

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **Senate Bill 367**

BY SENATOR TRUMP

[Introduced January 24, 2018; Referred  
to the Committee Pensions; and then to the Committee on  
Finance]

1 A BILL to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §51-9-10 of said code, all relating to allowing retired judicial officers  
 3 recalled to service to avoid the normal cap on temporary employment payments where an  
 4 urgent need such as a significant illness, suspension, or other long absence of a sitting  
 5 judicial officer requires a longer period of service by the retired judicial officer than the  
 6 current caps would allow.

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

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE  
 GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;  
 BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,  
 COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

**§5-10-48. Reemployment after retirement; options for holder of elected public office.**

1 (a) The Legislature finds that a compelling state interest exists in maintaining an actuarially  
 2 sound retirement system and that this interest necessitates that certain limitations be placed upon  
 3 an individual's ability to retire from the system and to then later return to state employment as an  
 4 employee with a participating public employer while contemporaneously drawing an annuity from  
 5 the system. The Legislature hereby further finds and declares that the interests of the public are  
 6 served when persons having retired from public employment are permitted, within certain  
 7 limitations, to render post-retirement employment in positions of public service, either in elected  
 8 or appointed capacities. The Legislature further finds and declares that it has the need for qualified  
 9 employees and that in many cases an employee of the Legislature will retire and be available to  
 10 return to work for the Legislature as a per diem employee. The Legislature further finds and  
 11 declares that in many instances these employees have particularly valuable expertise which the

12 Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying  
13 these persons on a limited per diem basis after they have retired is not only in the best interests  
14 of this state, but has no adverse effect whatsoever upon the actuarial soundness of this particular  
15 retirement system.

16 (b) For the purposes of this section: (1) "Regularly employed on a full-time basis" means  
17 employment of an individual by a participating public employer, in a position other than as an  
18 elected or appointed public official, which normally requires 12 months per year service and at  
19 least 1040 hours of service per year in that position; (2) "temporary full-time employment" or  
20 "temporary part-time employment" means employment of an individual on a temporary or  
21 provisional basis by a participating public employer, other than as an elected or appointed public  
22 official, in a position which does not otherwise render the individual as regularly employed; (3)  
23 "former employee of the Legislature" means any person who has retired from employment with  
24 the Legislature and who has at least 10 years' contributing service with the Legislature; and (4)  
25 "reemployed by the Legislature" means a former employee of the Legislature who has been  
26 reemployed on a per diem basis not to exceed 175 days per calendar year.

27 (c) ~~In the event~~ If a retirant becomes regularly employed on a full-time basis by a  
28 participating public employer, payment of his or her annuity shall be suspended during the period  
29 of his or her reemployment and he or she shall become a contributing member to the retirement  
30 system. If his or her reemployment is for a period of one year or longer, his or her annuity shall  
31 be recalculated and he or she shall be granted an increased annuity due to the additional  
32 employment, the annuity to be computed according to §5-10-22 of this code. If his or her  
33 reemployment is for a period less than one year, he or she may request in writing that the  
34 employee and employer retirement contributions submitted during reemployment be credited to  
35 the participating public employer pursuant to section 44 of this article, and his or her previous  
36 annuity shall be reinstated effective the first day of the month following termination of

37 reemployment and the board's receipt of written notice thereof. A retirant may accept legislative  
38 per diem, temporary full-time or temporary part-time employment from a participating employer  
39 without suspending his or her retirement annuity so long as he or she does not receive annual  
40 compensation in excess of \$20,000. A retirant who is assigned to temporary employment by the  
41 Chief Justice of the Supreme Court of Appeals may, however, receive annual compensation in  
42 excess of \$20,000 without suspending his or her retirement annuity, but only where the Chief  
43 Justice has by Administrative Order found that exigent circumstances involving protracted illness,  
44 lengthy suspension of a sitting judicial officer, or other extraordinary circumstances require a  
45 length of term of temporary employment that is likely to cause the retirant's annual compensation  
46 to exceed \$20,000.

