

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 1035

**FISCAL
NOTE**

By Senator Oliverio

[Introduced February 20, 2026; referred
to the Committee on Pensions; and then to the
Committee on Finance]

1 A BILL to amend and reenact §51-9-4, §51-9-6, §51-9-6a, and §51-9-6b of the Code of West
2 Virginia, 1931, as amended; and to repeal §51-9-6c and §51-9-6d, relating to the Judges'
3 Retirement System; suspending contribution of courts into judicial retirement system until
4 certain condition met; providing for retirees under post-2005 retirement system to be
5 treated as pre-2005 retirement system retirees; providing for actuarially reduced pension
6 benefit for judges in certain circumstances; increasing surviving spouse plan benefit for
7 certain judges; eliminating limitation on retirement benefit increases; and eliminating
8 distinction between certain judges for purposes of calculating surviving spouse plan
9 benefits, surviving dependent children plan benefits, and adjusted annual retirement
10 benefit.

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 ten
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 of the participant's annual
29 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: *Provided, That the*
35 *responsibility of the courts to pay, deposit, or transfer the calculated contribution into the plan shall*
36 *be placed on a contribution holiday until such time that the actual overfunded nature of the pension*

37 fund has fallen below a rate of 150 percent.

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

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

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

58 (g) Notwithstanding the preceding provisions of this section, contributions, benefits, and
59 service credit with respect to qualified military service shall be provided in accordance with Section
60 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has
61 the same meaning as in Section 414(u) of the Internal Revenue Code. The Retirement Board is
62 authorized to determine all questions and make all decisions relating to this section and may

63 promulgate rules relating to contributions, benefits and service credit pursuant to the authority
 64 granted to the retirement board in ~~section one, article ten-d, chapter five~~ §5-10D-1 of this code to
 65 comply with Section 414(u) of the Internal Revenue Code.

66 (h) Any judge holding office as such on the effective date of the amendments to this article
 67 adopted by the Legislature at its 1987 regular session who seeks to qualify service as a
 68 prosecuting attorney as credited service, which service credit must have been earned prior to the
 69 year 1987, shall be required to pay into the Judges' Retirement Fund nine percent of the annual
 70 salary which was actually received by such person as prosecuting attorney during the time such
 71 prosecutorial service was rendered prior to the year 1987 and for which credited service is being
 72 sought, together with applicable interest. No judge whose term of office shall commence after the
 73 effective date of such amendments to this article shall be eligible to claim any credit for service
 74 rendered as a prosecuting attorney as eligible service for retirement benefits under this article, nor
 75 shall any time served as a prosecutor after the year 1988 be considered as eligible service for any
 76 purposes of this article.

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

1 (a) Except as otherwise provided in sections five, six-d, twelve and thirteen of this article,
 2 and subject to the provisions of subsection (e) of this section, any person who is now serving, or
 3 who shall hereafter serve, as a judge of any court of record of this state and shall have served as
 4 such judge for a period of not less than ~~sixteen~~ 16 full years and shall have reached the age of
 5 ~~sixty-five~~ 65 years, or who has served as judge of such court or of that court and other courts of
 6 record of the state for a period of ~~sixteen~~ 16 full years or more (whether continuously or not and
 7 whether said service be entirely before or after this article became effective, or partly before and
 8 partly after said date, and whether or not said judge shall be in office on the date he or she shall
 9 become eligible to benefits hereunder) and shall have reached the age of ~~sixty-five~~ 65 years, or
 10 who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and
 11 shall have served as such judge for a period of not less than ~~twenty-four~~ 24 full years, regardless of

