

COMMITTEE SUBSTITUTE

FOR

H. B. 4392

(BY DELEGATES BOGGS, M. POLING, MOORE, BARILL, L. PHILLIPS,
WHITE, HALL, PETHTEL, JONES AND FRAZIER)

(Originating in the Committee on Finance)
[February 22, 2012]

A BILL to amend and reenact §50-1-3, §50-1-8, §50-1-9 and §50-1-9a of the Code of West Virginia, 1931, as amended, all relating generally to the magistrate court system; providing compensation for magistrates, magistrate assistants, magistrate court clerks and magistrate court deputy clerks; and authorizing judges to appoint magistrate court clerks in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §50-1-3, §50-1-8, §50-1-9 and §50-1-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. COURTS AND OFFICERS.

§50-1-3. Salaries of magistrates.

1 (a) The Legislature finds and declares that:

2 ~~(1) The West Virginia Supreme Court of Appeals has~~
3 ~~held that a salary system for magistrates which is based upon~~
4 ~~the population that each magistrate serves does not violate the~~
5 ~~equal protection clause of the Constitution of the United~~
6 ~~States;~~

7 ~~(2) The West Virginia Supreme Court of Appeals has~~
8 ~~held that a salary system for magistrates which is based upon~~
9 ~~the population that each magistrate serves does not violate~~
10 ~~section thirty-nine, article VI of the Constitution of West~~
11 ~~Virginia;~~

12 ~~(3) The utilization of a two-tiered salary schedule for~~
13 ~~magistrates is an equitable and rational manner by which~~
14 ~~magistrates should be compensated for work performed;~~

15 ~~(4) Organizing the two tiers of the salary schedule into~~
16 ~~one tier for magistrates serving less than eight thousand four~~
17 ~~hundred in population and the second tier for magistrates~~

18 ~~serving eight thousand four hundred or more in population is~~
19 ~~rational and equitable given current statistical information~~
20 ~~relating to population and caseload; and~~

21 ~~(5) That all magistrates who fall under the same tier~~
22 ~~should be compensated equally.~~

23 ~~(b) The salary of each magistrate shall be paid by the~~
24 ~~state. Magistrates who serve fewer than eight thousand four~~
25 ~~hundred in population shall be paid annual salaries of thirty~~
26 ~~thousand six hundred twenty-five dollars and magistrates~~
27 ~~who serve eight thousand four hundred or more in population~~
28 ~~shall be paid annual salaries of thirty-seven thousand dollars.~~

29 ~~*Provided, That on and after the first day of July, two*~~
30 ~~*thousand three, magistrates who serve fewer than eight*~~
31 ~~*thousand four hundred in population shall be paid annual*~~
32 ~~*salaries of thirty-three thousand six hundred twenty-five*~~
33 ~~*dollars and magistrates who serve eight thousand four*~~
34 ~~*hundred or more in population shall be paid annual salaries*~~
35 ~~*of forty thousand dollars. *Provided, however, That on and**~~
36 ~~*after the first day of July, two thousand five, magistrates who*~~

37 ~~serve fewer than eight thousand four hundred in population~~
38 ~~shall be paid annual salaries of forty-three thousand six~~
39 ~~hundred twenty-five dollars and magistrates who serve eight~~
40 ~~thousand four hundred or more in population shall be paid~~
41 ~~annual salaries of fifty thousand dollars. *Provided further,*~~
42 ~~That on and after the first day of July, 2011, magistrates who~~
43 ~~serve fewer than eight thousand four hundred in population~~
44 ~~shall be paid annual salaries of \$51,125 and magistrates who~~
45 ~~serve eight thousand four hundred or more in population shall~~
46 ~~be paid annual salaries of \$57,500.~~

47 ~~(c) For the purpose of determining the population served~~
48 ~~by each magistrate, the number of magistrates authorized for~~
49 ~~each county shall be divided into the population of each~~
50 ~~county. For the purpose of this article, the population of each~~
51 ~~county is the population as determined by the last preceding~~
52 ~~decennial census taken under the authority of the United~~
53 ~~States government.~~

54 All magistrates shall be compensated equally. Beginning
55 July 1, 2012, the annual salary of all magistrates is \$57,500.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

1 (a) In each county having ~~three or more~~ magistrates the
2 judge of the circuit court or the chief judge of the circuit
3 court, if there is more than one judge of the circuit court,
4 shall appoint a magistrate court clerk. ~~In all other counties~~
5 ~~the judge may appoint a magistrate court clerk or may by rule~~
6 ~~require the duties of the magistrate court clerk to be~~
7 ~~performed by the clerk of the circuit court, in which event the~~
8 ~~circuit court clerk is entitled to additional compensation in~~
9 ~~the amount of \$2,500 per year.~~ The magistrate court clerk
10 serves at the will and pleasure of the circuit judge.

