

H. B. 4343

(By Delegates Miley, Frazier, Longstreth and Barill)
[By Request of The Supreme Court of Appeals]
[Introduced January 30, 2012; referred to the
Committee on Pensions and Retirement then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §51-9-4, §51-9-6, §51-9-6a and §51-9-6b of the Code of West Virginia, 1931, as amended, all relating to the judicial retirement system; adjusting the contribution rate of judges; eliminating contribution requirement for judges who are fully vested and eligible for retirement; and increasing benefits for certain judges of record and their annuitants.

Be it enacted by the Legislature of West Virginia:

That §51-9-4, §51-9-6, §51-9-6a and §51-9-6b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

§51-9-4. Legislative Findings; Required percentage contributions from salaries; ~~any termination of required contributions prior to actual retirement disallowed;~~

1 **leased employees; military service credit; maximum**
2 **allowable and qualified military service; qualifiable**
3 **prosecutorial service;**

4 The Legislature finds and declares that:

5 (1) The retirement system for judges of courts of record in
6 this state is more than one hundred percent funded;

7 (2) That the current contribution of ten and one-half percent
8 is excessive in order to maintain a solvent and qualified
9 retirement system, under federal law, for judges of courts of
10 record;

11 (3) Collecting the current contribution of ten and one-half
12 percent from participating judges will continue to result in an
13 over-funded retirement system;

14 (4) An over-funded retirement system may result in a violation
15 of federal law and a disqualified retirement system;

16 (5) It is in the best interest of the residents of this state
17 to maintain experienced and qualified judges;

18 (6) It is more cost-effective to the residents of this state
19 if judges remain seated on the judicial bench after they are fully
20 vested in the retirement system for judges of courts of record; and

21 (7) Eliminating the requirement that participating judges
22 continue contributing to the retirement system for judges of courts
23 of record who are fully vested in the retirement system will assist
24 in ensuring that the residents continue to benefit from an

1 experienced and qualified judiciary.

2 (a) Every person who is now serving or shall hereafter serve
3 as a judge of any court of record of this state who elects to
4 participate in this retirement system, shall pay into the ~~Judges'~~
5 ~~Retirement Fund~~ ~~six~~ fund, except as hereinafter setforth, seven
6 percent of the salary received by ~~such person~~ the judge out of the
7 State Treasury: Provided, That every person who is now serving or
8 shall serve as a judge of any court of record of this state who
9 elects to participate in the retirement system for judges of courts
10 of record shall pay into the Judges' Retirement Fund no less than
11 seven percent nor more than ten and one half percent of his or her
12 salary. Beginning July 1, 2013, the percentage shall automatically
13 be adjusted according to the actuary report recommending the
14 percentage of contribution from the judge required to maintain a
15 solvent and qualified retirement system: Provided, however, That
16 the administrative director of the courts shall notify the State
17 Auditor in writing of the actuary's recommendation of the
18 percentage that shall be deducted from each participating judge's
19 salary and the State Auditor is hereby authorized to deduct such
20 percentage beginning July 1, of each year. Provided further, That
21 the percentage withheld from the participating judge shall not be
22 less than seven percent nor more than ten and one half percent of
23 the judges salary. And provided further, That when a judge becomes
24 fully vested and eligible to receive benefits from ~~such~~ the trust

1 fund by either actual retirement or by meeting the requirements for
2 retirement, no further payment by him or her shall be required.
3 ~~required, since such employee contribution, in an equal treatment~~
4 ~~sense, ceases to be required in the other retirement systems of the~~
5 ~~state, also, only after actual retirement: *Provided, however, That*~~
6 ~~on and after the first day of January, one thousand nine hundred~~
7 ~~ninety five, every person who is then serving or shall thereafter~~
8 ~~serve as a judge of any court of record in this state shall pay~~
9 ~~into the Judges' Retirement Fund nine percent of the salary~~
10 ~~received by that person: *Provided further, That* consistent with the~~
11 ~~salary increase granted to judges of courts of record during the~~
12 ~~two thousand five regular legislative session and to changes~~
13 ~~effectuated in judicial retirement by provisions enacted during the~~
14 ~~third extraordinary legislative session of two thousand five, on~~
15 ~~and after the first day of July, two thousand five, every person~~
16 ~~who is then serving or shall thereafter serve as a judge of any~~
17 ~~court of record in this state shall pay into the Judges' Retirement~~
18 ~~Fund ten and one half percent of the salary received by that~~
19 ~~person. Any prior occurrence or practice to the contrary, in any~~
20 ~~way allowing discontinuance of required employee contributions~~
21 ~~prior to actual retirement under this retirement system, is~~
22 ~~rejected as erroneous and contrary to legislative intent and as~~
23 ~~violative of required equal treatment and is hereby nullified and~~
24 ~~discontinued fully, with the State Auditor to require such~~

