

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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SPECIAL REPORT

DATE: September 11, 2012

TO: Legislative Post Audits Subcommittee

FROM: Aaron Allred, Legislative Auditor
Stacy Sneed, Director

SUBJECT: Noncompliance with WV Code §5-10-48

In January 2012, the Performance Evaluation and Research Division (PERD) issued a special report on internal controls within the Purchasing Division and Consolidated Public Retirement Board. In that report the Legislative Auditor was concerned the sole-source contract between former Governor Joe Manchin's Office and Smith Personnel Consulting, LLC exercised a loophole allowing a retired state employee to be paid by the state while receiving his full retirement annuity. This special report sparked a review by the Legislative Post Audit Division to determine the full extent of this loophole being used. Our Division performed a comparison of vendors in WVFIMS to Public Employees Retirement System (PERS) retirees, of PERS retirees to EPICS, and of the state directory to EPICS. Retirees from retirement systems other than PERS were not included in this study; however, each system has been described at the end of this report. The results are below. **We noted 35 individuals received payment from the state in excess of \$15,000 in CY 2011 and still received their full annuities.**

WV Code §5-10-48 states:

“(c) In the event a retirant becomes **regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment** and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to the additional employment, the annuity to be computed according to section twenty-two of this article. A retirant may accept **temporary full-time or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does**

not receive annual compensation in excess of \$15,000: *Provided*, That a retirant may be employed by the Legislature on a per diem basis without suspension of the retirement annuity if the retirant's annual compensation from the Legislature does not exceed \$20,000.” **(Emphasis Added)**

WVFIMS Comparison to Retirees

The objective was to determine the number of matches between the social security numbers of state workers retired from the Public Employees Retirement System (PERS) in Calendar Year (CY) 2011 with the 2011 WVFIMS Vendors. A further objective was to determine the number of people with social security number matches who received over \$15,000 as a vendor in CY 2011 and also received annuity payments from PERS.

We obtained a list of social security numbers of retirees for CY 2011 from the Consolidated Public Retirement Board (CPRB). We also obtained a crystal report of all Vendors who received their last payment during the period of January 1, 2011 to January 31, 2012. We then used the Match formula in Excel to determine which FEIN/SSN Numbers on the Vendor file were also on the PERS file received from CPRB. We prepared a pivot table summary of the FEIN/SSN to determine the number of matches between the two files.

We noted 31 individuals earned over the \$15,000 threshold and continued to receive their full annuities. We requested all contracts and agreements from corresponding agencies, and checked contract dates, contract job duties, retirement dates, and job duties before retirement. Below is a table of the 31 individuals detailing how much they received as a vendor and how much annuity they received:

<u>Individual</u>	<u>CY 2011 Agency(s) paid from</u>	<u>CY 2011 Amount Paid in WVFIMS</u>	<u>CY 2011 PERS Annuity Payments</u>
Toney Colagrosso	Adjutant General	\$ 69,605	\$ 6,124
Lowell D. Basford	Adjutant General; Div. of Personnel; Governors Office	\$ 15,492	\$50,258
Kenneth Webb	Bureau of Senior Services	\$ 31,340	\$52,942
Roland T. Huson, III	DEP	\$ 69,281	\$11,587
Billy B. Burke	Dept. of Agriculture	\$ 27,863	\$12,458
Anne Werum Lambright	Dept. of Ed; School for Deaf & Blind; Div. of Health; Board of Medicine; Supreme Court	\$ 44,041	\$50,123
Jack C. McClung (Attorney at Law)	Div. of Health; Racing Comm.; Board of Registered Nurses; DEP; Board of Physical Therapy; Board of Professional Surveyors; Board of Exam Psychologists; Medical Imaging & Radiation Tech.; Barbers & Cosmetologists; Board of Medicine; Attorney General; Sec. of State	\$ 67,710	\$32,174
Thomas J. Janicki, MD	Div. of Human Services	\$ 24,225	\$47,224
Edward J. Janco	DMV; Office of Admin. Hearing	\$ 17,394	\$23,907

