

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2917**

By Delegates Summers, Tully and Rohrbach

[Originating in the Committee on Finance; February

15th, 2023]



1 A BILL to amend and reenact §5-10-48 of the code of West Virginia, 1931, as amended, relating to  
2 allowing certain retired state employees to render certain post-retirement employment with  
3 the Department of Health and Human Resources under certain circumstances.

*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 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.

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*, That the limitation on compensation provided  
65 by subsection (c) of this section does not apply to the reemployed former employee: *Provided*  
66 *further*, That in no event may reemployment by the Legislature of a per diem employee exceed  
67 175 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.

87 (i) The Legislature hereby finds and declares that a severe shortage of child protective  
88 services workers and adult protective services workers exists throughout the state and therefore a  
89 compelling state interest exists in expanding the use of retired employees to serve this critical  
90 need. Notwithstanding any provision of subsection (c) of this section to the contrary, a person  
91 receiving retirement benefits or eligible to receive retirement benefits pursuant to the provisions of  
92 this chapter may accept employment as a child protective services worker or an adult protective  
93 services worker on a full-time or part-time basis without having payment of his or her retirement  
94 annuity suspended and without reentering the retirement system as a contributing member. This  
95 subsection is only applicable if the retired employee meets the minimum qualifications of the  
96 position, has been retired for at least 60 days, and is hired to fill an existing child protective  
97 services or adult protective services vacancy. The retired employee may continue to work under  
98 this subsection only as long as that position remains vacant. The vacant position shall be posted

99 until it is filled by a regularly employed person meeting the minimum qualifications to serve as a  
100 child protective service worker or an adult protective service worker. The provisions of this  
101 subsection shall expire July 1, 2025.

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