12 age, shall, upon a determination and certification of his or her eligibility as provided in section nine
13 hereof, be paid from the fund annual retirement benefits, so long as he or she shall live, in an
14 amount equal to ~~seventy-five~~ 75 percent of the annual salary of the office from which he or she has
15 retired based upon such salary of such office and as such salary may be changed from time to time
16 during the period of his or her retirement and the amount of his or her retirement benefits shall be
17 based upon and be equal to ~~seventy-five~~ 75 percent of the highest annual salary of such office for
18 any one calendar year during the period of his or her retirement and shall be payable in monthly
19 installments: *Provided*, That such retirement benefits shall be paid only after such judge has
20 resigned as such or, for any reason other than his or her impeachment, his or her service as such
21 has ended: *Provided, however*, That every such person seeking to retire and to receive the annual
22 retirement benefits provided by this subsection must have served a minimum of ~~twelve~~ 12 years as
23 a sitting judge of any such court of record: *Provided further*, That every individual who is appointed
24 or elected for the first time as judge of a court of record of this state after July 1, 2005, who
25 subsequently seeks to retire and to receive the annual retirement benefits provided by this
26 subsection must have served a minimum of ~~fourteen~~ 14 years as a sitting judge of any court of
27 record: And provided further, That any Justice of the West Virginia Supreme Court of Appeals,
28 Intermediate Court of Appeals Judge, Circuit Court Judge, or Family Court Judge in this state
29 appointed or elected for the first time after July 1, 2005, shall be eligible for payment of benefits
30 under this subsection.

31 (b) Notwithstanding any other provisions of this article with the exception of ~~sections~~
32 ~~twelve-a and twelve-b~~ §51-9-12a and §51-9-12b of this code, any person who is now serving or
33 who shall hereafter serve as a judge of any court of record of this state and who shall have
34 accumulated ~~sixteen~~ 16 years or more of credited service, at least ~~twelve~~ 12 years of which is as a
35 sitting judge of a court of record, and who has attained the age of ~~sixty-two~~ 62 years or more but
36 less than the age of ~~sixty-five~~ 65 years, may elect to retire from his or her office and to receive the
37 pension to which he or she would otherwise be entitled to receive at age ~~sixty-five~~ 65, but with an

38 actuarial reduction of pension benefit to be established as a reduced annuity receivable
39 throughout retirement: *Provided*, That every individual who is appointed or elected for the first time
40 as judge of a court of record of this state after July 1, 2005, who subsequently seeks to retire and to
41 receive the annual retirement benefits provided by this subsection must have served a minimum of
42 ~~fourteen~~ 14 years as a sitting judge of any court of record. The reduced percentage (less than
43 ~~seventy-five~~ 75 percent) actuarially computed, determined and established at time of retirement in
44 respect of this reduced pension benefit shall also continue and be applicable to any subsequent
45 new annual salary set for the office from which such judge has retired and as such salary may be
46 changed from time to time during the period of his or her retirement.

47 (c) In determining eligibility for the benefits provided by this section, active full-time duty
48 (including leaves and furloughs) in the Armed Forces of the United States shall be eligible for
49 qualification as credited military service for the purposes of this article by any judge with ~~twelve~~ 12
50 or more years actual service as a sitting judge of a court of record, such awardable military service
51 to not exceed five years: *Provided*, That in determining eligibility for the benefits provided by this
52 section for every individual who is appointed or elected for the first time as judge of a court of
53 record of this state after July 1, 2005, active full-time duty (including leaves and furloughs) in the
54 Armed Forces of the United States qualifies as credited service for the purposes of this article for
55 any judge with ~~fourteen~~ 14 or more years actual service as a sitting judge of a court of record of this
56 state, the awardable military service not to exceed five years.

57 (d) If a judge of a court of record who is presently sitting as such on the effective date of the
58 amendments to this section enacted by the Legislature at its regular session held in the year 1987
59 and who has served for a period of not less than ~~twelve~~ 12 full years and has made payments into
60 the Judges' Retirement Fund as provided in this article for each month during which he or she
61 served as judge, following the effective date of this section, any portion of time which he or she had
62 served as prosecuting attorney in any county in this state shall qualify as years of service, if such
63 judge shall pay those sums required to be paid pursuant to the provisions of section four of this