<u>Individual</u>	<u>CY 2011 Agency(s) paid from</u>	<u>CY 2011 Amount Paid in WVFIMS</u>	<u>CY 2011 PERS Annuity Payments</u>
Glenn O. Pauley	DMV; Office of Admin. Hearing	\$ 22,198	\$46,998
George R. Powers	DOH	\$ 28,275	\$19,069
Jennings R. Bradford	DOH	\$ 29,761	\$37,072
John E. Dorsey	DOH	\$ 17,518	\$ 2,650
Gerald Terry	DOH	\$115,260	\$22,286
David Casto	DOH; Adjutant General	\$ 23,505	\$ 3,105
Francis P. Fisher, II	Educational Broadcasting	\$ 27,060	\$10,480
Andy Ridenour	Educational Broadcasting	\$ 27,500	\$28,616
Joe Smith** (Smith Personnel Consulting, LLC)	Governor's Office; Racing Comm.	\$ 84,633	\$46,123
Carl P. Bryant	Public Defenders	\$ 27,599	\$ 6,339
Wayne King	Public Defenders	\$ 38,655	\$ 6,409
Lacy W. Wright, Jr.	Public Defenders; Div. of Human Services	\$ 28,370	\$ 2,290
Tony Morgan	Public Defenders; Supreme Court	\$ 41,560	\$18,608
Billy Jack Gregg	Public Service Comm.	\$ 39,848	\$40,753
James E. Capage	Rehabilitation Services	\$ 64,482	\$ 7,685
Claude Michael Griffith	Supreme Court	\$ 18,921	\$22,881
Daniel L. Boone	Supreme Court	\$ 37,830	\$39,535
Wade W. Thompson (Wade Consulting)	Tax Division	\$ 47,549	\$42,389
Wilbert G. Lister	Veterans Affairs	\$ 18,600	\$ 2,904
Michael P. Browning**	Development Office	\$ 21,420	\$ 5,791
Jane K. Peters**	Development Office	\$ 22,567	\$47,781
Richard C. Jennings**	Development Office	\$ 29,733	\$19,927

**Previously reported to the Legislature in a prior PERD or Post Audit Report

EPICS Comparison to Retirees

The objective was to determine the number of matches between the social security numbers of state workers retired from PERS with the employees who received payments via the EPICS Payroll System in CY 2011. A further objective was to determine the number of people with social security number matches who received over \$15,000 as an employee in CY 2011 in noncompliance with W. Va. Code §5-10-48.

We obtained a list of social security numbers from retirees who were retired before or during CY 2011 from the CPRB. We also obtained an EPICS Report of all employees receiving payments during CY 2011. There were 71,546 Employees who received a payment through the EPICS Payroll System. There were 1,445 matches to the list provided by the CPRB.

We then determined the total compensation each of the employees who matched received during CY 2011. Additionally, we determined whether the employees were full-time or part-time employees. Next, we used an Excel formula to determine if the Total Compensation received was greater than \$15,000 for the part-time employees. Once we completed our

research, we determined four retired individuals were re-employed with the State, paid as temporary employees, and received their full annuity payments for CY 2011. The employees are listed in the table below.

<u>Employee</u>	<u>CY 2011 Agency(s) paid from</u>	<u>CY 2011 Amount Paid in EPICS</u>	<u>CY 2011 PERS Annuity Payments</u>
Jerry W. Nick	Division of Highways	\$16,029	\$24,546
William W. Smith	Workforce West Virginia	\$33,125	\$19,808
Cline J. Allman	DNR	\$19,245	\$24,332
Oscar Vecellio	DNR	\$27,904	\$ 5,230

EPICS Comparison to the State Phone Directory

The objective of the comparison between the State Phone Directory and EPICS was to identify any individuals who are listed on the state phone directory and did not receive compensation from the EPICS System in CY 2011. This may show individuals who are working for the State of WV through a private entity.

