

H. B. 2469

(BY DELEGATE(S) PERRY, STAGGERS, SWARTZMILLER,
WALKER, BARILL AND WILLIAMS)

[Introduced February 14, 2013; referred to the
Committee on Pensions and Retirement then Finance.]

A BILL to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended, relating to increasing the cap on earnings during temporary reemployment after retirement.

Be it enacted by the Legislature of West Virginia:

That §5-10-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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
- 2 exists in maintaining an actuarially sound retirement system and

3 that this interest necessitates that certain limitations be placed
4 upon an individual's ability to retire from the system and to then
5 later return to state employment as an employee with a
6 participating public employer while contemporaneously drawing
7 an annuity from the system. The Legislature hereby further finds
8 and declares that the interests of the public are served when
9 persons having retired from public employment are permitted,
10 within certain limitations, to render post-retirement employment
11 in positions of public service, either in elected or appointed
12 capacities. The Legislature further finds and declares that it has
13 the need for qualified employees and that in many cases an
14 employee of the Legislature will retire and be available to return
15 to work for the Legislature as a per diem employee. The
16 Legislature further finds and declares that in many instances
17 these employees have particularly valuable expertise which the
18 Legislature cannot find elsewhere. The Legislature further finds
19 and declares that reemploying these persons on a limited per
20 diem basis after they have retired is not only in the best interests
21 of this state, but has no adverse effect whatsoever upon the
22 actuarial soundness of this particular retirement system.

23 (b) For the purposes of this section: (1) “Regularly employed
24 on a full-time basis” means employment of an individual by a
25 participating public employer, in a position other than as an
26 elected or appointed public official, which normally requires
27 twelve months per year service and at least one thousand forty
28 hours of service per year in that position; (2) “temporary
29 full-time employment or temporary part-time employment”
30 means employment of an individual on a temporary or
31 provisional basis by a participating public employer, other than
32 as an elected or appointed public official, in a position which
33 does not otherwise render the individual as regularly employed;
34 (3) “former employee of the Legislature” means any person who
35 has retired from employment with the Legislature and who has
36 at least ten years’ contributing service with the Legislature; and
37 (4) “reemployed by the Legislature” means a former employee
38 of the Legislature who has been reemployed on a per diem basis
39 not to exceed one hundred seventy-five days per calendar year.

40 (c) In the event a retirant becomes regularly employed on a
41 full-time basis by a participating public employer, payment of
42 his or her annuity shall be suspended during the period of his or

43 her reemployment and he or she shall become a contributing
44 member to the retirement system. If his or her reemployment is
45 for a period of one year or longer, his or her annuity shall be
46 recalculated and he or she shall be granted an increased annuity
47 due to the additional employment, the annuity to be computed
48 according to section twenty-two of this article. A retirant may
49 accept temporary full-time or temporary part-time employment
50 from a participating employer without suspending his or her
51 retirement annuity so long as he or she does not receive annual
52 compensation in excess of \$15,000: ~~Provided, That a retirant~~
53 ~~may be employed by the Legislature on a per diem basis without~~
54 ~~suspension of the retirement annuity if the retirant's annual~~
55 ~~compensation from the Legislature does not exceed \$20,000.~~

56 (d) In the event a member retires and is then subsequently
57 elected to a public office or is subsequently appointed to hold an
58 elected public office, or is a former employee of the Legislature
59 who has been reemployed by the Legislature, he or she has the
60 option, notwithstanding subsection (c) of this section, to either:

61 (1) Continue to receive payment of his or her annuity while
62 holding public office or during any reemployment of a former

63 employee of the Legislature on a per diem basis, in addition to
64 the salary he or she may be entitled to as an office holder or as
65 a per diem reemployed former employee of the Legislature; or

66 (2) Suspend the payment of his or her annuity and become
67 a contributing member of the retirement system as provided in
68 subsection (c) of this section. Notwithstanding the provisions of
69 this subsection, a member who is participating in the system as
70 an elected public official may not retire from his or her elected
71 position and commence to receive an annuity from the system
72 and then be elected or reappointed to the same position unless
73 and until a continuous twelve-month period has passed since his
74 or her retirement from the position: *Provided*, That a former
75 employee of the Legislature may not be reemployed by the
76 Legislature on a per diem basis until at least sixty days after the
77 employee has retired: *Provided, however*, That the limitation on
78 compensation provided by subsection (c) of this section does not
79 apply to the reemployed former employee: *Provided further*,
80 That in no event may reemployment by the Legislature of a per
81 diem employee exceed one hundred seventy-five days per
82 calendar year.

83 (e) A member who is participating in the system
84 simultaneously as both a regular, full-time employee of a
85 participating public employer and as an elected or appointed
86 member of the legislative body of the state or any political
87 subdivision may, upon meeting the age and service requirements
88 of this article, elect to retire from his or her regular full-time
89 state employment and may commence to receive an annuity from
90 the system without terminating his or her position as a member
91 of the legislative body of the state or political subdivision:
92 *Provided*, That the retired member shall not, during the term of
93 his or her retirement and continued service as a member of the
94 legislative body of a political subdivision, be eligible to continue
95 his or her participation as a contributing member of the system
96 and shall not continue to accrue any additional service credit or
97 benefits in the system related to the continued service.

98 (f) Notwithstanding the provisions of section twenty-seven-b
99 of this article, any publicly elected member of the legislative
100 body of any political subdivision or of the State Legislature, the
101 Clerk of the House of Delegates and the Clerk of the Senate may
102 elect to commence receiving in-service retirement distributions

103 from this system upon attaining the age of seventy and one-half
104 years: *Provided*, That the member is eligible to retire under the
105 provisions of section twenty or twenty-one of this article:
106 *Provided, however*, That the member elects to stop actively
107 contributing to the system while receiving the in-service
108 distributions.

109 (g) The provisions of section twenty-two-h of this article are
110 not applicable to the amendments made to this section during the
111 2006 Regular Session.

NOTE: The purpose of this bill is to increase from \$15,000 to \$20,000 the annual amount a state retiree may earn in temporary reemployment with a participating employer while continuing to receive a retirement annuity. Those temporarily reemployed by the Legislature who are not former employees of the Legislature currently have a \$20,000 annual cap.

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

