

§16-5V-6a. County Firefighter Members.

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

(b) Any county firefighter first employed by a county after the effective date of the revisions to this article made in the 2022 legislative session, shall be a member of this retirement plan by virtue of that employment and upon membership does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: *Provided*, That if a member has concurrent employment in an additional job or jobs the relevant concurrent employment provisions of this code shall apply.

(c) Any county firefighter employed in covered employment by an employer which is currently a participating public employer of the Public Employees Retirement System shall notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan by December 31, 2022. Any county firefighter who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the county firefighter remains employed in covered employment by an employer which is currently a participating public employer of this plan: *Provided*, That any county firefighter who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is, from time to time, offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire as a county firefighter.

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

(e) Any county firefighter employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (c) of this section shall be given credited service at the time of transfer for all credited service then standing to the county firefighter's service credit in the Public Employees Retirement System regardless of whether the credited service, as defined in §5-10-2 of this code, was

WV Legislature

earned as a county firefighter. All credited service standing to the transferring county firefighter's credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article and the transferring county firefighter shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring county firefighter would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring county firefighter receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: *Provided*, That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (c) of this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as a county firefighter and which service was withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(f) Once made, the election made under this section is irrevocable. All county firefighters employed by an employer which is a participating public employer of the Public Employees Retirement System after the effective date and county firefighters electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by this article.

WV Legislature

§16-5V-6b. Transfer of county firefighter member assets from Public Employees Retirement System.

(a) The Consolidated Public Retirement Board shall, within one hundred eighty days of January 1, 2023, transfer assets from the Public Employees Retirement System Trust Fund into the West Virginia Emergency Medical Services Trust Fund.

(b) The amount of assets to be transferred for each transferring county firefighter shall be computed as of January 1, 2023, using July 1, 2022, actuarial valuation of the Public Employees Retirement System, and updated with 7.25 percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring county firefighter in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

(1) Compute the market value of the Public Employees Retirement System assets as of July 1, 2022, actuarial valuation date under the actuarial valuation approved by the board;

(2) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries, disabled retirees and terminated inactive members as of July 1, 2022, actuarial valuation date;

(3) Compute the market value of active member assets in the Public Employees Retirement System as of July 1, 2022, by reducing the assets value under subdivision (1) of this subsection by the inactive liabilities under subdivision (2) of this subsection;

(4) Compute the actuarial accrued liability for all active Public Employees Retirement System members as of July 1, 2022, actuarial valuation date approved by the board;

(5) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2022, by dividing the active members' market value of assets under subdivision (3) of this subsection by the active members' actuarial accrued liabilities under subdivision (4) of this subsection;

(6) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2022, for active emergency medical services officers transferring to the Emergency Medical Services Retirement System;

(7) Determine the assets to be transferred from the Public Employees Retirement System to the Emergency Medical Services Retirement System by multiplying the active members' funded percentage determined under subdivision (5) of this subsection by the transferring active members' actuarial accrued liabilities under the Public Employees Retirement System under subdivision (6) of this subsection and adjusting the asset transfer amount by interest at 7.25 percent for the period from the calculation date of July 1, 2022, through the first day of the month in which the asset transfer is to be completed.

WV Legislature

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

WV Legislature

§16-5V-6c. 911 personnel.

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

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

(c) The election period for the vote shall conclude on August 30, 2024. All election forms received by the board on or before August 30, 2024, shall be counted, and any members eligible to vote who do not submit an election form to the board prior to or on August 30, 2024, shall be counted as not electing to transfer to the plan. If at least 75 percent of members eligible to vote pursuant to subsection (b) of this section affirmatively elect to transfer to the plan within the period provided in this subsection, then the board shall notify the employers of all members who affirmatively elected to do so during that period, and contributions to the plan shall begin during October 2024 for those electing to transfer. If more than 25 percent of those members eligible to vote pursuant to subsection (b) of this section do not affirmatively elect to transfer to the plan within that period, the Public Employees Retirement System continues as the retirement system for all 911 members eligible to vote. The vote pursuant to this subsection shall be directly to the board and the results shall be unknown to all employers until the time period for voting ends: *Provided*, That any employee eligible to vote pursuant to subsection (b) of this section shall have access through his or her employer to educational materials regarding the vote provided by the board. All members who complete an election form and all participating public employers with 911 personnel eligible to vote shall be notified in writing by the board by September 30, 2024, of the results of the election.

(d) Any costs incurred by the board attributable to this section shall be borne by all 911 personnel employers of persons eligible to transfer in proportion to the number of persons employed by that employer who are eligible to transfer. The board shall determine its costs

WVLegislature

incurred attributable to this election to transfer and shall determine the pro rata share of these costs to be borne by the 911 personnel participating employers.

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

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

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

(h) Any 911 personnel employed in covered employment on July 1, 2024, who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be given credited service at the time of transfer for all credited service then standing to the 911 personnel’s service credit in the Public Employees Retirement System regardless of whether the credited service, as defined in §5-10-2 of this code, was earned as a 911 personnel. All credited service standing to the transferring 911 personnel’s credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article, and the transferring 911 personnel shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring 911 personnel would have received from the Public Employees Retirement System as if the transfer had not occurred but with accrued benefit multipliers

WV Legislature

subject to the provisions of §16-5V-12 of this code. In connection with each transferring 911 personnel receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: *Provided*, That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (g) of this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as a 911 personnel and which service was withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

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

WV Legislature

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

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

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

(c) The amount of assets to be transferred for each transferring 911 personnel shall be computed using the July 1, 2023, actuarial valuation of the Public Employees Retirement System, and updated with 7.25 percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring 911 personnel in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

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

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

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

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

(5) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2023, by dividing the active

WV Legislature

members' market value of assets under subdivision (3) of this subsection by the active members' actuarial accrued liabilities under subdivision (4) of this subsection;

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

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

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

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

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

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

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

(4) Full reinstatement amount must be repaid no later than December 31, 2029, or prior to

WV Legislature

the member’s effective retirement date, whichever occurs first.

