

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 545**

4 (By Senator Green)

5 _____
6 [Originating in the Committee on Pensions;
7 reported February 21, 2012.]
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11 A BILL to amend and reenact §5-10-17, §5-10-19 and §5-10-48 of the
12 Code of West Virginia, 1931, as amended, all relating to
13 reemployment after retirement from the Public Employees
14 Retirement System; employer reporting requirements;
15 authorization for the Legislative Auditor to audit all
16 participating public employers; and directing the Consolidated
17 Public Retirement Board to study efficient and effective ways
18 to improve compliance with the provisions of this section and
19 report to the Legislature.

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

21 That §5-10-17, §5-10-19 and §5-10-48 of the Code of West
22 Virginia, 1931, as amended, be amended and reenacted, all to read
23 as follows:

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

25 **§5-10-17. Retirement system membership.**

26 The membership of the retirement system consists of the

1 following persons:

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

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

1 the Deputy Sheriff Retirement System and any retired member of any
2 municipal retirement system for either, or both, police or
3 firefighter may on and after the effective date of this section
4 become a member of the retirement system as provided in this
5 article, without receiving credit for prior service as a municipal
6 police officer or firefighter or as a member of the State Police
7 Death, Disability and Retirement Fund, the West Virginia State
8 Police Retirement System or the Deputy Sheriff Retirement System:
9 *Provided further,* That any retired member of the State Police
10 Death, Disability and Retirement Fund, the West Virginia State
11 Police Retirement System, the Deputy Sheriff Retirement System and
12 any retired member of any municipal retirement system for either,
13 or both, police or firefighters, who begins participation in the
14 retirement system established in this article on or after July 1,
15 2005, may not receive a combined retirement benefit in excess of
16 one hundred five percent of the member's highest annual salary
17 earned while either a member of the retirement system established
18 in this article or while a member of the other retirement system or
19 systems from which he or she previously retired when adding the
20 retirement benefit from the retirement system created in this
21 article to the retirement benefit received by that member from the
22 other retirement system or systems set forth herein from which he
23 or she previously retired: *And provided further,* That the
24 membership of the retirement system does not include any person who
25 becomes employed by the Prestera Center for Mental Health Services,
26 Valley Comprehensive Mental Health Center, Westbrook Health

1 Services or Eastern Panhandle Mental Health Center on or after July
2 1, 1997: *And provided further,* That membership of the retirement
3 system does not include any person who becomes a member of the
4 federal railroad retirement act on or after July 1, 2000.

5 (c) Any member of the State Legislature, the Clerk of the
6 House of Delegates, the Clerk of the state Senate and any employee
7 of the State Legislature whose employment is otherwise classified
8 as temporary and who is employed to perform services required by
9 the Legislature for its regular sessions or during the interim
10 between regular sessions and who has been or is employed during
11 regular sessions or during the interim between sessions in seven
12 consecutive calendar years, as certified by the Clerk of the House
13 in which the employee served, or any member of the legislative body
14 of any other political subdivision shall become a member of the
15 retirement system provided he or she notifies the retirement system
16 in writing of his or her intention to be a member of the system and
17 files a membership enrollment form as prescribed by the board of
18 Trustees, and each person, upon filing his or her written notice to
19 participate in the retirement system, shall by that act authorize
20 the Clerk of the House of Delegates or the Clerk of the state
21 Senate or such person or legislative agency as the legislative body
22 of any other political subdivision shall designate to deduct the
23 member's contribution, as provided in subsection (b), section
24 twenty-nine of this article, and after the deductions have been
25 made from the member's compensation, the deductions shall be
26 forwarded to the retirement system.

1 (d) If question arises regarding the membership status of any
2 employee, the board of Trustees has the final power to decide the
3 question.

4 (e) Any individual who is a leased employee is not eligible to
5 participate in the system. For the purposes of this article, the
6 term "leased employee" means any individual who performs services
7 as an independent contractor or pursuant to an agreement with an
8 employee leasing organization or as an employee of a contracting
9 partnership, company, corporation or other similar organization.
10 If a question arises regarding the status of an individual as a
11 leased employee, the board has final authority to decide the
12 question.

13 **§5-10-19. Employers to file information as to employees' service.**

14 Each participating public employer shall file with the board
15 of trustees, in such form as the board shall from time to time
16 prescribe, a detailed statement of all service rendered to
17 participating public employers by each of its employees and by any
18 retirant who retired under section twenty-two-c of this article and
19 who is working for the employer on a contract basis, as defined in
20 section twenty-two-c of this article, and such other information as
21 the board shall require in the operation of the retirement system:
22 Provided, That on and after July 1, 2012, all participating public
23 employers shall file with the board a detailed statement of all
24 services rendered to the employer by all retirants who are working
25 for the participating public employer on a contract basis or
26 working for an employer, company, corporation, partnership or other

1 legal entity that is working for the participating public employer
2 on a contract basis. The Board shall determine how often these
3 reports will be filed and any other information needed, including
4 but not limited to the amount of all payments made by the
5 participating public employer to the retirant directly or to the
6 retirant's employer.

