# **WEST VIRGINIA LEGISLATURE**

## 2018 REGULAR SESSION

# **Originating**

## Senate Bill 632

By Senators Trump, Weld, Azinger, Baldwin,

Beach, Clements, Cline, Jeffries, Karnes, Maynard,

Ojeda, Romano, Rucker, Smith, Swope, and

Woelfel

[Originating in the Committee on the Judiciary; Reported on February 28, 2018]

A BILL to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended; and to amend and reenact §51-9-10 of said code, all relating to allowing retired judicial officers recalled to service to avoid the limit on the temporary employment payments where a circumstance such as a significant illness, suspension, or other long absence of a sitting judicial officer requires a longer period of service by the retired judicial officer than the current cap would allow.

Be it enacted by the Legislature of West Virginia:

# CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE, AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

# ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT. §5-10-48. Reemployment after retirement; options for holder of elected public office.

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

- these persons on a limited per diem basis after they have retired is not only in the best interests of this state, but has no adverse effect whatsoever upon the actuarial soundness of this particular retirement system.
- (b) For the purposes of this section: (1) "Regularly employed on a full-time basis" means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires 12 months per year service and at least 1040 hours of service per year in that position; (2) "temporary full-time employment" or "temporary part-time employment" means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed; (3) "former employee of the Legislature" means any person who has retired from employment with the Legislature and who has at least 10 years' contributing service with the Legislature; and (4) "reemployed by the Legislature" means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed 175 days per calendar year.
- (c) In the event If a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to the additional employment, the annuity to be computed according to §5-10-22 of this code. If his or her reemployment is for a period less than one year, he or she may request in writing that the employee and employer retirement contributions submitted during reemployment be credited to the participating public employer pursuant to §5-10-44 of this code, and his or her previous annuity shall be reinstated effective the first day of the month following termination of reemployment and the board's receipt of written notice thereof. A retirant may accept legislative per diem, temporary full-time or temporary part-time employment from a participating employer without suspending his

or her retirement annuity so long as he or she does not receive annual compensation in excess of \$20,000: *Provided,* That a retirant who is assigned to temporary employment by the Chief Justice of the Supreme Court of Appeals may receive annual compensation in excess of \$20,000 without suspending or interrupting of his or her retirement annuity, but only where the Chief Justice has, by Administrative Order, found that exigent circumstances involving protracted illness, the lengthy suspension of a sitting judicial officer, or the extended absence of a judicial officer requires a term of temporary employment which would cause the retirant's annual compensation to exceed \$20,000.

- (d) In the event If a member retires and is then subsequently elected to a public office or is subsequently appointed to hold an elected public office, or is a former employee of the Legislature who has been reemployed by the Legislature, he or she has the option, notwithstanding §5-10-48(c) of this code, to either:
- (1) Continue to receive payment of his or her annuity while holding public office or during any reemployment of a former employee of the Legislature on a per diem basis, in addition to the salary he or she may be entitled to as an office holder or as a per diem reemployed former employee of the Legislature; or
- (2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in §5-10-48(c) of this code. Notwithstanding the provisions of this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be elected or reappointed to the same position unless and until a continuous 12-month period has passed since his or her retirement from the position: *Provided,* That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least 60 days after the employee has retired: *Provided, however,* That the limitation on compensation provided by §5-10-48(c) of this code does not apply to the reemployed former employee: *Provided further,*

That in no event may reemployment by the Legislature of a per diem employee exceed 175 days per calendar year.

- (e) A member who is participating in the system simultaneously as both a regular, full-time employee of a participating public employer and as an elected or appointed member of the legislative body of the state or any political subdivision may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: *Provided*, That the retired member shall may not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall may not continue to accrue any additional service credit or benefits in the system related to the continued service.
- (f) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member of the legislative body of any political subdivision or of the State Legislature, the Clerk of the House of Delegates and the Clerk of the Senate may elect to commence receiving in-service retirement distributions from this system upon attaining the age of 70 and one-half years: *Provided,* That the member is eligible to retire under the provisions of §5-10-20 or §5-10-21 of this code: *Provided, however,* That the member elects to stop actively contributing to the system while receiving the in-service distributions.
- (g) The provisions of §5-10-22h of this code are not applicable to the amendments made to this section during the 2006 regular session.

## **CHAPTER 51. COURTS AND THEIR OFFICERS.**

## ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

## §51-9-10. Services of senior judges.

The West Virginia Supreme Court of Appeals is authorized and empowered to create a panel of senior judges to utilize the talent and experience of former circuit court judges and

#### SB 632 ORG

supreme court justices of this state. The Supreme Court of Appeals shall promulgate rules 3 4 providing for said judges and justices to be assigned duties as needed and as feasible toward the 5 objective of reducing caseloads and providing speedier trials to litigants throughout the state: 6 Provided, That reasonable payment shall be made to said judges and justices on a per diem 7 basis: Provided, however, That the per diem and retirement compensation of a senior judge shall 8 not exceed the salary of a sitting judge except as set forth herein, and allowances shall also be 9 made for necessary expenses as provided for special judges under §51-2-1 et seg. and §51-2-1 10 et seg. of this code. A senior judge who is assigned to temporary employment by the Chief Justice 11 of the Supreme Court of Appeals may receive per diem and retirement compensation in excess 12 of the salary of a sitting judge, but only when the Chief Justice has, by Administrative Order, found 13 that exigent circumstances involving protracted illness, the lengthy suspension of a sitting judicial 14 officer, or the extended absence of a judicial officer requires a term of temporary employment 15 which would cause the retirant's annual compensation to exceed \$20,000.

NOTE: The purpose of this bill is to allow retired judicial officers recalled to service to avoid the normal cap on temporary employment payments where an urgent need such as a significant illness, suspension, or other long absence of a sitting judicial officer requires a longer period of service by the retired judicial officer than the current caps would allow.

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