47 (d) ~~In the event~~ If a member retires and is then subsequently elected to a public office or  
48 is subsequently appointed to hold an elected public office, or is a former employee of the  
49 Legislature who has been reemployed by the Legislature, he or she has the option,  
50 notwithstanding subsection (c) of this section, to either:

51 (1) Continue to receive payment of his or her annuity while holding public office or during  
52 any reemployment of a former employee of the Legislature on a per diem basis, in addition to the  
53 salary he or she may be entitled to as an office holder or as a per diem reemployed former  
54 employee of the Legislature; or

55 (2) Suspend the payment of his or her annuity and become a contributing member of the  
56 retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of  
57 this subsection, a member who is participating in the system as an elected public official may not  
58 retire from his or her elected position and commence to receive an annuity from the system and  
59 then be elected or reappointed to the same position unless and until a continuous 12-month period  
60 has passed since his or her retirement from the position: *Provided*, That a former employee of  
61 the Legislature may not be reemployed by the Legislature on a per diem basis until at least 60

62 days after the employee has retired: *Provided, however,* That the limitation on compensation  
63 provided by subsection (c) of this section does not apply to the reemployed former employee:  
64 *Provided further,* That in no event may reemployment by the Legislature of a per diem employee  
65 exceed 175 days per calendar year.

66 (e) A member who is participating in the system simultaneously as both a regular, full-time  
67 employee of a participating public employer and as an elected or appointed member of the  
68 legislative body of the state or any political subdivision may, upon meeting the age and service  
69 requirements of this article, elect to retire from his or her regular full-time state employment and  
70 may commence to receive an annuity from the system without terminating his or her position as  
71 a member of the legislative body of the state or political subdivision: *Provided,* That the retired  
72 member ~~shall~~ may not, during the term of his or her retirement and continued service as a member  
73 of the legislative body of a political subdivision, be eligible to continue his or her participation as  
74 a contributing member of the system and ~~shall~~ may not continue to accrue any additional service  
75 credit or benefits in the system related to the continued service.

76 (f) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member  
77 of the legislative body of any political subdivision or of the State Legislature, the Clerk of the  
78 House of Delegates and the Clerk of the Senate may elect to commence receiving in-service  
79 retirement distributions from this system upon attaining the age of seventy and one-half years:  
80 *Provided,* That the member is eligible to retire under the provisions of §5-10-20 or §5-10-21 of  
81 this code: *Provided, however,* That the member elects to stop actively contributing to the system  
82 while receiving the in-service distributions.

83 (g) The provisions of §5-10-22h of this code are not applicable to the amendments made  
84 to this section during the 2006 Regular Session.

## **CHAPTER 51. COURTS AND THEIR OFFICERS.**

**ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.****§51-9-10. Services of senior judges.**

1           The West Virginia Supreme Court of Appeals is authorized and empowered to create a  
2 panel of senior judges to utilize the talent and experience of former circuit court judges and  
3 supreme court justices of this state. The Supreme Court of Appeals shall promulgate rules  
4 providing for said judges and justices to be assigned duties as needed and as feasible toward the  
5 objective of reducing caseloads and providing speedier trials to litigants throughout the state:  
6 *Provided*, That reasonable payment shall be made to said judges and justices on a per diem  
7 basis: *Provided, however*, That the per diem and retirement compensation of a senior judge shall  
8 not exceed the salary of a sitting judge except as set forth herein, and allowances shall also be  
9 made for necessary expenses as provided for special judges under §51-2-1 *et seq.* and §51-2-1  
10 *et seq.* of this code. A senior judge who is assigned to temporary employment by the Chief Justice  
11 of the Supreme Court of Appeals may receive per diem and retirement compensation in excess  
12 of the salary of a sitting judge, but only when the Chief Justice has by Administrative Order found  
13 that exigent circumstances involving protracted illness, lengthy suspension of a sitting judicial  
14 officer, or other extraordinary circumstances require a length of term of temporary employment  
15 that is likely to cause the senior judge's per diem and retirement compensation to exceed the  
16 salary of a sitting judge.

NOTE: The purpose of this bill is to allow retired judicial officers recalled to service to avoid the normal cap on temporary employment payments where an urgent need such as a significant illness, suspension, or other long absence of a sitting judicial officer requires a longer period of service by the retired judicial officer than the current caps would allow.

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