7 **§5-10-48. Reemployment after retirement; options for holder of**
8 **elected public office.**

9 (a) The Legislature finds that a compelling state interest
10 exists in maintaining an actuarially sound retirement system and
11 that this interest necessitates that certain limitations be placed
12 upon an individual's ability to retire from the system and to then
13 later return to ~~state~~ employment as an employee with a
14 participating public employer while contemporaneously drawing an
15 annuity from the system. The Legislature hereby further finds and
16 declares that the interests of the public are served when persons
17 having retired from public employment are permitted, within certain
18 limitations, to render post-retirement employment in positions of
19 public service, either in elected or appointed capacities. The
20 Legislature further finds and declares that it has the need for
21 qualified employees and that in many cases an employee of the
22 Legislature will retire and be available to return to work for the
23 Legislature as a per diem employee. The Legislature further finds
24 and declares that in many instances these employees have
25 particularly valuable expertise which the Legislature cannot find
26 elsewhere. The Legislature further finds and declares that

1 reemploying these persons on a limited per diem basis after they
2 have retired is not only in the best interests of this state, but
3 has no adverse effect whatsoever upon the actuarial soundness of
4 this particular retirement system.

5 (b) For the purposes of this section: (1) "Regularly employed
6 on a full-time basis" means employment of an individual by a
7 participating public employer, in a position other than as an
8 elected or appointed public official, which normally requires
9 twelve months per year service and at least one thousand forty
10 hours of service per year in that position; (2) "temporary full-
11 time employment or temporary part-time employment" means employment
12 of an individual on a temporary or provisional basis by a
13 participating public employer, other than as an elected or
14 appointed public official, in a position which does not otherwise
15 render the individual as regularly employed; (3) "former employee
16 of the Legislature" means any person who has retired from
17 employment with the Legislature and who has at least ten years'
18 contributing service with the Legislature; and (4) "reemployed by
19 the Legislature" means a former employee of the Legislature who has
20 been reemployed on a per diem basis not to exceed one hundred
21 seventy-five days per calendar year.

22 (c) (1) In the event a retirant becomes regularly employed on
23 a full-time or part-time basis by a participating public employer,
24 payment of his or her annuity shall be suspended during the period
25 of his or her reemployment and he or she shall become a
26 contributing member to the retirement system. If his or her

1 reemployment is for a period of one year or longer, his or her
2 annuity shall be recalculated and he or she shall be granted an
3 increased annuity due to the additional employment, the annuity to
4 be computed according to section twenty-two of this article. A
5 retirant may accept temporary full-time or ~~temporary~~ part-time or
6 permanent part-time employment from a participating employer
7 without suspending his or her retirement annuity so long as he or
8 she does not receive annual compensation in excess of \$15,000:
9 *Provided*, That a retirant may be employed by the Legislature on a
10 per diem basis without suspension of the retirement annuity if the
11 retirant's annual compensation from the Legislature does not exceed
12 \$20,000.

13 (2) The Legislature finds that currently there are
14 insufficient provisions to assure compliance with requirements of
15 this section. The Legislature further finds that, to facilitate
16 compliance, cooperation is required among the State Auditor, the
17 Consolidated Public Retirement Board, the state divisions of
18 purchasing and personnel, participating public employers and
19 contractors providing services to the participating public
20 employers.

21 (3) The board is authorized to and shall gather and compare
22 information from the State Auditor, the state divisions of
23 purchasing and personnel, participating public employers and
24 contractors providing services to participating employers with
25 information in the board's data base to identify those retirants
26 from the Public Employees Retirement System receiving a PERS

1 annuity while receiving payments from a participating public
2 employer, whether as a permanent full-time or part-time employee,
3 a temporary full-time or part-time employee, a contractor or person
4 doing work directly for the participating public employer as an
5 employee of a contractor or contracting organization. If payment
6 is made to a corporation, partnership or entity by which an
7 individual is "doing business as" a name other than the proprietor,
8 the board shall seek information sufficient to determine the
9 amount of any of the payments inuring to the benefit of any
10 retirant providing services to the participating public employer.
11 The board may, in its discretion, on the issue of whether a person
12 is a contractor or an employee, request a determination from the
13 United States Internal Revenue Service. Issuance of an IRS Form
14 1099 by the participating public employer is not conclusive
15 evidence that the receiver of payment is an independent contractor
16 and not an employee. Upon reasonable belief that a retirant is in
17 violation of this section, the board shall give notice of intent to
18 suspend benefits based on the retirant's ineligibility to receive
19 benefits. The Board may suspend a retirant's benefits if the
20 retirant either waives the right to an administrative hearing or
21 fails to respond to the notice within forty days after service. The
22 retirant may appeal the decision pursuant to the board's procedures
23 established for hearing contested cases under article five, chapter
24 twenty-nine-a of this code.

