

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**ENGROSSED**

## **Senate Bill 669**

BY SENATORS NELSON, CLEMENTS, AZINGER, LINDSAY,

PLYMALE AND KARNES

[Originating in the Committee on Pensions; reported

on February 17, 2022]



1 A BILL to amend and reenact §5-10-14 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §51-9-5 of said code, all relating to a change in the contribution levels  
3 of every person who is serving or shall hereafter serve as a judge of any court of record  
4 of this state and who elects to participate in this retirement system, on or after July 1,  
5 2023, to no less than three percent and no more than 10 percent of the participant's annual  
6 compensation.

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

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE  
GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;  
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,  
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

**§5-10-14. Service credit; retroactive provisions.**

1 (a) The board of trustees shall credit each member with the prior service and contributing service  
2 to which he or she is entitled based upon rules adopted by the board of trustees and based upon  
3 the following:  
4 (1) In no event may less than 10 days of service rendered by a member in any calendar  
5 month be credited as a month of service: *Provided*, That for employees of the State Legislature  
6 whose term of employment is otherwise classified as temporary and who are employed to perform  
7 services required by the Legislature for its regular sessions or during the interim between regular  
8 sessions and who have been or are employed during regular sessions or during the interim  
9 between regular sessions in seven consecutive calendar years, service credit of one month shall  
10 be awarded for each 10 days employed in the interim between regular sessions, which interim

11 days shall be cumulatively calculated so that any 10 days, regardless of calendar month or year,  
12 shall be calculated toward any award of one month of service credit;

13 (2) Except for hourly employees, and those persons who first become members of the  
14 retirement system on or after July 1, 2015, 10 or more months of service credit earned in any  
15 calendar year shall be credited as a year of service: *Provided*, That no more than one year of  
16 service may be credited to any member for all service rendered by him or her in any calendar  
17 year and no days may be carried over by a member from one calendar year to another calendar  
18 year where the member has received a full-year credit for that year; and

19 (3) Service may be credited to a member who was employed by a political subdivision if  
20 his or her employment occurred within a period of thirty years immediately preceding the date the  
21 political subdivision became a participating public employer.

22 (b) The board of trustees shall grant service credit to employees of boards of health, the  
23 Clerk of the House of Delegates and the Clerk of the State Senate or to any former and present  
24 member of the State Teachers Retirement System who have been contributing members in the  
25 Public Employees Retirement System for more than three years, for service previously credited  
26 by the State Teachers Retirement System and shall require the transfer of the member's  
27 accumulated contributions to the system and shall also require a deposit, with reinstatement  
28 interest as set forth in the board's Rule, Refund, Reinstatement, Retroactive Service, Loan and  
29 Correction of Error Interest Factors, 162 C. S. R. 7, of any withdrawals of contributions any time  
30 prior to the member's retirement. Repayment of withdrawals shall be as directed by the Board of  
31 Trustees.

32 (c) Court reporters who are acting in an official capacity, although paid by funds other than  
33 the county commission or State Auditor, may receive prior service credit for time served in that  
34 capacity.

35 (d) Active members who previously worked in Comprehensive Employment and Training  
36 Act (CETA) may receive service credit for time served in that capacity: *Provided*, That in order to

37 receive service credit under the provisions of this subsection the following conditions must be  
38 met: (1) The member must have moved from temporary employment with the participating  
39 employer to permanent full-time employment with the participating employer within 120 days  
40 following the termination of the member's CETA employment; (2) the board must receive evidence  
41 that establishes to a reasonable degree of certainty as determined by the board that the member  
42 previously worked in CETA; and (3) the member shall pay to the board an amount equal to the  
43 employer and employee contribution plus interest at the amount set by the board for the amount  
44 of service credit sought pursuant to this subsection: *Provided, however,* That the maximum  
45 service credit that may be obtained under the provisions of this subsection is two years: *Provided*  
46 *further,* That a member must apply and pay for the service credit allowed under this subsection  
47 and provide all necessary documentation by March 31, 2003: *And provided further,* That the board  
48 shall exercise due diligence to notify affected employees of the provisions of this subsection.