(f) Commencement of retirement for transferring 911 personnel may occur on or after January 1, 2025.

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

WV Legislature

§16-5V-6f. Home confinement officers as members of the system. Transfer of home confinement officers assets from Public Employees Retirement System.

(a) Notwithstanding any other provision of this article to the contrary, any home confinement officer hired on or after July 1, 2025, shall be a member of this retirement plan as a condition of employment and upon membership does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: *Provided*, That any home confinement officer who has concurrent employment in an additional job or jobs which would require the home confinement officer to be a member of any other retirement system administered by the board shall participate in only one retirement system administered by the board and the retirement system applicable to the concurrent employment for which the home confinement officer has the earliest date of hire shall prevail. Notwithstanding any other provision of this article to the contrary, a person employed as a home confinement officer by a participating public employer may be a member of this retirement plan subject to the provisions of this section. Full-time employment as a home confinement officer employed by a sheriff's office or county commission which is a participating public employer satisfies the definition of "covered employment" as defined in this article.

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

(c) Any home confinement officer who was employed as a home confinement officer prior to July 1, 2026, but was not employed on July 1, 2026, shall become a member upon rehire as a home confinement officer. For purposes of this section, the member's years of service and credited service prior to July 1, 2026, may be counted so long as the home confinement officer has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan and will receive two percent of the member's final average salary for each year transferred. If the conditions of this subsection are met, all years of the home confinement officer's covered employment shall be counted as years of service for the purposes of this article.

WV Legislature

(d) Any home confinement officer employed in covered employment on July 1, 2026, shall elect in writing on a form provided by the board whether or not to transfer into this plan on or before August 31, 2026. Any home confinement officer who has elected to transfer into this plan shall be given credited service at the time of transfer for all credited service then standing to the home confinement officer's service credit in the Public Employees Retirement System regardless of whether the credited service, as defined in §5-10-2 of this code, was earned as a home confinement officer. All credited service standing to the transferring home confinement officer's credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article, and the transferring home confinement officer shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring home confinement officer would have received from the Public Employees Retirement System as if the transfer had not occurred but with accrued benefit multipliers subject to the provisions of §16-5V-12 of this code. In connection with each transferring home confinement officer receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: *Provided*, That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as a home confinement officer and which service was withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(e) Once made, the election made under this section is irrevocable. All home confinement officers electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by this article.

(f) The Consolidated Public Retirement Board shall transfer assets of home confinement officers who wish to participate in the Emergency Medical Services Retirement Act from the Public Employees Retirement System Trust Fund into the West Virginia Emergency Medical Services Trust Fund no later than April 30, 2027.

(g) The amount of assets to be transferred for each transferring home confinement officer shall be computed using the July 1, 2026, actuarial valuation of the Public Employees Retirement System, and updated with 7.25 percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring home confinement officer in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred, the board shall:

(1) Compute the market value of the Public Employees Retirement System assets as of July 1, 2026, actuarial valuation date under the actuarial valuation approved by the board;

(2) Compute the actuarial accrued liabilities for all Public Employees Retirement System

WV Legislature

retirees, beneficiaries, disabled retirees, and terminated inactive members as of July 1, 2026, actuarial valuation date;

(3) Compute the market value of active member assets in the Public Employees Retirement System as of July 1, 2026, by reducing the assets value under subdivision (1) of this subsection by the inactive liabilities under subdivision (2) of this subsection;

(4) Compute the actuarial accrued liability for all active Public Employees Retirement System members as of July 1, 2026, actuarial valuation date approved by the board;

(5) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2026, by dividing the active members' market value of assets under subdivision (3) of this subsection by the active members' actuarial accrued liabilities under subdivision (4) of this subsection;

(6) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2026, for active home confinement officers transferring to the Emergency Medical Services Retirement System;

(7) Determine the assets to be transferred from the Public Employees Retirement System to the Emergency Medical Services Retirement System by multiplying the active members' funded percentage determined under subdivision (5) of this subsection by the transferring active members' actuarial accrued liabilities under the Public Employees Retirement System under subdivision (6) of this subsection and adjusting the asset transfer amount by interest at 7.25 percent for the period from the calculation date of July 1, 2026, through the first day of the month in which the asset transfer is to be completed.

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

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

WV Legislature

(1) Compute the contributions made by each home confinement officer for eligible years under Public Employees Retirement System.

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

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

(4) Full reinstatement amount must be repaid no later than December 31, 2030, or prior to the member's effective retirement date, whichever occurs first.

(j) Commencement of retirement for transferring home confinement officers may occur on or after July 1, 2027.

WV Legislature

§16-5V-6g. Public emergency medical services officers as members of the system. Transfer of public emergency medical services officers' assets from Public Employees Retirement System.

