

E N G R O S S E D

**Senate Bill No. 403**

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

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

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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       (~~f~~) (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.