

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 582

FISCAL
NOTE

By Senators Trump, Weld, Nelson, and Jeffries

[Introduced February 08, 2023; referred
to the Committee on Pensions; and then to the
Committee on Finance]

1 A BILL to amend and reenact §5-10-2, §5-10-14, §5-10-17, and §5-10-48 of the Code of West
2 Virginia, 1931, as amended, all relating generally to legislative employment and
3 retirement; modifying the length of service an employee of the Legislature whose term of
4 employment is otherwise classified as temporary and who is employed to perform services
5 required by the Legislature for its regular sessions must serve to obtain service credit
6 towards retirement; removing the requirement that a person retiring from the Legislature
7 must be removed from employment prior to being eligible for temporary employment with
8 the Legislature; and increasing the maximum annual remuneration a retirant may earn as a
9 temporary legislative employee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

1 Unless a different meaning is clearly indicated by the context, the following words and
2 phrases as used in this article have the following meanings:

3 (1) "Accumulated contributions" means the sum of all amounts deducted from the
4 compensations of a member and credited to his or her individual account in the members' deposit
5 fund, together with regular interest on the contributions;

6 (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on
7 behalf of a retired member;

8 (3) "Actuarial equivalent" means a benefit of equal value computed upon the basis of a
9 mortality table and regular interest adopted by the board of trustees from time to time: *Provided*,
10 That when used in the context of compliance with the federal maximum benefit requirements of
11 Section 415 of the Internal Revenue Code, actuarial equivalent shall be computed using the
12 mortality tables and interest rates required to comply with those requirements;

13 (4) "Annuity" means an annual amount payable by the retirement system throughout the
14 life of a person. All annuities shall be paid in equal monthly installments, rounding to the upper cent

15 for any fraction of a cent;

16 (5) "Annuity reserve" means the present value of all payments to be made to a retirant or
17 beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other
18 tables of experience, and regular interest, adopted by the board of trustees from time to time;

19 (6) "Beneficiary" means any person which shall include an irrevocable special needs trust,
20 as that term is defined in this section, for the benefit of one individual beneficiary and which trust
21 terminates upon the death of such individual with no further annuity benefits being payable, except
22 a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the
23 retirement system;

24 (7) "Board of Trustees" or "board" means the Board of Trustees of the West Virginia
25 Consolidated Public Retirement Board;

26 (8) "Compensation" means the remuneration paid a member by a participating public
27 employer for personal services rendered by the member to the participating public employer. In the
28 event a member's remuneration is not all paid in money, his or her participating public employer
29 shall fix the value of the portion of the remuneration which is not paid in money: Provided, That
30 members hired in a position for the first time on or after July 1, 2014, who receive nonmonetary
31 remuneration shall not have nonmonetary remuneration included in compensation for retirement
32 purposes and nonmonetary remuneration may not be used in calculating a member's final
33 average salary. Any lump sum or other payments paid to members that do not constitute regular
34 salary or wage payments are not considered compensation for the purpose of withholding
35 contributions for the system or for the purpose of calculating a member's final average salary.
36 These payments include, but are not limited to, attendance or performance bonuses, one-time flat
37 fee or lump sum payments, payments paid as a result of excess budget, or employee recognition
38 payments. The board shall have final power to decide whether the payments shall be considered
39 compensation for purposes of this article;

40 (9) "Contributing service" means service rendered by a member within this state and for

41 which the member made contributions to a public retirement system account of this state, to the
42 extent credited him or her as provided by this article;

43 (10) "Credited service" means the sum of a member's prior service credit, military service
44 credit, workers' compensation service credit and contributing service credit standing to his or her
45 credit as provided in this article;