1 ~~contribution in every instance hereafter, except where no~~
2 ~~contributions are required to be made under any of the provisions~~
3 ~~of this article.~~

4 (b) An individual who is a leased employee shall not be
5 eligible to participate in the system. For purposes of this system,
6 a "leased employee" means any individual who performs services as
7 an independent contractor or pursuant to an agreement with an
8 employee leasing organization or other similar organization. If a
9 question arises regarding the status of an individual as a leased
10 employee, the board has the final power to decide the question.

11 (c) In drawing warrants for the salary checks of judges, the
12 State Auditor shall deduct from the amount of each ~~such~~ salary
13 check ~~six percent thereof, which amount so deducted~~ seven percent
14 of the judge's salary: Provided, That after July 1, 2013, the
15 Auditor shall deduct the percentage certified by the actuary and
16 reported by the administrative director of the courts to be
17 necessary to maintain the solvency of the retirement system for
18 that year: Provided, however, That the percentage deducted shall
19 not be less than seven percent nor more than ten and one-half
20 percent of the judges salary. Provided further, That the amount
21 deducted by the Auditor shall be credited by the Consolidated
22 Public Retirement Board to the trust fund. fund: Provided, That on
23 ~~or after the first day of January, one thousand nine hundred~~
24 ~~ninety-five, the amount so deducted and credited shall be nine~~

~~1 percent of each such salary check: *Provided, however,* That
2 consistent with the salary increase granted to judges of courts of
3 record during the two thousand five regular legislative session and
4 to changes effectuated in judicial retirement by provisions enacted
5 during the third extraordinary legislative session of two thousand
6 five, on or after the first day of July, two thousand five, the
7 amount so deducted and credited shall be ten and one half percent
8 of each such salary check.~~

9 (d) Any judge seeking to qualify military service to be
10 claimed as credited service, in allowable aggregate maximum amount
11 up to five years, shall be entitled to be awarded the same without
12 any required payment in respect thereof to the Judges' Retirement
13 Fund.

14 (e) Notwithstanding the preceding provisions of this section,
15 contributions, benefits and service credit with respect to
16 qualified military service shall be provided in accordance with
17 Section 414(u) of the Internal Revenue Code. For purposes of this
18 section, "qualified military service" has the same meaning as in
19 Section 414(u) of the Internal Revenue Code. The retirement board
20 is authorized to determine all questions and make all decisions
21 relating to this section and may promulgate rules relating to
22 contributions, benefits and service credit pursuant to the
23 authority granted to the retirement board in section one, article
24 ten-d, chapter five of this code to comply with Section 414(u) of

1 the Internal Revenue Code.

2 (f) Any judge holding office as such on the effective date of
3 the amendments to this article adopted by the Legislature at its
4 regular session in the year 1987, who seeks to qualify service as
5 a prosecuting attorney as credited service, which service credit
6 must have been earned prior to the year 1987, shall be required to
7 pay into the Judges' Retirement Fund nine percent of the annual
8 salary which was actually received by ~~such~~ the person as
9 prosecuting attorney during the time ~~such~~ the prosecutorial service
10 was rendered prior to the year 1987 and for which credited service
11 is being sought, together with applicable interest. No judge whose
12 term of office shall commence after the effective date of such
13 amendments to this article shall be eligible to claim any credit
14 for service rendered as a prosecuting attorney as eligible service
15 for retirement benefits under this article, nor shall any time
16 served as a prosecutor after the year 1988 be considered as
17 eligible service for any purposes of this article.

