

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 378**

4 (By Senators D. Hall, Kessler (Mr. President), Cann, Edgell,
5 Facemire, Green, Unger, Williams, Fitzsimmons and Plymale)

6 _____
7 [Originating in the Committee on the Judiciary;
8 reported March 27, 2013.]

**FISCAL
NOTE**

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12 A BILL to amend and reenact §50-1-3, §50-1-8, §50-1-9 and §50-1-9a
13 of the Code of West Virginia, 1931, as amended, all relating
14 to adjusting the population line upon which salaries for
15 magistrates and certain magistrate employees are calculated;
16 providing an effective date; and providing that the
17 adjustments are retroactive to January 1, 2013.

18 *Be it enacted by the Legislature of West Virginia:*

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

22 **ARTICLE 1. COURTS AND OFFICERS.**

23 **§50-1-3. Salaries of magistrates.**

24 (a) The Legislature finds and declares that:

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

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

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

12 (4) Organizing the two tiers of the salary schedule into one
13 tier for magistrates serving less than ~~eight~~ seven thousand ~~four~~
14 three hundred in population and the second tier for magistrates
15 serving ~~eight~~ seven thousand ~~four~~ three hundred or more in
16 population is rational and equitable given current statistical
17 information relating to population and caseload; and

18 (5) That all magistrates who fall under the same tier should
19 be compensated equally.

20 (b) The salary of each magistrate shall be paid by the state.
21 ~~Magistrates who serve fewer than eight thousand four hundred in~~
22 ~~population shall be paid annual salaries of \$30,625 and magistrates~~
23 ~~who serve eight thousand four hundred or more in population shall~~
24 ~~be paid annual salaries of \$37,000: Provided, That on and after~~

1 ~~July 1, 2003, magistrates who serve fewer than eight thousand four~~
2 ~~hundred in population shall be paid annual salaries of \$33,625 and~~
3 ~~magistrates who serve eight thousand four hundred or more in~~
4 ~~population shall be paid annual salaries of \$40,000: *Provided,*~~
5 ~~*however,* That on and after July 1, 2005, magistrates who serve~~
6 ~~fewer than eight thousand four hundred in population shall be paid~~
7 ~~annual salaries of \$43,625 and magistrates who serve eight thousand~~
8 ~~four hundred or more in population shall be paid annual salaries of~~
9 ~~\$50,000: *Provided further,* That on and after July 1, 2011,~~
10 Magistrates who serve fewer than ~~eight~~ seven thousand ~~four~~ three
11 hundred in population shall be paid annual salaries of \$51,125 and
12 magistrates who serve ~~eight~~ seven thousand ~~four~~ three hundred or
13 more in population shall be paid annual salaries of \$57,500.

14 (c) For the purpose of determining the population served by
15 each magistrate, the number of magistrates authorized for each
16 county shall be divided into the population of each county. For the
17 purpose of this article, the population of each county is the
18 population as determined by the last preceding decennial census
19 taken under the authority of the United States government.

20 (d) Notwithstanding any provision of this code to the
21 contrary, the amendments made to this section during the 2013
22 regular legislative session are effective upon date of passage and
23 are retroactive to January 1, 2013.

24 **§50-1-8. Magistrate court clerks; salaries; duties; duties of**

1 **circuit clerk.**

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

12 (b) Magistrate court clerks shall be paid a monthly salary by
13 the state. ~~Magistrate court clerks serving magistrates who serve~~
14 ~~less than eight thousand four hundred in population shall be paid~~
15 ~~up to \$26,436 per year and magistrate court clerks serving~~
16 ~~magistrates who serve eight thousand four hundred or more in~~
17 ~~population shall be paid up to \$31,344 per year: *Provided, That on*~~
18 ~~and after July 1, 2006, magistrate court clerks serving magistrates~~
19 ~~who serve less than eight thousand four hundred in population shall~~
20 ~~be paid up to \$31,436 per year and magistrate court clerks serving~~
21 ~~magistrates who serve eight thousand four hundred or more in~~
22 ~~population shall be paid up to \$36,344 per year: *Provided,*~~
23 ~~however, That on and after July 1, 2007, Magistrate court clerks~~
24 serving magistrates who serve less than eight seven thousand four

1 three hundred in population shall be paid up to \$36,436 per year
2 and magistrate court clerks serving magistrates who serve ~~eight~~
3 seven thousand ~~four~~ three hundred or more in population shall be
4 paid up to \$41,344 per year: *Provided, ~~further,~~* That after the
5 effective date of this section, any general salary increase granted
6 to all state employees, whose salaries are not set by statute,
7 expressed as a percentage increase or an "across-the-board"
8 increase, may also be granted to magistrate court clerks. For the
9 purpose of determining the population served by each magistrate,
10 the number of magistrates authorized for each county shall be
11 divided into the population of each county. The salary of the
12 magistrate court clerk shall be established by the judge of the
13 circuit court, or the chief judge of the circuit court if there is
14 more than one judge of the circuit court, within the limits set
15 forth in this section.

16 (c) In addition to other duties that may be imposed by the
17 provisions of this chapter or by the rules of the Supreme Court of
18 Appeals or the judge of the circuit court or the chief judge of the
19 circuit court if there is more than one judge of the circuit court,
20 it is the duty of the magistrate court clerk to establish and
21 maintain appropriate dockets and records in a centralized system
22 for the magistrate court, to assist in the preparation of the
23 reports required of the court and to carry out on behalf of the
24 magistrates or chief magistrate if a chief magistrate is appointed,

1 the administrative duties of the court.