11 (b) Magistrate court clerks shall be ~~paid a monthly salary~~
12 ~~by the state.~~ Magistrate court clerks serving magistrates who
13 ~~serve less than eight thousand four hundred in population~~
14 ~~shall be paid up to \$26,436 per year and magistrate court~~
15 ~~clerks serving magistrates who serve eight thousand four~~
16 ~~hundred or more in population shall be paid up to \$31,344~~
17 ~~per year.~~ *Provided,* ~~That on and after July 1, 2006,~~

18 ~~magistrate court clerks serving magistrates who serve less~~
19 ~~than eight thousand four hundred in population shall be paid~~
20 ~~up to \$31,436 per year and magistrate court clerks serving~~
21 ~~magistrates who serve eight thousand four hundred or more~~
22 ~~in population shall be paid up to \$36,344 per year: *Provided,*~~
23 ~~*however,* That on and after July 1, 2007, magistrate court~~
24 ~~clerks serving magistrates who serve less than eight thousand~~
25 ~~four hundred in population shall be paid up to \$36,436 per~~
26 ~~year and magistrate court clerks serving magistrates who~~
27 ~~serve eight thousand four hundred or more in population shall~~
28 ~~be paid up to \$41,344 per year: *Provided further,* That after~~
29 ~~the effective date of this section, any general salary increase~~
30 ~~granted to all state employees, whose salaries are not set by~~
31 ~~statute, expressed as a percentage increase or an “across-the-~~
32 ~~board” increase, may also be granted to magistrate court~~
33 ~~clerks. For the purpose of determining the population served~~
34 ~~by each magistrate, the number of magistrates authorized for~~
35 ~~each county shall be divided into the population of each~~
36 ~~county. The salary of the magistrate court clerk shall be~~

37 ~~established by the judge of the circuit court, or the chief~~
38 ~~judge of the circuit court if there is more than one judge of~~
39 ~~the circuit court, within the limits set forth in this section~~
40 compensated equally.

41 (c) Beginning July 1, 2012, the annual salary of all
42 magistrate court clerks is \$44,720: *Provided*, That after the
43 effective date of this section, any general salary increase
44 granted to state employees, whose salaries are not set by
45 statute, expressed as a percentage increase or an “across-the-
46 board” increase, may also be granted to magistrate court
47 clerks.

48 (c) ~~(d)~~ In addition to other duties that may be imposed by
49 the provisions of this chapter, or by the rules of the Supreme
50 Court of Appeals, or the judge of the circuit court, or the
51 chief judge of the circuit court, if there is more than one
52 judge of the circuit court, it is the duty of the magistrate court
53 clerk to establish and maintain appropriate dockets and
54 records in a centralized system for the magistrate court, to
55 assist in the preparation of the reports required of the court

56 and to carry out on behalf of the magistrates or chief
57 magistrate if a chief magistrate is appointed, the
58 administrative duties of the court.

59 (d) (e) The magistrate court clerk ~~or if there is no~~
60 ~~magistrate court clerk in the county, the clerk of the circuit~~
61 ~~court,~~ may issue all manner of civil process and require the
62 enforcement of subpoenas and subpoenas duces tecum in
63 magistrate court.

§50-1-9. Magistrate assistants; salary; duties.

1 (a) In each county there shall be one magistrate assistant
2 for each magistrate. Each magistrate assistant shall be
3 appointed by the magistrate under whose authority and
4 supervision and at whose will and pleasure he or she shall
5 serve. The assistant shall not be a member of the immediate
6 family of any magistrate and shall not have been convicted of
7 a felony or any misdemeanor involving moral turpitude and
8 shall reside in the State of West Virginia. For the purpose of
9 this section, “immediate family” means the relationships of
10 mother, father, sister, brother, child or spouse.

11 (b) A magistrate assistant shall have the duties, clerical or
12 otherwise, assigned by the magistrate and prescribed by the
13 rules of the Supreme Court of Appeals, or the judge of the
14 circuit court, or the chief judge of the circuit court, if there is
15 more than one judge of the circuit court. In addition to these
16 duties, magistrate assistants shall perform and are
17 accountable to the magistrate court clerks with respect to the
18 following duties:

- 19 (1) The preparation of summons in civil actions;
- 20 (2) The assignment of civil actions to the various
21 magistrates;
- 22 (3) The collection of all costs, fees, fines, forfeitures and
23 penalties which are payable to the court;
- 24 (4) The submission of moneys, along with an accounting
25 of the moneys, to appropriate authorities as provided by law;
- 26 (5) The daily disposition of closed files which are to be
27 located in the magistrate clerk's office;
- 28 (6) All duties related to the gathering of information and
29 documents necessary for the preparation of administrative

30 reports and documents required by the rules of the Supreme
31 Court of Appeals, or the judge of the circuit court, or the
32 chief judge of the circuit court, if there is more than one
33 judge of the circuit court;

34 (7) All duties relating to the notification, certification and
35 payment of jurors serving pursuant to the terms of this chapter;

36 (8) All other duties or responsibilities whereby the
37 magistrate assistant is accountable to the magistrate court
38 clerk as determined by the magistrate.

