WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 597

BY SENATORS TRUMP, WOELFEL, ROMANO, UNGER, AND

LINDSAY

[Introduced January 22, 2020; referred

to the Committee on the Judiciary; and then to the

Committee on Finance]

1   A BILL to amend and reenact §50-1-3 of the Code of West Virginia, 1931, as amended; to amend

2   and reenact §51-1-10a of said code; to amend and reenact §51-2-13 of said code; to

3   amend and reenact §51-2A-6 of said code; and to amend and reenact §51-9-1a and §51-

4   9-5 of said code, all relating generally to salaries and pensions of magistrate, justices of

5   the Supreme Court of Appeals, circuit judges, and family court judges; adopting and

6   codifying the 2019 recommendations of the Judicial Compensation Commission as to

7   salary increases for magistrates, justices of the Supreme Court of Appeals, circuit judges,

8   and family court judges; and allowing family court judges to participate in the Judge's

9   Retirement System as it applies to judges first taking office after July 1, 2005.

Be it enacted by the Legislature of West Virginia:

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE I. COURTS AND OFFICERS.

§50-1-3. Salaries of magistrates.

1   (a) The Legislature finds and declares that:

2   (1) The West Virginia Supreme Court of Appeals has held that a salary system for

3   magistrates which is based upon the population that each magistrate serves does not violate the

4   equal protection clause of the Constitution of the United States;

5   (2) The West Virginia Supreme Court of Appeals has held that a salary system for

6   magistrates which is based upon the population that each magistrate serves does not violate

7   section thirty-nine, article VI of the Constitution of West Virginia;

8   (3) The Administrative Office of the Supreme Court of Appeals of West Virginia has stated

9   that the utilization of a two-tiered salary schedule for magistrates is no longer an equitable and

10 rational manner by which magistrates should be compensated for work performed;

11 (4) Organizing the two tiers of the salary schedule into one tier for magistrates serving less

12 than seven thousand three hundred in population and a second tier for magistrates serving seven

13   thousand three hundred or more in population is no longer rational and equitable given current

14   statistical information relating to population and caseload; and

15   (5) That, by January 1, 2017, all magistrates should be compensated equally.

16   (b) The salary of each magistrate shall be paid by the state. Magistrates who serve fewer

17   than seven thousand three hundred in population shall be paid annual salaries of $51,125 and

18   magistrates who serve seven thousand three hundred or more in population shall be paid annual

19   salaries of $57,500.

20   (c) For the purpose of determining the population served by each magistrate, the number

21   of magistrates authorized for each county shall be divided into the population of each county. For

22   the purpose of this article, the population of each county is the population as determined by the

23   last preceding decennial census taken under the authority of the United States government.

24   (d) Notwithstanding any provision of this code to the contrary, the amendments made to

25   this section during the 2013 First Extraordinary Session are effective upon passage and are

26   retroactive to January 1, 2013.

27   (e) On or before July 1, 2013, the Joint Committee on Government and Finance shall

28   request a study by the National Center for State Courts, working in conjunction with the

29   Administrative Office of the Supreme Court of Appeals of West Virginia, to review the weighted

30   case loads in each of the magistrate courts in this state, and present recommendations as to how

31   the present resources and personnel in the magistrate court system could be better apportioned

32   to equitably and timely meet the collective needs of the magistrate court system in West Virginia.

33   Based on the findings and data generated by that study, the National Center for State Courts shall

34   make recommendations as to the equitable redistribution of personnel and resources, by

35   temporary or permanent reassignment, to better meet the needs and weighted loads that are

36   demonstrated to exist in the various magistrate courts in this state. This study shall be presented

37   to the Joint Committee on Government and Finance no later than December 1, 2014, and shall

38   include recommendations and proposed legislation resulting from such study and shall also

39   ~~include a plan to continue the efficient delivery of justice by the magistrate court system and the~~

40   ~~justification for equalization of pay for all magistrates. As a part of the submitted study, the plan~~

41   ~~shall consider the reassignment of magistrates or the extension of their duties and jurisdiction to~~

42   ~~include holding court or delivering services to adjacent counties with higher caseloads, as part of~~

43   ~~their regular duties, or being on call as needed to serve other needs in other adjacent counties or~~

44   ~~within the same judicial circuit.~~

45   ~~On or before January 15, 2015, the Supreme Court of Appeals of West Virginia shall~~

46   ~~present its recommendations to the Legislature regarding how to allocate or assign a maximum~~

47   ~~of one hundred fifty- eight magistrates throughout this state to improve the magistrate process,~~

48   ~~and more equitably distribute the magistrate court resources to efficiently and effectively meet the~~

49   ~~needs of the citizens of this state~~

50   ~~(f)~~ (a) ~~Notwithstanding any provision of this code to the contrary, beginning January 1,~~

51   ~~2017, all~~ All magistrates shall be compensated equally and the annual salary of all magistrates

52   shall be $57,500.

