

FILED

2005 MAY 26 P 4: 18

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*3rd Extraordinary Session, 2005*

---

**ENROLLED**

*Committee Substitute for*  
**SENATE BILL NO. 3010**

(By Senator Tamplin, Mr. President, and Spradell,  
*By Request of the Executive*)

---

**PASSED May 17, 2005**

**In Effect July 1, 2005 Passage**

FILED

2005 MAY 26 P 4: 18

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 3010**

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,  
BY REQUEST OF THE EXECUTIVE)

[Passed May 17, 2005; to take effect July 1, 2005.]

AN ACT to amend and reenact §51-9-1a, §51-9-4, §51-9-6, §51-9-6a, §51-9-6b and §51-9-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §51-9-6d, all relating generally to the judicial retirement system; increasing the contribution rate for judges and justices effective the first day of July, two thousand five, consistent with the salary increase granted to judges and justices of courts of record during the two thousand five regular legislative session; providing that judges and justices appointed or elected for the first time as judge of a court of record after the first day of July, two thousand five, must have served fourteen years as a sitting judge to receive annual retirement benefits; changing the annual benefit calculations and retirement qualifications for all judges and justices appointed or elected for the first time as judge of a court of record after the first day of July, two thousand five; changing the annual benefit calculations for

the spouses and children of all judges and justices appointed or elected for the first time as judge of a court of record after the first day of July, two thousand five; clarifying the ability of judges and justices to use prosecutorial service as qualifying service; providing that retired judges and justices may hold a public office or trust for compensation from the State of West Virginia; and providing that retired judges and justices are ineligible to participate in any other pension plan maintained by the State of West Virginia.

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

That §51-9-1a, §51-9-4, §51-9-6, §51-9-6a, §51-9-6b and §51-9-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §51-9-6d, all to read as follows:

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

**§51-9-1a. Definitions.**

1 (a) As used in this article, the term “judge”, “judge of  
2 any court of record” or “judge of any court of record of  
3 this state” means, refers to and includes judges of the  
4 several circuit courts and Justices of the Supreme Court of  
5 Appeals. For purposes of this article, the terms do not  
6 mean, refer to or include family court judges.

7 (b) “Beneficiary” means any person, except a member,  
8 who is entitled to an annuity or other benefit payable by  
9 the retirement system.

10 (c) “Board” means the Consolidated Public Retirement  
11 Board created pursuant to article ten-d, chapter five of  
12 this code.

13 (d) “Final average salary” means the average of the  
14 highest thirty-six consecutive months’ compensation  
15 received by the member as a judge of any court of record  
16 of this state.

17 (e) "Internal Revenue Code" means the Internal Revenue  
18 Code of 1986, as it has been amended.

19 (f) "Member" means a judge participating in this system.

20 (g) "Plan year" means the twelve-month period com-  
21 mencing on the first day of July of any designated year and  
22 ending the following thirtieth day of June.

23 (h) "Required beginning date" means the first day of  
24 April of the calendar year following the later of: (i) The  
25 calendar year in which the member attains age seventy  
26 and one-half; or (ii) the calendar year in which the member  
27 retires or otherwise separates from covered employment.

28 (i) "Retirement system" or "system" means the Judges  
29 Retirement System created and established by this article.  
30 Notwithstanding any other provision of law to the con-  
31 trary, the provisions of this article are applicable only to  
32 circuit judges and Justices of the Supreme Court of  
33 Appeals in the manner specified in this article. No service  
34 as a family court judge may be construed to qualify a  
35 person to participate in the Judges' Retirement System or  
36 used in any manner as credit toward eligibility for retire-  
37 ment benefits under the Judges' Retirement System.

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

1 (a) Every person who is now serving or shall hereafter  
2 serve as a judge of any court of record of this state shall  
3 pay into the judges' retirement fund six percent of the  
4 salary received by such person out of the State Treasury:  
5 *Provided*, That when a judge becomes eligible to receive  
6 benefits from such trust fund by actual retirement, no  
7 further payment by him or her shall be required, since  
8 such employee contribution, in an equal treatment sense,

