

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 486**

4 (By Senators Palumbo, Tucker, Laird, Edgell, Foster, Wills,
5 Kessler (Mr. President) and Klempa)

6 _____
7 [Originating in the Committee on the Judiciary;
8 reported February 8, 2012.]
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11 A BILL to amend and reenact §51-9-4, §51-9-6, §51-9-6a and §51-9-6b
12 of the Code of West Virginia, 1931, as amended, all relating
13 to the judicial retirement system; reducing the contribution
14 rate of judges; removing the limitations imposed on judges
15 first appointed or elected after July 1, 2005; authorizing the
16 Consolidated Public Retirement Board to annually establish
17 future participant contribution rates based on the State
18 Actuary's report; and limiting the participant contribution
19 rate to ten and one-half percent of a participant's salary.

20 *Be it enacted by the Legislature of West Virginia:*

21 That §51-9-4, §51-9-6, §51-9-6a and §51-9-6b of the Code of
22 West Virginia, 1931, as amended, be amended and reenacted, all to
23 read as follows:

24 **ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.**

25 **§51-9-4. Required percentage contributions from salaries; any**

1 **termination of required contributions prior to actual**
2 **retirement disallowed; leased employees; maximum**
3 **allowable and qualified military service; qualifiable**
4 **prosecutorial service.**

5 (a) Every person who is now serving or shall hereafter serve
6 as a judge of any court of record of this state shall pay into the
7 Judges' Retirement Fund six percent of the salary received by such
8 person out of the state Treasury: *Provided*, That when a judge
9 becomes eligible to receive benefits from such trust fund by actual
10 retirement, no further payment by him or her shall be required,
11 since such employee contribution, in an equal treatment sense,
12 ceases to be required in the other retirement systems of the state,
13 also, only after actual retirement: *Provided, however*, That on and
14 after January 1, 1995, every person who is then serving or shall
15 thereafter serve as a judge of any court of record in this state
16 shall pay into the Judges' Retirement Fund nine percent of the
17 salary received by that person: *Provided further*, That consistent
18 with the salary increase granted to judges of courts of record
19 during the 2005 regular legislative session and to changes
20 effectuated in judicial retirement by provisions enacted during the
21 third extraordinary legislative session of 2005, on and after July
22 1, 2005, every person who is then serving or shall thereafter serve
23 as a judge of any court of record in this state shall pay into the
24 Judges' Retirement Fund ten and one-half percent of the salary
25 received by that person: *And provided further*, That on and after

1 July 1, 2012, except as provided in subsection (b) of this section,
2 every person who is then serving or shall thereafter serve as a
3 judge of any court of record in this state and who elects to
4 participate in this retirement system shall pay into the Judges'
5 Retirement Fund seven percent of the salary received. Any prior
6 occurrence or practice to the contrary, in any way allowing
7 discontinuance of required employee contributions prior to actual
8 retirement under this retirement system, is rejected as erroneous
9 and contrary to legislative intent and as violative of required
10 equal treatment and is hereby nullified and discontinued fully,
11 with the State Auditor to require such contribution in every
12 instance hereafter, except where no contributions are required to
13 be made under any of the provisions of this article.

14 (b) On and after July 1, 2013, every person who is serving or
15 shall hereafter serve as a judge of any court of record of this
16 state and who elects to participate in this retirement system shall
17 contribute to the fund an amount determined by the board. This
18 amount will be based on the annual actuarial valuation prepared by
19 the State Actuary; Provided, That the contribution will be no less
20 than seven percent or no more than ten and one-half percent of the
21 participant's annual compensation.

22 ~~(b)~~ (c) An individual who is a leased employee shall not be
23 eligible to participate in the system. For purposes of this
24 system, a "leased employee" means any individual who performs
25 services as an independent contractor or pursuant to an agreement
26 with an employee leasing organization or other similar

1 organization. If a question arises regarding the status of an
2 individual as a leased employee, the board has the final power to
3 decide the question.

4 ~~(c)~~ (d)In drawing warrants for the salary checks of judges,
5 the State Auditor shall deduct from the amount of each such salary
6 check six percent thereof, which amount so deducted shall be
7 credited by the Consolidated Public Retirement Board to the trust
8 fund: *Provided*, That on or after January 1, 1995, the amount so
9 deducted and credited shall be nine percent of each such salary
10 check: *Provided, however*, That consistent with the salary increase
11 granted to judges of courts of record during the 2005 regular
12 legislative session and to changes effectuated in judicial
13 retirement by provisions enacted during the third extraordinary
14 legislative session of 2005, on or after July 1, 2005, the amount
15 so deducted and credited shall be ten and one-half percent of each
16 such salary check: *And provided further*, That on and after July 1,
17 2012, except as provided in subsection (b) of this section, the
18 amount so deducted and credited shall be seven percent of each
19 salary check: *And provided further*, That on and after July 1,
20 2013, the amount so deducted and credited will be determined by the
21 Board.