46 (11) "Employee" means any person who serves regularly as an officer or employee, full
47 time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment,
48 in the service of, and whose compensation is payable, in whole or in part, by any political
49 subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid
50 monthly or on completion of assignment, including technicians and other personnel employed by
51 the West Virginia National Guard whose compensation, in whole or in part, is paid by the federal
52 government: *Provided*, That an employee of the Legislature whose term of employment is
53 otherwise classified as temporary and who is employed to perform services required by the
54 Legislature for its regular sessions or during the interim between regular sessions and who has
55 been or is employed during regular sessions or during the interim between regular sessions in
56 ~~seven~~ five or more consecutive calendar years, as certified by the clerk of the house in which the
57 employee served, is an employee, any provision to the contrary in this article notwithstanding, and
58 is entitled to credited service in accordance with provisions of §5-10-14 of this code: *Provided*,
59 *however*, That members of the legislative body of any political subdivision and commissioners of
60 the West Virginia Claims Commission are employees receiving one year of service credit for each
61 one-year term served and prorated service credit for any partial term served, anything contained in
62 this article to the contrary notwithstanding: *Provided further*, That only a compensated board
63 member of a participating public employer appointed to a board of a nonlegislative body for the
64 first time on or after July 1, 2014, who normally is required to work 12 months per year and 1040
65 hours of service per year is an employee. In any case of doubt as to who is an employee within the
66 meaning of this article, the board of trustees shall decide the question;

67 (12) "Employer error" means an omission, misrepresentation, or deliberate act in violation
68 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations
69 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
70 Regulations by the participating public employer that has resulted in an underpayment or
71 overpayment of contributions required;

72 (13) "Final average salary" means either of the following: *Provided*, That salaries for
73 determining benefits during any determination period may not exceed the maximum
74 compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and
75 Section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That the provisions of §5-
76 10-22h of this code are not applicable to the amendments made to this subdivision during the 2011
77 regular session of the Legislature;

78 (A) The average of the highest annual compensation received by a member, including a
79 member of the Legislature who participates in the retirement system in the year 1971 or thereafter,
80 during any period of three consecutive years of credited service contained within the member's 15
81 years of credited service immediately preceding the date his or her employment with a
82 participating public employer last terminated: *Provided*, That for persons who were first hired on or
83 after July 1, 2015, any period of five consecutive years of contributing service contained within the
84 member's 15 years of credited service immediately preceding the date his or her employment with
85 a participating public employer last terminated; or

86 (B) If the member has less than five years of credited service, the average of the annual
87 rate of compensation received by the member during his or her total years of credited service; and
88 in determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a
89 member of the Legislature who participates in the retirement system as a member of the
90 Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation
91 (the total of all compensation paid under §4-2A-2, §4-2A-3, §4-2A-4, and §4-2A-5 of this code), in
92 the year 1971, or in any year thereafter, plus any other compensation he or she receives in any

93 year from any other participating public employer including the State of West Virginia, without any
94 multiple in excess of one times his or her actual legislative compensation and other compensation,
95 shall be used: *Provided*, That final average salary for any former member of the Legislature or for
96 any member of the Legislature in the year 1971 who, in either event, was a member of the
97 Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on
98 November 30 in any one or more of those three years and who participated in the retirement
99 system as a member of the Legislature in any one or more of those years means: (i) Either,
100 notwithstanding the provisions of this subdivision preceding this proviso, \$1,500 multiplied by
101 eight, plus the highest other compensation the former member or member received in any one of
102 the three years from any other participating public employer including the State of West Virginia; or
103 (ii) final average salary determined in accordance with paragraph (A) or (B) of this subdivision,
104 whichever computation produces the higher final average salary, and in determining the annual
105 compensation under subparagraph (ii) of this paragraph, the legislative compensation of the
106 former member shall be computed on the basis of \$1,500 multiplied by eight, and the legislative
107 compensation of the member shall be computed on the basis set forth in the provisions of this
108 subdivision immediately preceding this paragraph or on the basis of \$1,500 multiplied by eight,
109 whichever computation as to the member produces the higher annual compensation;

110 (14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended,
111 codified at Title 26 of the United States Code;

112 (15) "Limited credited service" means service by employees of the West Virginia
113 Educational Broadcasting Authority, in the employment of West Virginia University, during a period
114 when the employee made contributions to another retirement system, as required by West Virginia
115 University, and did not make contributions to the Public Employees Retirement System: *Provided*,
116 That while limited credited service can be used for the formula set forth in §5-10-21(e) of this code,
117 it may not be used to increase benefits calculated under §5-10-22 of this code;

118 (16) "Member" means any person who has accumulated contributions standing to his or

119 her credit in the members' deposit fund;

120 (17) "Participating public employer" means the State of West Virginia, any board,
121 commission, department, institution or spending unit and includes any agency created by rule of
122 the Supreme Court of Appeals having full-time employees, which for the purposes of this article is
123 considered a department of state government; and any political subdivision in the state which has
124 elected to cover its employees, as defined in this article, under the West Virginia Public Employees
125 Retirement System;