18 **§51-9-6. Eligibility for and payment of benefits.**

19 (a) Except as otherwise provided in sections five, six-d,
20 twelve and thirteen of this article, and subject to the provisions
21 of subsection (e) of this section, any person who is now serving,
22 or who shall hereafter serve, as a judge of any court of record of
23 this state and shall have served as such judge for a period of not

1 less than sixteen full years and shall have reached the age of
2 sixty-five years, or who has served as judge of such court or of
3 that court and other courts of record of the state for a period of
4 sixteen full years or more (whether continuously or not and whether
5 said service be entirely before or after this article became
6 effective, or partly before and partly after said date, and whether
7 or not said judge shall be in office on the date he or she shall
8 become eligible to benefits hereunder) and shall have reached the
9 age of sixty-five years, or who is now serving, or who shall
10 hereafter serve, as a judge of any court of record of this state
11 and shall have served as such judge for a period of not less than
12 twenty-four full years, regardless of age, shall, upon a
13 determination and certification of his or her eligibility as
14 provided in section nine hereof, be paid from the fund annual
15 retirement benefits, so long as he or she shall live, in an amount
16 equal to seventy-five percent of the annual salary of the office
17 from which he or she has retired based upon ~~such~~ the salary of ~~such~~
18 the office and as ~~such~~ the salary may be changed from time to time
19 during the period of his or her retirement and the amount of his or
20 her retirement benefits shall be based upon and be equal to
21 seventy-five percent of the highest annual salary of ~~such~~ the
22 office for any one calendar year during the period of his or her
23 retirement and shall be payable in monthly installments: *Provided,*
24 That ~~such~~ the retirement benefits shall be paid only after ~~such~~

1 the judge has resigned ~~as such~~ or, for any reason other than his or
2 her impeachment, his or her service ~~as such~~ has ended: *Provided,*
3 *however,* That every ~~such~~ person seeking to retire and to receive
4 the annual retirement benefits provided by this subsection must
5 have served a minimum of twelve years as a sitting judge of any
6 ~~such~~ court of record: *Provided further,* That every individual who
7 is appointed or elected for the first time as judge of a court of
8 record of this state after July 1,2012, who subsequently seeks to
9 retire and to receive the annual retirement benefits provided by
10 this subsection must have served a minimum of fourteen years as a
11 sitting judge of any court of record.

12 (b) Notwithstanding any other provisions of this article with
13 the exception of sections twelve-a and twelve-b, any person who is
14 now serving or who shall hereafter serve as a judge of any court of
15 record of this state and who shall have accumulated sixteen years
16 or more of credited service, at least twelve years of which is as
17 a sitting judge of a court of record, and who has attained the age
18 of sixty-two years or more but less than the age of sixty-five
19 years, may elect to retire from his or her office and to receive
20 the pension to which he or she would otherwise be entitled to
21 receive at age sixty-five, but with an actuarial reduction of
22 pension benefit to be established as a reduced annuity receivable
23 throughout retirement: *Provided,* That every individual who is
24 appointed or elected for the first time as judge of a court of

1 record of this state after the first day of July, two thousand ~~five~~
2 twelve, who subsequently seeks to retire and to receive the annual
3 retirement benefits provided by this subsection must have served a
4 minimum of fourteen years as a sitting judge of any court of
5 record. The reduced percentage (less than seventy-five percent)
6 actuarially computed, determined and established at time of
7 retirement in respect of this reduced pension benefit shall also
8 continue and be applicable to any subsequent new annual salary set
9 for the office from which such judge has retired and as such salary
10 may be changed from time to time during the period of his or her retirement.