49 (e) (1) Employees of the State Legislature whose terms of employment are otherwise  
50 classified as temporary and who are employed to perform services required by the Legislature for  
51 its regular sessions or during the interim time between regular sessions shall receive service  
52 credit for the time served in that capacity in accordance with the following: For purposes of this  
53 section, the term "regular session" means day one through day 60 of a 60-day legislative session  
54 or day one through day 30 of a 30-day legislative session. Employees of the State Legislature  
55 whose term of employment is otherwise classified as temporary and who are employed to perform  
56 services required by the Legislature for its regular sessions or during the interim time between  
57 regular sessions and who have been or are employed during regular sessions or during the interim  
58 time between regular sessions in seven consecutive calendar years, as certified by the clerk of  
59 the house in which the employee served, shall receive service credit of six months for all regular  
60 sessions served, as certified by the clerk of the house in which the employee served, or shall  
61 receive service credit of three months for each regular 30-day session served prior to 1971:  
62 *Provided,* That employees of the State Legislature whose term of employment is otherwise

63 classified as temporary and who are employed to perform services required by the Legislature for  
64 its regular sessions and who have been or are employed during the regular sessions in 13  
65 consecutive calendar years as either temporary employees or full-time employees or a  
66 combination thereof, as certified by the clerk of the house in which the employee served, shall  
67 receive a service credit of 12 months for each regular session served, as certified by the clerk of  
68 the house in which the employee served: *Provided, however,* That the amendments made to this  
69 subsection during the 2002 regular session of the Legislature only apply to employees of the  
70 Legislature who are employed by the Legislature as either temporary employees or full-time  
71 employees as of January 1, 2002, or who become employed by the Legislature as temporary or  
72 full-time employees for the first time after January 1, 2002. Employees of the State Legislature  
73 whose terms of employment are otherwise classified as temporary and who are employed to  
74 perform services required by the Legislature during the interim time between regular sessions  
75 shall receive service credit of one month for each 10 days served during the interim between  
76 regular sessions, which interim days shall be cumulatively calculated so that any ten days,  
77 regardless of calendar month or year, shall be calculated toward any award of one month of  
78 service credit: *Provided further,* That no more than one year of service may be credited to any  
79 temporary legislative employee for all service rendered by that employee in any calendar year  
80 and no days may be carried over by a temporary legislative employee from one calendar year to  
81 another calendar year where the member has received a full year credit for that year. Service  
82 credit awarded for legislative employment pursuant to this section shall be used for the purpose  
83 of calculating that member's retirement annuity, pursuant to §5-10-22 of this code, and  
84 determining eligibility as it relates to credited service, notwithstanding any other provision of this  
85 section. Certification of employment for a complete legislative session and for interim days shall  
86 be determined by the clerk of the house in which the employee served, based upon employment  
87 records. Service of 55 days of a regular session constitutes an absolute presumption of service  
88 for a complete legislative session and service of 27 days of a 30-day regular session occurring

89 prior to 1971 constitutes an absolute presumption of service for a complete legislative session.  
90 Once a legislative employee has been employed during regular sessions for seven consecutive  
91 years or has become a full-time employee of the Legislature, that employee shall receive the  
92 service credit provided in this section for all regular and interim sessions and interim days worked  
93 by that employee, as certified by the clerk of the house in which the employee served, regardless  
94 of when the session or interim legislative employment occurred: *And provided further*, That regular  
95 session legislative employment for seven consecutive years may be served in either or both  
96 houses of the Legislature.

97 (2) For purposes of this section, employees of the Joint Committee on Government and  
98 Finance are entitled to the same benefits as employees of the House of Delegates or the Senate:  
99 *Provided*, That for joint committee employees whose terms of employment are otherwise  
100 classified as temporary, employment in preparation for regular sessions, certified by the legislative  
101 manager as required by the Legislature for its regular sessions, shall be considered the same as  
102 employment during regular sessions to meet service credit requirements for sessions served.

