

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1949



ENROLLED

HOUSE BILL No. 24

(By Mr. Ballard of Monroe)
and Mr File



PASSED March 7 1949

In Effect 90 days from Passage



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House Bill No. 24

(By MR. BALLARD, of Monroe, and MR. FILE)

[Passed March 7, 1949; in effect ninety days from passage.]

AN ACT to amend chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article nine, relating to the establishment and administration of a permanent retirement system, for judges of courts of record of this state.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding thereto a new article nine to read as follows:

Section 1. *Judges' Retirement System*.—There is hereby
2 established a judges' retirement system for the purpose
3 and to be administered as hereinafter provided.

Sec. 2. *Judges' Retirement Fund*.—As a part of the
2 judges' retirement system, there is hereby created a
3 judges' retirement fund which shall be made up of and
4 into which shall be paid

5 (a) Percentage contributions from salaries of judges
6 as provided in section four of this article;

7 (b) Gifts and bequests to the fund and any accretions
8 and accumulations which may properly be paid into and
9 become a part of the fund;

10 (c) Specific appropriations to the fund made by the
11 Legislature of the state of West Virginia and by any
12 county court or courts of the state;

13 (d) Interest on the investment of any part or parts
14 of the fund;

15 (e) Any other monies, available and not otherwise ex-
16 pended, which may be appropriated or transferred to the
17 fund.

Sec. 3. Custody, Investment and Administration of Fund.

2 —The state treasurer shall be the custodian of the fund
3 and of any investment securities of the retirement sys-
4 tem and shall give a separate and additional bond for the
5 faithful performance of his duties as such custodian. The
6 governor shall fix the amount of said bond which shall
7 be approved as to sufficiency and form by the attorney
8 general and shall be filed in the office of the secretary

9 of state. The premium on said bond shall be paid from
10 the fund.

11 In a manner and to an extent consonant with sound
12 administration principles, the board of public works shall
13 have authority to invest said fund in interest bearing
14 securities of the United States of America, of the state of
15 West Virginia and of any political subdivision thereof.

16 The state auditor shall be the fiscal officer responsible
17 for the records and administration of the fund, including
18 budgetary matters incident to the authority vested in him
19 with respect to judicial department appropriations under
20 article six, section fifty-one of the constitution of West
21 Virginia.

Sec. 4. *Percentage Contributions from Salaries.*—Every
2 person who is now serving or shall hereafter serve as a
3 judge of any court of record of this state shall pay into
4 the judges' retirement fund six per cent of the salary
5 received by him either out of the state treasury or from
6 any county court or courts of this state, or, if his total
7 salary as such judge be paid in part out of the state
8 treasury and in part by a county court or county courts,

9 then six per cent of such total salary shall be paid into
10 the said fund.

11 In drawing warrants for the salary checks of said
12 judges, the state auditor shall deduct from the amount
13 of each such salary check six per cent thereof, which
14 amount so deducted shall be credited by the state treasur-
15 er to said fund. Where the salary, or any part thereof, of a
16 judge is paid by a county court, such county court shall
17 deduct from the amount of each such salary check six
18 per cent of the amount thereof, which amount so deducted
19 shall be paid by said county court into the state treasury
20 to the credit of said fund.

Sec. 5. *Election not to Contribute.*—Notwithstanding
2 any provisions of this article, any judge may in writing
3 notify the auditor or the county court, as the case may
4 be, within thirty days after he takes office, or, if he is in
5 office, on the date this article becomes effective, then
6 within thirty days from such latter date, that he elects
7 not to make payments or contributions to the fund, in
8 which event every judge, so electing, shall not thereafter
9 at any time be entitled to receive any retirement pay or

10 benefits under provisions of this article. If such notice
11 in writing be given, any deductions theretofore made
12 from the salary of such judge and paid into the fund shall
13 be refunded, without interest, to him by the auditor
14 by warrant drawn on the fund.