22 ~~(d)~~ (e)Any judge seeking to qualify military service to be
23 claimed as credited service, in allowable aggregate maximum amount
24 up to five years, shall be entitled to be awarded the same without
25 any required payment in respect thereof to the Judges' Retirement
26 Fund.

1 ~~(e)~~(f) Notwithstanding the preceding provisions of this
2 section, contributions, benefits and service credit with respect to
3 qualified military service shall be provided in accordance with
4 Section 414(u) of the Internal Revenue Code. For purposes of this
5 section, "qualified military service" has the same meaning as in
6 Section 414(u) of the Internal Revenue Code. The Retirement Board
7 is authorized to determine all questions and make all decisions
8 relating to this section and may promulgate rules relating to
9 contributions, benefits and service credit pursuant to the
10 authority granted to the retirement board in section one, article
11 ten-d, chapter five of this code to comply with Section 414(u) of
12 the Internal Revenue Code.

13 ~~(f)~~(g) Any judge holding office as such on the effective date
14 of the amendments to this article adopted by the Legislature at its
15 1987 regular session who seeks to qualify service as a prosecuting
16 attorney as credited service, which service credit must have been
17 earned prior to the year 1987, shall be required to pay into the
18 Judges' Retirement Fund nine percent of the annual salary which was
19 actually received by such person as prosecuting attorney during the
20 time such prosecutorial service was rendered prior to the year 1987
21 and for which credited service is being sought, together with
22 applicable interest. No judge whose term of office shall commence
23 after the effective date of such amendments to this article shall
24 be eligible to claim any credit for service rendered as a
25 prosecuting attorney as eligible service for retirement benefits
26 under this article, nor shall any time served as a prosecutor after

1 the year 1988 be considered as eligible service for any purposes of
2 this article.

3 **§51-9-6. Eligibility for and payment of benefits.**

4 (a) Except as otherwise provided in sections five, six-d,
5 twelve and thirteen of this article, and subject to the provisions
6 of subsection (e) of this section, any person who is now serving,
7 or who shall hereafter serve, as a judge of any court of record of
8 this state and shall have served as such judge for a period of not
9 less than sixteen full years and shall have reached the age of
10 sixty-five years, or who has served as judge of such court or of
11 that court and other courts of record of the state for a period of
12 sixteen full years or more (whether continuously or not and whether
13 said service be entirely before or after this article became
14 effective, or partly before and partly after said date, and whether
15 or not said judge shall be in office on the date he or she shall
16 become eligible to benefits hereunder) and shall have reached the
17 age of sixty-five years, or who is now serving, or who shall
18 hereafter serve, as a judge of any court of record of this state
19 and shall have served as such judge for a period of not less than
20 twenty-four full years, regardless of age, shall, upon a
21 determination and certification of his or her eligibility as
22 provided in section nine hereof, be paid from the fund annual
23 retirement benefits, so long as he or she shall live, in an amount
24 equal to seventy-five percent of the annual salary of the office
25 from which he or she has retired based upon such salary of such
26 office and as such salary may be changed from time to time during

1 the period of his or her retirement and the amount of his or her
2 retirement benefits shall be based upon and be equal to seventy-
3 five percent of the highest annual salary of such office for any
4 one calendar year during the period of his or her retirement and
5 shall be payable in monthly installments: *Provided*, That such
6 retirement benefits shall be paid only after such judge has
7 resigned as such or, for any reason other than his or her
8 impeachment, his or her service as such has ended: *Provided*,
9 *however*, That every such person seeking to retire and to receive
10 the annual retirement benefits provided by this subsection must
11 have served a minimum of twelve years as a sitting judge of any
12 such court of record: ~~*Provided further*, That every individual who~~
13 ~~is appointed or elected for the first time as judge of a court of~~
14 ~~record of this state after July 1, 2005, who subsequently seeks to~~
15 ~~retire and to receive the annual retirement benefits provided by~~
16 ~~this subsection must have served a minimum of fourteen years as a~~
17 ~~sitting judge of any court of record.~~

18 (b) Notwithstanding any other provisions of this article with
19 the exception of sections twelve-a and twelve-b, any person who is
20 now serving or who shall hereafter serve as a judge of any court of
21 record of this state and who shall have accumulated sixteen years
22 or more of credited service, at least twelve years of which is as
23 a sitting judge of a court of record, and who has attained the age
24 of sixty-two years or more but less than the age of sixty-five
25 years, may elect to retire from his or her office and to receive
26 the pension to which he or she would otherwise be entitled to

1 receive at age sixty-five, but with an actuarial reduction of
2 pension benefit to be established as a reduced annuity receivable
3 throughout retirement: ~~Provided, That every individual who is~~
4 ~~appointed or elected for the first time as judge of a court of~~
5 ~~record of this state after July 1, 2005, who subsequently seeks to~~
6 ~~retire and to receive the annual retirement benefits provided by~~
7 ~~this subsection must have served a minimum of fourteen years as a~~
8 ~~sitting judge of any court of record.~~ The reduced percentage (less
9 than seventy-five percent) actuarially computed, determined and
10 established at time of retirement in respect of this reduced
11 pension benefit shall also continue and be applicable to any
12 subsequent new annual salary set for the office from which such
13 judge has retired and as such salary may be changed from time to
14 time during the period of his or her retirement.

