

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 378

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

[Originating in the Committee on Finance;
reported April 1, 2013.]

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 to adjusting the population line upon which salaries for magistrates and certain magistrate employees are calculated; providing an effective date; and providing that the adjustments are 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.

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
5 the 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~~ seven
17 thousand ~~four~~ three hundred in population and the second tier

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

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

24 (b) The salary of each magistrate shall be paid by the
25 state. ~~Magistrates who serve fewer than eight thousand four~~
26 ~~hundred in population shall be paid annual salaries of~~
27 ~~\$30,625 and magistrates who serve eight thousand four~~
28 ~~hundred or more in population shall be paid annual salaries~~
29 ~~of \$37,000. *Provided, That on and after July 1,2003,*~~
30 ~~magistrates who serve fewer than eight thousand four~~
31 ~~hundred in population shall be paid annual salaries of~~
32 ~~\$33,625 and magistrates who serve eight thousand four~~
33 ~~hundred or more in population shall be paid annual salaries~~
34 ~~of \$40,000. *Provided, however, That on and after July 1,*~~
35 ~~2005, magistrates who serve fewer than eight thousand four~~
36 ~~hundred in population shall be paid annual salaries of~~

37 ~~\$43,625 and magistrates who serve eight thousand four~~
38 ~~hundred or more in population shall be paid annual salaries~~
39 ~~of \$50,000. *Provided further, That on and after July 1, 2011,*~~
40 Magistrates who serve fewer than ~~eight~~ seven thousand ~~four~~
41 three hundred in population shall be paid annual salaries of
42 \$51,125 and magistrates who serve ~~eight~~ seven thousand ~~four~~
43 three hundred or more in population shall be paid annual
44 salaries of \$57,500.

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

52 (d) Notwithstanding any provision of this code to the
53 contrary, the amendments made to this section during the
54 2013 regular legislative session are effective upon date of
55 passage and are retroactive to January 1, 2013.

**§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 seven~~
25 ~~thousand four three hundred in population shall be paid up to~~
26 ~~\$36,436 \$39,552 per year and magistrate court clerks serving~~
27 ~~magistrates who serve eight seven thousand four three~~
28 ~~hundred or more in population shall be paid up to \$41,344~~
29 ~~\$44,712 per year: *Provided, further,* That after the effective~~
30 ~~date of this section, any general salary increase granted to all~~
31 ~~state employees, whose salaries are not set by statute,~~
32 ~~expressed as a percentage increase or an “across-the-board”~~
33 ~~increase, may also be granted to magistrate court clerks. For~~
34 ~~the purpose of determining the population served by each~~
35 ~~magistrate, the number of magistrates authorized for each~~
36 ~~county shall be divided into the population of each county.~~

37 The salary of the magistrate court clerk shall be established
38 by the judge of the circuit court, or the chief judge of the
39 circuit court if there is more than one judge of the circuit
40 court, within the limits set forth in this section.

41 (c) In addition to other duties that may be imposed by the
42 provisions of this chapter or by the rules of the Supreme
43 Court of Appeals or the judge of the circuit court or the chief
44 judge of the circuit court if there is more than one judge of
45 the circuit court, it is the duty of the magistrate court clerk to
46 establish and maintain appropriate dockets and records in a
47 centralized system for the magistrate court, to assist in the
48 preparation of the reports required of the court and to carry
49 out on behalf of the magistrates or chief magistrate if a chief
50 magistrate is appointed, the administrative duties of the court.

51 (d) The magistrate court clerk, or if there is no magistrate
52 court clerk in the county, the clerk of the circuit court, may
53 issue all manner of civil process and require the enforcement
54 of subpoenas and subpoenas duces tecum in magistrate court.

55 (e) Notwithstanding any provision of this code to the
56 contrary, the amendments made to this section during the
57 2013 regular legislative session are effective upon date of
58 passage and are retroactive to January 1, 2013.

§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

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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 chief
32 judge of the circuit court if there is more than one judge of
33 the circuit court;

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

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

40 (c) Magistrate assistants shall be paid a monthly salary by
41 the state. ~~Magistrate assistants serving magistrates who serve~~
42 ~~less than eight thousand four hundred in population shall be~~
43 ~~paid up to \$23,148 per year and magistrate assistants serving~~
44 ~~magistrates who serve eight thousand four hundred or more~~
45 ~~in population shall be paid up to \$26,244 per year. *Provided,*~~
46 ~~That on and after July 1, 2006, magistrate assistants serving~~
47 ~~magistrates who serve less than eight thousand four hundred~~
48 ~~in population shall be paid up to \$28,148 per year and~~
49 ~~magistrate assistants serving magistrates who serve eight~~
50 ~~thousand four hundred or more in population shall be paid up~~
51 ~~to \$31,244 per year. *Provided, however,* That on and after~~
52 ~~July 1, 2007, Magistrate assistants serving magistrates who~~

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53 serve less than ~~eight~~ seven thousand ~~four~~ three hundred in
54 population shall be paid up to ~~\$33,148~~ \$36,048 per year and
55 magistrate assistants serving magistrates who serve ~~eight~~
56 seven thousand ~~four~~ three hundred or more in population
57 shall be paid up to ~~\$36,244~~ \$39,348 per year: *Provided,*
58 *further,* That after the effective date of this section, any
59 general salary increase granted to all state employees, whose
60 salaries are not set by statute, expressed as a percentage
61 increase or an “across-the-board” increase, may also be
62 granted to magistrate assistants. For the purpose of
63 determining the population served by each magistrate, the
64 number of magistrates authorized for each county shall be
65 divided into the population of each county. The salary of the
66 magistrate assistant shall be established by the magistrate
67 within the limits set forth in this section.

68 (d) Notwithstanding any provision of this code to the
69 contrary, the amendments made to this section during the
70 2013 regular legislative session are effective upon date of
71 passage and are retroactive to January 1, 2013.

§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 or
16 the chief judge if there is more than one judge of the circuit
17 court. Magistrate court deputy clerks may also exercise the

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18 power and perform the duties of the magistrate court clerk
19 as may be delegated or assigned by the magistrate court
20 clerk.

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

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

33 (e) Notwithstanding any provision of this code to the
34 contrary, the amendments made to section nine of this
35 article during the 2013 regular legislative session, and the

36 effects of those amendments on subsection (d) of this
37 section, are effective upon date of passage and are retroactive
38 to January 1, 2013.