11 (c) In determining eligibility for the benefits provided by
12 this section, active full-time duty (including leaves and
13 furloughs) in the Armed Forces of the United States shall be
14 eligible for qualification as credited military service for the
15 purposes of this article by any judge with twelve or more years
16 actual service as a sitting judge of a court of record, such
17 awardable military service to not exceed five years: *Provided,*
18 That in determining eligibility for the benefits provided by this
19 section for every individual who is appointed or elected for the
20 first time as judge of a court of record of this state after the
21 first day of July, two thousand ~~five~~ twelve, active full-time duty
22 (including leaves and furloughs) in the Armed Forces of the United
23 States qualifies as credited service for the purposes of this
24 article for any judge with fourteen or more years actual service as

1 a sitting judge of a court of record of this state, the awardable
2 military service not to exceed five years.

3 (d) If a judge of a court of record who is presently sitting
4 as such on the effective date of the amendments to this section
5 enacted by the Legislature at its regular session held in the year
6 1987 and who has served for a period of not less than twelve full
7 years and has made payments into the Judges' Retirement Fund as
8 provided in this article for each month during which he or she
9 served as judge, following the effective date of this section, any
10 portion of time which he or she had served as prosecuting attorney
11 in any county in this state shall qualify as years of service, if
12 such judge shall pay those sums required to be paid pursuant to the
13 provisions of section four of this article: *Provided*, That any term
14 of office as prosecuting attorney, or part thereof, commencing
15 after December 31, 1988, shall not hereafter in any way qualify as
16 eligible years of service under this retirement system. For
17 purposes of this article, eligible service as a "prosecuting
18 attorney" or as a "prosecutor" does not include any service as an
19 assistant prosecuting attorney. The amendment to this subsection
20 during the third extraordinary session in the year two thousand
21 five is not for the purpose of changing existing law but is
22 intended to clarify the intent of the Legislature as to existing
23 law regarding eligibility for benefits for service as a prosecuting
24 attorney since its initial enactment and this clarification shall

1 be applied retrospectively to the effective date of this section
2 and any predecessor acts in which service as a prosecuting attorney
3 was initially determined by statute to qualify as eligible years of
4 service under the retirement system provided by this article.

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

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

11 **§51-9-6a. Eligibility benefits; service and retirement of judges**
12 **over sixty-five years of age**

13 Any judge of a court of record of this state who shall have
14 served for a period of not less than eight full years after
15 attaining the age of sixty-five years and who shall have made
16 payments into the Judges' Retirement Fund as provided in this
17 article for each month during which he or she served as such judge
18 following the effective date of this section, shall be subject to
19 all the applicable terms and provisions of this article, not
20 inconsistent with the provisions hereof, and shall receive
21 retirement benefits in an amount equal to seventy-five percent of
22 the annual salary of the office from which he or she has retired
23 based upon such salary of such office as such salary may be changed
24 from time to time during the period of his or her retirement and

1 the amount of his or her retirement benefits shall be based upon
2 and be equal to seventy-five percent of the highest annual salary
3 of such office for any one calendar year during the period of his
4 or her retirement and shall be payable in monthly installments. If
5 such judge shall become incapacitated to perform his or her said
6 duties before the expiration of his or her said term and after
7 serving for six years thereof, and upon the acceptance of his or
8 her resignation as in this article provided, he or she shall be
9 paid the annual retirement benefits as herein provided so long as
10 he or she shall live. The provisions of this section shall prevail
11 over any language to the contrary in this article contained, except
12 those provisions of sections twelve-a and twelve-b of this article:
13 *Provided*, That no individual who is appointed or elected for the
14 first time as judge of a court of record of this state after July
15 1, 2012, is eligible for retirement under this section.

16 **§51-9-6b. Annuities for surviving spouses and surviving dependent**
17 **children of judges; automatic escalation and increase**
18 **of annuity benefit; proration designation by judge**
19 **permitted;**

20 (a) There shall be paid, from the fund created or continued by
21 section two of this article, or from such funds as may be
22 appropriated by the Legislature for such purpose, an annuity to the
23 surviving spouse of a judge, if such judge at the time of his or

