

Senate Bill No. 545

(By Senator Green)

[Introduced February 8, 2012; referred to the Committee on
Pensions; and then to the Committee on Finance.]

**FISCAL
NOTE**

A Bill to amend and reenact §5-10-48 of the Code of West Virginia,
1931, as amended, relating to reemployment after retirement
from the Public Employees Retirement System.

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.**

(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

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

19 (b) For the purposes of this section: (1) "Regularly employed
20 on a full-time basis" means employment of an individual by a
21 participating public employer, in a position other than as an
22 elected or appointed public official, which normally requires
23 twelve months per year service and at least one thousand forty

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

13 (c) In the event a retirant becomes regularly employed on a
14 full-time basis by a participating public employer, payment of his
15 or her annuity shall be suspended during the period of his or her
16 reemployment and he or she shall become a contributing member to
17 the retirement system. If his or her reemployment is for a period
18 of one year or longer, his or her annuity shall be recalculated and
19 he or she shall be granted an increased annuity due to the
20 additional employment, the annuity to be computed according to
21 section twenty-two of this article. A retirant may accept
22 temporary full-time or temporary part-time employment from a
23 participating employer without suspending his or her retirement

1 annuity so long as he or she does not receive annual compensation
2 in excess of \$15,000: *Provided*, That a retirant may be employed by
3 the Legislature on a per diem basis without suspension of the
4 retirement annuity if the retirant's annual compensation from the
5 Legislature does not exceed \$20,000.

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

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

16 (2) Suspend the payment of his or her annuity and become a
17 contributing member of the retirement system as provided in
18 subsection (c) of this section. Notwithstanding the provisions of
19 this subsection, a member who is participating in the system as an
20 elected public official may not retire from his or her elected
21 position and commence to receive an annuity from the system and
22 then be elected or reappointed to the same position unless and
23 until a continuous twelve-month period has passed since his or her

1 retirement from the position: *Provided*, That a former employee of
2 the Legislature may not be reemployed by the Legislature on a per
3 diem basis until at least sixty days after the employee has
4 retired: *Provided, however*, That the limitation on compensation
5 provided by subsection (c) of this section does not apply to the
6 reemployed former employee: *Provided further*, That in no event may
7 reemployment by the Legislature of a per diem employee exceed one
8 hundred seventy-five days per calendar year.

9 (e) A member who is participating in the system simultaneously
10 as both a regular, full-time employee of a participating public
11 employer and as an elected or appointed member of the legislative
12 body of the state or any political subdivision may, upon meeting
13 the age and service requirements of this article, elect to retire
14 from his or her regular full-time state employment and may commence
15 to receive an annuity from the system without terminating his or
16 her position as a member of the legislative body of the state or
17 political subdivision: *Provided*, That the retired member shall
18 not, during the term of his or her retirement and continued service
19 as a member of the legislative body of a political subdivision, be
20 eligible to continue his or her participation as a contributing
21 member of the system and shall not continue to accrue any
22 additional service credit or benefits in the system related to the
23 continued service.

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

12 (g) The provisions of section twenty-two-h of this article are
13 not applicable to the amendments made to this section during the
14 2006 Regular Session.

15 (h) (1) The Legislature finds that currently there are
16 insufficient provisions to assure compliance with requirements of
17 subsection (c) of this section. The Legislature further finds that
18 cooperation among the State Auditor, The Consolidated Public
19 Retirement Board, participating public employers and contractors
20 providing services to the participating public employers is
21 required to facilitate compliance.

22 (2) The State Auditor shall match information in its database
23 with information in the databases of the Consolidated Public

1 Retirement Board, the state's Department of Administration and
2 participating public employers to identify all those retirants of
3 the Public Employees Retirement System who are receiving an annuity
4 while at the same time receiving any payment from a participating
5 public employer, whether as an employee, contractor or person doing
6 work directly for the participating public employer as an employee
7 of a contractor. If payment is made to a corporation, partnership,
8 or entity by which an individual is "doing business as" a name
9 other than the proprietor, the State Auditor shall seek information
10 sufficient to determine the amount of any of the payments inuring
11 to the benefit of any retirant directly serving the participating
12 public employer. Upon reasonable belief that a retirant is in
13 violation of subsection (c) of this section, the State Auditor
14 shall notify the retirement board. The State Auditor shall also
15 notify the retirement board upon reasonable belief that a retirant
16 providing services to a participating public employer under a
17 contract should be classified as an employee. If the retirement
18 board has reasonable belief that the retirant providing services
19 under a contract is in violation of subsection (c) of this section,
20 the retirement board shall notify the retirant and, if the retirant
21 does not agree to employee status, the retirement board shall
22 promptly request a determination of employee or contractor status
23 from the United States Internal Revenue Service.

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

8 (4) As a condition of a contract, any contractor providing
9 services to a participating public employer shall provide to the
10 employer the name and social security number of each person
11 performing work under the contract who is a retirant of the Public
12 Employees Retirement System, the amount paid to the retirant and
13 the retirant's complete job description.

14 (5) Except as relates to former employees of the Legislature
15 reemployed by the Legislature, the State Auditor shall make
16 available to the public information on those retirants who are
17 regularly employed on a full-time basis by a participating public
18 employer, or who are receiving payments from a participating public
19 employer under other circumstances mentioned in this subsection or
20 subsection (c) of this section. The information provided shall
21 include the name of the retirant, the amount of money paid to the
22 retirant, the entity making the payment, a general description of
23 services rendered in exchange for the payment and the time for

1 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.

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