

Senate Bill No. 22

(By Senator Green)

[Introduced January 8, 2014; referred to the Committee on
Pensions; and then to the Committee on Finance.]

**FISCAL
NOTE**

9
10 A BILL to amend and reenact §5-10-48 of the Code of West Virginia,
11 1931, as amended, relating to reemployment after retirement
12 from Public Employees Retirement System; and requiring
13 cooperation and information sharing among State Auditor,
14 Consolidated Public Retirement Board, State Department of
15 Administration, employers participating in Public Employees
16 Retirement System and contractors providing services to state
17 to permit State Auditor to fully comply with limiting
18 post-retirement earnings requirements.

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

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

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

1 **§5-10-48. Reemployment after retirement; options for holder of**
2 **elected public office; State Auditor requirements.**

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

1 has no adverse effect whatsoever upon the actuarial soundness of
2 this particular retirement system.

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

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

1 reemployment and he or she shall become a contributing member to
2 the retirement system. If his or her reemployment is for a period
3 of one year or longer, his or her annuity shall be recalculated and
4 he or she shall be granted an increased annuity due to the
5 additional employment, the annuity to be computed according to
6 section twenty-two of this article. A retirant may accept
7 legislative per diem, temporary full-time or temporary part-time
8 employment from a participating employer without suspending his or
9 her retirement annuity so long as he or she does not receive annual
10 compensation in excess of \$20,000.

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

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

21 (2) Suspend the payment of his or her annuity and become a
22 contributing member of the retirement system as provided in

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

15 (e) A member who is participating in the system simultaneously
16 as both a regular, full-time employee of a participating public
17 employer and as an elected or appointed member of the legislative
18 body of the state or any political subdivision may, upon meeting
19 the age and service requirements of this article, elect to retire
20 from his or her regular full-time state employment and may commence
21 to receive an annuity from the system without terminating his or
22 her position as a member of the legislative body of the state or

1 political subdivision: *Provided*, That the retired member shall
2 not, during the term of his or her retirement and continued service
3 as a member of the legislative body of a political subdivision, be
4 eligible to continue his or her participation as a contributing
5 member of the system and shall not continue to accrue any
6 additional service credit or benefits in the system related to the
7 continued service.

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

19 (g) The provisions of section twenty-two-h of this article are
20 not applicable to the amendments made to this section during the
21 2006 Regular Session.

22 (h) (1) The Legislature finds that currently there are

1 insufficient provisions to assure compliance with requirements of
2 subsection (c) of this section. The Legislature further finds that
3 cooperation among the State Auditor, The Consolidated Public
4 Retirement Board, participating public employers and contractors
5 providing services to the participating public employers is
6 required to facilitate compliance.

7 (2) The State Auditor shall match information in its database
8 with information in the databases of the Consolidated Public
9 Retirement Board, the state's Department of Administration and
10 participating public employers to identify all those retirants of
11 the Public Employees Retirement System who are receiving an annuity
12 while at the same time receiving any payment from a participating
13 public employer, whether as an employee, contractor or person doing
14 work directly for the participating public employer as an employee
15 of a contractor. If payment is made to a corporation, partnership,
16 or entity by which an individual is "doing business as" a name
17 other than the proprietor, the State Auditor shall seek information
18 sufficient to determine the amount of any of the payments inuring
19 to the benefit of any retirant directly serving the participating
20 public employer. Upon reasonable belief that a retirant is in
21 violation of subsection (c) of this section, the State Auditor
22 shall notify the retirement board. The State Auditor shall also

1 notify the retirement board upon reasonable belief that a retirant
2 providing services to a participating public employer under a
3 contract should be classified as an employee. If the retirement
4 board has reasonable belief that the retirant providing services
5 under a contract is in violation of subsection (c) of this section,
6 the retirement board shall notify the retirant and, if the retirant
7 does not agree to employee status, the retirement board shall
8 promptly request a determination of employee or contractor status
9 from the United States Internal Revenue Service.

10 (3) The retirement board and participating public employers
11 shall cooperate fully with the State Auditor to assist the State
12 Auditor in gathering the information as required in this subsection
13 and to permit the State Auditor to fully comply with the provisions
14 limiting post-retirement earnings as set forth in this section.
15 Issuance of IRS Form 1099 is not conclusive evidence that the
16 receiver of payment is a contractor and not an employee.

17 (4) As a condition of a contract, any contractor providing
18 services to a participating public employer shall provide to the
19 employer the name and social security number of each person
20 performing work under the contract who is a retirant of the Public
21 Employees Retirement System, the amount paid to the retirant and
22 the retirant's complete job description.

1 (5) Except as relates to former employees of the Legislature
2 reemployed by the Legislature, the State Auditor shall make
3 available to the public information on those retirants who are
4 regularly employed on a full-time basis by a participating public
5 employer, or who are receiving payments from a participating public
6 employer under other circumstances mentioned in this subsection or
7 subsection (c) of this section. The information provided shall
8 include the name of the retirant, the amount of money paid to the
9 retirant, the entity making the payment, a general description of
10 services rendered in exchange for the payment and the time for
11 which payment was made.

NOTE: The purpose of this bill is to facilitate assurance of compliance with statutory requirements which, under certain circumstances, limit earnings of a retiree in post-retirement employment. The bill requires cooperation and information sharing among the State Auditor, The Consolidated Public Retirement Board, the State Department of Administration, employers participating in the Public Employees Retirement System and contractors providing services to the state so that the State Auditor may fully comply with the limiting post-retirement earnings requirements.

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