

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3404

**FISCAL
NOTE**

By Delegates Kelly, Maynor, and Hott

[Introduced March 17, 2025; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §5-10-48 of the Code of West Virginia, as amended, relating to
2 permitting a prosecuting attorney or an assistant prosecuting attorney to return to service
3 after retirement without suspending or ending payments from his or her retirement annuity
4 during such period of additional employment.

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 or
8 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 of
14 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 1,040 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) 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 \$25,000: . Provided, That a retirant, who was employed as a prosecuting attorney or assistant prosecuting attorney at the time of his or her retirement, may subsequently return to work as an assistant prosecuting attorney on a part-time or full-time basis without suspending his or her retirement annuity, without limitation on the annual period of employment or on the amount of annual compensation received by the retirant.

(d) Senior judges, justices, and magistrates. –

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

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

(e) 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 subsection (c) of this section, 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 subsection (c) of this section. 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 subsection (c) of this section does not apply to the reemployed former employee: *Provided*

72 *further*, That in no event may reemployment by the Legislature of a per diem employee exceed
73 175 days per calendar year.

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

84 (g) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member
85 of the legislative body of any political subdivision or of the State Legislature, the Clerk of the House
86 of Delegates, and the Clerk of the Senate may elect to commence receiving in-service retirement
87 distributions from this system upon attaining the age of 70 and one-half years: *Provided*, That the
88 member is eligible to retire under the provisions of §5-10-20 or §5-10-21 of this code: *Provided*,
89 *however*, That the member elects to stop actively contributing to the system while receiving the in-
90 service distributions.

91 (h) The Legislature hereby finds and declares that a severe shortage of child protective
92 services workers and adult protective services workers exists throughout the state, and therefore,
93 a compelling state interest exists in expanding the use of retired employees to serve this critical
94 need. Notwithstanding any provision of subsection (c) of this section to the contrary, a person
95 receiving retirement benefits or who is eligible to receive retirement benefits pursuant to the
96 provisions of this chapter, may accept employment as a child protective services worker or an
97 adult protective services worker on a full-time or part-time basis without having payment of his or

98 her retirement annuity suspended and without reentering the retirement system as a contributing
99 member. This subsection is only applicable if the retired employee meets the minimum
100 qualifications of the position, has been retired for at least 60 days, and is hired to fill an existing
101 child protective services or adult protective services vacancy. The retired employee may continue
102 to work under this subsection only as long as that position remains vacant. The vacant position
103 shall be posted until it is filled by a regularly employed person meeting the minimum qualifications
104 to serve as a child protective service worker or an adult protective service worker. The provisions
105 of this subsection shall expire July 1, 2025.

NOTE: The purpose of this bill is to permit retired prosecuting attorneys and assistant prosecuting attorneys to return to work as assistant prosecuting attorneys without suspending payments from his or her retirement annuity or limitation on the annual period of employment or on the amount of annual compensation received by the retirant.

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