WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 2802

(By Delegate(s) Pethtel, Jones, Craig, Canterbury, Kump, Lynch and Stowers)

Passed April 2, 2013

In effect ninety days from passage.
AN ACT to amend and reenact §16-5V-2, §16-5V-8, §16-5V-11, §16-5V-20, §16-5V-21 and §16-5V-24 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated §16-5V-8a and §16-5V-35, all relating to the Emergency Medical Services Retirement System; modifying the definition of annual compensation as it relates to determining benefits; adding a definition for contributing service to this article; adding a definition for the terms retire and retirement to this
article; providing for correction of participating public employer errors by the board; providing eligibility requirements for commencement of benefits; specifying that the board must be in receipt of a request for estimation of benefits prior to providing a member with an explanation of their estimated gross monthly annuity and a retirement application; providing that a member shall have at least ten years of contributing service to qualify for nonduty related disability retirement; specifying that the total nonduty disability award received by a member shall be based on their average monthly compensation during the twelve month period immediately preceding the disability award; providing that all costs associated with disability benefit examinations shall be paid from the board’s expense fund; providing that disability benefits shall cease on the first day of the month following termination of disability by the board; requiring annual disability recertification for a retirant who is less than sixty years of age during the first five years of retirement and once every three years thereafter; providing that if a member who is receiving a nonduty disability benefit dies the surviving spouse shall receive the average monthly compensation received by the member prior to
the disability award; and providing for the annuity calculation for a member who returns to covered employment after retirement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-2. Definitions.

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

3 (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 twenty years of credited service. Additionally, two percent per year for twenty-one through twenty-five years and one percent per year for twenty-six through thirty years will be credited with a maximum benefit of sixty-seven percent. A member’s accrued benefit may not exceed the limits of Section
10 415 of the Internal Revenue Code and is subject to the provisions
11 of section twelve of this article.
12
13 (1) The board may upon the recommendation of the board's
14 actuary increase the employees' contribution rate to ten and
15 five-tenths percent should the funding of the plan not reach
16 seventy percent funded by July 1, 2012. The board shall decrease
17 the contribution rate to eight and one-half percent once the plan
18 funding reaches the seventy percent support objective as of any
19 later actuarial valuation date.
20 (2) Upon reaching the seventy-five percent actuarial funded
21 level, as of an actuarial valuation date, the board shall increase
22 the two and six-tenths percent to two and three-quarter percent
23 for the first twenty years of credited service. The maximum
24 benefit will also be increased from sixty-seven percent to
25 seventy percent.
26 (b) "Accumulated contributions" means the sum of all
27 retirement contributions deducted from the compensation of a
28 member, or paid on his or her behalf as a result of covered
29 employment, together with regular interest on the deducted
30 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 section seven, article ten-d, chapter five 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) "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.
(j) "County commission or political subdivision" has the meaning ascribed to it in this code.

(k) "Covered employment" means either: (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) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by an emergency medical services officer in a job or jobs in addition to his or her employment as an emergency medical services officer where the secondary employment requires the emergency medical services officer 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 contributes to the fund created in this article the amount specified as the member's contribution in section eight of this article.
(l) "Credited service" means the sum of a member's years of service, active military duty, disability service and accrued annual and sick leave service.

(m) "Dependent child" means either:

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

(A) A natural child of the member;

(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 twenty-three:

(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.
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(n) “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.

(o) “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.

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

(q) “Effective date” means January 1, 2008.

(r) “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.

(s) "Employer error" means an omission, misrepresentation or violation of relevant provisions of the West Virginia Code or of 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 Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this article by a participating public employer does not constitute employer error.

(t) "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 ten 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 section nineteen of this article multiplied by twelve. "Final average salary" does not include any lump sum payment for unused, accrued leave of any kind or character.

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

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

(w) "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 section nineteen or twenty of this article; 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 (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.

(x) "Member" means a person first hired as an emergency medical services officer by an employer which is a participating
public employer of the Public Employees Retirement System or
the Emergency Medical Services Retirement System after the
effective date of this article, as defined in subsection (p) (q) of
this section, or 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.
A member shall remain a member until the benefits to which he
or she is entitled under this article are paid or forfeited.
(y) "Monthly salary" means the W-2 reportable
compensation received by a member during the month.
(z) "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.
(aa) "Normal retirement age" means the first to occur of the
following:
(1) Attainment of age fifty years and the completion of twenty 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 fifty years and when the sum of current age plus regular contributory years of service equals or exceeds seventy years;

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

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

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

(cc) “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 section four, article fifteen, chapter seven of this code is considered a political subdivision solely for the purposes of this article.

(dd) “Plan” means the West Virginia Emergency Medical Services Retirement System established by this article.

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

(ff) “Public Employees Retirement System” means the West Virginia Public Employee’s Retirement System created by West Virginia Code.

(gg) “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.

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

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

(jj) "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.

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

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

(mm) "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.

(nn) "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 twelve 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 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.

(oo) “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:

<table>
<thead>
<tr>
<th>Hours of Service</th>
<th>Year of Service Credited.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500</td>
<td>0</td>
</tr>
<tr>
<td>500 to 999</td>
<td>1/3</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2/3</td>
</tr>
<tr>
<td>1,500 or more</td>
<td>1</td>
</tr>
</tbody>
</table>

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 section nineteen or twenty of this article. 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 section eighteen of this article or
section thirty, article ten, chapter five of this code, shall be
disregarded for all purposes under this plan unless the member
repays the accumulated contributions with interest pursuant to
section eighteen of this article or has prior to the effective date
made the repayment pursuant to section eighteen, article ten,
chapter five of this code.

§16-SV-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 ten 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 emergency medical services officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five 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 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 to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five 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 ten 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 fifteen 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.

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

(a) General rule: If any change or employer error in the
records of any participating public employer or the plan results
in any member, retirant or beneficiary receiving from the plan
more or less than he or she would have been entitled to receive
had the records been correct, the board shall correct the error. If correction of the error occurs after the effective retirement date of a retirant, and as far as is practicable, the board shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the retirant was correctly entitled shall be paid.

(b) Underpayments: Any error resulting in an underpayment to the retirement system of required contributions may be corrected by the member or retirant remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with the Legislative Rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and employer error interest factors and any accumulating interest owed on the employee and employer contributions 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 of required contributions to the
retirement system will result in increased payments to a retirant,
including increases to payments already made, any adjustments
shall be made only after the board receives full payment of all
required employee and employer contributions, including
interest.

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

(2) When mistaken or excess employee contributions,
including any overpayments, have been made to the retirement
system, due to error or other reason, the board shall have sole
authority for determining the means of return, offset or credit to
or for the benefit of the employee 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 to pay the employee 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: Provided, That the wages paid to the employee shall not be considered compensation for any purposes under this article. Earnings or interest shall not be returned, offset, or credited under any of the means utilized by the board for returning mistaken or excess employee contributions, including any overpayments, to an employee.

§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
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.

§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.

§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.


(a) If a member who has been a member for at least ten years, while in covered employment after the effective date of this article, has died or dies from any cause other than those specified in section twenty-three of this article 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 in the preceding twelve-month employment period by the deceased member; or (2) if the member dies after his or her early or normal retirement age, 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. Where the member is receiving disability benefits under this article at the time of his or her death, the average monthly compensation received in the plan year prior to disability shall be substituted for the annual compensation in subdivision (1) of this subsection.

(b) 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.

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

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. 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 17th day of April, 2013.

Governor