WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2917

BY DELEGATES SUMMERS, TULLY AND ROHRBACH

[Passed March 9, 2023; in effect from passage.]
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AN ACT to amend and reenact §5-10-48 of the code of West Virginia, 1931, as amended, relating
to post-retirement employment by certain retirants; allowing certain retired state
employees to render certain post-retirement employment with the Department of Health
and Human Resources under certain circumstances; and increasing the amount that may
be earned by certain retirants in certain post-retirement employment without requiring
suspension of retirement annuity.

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.

(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
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18 elected or appointed public official, which normally requires 12 months per year service and at
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)
"re-employed by the Legislature" means a former employee of the Legislature who has been
re-employed 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.

d) Senior judges, justices, and magistrates. –

(1) Notwithstanding the provisions of subsection (c) of this section, a retired 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 further, That in no event may reemployment by the Legislature of a per diem employee exceed 175 days per calendar year.
(f) 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 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 not continue to accrue any additional service credit or benefits in the system related to the continued service.

(g) 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.

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

(i) The Legislature hereby finds and declares that a severe shortage of child protective services workers and adult protective services workers exists throughout the state and therefore a compelling state interest exists in expanding the use of retired employees to serve this critical need. Notwithstanding any provision of subsection (c) of this section to the contrary, a person receiving retirement benefits or eligible to receive retirement benefits pursuant to the provisions of this chapter may accept employment as a child protective services worker or an adult protective services worker on a full-time or part-time basis without having payment of his or her retirement
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annuity suspended and without reentering the retirement system as a contributing member. This subsection is only applicable if the retired employee meets the minimum qualifications of the position, has been retired for at least 60 days, and is hired to fill an existing child protective services or adult protective services vacancy. The retired employee may continue to work under this subsection only as long as that position remains vacant. The vacant position shall be posted until it is filled by a regularly employed person meeting the minimum qualifications to serve as a child protective service worker or an adult protective service worker. The provisions of this subsection shall expire July 1, 2025.
The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

Clerk of the House of Delegates

Clerk of the Senate

Originated in the House of Delegates.

In effect from passage.

Speaker of the House of Delegates

President of the Senate

The within is approved this the 29th Day of March, 2023.

Governor