53   (b) Notwithstanding any provisions of this code to the contrary, consistent with the 2019

54   recommendations of the Judicial Compensation Commission, beginning July 1, 2020, the annual

55   salary of a magistrate shall be $68,038.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

1   The salary of each of the justices of the Supreme Court of Appeals shall be ~~$95,000 per~~

2   ~~year: *Provided,* That beginning July, 1, 2005, the salary of each of the justices of the Supreme~~

3   ~~Court shall be $121,000: *Provided, however,* That beginning July 1, 2011, the annual salary of a~~

4   ~~justice of the Supreme Court shall be~~ $136,000: *Provided,* That consistent with the 2019

5   recommendation of the Judicial Compensation Commission, beginning July 1, 2020, the annual

6   salary of a justice of the Supreme Court of Appeals shall be $160,901.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-13. Salaries of judges of circuit courts.

1   The salaries of the judges of the various circuit courts shall be paid solely out of the State

2   Treasury. No county, county commission, board of commissioners or other political subdivision

3   shall supplement or add to such salaries.

4   The annual salary of all circuit judges shall be $90,000 per year*: Provided,* That beginning

5   July 1,2005, the annual salary of all circuit judges shall be $116,000 per year*: Provided, however,*

6   That beginning July 1, 2011, the annual salary of a circuit court judge shall be $126,000:

7   *Provided,* That consistent with the 2019 recommendation of the Judicial Compensation

8   Commission, beginning July 1, 2020, the annual salary of a circuit judge shall be $149,070.

ARTICLE 2A. FAMILY COURTS.

§51-2A-6. Compensation and expenses of family court judges and their staffs.

1   (a) A family court judge is entitled to receive as compensation for his or her services an

2   annual salary of $62,500: Provided, That beginning July 1, 2005, a family court judge is entitled

3   to receive as compensation for his or her services an annual salary of $82,500: Provided,

4   however, That beginning July 1, 2011, the The annual salary of a family court judge shall be

5    $94,500: *Provided,* That consistent with the 2019 recommendation of the Judicial Compensation

6   Commission, beginning July 1, 2020, the annual salary of a family court judge shall be $113,930.

7   (b) The secretary-clerk of the family court judge is appointed by the family court judge and

8   serves at his or her will and pleasure. The secretary-clerk of the family court judge is entitled to

9   receive an annual salary of $27,036: *Provided*, That on and after July 1, 2006, the annual salary

10   of the secretary-clerk shall be established by the administrative director of the Supreme Court of

11   Appeals, but may not exceed $39,000. In addition, any person employed as a secretary-clerk to

12   a family court judge on the effective date of the enactment of this section during the sixth

13   extraordinary session of the Legislature in the year 2001 who is receiving an additional $500 per

14   year up to 10 years of a certain period of prior employment under the provisions of the prior

15   enactment of §51-2A-8 of this code during the second extraordinary session of the Legislature in

16   the year 1999 shall continue to receive such additional amount. Further, the secretary-clerk will

17   receive such percentage or proportional salary increases as may be provided by general law for

18   other public employees and is entitled to receive the annual incremental salary increase as

19   provided in §5-5-1 *et seq.* of this code.

20   (c) The family court judge may employ not more than one family case coordinator who

21   serves at his or her will and pleasure. The annual salary of the family case coordinator of the

22   family court judge shall be established by the Administrative Director of the Supreme Court of

23   Appeals but may not exceed $36,000: *Provided*, That on and after July 1, 2006, the annual salary

24   of the family case coordinator of the family court judge may not exceed $51,000. The family case

25   coordinator will receive such percentage or proportional salary increases as may be provided by

26   general law for other public employees and is entitled to receive the annual incremental salary

27   increase as provided in §5-5-1 *et seq.* of this code.

28   (d) The sheriff or his or her designated deputy shall serve as a bailiff for a family court

29   judge. The sheriff of each county shall serve or designate persons to serve so as to assure that

30   a bailiff is available when a family court judge determines the same is necessary for the orderly

31   and efficient conduct of the business of the family court.