126 (18) "Plan year" means the same as referenced in §5-10-42 of this code;

127 (19) "Political subdivision" means the State of West Virginia, a county, city or town in the
128 state; a school corporation or corporate unit; any separate corporation or instrumentality
129 established by one or more counties, cities or towns, as permitted by law; any corporation or
130 instrumentality supported in most part by counties, cities or towns; and any public corporation
131 charged by law with the performance of a governmental function and whose jurisdiction is
132 coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency
133 participating in the Public Employees Retirement System before July 1, 1997, is considered a
134 political subdivision solely for the purpose of permitting those employees who are members of the
135 Public Employees Retirement System to remain members and continue to participate in the
136 retirement system at their option after July 1, 1997: *Provided, however*, That the Regional
137 Community Policing Institute which participated in the Public Employees Retirement System
138 before July 1, 2000, is considered a political subdivision solely for the purpose of permitting those
139 employees who are members of the Public Employees Retirement System to remain members
140 and continue to participate in the Public Employees Retirement System after July 1, 2000;

141 (20) "Prior service" means service rendered prior to July 1, 1961, to the extent credited a
142 member as provided in this article;

143 (21) "Regular interest" means the rate or rates of interest per annum, compounded
144 annually, as the board of trustees adopts from time to time;

145 (22) "Required beginning date" means April 1 of the calendar year following the later of: (A)
146 The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if
147 born after June 30, 1949); or (B) the calendar year in which a member ceases providing service
148 covered under this retirement system to a participating employer;

149 (23) "Retirant" means any member who commences an annuity payable by the retirement
150 system;

151 (24) "Retirement" means a member's withdrawal from the employ of a participating public
152 employer and the commencement of an annuity by the retirement system;

153 (25) "Retirement system" or "system" means the West Virginia Public Employees
154 Retirement System created and established by this article;

155 (26) "Retroactive service" means: (1) Service between July 1, 1961, and the date an
156 employer decides to become a participating member of the Public Employees Retirement System;

157 (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost in
158 accordance with 162 CSR 5.12; and (3) service of any member of a legislative body or employees
159 of the State Legislature whose term of employment is otherwise classified as temporary for which
160 the employee is eligible, but for which the employee did not elect to participate at that time;

161 (27) "Service" means personal service rendered to a participating public employer by an
162 employee of a participating public employer;

163 (28) "Special needs trust" means a trust established pursuant to §44D-8B-13 of this code
164 for an individual beneficiary with a disability and such special needs trust is or will become
165 irrevocable by the time the retirant names the special needs trust as the beneficiary of retirant's
166 annuity benefits in place of the individual beneficiary and terminates upon the death of the
167 individual beneficiary with no further annuity benefits being payable; and

168 (29) "State" means the State of West Virginia.

§5-10-14. Service credit; retroactive provisions.

1 (a) The board of trustees shall credit each member with the prior service and contributing

2 service to which he or she is entitled based upon rules adopted by the board of trustees and based
3 upon the following:

4 (1) In no event may less than 10 days of service rendered by a member in any calendar
5 month be credited as a month of service: *Provided*, That for employees of the State Legislature
6 whose term of employment is otherwise classified as temporary and who are employed to perform
7 services required by the Legislature for its regular sessions or during the interim between regular
8 sessions and who have been or are employed during regular sessions or during the interim
9 between regular sessions in ~~seven consecutive~~ five calendar years, service credit of one month
10 shall be awarded for each 10 days employed in the interim between regular sessions, which
11 interim days shall be cumulatively calculated so that any 10 days, regardless of calendar month or
12 year, shall be calculated toward any award of one month of service credit;

13 (2) Except for hourly employees, and those persons who first become members of the
14 retirement system on or after July 1, 2015, 10 or more months of service credit earned in any
15 calendar year shall be credited as a year of service: *Provided*, That no more than one year of
16 service may be credited to any member for all service rendered by him or her in any calendar year
17 and no days may be carried over by a member from one calendar year to another calendar year
18 where the member has received a full-year credit for that year; and

19 (3) Service may be credited to a member who was employed by a political subdivision if his
20 or her employment occurred within a period of 30 years immediately preceding the date the
21 political subdivision became a participating public employer.

