WEST VIRGINIA CODE: §51-9-1B

§51-9-1b. Statement of legislative intent, policy and finding.

The decision and opinion of the state Supreme Court of Appeals in the case of *In re Judge Dostert*, which was rendered on November 7, 1984, and other decisions and opinions of that court based upon the *Dostert* decision have served to make substantial and fundamental changes in the retirement system for judges as established by the Legislature under the provisions of this article. These substantial and fundamental changes have served to or resulted in (i) expanding and greatly easing the requirements necessary to qualify to receive retirement annuity benefits from the system, (ii) making many persons eligible for retirement annuity benefits from the system at an earlier date than would have been the case under the provisions of the article, (iii) unjustly increasing the amount of retirement annuity benefits to be received by certain judges or justices would or will receive and (iv) altering or reducing the authority of the State Auditor as the primary administrator of the judges retirement fund and of the Governor to determine the eligibility of persons seeking to claim retirement annuity benefits from the fund and placed these functions within the province of the court administrator; thus removing the statutory authority of public officers outside the judicial branch of state government to determine the eligibility of judges and justices to receive such benefits or to see to the financial stability and soundness of the fund or to ensure fiscal accountability with respect thereto.

The Legislature hereby declares that the *Dostert* decision and the subsequent decisions of the Supreme Court of Appeals which were based upon the *Dostert* decision were not and do not constitute sound legal principles, in that they have served to rewrite contractual arrangements found to exist by the Supreme Court of Appeals in the case of *Wagoner v. Gainer* decided on June 15, 1981, and, further, usurped the authority of the Legislature to determine or formulate the public policy of this state as required by article V, section 1 and article VI, section 1 of the Constitution of West Virginia and further usurped the authority of the Legislature to set judicial compensation.

The Legislature hereby states and finds that its intent and policy recognizes a compelling state interest is present in carrying out its Constitutional responsibilities of establishing, determining and setting reasonable compensation guidelines and amounts for judicial officers, by law, and of protecting the fiscal responsibility and soundness of the moneys required for payment into the trust fund, as a part of the judicial branch budget request, which is determined by benefits payable from the judicial retirement system, and which judicial budget request may not be reduced by the Legislature, Constitutionally.

The amendments now made to the provisions of this retirement system by the Legislature are made within the original and continuing framework of such system and with the benefits hereunder being directed toward those meeting the strict and fundamental requirements of career judicial service on the bench, of military service and service as a prosecuting attorney as granted by this article.

www.legislature