(a) Notwithstanding any other provision of this article to the contrary, any county commission emergency medical services officer participating in the Public Employees Retirement System who was hired by a county commission prior to the election of the county commission becoming a participating public employer in this plan shall elect in writing on a form provided by the board whether or not to transfer into this plan on or before August 31, 2026. Any emergency medical services officer who has elected to transfer into this plan shall be given credited service at the time of transfer for all credited service then standing to the emergency medical services officer's service credit in the Public Employees Retirement System regardless of whether the credited service, as defined in §5-10-2 of this code, was earned as a emergency medical services officer. All credited service standing to the transferring emergency medical services officer's credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article, and the transferring emergency medical services officer shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring emergency medical services officer would have received from the Public Employees Retirement System as if the transfer had not occurred but with accrued benefit multipliers subject to the provisions of §16-5V-12 of this code. In connection with each transferring emergency medical services officer receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: *Provided*, That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as an emergency medical services officer and which service was withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(b) Any emergency medical services officer who elects to become a member of the plan does not qualify for active membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: *Provided*, That any emergency medical services officer who has concurrent employment in an additional job or jobs which would require the emergency medical services officer to be an active member of the West Virginia Deputy Sheriffs Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System, or the West Virginia Natural Resources Police Officers Retirement System shall actively participate in only one retirement system administered by the board, and the retirement system applicable to the concurrent employment for which the employee has the earliest date of hire shall prevail. Any emergency medical services officer shall continue to receive his or her accrued benefit of other retirement systems administered by the board, except in the case of Public Employees

Retirement System, when credit and assets are transferred to the Emergency Services Retirement System.

(c) Any emergency medical services officer who was employed as a county commission emergency medical services officer prior to July 1, 2026, but was not employed on July 1, 2026, shall become a member upon rehire as an emergency medical services officer. For purposes of this section, the member's years of service and credited service prior to July 1, 2026, may be counted so long as the emergency medical services officer has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan and will receive two percent of the member's final average salary for each year transferred. If the conditions of this subsection are met, all years of the emergency medical services officer's covered employment shall be counted as years of service for the purposes of this article.

(d) Once made, the election made under this section is irrevocable. All emergency medical services officers electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by this article.

(e) The Consolidated Public Retirement Board shall transfer assets of emergency medical services officers who wish to participate in the Emergency Medical Services Retirement Act from the Public Employees Retirement System Trust Fund into the West Virginia Emergency Medical Services Trust Fund no later than March 31, 2027.

(f) The amount of assets to be transferred for each transferring emergency medical services officer shall be computed using the July 1, 2026, actuarial valuation of the Public Employees Retirement System, and updated with 7.25 percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring emergency medical services officer in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred, the board shall:

(1) Compute the market value of the Public Employees Retirement System assets as of July 1, 2026, actuarial valuation date under the actuarial valuation approved by the board;

(2) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries, disabled retirees, and terminated inactive members as of July 1, 2026, actuarial valuation date;

(3) Compute the market value of active member assets in the Public Employees Retirement System as of July 1, 2026, by reducing the assets value under subdivision (1) of this subsection by the inactive liabilities under subdivision (2) of this subsection;

(4) Compute the actuarial accrued liability for all active Public Employees Retirement

System members as of July 1, 2025, actuarial valuation date approved by the board;

(5) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2026, by dividing the active members' market value of assets under subdivision (3) of this subsection by the active members' actuarial accrued liabilities under subdivision (4) of this subsection;

(6) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2026, for active emergency medical services officers transferring to the Emergency Medical Services Retirement System;

(7) Determine the assets to be transferred from the Public Employees Retirement System to the Emergency Medical Services Retirement System by multiplying the active members' funded percentage determined under subdivision (5) of this subsection by the transferring active members' actuarial accrued liabilities under the Public Employees Retirement System under subdivision (6) of this subsection and adjusting the asset transfer amount by interest at 7.25 percent for the period from the calculation date of July 1, 2026, through the first day of the month in which the asset transfer is to be completed.

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

(h) An emergency medical services officer who timely elected to transfer into this plan may request in writing that the Consolidated Public Retirement Board compute a quote of the amount owed for the member's transferred emergency medical services officer to be eligible for the 2.75 percent multiplier. The quote shall be provided to the member within 60 days of the board's receipt of the written request and the employer's verification of emergency medical services officer. Other Public Employees Retirement System employment is eligible for transfer, but only at the 2 percent multiplier. To determine the computation of the quote provided, the board shall:

(1) Compute the contributions made by each emergency medical services officer for eligible years under Public Employees Retirement System.

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

WV Legislature

(3) Compute the difference with interest at 7.25 percent that each emergency medical services officer would have been required to pay had he or she originally participated in Emergency Medical Services Retirement System for eligible years.

(4) Full reinstatement amount must be repaid no later than December 31, 2030, or prior to the member's effective retirement date, whichever occurs first.

(i) Commencement of retirement for transferring emergency medical services officers may occur on or after April 1, 2027.

WV Legislature

§16-5V-7. Creation of Fund; investments; actuarial valuations.

(a) There is hereby created the "West Virginia Emergency Medical Services Retirement Fund" for the benefit of the members of the retirement system created pursuant to this article and the dependents of any deceased or retired member of the system.

(b) All moneys paid into and accumulated in the fund, except amounts designated by the board for payment of benefits as provided in this article, shall be held in trust and invested in the consolidated pensions fund administered by the West Virginia Investment Management Board as provided by law.

(c) The board shall employ a competent actuary or actuarial firm to prepare an actuarial valuation of the assets and liabilities of the fund. The actuarial valuation period shall coincide with the fiscal year of the state.

WV Legislature

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

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

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

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

WV Legislature

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

(a) General rule: Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) Underpayments to the plan: Any error resulting in an underpayment to the retirement plan, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the retirement system will result in the plan paying the retirant an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) Overpayments to the plan by an employer: When mistaken or excess employer contributions or other employer overpayments have been made to the plan, the board shall credit the employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the plan. If the employer has no future liability for employer contributions to the plan, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.

(d) Overpayments to the plan by an employee: When mistaken or excess employee contributions or overpayments have been made to the plan, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq*. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer employing the individual to pay the individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the plan, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee

overpayments.

(e) Overpayments from the plan: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board upon learning of the error shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the plan shall repay the amount of any overpayment to the plan in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the remaining overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.

