

1 **ENROLLED**

2 **Senate Bill No. 403**

3 (BY SENATORS PALUMBO, CHAFIN AND KESSLER (MR. PRESIDENT))

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5 [Passed April 13, 2013; in effect from passage.]
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10 AN ACT to amend and reenact §51-9-4 of the Code of West Virginia,
11 1931, as amended, relating to the judicial retirement system;
12 reducing the contribution rate of judges; authorizing the
13 Consolidated Public Retirement Board to annually establish
14 future participant contribution rates based on the State
15 Actuary's report; requiring certain reporting to the
16 Legislature's Joint Committee on Government and Finance and
17 the Joint Committee on Pensions and Retirement; and limiting
18 the participant contribution rate to no more than ten and
19 one-half percent and no less than seven percent of a
20 participant's salary.

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

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

1 **ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF RECORD.**

2 **§51-9-4. Required percentage contributions from salaries; any**
3 **termination of required contributions prior to actual**
4 **retirement disallowed; leased employees; military**
5 **service credit; maximum allowable and qualified**
6 **military service; qualifiable prosecutorial service.**

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

1 1, 2005, every person who is then serving or shall thereafter serve
2 as a judge of any court of record in this state shall pay into the
3 Judges' Retirement Fund ten and one-half percent of the salary
4 received by that person: *And provided further,* That on and after
5 July 1, 2013, except as provided in subsection (b) of this section,
6 every person who is then serving or shall thereafter serve as a
7 judge of any court of record in this state and who elects to
8 participate in this retirement system shall pay into the Judges'
9 Retirement Fund seven percent of the salary received. Any prior
10 occurrence or practice to the contrary, in any way allowing
11 discontinuance of required employee contributions prior to actual
12 retirement under this retirement system, is rejected as erroneous
13 and contrary to legislative intent and as violative of required
14 equal treatment and is hereby nullified and discontinued fully,
15 with the State Auditor to require such contribution in every
16 instance hereafter, except where no contributions are required to
17 be made under any of the provisions of this article.

18 (b) On and after July 1, 2014, every person who is serving or
19 shall hereafter serve as a judge of any court of record of this
20 state and who elects to participate in this retirement system shall
21 contribute to the fund an amount determined by the board. This
22 amount will be based on the annual actuarial valuation prepared by
23 the State Actuary: *Provided,* That the contribution will be no less

1 than seven percent or no more than ten and one-half percent of the
2 participant's annual compensation.

3 (c) On or after July 1, 2013, and each year thereafter, the
4 annual actuarial valuation prepared by the State Actuary for
5 determination of all participants' contributions and the annual
6 actuarially required contribution prepared by the State Actuary for
7 use by the courts of this state for legislative appropriation shall
8 be provided to the Legislature's Joint Committee on Government and
9 Finance and the Joint Committee on Pensions and Retirement.

10 (d) An individual who is a leased employee shall not be
11 eligible to participate in the system. For purposes of this
12 system, a "leased employee" means any individual who performs
13 services as an independent contractor or pursuant to an agreement
14 with an employee leasing organization or other similar
15 organization. If a question arises regarding the status of an
16 individual as a leased employee, the board has the final power to
17 decide the question.

18 (e) In drawing warrants for the salary checks of judges, the
19 State Auditor shall deduct from the amount of each such salary
20 check six percent thereof, which amount so deducted shall be
21 credited by the Consolidated Public Retirement Board to the trust
22 fund: *Provided*, That on or after January 1, 1995, the amount so
23 deducted and credited shall be nine percent of each such salary

1 check: *Provided, however,* That consistent with the salary increase
2 granted to judges of courts of record during the 2005 regular
3 legislative session and to changes effectuated in judicial
4 retirement by provisions enacted during the third extraordinary
5 legislative session of 2005, on or after July 1, 2005, the amount
6 so deducted and credited shall be ten and one-half percent of each
7 such salary check: *Provided further,* That on and after July 1,
8 2013, except as provided in subsection (b) of this section, the
9 amount so deducted and credited shall be seven percent of each
10 salary check: *And provided further,* That on and after July 1, 2014,
11 the amount so deducted and credited will be determined by the
12 board.

13 (f) Any judge seeking to qualify military service to be
14 claimed as credited service, in allowable aggregate maximum amount
15 up to five years, shall be entitled to be awarded the same without
16 any required payment in respect thereof to the Judges' Retirement
17 Fund.

18 (g) Notwithstanding the preceding provisions of this section,
19 contributions, benefits and service credit with respect to
20 qualified military service shall be provided in accordance with
21 Section 414(u) of the Internal Revenue Code. For purposes of this
22 section, "qualified military service" has the same meaning as in
23 Section 414(u) of the Internal Revenue Code. The Retirement Board

1 is authorized to determine all questions and make all decisions
2 relating to this section and may promulgate rules relating to
3 contributions, benefits and service credit pursuant to the
4 authority granted to the retirement board in section one, article
5 ten-d, chapter five of this code to comply with Section 414(u) of
6 the Internal Revenue Code.

7 (h) Any judge holding office as such on the effective date of
8 the amendments to this article adopted by the Legislature at its
9 1987 regular session who seeks to qualify service as a prosecuting
10 attorney as credited service, which service credit must have been
11 earned prior to the year 1987, shall be required to pay into the
12 Judges' Retirement Fund nine percent of the annual salary which was
13 actually received by such person as prosecuting attorney during the
14 time such prosecutorial service was rendered prior to the year 1987
15 and for which credited service is being sought, together with
16 applicable interest. No judge whose term of office shall commence
17 after the effective date of such amendments to this article shall
18 be eligible to claim any credit for service rendered as a
19 prosecuting attorney as eligible service for retirement benefits
20 under this article, nor shall any time served as a prosecutor after
21 the year 1988 be considered as eligible service for any purposes of
22 this article.