15 (c) In determining eligibility for the benefits provided by
16 this section, active full-time duty (including leaves and
17 furloughs) in the Armed Forces of the United States shall be
18 eligible for qualification as credited military service for the
19 purposes of this article by any judge with twelve or more years
20 actual service as a sitting judge of a court of record, such
21 awardable military service to not exceed five years: ~~Provided,~~
22 ~~That in determining eligibility for the benefits provided by this~~
23 ~~section for every individual who is appointed or elected for the~~
24 ~~first time as judge of a court of record of this state after July~~
25 ~~1, 2005, active full-time duty (including leaves and furloughs) in~~
26 ~~the Armed Forces of the United States qualifies as credited service~~

~~1 for the purposes of this article for any judge with fourteen or
2 more years actual service as a sitting judge of a court of record
3 of this state, the awardable military service not to exceed five
4 years.~~

5 (d) If a judge of a court of record who is presently sitting
6 as such on the effective date of the amendments to this section
7 enacted by the Legislature at its regular session held in the year
8 1987 and who has served for a period of not less than twelve full
9 years and has made payments into the Judges' Retirement Fund as
10 provided in this article for each month during which he or she
11 served as judge, following the effective date of this section, any
12 portion of time which he or she had served as prosecuting attorney
13 in any county in this state shall qualify as years of service, if
14 such judge shall pay those sums required to be paid pursuant to the
15 provisions of section four of this article: *Provided*, That any
16 term of office as prosecuting attorney, or part thereof, commencing
17 after December 31, 1988, shall not hereafter in any way qualify as
18 eligible years of service under this retirement system. For
19 purposes of this article, eligible service as a "prosecuting
20 attorney" or as a "prosecutor" does not include any service as an
21 assistant prosecuting attorney. The amendment to this subsection
22 during the third extraordinary session in the year 2005 is not for
23 the purpose of changing existing law but is intended to clarify the
24 intent of the Legislature as to existing law regarding eligibility
25 for benefits for service as a prosecuting attorney since its
26 initial enactment and this clarification shall be applied

1 retrospectively to the effective date of this section and any
2 predecessor acts in which service as a prosecuting attorney was
3 initially determined by statute to qualify as eligible years of
4 service under the retirement system provided by this article.

5 (e) Any retirement benefit accruing under the provisions of
6 this section shall not be paid if otherwise barred under the
7 provisions of article ten-a, chapter five of this code.

8 (f) Notwithstanding any other provisions of this article,
9 forfeitures under the system shall not be applied to increase the
10 benefits any member would otherwise receive under the system.

11 **§51-9-6a. Eligibility benefits; service and retirement of judges**
12 **over sixty-five years of age.**

13 Any judge of a court of record of this state who shall have
14 served for a period of not less than eight full years after
15 attaining the age of sixty-five years and who shall have made
16 payments into the Judges' Retirement Fund as provided in this
17 article for each month during which he or she served as such judge
18 following the effective date of this section, shall be subject to
19 all the applicable terms and provisions of this article, not
20 inconsistent with the provisions hereof, and shall receive
21 retirement benefits in an amount equal to seventy-five percent of
22 the annual salary of the office from which he or she has retired
23 based upon such salary of such office as such salary may be changed
24 from time to time during the period of his or her retirement and
25 the amount of his or her retirement benefits shall be based upon
26 and be equal to seventy-five percent of the highest annual salary

1 of such office for any one calendar year during the period of his
2 or her retirement and shall be payable in monthly installments. If
3 such judge shall become incapacitated to perform his or her said
4 duties before the expiration of his or her said term and after
5 serving for six years thereof, and upon the acceptance of his or
6 her resignation as in this article provided, he or she shall be
7 paid the annual retirement benefits as herein provided so long as
8 he or she shall live. The provisions of this section shall prevail
9 over any language to the contrary in this article contained, except
10 those provisions of sections twelve-a and twelve-b of this article:
11 ~~Provided, That no individual who is appointed or elected for the~~
12 ~~first time as judge of a court of record of this state after July~~
13 ~~1, 2005, is eligible for retirement under this section.~~