(f) Underpayments from the retirement system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the plan pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer, participating in the plan is not eligible to participate, the board shall notify the individual and his or her employer of the determination and terminate participation in the plan. Any erroneous payments to the plan shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the plan to such individual shall be returned to the plan in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the plan, but was eligible to and required to be participating in the plan, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the plan as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the plan shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

WV Legislature

§16-5V-9. Transfer from Public Employees Retirement System.

(a) The Consolidated Public Retirement Board shall, within one hundred eighty days of the effective date of the transfer of an emergency medical services officer from the Public Employees Retirement System to the plan, transfer assets from the Public Employees Retirement System Trust Fund into the West Virginia Emergency Medical Services Trust Fund.

(b) Except as provided in subsection (e) of this section, the amount of assets to be transferred for each transferring emergency medical services officer shall be computed as of January 1, 2008, using July 1, 2007, actuarial valuation of the Public Employees Retirement System, and updated with seven and one-half percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring emergency medical services officer in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

(1) Compute the market value of the Public Employees Retirement System assets as of July 1, 2007, actuarial valuation date under the actuarial valuation approved by the board;

(2) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries, disabled retirees and terminated inactive members as of July 1, 2007, actuarial valuation date;

(3) Compute the market value of active member assets in the Public Employees Retirement System as of July 1, 2007, by reducing the assets value under subdivision (1) of this subsection by the inactive liabilities under subdivision (2) of this subsection;

(4) Compute the actuarial accrued liability for all active Public Employees Retirement System members as of July 1, 2007, actuarial valuation date approved by the board;

(5) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2007, by dividing the active members' market value of assets under subdivision (3) of this subsection by the active members' actuarial accrued liabilities under subdivision (4) of this subsection;

(6) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2007, for active emergency medical services officers transferring to the Emergency Medical Services Retirement System;

(7) Determine the assets to be transferred from the Public Employees Retirement System to the Emergency Medical Services Retirement System by multiplying the active members' funded percentage determined under subdivision (5) of this subsection by the transferring active members' actuarial accrued liabilities under the Public Employees Retirement System under subdivision (6) of this subsection and adjusting the asset transfer amount by interest

WV Legislature

at seven and five-tenths percent for the period from the calculation date of July 1, 2007, through the first day of the month in which the asset transfer is to be completed.

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

(d) Eligible emergency medical services officers that transfer from plans other than the Public Employees Retirement System shall have service recognized under this plan through the purchase of the service through payment by the member of sixty percent of the actuarial accrued liabilities which would result if the service is credited under the Emergency Medical Services Retirement System subject to the following:

(1) The service may be purchased in one-year increments of eligible service or for the total period of eligible service;

(2) Payment must begin within twelve months of the effective date of this article;

(3) Payment must be made in either a one-time lump sum payment received by the board no later than December 31, 2008, or in regular installment payments payable over sixty months with the initial installment received by the board on or before December 31, 2008;

(4) The rate of interest applicable to regular installment payments for the purchase of service shall be the actuarial interest rate assumption as approved by the board for completing the actuarial valuation for the plan year immediately preceding the first day of the plan year in which the service purchase is made, compounded per annum;

(5) Once payments commence, selection of the period of service being purchased may not be amended; and

(6) Service will be credited only upon receipt by the board of all payments due.

(e) Notwithstanding any provision of this code to the contrary, any Emergency Medical Services director who: (1) Is an active member of the Public Employees Retirement System; and (2)has, or obtains within one year of the effective date of the amendments to this section enacted during the 2012 regular session of the Legislature, basic or higher emergency management technician certification, is eligible to transfer service credit from the Public

WV Legislature

Employees Retirement System to the Emergency Medical Services Retirement System, upon payment of associated costs by the transferring director. The board shall compute the actuarially appropriate amount of any increased benefit cost of transfer to be borne by the transferring director to be paid according to terms established by the board. Any Emergency Medical Services director who transfers to the Emergency Medical Services Retirement System pursuant to the provisions of this subsection shall apply for the transfer to the board within one year of the effective date of the amendments to this section enacted during the 2012 regular session of the Legislature. Upon receipt of the total payment of all associated costs by the transferring director, the board shall compute the amount of assets to be transferred from the Public Employees Retirement System to the Emergency Medical Retirement System and shall transfer the assets within six months of the receipt of the application. Any director transferring into the retirement system as provided in this subsection is prohibited from retiring within three years of transfer.

WV Legislature

§16-5V-10. Notice requirements; test case.

(a) Each county commission or political subdivision shall prepare a written notice to be delivered to each emergency medical services officer employed prior to July 1, 2007. This notice shall clearly and accurately explain the benefits, financial implications and consequences to an emergency medical services officer of electing to participate in the retirement plan created in this article, including the consequences and financial implications in regard to the benefits under the Public Employees Insurance Plan as set forth in this code for those emergency medical services officers employed by a county commission or political subdivision which participates in that insurance plan. This notice shall be distributed to each emergency medical services officer and the county or political subdivision shall obtain a signed receipt from each emergency medical services officer acknowledging that the emergency medical services officer was provided a copy of the notice required in this subsection. If an emergency medical services officer makes the election provided in section six of this article, he or she shall be considered to have made a voluntary, informed decision in regard to the election to participate in the retirement system created in this article.

(b) Nothing in this section may be construed to alter, affect or change any of the rights and benefits of any emergency medical services officer who has insurance coverage under article sixteen, chapter five of this code as a result of being a spouse or dependant of a participant who is the primary insured under article sixteen, chapter five of this code.

(c) Nothing contained in this section may be construed to affect or pertain to any life insurance coverage under article sixteen, chapter five of this code.

WV Legislature

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

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

(b) On or after the date a member attains early or normal retirement age, a member may retire and commence to receive retirement income payments on the first day of the calendar month following termination of employment and receipt of his or her written application for retirement in an amount as provided under this article: Provided, That retirement income payments under this plan are subject to the provisions of this article. Upon receipt of a request for estimation of benefits, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and the estimated gross monthly annuity. Upon receipt of properly executed retirement application forms from the member, the board shall process member's request for and commence payments as soon as administratively feasible.

