

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Senate Bill 97

By Senator Nelson

[Introduced January 11, 2023; referred
to committee on Pensions; and then to the Committee
on Finance]

1 A BILL to amend and reenact §51-9-4 of the Code of West Virginia, 1931, as amended, relating to
2 a change in the contribution levels of every person who is serving or shall hereafter serve
3 as a judge of any court of record of this state and who elects to participate in this retirement
4 system, on or after July 1, 2014, to no less than three percent and no more than 10 percent
5 of the participant's annual compensation.

Be it enacted by the Legislature of West Virginia:

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 by
3 such person out of the State Treasury: *Provided*, That when a judge becomes eligible to receive
4 benefits from such trust fund by actual retirement, no further payment by him or her shall be
5 required, since such employee contribution, in an equal treatment sense, ceases to be required in
6 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 a
8 judge of any court of record in this state shall pay into the Judges' Retirement Fund nine percent of
9 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 after
15 July 1, 2013, except as provided in subsection (b) of this section, every person who is then serving

16 or shall thereafter serve as a judge of any court of record in this state and who elects to participate
17 in this retirement system shall pay into the Judges' Retirement Fund seven percent of the salary
18 received. Any prior occurrence or practice to the contrary, in any way allowing discontinuance of
19 required employee contributions prior to actual retirement under this retirement system, is rejected
20 as erroneous and contrary to legislative intent and as violative of required equal treatment and is
21 hereby nullified and discontinued fully, with the State Auditor to require such contribution in every
22 instance hereafter, except where no contributions are required to be made under any of the
23 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 no
28 less than ~~seven percent or no more than ten and one-half percent~~ three percent or no more than
29 10 percent of the participant's annual compensation.

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

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

40 (e) In drawing warrants for the salary checks of judges, the State Auditor shall deduct from
41 the amount of each such salary check six percent thereof, which amount so deducted shall be

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

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

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

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

68 prosecutorial service was rendered prior to the year 1987 and for which credited service is being
69 sought, together with applicable interest. No judge whose term of office shall commence after the
70 effective date of such amendments to this article ~~shall be~~ is eligible to claim any credit for service
71 rendered as a prosecuting attorney as eligible service for retirement benefits under this article, nor
72 shall any time served as a prosecutor after the year 1988 be considered as eligible service for any
73 purposes of this article.

NOTE: The purpose of this bill is to change the contribution levels of every person who is serving or shall hereafter serve as a judge of any court of record of this state and who elects to participate in this retirement system, on or after July 1, 2014, to no less than three percent and no more than 10 percent of the participant's annual compensation.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.