

FIRST REGULAR SESSION

SENATE BILL NO. 309

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS WALSH AND ONDER.

Read 1st time January 18, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1122S.01I

AN ACT

To repeal sections 56.363, 56.805, 56.807, 56.814, 56.818, 56.833, and 56.840, RSMo, and to enact in lieu thereof seven new sections relating to the retirement system for prosecuting and circuit attorneys.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 56.363, 56.805, 56.807, 56.814, 56.818, 56.833, and 56.840, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 56.363, 56.805, 56.807, 56.814, 56.818, 56.833, and 56.840, to read as follows:

56.363. 1. The county commission of any county may on its own motion and shall upon the petition of ten percent of the total number of people who voted in the previous general election in the county submit to the voters at a general or special election the proposition of making the county prosecutor a full-time position. The commission shall cause notice of the election to be published in a newspaper published within the county, or if no newspaper is published within the county, in a newspaper published in an adjoining county, for three weeks consecutively, the last insertion of which shall be at least ten days and not more than thirty days before the day of the election, and by posting printed notices thereof at three of the most public places in each township in the county. The proposition shall be put before the voters substantially in the following form:

Shall the office of prosecuting attorney be made a full-time position in County?

☐ YES ☐ NO

If a majority of the voters voting on the proposition vote in favor of making the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 county prosecutor a full-time position, it shall become effective upon the date that
17 the prosecutor who is elected at the next election subsequent to the passage of
18 such proposal is sworn into office. **The position shall then qualify for the**
19 **retirement benefits available to a full-time prosecutor of a county of the**
20 **first classification. Any county that elects to make the position of**
21 **prosecuting attorney full-time shall pay into the Missouri prosecuting**
22 **attorneys and circuit attorneys' retirement fund at the same**
23 **contribution amount as paid by counties of the first classification.**

24 2. The provisions of subsection 1 of this section notwithstanding, in any
25 county where the proposition of making the county prosecutor a full-time position
26 was submitted to the voters at a general election in 1998 and where a majority
27 of the voters voting on the proposition voted in favor of making the county
28 prosecutor a full-time position, the proposition shall become effective on May 1,
29 1999. Any prosecuting attorney whose position becomes full time on May 1, 1999,
30 under the provisions of this subsection shall have the additional duty of providing
31 not less than three hours of continuing education to peace officers in the county
32 served by the prosecuting attorney in each year of the term beginning January
33 1, 1999.

34 3. In counties that, prior to August 28, 2001, have elected pursuant to this
35 section to make the position of prosecuting attorney a full-time position, the
36 county commission may at any time elect to have that position also qualify for the
37 retirement benefit available for a full-time prosecutor of a county of the first
38 classification. Such election shall be made by a majority vote of the county
39 commission and once made shall be irrevocable, unless the voters of the county
40 elect to change the position of prosecuting attorney back to a part-time position
41 under subsection 4 of this section. When such an election is made, the results
42 shall be transmitted to the Missouri prosecuting attorneys and circuit attorneys'
43 retirement system fund, and the election shall be effective on the first day of
44 January following such election. Such election shall also obligate the county to
45 pay into the Missouri prosecuting attorneys and circuit attorneys' system
46 retirement fund the same retirement contributions for full-time prosecutors as are
47 paid by counties of the first classification.

48 4. In any county of the third classification without a township form of
49 government and with more than twelve thousand but fewer than fourteen
50 thousand inhabitants and with a city of the fourth classification with more than
51 one thousand seven hundred but fewer than one thousand nine hundred

52 inhabitants as the county seat that has elected to make the county prosecutor a
53 full-time position under this section after August 28, 2014, the county commission
54 may on its own motion and shall upon the petition of ten percent of the total
55 number of people who voted in the previous general election in the county submit
56 to the voters at a general or special election the proposition of changing the
57 full-time prosecutor position to a part-time position. The commission shall cause
58 notice of the election to be published in a newspaper published within the county,
59 or if no newspaper is published within the county, in a newspaper published in
60 an adjoining county, for three weeks consecutively, the last insertion of which
61 shall be at least ten days and not more than thirty days before the day of the
62 election, and by posting printed notices thereof at three of the most public places
63 in each township in the county. The proposition shall be put before the voters
64 substantially in the following form:

65 Shall the office of prosecuting attorney be made a part-time position in
66 County?

67 ☐ YES

☐ NO

68 If a majority of the voters vote in favor of making the county prosecutor a
69 part-time position, it shall become effective upon the date that the prosecutor who
70 is elected at the next election subsequent to the passage of such proposal is sworn
71 into office.

