WEST VIRGINIA CODE: §51-9-4

§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.

(a) Every person who is now serving or shall hereafter serve as a judge of any court of record of this state shall pay into the Judges' Retirement Fund six percent of the salary received by such person out of the State Treasury: *Provided*, That when a judge becomes eligible to receive benefits from such trust fund by actual retirement, no further payment by him or her shall be required, since such employee contribution, in an equal treatment sense, ceases to be required in the other retirement systems of the state, also, only after actual retirement: *Provided, however*, That on and after January 1, 1995, every person who is then serving or shall thereafter serve as a judge of any court of record in this state shall pay into the Judges' Retirement Fund nine percent of the salary received by that person: *Provided further*, That consistent with the salary increase granted to judges of courts of record during the 2005 regular legislative session and to changes effectuated in judicial retirement by provisions enacted during the third extraordinary legislative session of 2005, on and after July 1, 2005, every person who is then serving or shall thereafter serve as a judge of any court of record in this state shall pay into the Judges' Retirement Fund ten and one-half percent of the salary received by that person: *And provided further*, That on and after July 1, 2013, except as provided in subsections (b) and (c) of this section, every person who is then serving or shall thereafter serve as a judge of any court of record in this state and who elects to participate in this retirement system shall pay into the Judges' Retirement Fund seven percent of the salary received. Any prior occurrence or practice to the contrary, in any way allowing discontinuance of required employee contributions prior to actual retirement under this retirement system, is rejected as erroneous and contrary to legislative intent and as violative of required equal treatment and is hereby nullified and discontinued fully, with the State Auditor to require such contribution in every instance hereafter, except where no contributions are required to be made under any of the provisions of this article.

(b) On and after July 1, 2014, every person who is serving or shall hereafter serve as a judge of any court of record of this state and who elects to participate in this retirement system shall contribute to the fund an amount determined by the board. This amount will be based on the annual actuarial valuation prepared by the State Actuary: *Provided*, That the contribution will be no less than seven percent or no more than 10 and one-half percent of the participant's annual compensation.

(c) On or after July 1, 2027, every person who is serving or shall hereafter serve as a judge of any court of record of this state and who elects to participate in this retirement system shall contribute to the Judges' Retirement Fund seven percent of the salary received.

(d) On or after July 1, 2013, and each year thereafter, the board shall provide the annual

actuarial valuation and the annual actuarially required contribution prepared by the State Actuary for use by the courts of this state for legislative appropriation to the Legislature's Joint Committee on Government and Finance and the Joint Committee on Pensions and Retirement: *Provided*, That in any year that the State Actuary determines that the funding level of the Judges' Retirement Fund exceeds 125 percent, the board shall provide the annual actuarial valuation prepared by the State Actuary and a statement of the current funding level of the fund to the Legislature's Joint Committee on Government and Finance and the Joint Committee on Pensions and Retirement. Notwithstanding any provision of this code to the contrary, neither the court nor the Legislature shall be required to make a contribution to the fund when the funding level exceeds 125 percent. For purposes of this subsection, the funding level is determined by dividing the assets of the fund by the sum of the assets of the fund and the unfunded accrued liability of the fund.

(e) An individual who is a leased employee shall not be eligible to participate in the system. For purposes of this system, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has the final power to decide the question.

(f) In drawing warrants for the salary checks of judges, the State Auditor shall deduct from the amount of each such salary check six percent thereof, which amount so deducted shall be credited by the Consolidated Public Retirement Board to the trust fund: *Provided*, That on or after January 1, 1995, the amount so deducted and credited shall be nine percent of each such salary check: *Provided, however*, That consistent with the salary increase granted to judges of courts of record during the 2005 regular legislative session and to changes effectuated in judicial retirement by provisions enacted during the third extraordinary legislative session of 2005, on or after July 1, 2005, the amount so deducted and credited shall be ten and one-half percent of each such salary check: *Provided further*, That on and after July 1, 2013, except as provided in subsection (b) of this section, the amount so deducted and credited shall be seven percent of each salary check: *And provided further*, That on and after July 1, 2014, the amount so deducted and credited will be determined by the board: *And provided further*, That on and after July 1, 2027, the amount so deducted and credited shall be seven percent of each salary check.

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

(h) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The Retirement Board is authorized to determine all questions and make all decisions relating to this section and may promulgate rules relating to contributions, benefits and service credit pursuant to the authority granted to the retirement board in §5-10D-1 of this code to comply

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with Section 414(u) of the Internal Revenue Code.

(i) Any judge holding office as such on the effective date of the amendments to this article adopted by the Legislature at its 1987 regular session who seeks to qualify service as a prosecuting attorney as credited service, which service credit must have been earned prior to the year 1987, shall be required to pay into the Judges' Retirement Fund nine percent of the annual salary which was actually received by such person as prosecuting attorney during the time such prosecutorial service was rendered prior to the year 1987 and for which credited service is being sought, together with applicable interest. No judge whose term of office shall commence after the effective date of such amendments to this article shall be eligible to claim any credit for service rendered as a prosecuting attorney as eligible service for retirement benefits under this article, nor shall any time served as a prosecutor after the year 1988 be considered as eligible service for any purposes of this article.

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