

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### Senate Bill 513

FISCAL  
NOTE

BY SENATORS TRUMP, STOLLINGS, PLYMALE, AND CLINE

[Introduced February 9, 2018; Referred  
to the Committee on Pensions; and then to the Committee  
on Finance]

A BILL to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended, relating to increasing the amount a retirant may earn if employed by a covered employer.

*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  
 8 or 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  
 14 of 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 twelve months per year service and  
 19 at least 1040 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  
24 the 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) In the event a retirant becomes regularly employed on a full-time basis by a  
28 participating public employer, payment of his or her annuity shall be suspended during the period  
29 of his or her reemployment and he or she shall become a contributing member to the retirement  
30 system. If his or her reemployment is for a period of one year or longer, his or her annuity shall  
31 be recalculated and he or she shall be granted an increased annuity due to the additional  
32 employment, the annuity to be computed according to §5-10-22 of this code. If his or her  
33 reemployment is for a period less than one year, he or she may request in writing that the  
34 employee and employer retirement contributions submitted during reemployment be credited to  
35 the participating public employer pursuant to §5-10-44 of this code, and his or her previous annuity  
36 shall be reinstated effective the first day of the month following termination of reemployment and  
37 the board's receipt of written notice thereof. A retirant may accept legislative per diem, temporary  
38 full-time or temporary part-time employment from a participating employer without suspending his  
39 or her retirement annuity so long as he or she does not receive annual compensation in excess  
40 of ~~\$20,000~~ \$35,000.

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

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

48 employee of the Legislature; or

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

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

70 (f) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member  
71 of the legislative body of any political subdivision or of the State Legislature, the Clerk of the  
72 House of Delegates and the Clerk of the Senate may elect to commence receiving in-service  
73 retirement distributions from this system upon attaining the age of seventy and one-half years:

74 *Provided*, That the member is eligible to retire under the provisions of §5-10-20 or §5-10-21 of  
75 this code: *Provided, however*, That the member elects to stop actively contributing to the system  
76 while receiving the in-service distributions.

77 (g) The provisions of §5-10-22h of this code are not applicable to the amendments made  
78 to this section during the 2006 Regular Session.

NOTE: The purpose of this bill is to increase the amount a retiree may earn when temporarily employed by a cover agency. This encourages valued employees to accept temporary employment, assist in training new employees, filling positions that have been temporarily vacated and working on special projects.

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