1 her death is eligible for the retirement benefits provided by any
2 of the provisions of this article, or who has, at death, actually
3 served five years or more as a sitting judge of any court of record
4 of this state, exclusive of any other service credit to which such
5 judge may otherwise be entitled, and who dies either while in
6 office or after resignation or retirement from office pursuant to
7 the provisions of this article. Said annuity shall amount to forty
8 percent of the annual salary of the office which said judge held at
9 his or her death or from which he or she resigned or retired. In
10 the event said salary is increased or decreased while an annuitant
11 is receiving the benefits hereunder, his or her annuity shall
12 amount to forty percent of the new salary: *Provided*, That with
13 respect to any individual who is appointed or elected for the first
14 time as judge of a court of record of this state after July 1,
15 2012, any annuity to the surviving spouse of the judge shall be an
16 amount equal to forty percent of the judge's final average salary:
17 *Provided, however*, That the annuitant is not entitled to an
18 increase in benefits by virtue of any increase in the salaries of
19 the offices of circuit court judge or Justice of the Supreme Court
20 of Appeals. The annuity granted hereunder shall accrue monthly and
21 shall be due and payable in monthly installments on the first
22 business day of the month following the month for which the annuity
23 shall have accrued. Such annuity shall commence on the first day of
24 the month in which said judge dies and shall, subject to the

1 provisions of subsection (b) of this section, terminate upon the
2 death of the annuitant or shall terminate upon the remarriage of
3 the annuitant.

4 (b) If there be no surviving spouse at the time of death of a
5 judge who dies after serving five years or more as a sitting judge
6 of any court of record and such judge leaves surviving him or her
7 any dependent child or children, such dependent child or children
8 shall receive an amount equal to twenty percent of the annual
9 salary of the office which said judge held at the time of his or
10 her death: *Provided*, That the total of all such annuities payable
11 to each such child shall not exceed in the aggregate an amount
12 equal to forty percent of such salary. Such annuity shall continue
13 as to each such child until: (i) He or she attains the age of
14 eighteen years; or (ii) attains the age of twenty-three years so
15 long as such child remains a full-time student. The Auditor shall,
16 by legislative rule, establish the criteria for determining a
17 person's status as a full-time student within the meaning and
18 intent of this subsection. In the event there are surviving any
19 such judge three or more dependent children, then each such child's
20 annuity shall be proratably reduced in order that the aggregate
21 annuity received by all such dependent children does not exceed
22 forty percent of such salary and the amount to be so received by
23 any such child shall continue throughout the entire period during
24 which each such child is eligible to receive such annuity. The

1 provisions of this subsection shall also apply to those
2 circumstances and situations wherein a surviving spouse of a
3 deceased judge shall die while receiving benefits pursuant to
4 subsection (a) of this section and who shall leave surviving
5 dependent children of such deceased judge who would be entitled to
6 benefits under this subsection as if they had succeeded to such
7 annuity benefits upon the death of such judge in the first
8 instance. In the event the salary of judges is increased or
9 decreased while an annuitant is receiving benefits pursuant to this
10 subsection, the annuities payable shall be likewise increased or
11 decreased proportionately to reflect such change in salary:
12 *Provided, however,* That with respect to any individual who is
13 appointed or elected for the first time as judge of a court of
14 record of this state after July 1, 2012, any annuity to any
15 children of the judge shall be calculated with respect to the
16 judge's final average salary: *Provided further,* That the child is
17 not entitled to an increase in benefits by virtue of any increase
18 in the salaries of the offices of circuit court judge or Justice of
19 the Supreme Court of Appeals. The annuities granted hereunder shall
20 accrue monthly and shall be due and payable in monthly installments
21 on the same day as surviving spouses' benefits are required to be
22 paid. Such annuities shall commence on the first day of the month
23 in which any such dependent child becomes eligible for benefits
24 hereunder and shall terminate on the last day of the month during

1 which such eligibility ceases.

NOTE: This bill is requested by the Supreme Court of Appeals. The purpose of this bill is to provide for a sliding scale of required employee contributions which would result in reduction of employee contributions to the pension system; to increase for judges appointed or elected between July 1, 2005 and July 1, 2012 and their annuitants, benefits previously limited to judges appointed or elected prior to July 1, 2005; and to provide that sitting judges fully vested and eligible for retirement would not have to continue to contribute to the pension system.

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