14 **§51-9-6b. Annuities for surviving spouses and surviving dependent**
15 **children of judges; automatic escalation and increase of**
16 **annuity benefit; proration designation by judge permitted.**

17 (a) There shall be paid, from the fund created or continued by
18 section two of this article, or from such funds as may be
19 appropriated by the Legislature for such purpose, an annuity to the
20 surviving spouse of a judge, if such judge at the time of his or
21 her death is eligible for the retirement benefits provided by any
22 of the provisions of this article, or who has, at death, actually
23 served five years or more as a sitting judge of any court of record
24 of this state, exclusive of any other service credit to which such
25 judge may otherwise be entitled, and who dies either while in

1 office or after resignation or retirement from office pursuant to
2 the provisions of this article. Said annuity shall amount to forty
3 percent of the annual salary of the office which said judge held at
4 his or her death or from which he or she resigned or retired. In
5 the event said salary is increased or decreased while an annuitant
6 is receiving the benefits hereunder, his or her annuity shall
7 amount to forty percent of the new salary: ~~Provided, That with~~
8 ~~respect to any individual who is appointed or elected for the first~~
9 ~~time as judge of a court of record of this state after July 1,~~
10 ~~2005, any annuity to the surviving spouse of the judge shall be an~~
11 ~~amount equal to forty percent of the judge's final average salary:~~
12 ~~Provided, however, That the annuitant is not entitled to an~~
13 ~~increase in benefits by virtue of any increase in the salaries of~~
14 ~~the offices of circuit court judge or Justice of the Supreme Court~~
15 ~~of Appeals.~~ The annuity granted hereunder shall accrue monthly and
16 shall be due and payable in monthly installments on the first
17 business day of the month following the month for which the annuity
18 shall have accrued. Such annuity shall commence on the first day
19 of the month in which said judge dies and shall, subject to the
20 provisions of subsection (b) of this section, terminate upon the
21 death of the annuitant or shall terminate upon the remarriage of
22 the annuitant.

23 (b) If there be no surviving spouse at the time of death of a
24 judge who dies after serving five years or more as a sitting judge
25 of any court of record and such judge leaves surviving him or her
26 any dependent child or children, such dependent child or children

1 shall receive an amount equal to twenty percent of the annual
2 salary of the office which said judge held at the time of his or
3 her death: *Provided*, That the total of all such annuities payable
4 to each such child shall not exceed in the aggregate an amount
5 equal to forty percent of such salary. Such annuity shall continue
6 as to each such child until: (i) He or she or she attains the age
7 of eighteen years; or (ii) attains the age of twenty-three years so
8 long as such child remains a full-time student. ~~The Auditor Board~~
9 shall by legislative rule establish the criteria for determining a
10 person's status as a full-time student within the meaning and
11 intent of this subsection. In the event there are surviving any
12 such judge three or more dependent children, then each such child's
13 annuity shall be proratably reduced in order that the aggregate
14 annuity received by all such dependent children does not exceed
15 forty percent of such salary and the amount to be so received by
16 any such child shall continue throughout the entire period during
17 which each such child is eligible to receive such annuity. The
18 provisions of this subsection shall also apply to those
19 circumstances and situations wherein a surviving spouse of a
20 deceased judge shall die while receiving benefits pursuant to
21 subsection (a) of this section and who shall leave surviving
22 dependent children of such deceased judge who would be entitled to
23 benefits under this subsection as if they had succeeded to such
24 annuity benefits upon the death of such judge in the first
25 instance. In the event the salary of judges is increased or
26 decreased while an annuitant is receiving benefits pursuant to this

1 subsection, the annuities payable shall be likewise increased or
2 decreased proportionately to reflect such change in salary:~~—~~
3 ~~Provided, however, That with respect to any individual who is~~
4 ~~appointed or elected for the first time as judge of a court of~~
5 ~~record of this state after July 1, 2005, any annuity to any~~
6 ~~children of the judge shall be calculated with respect to the~~
7 ~~judge's final average salary: Provided further That the child is~~
8 ~~not entitled to an increase in benefits by virtue of any increase~~
9 ~~in the salaries of the offices of circuit court judge or Justice of~~
10 ~~the Supreme Court of Appeals.~~ The annuities granted hereunder
11 shall accrue monthly and shall be due and payable in monthly
12 installments on the same day as surviving spouses' benefits are
13 required to be paid. Such annuities shall commence on the first
14 day of the month in which any such dependent child becomes eligible
15 for benefits hereunder and shall terminate on the last day of the
16 month during which such eligibility ceases.

17

18 NOTE: The purpose of this bill is to reduce the retirement
19 contribution rate for judges of courts of record and to require the
20 Consolidated Public Retirement Board to establish all future
21 contribution rates based on the State Actuary's report. This bill
22 also removes the limitations on pension benefits and eligibility
23 for judges appointed or elected after July 1, 2005.