

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 2996

FISCAL  
NOTE

By Delegate C. Pritt

[Introduced January 24, 2023; Referred to the  
Committee on Pensions and Retirement then the  
Judiciary]

1 A BILL to amend and reenact §51-9-4 of the Code of West Virginia, 1931, as amended, relating to  
2 allowing a credit toward judicial retirement for public defender service.

*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; qualifiable public defender 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.

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 ten 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 section one, article ten-d, chapter five of this code to comply with  
62 Section 414(u) of the 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 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.

74 (i) Any judge holding office as such on the effective date of the amendments to this article  
75 adopted by the Legislature at its 2023 regular session who seeks to qualify service as a public  
76 defender as credited service, which service credit must have been earned prior to the year 2023,  
77 shall be required to pay into the Judges' Retirement Fund nine percent of the annual salary which  
78 was actually received by such person as a public defender during the time such public defender  
79 service was rendered prior to the year 2023 and for which credited service is being sought,  
80 together with applicable interest. No judge whose term of office shall commence after the effective  
81 date of such amendments to this article shall be eligible to claim any credit for service rendered as  
82 a public defender as eligible service for retirement benefits under this article, nor shall any time  
83 served as a public defender after the year 2024 be considered as eligible service for any purposes  
84 of this article.

NOTE: The purpose of this bill is to allow a credit toward judicial retirement for public defender service.

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