9 ceases to be required in the other retirement systems of the  
10 state, also, only after actual retirement: *Provided, how-*  
11 *ever,* That on and after the first day of January, one  
12 thousand nine hundred ninety-five, every person who is  
13 then serving or shall thereafter serve as a judge of any  
14 court of record in this state shall pay into the judges'  
15 retirement fund nine percent of the salary received by that  
16 person: *Provided further,* That consistent with the salary  
17 increase granted to judges of courts of record during the  
18 two thousand five regular legislative session and to  
19 changes effectuated in judicial retirement by provisions  
20 enacted during the third extraordinary legislative session  
21 of two thousand five, on and after the first day of July, two  
22 thousand five, every person who is then serving or shall  
23 thereafter serve as a judge of any court of record in this  
24 state shall pay into the judges' retirement fund ten and  
25 one-half percent of the salary received by that person.  
26 Any prior occurrence or practice to the contrary, in any  
27 way allowing discontinuance of required employee  
28 contributions prior to actual retirement under this retire-  
29 ment system, is rejected as erroneous and contrary to  
30 legislative intent and as violative of required equal  
31 treatment and is hereby nullified and discontinued fully,  
32 with the State Auditor to require such contribution in  
33 every instance hereafter, except where no contributions  
34 are required to be made under any of the provisions of this  
35 article.

36 (b) An individual who is a leased employee shall not be  
37 eligible to participate in the system. For purposes of this  
38 system, a "leased employee" means any individual who  
39 performs services as an independent contractor or pursu-  
40 ant to an agreement with an employee leasing organization  
41 or other similar organization. If a question arises regard-  
42 ing the status of an individual as a leased employee, the  
43 Board has the final power to decide the question.

44 (c) In drawing warrants for the salary checks of judges,  
45 the State Auditor shall deduct from the amount of each  
46 such salary check six percent thereof, which amount so

47 deducted shall be credited by the Consolidated Public  
48 Retirement Board to the trust fund: *Provided*, That on or  
49 after the first day of January, one thousand nine hundred  
50 ninety-five, the amount so deducted and credited shall be  
51 nine percent of each such salary check: *Provided, how-*  
52 *ever*, That consistent with the salary increase granted to  
53 judges of courts of record during the two thousand five  
54 regular legislative session and to changes effectuated in  
55 judicial retirement by provisions enacted during the third  
56 extraordinary legislative session of two thousand five, on  
57 or after the first day of July, two thousand five, the  
58 amount so deducted and credited shall be ten and one-half  
59 percent of each such salary check.

60 (d) Any judge seeking to qualify military service to be  
61 claimed as credited service, in allowable aggregate maxi-  
62 mum amount up to five years, shall be entitled to be  
63 awarded the same without any required payment in  
64 respect thereof to the judges' retirement fund.

65 (e) Notwithstanding the preceding provisions of this  
66 section, contributions, benefits and service credit with  
67 respect to qualified military service shall be provided in  
68 accordance with Section 414(u) of the Internal Revenue  
69 Code. For purposes of this section, "qualified military  
70 service" has the same meaning as in Section 414(u) of the  
71 Internal Revenue Code. The Retirement Board is autho-  
72 rized to determine all questions and make all decisions  
73 relating to this section and may promulgate rules relating  
74 to contributions, benefits and service credit pursuant to  
75 the authority granted to the Retirement Board in section  
76 one, article ten-d, chapter five of this code to comply with  
77 Section 414(u) of the Internal Revenue Code.

78 (f) Any judge holding office as such on the effective date  
79 of the amendments to this article adopted by the Legisla-  
80 ture at its regular session in the year one thousand nine  
81 hundred eighty-seven who seeks to qualify service as a  
82 prosecuting attorney as credited service, which service  
83 credit must have been earned prior to the year one thou-

84 sand nine hundred eighty-seven, shall be required to pay  
85 into the judges' retirement fund nine percent of the annual  
86 salary which was actually received by such person as  
87 prosecuting attorney during the time such prosecutorial  
88 service was rendered prior to the year one thousand nine  
89 hundred eighty-seven and for which credited service is  
90 being sought, together with applicable interest. No judge  
91 whose term of office shall commence after the effective  
92 date of such amendments to this article shall be eligible to  
93 claim any credit for service rendered as a prosecuting  
94 attorney as eligible service for retirement benefits under  
95 this article, nor shall any time served as a prosecutor after  
96 the year one thousand nine hundred eighty-eight be  
97 considered as eligible service for any purposes of this  
98 article.