We obtained an Excel listing of all individuals listed in the State Auditor’s Office (SAO) EPICS payroll system. This listing detailed the agency and name of each individual as it appears in the EPICS payroll records. Next, we obtained the State Phone Directory in Excel format, which also detailed the agency and name of each individual listed. We then matched the State Phone Directory information to the EPICS listing and indicated any non-matches. Finally, we searched the MyApps total compensation database for the names of individuals who did not match the EPICS listing during our initial search. We also performed an internet search for any other records which may help determine if individuals were the same (obituaries, grievances filed, agency newsletters, etc..)

We identified the individuals who were listed on the State Phone Directory and did not receive compensation from the SAO EPICS System in Calendar Year 2011, to the best of our ability. The State Phone Directory was an unreliable source to try to match to EPICS, because many of the names were different, nicknames were used on the State Phone Directory, and the State Phone Directory is not updated as frequently as EPICS, resulting in individuals who were deceased, retired, and/or had transferred to another agency being listed on the State Phone Directory.

Next, the Legislative Auditor and the Post Audit Division sent several letters to the agencies the non-matching individuals were said to be working for, according to the State Phone Directory, and asked them to review the listing of individuals and inform us whether or not they were presently an employee, a contract employee simply listed in the State Phone Directory, or no longer working at the agency. We explained the most common reason for non-matches appeared to be the use of nicknames in the phone directory. If this was the case, the agency was asked to explain. Once we received responses back from the agencies, we performed additional work on the non-matching list to remove appropriate individuals.

We noted the following items:

- **We noted 79 individuals on the State Phone Directory were contract employees in CY 2011** with either CPRB (1), DHHR (61), the Department of Education and Arts (1), Educational Broadcasting Authority (2), Office of Technology (8), PEIA (5), and Bureau of Senior Services (1);
- **We were unable to verify if 321 additional individuals were contract employees in CY 2011** due to the following:
 - We were unable to determine the proper agency for seven individuals due to incorrect information being entered into the State Phone Directory;
 - Agencies were unable to verify the employment status of 209 individuals;
 - We noted 81 individuals were no longer employed with DHHR and the agency could not provide the last employment date or note if the person had been a contract employee;
 - We noted DHHR did not respond to our requests for 24 individuals as to why the employees were listed on the phone directory, but were not being paid in EPICS in CY 2011 and did not state whether they were a contract employee; and
- **We noted two employees were federal employees** located at DHHR.

Recommendation

The Legislative Auditor recommends the following options as an opportunity for the Legislature to clarify its intent regarding the pay of retired state employees:

- **Eliminate limitations for all retired state employees; or**
- **Disallow retired state employees drawing an annuity to contract or return to work with the State; or**
- **Amend WV Code to specifically limit contracted retired state employees.**

Additionally, all agencies must work with the CPRB to investigate contractual relationships and the rehiring of retired state employees, and notify the CPRB when a contractor or employee who is retired from PERS meets the maximum amount allowed by statute. There should also be training for all payroll coordinators so they are aware of the WV Code section.

CPRB Response

The CPRB was provided with a draft copy of the special report. The agency's response has been included at the end of this report.

Listed below are nine retirement systems which were established to serve various parts of the workforce.