22 (b) The board of trustees shall grant service credit to any former and present member of
23 the State Teachers Retirement System who has been a contributing member in the Public
24 Employees Retirement System for more than three years, for service previously credited by the
25 State Teachers Retirement System and shall require the transfer of the member's accumulated
26 contributions to the system and shall also require a deposit, with reinstatement interest as set forth
27 in the board's Rule, Refund, Reinstatement, Retroactive Service, Loan and Correction of Error

28 Interest Factors, 162 C. S. R. 7, of any withdrawals of contributions any time prior to the member's
29 retirement: *Provided*, That members of the State Teachers Retirement System who first became a
30 member of the State Teachers Retirement System on or after July 1, 2022, may only transfer
31 service credit to the Public Employees Retirement System if they first became a member of the
32 Public Employees Retirement System on or after July 1, 2015. Repayment of withdrawals shall be
33 as directed by the Board of Trustees.

34 (c) Court reporters who are acting in an official capacity, although paid by funds other than
35 the county commission or State Auditor, may receive prior service credit for time served in that
36 capacity.

37 (d) Active members who previously worked in Comprehensive Employment and Training
38 Act (CETA) may receive service credit for time served in that capacity: *Provided*, That in order to
39 receive service credit under the provisions of this subsection the following conditions must be met:
40 (1) The member must have moved from temporary employment with the participating employer to
41 permanent full-time employment with the participating employer within 120 days following the
42 termination of the member's CETA employment; (2) the board must receive evidence that
43 establishes to a reasonable degree of certainty as determined by the board that the member
44 previously worked in CETA; and (3) the member shall pay to the board an amount equal to the
45 employer and employee contribution plus interest at the amount set by the board for the amount of
46 service credit sought pursuant to this subsection: *Provided, however*, That the maximum service
47 credit that may be obtained under the provisions of this subsection is two years: *Provided further*,
48 That a member must apply and pay for the service credit allowed under this subsection and
49 provide all necessary documentation by March 31, 2003: *And provided further*, That the board
50 shall exercise due diligence to notify affected employees of the provisions of this subsection.

51 (e) (1) Employees of the State Legislature whose terms of employment are otherwise
52 classified as temporary and who are employed to perform services required by the Legislature for
53 its regular sessions or during the interim time between regular sessions shall receive service credit

54 for the time served in that capacity in accordance with the following: For purposes of this section,
55 the term "regular session" means day one through day 60 of a 60-day legislative session or day
56 one through day 30 of a 30-day legislative session. Employees of the State Legislature whose
57 term of employment is otherwise classified as temporary and who are employed to perform
58 services required by the Legislature for its regular sessions or during the interim time between
59 regular sessions and who have been or are employed during regular sessions or during the interim
60 time between regular sessions in ~~seven consecutive~~ five calendar years, as certified by the clerk of
61 the house in which the employee served, shall receive service credit of six months for all regular
62 sessions served, as certified by the clerk of the house in which the employee served, or shall
63 receive service credit of three months for each regular 30-day session served prior to 1971:
64 *Provided*, That employees of the State Legislature whose term of employment is otherwise
65 classified as temporary and who are employed to perform services required by the Legislature for
66 its regular sessions and who have been or are employed during the regular sessions in ~~13~~
67 ~~consecutive~~ seven calendar years as either temporary employees or full-time employees or a
68 combination thereof, as certified by the clerk of the house in which the employee served, shall
69 receive a service credit of 12 months for each regular session served, as certified by the clerk of
70 the house in which the employee served: *Provided, however*, That the amendments made to this
71 subsection during the 2002 regular session of the Legislature only apply to employees of the
72 Legislature who are employed by the Legislature as either temporary employees or full-time
73 employees as of January 1, 2002, or who become employed by the Legislature as temporary or
74 full-time employees for the first time after January 1, 2002. Employees of the State Legislature
75 whose terms of employment are otherwise classified as temporary and who are employed to
76 perform services required by the Legislature during the interim time between regular sessions
77 shall receive service credit of one month for each 10 days served during the interim between
78 regular sessions, which interim days shall be cumulatively calculated so that any 10 days,
79 regardless of calendar month or year, shall be calculated toward any award of one month of

