

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 166

BY SENATORS CAPUTO, NELSON, AND BARRETT

[Originating in the Committee on Pensions; reported

on January 26, 2023]

1 A BILL to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended, relating
2 to reemployment after retirement by public employees; and increasing the maximum
3 compensation that may be earned by certain retired public employees who accept
4 legislative per diem, temporary full-time, or temporary part-time employment from a
5 participating employer without suspending his or her retirement annuity.

Be it enacted by the Legislature of West Virginia:

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 1,040 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) If a retirant becomes regularly employed on a full-time basis by a participating public
28 employer, payment of his or her annuity shall be suspended during the period of his or her
29 reemployment and he or she shall become a contributing member to the retirement system. If his
30 or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated
31 and he or she shall be granted an increased annuity due to the additional employment, the annuity
32 to be computed according to §5-10-22 of this code. If his or her reemployment is for a period less
33 than one year, he or she may request in writing that the employee and employer retirement
34 contributions submitted during reemployment be credited to the participating public employer
35 pursuant to §5-10-44 of this code, and his or her previous annuity shall be reinstated effective the
36 first day of the month following termination of reemployment and the board's receipt of written
37 notice thereof. A retirant may accept legislative per diem, temporary full-time, or temporary part-
38 time employment from a participating employer without suspending his or her retirement annuity
39 so long as he or she does not receive annual compensation ~~in excess of \$20,000~~ more than
40 \$25,000: *Provided, That the Legislature shall review the amount of annual compensation which*
41 *a retirant may receive from legislative per diem, temporary full-time, or temporary part-time*
42 *employment from a participating employer without suspending his or her retirement annuity on or*
43 *before July 1, 2028.*

44 (d) *Senior judges, justices, and magistrates. –*

45 (1) Notwithstanding the provisions of subsection (c) of this section, a retired judge or
46 justice who is recalled and assigned to temporary service as a senior judge or justice by the West
47 Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the
48 requirements of §51-9-10 of this code while continuing to receive his or her annuity.

49 (2) Notwithstanding the provisions of subsection (c) of this section, a retired magistrate
50 who is recalled and assigned to temporary service as a senior magistrate by the West Virginia
51 Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of
52 §50-1-6a of this code while continuing to receive his or her annuity.

53 (e) If a member retires and is then subsequently elected to a public office or is
54 subsequently appointed to hold an elected public office, or is a former employee of the Legislature
55 who has been reemployed by the Legislature, he or she has the option, notwithstanding
56 subsection (c) of this section, to either:

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

61 (2) Suspend the payment of his or her annuity and become a contributing member of the
62 retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of
63 this subsection, a member who is participating in the system as an elected public official may not
64 retire from his or her elected position and commence to receive an annuity from the system and
65 then be elected or reappointed to the same position unless and until a continuous 12-month period
66 has passed since his or her retirement from the position: ~~Provided~~ Provided, That a former
67 employee of the Legislature may not be reemployed by the Legislature on a per diem basis until
68 at least 60 days after the employee has retired: *Provided, however*, That the limitation on
69 compensation provided by subsection (c) of this section does not apply to the reemployed former

70 employee: *Provided further*, That in no event may reemployment by the Legislature of a per diem
71 employee exceed 175 days per calendar year.

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

82 (g) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member
83 of the legislative body of any political subdivision or of the State Legislature, the Clerk of the
84 House of Delegates, and the Clerk of the Senate may elect to commence receiving in-service
85 retirement distributions from this system upon attaining the age of 70 and one-half years:
86 ~~*Provided*, That the member~~ if he or she is eligible to retire under the provisions of §5-10-20 or §5-
87 10-21 of this code: *Provided*, That ~~the member~~ he or she must ~~elects~~ elect to stop actively
88 contributing to the system while receiving the in-service distributions.

89 (h) The provisions of §5-10-22h of this code are not applicable to the amendments made
90 to this section during the 2006 regular session.