2 (d) The magistrate court clerk, or if there is no magistrate
3 court clerk in the county, the clerk of the circuit court, may
4 issue all manner of civil process and require the enforcement of
5 subpoenas and subpoenas duces tecum in magistrate court.

6 (e) Notwithstanding any provision of this code to the
7 contrary, the amendments made to this section during the 2013
8 regular legislative session are effective upon date of passage and
9 are retroactive to January 1, 2013.

10 **§50-1-9. Magistrate assistants; salary; duties.**

11 (a) In each county there shall be one magistrate assistant for
12 each magistrate. Each magistrate assistant shall be appointed by
13 the magistrate under whose authority and supervision and at whose
14 will and pleasure he or she shall serve. The assistant shall not
15 be a member of the immediate family of any magistrate and shall not
16 have been convicted of a felony or any misdemeanor involving moral
17 turpitude and shall reside in the State of West Virginia. For the
18 purpose of this section, "immediate family" means the relationships
19 of mother, father, sister, brother, child or spouse.

20 (b) A magistrate assistant shall have the duties, clerical or
21 otherwise, assigned by the magistrate and prescribed by the rules
22 of the Supreme Court of Appeals or the judge of the circuit court
23 or the chief judge of the circuit court if there is more than one
24 judge of the circuit court. In addition to these duties,

1 magistrate assistants shall perform and are accountable to the
2 magistrate court clerks with respect to the following duties:

3 (1) The preparation of summons in civil actions;

4 (2) The assignment of civil actions to the various
5 magistrates;

6 (3) The collection of all costs, fees, fines, forfeitures and
7 penalties which are payable to the court;

8 (4) The submission of moneys, along with an accounting of the
9 moneys, to appropriate authorities as provided by law;

10 (5) The daily disposition of closed files which are to be
11 located in the magistrate clerk's office;

12 (6) All duties related to the gathering of information and
13 documents necessary for the preparation of administrative reports
14 and documents required by the rules of the Supreme Court of Appeals
15 or the judge of the circuit court or the chief judge of the circuit
16 court if there is more than one judge of the circuit court;

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

19 (8) All other duties or responsibilities whereby the
20 magistrate assistant is accountable to the magistrate court clerk
21 as determined by the magistrate.

22 (c) Magistrate assistants shall be paid a monthly salary by
23 the state. ~~Magistrate assistants serving magistrates who serve~~
24 ~~less than eight thousand four hundred in population shall be paid~~

1 up to ~~\$23,148~~ per year and magistrate assistants serving
2 magistrates who serve eight thousand four hundred or more in
3 population shall be paid up to ~~\$26,244~~ per year: ~~Provided, That on~~
4 and after July 1, 2006, magistrate assistants serving magistrates
5 who serve less than eight thousand four hundred in population shall
6 be paid up to ~~\$28,148~~ per year and magistrate assistants serving
7 magistrates who serve eight thousand four hundred or more in
8 population shall be paid up to ~~\$31,244~~ per year: ~~Provided,~~
9 however, That on and after July 1, 2007, Magistrate assistants
10 serving magistrates who serve less than ~~eight~~ seven thousand four
11 three hundred in population shall be paid up to \$33,148 per year
12 and magistrate assistants serving magistrates who serve ~~eight~~ seven
13 thousand ~~four~~ three hundred or more in population shall be paid up
14 to \$36,244 per year: ~~Provided, further,~~ That after the effective
15 date of this section, any general salary increase granted to all
16 state employees, whose salaries are not set by statute, expressed
17 as a percentage increase or an "across-the-board" increase, may
18 also be granted to magistrate assistants. For the purpose of
19 determining the population served by each magistrate, the number of
20 magistrates authorized for each county shall be divided into the
21 population of each county. The salary of the magistrate assistant
22 shall be established by the magistrate within the limits set forth
23 in this section.

24 (d) Notwithstanding any provision of this code to the

1 contrary, the amendments made to this section during the 2013
2 regular legislative session are effective upon date of passage and
3 are retroactive to January 1, 2013.

4 **§50-1-9a. Magistrate court deputy clerks; duties; salary.**

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

15 (b) Magistrate court deputy clerks shall have the duties,
16 clerical or otherwise, as may be assigned by the magistrate court
17 clerk and as may be prescribed by the rules of the Supreme Court of
18 Appeals or the judge of the circuit court or the chief judge if
19 there is more than one judge of the circuit court. Magistrate
20 court deputy clerks may also exercise the power and perform the
21 duties of the magistrate court clerk as may be delegated or
22 assigned by the magistrate court clerk.

23 (c) A magistrate court deputy clerk may not be an immediate
24 family member of any magistrate, magistrate court clerk, magistrate

1 assistant or judge of the circuit court within the same county, may
2 not have been convicted of a felony or any misdemeanor involving
3 moral turpitude and must reside in this state. For purposes of
4 this subsection, "immediate family member" means a mother, father,
5 sister, brother, child or spouse.

6 (d) Magistrate court deputy clerks shall be paid an annual
7 salary by the state on the same basis and in the same amounts
8 established for magistrate assistants in each county, as provided
9 in section nine of this article.

10 (e) Notwithstanding any provision of this code to the
11 contrary, the amendments made to section nine of this article
12 during the 2013 regular legislative session, and the effects of
13 those amendments on subsection (d) of this section, are effective
14 upon date of passage and are retroactive to January 1, 2013.