64 article: *Provided*, That any term of office as prosecuting attorney, or part thereof, commencing
65 after December 31, 1988, shall not hereafter in any way qualify as eligible years of service under
66 this retirement system. For purposes of this article, eligible service as a "prosecuting attorney" or
67 as a "prosecutor" does not include any service as an assistant prosecuting attorney. The
68 amendment to this subsection during the third extraordinary session in the year 2005 is not for the
69 purpose of changing existing law but is intended to clarify the intent of the Legislature as to existing
70 law regarding eligibility for benefits for service as a prosecuting attorney since its initial enactment
71 and this clarification shall be applied retrospectively to the effective date of this section and any
72 predecessor acts in which service as a prosecuting attorney was initially determined by statute to
73 qualify as eligible years of service under the retirement system provided by this article.

74 (e) Any retirement benefit accruing under the provisions of this section shall not be paid if
75 otherwise barred under the provisions of ~~article ten-a, chapter five~~ 5-10a-1 et seq. of this code.

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

§51-9-6a. Eligibility benefits; service and retirement of judges over 65 years of age.

1 (a) Any judge of a court of record of this state who shall have served for a period of not less
2 than eight full years after attaining the age of ~~sixty-five~~ 65 years and who shall have made
3 payments into the Judges' Retirement Fund as provided in this article for each month during which
4 he or she served as such judge following the effective date of this section, shall be subject to all the
5 applicable terms and provisions of this article, not inconsistent with the provisions hereof, and shall
6 receive retirement benefits in an amount equal to ~~seventy-five~~ 75 percent of the annual salary of
7 the office from which he or she has retired based upon such salary of such office as such salary
8 may be changed from time to time during the period of his or her retirement and the amount of his
9 or her retirement benefits shall be based upon and be equal to ~~seventy-five~~ 75 percent of the
10 highest annual salary of such office for any one calendar year during the period of his or her
11 retirement and shall be payable in monthly installments. If such judge shall become incapacitated

12 to perform his or her said duties before the expiration of his or her said term and after serving for
13 six years thereof, and upon the acceptance of his or her resignation as in this article provided, he
14 or she shall be paid the annual retirement benefits as herein provided so long as he or she shall
15 live. The provisions of this section shall prevail over any language to the contrary in this article
16 contained, except those provisions of sections twelve-a and twelve-b of this article: *Provided*, That
17 no individual who is appointed or elected for the first time as judge of a court of record of this state
18 after July 1, 2005, is eligible for retirement under this subsection.

19 (b) Any individual who is appointed or elected for the first time as a family court judge, a
20 judge of a court of record, judge of the Intermediate Court of Appeals, or as a justice of the
21 Supreme Court of Appeals of West Virginia, of this State after July 1, 2005, who having attained
22 the age of 65 years, and who shall have served as a sitting judge of said court or courts for a period
23 of not less than 12 full years, and who shall have made payments into the Judges' Retirement
24 Fund as provided in this article for each month during which he or she served as a judge or justice,
25 shall be eligible to receive the pension to which he or she would otherwise have been entitled to
26 receive as if at 16 years of credited service, but with an actuarial reduction of pension benefit to be
27 established as a reduced annuity receivable throughout retirement, and shall be paid as an annual
28 retirement benefit as herein provided so long as he or she shall live.

**§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 continued by section two of this article, or
2 from such funds as may be appropriated by the Legislature for such purpose, an annuity to the
3 surviving spouse of a judge, if such judge at the time of his or her death is eligible for the retirement
4 benefits provided by any of the provisions of this article, or who has, at death, actually served five
5 years or more as a sitting judge of any court of record of this state, exclusive of any other service
6 credit to which such judge may otherwise be entitled, and who dies either while in office or after