WV Legislature

§16-5V-12. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section, to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which any annuity or other annual benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities or other annual benefit required by this section. For purposes of the 415 limitations, the "limitation year" shall be the calendar year. The 415 limitations are incorporated herein by reference, except to the extent the following provisions may modify the default provisions thereunder:

(a) The annual adjustment to the 415 dollar limitations made by Section 415(d) of the Internal Revenue Code and the regulations thereunder shall apply for each limitation year. The annual adjustments to the dollar limitations under Section 415(d) of the Internal Revenue Code which become effective: (i) After a retirant's severance from employment with the employer; or (ii) after the annuity starting date in the case of a retirant who has already commenced receiving benefits, will apply with respect to a retirant's annual benefit in any limitation year. A retirant's annual benefit payable in any limitation year from this retirement system shall in no event be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(b) For purposes of this section, the "annual benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit, using factors prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise

satisfy the limitations of this article, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this article applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(c) Adjustment for benefit forms not subject to Section 417(e)(3). -- The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is either: (1) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity that decreases during the life of the member merely because of: (i) The death of the survivor annuitant (but only if the reduction is not below fifty percent of the benefit payable before the death of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 411(a)(9) of the Internal Revenue Code). The actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; and (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date.

(d) Adjustment for benefit forms subject to Section 417(e)(3). -- The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is other than a benefit form described in subdivision (c) of this section. In this case, the actuarially equivalent straight life annuity shall be determined as follows: The actuarially equivalent straight life annuity is equal to the greatest of: (1) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate specified in this retirement system and the mortality table (or other tabular factor) specified in this retirement system for adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five and a half percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in Treasury Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in

WV Legislature

Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(e) Benefits payable prior to age sixty-two. --

(1) Except as provided in paragraphs (2) and (3) of this subdivision, if the member's retirement benefits become payable before age sixty-two, the 415 dollar limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that the limitation (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to an annual benefit in the amount of the applicable dollar limitation of Section 415(b)(1)(A) of the Internal Revenue Code (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) beginning at age sixty-two.

(2) The limitation reduction provided in paragraph (1) of this subdivision shall not apply if the member commencing retirement benefits before age sixty-two is a qualified participant. A qualified participant for this purpose is a participant in a defined benefit plan maintained by a state, or any political subdivision of a state, with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least fifteen years of service: (i) As a full-time employee of any police or fire department organized and operated by the state or political subdivision maintaining the defined benefit plan to provide police protection, firefighting services or emergency medical services for any area within the jurisdiction of such state or political subdivision; or (ii) as a member of the Armed Forces of the United States.

(3) The limitation reduction provided in paragraph (1) of this subdivision shall not be applicable to preretirement disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation for benefit commencement before age sixty-two or after age sixty-five (if the plan provides for such adjustment), no adjustment is made to reflect the probability of a member's death: (i) After the annuity starting date and before age sixty-two; or (ii) after age sixty-five and before the annuity starting date.

(f) Adjustment when member has less than ten years of participation. -- In the case of a member who has less than ten years of participation in the retirement system (within the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the 415 dollar limitation (as adjusted pursuant to Section 415(d) of the Internal Revenue Code and subdivision (e) of this section) shall be reduced by multiplying the otherwise applicable limitation by a fraction, the numerator of which is the number of years of participation in the plan (or one, if greater), and the denominator of which is ten. This adjustment shall not be applicable to preretirement disability benefits or preretirement death benefits.

(g) The application of the provisions of this section shall not cause the maximum annual

WV Legislature

benefit provided to a member to be less than the member's accrued benefit as of December 31, 2008 (the end of the limitation year that is immediately prior to the effective date of the final regulations for this retirement system as defined in Treasury Regulation §1.415(a)-1(g)(2)), under provisions of the retirement system that were both adopted and in effect before April 5, 2007, provided that such provisions satisfied the applicable requirements of statutory provisions, regulations and other published guidance relating to Section 415 of the Internal Revenue Code in effect as of December 31, 2008, as described in Treasury Regulation §1.415(a)-1(g)(4). If additional benefits are accrued for a member under this retirement system after January 1, 2009, then the sum of the benefits described under the first sentence of this subdivision and benefits accrued for a member after January 1, 2009, must satisfy the requirements of Section 415, taking into account all applicable requirements of the final 415 Treasury Regulations.

WV Legislature

§16-5V-13. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of §1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under §401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this plan which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the plan has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the plan is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

www.legislature.wv.gov

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §16-5V-2 of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §16-5V-2 of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

WV Legislature

§16-5V-14. Direct rollovers.

Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this plan, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (A) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (B) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; and (C) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code (including a Roth IRA described in Section 408A of the Internal Revenue Code), or to a qualified trust or to an annuity contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable.

(2) "Eligible retirement plan" means an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, a Roth IRA described in Section 408A of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, an annuity contract described in Section 403(b) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as

WVLegislature

defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse. The term "distributee" also includes a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan.

WV Legislature

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

(a) Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the plan shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of purchasing permissive service credit, in whole or in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a previous forfeiture of service credit as otherwise provided in this article or for the purpose of paying higher contributions with interest for credit towards eligible 911 service upon initial transfer into this plan: (A) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (B) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (C) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (D) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: *Provided*, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with such policies, practices and procedures established by the board from time to time. For purposes of this article, the following definitions and limitations apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code: *Provided*, That no more than five years of "nonqualified service credit", as defined in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service credit allowed to be purchased (other than by means of a rollover or plan transfer), and no nonqualified service credit may be included in any such purchase (other than by means of a rollover or plan transfer) before the member has at least five years of participation in the retirement system.