Sec. 6. *Eligibility for and Payment of Benefits.*—Ex-
2 cept as otherwise provided in sections five, twelve and
3 thirteen of this article, any person who is now serving,
4 or who shall hereafter serve, as a judge of any court of
5 record of this state and shall have served as such judge
6 for a period of not less than sixteen full years and shall
7 have reached the age of sixty-five years, or who has
8 served as judge of such court or of that court and other
9 courts of record of the state for a period of sixteen full
10 years or more (whether continuously or not and whether
11 said service be entirely before or after this act shall be-
12 come effective, or partly before and partly after said
13 date, and whether or not said judge shall be in
14 office on the date he shall become eligible to benefits
15 hereunder), shall, upon a determination and certification
16 of his eligibility as provided in section nine hereof, be

17 paid from the fund annual retirement benefits, so long
18 as he shall live, in an amount equal to four per cent of
19 his annual salary for the last year of his service as such
20 judge multiplied by the total number of full years he has
21 served as a judge of any of the courts of record of this
22 state: *Provided, however,* That said annual retirement
23 benefits shall in no case exceed the amount of fifty
24 per cent of the annual salary received by him for
25 the last year of his service as judge: *Provided further,*
26 That said retirement benefits shall be paid only after
27 said judge has resigned as such or, for any reason other
28 than his impeachment, his service as such has ended:
29 *And provided further,* That the provisions of this act
30 shall apply only to those judges who are in office at the
31 time it becomes effective, and those who shall thereafter
32 serve as judges of the courts of record of this state.

33 In determining eligibility for the benefits provided by
34 this section, any portion of the term of office of any
35 judge of a court of record which shall have elapsed
36 while such judge was on active duty (including leaves,
37 furlough, and time consumed going to his place of duty

38 and returning to his place of residence after discharge
39 or release from active duty) in the armed forces of the
40 United States shall be considered as served: *Provided,*
41 *however,* That any judge who enters active duty in the
42 armed forces of the United States during his term of
43 office and after the effective date of this act, shall during,
44 or within one year after such military service, pay into
45 the state treasury all contributions required by section
46 four of this article, and, by reason of such military service
47 not deducted from his salary.

Sec. 7. *Ineligibility to Receive Benefits.*—A judge who
2 retires under the provisions and accepts the benefits of
3 this article shall not, while receiving said benefits, be
4 permitted to practice law in the courts of this state, or
5 to hold any public office or trust for which he receives
6 compensation. If, after retirement under the provisions
7 of this article and acceptance of its benefits, he shall
8 enter the practice of law or be elected or ~~no~~ appointed to
9 any public office or trust for which he receives any salary
10 or other compensation, his benefits under this article
11 shall be suspended for such time only as he shall be

12 engaged in the practice of law or shall occupy such office
13 or trust.

Sec. 8. *Retirement and Eligibility.*—Whenever a judge
2 of a court of record of this state, who is not disqualified
3 from participation herein as provided in section five of this
4 article, who shall have served for twelve full years,
5 shall become physically or mentally incapacitated to per-
6 form the duties of his office as judge during the remainder
7 of his term and shall make a written application to the
8 governor for his retirement, setting forth the nature
9 and extent of his disability and tendering his resignation
10 as such judge upon condition that upon its acceptance
11 he be retired with pay under the provisions of this
12 article, the governor shall make such investigation as he
13 shall deem advisable and, if he shall determine that such
14 disability exists and that the public service is suffering
15 and will continue to suffer by reason of such disability,
16 he shall thereupon accept the resignation and, by written
17 order filed in the office of the secretary of the state, direct
18 the retirement of the judge for the unexpired portion of
19 the term for which such judge was elected or appointed.

20 The secretary of state shall thereupon file a certified copy
21 of said order with the state auditor. When so accepted,
22 said resignation shall create a vacancy in said office of
23 judge, which shall be filled by appointment or election
24 as provided by law. The retired judge shall thereupon
25 be paid annual retirement pay during the remainder of
26 his unexpired term in an amount equal to the annual
27 salary he was receiving at the time of his retirement,
28 which annual retirement pay, so long as it shall be paid
29 to him, shall be in lieu of any and all retirement benefits
30 such judge may otherwise have received under the pro-
31 visions of this article: *Provided, however,* That when
32 the payment of said retirement pay shall have terminated,
33 such judge, even though he shall not have arrived at the
34 age of sixty-five years, shall, so long as the disability
35 determined by the governor continues to exist, be paid
36 the retirement benefits for which provisions is made in
37 section six of this article.