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

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

23 seventy-five percent of the annual salary of the office from  
24 which he or she has retired based upon such salary of such  
25 office and as such salary may be changed from time to  
26 time during the period of his or her retirement and the  
27 amount of his or her retirement benefits shall be based  
28 upon and be equal to seventy-five percent of the highest  
29 annual salary of such office for any one calendar year  
30 during the period of his or her retirement and shall be  
31 payable in monthly installments: *Provided*, That such  
32 retirement benefits shall be paid only after such judge has  
33 resigned as such or, for any reason other than his or her  
34 impeachment, his or her service as such has ended:  
35 *Provided, however*, That every such person seeking to  
36 retire and to receive the annual retirement benefits  
37 provided by this subsection must have served a minimum  
38 of twelve years as a sitting judge of any such court of  
39 record: *Provided further*, That every individual who is  
40 appointed or elected for the first time as judge of a court  
41 of record of this state after the first day of July, two  
42 thousand five, who subsequently seeks to retire and to  
43 receive the annual retirement benefits provided by this  
44 subsection must have served a minimum of fourteen years  
45 as a sitting judge of any court of record.

46 (b) Notwithstanding any other provisions of this article  
47 with the exception of sections twelve-a and twelve-b, any  
48 person who is now serving or who shall hereafter serve as  
49 a judge of any court of record of this state and who shall  
50 have accumulated sixteen years or more of credited  
51 service, at least twelve years of which is as a sitting judge  
52 of a court of record, and who has attained the age of sixty-  
53 two years or more but less than the age of sixty-five years,  
54 may elect to retire from his or her office and to receive the  
55 pension to which he or she would otherwise be entitled to  
56 receive at age sixty-five, but with an actuarial reduction  
57 of pension benefit to be established as a reduced annuity  
58 receivable throughout retirement: *Provided*, That every  
59 individual who is appointed or elected for the first time as  
60 judge of a court of record of this state after the first day of



61 July, two thousand five, who subsequently seeks to retire  
62 and to receive the annual retirement benefits provided by  
63 this subsection must have served a minimum of fourteen  
64 years as a sitting judge of any court of record. The re-  
65 duced percentage (less than seventy-five percent)  
66 actuarially computed, determined and established at time  
67 of retirement in respect of this reduced pension benefit  
68 shall also continue and be applicable to any subsequent  
69 new annual salary set for the office from which such judge  
70 has retired and as such salary may be changed from time  
71 to time during the period of his or her retirement.

72 (c) In determining eligibility for the benefits provided by  
73 this section, active full-time duty (including leaves and  
74 furloughs) in the armed forces of the United States shall be  
75 eligible for qualification as credited military service for  
76 the purposes of this article by any judge with twelve or  
77 more years actual service as a sitting judge of a court of  
78 record, such awardable military service to not exceed five  
79 years: *Provided*, That in determining eligibility for the  
80 benefits provided by this section for every individual who  
81 is appointed or elected for the first time as judge of a court  
82 of record of this state after the first day of July, two  
83 thousand five, active full-time duty (including leaves and  
84 furloughs) in the armed forces of the United States quali-  
85 fies as credited service for the purposes of this article for  
86 any judge with fourteen or more years actual service as a  
87 sitting judge of a court of record of this state, the  
88 awardable military service not to exceed five years.

89 (d) If a judge of a court of record who is presently sitting  
90 as such on the effective date of the amendments to this  
91 section enacted by the Legislature at its regular session  
92 held in the year one thousand nine hundred eighty-seven  
93 and who has served for a period of not less than twelve full  
94 years and has made payments into the judges' retirement  
95 fund as provided in this article for each month during  
96 which he or she served as judge, following the effective  
97 date of this section, any portion of time which he or she  
98 had served as prosecuting attorney in any county in this

99 state shall qualify as years of service, if such judge shall  
100 pay those sums required to be paid pursuant to the provi-  
101 sions of section four of this article: *Provided*, That any  
102 term of office as prosecuting attorney, or part thereof,  
103 commencing after the thirty-first day of December, one  
104 thousand nine hundred eighty-eight, shall not hereafter in  
105 any way qualify as eligible years of service under this  
106 retirement system. For purposes of this article, eligible  
107 service as a “prosecuting attorney” or as a “prosecutor”  
108 does not include any service as an assistant prosecuting  
109 attorney. The amendment to this subsection during the  
110 third extraordinary session in the year two thousand five  
111 is not for the purpose of changing existing law but is  
112 intended to clarify the intent of the Legislature as to  
113 existing law regarding eligibility for benefits for service as  
114 a prosecuting attorney since its initial enactment and this  
115 clarification shall be applied retrospectively to the effec-  
116 tive date of this section and any predecessor acts in which  
117 service as a prosecuting attorney was initially determined  
118 by statute to qualify as eligible years of service under the  
119 retirement system provided by this article.