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

(3) Any contribution (other than by means of a rollover or plan transfer) to purchase permissive service credit under any provision of this article must satisfy the special

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

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

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

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

WV Legislature

§16-5V-15. Retirement credited service through member's use, as option, of accrued annual or sick leave days.

Any member accruing annual leave or sick leave days may, after the effective date of this section, elect to use the days at the time of retirement to acquire additional credited service in this retirement system: Provided, That the accrued annual or sick leave may not be used to purchase health insurance under the Public Employees Insurance Agency until the member reaches the age of fifty-five. The days shall be applied on the basis of two workdays' credit granted for each one day of accrued annual or sick leave days, with each month of retirement service credit to equal twenty workdays and with any remainder of ten workdays or more to constitute a full month of additional credit and any remainder of less than ten workdays to be dropped and not used, notwithstanding any provisions of the code to the contrary. The credited service shall be allowed and not considered to controvert the requirement of no more than twelve months' credited service in any year's period.

WV Legislature

§16-5V-16. Retirement benefits.

This section describes when adjustment of a member's accrued benefit to reflect the difference in age, in years and months, between the member's annuity starting date and the date the member attains normal retirement age shall be made. This age adjustment, when required, shall be made based upon the normal form of benefit and shall be the actuarial equivalent of the accrued benefit at the member's normal retirement age. The member shall receive the age adjusted retirement income in the normal form or in an actuarial equivalent amount in an optional form as provided under this article, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section twelve of this article. The first day of the calendar month following the month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

(a) Normal retirement. -- A member whose annuity starting date is the date the member attains normal retirement age, is entitled to his or her accrued benefit without adjustment for age at commencement.

(b) Early retirement. -- A member who ceases covered employment and has attained early retirement age while in covered employment may elect in writing by completion of an application for retirement required by and submitted to the board, to receive retirement income payments commencing on the first day of the month coincident with or following the date the member ceases covered employment and submits the proper application to the board. "Normal retirement age" for such a member is the first day of the calendar month coincident with or next following the month in which the member attains the age of fifty years. If the member's annuity starting date is prior to the date the member attains normal retirement age, his or her accrued benefit is reduced to the actuarial equivalent benefit amount based on the years and months by which his or her annuity starting date precedes the date he or she attains normal retirement age.

(c) Late retirement. -- A member whose annuity starting date is later than the date the member attains normal retirement age shall receive retirement income payments in the normal form without adjustment for age at commencement, which is the benefit to which he or she is entitled according to his or her accrued benefit based on his or her final average salary and credited service at the time of his or her actual retirement and following the completion of an application for retirement as required by the board.

(d) Retirement benefits shall be paid monthly in an amount equal to one twelfth of the retirement income payments elected and at those times established by the board. Notwithstanding any other provision of the plan, a member who is married on the annuity starting date will receive his or her retirement income payments in the form of a sixty-six and two-thirds percent joint and survivor annuity with his or her spouse unless prior to the annuity starting date the spouse waives the form of benefit.

WV Legislature

§16-5V-17. Annuity options.

Prior to the effective date of retirement, but not after that date, a member may elect to receive retirement income payments in the normal form, or the actuarial equivalent of the normal form from the following options:

(a) Option A-- Contingent joint and survivor annuity. -- A life annuity payable during the joint lifetime of the member and his or her beneficiary who must be a natural person with an insurable interest in the member's life. Upon the death of the member, the benefit shall continue as a life annuity to the beneficiary in an amount equal to fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred percent of the amount paid while both were living as selected by the member. If the beneficiary dies first, the monthly amount of benefits may not be reduced, but shall be paid at the amount that was in effect before the death of the beneficiary. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

(b) Option B -- Ten years certain and life annuity. -- A life annuity payable during the member's lifetime but in any event for a minimum of ten years. If the member dies before the expiration of ten years, the remaining payments shall be made to a designated beneficiary, if any, or otherwise to the member's estate.

WV Legislature

§16-5V-18. Refunds to certain members upon discharge or resignation; deferred retirement; preretirement death; forfeitures.

(a) Any member who terminates covered employment and is not immediately eligible to receive disability or retirement income benefits under this article is, by written request filed with the board, entitled to receive from the fund the member's accumulated contributions. Except as provided in subsection (b) of this section, upon withdrawal, the member shall forfeit his or her accrued benefit and cease to be a member.

(b) Any member who ceases employment in covered employment and active participation in this plan and who thereafter becomes reemployed in covered employment may not receive any credited service for any prior withdrawn accumulated contributions from either this plan or the Public Employees Retirement System unless following his or her return to covered employment and active participation in this plan, the member redeposits in the fund the amount of the accumulated contributions withdrawn from previous covered employment, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on account of his or her former covered employment as if no refund had been made.

The repayment authorized by this subsection shall be made in a lump sum within 60 months of the emergency medical services officer's reemployment in covered employment or, if later, within 60 months of the effective date of this article.

(c) A member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to §16-5V-6(b) of this code, may not, after having transferred into and become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of nonemergency medical services officer service withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(d) Every member who completes 60 months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with this section or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining early or normal retirement age.

(e) In the event a member dies from any cause other than those specified in §16-5V-23 of this code and does not have 10 or more years of contributory service, the member's accumulated contributions may be paid to a named beneficiary or beneficiaries. If no beneficiary is named, then the accumulated contributions shall be paid to the estate of the deceased member.

(f) Notwithstanding any other provision of this article, forfeitures under the plan may not be applied to increase the benefits any member would otherwise receive under the plan.

WV Legislature

§16-5V-19. Awards and benefits for disability — Duty related.

