

H. B. 2549

(By Delegates M. Smith, Phillips, L., Moore, White,
Marcum and Miley)

[Introduced February 19, 2013; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and enact §50-1-3, §50-1-8, §50-1-9 and §50-1-9a of
the Code of West Virginia, 1931, as amended, all relating to
increasing salaries of those magistrates and their staffs
whose salaries were reduced as a result of the 2010 census to
precensus amounts; providing an effective date; and providing
that the salary increase is retroactive to January 1, 2013.

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.

(a) The Legislature finds and declares that:

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

1 clause of the Constitution of the United States;

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

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

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

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

17 (b) The salary of each magistrate shall be paid by the state.
18 Magistrates who serve fewer than eight thousand four hundred in
19 population shall be paid annual salaries of \$30,625 and magistrates
20 who serve eight thousand four hundred or more in population shall
21 be paid annual salaries of \$37,000: *Provided*, That on and after
22 the first day of July, two thousand three, magistrates who serve
23 fewer than eight thousand four hundred in population shall be paid
24 annual salaries of \$33,625 and magistrates who serve eight thousand

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

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

18 (d) Notwithstanding any provision of this code to the
19 contrary, any magistrate whose salary was decreased as a result of
20 the 2010 United States census shall have his or her salary
21 increased to the precensus amount. This section is effective upon
22 date of passage and is retroactive to January 1, 2013.

23 **§50-1-8. Magistrate court clerks; salaries; duties; duties of**
24 **circuit clerk.**

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

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

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

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

24 (d) The magistrate court clerk, or if there is no magistrate

1 court clerk in the county, the clerk of the circuit court, may
2 issue all manner of civil process and require the enforcement of
3 subpoenas and subpoenas duces tecum in magistrate court.

4 (e) Notwithstanding any provision of this code to the
5 contrary, any magistrate court clerk whose salary was decreased as
6 a result of the 2010 United States census shall have his or her
7 salary increased to the precensus amount. This section is
8 effective upon date of passage and is retroactive to January 1,
9 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 thousand four hundred
11 in population shall be paid up to \$33,148 per year and magistrate
12 assistants serving magistrates who serve eight thousand four
13 hundred or more in population shall be paid up to \$36,244 per year:
14 *Provided further*, That after the effective date of this section,
15 any general salary increase granted to all state employees, whose
16 salaries are not set by statute, expressed as a percentage increase
17 or an "across-the-board" increase, may also be granted to
18 magistrate assistants. For the purpose of determining the
19 population served by each magistrate, the number of magistrates
20 authorized for each county shall be divided into the population of
21 each county. The salary of the magistrate assistant shall be
22 established by the magistrate within the limits set forth in this
23 section.

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

1 contrary, any magistrate assistant whose salary was decreased as a
2 result of the 2010 United States census shall have his or her
3 salary increased to the precensus amount. This section is
4 effective upon date of passage and is retroactive to January 1,
5 2013.

6 **§50-1-9a. Magistrate court deputy clerks; duties; salary.**

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

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

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

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

12 (e) Notwithstanding any provision of this code to the
13 contrary, any magistrate court deputy clerk whose salary was
14 decreased as a result of the 2010 United States census shall have
15 his or her salary increased to the precensus amount. This section
16 is effective upon date of passage and is retroactive to January 1,
17 2013.

NOTE: The purpose of this bill is to increasing salaries of those magistrates and their staffs whose salaries were reduced as a result of the 2010 census to precensus amounts. The bill provides an effective date. The bill provides that the salary increase is retroactive to January 1, 2013.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.