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

123 (f) Notwithstanding any other provisions of this article,  
124 forfeitures under the system shall not be applied to  
125 increase the benefits any member would otherwise receive  
126 under the system.

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

1 Any judge of a court of record of this state who shall  
2 have served for a period of not less than eight full years  
3 after attaining the age of sixty-five years and who shall  
4 have made payments into the judges’ retirement fund as  
5 provided in this article for each month during which he or  
6 she served as such judge following the effective date of

7 this section, shall be subject to all the applicable terms and  
8 provisions of this article, not inconsistent with the provi-  
9 sions hereof, and shall receive retirement benefits in an  
10 amount equal to seventy-five percent of the annual salary  
11 of the office from which he or she has retired based upon  
12 such salary of such office as such salary may be changed  
13 from time to time during the period of his or her retire-  
14 ment and the amount of his or her retirement benefits shall  
15 be based upon and be equal to seventy-five percent of the  
16 highest annual salary of such office for any one calendar  
17 year during the period of his or her retirement and shall be  
18 payable in monthly installments. If such judge shall  
19 become incapacitated to perform his or her said duties  
20 before the expiration of his or her said term and after  
21 serving for six years thereof, and upon the acceptance of  
22 his or her resignation as in this article provided, he or she  
23 shall be paid the annual retirement benefits as herein  
24 provided so long as he or she shall live. The provisions of  
25 this section shall prevail over any language to the contrary  
26 in this article contained, except those provisions of  
27 sections twelve-a and twelve-b of this article: *Provided,*  
28 That no individual who is appointed or elected for the first  
29 time as judge of a court of record of this state after the  
30 first day of July, two thousand-five, is eligible for retire-  
31 ment under this section.

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

1 (a) There shall be paid, from the fund created or contin-  
2 ued by section two of this article, or from such funds as  
3 may be appropriated by the Legislature for such purpose,  
4 an annuity to the surviving spouse of a judge, if such judge  
5 at the time of his or her death is eligible for the retirement  
6 benefits provided by any of the provisions of this article,  
7 or who has, at death, actually served five years or more as  
8 a sitting judge of any court of record of this state, exclu-  
9 sive of any other service credit to which such judge may

10 otherwise be entitled, and who dies either while in office  
11 or after resignation or retirement from office pursuant to  
12 the provisions of this article. Said annuity shall amount to  
13 forty percent of the annual salary of the office which said  
14 judge held at his or her death or from which he or she  
15 resigned or retired. In the event said salary is increased or  
16 decreased while an annuitant is receiving the benefits  
17 hereunder, his or her annuity shall amount to forty percent  
18 of the new salary: *Provided*, That with respect to any  
19 individual who is appointed or elected for the first time as  
20 judge of a court of record of this state after the first day of  
21 July, two thousand five, any annuity to the surviving  
22 spouse of the judge shall be an amount equal to forty  
23 percent of the judge's final average salary: *Provided*,  
24 *however*, That the annuitant is not entitled to an increase  
25 in benefits by virtue of any increase in the salaries of the  
26 offices of circuit court judge or Justice of the Supreme  
27 Court of Appeals. The annuity granted hereunder shall  
28 accrue monthly and shall be due and payable in monthly  
29 installments on the first business day of the month follow-  
30 ing the month for which the annuity shall have accrued.  
31 Such annuity shall commence on the first day of the month  
32 in which said judge dies and shall, subject to the provi-  
33 sions of subsection (b) of this section, terminate upon the  
34 death of the annuitant or shall terminate upon the remar-  
35 riage of the annuitant.