80 service credit: *Provided further*, That no more than one year of service may be credited to any
81 temporary legislative employee for all service rendered by that employee in any calendar year and
82 no days may be carried over by a temporary legislative employee from one calendar year to
83 another calendar year where the member has received a full year credit for that year. Service
84 credit awarded for legislative employment pursuant to this section shall be used for the purpose of
85 calculating that member's retirement annuity, pursuant to §5-10-22 of this code, and determining
86 eligibility as it relates to credited service, notwithstanding any other provision of this section.
87 Certification of employment for a complete legislative session and for interim days shall be
88 determined by the clerk of the house in which the employee served, based upon employment
89 records. Service of 55 days of a regular session constitutes an absolute presumption of service for
90 a complete legislative session and service of 27 days of a 30-day regular session occurring prior to
91 1971 constitutes an absolute presumption of service for a complete legislative session. Once a
92 legislative employee has been employed during regular sessions for ~~seven~~ five consecutive years
93 or has become a full-time employee of the Legislature, that employee shall receive the service
94 credit provided in this section for all regular and interim sessions and interim days worked by that
95 employee, as certified by the clerk of the house in which the employee served, regardless of when
96 the session or interim legislative employment occurred: *And provided further*, That regular session
97 legislative employment for seven consecutive years may be served in either or both houses of the
98 Legislature.

99 (2) For purposes of this section, employees of the Joint Committee on Government and
100 Finance are entitled to the same benefits as employees of the House of Delegates or the Senate:
101 *Provided*, That for joint committee employees whose terms of employment are otherwise
102 classified as temporary, employment in preparation for regular sessions, certified by the legislative
103 manager as required by the Legislature for its regular sessions, shall be considered the same as
104 employment during regular sessions to meet service credit requirements for sessions served.

105 (f) Any employee may purchase retroactive service credit for periods of employment in

106 which contributions were not deducted from the employee's pay. In the purchase of service credit
107 for employment prior to 1989 in any department, including the Legislature, which operated from
108 the General Revenue Fund and which was not expressly excluded from budget appropriations in
109 which blanket appropriations were made for the state's share of public employees' retirement
110 coverage in the years prior to 1989, the employee shall pay the employee's share. Other
111 employees shall pay the state's share and the employee's share to purchase retroactive service
112 credit. Where an employee purchases service credit for employment which occurred after 1988,
113 that employee shall pay for the employee's share and the employer shall pay its share for the
114 purchase of retroactive service credit: *Provided*, That no legislative employee and no current or
115 former member of the Legislature may be required to pay any interest or penalty upon the
116 purchase of retroactive service credit in accordance with the provisions of this section where the
117 employee was not eligible to become a member during the years for which he or she is purchasing
118 retroactive credit or had the employee attempted to contribute to the system during the years for
119 which he or she is purchasing retroactive service credit and the contributions would have been
120 refused by the board: *Provided, however*, That a current legislative employee purchasing
121 retroactive credit under this section shall do so within 24 months of beginning contributions to the
122 retirement system as a legislative employee or no later than December 31, 2016, whichever
123 occurs later: *Provided further*, That once a legislative employee becomes a member of the
124 retirement system, he or she may purchase retroactive service credit for any time he or she was
125 employed by the Legislature and did not receive service credit. Any service credit purchased shall
126 be credited as six months for each 60-day session worked, three months for each 30-day session
127 worked or 12 months for each 60-day session for legislative employees who have been employed
128 during regular sessions in ~~13 consecutive~~ seven calendar years, as certified by the clerk of the
129 house in which the employee served, and credit for interim employment as provided in this
130 subsection: *And provided further*, That this legislative service credit shall also be used for months
131 of service in order to meet the 60-month requirement for the payments of a temporary legislative

132 employee member's retirement annuity: *And provided further*, That no legislative employee may
133 be required to pay for any service credit beyond the actual time he or she worked regardless of the
134 service credit which is credited to him or her pursuant to this section: *And provided further*, That
135 any legislative employee may request a recalculation of his or her credited service to comply with
136 the provisions of this section at any time.

137 (g) (1) Notwithstanding any provision to the contrary, the ~~seven~~ five consecutive calendar
138 years requirement and the ~~43 consecutive~~ seven calendar years requirement and the service
139 credit requirements set forth in this section shall be applied retroactively to all periods of legislative
140 employment prior to the passage of this section, including any periods of legislative employment
141 occurring before the ~~seven consecutive~~ five and ~~43 consecutive~~ seven calendar years referenced
142 in this section: *Provided*, That the employee has not retired prior to the effective date of the
143 amendments made to this section in the 2002 regular session of the Legislature.