39 (c) Magistrate assistants shall be paid a monthly salary by
40 ~~the state. Magistrate assistants serving magistrates who serve~~
41 ~~less than eight thousand four hundred in population shall be~~
42 ~~paid up to \$23,148 per year and magistrate assistants serving~~
43 ~~magistrates who serve eight thousand four hundred or more~~
44 ~~in population shall be paid up to \$26,244 per year. *Provided,*~~
45 ~~That on and after July 1, 2006, magistrate assistants serving~~
46 ~~magistrates who serve less than eight thousand four hundred~~
47 ~~in population shall be paid up to \$28,148 per year and~~
48 ~~magistrate assistants serving magistrates who serve eight~~

49 thousand four hundred or more in population shall be paid up
50 to \$31,244 per year: *Provided, however,* That on and after
51 July 1, 2007, magistrate assistants serving magistrates who
52 serve less than eight thousand four hundred in population
53 shall be paid up to \$33,148 per year and magistrate assistants
54 serving magistrates who serve eight thousand four hundred or
55 more in population shall be paid up to \$36,244 per year:
56 *Provided further,* That after the effective date of this section,
57 any general salary increase granted to all state employees;
58 whose salaries are not set by statute, expressed as a
59 percentage increase or an “across-the-board” increase, may
60 also be granted to magistrate assistants. For the purpose of
61 determining the population served by each magistrate, the
62 number of magistrates authorized for each county shall be
63 divided into the population of each county. The salary of the
64 magistrate assistant shall be established by the magistrate
65 within the limits set forth in this section compensated equally.

66 (d) Beginning July 1, 2012, the annual salary of all
67 magistrate assistants is \$39,348: *Provided,* That after the

68 effective date of this section, any general salary increase
69 granted to state employees, whose salaries are not set by
70 statute, expressed as a percentage increase or an “across-the-
71 board” increase, may also be granted to magistrate assistants.

§50-1-9a. Magistrate court deputy clerks; duties; salary.

1 (a) Whenever required by workload and upon the
2 recommendation of the judge of the circuit court or the chief
3 judge of the circuit court, if there is more than one judge of
4 the circuit court, the Supreme Court of Appeals may, by rule,
5 provide for the appointment of magistrate court deputy
6 clerks, not to exceed seventy-two in number. The magistrate
7 court deputy clerks shall be appointed by the judge of the
8 circuit court or the chief judge, if there is more than one
9 judge of the circuit court, to serve at his or her will and
10 pleasure under the immediate supervision of the magistrate
11 court clerk.

12 (b) Magistrate court deputy clerks shall have the duties,
13 clerical or otherwise, as may be assigned by the magistrate
14 court clerk and as may be prescribed by the rules of the

15 Supreme Court of Appeals, or the judge of the circuit court,
16 or the chief judge, if there is more than one judge of the
17 circuit court. Magistrate court deputy clerks may also
18 exercise the power and perform the duties of the magistrate
19 court clerk as may be delegated or assigned by the magistrate
20 court clerk.

21 (c) A magistrate court deputy clerk may not be an
22 immediate family member of any magistrate, magistrate court
23 clerk, magistrate assistant or judge of the circuit court within the
24 same county, may not have been convicted of a felony or any
25 misdemeanor involving moral turpitude and must reside in this
26 state. For purposes of this subsection, “immediate family
27 member” means a mother, father, sister, brother, child or spouse.

28 (d) Magistrate court deputy clerks shall be ~~paid an annual~~
29 ~~salary by the state on the same basis and in the same amounts~~
30 ~~established for magistrate assistants in each county, as~~
31 ~~provided in section nine of this article~~ compensated equally.

32 (e) Beginning July 1, 2012, the annual salary of all
33 magistrate court deputy clerks is \$39,348: *Provided, That*

34 after the effective date of this section, any general salary
35 increase granted to state employees, whose salaries are not set
36 by statute, expressed as a percentage increase or an “across-
37 the-board” increase, may also be granted to magistrate court
38 deputy clerks.