72 5. In any county that has elected to make the full-time position of county
73 prosecutor a part-time position under subsection 4 of this section, the county's
74 retirement contribution to the retirement system and the retirement benefit
75 earned by the member shall prospectively be that of a part-time prosecutor as
76 established in this chapter. Any retirement contribution made and retirement
77 benefit earned prior to the effective date of the voter-approved proposition under
78 subsection 4 of this section shall be maintained by the retirement system and
79 used to calculate the retirement benefit for such prior full-time position
80 service. Under no circumstances shall a member in a part-time prosecutor
81 position earn full-time position retirement benefit service accruals for time
82 periods after the effective date of the proposition changing the county prosecutor
83 back to a part-time position.

 56.805. As used in sections 56.800 to 56.840, the following words and
2 terms mean:

3 (1) "Annuity", annual payments, made in equal monthly installments, to
4 a retired member from funds provided for, in, or authorized by, the provisions of

5 sections 56.800 to 56.840;

6 (2) "Average final compensation", the average compensation of an
7 employee for the two consecutive years prior to retirement when the employee's
8 compensation was greatest;

9 (3) "Board of trustees" or "board", the board of trustees established by the
10 provisions of sections 56.800 to 56.840;

11 (4) "Compensation", all salary and other compensation payable by a
12 county to an employee for personal services rendered as an employee, **including**
13 **any salary reduction amounts under a cafeteria plan that satisfies 26**
14 **U.S.C. Section 125 or an eligible deferred compensation plan that**
15 **satisfies 26 U.S.C. Section 457** but not including [travel and mileage]
16 reimbursement **for any expenses, any consideration for agreeing to**
17 **terminate employment, or any other nonrecurring or unusual payment**
18 **that is not part of regular remuneration;**

19 (5) "County", the city of St. Louis and each county in the state;

20 (6) "Creditable service", the sum of both membership service and
21 creditable prior service;

22 (7) "Effective date of the establishment of the system", August 28, 1989;

23 (8) "Employee", an elected or appointed prosecuting attorney or circuit
24 attorney who is employed by a county or a city not within a county;

25 (9) "Membership service", service as a prosecuting attorney or circuit
26 attorney after becoming a member that is creditable in determining the amount
27 of the member's benefits under this system;

28 (10) "Prior service", service of a member rendered prior to the effective
29 date of the establishment of the system which is creditable under section 56.823;

30 (11) "Retirement system" or "system", the prosecuting attorneys and
31 circuit attorneys' retirement system authorized by the provisions of sections
32 56.800 to 56.840.

56.807. 1. Beginning August 28, 1989, and continuing monthly thereafter
2 until August 27, 2003, the funds for prosecuting attorneys and circuit attorneys
3 provided for in subsection 2 of this section shall be paid from county or city funds.

4 2. Beginning August 28, 1989, and continuing monthly thereafter until
5 August 27, 2003, each county treasurer shall pay to the system the following
6 amounts to be drawn from the general revenues of the county:

7 (1) For counties of the third and fourth classification except as provided
8 in subdivision (3) of this subsection, three hundred seventy-five dollars;

9 (2) For counties of the second classification, five hundred forty-one dollars
10 and sixty-seven cents;

11 (3) For counties of the first classification, and, except as otherwise
12 provided under section 56.363, counties which pursuant to section 56.363 elect to
13 make the position of prosecuting attorney a full-time position after August 28,
14 2001, or whose county commission has elected a full-time retirement benefit
15 pursuant to subsection 3 of section 56.363, and the city of St. Louis, one thousand
16 two hundred ninety-one dollars and sixty-seven cents.

17 3. Beginning August 28, 1989, and continuing until August 27, 2003, the
18 county treasurer shall at least monthly transmit the sums specified in subsection
19 2 of this section to the Missouri office of prosecution services for deposit to the
20 credit of the "Missouri Prosecuting Attorneys and Circuit Attorneys' Retirement
21 System Fund", which is hereby created. All moneys held by the state treasurer
22 on behalf of the system shall be paid to the system within ninety days after
23 August 28, 1993. Moneys in the Missouri prosecuting attorneys and circuit
24 attorneys' retirement system fund shall be used only for the purposes provided
25 in sections 56.800 to 56.840 and for no other purpose.

26 4. Beginning August 28, 2003, the funds for prosecuting attorneys and
27 circuit attorneys provided for in this section shall be paid from county or city
28 funds and the surcharge established in this section and collected as provided by
29 this section and sections 488.010 to 488.020.

