

H. B. 3165

(By Delegates Miley, Hunt, T. Campbell, Morgan,
Boggs, Pasdon and Armstead)

[Introduced February 17, 2011; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §51-1B-1, §51-1B-2,
§51-1B-3, §51-1B-4, §51-1B-5, §51-1B-6, §51-1B-7, §51-1B-8,
§51-1B-9 and §51-1B-10, all relating to the establishment of
an Intermediate Court of Appeals.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding a new article, designated §51-1B-1, §51-1B-2, §51-1B-3,
§51-1B-4, §51-1B-5, §51-1B-6, §51-1B-7, §51-1B-8, §51-1B-9 and §51-
1B-10, all to read as follows:

ARTICLE 1B. INTERMEDIATE COURT OF APPEALS.

§51-1B-1. Intermediate Court of Appeals established; location.

(a) In accordance with article VIII, section one of the West
Virginia Constitution, the "West Virginia Intermediate Court of
Appeals" is created.

1 (b) The Intermediate Court of Appeals may be located in any
2 county seat of state government for the purpose of hearing oral
3 argument, or may be located in a fixed location.

4 **§51-1B-2. Judges and qualifications.**

5 (a) The Intermediate Court of Appeals shall consist of three
6 judges, initially appointed by the Governor in accordance with
7 section four of the article.

8 (b) An Intermediate Court of Appeals judge must be a resident
9 of this state, a member in good standing of the West Virginia State
10 Bar, and admitted to practice law in this state for at least eight
11 years prior to appointment or election.

12 (c) An Intermediate Court of Appeals judge may not engage in
13 any other business, occupation or employment inconsistent with the
14 expeditious, proper and impartial performance of his or her duties
15 as a judicial officer. An Intermediate Court of Appeals justice is
16 not permitted to engage in the outside practice of law and shall
17 devote full time to his or her duties as a judicial officer.

18 **§51-1B-3. Jurisdiction; defunctive rights of West Virginia Supreme**
19 **Court of Appeals; discretionary appeals.**

20 (a) The Intermediate Court of Appeals shall not have original
21 jurisdiction over appeals.

22 (b) Petitions for appeal shall be filed with the Supreme Court
23 of Appeals. Those cases for which the Supreme Court elects not to
24 grant petitions for appeal shall be transferred to the Intermediate

1 Court of Appeals.

2 (c) The Intermediate Court of Appeals has jurisdiction to hear
3 appeals from final judgments, interlocutory decrees or orders
4 entered by a circuit court in any civil or criminal case, appeals
5 from the Workers Compensation Board of Review, and the Public
6 Service Commission.

7 (d) All appeals shall be heard by either the Supreme Court of
8 Appeals or Intermediate Court of Appeals as a matter or right
9 except for the following appeals, which shall be discretionary with
10 the Courts:

11 (1) Appeals from the Workers' Compensation Board of Review
12 established by section eleven, article five, chapter twenty-four of
13 this Code;

14 (2) Appeals from orders of the Public Service Commission
15 established by article one, chapter twenty-four of this Code;

16 (3) Appeals from decisions of circuit court of administrative
17 appeals of an agency as defined in article one, chapter twenty-nine
18 A of this Code; and

19 (4) Appeals of misdemeanor convictions.

20 (e) Within thirty days after a decision by the Intermediate
21 Court of Appeals , any aggrieved party may appeal the decision to
22 the Supreme Court of Appeals by writ of certiorari as provided by
23 the West Virginia Rules of Appellate Procedure.

24 **§51-1B-4. Number of Intermediate Court Judges; initial**

1 appointment; election; term of office; vacancy; chief judge.

2 (a) There shall be three judges for the Intermediate Court of
3 Appeals. The Governor shall appoint the initial judges from names
4 submitted by the Intermediate Court of Appeals nominating
5 committee. The nominating committee shall recommend three
6 qualified nominees for each position for Intermediate Court of
7 Appeals judge. If the Governor does not select a nominee for the
8 position of judge from the names provided by the nominating
9 committee, he or she shall notify the nominating committee of that
10 circumstance and the committee shall provide additional names for
11 consideration by the Governor.

12 (b) The nominating committee shall consist of the members of
13 the Judicial Vacancy Advisory Committee established pursuant to
14 section three-a, article ten, chapter three of this code and four
15 additional public members. The additional four public members
16 shall consist of the following: President of West Virginia
17 University, President of Marshall University, president of the
18 state organization representing the interests of businesses doing
19 business in this state, and president of the largest labor
20 organization in this state representing the interests of employees
21 working in the state. The chairman of the Judicial Vacancy
22 Committee shall serve as Chairman of the Committee.