7 resignation or retirement from office pursuant to the provisions of this article. Said annuity shall
8 amount to ~~forty~~ 50 percent of the annual salary of the office which said judge held at his or her
9 death or from which he or she resigned or retired. In the event said salary is increased or
10 decreased while an annuitant is receiving the benefits hereunder, his or her annuity shall amount
11 to ~~forty~~ 50 percent of the new salary. *Provided*, ~~That with respect to any individual who is appointed~~
12 ~~or elected for the first time as judge of a court of record of this state after July 1, 2005, any annuity~~
13 ~~to the surviving spouse of the judge shall be an amount equal to forty percent of the judge's final~~
14 ~~average salary: *Provided, however*, That the annuitant is not entitled to an increase in benefits by~~
15 ~~virtue of any increase in the salaries of the offices of circuit court judge or Justice of the Supreme~~
16 ~~Court of Appeals~~ The annuity granted hereunder shall accrue monthly and shall be due and
17 payable in monthly installments on the first business day of the month following the month for
18 which the annuity shall have accrued. Such annuity shall commence on the first day of the month
19 in which said judge dies and shall, subject to the provisions of subsection (b) of this section,
20 terminate upon the death of the annuitant or shall terminate upon the remarriage of the annuitant.

21 (b) If there be no surviving spouse at the time of death of a judge who dies after serving five
22 years or more as a sitting judge of any court of record and such judge leaves surviving him or her
23 any dependent child or children, such dependent child or children shall receive an amount equal to
24 twenty percent of the annual salary of the office which said judge held at the time of his or her
25 death: *Provided*, That the total of all such annuities payable to each such child shall not exceed in
26 the aggregate an amount equal to ~~forty~~ 40 percent of such salary. Such annuity shall continue as to
27 each such child until: (i) He or she or she attains the age of ~~eighteen~~ 18 years; or (ii) attains the age
28 of ~~twenty-three~~ 23 years so long as such child remains a full-time student. The Auditor shall by
29 legislative rule establish the criteria for determining a person's status as a full-time student within
30 the meaning and intent of this subsection. In the event there are surviving any such judge three or
31 more dependent children, then each such child's annuity shall be proratably reduced in order that
32 the aggregate annuity received by all such dependent children does not exceed ~~forty~~ 40 percent of

33 such salary and the amount to be so received by any such child shall continue throughout the
 34 entire period during which each such child is eligible to receive such annuity. The provisions of this
 35 subsection shall also apply to those circumstances and situations wherein a surviving spouse of a
 36 deceased judge shall die while receiving benefits pursuant to subsection (a) of this section and
 37 who shall leave surviving dependent children of such deceased judge who would be entitled to
 38 benefits under this subsection as if they had succeeded to such annuity benefits upon the death of
 39 such judge in the first instance. In the event the salary of judges is increased or decreased while an
 40 annuitant is receiving benefits pursuant to this subsection, the annuities payable shall be likewise
 41 increased or decreased proportionately to reflect such change in salary. *Provided, however,* That
 42 ~~with respect to any individual who is appointed or elected for the first time as judge of a court of~~
 43 ~~record of this state after July 1, 2005, any annuity to any children of the judge shall be calculated~~
 44 ~~with respect to the judge's final average salary: *Provided further,* That the child is not entitled to an~~
 45 ~~increase in benefits by virtue of any increase in the salaries of the offices of circuit court judge or~~
 46 ~~Justice of the Supreme Court of Appeals~~ The annuities granted hereunder shall accrue monthly
 47 and shall be due and payable in monthly installments on the same day as surviving spouses'
 48 benefits are required to be paid. Such annuities shall commence on the first day of the month in
 49 which any such dependent child becomes eligible for benefits hereunder and shall terminate on
 50 the last day of the month during which such eligibility ceases.

§51-9-6c. Limitations on benefit increases.

[Repealed.]

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

[Repealed.]

NOTE: The purpose of this bill is to amend the retirement system by suspending contribution of courts into judicial retirement system until certain condition met; providing that retirees under the post-2005 retirement system are to be treated as pre-2005 retirement system retirees; providing for actuarially reduced pension benefit for judges in certain circumstances; increasing surviving spouse plan benefit for certain judges;

eliminating limitation on retirement benefit increases; and eliminating distinction between certain judges for purposes of calculating surviving spouse plan benefits, surviving dependent children plan benefits, and adjusted annual retirement benefit.

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