Sec. 9. *Determination of Eligibility for Benefits.*—Be-
2 fore any person shall be entitled to retirement benefits
3 under the provisions hereof, he shall submit proof of his

4 eligibility for such benefits to the governor, and if such
5 judge be then in office, he shall at the same time tender
6 to the governor his resignation as judge upon condition
7 that, if such resignation be accepted, he be paid retire-
8 ment benefits as herein provided. Thereupon the gov-
9 ernor shall make such investigation as he shall deem
10 advisable and, if the governor shall determine that such
11 person is entitled to retirement benefits under the pro-
12 visions hereof, the governor shall accept the resignation
13 and certify said facts and the amount of retirement
14 benefits to be paid to said retired judges by a written
15 order to be filed in the office of the secretary of state.
16 The secretary of state shall thereupon file a certified
17 copy of said order with the state auditor. The resignation
18 so accepted shall create a vacancy in said office of judge
19 which shall be filled by appointment or election as
20 provided by law.

Sec. 10. *Services of Retired Judges.*—Any retired judge
2 receiving retirement benefits under the provisions hereof
3 shall serve as special judge of any court of record of
4 this state, except of the Supreme Court of Appeals, when

5 such retired judge is selected according to law to serve
6 as such special judge in any such court of record, without
7 charge or compensation, per diem or otherwise to him,
8 but shall be allowed and paid his traveling expenses and
9 other actual exepnses for lodging and meals in the same
10 manner and amounts as such expenses of judges are paid
11 as now or hereafter may be provided for by statute.

Sec. 11. *Monthly Payments.*—The retirement benefits
2 and retirement pay, as herein provided, shall be paid in
3 equal monthly installments upon the warrant of the state
4 auditor drawn on the judges' retirement fund. If at any
5 time monies in said fund are insufficient to meet the
6 orderly requirements of the retirement system, payments
7 hereunder shall then be made from funds in the state
8 treasury appropriated and otherwise available for such
9 purposes.

Sec. 12. *Refunds.*—Any judge of a court of record of
2 this state whose services have terminated, otherwise than
3 by retirement under provisions of this act, shall, upon^{his}
4 written demand or the written demand of his personal
5 representative filed with the state auditor, by a proper

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6 warrant of the state auditor drawn on the fund, be re-
7 funded, without interest, any and all money paid by or
8 for said judge into the fund. Such repayment shall ter-
9 minate all rights of said judge to participate thereafter
10 at any time in the benefits and pay of the retirement sys-
11 tem, without prejudice, however, to his right to re-enter
12 the system after a subsequent appointment or election to
13 a qualified judgeship, but without credit for any prior
14 years of service.

Sec. 13. *Disqualification for Pay and Benefits.*—No judge
2 of a court of record of this state, who has become
3 physically incapacitated to perform the duties of his
4 office as judge and who has remained so for one year
5 without making application for retirement and submitting
6 his resignation as provided in section eight hereof, shall
7 be entitled to retirement pay or retirement benefits under
8 the provisions of any section of this article.

Sec. 14. *Monies Exempt from Execution.*—The monies
2 in the judges' retirement fund, the right of any judge to
3 participate in the pay and benefits of the retirement sys-
4 tem and the right of any judge to a refund of payments

5 or contributions made to the fund shall not be subject to
6 execution, garnishment, attachment or any other process
7 whatsoever and shall be unassignable and nontransfer-
8 able.

Sec. 15. *County Commissioners Excluded.*—Commis-
2 sioners of county courts, or of any tribunal established
3 in lieu thereof, are excluded from the retirement pay and
4 retirement benefits herein provided.

Sec. 16. *Provisions Severable.*—The provisions of this
2 article are declared to be severable and if any provision
3 or provisions hereof shall be held to be unconstitutional,
4 such holding shall not affect the validity of the remaining
5 provisions.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Joseph L. McKeer
Chairman Senate Committee

Robert C. McKeer
Chairman House Committee

Originated in the House of Delegates

Takes effect 90 days from passage.

Howard Myers
Clerk of the Senate

J. A. Lipp
Clerk of the House of Delegates

W. B. L. Hester
President of the Senate

W. B. L. Hester
Speaker House of Delegates

The within Approved this the 12th

day of March, 1949.

Key L. Tallison
Governor.

Filed in the Office of the Secretary of State
of West Virginia

MAR 15 1949

D. PITT O'BRIEN,
SECRETARY OF STATE