23 (c) The nominating committee is responsible for reviewing and
24 evaluating candidates for possible appointment to the Intermediate

1 Court of Appeals by the Governor. In reviewing candidates, the
2 nominating committee may accept applications from any attorney who
3 believes himself or herself qualified for the judgeships. The
4 nominating committee may accept comments from and request
5 information from any person or source.

6 (d) Of the initial appointments, one judge shall be appointed
7 for a term of four years, one judge shall be appointed for a term
8 of six years, and one judge shall be appointed for a term of eight
9 years. Upon the expiration of each term, the judge position shall
10 be filled by election in the same manner as with the Supreme Court
11 of Appeals for a term of eight years.

12 (e) Vacancies in office shall be filled in the same manner as
13 vacancies on the Supreme Court of Appeals.

14 (f) One judge of the Intermediate Court of Appeals shall be
15 chosen chief judge of the Intermediate Court. The manner of
16 choosing the chief judge and providing for periodic rotation of the
17 position of chief judge shall be determined by rules to be
18 established by the Supreme Court of Appeals.

19 **§51-1B-5. Compensation and expenses of Intermediate Court Judges**
20 **and staffs.**

21 (a) The salary of an Intermediate Court of Appeals judge shall
22 be \$119,000 per year. Reimbursement for expenses shall be at a
23 rate established by the Supreme Court of Appeals.

24 (b) Each judge of the Intermediate Court of Appeals may employ

1 two law clerks and one secretary. The Intermediate Court of
2 Appeals shall employ a clerk and the necessary staff to carry out
3 the administrative duties of the court or, with the permission of
4 the Supreme Court of Appeals, use the administrative and other
5 support staff of the Supreme Court of Appeals to carry out the
6 administrative duties of both courts. The compensation of the
7 staff of the Intermediate Court of Appeals shall be established by
8 the judges of the Intermediate Court of Appeals with the approval
9 of the Supreme Court of Appeals.

10 **§51-1B-6. Temporary assignment of circuit court judges.**

11 Upon the occurrence of a vacancy in the office of Intermediate
12 Court of Appeals judge, the disqualification of an Intermediate
13 Court of Appeals judge or the inability of an Intermediate Court of
14 Appeals judge to attend to his or her duties because of illness,
15 temporary absence, or any other reason, the Chief Justice of the
16 Supreme Court of Appeals may assign any senior status circuit judge
17 or circuit judge of any judicial circuit that is not from the same
18 circuit as the appeal before the Intermediate Court to hear and
19 determine any and all matters then or thereafter pending in the
20 Intermediate Court to which the absent Intermediate Court judge is
21 assigned.

22 **§51-1B-7. Rules of practice and procedure.**

23 Pleading, practice and procedure in matters before the
24 Intermediate Court of Appeals are governed by rules promulgated by

1 the Supreme Court of Appeals.

2 **§51-1B-8. Facilities.**

3 The Administrative Director of the Supreme Court of Appeals
4 shall provide the necessary physical facilities, furniture,
5 fixtures and equipment necessary for the efficient operation of the
6 Intermediate Court of Appeals. In order to minimize costs, the
7 director may (1) contract with the Department of Administration,
8 county commissions and private parties to provide for space that is
9 suitable for the Intermediate Court of Appeals, and (2) shall make
10 existing courtrooms throughout the state available for use by the
11 Intermediate Court of Appeals at times convenient both to the
12 Intermediate Court of Appeals and the local court.

13 **§51-1B-9. Electronic filing of all documents and orders.**

14 All documents filed in connection with an appeal to the
15 Intermediate Court of Appeals shall be filed electronically. The
16 court shall electronically file and publish its orders and
17 decisions.

18 **§51-1B-10. Budget.**

19 The budget for the payment of the salaries and benefits for
20 the Intermediate Court of Appeals judges and staff, facilities,
21 furniture, fixtures and equipment shall be included in the
22 appropriation for the Supreme Court of Appeals. To the extent
23 possible, the Supreme Court shall designate existing facilities and
24 existing staff members for use by the Intermediate Court of Appeals

1 to minimize costs for establishing and operating the Intermediate
2 Court of Appeals.

NOTE: The purpose of this bill is to create an Intermediate Court of Appeals and delineate its operations and protocol.

The article is new; therefore, it has been completely underscored.