103 (f) Any employee may purchase retroactive service credit for periods of employment in  
104 which contributions were not deducted from the employee's pay. In the purchase of service credit  
105 for employment prior to 1989 in any department, including the Legislature, which operated from  
106 the General Revenue Fund and which was not expressly excluded from budget appropriations in  
107 which blanket appropriations were made for the state's share of public employees' retirement  
108 coverage in the years prior to 1989, the employee shall pay the employee's share. Other  
109 employees shall pay the state's share and the employee's share to purchase retroactive service  
110 credit. Where an employee purchases service credit for employment which occurred after 1988,  
111 that employee shall pay for the employee's share and the employer shall pay its share for the  
112 purchase of retroactive service credit: *Provided*, That no legislative employee and no current or  
113 former member of the Legislature may be required to pay any interest or penalty upon the  
114 purchase of retroactive service credit in accordance with the provisions of this section where the

115 employee was not eligible to become a member during the years for which he or she is purchasing  
116 retroactive credit or had the employee attempted to contribute to the system during the years for  
117 which he or she is purchasing retroactive service credit and the contributions would have been  
118 refused by the board: *Provided, however,* That a current legislative employee purchasing  
119 retroactive credit under this section shall do so within 24 months of beginning contributions to the  
120 retirement system as a legislative employee or no later than December 31, 2016, whichever  
121 occurs later: *Provided further,* That once a legislative employee becomes a member of the  
122 retirement system, he or she may purchase retroactive service credit for any time he or she was  
123 employed by the Legislature and did not receive service credit. Any service credit purchased shall  
124 be credited as six months for each 60-day session worked, three months for each 30-day session  
125 worked or 12 months for each 60-day session for legislative employees who have been employed  
126 during regular sessions in 13 consecutive calendar years, as certified by the clerk of the house in  
127 which the employee served, and credit for interim employment as provided in this subsection: *And*  
128 *provided further,* That this legislative service credit shall also be used for months of service in  
129 order to meet the 60-month requirement for the payments of a temporary legislative employee  
130 member's retirement annuity: *And provided further,* That no legislative employee may be required  
131 to pay for any service credit beyond the actual time he or she worked regardless of the service  
132 credit which is credited to him or her pursuant to this section: *And provided further,* That any  
133 legislative employee may request a recalculation of his or her credited service to comply with the  
134 provisions of this section at any time.

135 (g) (1) Notwithstanding any provision to the contrary, the seven consecutive calendar  
136 years requirement and the thirteen consecutive calendar years requirement and the service credit  
137 requirements set forth in this section shall be applied retroactively to all periods of legislative  
138 employment prior to the passage of this section, including any periods of legislative employment  
139 occurring before the seven consecutive and 13 consecutive calendar years referenced in this



140 section: *Provided*, That the employee has not retired prior to the effective date of the amendments  
141 made to this section in the 2002 regular session of the Legislature.

142 (2) The requirement of seven consecutive years and the requirement of 13 consecutive  
143 years apply retroactively to all legislative employment prior to the effective date of the 2006  
144 amendments to this section.

145 (h) The board of trustees shall grant service credit to any former or present member of the  
146 State Police Death, Disability and Retirement Fund who has been a contributing member of this  
147 system for more than three years for service previously credited by the State Police Death,  
148 Disability and Retirement Fund if the member transfers all of his or her contributions to the State  
149 Police Death, Disability and Retirement Fund to the system created in this article, including  
150 repayment of any amounts withdrawn any time from the State Police Death, Disability and  
151 Retirement Fund by the member seeking the transfer allowed in this subsection: *Provided*, That  
152 there shall be added by the member to the amounts transferred or repaid under this subsection  
153 an amount which shall be sufficient to equal the contributions he or she would have made had  
154 the member been under the Public Employees Retirement System during the period of his or her  
155 membership in the State Police Death, Disability and Retirement Fund, excluding contributions  
156 on lump sum payment for annual leave, plus interest at a rate determined by the board.

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

159 (j) The board of trustees shall grant service credit to any judge who elects to transfer  
160 service from the judges' retirement system to the public employees retirement system and shall  
161 require the transfer to the member's employee contributions to the system: *Provided*, That there  
162 shall be added by the member to the amount transferred pursuant to this subsection an amount  
163 which shall be sufficient to equal the contributions he or she would have made had the member  
164 been under the public employees retirement system during the period of his or her membership

165 in the judges' retirement system, plus interest at the actuarial interest rate assumption as  
166 approved by the board, compounded per annum.