(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally or partially disabled by injury, illness, or disease; and (2) the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (3) the disability was incurred while performing emergency medical services functions during either scheduled work hours or at any other time; and (4) in the opinion of two physicians after medical examination, one of whom shall be named by the board, the member is by reason of the disability unable to perform adequately the duties required of an emergency medical services officer, is entitled to receive and shall be paid from the fund in monthly installments the compensation set forth under either subsection (b) or (c) of this section.

(b) If the member is totally disabled, the member shall receive 90 percent of his or her average full monthly compensation for the 12-month period preceding the member's disability or the shorter period if the member has not worked 12 months. If the member remains totally disabled until attaining 65 years of age, the member shall then receive the retirement benefit provided in §16-5V-16 and §16-5V-17 of this code.

(c) If the member is partially disabled, the member shall receive 45 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months. If the member remains partially disabled until attaining 60 years of age, the member shall then receive the retirement benefit provided in §16-5V-16 and §16-5V-17 of this code.

(d) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

(e) For purposes of this article, unless a federal law or regulation or the context clearly requires a different meaning, "partially disabled" means a member’s inability to engage in the duties of his or her covered employment position by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state, but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

WV Legislature

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

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

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

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

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

(e) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

WV Legislature

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

(a) The board may require any member who has applied for or is receiving disability benefits under this article to submit to a physical examination, mental examination or both, by a physician or physicians selected or approved by the board. All costs incident to any examination by a board selected physician shall be paid from the board's expense fund. The costs may include hospital, laboratory, X-ray, medical and physicians' fees. A report of the findings of any physician shall be submitted in writing to the board for its consideration. If, from the report, independent information, or from the report and any hearing on the report, the board is of the opinion and finds that: (1) The member has become reemployed as an emergency medical services officer; (2) a physician who has examined the member has found that considering the opportunities for emergency medical services in West Virginia, the member could be so employed as an emergency medical services officer; or (3) other facts exist to demonstrate that the member is no longer totally disabled, then the disability benefits shall cease the first day of the month following board action. (b) The board shall require recertification for a disabled retirant, who has not attained age sixty, at least once each year during the first five years following his or her retirement and at least once in each three year period thereafter.

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

WV Legislature

§16-5V-22.

Repealed.

Acts, 2012 Reg. Sess., Ch. 32.

WV Legislature

§16-5V-23. Awards and benefits to surviving spouse – When member dies in performance of duty, etc.

(a) The surviving spouse of any member who dies by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his or her duties as an emergency medical services officer, or the survivor spouse of a member who dies from any cause while receiving benefits pursuant to §16-5V-19 of this code, is entitled to receive and shall be paid from the fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime an amount equal to the greater of: (1) Two thirds of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (2) if the member dies after meeting early or normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) Benefits for a surviving spouse received under this section, §16-5V-25 and §16-5V-26 of this code are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based upon the member's covered employment.

WV Legislature

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

(a) If a member who has been a contributing member for at least 10 years dies prior to retirement from any cause other than those specified in §16-5V-23 of this code and not due to vicious habits, intemperance or willful misconduct on his or her part, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime, a sum equal to the greater of: (1) One half of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (2) if the member dies after meeting early or normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) In any case where a retirant who had been a contributing member for at least 10 years, had not obtained the age of 60 and was receiving benefits pursuant to §16-5V-20 of this code and leaves a surviving spouse, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime a sum equal to the greater of: (1) One half of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (2) If the retirant dies after meeting early or normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

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

WV Legislature

§16-5V-25. Additional death benefits and scholarships -- Dependent children.

(a) In addition to the spouse death benefits in this article, the surviving spouse is entitled to receive and there shall be paid to the spouse $100 monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one hundred percent of the spouse's entitlement under this article divided by the number of dependent children. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: Provided, however, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: Provided further, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $6,000 per year, shall be paid from the fund to any university or college in this state or to any trade or vocational school or other entity in this state approved by the board to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under rules provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section. Scholarship benefits awarded pursuant to this subsection are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.

WV Legislature

§16-5V-26. Burial benefit.

Any member who dies as a result of any service related illness or injury after the effective date is entitled to a lump sum burial benefit of $5,000. If the member is married, the burial benefit shall be paid to the member's spouse. If the member is not married, the burial benefit shall be paid to the member's estate for the purposes of paying burial expenses, settling the member's final affairs, or both. Burial benefits awarded pursuant to this section are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.

WV Legislature

§16-5V-27. Double death benefits prohibited.

A surviving spouse is not entitled to receive simultaneous death benefits under this article as a result of the death of two or more members to whom the spouse was married. Any spouse who becomes eligible for a subsequent death benefit under this article while receiving a death benefit under this article shall receive the higher benefit, but not both.

WV Legislature

§16-5V-28. Right to benefits not subject to execution, etc.;assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders; benefits exempt from taxes.

The right of a person to any benefit provided for in this article shall not be subject to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court except that the benefits or contributions under this system shall be subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code as applicable to governmental plans: Provided, That should a member be covered by a group insurance or prepayment plan participated in by a participating public employer, and should he or she be permitted to, and elect to, continue such coverage as a retirant, he or she may authorize the board of trustees to have deducted from his or her annuity the payments required of him or her to continue coverage under such group insurance or prepayment plan: Provided, however, That a participating public employer shall have the right of setoff for any claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary. The assets of the retirement system are hereby exempt from state, county and municipal taxes.

WV Legislature

§16-5V-29. Fraud; penalties; and repayment.

Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement system in any attempt to defraud that system is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed 1,000, by confinement in jail not to exceed one year, or by both fine and confinement. Any increased benefit received by any person as a result of the falsification or fraud shall be returned to the fund upon demand by the board.

WV Legislature

§16-5V-30. Credit toward retirement for member's prior military service; credit toward retirement when member has joined Armed Forces in time of armed conflict; qualified military service.

