

SECOND REGULAR SESSION

HOUSE BILL NO. 2538

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LEARA.

6473H.011

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Sections 56.363, 56.805, 56.807, 56.814, 56.818, 56.833, and 56.840, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 56.363, 56.805, 56.807, 56.814, 56.818, 56.833, and 56.840, to read as follows: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 county prosecutor a full-time position, it shall become effective upon the date that the prosecutor who

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

42 4. In any county of the third classification without a township form of government and
43 with more than twelve thousand but fewer than fourteen thousand inhabitants and with a city of
44 the fourth classification with more than one thousand seven hundred but fewer than one thousand
45 nine hundred inhabitants as the county seat that has elected to make the county prosecutor a
46 full-time position under this section after August 28, 2014, the county commission may on its
47 own motion and shall upon the petition of ten percent of the total number of people who voted
48 in the previous general election in the county submit to the voters at a general or special election
49 the proposition of changing the full-time prosecutor position to a part-time position. The
50 commission shall cause notice of the election to be published in a newspaper published within
51 the county, or if no newspaper is published within the county, in a newspaper published in an

52 adjoining county, for three weeks consecutively, the last insertion of which shall be at least ten
53 days and not more than thirty days before the day of the election, and by posting printed notices
54 thereof at three of the most public places in each township in the county. The proposition shall
55 be put before the voters substantially in the following form:

56 Shall the office of prosecuting attorney be made a part-time position in County?
57 YES NO

58

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

62 5. In any county that has elected to make the full-time position of county prosecutor a
63 part-time position under subsection 4 of this section, the county's retirement contribution to the
64 retirement system and the retirement benefit earned by the member shall prospectively be that
65 of a part-time prosecutor as established in this chapter. Any retirement contribution made and
66 retirement benefit earned prior to the effective date of the voter-approved proposition under
67 subsection 4 of this section shall be maintained by the retirement system and used to calculate
68 the retirement benefit for such prior full-time position service. Under no circumstances shall a
69 member in a part-time prosecutor position earn full-time position retirement benefit service
70 accruals for time periods after the effective date of the proposition changing the county
71 prosecutor back to a part-time position.

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

2 (1) "Annuity", annual payments, made in equal monthly installments, to a retired
3 member from funds provided for, in, or authorized by, the provisions of sections 56.800 to
4 56.840;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 5. (1) Beginning August 28, 2003, each county treasurer shall pay to the system the
28 following amounts to be drawn from the general revenues of the county:

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

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

32 (c) For counties of the first classification, counties which pursuant to section 56.363 elect
33 to make the position of prosecuting attorney a full-time position after August 28, 2001, or whose
34 county commission has elected a full-time retirement benefit pursuant to subsection 3 of section
35 56.363, and the City of St. Louis, six hundred forty-six dollars.

36 (2) Beginning August 28, 2015, the county contribution set forth in paragraphs (a) to (c)
37 of subdivision (1) of this subsection shall be adjusted in accordance with the following schedule
38 based upon the prosecuting attorneys and circuit attorneys' retirement system's annual actuarial
39 valuation report. If the system's funding ratio is:

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

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

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

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

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

49 6. Beginning August 28, 2003, the county treasurer shall at least monthly transmit the
50 sums specified in subsection 5 of this section to the Missouri office of prosecution services for
51 deposit to the credit of the Missouri prosecuting attorneys and circuit attorneys' retirement system
52 fund. Moneys in the Missouri prosecuting attorneys and circuit attorneys' retirement system fund
53 shall be used only for the purposes provided in sections 56.800 to 56.840, and for no other
54 purpose.

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

57 (1) There shall be assessed and collected a surcharge of four dollars in all criminal cases
58 filed in the courts of this state including violation of any county ordinance, any violation of
59 criminal or traffic laws of this state, including infractions, and against any person who has pled

60 guilty for any violation and paid a fine through a fine collection center, but no such surcharge
61 shall be assessed when the costs are waived or are to be paid by the state, county, or municipality
62 or when a criminal proceeding or the defendant has been dismissed by the court. For purposes
63 of this section, the term "county ordinance" shall include any ordinance of the City of St. Louis;

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

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

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

73 **10. Beginning January first following the effective date of this section, all members,**
74 **as a condition of participation, shall contribute two percent of their gross salary to the**
75 **fund. Each county treasurer shall deduct the appropriate amount from the gross salary**
76 **of the prosecuting attorney or circuit attorney and, at least monthly, shall transmit the sum**
77 **to the prosecuting attorney and circuit attorney retirement system for deposit in the**
78 **prosecuting attorneys and circuit attorneys' retirement fund.**

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

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

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

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

4 **2. Any member who does not have at least twelve years of creditable service by the**
5 **effective date of this section may retire with a normal annuity upon attaining the age of**
6 **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 receive each year an increase in the amount of benefits received by the member during the preceding year equal to the increase in the consumer price index calculated in the manner hereinafter provided [not to exceed] **of at least two percent and not to exceed four percent** in any year. The total increase in the amount of benefits received pursuant to the provisions of this subsection shall not exceed fifty percent of the initial benefit which the member received upon retirement.

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

3. An annual increase shall be payable monthly beginning on a date specified by the board. Nothing in this section shall be construed to prohibit a member from waiving his right to receive the annual increase provided pursuant 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 more years of creditable service **on the effective date of this section** shall be entitled to a deferred normal annuity, payable at age fifty-five with twelve or more years of creditable service. **Any member with less than twelve years of creditable service on the effective date of this section shall be entitled to a deferred normal annuity, payable at age sixty with twelve or more years of creditable service.** Any member with less than twelve years of creditable service shall forfeit all rights in the fund, including the member's accrued creditable service as of the date of the member's termination of employment.

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

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

56.840. 1. Annuity payments to retired employees under the provisions of sections 56.800 to 56.840 shall be available beginning January first next succeeding the expiration of two calendar years from the effective date of the establishment of the system to eligible retired

4 employees, and employees with at least twelve years of creditable service shall have vested rights
5 and upon reaching the required age shall be entitled to retirement benefits.

6 **2. All members serving as a prosecuting attorney or circuit attorney in a county of**
7 **the first classification or a city not within a county shall receive one year of creditable**
8 **service for each year served.**

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

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

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

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