

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2248

FISCAL
NOTE

By Delegate Steele

[Introduced January 11, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §50-1-8, §50-1-9, §50-1-9a, and §50-1-9b of the Code of West
 2 Virginia, 1931, as amended, all relating to magistrate employee appointments; permitting
 3 the circuit court to appoint additional magistrate clerks as necessary based on workload;
 4 permitting the magistrate to appoint additional magistrate assistants; permitting the
 5 magistrate to request additional magistrate deputy clerks when workload requires it;
 6 eliminating any restrictions on the number of magistrate deputy clerks that may be
 7 employed in the state; increasing compensation of magistrate employees; and other
 8 technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COURTS AND OFFICERS.

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

1 (a) In each county having three or more magistrates the judge of the circuit court or the
 2 chief judge of the circuit court, if there is more than one judge of the circuit court, shall appoint a
 3 magistrate court clerk, and may appoint additional magistrate court clerks if the workload requires
 4 additional assistance. In all other counties the judge may appoint a magistrate court clerk or may
 5 by rule require the duties of the magistrate court clerk to be performed by the clerk of the circuit
 6 court, in which event the circuit court clerk is entitled to additional compensation in the amount of
 7 ~~\$2,500~~ \$5,000 per year. The magistrate court clerk serves at the will and pleasure of the circuit
 8 judge.

9 (b) Magistrate court clerks shall be paid at least twice per month by the state. ~~Magistrate~~
 10 ~~court clerks serving magistrates who serve less than 7,300 in population shall be paid up to~~
 11 ~~\$39,552 per year and magistrate court clerks serving magistrates who serve 7,300 or more in~~
 12 ~~population shall be paid up to \$44,712 per year: *Provided*, That after the effective date of this~~
 13 ~~section, any general salary increase granted to all state employees, whose salaries are not set by~~
 14 ~~statute, expressed as a percentage increase or an across-the-board increase, may also be~~
 15 ~~granted to magistrate court clerks. For the purpose of determining the population served by each~~

16 ~~magistrate, the number of magistrates authorized for each county shall be divided into the~~
 17 ~~population of each county. The salary of the magistrate court clerk shall be established by the~~
 18 ~~judge of the circuit court, or the chief judge of the circuit court if there is more than one judge of the~~
 19 ~~circuit court, within the limits set forth in this section~~

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

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

30 (e) Notwithstanding any provision of this code to the contrary, the amendments made to
 31 this section during the 2013 first extraordinary session are effective upon passage and are
 32 retroactive to January 1, 2013.

33 (f) Beginning January 1, ~~2017~~ 2024, the annual salary of all magistrate court clerks is
 34 ~~\$44,720~~ \$49,192. After the effective date of this section, a general salary increase granted to state
 35 employees, whose salaries are not set by statute, expressed as a percentage increase or an
 36 across-the-board increase, may also be granted to magistrate court clerks.

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

1 (a) In each county there shall be at least one magistrate assistant for each magistrate.
 2 Additional magistrate assistants may be appointed if workload requires additional assistance.
 3 Each magistrate assistant shall be appointed by the magistrate under whose authority and
 4 supervision and at whose will and pleasure he or she shall serve. The assistant ~~shall~~ may not be a

5 member of the immediate family of any magistrate and ~~shall~~ may not have been convicted of a
6 felony or any misdemeanor involving moral turpitude and shall reside in the State of West Virginia.
7 For the purpose of this section, "immediate family" means the relationships of mother, father,
8 sister, brother, child, or spouse.

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

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

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

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

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

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

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

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

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

30 (c) Magistrate assistants shall be paid at least twice per month by the state. ~~Magistrate~~

31 ~~assistants serving magistrates who serve less than seven thousand three hundred in population~~
 32 ~~shall be paid up to \$36,048 per year and magistrate assistants serving magistrates who serve~~
 33 ~~seven thousand three hundred or more in population shall be paid up to \$39,348 per year:~~
 34 ~~Provided, That after the effective date of this section, any general salary increase granted to all~~
 35 ~~state employees, whose salaries are not set by statute, expressed as a percentage increase or an~~
 36 ~~across-the-board increase, may also be granted to magistrate assistants. For the purpose of~~
 37 ~~determining the population served by each magistrate, the number of magistrates authorized for~~
 38 ~~each county shall be divided into the population of each county. The salary of the magistrate~~
 39 ~~assistant shall be established by the magistrate within the limits set forth in this section~~

40 (d) Notwithstanding any provision of this code to the contrary, the amendments made to
 41 this section during the 2013 first extraordinary session are effective upon passage and are
 42 retroactive to January 1, 2013.

43 (e) Beginning January 1, ~~2017~~ 2024, the annual salary of all magistrate assistants is
 44 ~~\$39,348~~ \$43,282. After the effective date of this section, a general salary increase granted to state
 45 employees, whose salaries are not set by statute, expressed as a percentage increase or an
 46 across-the-board increase, may also be granted to magistrate assistants.

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

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

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

10 Court of Appeals or the judge of the circuit court or the chief judge if there is more than one judge of
 11 the circuit court. Magistrate court deputy clerks may also exercise the power and perform the
 12 duties of the magistrate court clerk as may be delegated or assigned by the magistrate court clerk.

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

18 (d) Magistrate court deputy clerks shall be paid an annual salary by the state on the same
 19 basis and in the same amounts established for magistrate assistants in each county, as provided
 20 in §50-1-9 of this code.

21 (e) Notwithstanding any provision of this code to the contrary, the amendments made to
 22 §50-1-9 of this code during the 2013 First Extraordinary Session, and the effects of those
 23 amendments on subsection (d) of this section, are effective upon passage and are retroactive to
 24 January 1, 2013.

25 (f) Beginning January 1, ~~2017~~ 2024, the annual salary of all magistrate court deputy clerks
 26 is ~~\$39,348~~ \$43,282. After the effective date of this section, a general salary increase granted to
 27 state employees, whose salaries are not set by statute, expressed as a percentage increase or an
 28 across-the-board increase, may also be granted to magistrate court deputy clerks.

§50-1-9b. Appointment of senior magistrate court clerks.

1 (a) The West Virginia Supreme Court of Appeals ~~is authorized to~~ may create a panel of
 2 senior magistrate court clerks to utilize the talent and experience of former magistrate court clerks
 3 of this state. The Supreme Court of Appeals shall promulgate rules providing for senior magistrate
 4 court clerks to be assigned duties as needed to serve:

5 (1) In the place of magistrate court clerks who are on authorized leave or are otherwise
 6 unavailable; or

7 (2) While there is a vacancy in a magistrate court clerk's office.

8 (b)The Supreme Court of Appeals shall further promulgate rules to provide for:

9 (1) Reimbursement of travel and other necessary expenses actually incurred while the
10 senior clerk is serving outside the county of his or her residence; and

11 (2) Reasonable compensation on a per diem basis: *Provided*, That the per diem and
12 retirement compensation of a senior magistrate court clerk may not exceed the salary of the
13 magistrate court clerk in whose place the senior clerk is serving.

NOTE: The purpose of this bill is to provide additional flexibility to hire magistrate employees to expedite judicial issues.

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