

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

**Introduced**

### **House Bill 4137**

**FISCAL  
NOTE**

BY DELEGATES HANSHAW, SHOTT, LOVEJOY, MILLER, C.,  
WESTFALL, PETHTEL, SPONAUGLE, HAMILTON, EVANS, E.,  
AND HOLLEN

[BY REQUEST OF THE WEST VIRGINIA SUPREME COURT  
OF APPEALS]

[Introduced January 16, 2018; Referred  
to the Committee on Pensions and Retirement then  
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 §51-9-10 of said code, all relating to removing the cap on payments  
3 for service by retired circuit judges, family court judges, and magistrates in certain limited  
4 circumstances.

*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 twelve months per year service and  
19 at least one thousand forty hours of service per year in that position; (2) "temporary full-time  
20 employment" or "temporary part-time employment" means employment of an individual on a  
21 temporary or provisional basis by a participating public employer, other than as an elected or  
22 appointed public official, in a position which does not otherwise render the individual as regularly  
23 employed; (3) "former employee of the Legislature" means any person who has retired from  
24 employment with the Legislature and who has at least ten years' contributing service with the  
25 Legislature; and (4) "reemployed by the Legislature" means a former employee of the Legislature  
26 who has been reemployed on a per diem basis not to exceed one hundred seventy-five days per  
27 calendar year.

28 (c) In the event a retirant becomes regularly employed on a full-time basis by a  
29 participating public employer, payment of his or her annuity shall be suspended during the period  
30 of his or her reemployment and he or she shall become a contributing member to the retirement  
31 system. If his or her reemployment is for a period of one year or longer, his or her annuity shall  
32 be recalculated and he or she shall be granted an increased annuity due to the additional  
33 employment, the annuity to be computed according to §5-10-22 of this code. If his or her  
34 reemployment is for a period less than one year, he or she may request in writing that the  
35 employee and employer retirement contributions submitted during reemployment be credited to  
36 the participating public employer pursuant to §5-10-44 of this code, and his or her previous annuity  
37 shall be reinstated effective the first day of the month following termination of reemployment and  
38 the board's receipt of written notice thereof. A retirant may accept legislative per diem, temporary

39 full-time or temporary part-time employment from a participating employer without suspending his  
40 or her retirement annuity so long as he or she does not receive annual compensation in excess  
41 of \$20,000. A retirant who is assigned to temporary employment by the Chief Justice of the  
42 Supreme Court of Appeals may, however, receive annual compensation in excess of \$20,000  
43 without suspending his or her retirement annuity, but only where the Chief Justice has by  
44 administrative order found that exigent circumstances involving protracted illness, lengthy  
45 suspension of a sitting judicial officer, or other extraordinary circumstances require a length of  
46 term of temporary employment that is likely to cause the retirant's annual compensation to exceed  
47 \$20,000.

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

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

56 (2) Suspend the payment of his or her annuity and become a contributing member of the  
57 retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of  
58 this subsection, a member who is participating in the system as an elected public official may not  
59 retire from his or her elected position and commence to receive an annuity from the system and  
60 then be elected or reappointed to the same position unless and until a continuous twelve-month  
61 period has passed since his or her retirement from the position: *Provided*, That a former employee  
62 of the Legislature may not be reemployed by the Legislature on a per diem basis until at least  
63 sixty days after the employee has retired: *Provided, however*, That the limitation on compensation

64 provided by subsection (c) of this section does not apply to the reemployed former employee:  
65 *Provided further*, That in no event may reemployment by the Legislature of a per diem employee  
66 exceed one hundred seventy-five days per calendar year.

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

77 (f) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member  
78 of the legislative body of any political subdivision or of the State Legislature, the Clerk of the  
79 House of Delegates and the Clerk of the Senate may elect to commence receiving in-service  
80 retirement distributions from this system upon attaining the age of seventy and one-half years:  
81 *Provided*, That the member is eligible to retire under the provisions of §5-10-20 of this code or §5-  
82 10-21 of this code: *Provided, however*, That the member elects to stop actively contributing to the  
83 system while receiving the in-service distributions.

84 (g) The provisions of §5-10-22h of this code are not applicable to the amendments made  
85 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.**

1           The West Virginia Supreme Court of Appeals is authorized and empowered to create a  
2 panel of senior judges to utilize the talent and experience of former circuit court judges and  
3 supreme court justices of this state. The Supreme Court of Appeals shall promulgate rules  
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 may not exceed the salary of a sitting judge except as set forth herein, and allowances shall also  
9 be made for necessary expenses as provided for special judges under §51-2-1 *et seq.* and §51-  
10 9-1 *et seq.* of this code. A senior judge who is assigned to temporary employment by the Chief  
11 Justice of the Supreme Court of Appeals may receive per diem and retirement compensation in  
12 excess of the salary of a sitting judge, but only when the chief justice has by administrative order  
13 found that exigent circumstances involving protracted illness, lengthy suspension of a sitting  
14 judicial officer, or other extraordinary circumstances require a length of term of temporary  
15 employment that is likely to cause the senior judge's per diem and retirement compensation to  
16 exceed the salary of a sitting judge.

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.