30 5. (1) Beginning August 28, 2003, each county treasurer shall pay to the
31 system the following amounts to be drawn from the general revenues of the
32 county:

33 (a) For counties of the third and fourth classification except as provided
34 in paragraph (c) of this subdivision, one hundred eighty-seven dollars;

35 (b) For counties of the second classification, two hundred seventy-one
36 dollars;

37 (c) For counties of the first classification, counties which pursuant to
38 section 56.363 elect to make the position of prosecuting attorney a full-time
39 position after August 28, 2001, or whose county commission has elected a
40 full-time retirement benefit pursuant to subsection 3 of section 56.363, and the
41 City of St. Louis, six hundred forty-six dollars.

42 (2) Beginning August 28, 2015, the county contribution set forth in
43 paragraphs (a) to (c) of subdivision (1) of this subsection shall be adjusted in
44 accordance with the following schedule based upon the prosecuting attorneys and

45 circuit attorneys' retirement system's annual actuarial valuation report. If the
46 system's funding ratio is:

47 (a) One hundred twenty percent or more, no monthly sum shall be
48 transmitted;

49 (b) More than one hundred ten percent but less than one hundred twenty
50 percent, the monthly sum transmitted shall be reduced fifty percent;

51 (c) At least ninety percent and up to and including one hundred ten
52 percent, the monthly sum transmitted shall remain the same;

53 (d) At least eighty percent and less than ninety percent, the monthly sum
54 transmitted shall be increased fifty percent; and

55 (e) Less than eighty percent, the monthly sum transmitted shall be
56 increased one hundred percent.

57 6. Beginning August 28, 2003, the county treasurer shall at least monthly
58 transmit the sums specified in subsection 5 of this section to the Missouri office
59 of prosecution services for deposit to the credit of the Missouri prosecuting
60 attorneys and circuit attorneys' retirement system fund. Moneys in the Missouri
61 prosecuting attorneys and circuit attorneys' retirement system fund shall be used
62 only for the purposes provided in sections 56.800 to 56.840, and for no other
63 purpose.

64 7. Beginning August 28, 2003, the following surcharge for prosecuting
65 attorneys and circuit attorneys shall be collected and paid as follows:

66 (1) There shall be assessed and collected a surcharge of four dollars in all
67 criminal cases filed in the courts of this state including violation of any county
68 ordinance, any violation of criminal or traffic laws of this state, including
69 infractions, and against any person who has pled guilty for any violation and paid
70 a fine through a fine collection center, but no such surcharge shall be assessed
71 when the costs are waived or are to be paid by the state, county, or municipality
72 or when a criminal proceeding or the defendant has been dismissed by the
73 court. For purposes of this section, the term "county ordinance" shall include any
74 ordinance of the City of St. Louis;

75 (2) The clerk responsible for collecting court costs in criminal cases shall
76 collect and disburse such amounts as provided by sections 488.010 to
77 488.026. Such funds shall be payable to the prosecuting attorneys and circuit
78 attorneys' retirement fund. Moneys credited to the prosecuting attorneys and
79 circuit attorneys' retirement fund shall be used only for the purposes provided for
80 in sections 56.800 to 56.840 and for no other purpose.

81 8. The board may accept gifts, donations, grants and bequests from
82 private or public sources to the Missouri prosecuting attorneys and circuit
83 attorneys' retirement system fund.

84 9. No state moneys shall be used to fund section 56.700 and sections
85 56.800 to 56.840 unless provided for by law.

86 **10. Beginning January first following the effective date of this**
87 **section, all members, who upon vesting and retiring are eligible to**
88 **receive a normal annuity equal to fifty percent of the final average**
89 **compensation and, as a condition of participation, shall contribute two**
90 **percent of their gross salary to the fund. Each county treasurer shall**
91 **deduct the appropriate amount from the gross salary of the prosecuting**
92 **attorney or circuit attorney and, at least monthly, shall transmit the**
93 **sum to the prosecuting attorney and circuit attorney retirement system**
94 **for deposit in the prosecuting attorneys and circuit attorneys'**
95 **retirement fund.**

96 **11. Upon separation from the system, a nonvested member shall**
97 **receive a lump sum payment equal to the total contribution of the**
98 **member without interest or other increases in value.**

99 **12. Upon retirement and in the sole discretion of the board on**
100 **the advice of the actuary, a member shall receive a lump sum payment**
101 **equal to the total contribution of the member without interest or other**
102 **increases in value. This amount shall be in addition to any retirement**
103 **benefits to which the member is entitled.**

104 **13. Upon the death of a nonvested member or the death of a**
105 **vested member prior to retirement, the lump sum payment in**
106 **subsection 11 or 12 of this section shall be made to the designated**
107 **beneficiary of the member or, if no beneficiary has been designated, to**
108 **the member's estate.**

56.814. 1. Any member who has attained the age of sixty-two years and
2 who has twelve years or more of creditable service as prosecuting attorney or
3 circuit attorney **by January first following the effective date of this**
4 **section** may retire with a normal annuity.