144 (2) The requirement of ~~seven consecutive~~ five years and the requirement of ~~43~~
145 ~~consecutive~~ seven years apply retroactively to all legislative employment prior to the effective date
146 of the 2006 amendments to this section.

147 (h) The board of trustees shall grant service credit to any former or present member of the
148 State Police Death, Disability and Retirement Fund who has been a contributing member of this
149 system for more than three years for service previously credited by the State Police Death,
150 Disability and Retirement Fund if the member transfers all of his or her contributions to the State
151 Police Death, Disability and Retirement Fund to the system created in this article, including
152 repayment of any amounts withdrawn any time from the State Police Death, Disability and
153 Retirement Fund by the member seeking the transfer allowed in this subsection: *Provided*, That
154 there shall be added by the member to the amounts transferred or repaid under this subsection an
155 amount which shall be sufficient to equal the contributions he or she would have made had the
156 member been under the Public Employees Retirement System during the period of his or her
157 membership in the State Police Death, Disability and Retirement Fund, excluding contributions on

158 lump sum payment for annual leave, plus interest at a rate determined by the board.

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

§5-10-17. Retirement system membership.

1 The membership of the retirement system consists of the following persons:

2 (a) All employees, as defined in §5-10-2 of this code, who are in the employ of a political
3 subdivision the day preceding the date it becomes a participating public employer and who
4 continue in the employ of the participating public employer on and after that date shall become
5 members of the retirement system; and all persons who become employees of a participating
6 public employer on or after that date shall thereupon become members of the system; except as
7 provided in subdivisions (b), (c) and (d) of this section.

8 (b) The membership of the Public Employees Retirement System may not include any
9 person who is an active contributing member of, or who has been retired by, any of the state
10 teachers retirement systems, the Judges Retirement System, any retirement system of the West
11 Virginia State Police, the Deputy Sheriff Retirement System, the Natural Resources Police Officer
12 Retirement System or any municipal retirement system for either, or both, police or firefighter; and
13 the Bureau of Employment Programs, by the Commissioner of the Bureau, may elect whether its
14 employees will accept coverage under this article or be covered under the authorization of a
15 separate enactment: *Provided*, That the exclusions of membership do not apply to any member of
16 the State Legislature, the Clerk of the House of Delegates, the Clerk of the State Senate or to any
17 member of the legislative body of any political subdivision provided he or she once becomes a
18 contributing member of the retirement system: *Provided, however*, That any retired member of the
19 State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement
20 System, the Deputy Sheriff Retirement System, the Natural Resources Police Officer Retirement
21 System and any retired member of any municipal retirement system for either, or both, police or
22 firefighter may on and after the effective date of this section become a member of the retirement

23 system as provided in this article, without receiving credit for prior service as a municipal police
24 officer or firefighter or as a member of the State Police Death, Disability and Retirement Fund, the
25 West Virginia State Police Retirement System, the Deputy Sheriff Retirement System, or the
26 Natural Resources Police Officer Retirement System: *Provided further*, That any retired member
27 of the State Police Death, Disability and Retirement Fund, the West Virginia State Police
28 Retirement System, the Deputy Sheriff Retirement System, the Natural Resources Police Officer
29 Retirement System and any retired member of any municipal retirement system for either, or both,
30 police or firefighters, who begins participation in the retirement system established in this article on
31 or after July 1, 2005, may not receive a combined retirement benefit in excess of 105 percent of the
32 member's highest annual salary earned while either a member of the retirement system
33 established in this article or while a member of the other retirement system or systems from which
34 he or she previously retired when adding the retirement benefit from the retirement system created
35 in this article to the retirement benefit received by that member from the other retirement system or
36 systems set forth herein from which he or she previously retired: *And provided further*, That the
37 membership of the retirement system does not include any person who becomes employed by the
38 Pretera Center for Mental Health Services, Valley Comprehensive Mental Health Center,
39 Westbrook Health Services or Eastern Panhandle Mental Health Center on or after July 1, 1997:
40 *And provided further*, That membership of the retirement system does not include any person who
41 becomes a member of the federal Railroad Retirement Act on or after July 1, 2000.