36 (b) If there be no surviving spouse at the time of death of  
37 a judge who dies after serving five years or more as a  
38 sitting judge of any court of record and such judge leaves  
39 surviving him any dependent child or children, such  
40 dependent child or children shall receive an amount equal  
41 to twenty percent of the annual salary of the office which  
42 said judge held at the time of his or her death: *Provided*,  
43 That the total of all such annuities payable to each such  
44 child shall not exceed in the aggregate an amount equal to  
45 forty percent of such salary. Such annuity shall continue  
46 as to each such child until: (i) He or she attains the age of  
47 eighteen years; or (ii) attains the age of twenty-three years  
48 so long as such child remains a full-time student. The

49 Auditor shall by legislative rule establish the criteria for  
50 determining a person's status as a full-time student within  
51 the meaning and intent of this subsection. In the event  
52 there are surviving any such judge three or more depend-  
53 ent children, then each such child's annuity shall be  
54 proratably reduced in order that the aggregate annuity  
55 received by all such dependent children does not exceed  
56 forty percent of such salary and the amount to be so  
57 received by any such child shall continue throughout the  
58 entire period during which each such child is eligible to  
59 receive such annuity. The provisions of this subsection  
60 shall also apply to those circumstances and situations  
61 wherein a surviving spouse of a deceased judge shall die  
62 while receiving benefits pursuant to subsection (a) of this  
63 section and who shall leave surviving dependent children  
64 of such deceased judge who would be entitled to benefits  
65 under this subsection as if they had succeeded to such  
66 annuity benefits upon the death of such judge in the first  
67 instance. In the event the salary of judges is increased or  
68 decreased while an annuitant is receiving benefits pursu-  
69 ant to this subsection, the annuities payable shall be  
70 likewise increased or decreased proportionately to reflect  
71 such change in salary: *Provided, however,* That with  
72 respect to any individual who is appointed or elected for  
73 the first time as judge of a court of record of this state  
74 after the first day of July, two thousand five, any annuity  
75 to any children of the judge shall be calculated with  
76 respect to the judge's final average salary: *Provided*  
77 *further,* That the child is not entitled to an increase in  
78 benefits by virtue of any increase in the salaries of the  
79 offices of circuit court judge or Justice of the Supreme  
80 Court of Appeals. The annuities granted hereunder shall  
81 accrue monthly and shall be due and payable in monthly  
82 installments on the same day as surviving spouses' benefits  
83 are required to be paid. Such annuities shall commence on  
84 the first day of the month in which any such dependent  
85 child becomes eligible for benefits hereunder and shall  
86 terminate on the last day of the month during which such  
87 eligibility ceases.

**§51-9-6d. Adjusted annual retirement benefit calculations.**

1 In calculating the annual retirement benefits under  
2 section six of this article for any individual who is ap-  
3 pointed or elected for the first time as judge of a court of  
4 record of this state after the first day of July, two thou-  
5 sand five, the judge shall receive retirement benefits in an  
6 amount equal to seventy-five percent of the individual's  
7 final average salary. The individual is not entitled to an  
8 increase in benefits by virtue of any increase in the salaries  
9 of the offices of circuit court judge or Justice of the  
10 Supreme Court of Appeals.

**§51-9-7. Ineligibility to receive pay or benefits.**

1 A judge who retires under the provisions of any section  
2 of this article and accepts the pay or benefits payable  
3 under this article shall, while receiving said pay or bene-  
4 fits, be permitted to hold any public office or trust for  
5 which the judge receives compensation from the State of  
6 West Virginia. If, after retirement under the provisions of  
7 this article, a judge is elected or appointed to any public  
8 office or trust for which he or she receives any salary or  
9 other compensation from the State of West Virginia, the  
10 retired judge is not eligible to participate in any other  
11 pension plan maintained by the State of West Virginia, nor  
12 accrue additional years of credited service under this  
13 system or any other state pension system. A judge who  
14 retires because of disability and accepts the pay or benefits  
15 payable under this article because of his or her disability  
16 shall not, while receiving said pay or benefits because of  
17 his or her disability, be permitted to practice law. If, after  
18 disability retirement under the provisions of this article  
19 and while receiving pay or benefits payable under said  
20 article because of his or her disability, he or she shall enter  
21 the practice of law, his or her pay or benefits under this  
22 article because of his or her disability shall be suspended  
23 for such time only as he or she shall be engaged in the  
24 practice of law.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Nancy White*  
.....  
Chairman Senate Committee

*D. Keith Beyer*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2005.

*Samuel E. Hobbs*  
.....  
Clerk of the Senate

*Bryson D. Snow*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Robert S. Ass*  
.....  
Speaker House of Delegates

The within *is* approved ..... this the *26<sup>th</sup>*  
Day of *May* ....., 2005.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAY 25 2005

Time 4:05 PM