5 **2. Any member who does not have at least twelve years of**
6 **creditable service by January first following the effective date of this**
7 **section may retire with a normal annuity upon attaining the age of**
8 **sixty-five years and accruing at least twelve years of creditable service.**

56.818. 1. Each member who retires on or after August 28, 1989, shall

2 receive each year an increase in the amount of benefits received by the member
3 during the preceding year equal to the increase in the consumer price index
4 calculated in the manner hereinafter provided [not to exceed] **of at least two**
5 **percent and not to exceed four percent** in any year. The total increase in the
6 amount of benefits received pursuant to the provisions of this subsection shall not
7 exceed fifty percent of the initial benefit which the member received upon
8 retirement.

9 2. For the purposes of this section, any increase in the consumer price
10 index shall be determined by the board in May of each year, based upon the
11 consumer price index for the preceding calendar year over the consumer price
12 index for the calendar year immediately prior thereto. Any increase so
13 determined shall be applied by the board in calculating any benefit increases that
14 become payable under this section for the twelve-month period beginning with the
15 June first immediately following such determination.

16 3. An annual increase shall be payable monthly beginning on a date
17 specified by the board. Nothing in this section shall be construed to prohibit a
18 member from waiving his right to receive the annual increase provided pursuant
19 to this section. The waiver shall be final as to the annual increase waived.

56.833. 1. Upon termination of employment, any member with twelve or
2 more years of creditable service **by January first following the effective**
3 **date of this section** shall be entitled to a deferred normal annuity, payable at
4 age fifty-five with twelve or more years of creditable service. **Any member with**
5 **less than twelve years of creditable service by January first following**
6 **the effective date of this section shall be entitled to a deferred normal**
7 **annuity, payable at age sixty with twelve or more years of creditable**
8 **service.** Any member with less than twelve years of creditable service shall
9 forfeit all rights in the fund, including the member's accrued creditable service
10 as of the date of the member's termination of employment.

11 2. A former member who has forfeited creditable service may have the
12 creditable service restored by again becoming an employee [and] **within ten**
13 **years of the date of the termination of employment,** completing four years
14 of continuous membership service, **and contributing an amount to the fund**
15 **equal to any lump sum payment received under subsections 11 and 12**
16 **of section 56.807. Notwithstanding any other provision of section**
17 **104.800 to the contrary, a former member shall not be entitled to**
18 **transfer creditable service into this retirement system unless the**

19 **member previously vested in this system.**

20 3. Absences for sickness or injury of less than twelve months shall be
21 counted as membership service.

56.840. 1. Annuity payments to retired employees under the provisions
2 of sections 56.800 to 56.840 shall be available beginning January first next
3 succeeding the expiration of two calendar years from the effective date of the
4 establishment of the system to eligible retired employees, and employees with at
5 least twelve years of creditable service shall have vested rights and upon reaching
6 the required age shall be entitled to retirement benefits.

7 2. All members serving as a prosecuting attorney or circuit
8 attorney in a county of the first classification, a county with a charter
9 form of government, or a city not within a county shall receive one year
10 of creditable service for each year served.

11 3. Members serving as a prosecuting attorney in counties that
12 elected to make the position of prosecuting attorney a full-time position
13 shall receive one year of creditable service for each year served as a
14 full-time prosecuting attorney and six-tenths of a year of creditable
15 service for each year served as a part-time prosecuting attorney.

16 4. Members restoring creditable service under subsection 2 of
17 section 56.833 shall receive one year of creditable service for each
18 restored year served as a full-time prosecuting attorney and six-tenths
19 of a year of creditable service for each restored year served as a part-
20 time prosecuting attorney. Unless otherwise permitted by law, no
21 member shall receive credit for any partial year of employment.

22 5. Notwithstanding any provision of the law to the contrary, any
23 member who vested in the system as a part-time prosecuting attorney
24 and who ceased being a member for more than six months before
25 returning as a full-time prosecuting attorney shall be entitled only to
26 retirement benefits as a part-time prosecuting attorney. Any creditable
27 service earned by such an employee upon returning to the system as a
28 full-time prosecuting attorney shall begin a new vesting period subject
29 to the provision of the system in effect at the time of the member's
30 return. No member shall receive benefits while employed as a
31 prosecuting attorney or circuit attorney.

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