42 (c) Any member of the State Legislature, the Clerk of the House of Delegates, the Clerk of
43 the State Senate, and any employee of the State Legislature whose employment is otherwise
44 classified as temporary and who is employed to perform services required by the Legislature for its
45 regular sessions or during the interim between regular sessions and who has been or is employed
46 during regular sessions or during the interim between sessions in ~~seven consecutive~~ five calendar
47 years, as certified by the ~~Clerk~~ clerk of the ~~House~~ house of the Legislature in which the employee
48 served, or any member of the legislative body of any other political subdivision shall become a

49 member of the retirement system provided he or she notifies the retirement system in writing of his
50 or her intention to be a member of the system and files a membership enrollment form as
51 prescribed by the Board of Trustees, and each person, upon filing his or her written notice to
52 participate in the retirement system, shall by that act authorize the Clerk of the House of Delegates
53 or the Clerk of the State Senate or such person or legislative agency as the legislative body of any
54 other political subdivision shall designate to deduct the member's contribution, as provided in §5-
55 10-29(b) of this code, and after the deductions have been made from the member's compensation,
56 the deductions shall be forwarded to the retirement system.

57 (d) Any employee, as defined in §5-10-2 of this code, who has concurrent employment in
58 an additional job or jobs which would require the employee to be a member of the West Virginia
59 Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters
60 Retirement System, the Natural Resources Police Officer Retirement System or the West Virginia
61 Emergency Medical Services Retirement System shall abide by the concurrent employment
62 statutory provisions of said retirement system and shall participate in only one retirement system
63 administered by the board.

64 (e) If question arises regarding the membership status of any employee, the Board of
65 Trustees has the final power to decide the question.

66 (f) Any individual who is a leased employee is not eligible to participate in the system. For
67 the purposes of this article, the term "leased employee" means any individual who performs
68 services as an independent contractor or pursuant to an agreement with an employee leasing
69 organization or other similar organization. If a question arises regarding the status of an individual
70 as a leased employee, the board has final authority to decide the question.

§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 or
8 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 of
14 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 the
24 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~~ \$30,000.

40 (d) Senior judges, justices, and magistrates. –

41 (1) Notwithstanding the provisions of subsection (c) of this section, a retired judge or justice
42 who is recalled and assigned to temporary service as a senior judge or justice by the West Virginia
43 Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of
44 §51-9-10 of this code while continuing to receive his or her annuity.

45 (2) Notwithstanding the provisions of subsection (c) of this section, a retired magistrate
46 who is recalled and assigned to temporary service as a senior magistrate by the West Virginia
47 Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of
48 §50-1-6a of this code while continuing to receive his or her annuity.

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

53 (1) Continue to receive payment of his or her annuity while holding public office or during
54 any reemployment of a former employee of the Legislature on a per diem basis, in addition to the

55 salary he or she may be entitled to as an office holder or as a per diem reemployed former
56 employee of the Legislature; or

57 (2) Suspend the payment of his or her annuity and become a contributing member of the
58 retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of
59 this subsection, a member who is participating in the system as an elected public official may not
60 retire from his or her elected position and commence to receive an annuity from the system and
61 then be elected or reappointed to the same position unless and until a continuous 12-month period
62 has passed since his or her retirement from the position: ~~Provided, That a former employee of the~~
63 ~~Legislature may not be reemployed by the Legislature on a per diem basis until at least 60 days~~
64 ~~after the employee has retired: *Provided, however* Provided, That the limitation on compensation~~
65 provided by subsection (c) of this section does not apply to the reemployed former employee:
66 ~~*Provided further* Provided, however, That in no event may reemployment by the Legislature of a~~
67 per diem employee exceed 175 days per calendar year.

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

78 (g) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member
79 of the legislative body of any political subdivision or of the State Legislature, the Clerk of the House
80 of Delegates, and the Clerk of the Senate may elect to commence receiving in-service retirement

81 distributions from this system upon attaining the age of 70 and one-half years: *Provided*, That the
82 member is eligible to retire under the provisions of §5-10-20 or §5-10-21 of this code: *Provided*,
83 *however*, That the member elects to stop actively contributing to the system while receiving the in-
84 service distributions.

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

NOTE: The purpose of this bill is to modify the length of service an employee of the Legislature whose term of employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions must serve to obtain service credit towards retirement; remove the requirement that a person retiring from the Legislature must be removed from employment prior to being eligible for temporary employment with the Legislature; and increase the maximum annual remuneration a retirant may earn as a temporary legislative employee.

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