

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 399

BY SENATORS TRUMP, STOLLINGS, AND BEACH

[Introduced January 23, 2019; Referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §50-1-6a of said code, all relating generally to compensation for
3 judicial officers; providing that senior judges, justices, and magistrates may receive per
4 diem compensation for temporary assignments while receiving retirement benefits,
5 subject to certain limitations; limiting the per diem rate of compensation that may be paid
6 to senior magistrates for each day served; providing that the combined total of per diem
7 compensation and retirement benefits paid to a senior magistrate during a single calendar
8 year may not exceed the annual salary of a sitting magistrate; providing an exception to
9 the limitation on the combined total of per diem compensation and retirement benefits paid
10 to a senior magistrate in a calendar year, if the Chief Justice of the Supreme Court of
11 Appeals enters an administrative order certifying that certain circumstances necessitate
12 extended assignment of such senior magistrate; requiring that administrative orders
13 regarding extended assignment of a senior magistrate be submitted to the State Auditor
14 and the State Treasurer; and providing that senior magistrates may be reimbursed for
15 actual and necessary expenses incurred in the performance of their duties.

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.

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 12 months per year service and at
19 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~~ If 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
39 his or her retirement annuity so long as he or she does not receive annual compensation in excess
40 of \$20,000.

41 (d) Senior judges, justices, and magistrates. —

42 (1) Notwithstanding the provisions of subsection (c) of this section, a retired judge or
43 justice who is recalled and assigned to temporary service as a senior judge or justice by the
44 Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of
45 §51-9-10 of this code while continuing to receive his or her annuity.

46 (2) Notwithstanding the provisions of subsection (c) of this section, a retired magistrate
47 who is recalled and assigned to temporary service as a senior magistrate by the West Virginia
48 Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of
49 §50-1-6a of this code while continuing to receive his or her annuity.

50 ~~(d)~~ (e) ~~In the event~~ If a member retires and is then subsequently elected to a public office
51 or is subsequently appointed to hold an elected public office, or is a former employee of the
52 Legislature who has been reemployed by the Legislature, he or she has the option,
53 notwithstanding subsection (c) of this section, to either:

54 (1) Continue to receive payment of his or her annuity while holding public office or during
55 any reemployment of a former employee of the Legislature on a per diem basis, in addition to the

56 salary he or she may be entitled to as an office holder or as a per diem reemployed former
57 employee of the Legislature; or

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

69 ~~(e)~~ (f) A member who is participating in the system simultaneously as both a regular, full-
70 time employee of a participating public employer and as an elected or appointed member of the
71 legislative body of the state or any political subdivision may, upon meeting the age and service
72 requirements of this article, elect to retire from his or her regular full-time state employment and
73 may commence to receive an annuity from the system without terminating his or her position as
74 a member of the legislative body of the state or political subdivision: *Provided*, That the retired
75 member ~~shall~~ may not, during the term of his or her retirement and continued service as a member
76 of the legislative body of a political subdivision, be eligible to continue his or her participation as
77 a contributing member of the system and ~~shall~~ may not continue to accrue any additional service
78 credit or benefits in the system related to the continued service.

79 ~~(f)~~ (g) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected
80 member of the legislative body of any political subdivision or of the State Legislature, the Clerk of
81 the House of Delegates, and the Clerk of the Senate may elect to commence receiving in-service

82 retirement distributions from this system upon attaining the age of 70 and one-half years:
83 *Provided*, That the member is eligible to retire under the provisions of §5-10-20 or §5-10-21 of
84 this code: *Provided, however*, That the member elects to stop actively contributing to the system
85 while receiving the in-service distributions.

86 ~~(g)~~ (h) The provisions of §5-10-22h of this code are not applicable to the amendments
87 made to this section during the 2006 regular session.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-6a. Temporary appointment of retired magistrates.

1 ~~(a) The Legislature recognizes and acknowledges the authority of the West Virginia~~
2 ~~Supreme Court of Appeals is authorized and empowered to create a panel of senior magistrates~~
3 ~~to consist of, and to utilize the talent and experience of, retired magistrates of this state. The~~
4 ~~Supreme Court of Appeals shall promulgate rules providing for such senior magistrates to be~~
5 ~~assigned duties as needed and as feasible toward the objective of reducing caseloads and~~
6 ~~providing for replacement of magistrates who are unavailable. *Provided*, That reasonable~~
7 ~~payment shall be made to said senior magistrates on a per diem basis: *Provided, however*, That~~
8 ~~the per diem and retirement compensation of a senior magistrate shall not exceed the salary of a~~
9 ~~sitting magistrate and allowances shall also be made for necessary expenses pursuant to the~~
10 ~~travel regulations of the Supreme Court of Appeals.~~

11 (b) Senior magistrates recalled and assigned to service shall receive per diem
12 compensation set by the Supreme Court of Appeals, but not to exceed \$200 for each day actually
13 served: *Provided*, That the combined total of per diem compensation and retirement benefits paid
14 to a senior magistrate during a single calendar year may not exceed the annual salary of a sitting
15 magistrate, except as set forth in subsection (c) of this section.

16 (c) Notwithstanding subsection (b) of this section, for purposes of maintaining magisterial
17 efficacy and continuity of magisterial decisionmaking, a senior magistrate may continue to receive
18 per diem compensation after the combined total of per diem compensation and retirement benefits
19 paid to the senior magistrate during that calendar year exceeds the annual salary of a sitting
20 magistrate if the Chief Justice of the Supreme Court of Appeals enters an administrative order
21 certifying that circumstances, such as the protracted illness or the lengthy suspension or absence
22 of a sitting magistrate, necessitate the extended assignment of the senior magistrate. Immediately
23 upon entering such an order, the chief justice shall submit copies of the order to the State Auditor
24 and the State Treasurer.

25 (d) In addition to the compensation authorized by this section, senior magistrates recalled
26 to service may be reimbursed for their actual and necessary expenses incurred in the
27 performance of their duties.

NOTE: The purpose of this bill is to fix the rate of compensation for senior magistrates and to limit the annual total of per diem compensation and retirement benefits paid to senior magistrates, absent certain conditions.

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