- **The Public Employees Retirement Systems (PERS)** was established for the purpose of providing retirement benefits for employees of the State and other political subdivisions. PERS is funded by employee and employer contributions.
- **The State Teachers' Retirement System (TRS)** was established for the purpose of providing retirement benefits for teachers and school service personnel. TRS is funded by employee and employer contributions based on employee hire date.
- **West Virginia Teachers Defined Contribution Plan** is a 401(a) plan which covers some full-time employees of the State's county public school systems, Department of Education, some Higher Education employees, and the School for the Deaf and Blind.
- **The Judges' Retirement System (JRS)** was established for judges and justices of the State of West Virginia who elect to participate in the retirement system. JRS is a single employer defined benefit retirement system providing retirement, death and disability benefits.
- **The Deputy Sheriff Retirement System (DSRS)**, a multiple-employer defined benefit employee retirement system, was established for all deputy sheriffs hired on or after July 1, 1998. Service as a sheriff may also be considered covered employment under certain circumstances. A member is vested after completion of 5 years covered employment.
- **The West Virginia State Police Death, Disability and Retirement Fund**, commonly referred to as **Plan A**, was established for all state troopers on July 1, 1935. West Virginia Code §15-2 establishes the plan provisions for Plan A. State troopers hired on or after March 12, 1994 are not eligible for membership in Plan A. Civilian employees of the West Virginia State Police are members of the PERS.
- **The West Virginia State Police Retirement System**, commonly referred to as **Plan B**, was established by the enactment of W. V. Code §15-2A during the 1994 Legislative Session for all state troopers hired on or after March 12, 1994.
- **The Emergency Medical Services Retirement System (EMSRS)** was established January 1, 2008 for the purpose of providing retirement benefits for emergency medical services officers employed by participating public employers who voluntarily elected to participate as of December 31, 2007, and to all emergency medical services officers hired into covered employment by participating public employers of EMSRS on or after January 1, 2008.
- **The Municipal Police Officers and Firefighters Retirement System (MPFRS)** was established January 1, 2010. All paid police officers and firefighters first employed in

covered employment by a participating municipality or municipal subdivision after the date the municipality or municipal subdivision elected to join MPFRS are required to be members of MPFRS as a condition of employment. If there are fewer than 100 members of MPFRS on January 1, 2014, all members will be merged into the Emergency Medical Services Retirement System (EMSRS).

It is possible for an employee to move from one retirement system to another based on their status as a retiree, yet regaining a full-time position with another agency.

Contributing auditors:

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September 6, 2012

Stacy Sneed, CPA, Director
Legislative Post Audit Division
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1900 Kanawha Blvd., E.
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Dear Ms. Sneed:

I am in receipt of your letter and draft memorandum dated August 9, 2012. As you requested, I am responding with suggested comments.

W.Va. Code §5-10-48(c) states that “In the event a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system.” I would like to bring to your attention that W.Va. Code §5-10-17(e) prohibits “leased employees”, which includes independent contractors, from participating in the retirement system. Therefore, a leased employee, no matter how much they work or how much they earn, are prohibited from becoming “a contributing member to the retirement system.” The Consolidated Public Retirement Board (CPRB) administers the plans according to statute and currently, there is nothing that prohibits retired public employees from working for a state employer as an independent contractor and still receiving their full annuity. The CPRB was created to administer the nine plans entrusted to it by the Legislature and the determination of employment status is not within our scope and would be better suited to be determined by someone specializing in employment law. The individuals listed in your report that were vendors with WVFIMS would have been contract or “leased employees” and therefore would not have been eligible to participate in the Public Employees Retirement System (PERS).

In your report, you also list four employees paid through EPICS who exceeded the \$15,000.00 limit and were overpaid in their annuity. We are currently in the process of contacting their employers to confirm the information you provided and will request reimbursement for any overpayments they may have received.

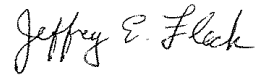
PERS has over 652 participating employers. Only 123 of those are state employers and paid through the EPICS system. The other 529 employers utilize various payroll systems and so your report does not take into account those employers and their employees. We are currently in the process of developing a memorandum of understanding with the state Auditor’s office to perform audits of

participating employers and one of the items on their list is to determine if they have any retired employees on their payroll.

Your recommendation to eliminate limitations for all retired state employees would have a very negative affect on the PERS plan. In discussing the recommendation with our actuary, it would totally change the experience of the plan and would create a change in the actuarial assumptions. It would create an environment that would promote retirement as early as possible so that a pension and a salary could be acquired. This change in experience would require an increase in employer contributions.

We look forward to working with your office in resolving this issue.

Sincerely,

A handwritten signature in cursive script that reads "Jeffrey E. Fleck".

Jeffrey E. Fleck
Executive Director