## **CHAPTER 51. COURTS AND THEIR OFFICERS.**

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

**§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 serve as a judge of any court of  
2 record of this state shall pay into the Judges' Retirement Fund six percent of the salary received  
3 by such person out of the State Treasury: *Provided*, That when a judge becomes eligible to  
4 receive benefits from such trust fund by actual retirement, no further payment by him or her shall  
5 be required, since such employee contribution, in an equal treatment sense, ceases to be required  
6 in the other retirement systems of the state, also, only after actual retirement: *Provided, however*,  
7 That on and after January 1, 1995, every person who is then serving or shall thereafter serve as  
8 a judge of any court of record in this state shall pay into the Judges' Retirement Fund nine percent  
9 of the salary received by that person: *Provided further*, That consistent with the salary increase  
10 granted to judges of courts of record during the 2005 regular legislative session and to changes  
11 effectuated in judicial retirement by provisions enacted during the third extraordinary legislative  
12 session of 2005, on and after July 1, 2005, every person who is then serving or shall thereafter  
13 serve as a judge of any court of record in this state shall pay into the Judges' Retirement Fund 10  
14 and one-half percent of the salary received by that person: *And provided further*, That on and  
15 after July 1, 2013, except as provided in subsection (b) of this section, every person who is then  
16 serving or shall thereafter serve as a judge of any court of record in this state and who elects to  
17 participate in this retirement system shall pay into the Judges' Retirement Fund seven percent of

18 the salary received. Any prior occurrence or practice to the contrary, in any way allowing  
19 discontinuance of required employee contributions prior to actual retirement under this retirement  
20 system, is rejected as erroneous and contrary to legislative intent and as violative of required  
21 equal treatment and is hereby nullified and discontinued fully, with the State Auditor to require  
22 such contribution in every instance hereafter, except where no contributions are required to be  
23 made under any of the provisions of this article.

24 (b) On and after July 1, 2014, every person who is serving or shall hereafter serve as a  
25 judge of any court of record of this state and who elects to participate in this retirement system  
26 shall contribute to the fund an amount determined by the board. This amount will be based on the  
27 annual actuarial valuation prepared by the State Actuary: *Provided*, That the contribution will be  
28 no less than seven percent or no more than 10 and one-half percent of the participant's annual  
29 compensation: *Provided, however*, That on or after July 1, 2023, the contribution will be no less  
30 than three percent or no more than 10 percent of the participant's annual compensation.

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

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

41 (e) In drawing warrants for the salary checks of judges, the State Auditor shall deduct from  
42 the amount of each such salary check six percent thereof, which amount so deducted shall be  
43 credited by the Consolidated Public Retirement Board to the trust fund: *Provided*, That on or after

44 January 1, 1995, the amount so deducted and credited shall be nine percent of each such salary  
45 check: *Provided, however,* That consistent with the salary increase granted to judges of courts of  
46 record during the 2005 regular legislative session and to changes effectuated in judicial retirement  
47 by provisions enacted during the third extraordinary legislative session of 2005, on or after July  
48 1, 2005, the amount so deducted and credited shall be 10 and one-half percent of each such  
49 salary check: *Provided further,* That on and after July 1, 2013, except as provided in subsection  
50 (b) of this section, the amount so deducted and credited shall be seven percent of each salary  
51 check: *And provided further,* That on and after July 1, 2014, the amount so deducted and credited  
52 will be determined by the board.

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

56 (g) Notwithstanding the preceding provisions of this section, contributions, benefits, and  
57 service credit with respect to qualified military service shall be provided in accordance with  
58 Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military  
59 service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement  
60 board is authorized to determine all questions and make all decisions relating to this section and  
61 may promulgate rules relating to contributions, benefits and service credit pursuant to the  
62 authority granted to the retirement board in §5-10D-1 of this code to comply with Section 414(u)  
63 of the Internal Revenue Code.

64 (h) Any judge holding office as such on the effective date of the amendments to this article  
65 adopted by the Legislature at its 1987 regular session who seeks to qualify service as a  
66 prosecuting attorney as credited service, which service credit must have been earned prior to the  
67 year 1987, shall be required to pay into the Judges' Retirement Fund nine percent of the annual  
68 salary which was actually received by such person as prosecuting attorney during the time such  
69 prosecutorial service was rendered prior to the year 1987 and for which credited service is being

70 sought, together with applicable interest. No judge whose term of office shall commence after the  
71 effective date of such amendments to this article shall be eligible to claim any credit for service  
72 rendered as a prosecuting attorney as eligible service for retirement benefits under this article,  
73 nor shall any time served as a prosecutor after the year 1988 be considered as eligible service  
74 for any purposes of this article.