(a) Any member who has previously served on active military duty is entitled to receive additional years of service for the purpose of determining his or her years of credited service for a period equal to the active military duty not to exceed five years, subject to the following:

(1) That he or she has been honorably discharged from the Armed Forces;

(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty; and

(3) That he or she is receiving no benefits from any other retirement system for his or her active military duty.

(b) In addition, any member who while in covered employment was commissioned, enlisted or inducted into the Armed Forces of the United States or, being a member of the reserve officers' corps, was called to active duty in the Armed Forces between September 1, 1940, and the close of hostilities in World War II, or between the June 27, 1950, and the close of the armed conflict in Korea on the July 27, 1953, between August 1, 1964, and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by Congress or by executive or other order of the President, is entitled to and shall receive credited service, for a period equal to the full time that he or she has or, pursuant to that commission, enlistment, induction or call, shall have served with the Armed Forces subject to the following:

(1) That he or she has been honorably discharged from the Armed Forces;

(2) That within ninety days after honorable discharge from the Armed Forces, he or she presented himself or herself to the county commission or other political subdivision and offered to resume service as an emergency medical services officer; and

(3) That he or she has made no voluntary act, whether by reenlistment, waiver of discharge, acceptance of commission or otherwise, to extend or participate in extension of the period of service with the Armed Forces beyond the period of service for which he or she was originally commissioned, enlisted, inducted or called.

(c) The total amount of service allowable under subsections (a) and (b) of this section may not exceed five years.

(d) Any service credit allowed under this section may be credited one time only for each emergency medical services officer, regardless of any changes in job title or responsibilities.

(e) Notwithstanding any provision of this section to the contrary, contributions, benefits and

WV Legislature

service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The Retirement Board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

WV Legislature

§16-5V-31. How a county commission, political subdivision, or county 911 public safety answering point becomes a participating public employer.

Any county commission, or political subdivision, or county 911 public safety answering point employing emergency medical services officers or 911 personnel may by a three-fifths vote of its governing body, or by a majority vote of its electors, elect to become a participating public employer and thereby include its emergency medical services officers and 911 personnel in the membership of the plan. The clerk or secretary of each such county commission, or political subdivision, or county 911 public safety answering point governing board electing to become a participating public employer shall certify the determination of the county commission, or political subdivision, or county 911 public safety answering point governing board to the Consolidated Public Retirement Board within 10 days from and after the vote of the governing body or the canvass of votes upon such action. Once a county commission, or political subdivision, or county 911 public safety answering point governing board elects to participate in the plan, the action is final and it may not, at a later date, elect to terminate its participation in the plan.

WV Legislature

§16-5V-32. Effective date; report to Joint Committee on Government and Finance; special starting date for benefits.

(a) The provisions of this article become effective January 1, 2008: Provided, That no payout of any benefits may be made to any person prior to January 1, 2011: Provided, however, That emergency medical services officers who retire due to a duty disability pursuant to this article may begin receiving the benefits at the rate and in the amount specified in this article from this fund after June 30, 2008: Provided further, That until June 30, 2008, those emergency medical services officers who retire due to a duty disability pursuant to this article may draw benefits from this fund at the rate and in the amount set forth in section twenty-five, article ten, chapter five of this code.

(b) During the 36-month period before the payout of benefits begins, the Joint Committee on Government and Finance shall cause an interim study or studies to be conducted on the potential effects of the implementation of this retirement system, including, but not limited to, potential funding mechanisms to provide health insurance coverage for retirees in the fifty to fifty-five age group: Provided, That after the effective date of this provision, the Director of the Public Employees Insurance Agency shall propose a rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the funding of health insurance coverage for retirees under the plan provided in this article who are in the fifty to fifty-five year age group, which rule may be filed as an emergency rule: Provided, however, That any rule filed as an emergency rule pursuant to this subsection shall be refiled at the earliest opportunity as a legislative rule for review and promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.

WV Legislature

§16-5V-33. Limitation of county liability.

No county which has timely met all of its obligations under this article is liable for any payments or contributions to the emergency medical services retirement plan which are owed to the plan by another county or counties.

WV Legislature

§16-5V-34. Benefits not forfeited if system terminates.

If the retirement system is terminated or contributions are completely discontinued, the rights of all members to benefits accrued or contributions made to the date of the termination or discontinuance, to the extent then funded, are not forfeited.

WV Legislature

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

(a) Subject to the provisions of subsection (b) of this section, the annuity of any member who retires under the provisions of this article and who resumes service in covered employment shall be suspended while the member continues in covered employment. If there has been a bona fide separation from service upon retirement, the monthly annuity payment for the month in which the service resumes shall be pro-rated to the date of commencement of service, and the member shall again become a contributing member during resumption of service. At the conclusion of resumed service in covered employment the member shall have his or her annuity recalculated to take into account the entirety of service in covered employment.

(b) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating public employer after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the plan. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the participating public employer fails to comply with subsection (c) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of §16-5V-8a to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(c) Prior to any retirant subsequently becoming reemployed by a participating public employer, including on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the participating public employer shall notify the board and the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of such employment, the participating public employer shall notify the board, in writing, of the retirant's subsequent employment. The retirement board may also require of retirants and the participating public employer such reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service upon retirement has occurred.

(d) Any retirant who retired under the early retirement provisions of §16-5V-16 of this code, and is subsequently reemployed in covered employment pursuant to this section, and who again retires shall have his or her retirement annuity recalculated as if he or she were retiring at an age calculated by adding his or her original early retirement age to the number of years and months during which he or she was reemployed and contributing to the plan. In the event the artificially determined age, as determined in accordance with the preceding sentence, exceeds 60, the board shall not make any reduction for early retirement.

WVLegislature

§16-5V-36. Severability.

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

WV Legislature