

E N G R O S S E D

Senate Bill No. 403

(By Senators Palumbo, Chafin and Kessler (Mr. President))

[Introduced February 28, 2013; referred to the Committee on Pensions; and then to the Committee on Finance.]

A BILL to amend and reenact §51-9-4 of the Code of West Virginia, 1931, as amended, relating to the judicial retirement system; reducing the contribution rate of judges; authorizing the Consolidated Public Retirement Board to annually establish future participant contribution rates based on the State Actuary's report; and limiting the participant contribution rate to ten and one-half percent of a participant's salary.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES 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
2 serve as a judge of any court of record of this state shall
3 pay into the Judges' Retirement Fund six percent of the
4 salary received by such person out of the State Treasury:
5 *Provided*, That when a judge becomes eligible to receive
6 benefits from such trust fund by actual retirement, no
7 further payment by him or her shall be required, since such
8 employee contribution, in an equal treatment sense, ceases to
9 be required in the other retirement systems of the state, also,
10 only after actual retirement: *Provided, however*; That on
11 and after January 1, 1995, every person who is then serving
12 or shall thereafter serve as a judge of any court of record in
13 this state shall pay into the Judges' Retirement Fund nine
14 percent of the salary received by that person: *Provided*
15 *further*, That consistent with the salary increase granted to
16 judges of courts of record during the 2005 regular legislative

17 session and to changes effectuated in judicial retirement by
18 provisions enacted during the third extraordinary legislative
19 session of 2005, on and after July 1, 2005, every person
20 who is then serving or shall thereafter serve as a judge of
21 any court of record in this state shall pay into the Judges'
22 Retirement Fund ten and one-half percent of the salary
23 received by that person: And provided further, That on
24 and after July 1, 2013, except as provided in subsection (b)
25 of this section, every person who is then serving or shall
26 thereafter serve as a judge of any court of record in this state
27 and who elects to participate in this retirement system shall
28 pay into the Judges' Retirement Fund seven percent of the
29 salary received. Any prior occurrence or practice to the
30 contrary, in any way allowing discontinuance of required
31 employee contributions prior to actual retirement under this
32 retirement system, is rejected as erroneous and contrary to
33 legislative intent and as violative of required equal treatment
34 and is hereby nullified and discontinued fully, with the
35 State Auditor to require such contribution in every instance

36 hereafter, except where no contributions are required to be
37 made under any of the provisions of this article.

38 (b) On and after July 1, 2014, every person who is
39 serving or shall hereafter serve as a judge of any court of
40 record of this state and who elects to participate in this
41 retirement system shall contribute to the fund an amount
42 determined by the board. This amount will be based on the
43 annual actuarial valuation prepared by the State Actuary:
44 Provided, That the contribution will be no less than seven
45 percent or no more than ten and one-half percent of the
46 participant's annual compensation.

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

55 ~~(b)~~ (d) An individual who is a leased employee shall
56 not be eligible to participate in the system. For purposes of
57 this system, a “leased employee” means any individual who
58 performs services as an independent contractor or pursuant
59 to an agreement with an employee leasing organization or
60 other similar organization. If a question arises regarding the
61 status of an individual as a leased employee, the board has
62 the final power to decide the question.

63 ~~(e)~~ (e) In drawing warrants for the salary checks of
64 judges, the State Auditor shall deduct from the amount of
65 each such salary check six percent thereof, which amount
66 so deducted shall be credited by the Consolidated Public
67 Retirement Board to the trust fund: *Provided*, That on or
68 after January 1, 1995, the amount so deducted and credited
69 shall be nine percent of each such salary check: *Provided*,
70 *however*, That consistent with the salary increase granted to
71 judges of courts of record during the 2005 regular legislative
72 session and to changes effectuated in judicial retirement by
73 provisions enacted during the third extraordinary legislative

74 session of 2005, on or after July 1, 2005, the amount so
75 deducted and credited shall be ten and one-half percent of
76 each such salary check: Provided further, That on and after
77 July 1, 2013, except as provided in subsection (b) of this
78 section, the amount so deducted and credited shall be seven
79 percent of each salary check: And provided further, That on
80 and after July 1, 2014, the amount so deducted and credited
81 will be determined by the board.

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

87 (e) (g) Notwithstanding the preceding provisions of this
88 section, contributions, benefits and service credit with respect
89 to qualified military service shall be provided in accordance
90 with Section 414(u) of the Internal Revenue Code. For
91 purposes of this section, "qualified military service" has the
92 same meaning as in Section 414(u) of the Internal Revenue

93 Code. The Retirement Board is authorized to determine
94 all questions and make all decisions relating to this section
95 and may promulgate rules relating to contributions, benefits
96 and service credit pursuant to the authority granted to the
97 retirement board in section one, article ten-d, chapter five
98 of this code to comply with Section 414(u) of the Internal
99 Revenue Code.

100 (¶) (h) Any judge holding office as such on the effective
101 date of the amendments to this article adopted by the
102 Legislature at its 1987 regular session who seeks to qualify
103 service as a prosecuting attorney as credited service, which
104 service credit must have been earned prior to the year 1987,
105 shall be required to pay into the Judges' Retirement Fund
106 nine percent of the annual salary which was actually received
107 by such person as prosecuting attorney during the time such
108 prosecutorial service was rendered prior to the year 1987
109 and for which credited service is being sought, together with
110 applicable interest. No judge whose term of office shall
111 commence after the effective date of such amendments to

112 this article shall be eligible to claim any credit for service
113 rendered as a prosecuting attorney as eligible service for
114 retirement benefits under this article, nor shall any time
115 served as a prosecutor after the year 1988 be considered as
116 eligible service for any purposes of this article.