32   (e) Disbursement of salaries for family court judges and members of their staffs are made

33   by or pursuant to the order of the Director of the Administrative Office of the Supreme Court of

34   Appeals.

35   (f) Family court judges and members of their staffs are allowed their actual and necessary

36   expenses incurred in the performance of their duties. The expenses and compensation will be

37   determined and paid by the Director of the Administrative Office of the Supreme Court of Appeals

38   under such guidelines as he or she may prescribe, as approved by the Supreme Court of Appeals.

39   (g) Notwithstanding any other provision of law, family court judges are not eligible to

40   participate in the retirement system for judges under the provisions of §51-9-1 *et seq.* of this code

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 any court of record" or "judge of any

2   court of record of this state" means, refers to and includes family court judges, judges of the

3   several circuit courts and justices of the Supreme Court of Appeals. For purposes of this article,

4   the terms do not mean, refer to or include family court judges.

5   (b) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value

6   computed upon the basis of the mortality table and interest rates as set and adopted by the

7   retirement board in accordance with the provisions of this article: *Provided,* That when used in

8   the context of compliance with the federal maximum benefit requirements of Section 415 of the

9   Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and

10   interest rates required to comply with those requirements.

11   (c) "Beneficiary" means any person, except a member, who is entitled to an annuity or

12   other benefit payable by the retirement system.

13   (d) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-

14   1 *et seq.* of this code.

15   (e) "Final average salary" means the average of the highest 36 consecutive months'

16   compensation received by the member as a judge of any court of record of this state.

17   (f) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been

18   amended.

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

20   (h) "Plan year" means the 12-month period commencing on July 1 of any designated year

21   and ending the following June 30.

22   (i) "Required beginning date" means April 1 of the calendar year following the later of: (i)

23   The calendar year in which the member attains age 70 and one-half; or (ii) the calendar year in

24   which the member retires or otherwise separates from covered employment.

25   ~~(j)~~ "Retirement system" or "system" means the Judges' Retirement System created and

26   established by this article. Notwithstanding any other provision of law to the contrary, the

27   provisions of this article are applicable only to <u>family court judges,</u> circuit judges and justices of

28   the Supreme Court of Appeals in the manner specified in this article. ~~No service as a family court~~

29   ~~judge may be construed to qualify a person to participate in the Judges' Retirement System or~~

30   ~~used in any manner as credit toward eligibility for retirement benefits under the Judges'~~

31   ~~Retirement System~~

§51-9-5. Election not to participate, contribute, or be a member; authorized transfers of

service credit by a judge; duplicate use of service credit prohibited.

1   (a) Notwithstanding any provisions of this article, any judge may in writing notify the Auditor

2   within 30 days after he or she takes office, or, if he or she is in office, on the date this article

3   becomes effective, then within 30 days from such latter date, that such judge elects not to become

4   a member or make any payments or contributions to the trust fund, in which event every judge,

5   so electing, shall not thereafter at any time be entitled to receive any retirement pay or benefits

6   under provisions of this article, and any deduction that may have theretofore been made from the

7   salary of such judge and paid into the fund shall be refunded without interest, to him or her by the

8   Auditor by warrant drawn on the trust fund. Any judge who has so elected not to become a

9   member or not to contribute, shall nevertheless thereafter be permitted to become such member,

10   contribute and become eligible for retirement benefits by paying into the Judges' Retirement Fund

11   all contributions such judge would have been required to pay into the fund, together with interest

12   thereon at a rate to be determined by the State Auditor as reasonable for such prior periods, as if

13   such judge had not previously elected not to be a member and not to contribute.

14   (b) There may be transfers of service credit on proper basis between the judges' retirement

15   system and the Public Employees Retirement System, where such service credit constitutes

16   qualified and eligible credit under the recipient system's statutes, in order to allow full flexibility of

17   choice of option by a judge or judicial member; but in no case shall benefits be receivable from

18   more than one of such state retirement systems, nor shall any service credit be usable more than

19   once and then only in the finally chosen state retirement system.

20   (c) Notwithstanding any provision of this code to the contrary, a family court judge electing

21   to become a member of the Judge's Retirement System established pursuant to §51-9-1 *et seq.*

22   of this code who was not a participant in said system prior to July 1, 2005 who elects to become

23   a participant may, upon successful completion of all requirements therefore, become a member

24   of the Judge's Retirement System in effect for persons first participating in the system on and

25   after July 1, 2005.

> NOTE: The purpose of this bill is to adopt and codify the 2019 recommendations of the Judicial Compensation Commission as to salary increases for magistrates, justices of the Supreme Court of Appeals, circuit judges, and family court judges; and to allow family court judges to participate in the Judge's Retirement System as it applies to judges first taking office after July 1, 2005.
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> Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.