25 (4) The Legislative Auditor is authorized to audit all
26 participating public employers for the purpose of ensuring

1 compliance with provisions of this section.

2 (5) As a condition of a contract, any contractor providing
3 services to a participating employer shall provide to the employer
4 the name and social security number of each person performing work
5 under the contract, the amount paid to the person and the person's
6 job description.

7 (6) The State Auditor shall monthly forward to the
8 Consolidated Public Retirement Board information on all persons who
9 are receiving payment as an employee, or leased employee as defined
10 in subsection (e), section seventeen of this article. The
11 information shall include the name and address of the person or
12 entity receiving payment, the amount of money paid to the person,
13 the entity making the payment, the contract number under which
14 payment is made if applicable, and the time payment was made. The
15 State Auditor shall make this same information available to the
16 public on a regular basis.

17 (7) The board shall study efficient and effective ways to
18 improve compliance with the provisions of this section and shall
19 report its findings, conclusions and recommendations, together with
20 drafts of any legislation necessary to effectuate its
21 recommendations, to the Legislature's Joint Committee on Pensions
22 and Retirement by October 31, 2012, and shall report the board's
23 study results to the regular session of the Legislature, 2013.

24 (d) In the event a member retires and is then subsequently
25 elected to a public office or is subsequently appointed to hold an
26 elected public office, or is a former employee of the Legislature

1 who has been reemployed by the Legislature, he or she has the
2 option, notwithstanding subsection (c) of this section, to either:

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

8 (2) Suspend the payment of his or her annuity and become a
9 contributing member of the retirement system as provided in
10 subsection (c) of this section. Notwithstanding the provisions of
11 this subsection, a member who is participating in the system as an
12 elected public official may not retire from his or her elected
13 position and commence to receive an annuity from the system and
14 then be elected or reappointed to the same position unless and
15 until a continuous twelve-month period has passed since his or her
16 retirement from the position: *Provided*, That a former employee of
17 the Legislature may not be reemployed by the Legislature on a per
18 diem basis until at least sixty days after the employee has
19 retired: *Provided, however*, That the limitation on compensation
20 provided by subsection (c) of this section does not apply to the
21 reemployed former employee: *Provided further*, That in no event may
22 reemployment by the Legislature of a per diem employee exceed one
23 hundred seventy-five days per calendar year.

1 (e) A member who is participating in the system simultaneously
2 as both a regular, full-time employee of a participating public
3 employer and as an elected or appointed member of the legislative

1 body of the state or any political subdivision may, upon meeting
2 the age and service requirements of this article, elect to retire
3 from his or her regular full-time state employment and may commence
4 to receive an annuity from the system without terminating his or
5 her position as a member of the legislative body of the state or
6 political subdivision: *Provided*, That the retired member shall
7 not, during the term of his or her retirement and continued service
8 as a member of the legislative body of a political subdivision, be
9 eligible to continue his or her participation as a contributing
10 member of the system and shall not continue to accrue any
11 additional service credit or benefits in the system related to the
12 continued service.

13 (f) Notwithstanding the provisions of section twenty-seven-b
14 of this article, any publicly elected member of the legislative
15 body of any political subdivision or of the State Legislature, the
16 clerk of the House of Delegates and the clerk of the Senate may
17 elect to commence receiving in-service retirement distributions
18 from this system upon attaining the age of seventy and one-half
19 years: *Provided*, That the member is eligible to retire under the
20 provisions of section twenty or twenty-one of this article:
21 *Provided, however*, That the member elects to stop actively
22 contributing to the system while receiving the in-service
23 distributions.

24 (g) The provisions of section twenty-two-h of this article are
25 not applicable to the amendments made to this section during the
26 2006 Regular Session.

NOTE: The purpose of this bill is to facilitate assurance of compliance with statutory requirements which, under certain circumstances, limit earnings of a PERS retirant in post-retirement employment.

The bill requires cooperation and information sharing among the State Auditor, the Consolidated Public Retirement Board, agencies in the state Department of Administration, employers participating in the Public Employees Retirement System and contractors providing services to the state and other participating public employers.

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