

1 **H. B. 102**

2  
3 (By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)

4 [By Request of the Executive]

5 [Introduced April 17, 2013]

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9 A BILL to amend and reenact §50-1-3, §50-1-8, §50-1-9 and §50-1-9a  
10 of the Code of West Virginia, 1931, as amended, all relating  
11 generally to the magistrate court system; making legislative  
12 findings; adjusting the population line upon which salaries  
13 for magistrates and certain magistrate employees are  
14 calculated; providing that the Joint Committee on Government  
15 and Finance shall request a study from the National Center for  
16 State Courts, on the weighted case loads, salaries,  
17 jurisdiction, and apportionment of resources within the  
18 magistrate court system; requiring presentation of report and  
19 recommendations regarding redistribution of magistrate court  
20 personnel and resources by December 1, 2014; requiring the  
21 Supreme Court of Appeals of West Virginia to present  
22 recommendations to the Legislature regarding allocation and  
23 assignment of resources; adjusting certain salaries for  
24 certain magistrates and magistrate court employees effective

1 January 1, 2013; equalizing the pay for all magistrates and  
2 certain magistrate employees on January 1, 2017; providing for  
3 an effective date; and providing that the amendments are  
4 retroactive to January 1, 2013.

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

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

9 **ARTICLE 1. COURTS AND OFFICERS.**

10 **§50-1-3. Salaries of magistrates.**

11 (a) The Legislature finds and declares that:

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

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

20 (3) The Administrative Office of the Supreme Court of Appeals  
21 of West Virginia has stated that the utilization of a two-tiered  
22 salary schedule for magistrates is no longer an equitable and  
23 rational manner by which magistrates should be compensated for work  
24 performed;

1 (4) Organizing the two tiers of the salary schedule into one  
2 tier for magistrates serving less than ~~eight~~ seven thousand ~~four~~  
3 three hundred in population and ~~the~~ a second tier for magistrates  
4 serving ~~eight~~ seven thousand ~~four~~ three hundred or more in  
5 population is no longer rational and equitable given current  
6 statistical information relating to population and caseload; and

7 (5) That, by January 1, 2017, all magistrates ~~who fall under~~  
8 ~~the same tier~~ should be compensated equally.

9 (b) The salary of each magistrate shall be paid by the state.  
10 ~~Magistrates who serve fewer than eight thousand four hundred in~~  
11 ~~population shall be paid annual salaries of \$30,625 and magistrates~~  
12 ~~who serve eight thousand four hundred or more in population shall~~  
13 ~~be paid annual salaries of \$37,000: *Provided,* That on and after~~  
14 ~~July 1, 2003, magistrates who serve fewer than eight thousand four~~  
15 ~~hundred in population shall be paid annual salaries of \$33,625 and~~  
16 ~~magistrates who serve eight thousand four hundred or more in~~  
17 ~~population shall be paid annual salaries of \$40,000: *Provided,*~~  
18 ~~however, That on and after July 1, 2005, magistrates who serve~~  
19 ~~fewer than eight thousand four hundred in population shall be paid~~  
20 ~~annual salaries of \$43,625 and magistrates who serve eight thousand~~  
21 ~~four hundred or more in population shall be paid annual salaries of~~  
22 ~~\$50,000: *Provided further,* That on and after July 1, 2011,~~  
23 Magistrates who serve fewer than ~~eight~~ seven thousand ~~four~~ three  
24 hundred in population shall be paid annual salaries of \$51,125 and

1 magistrates who serve ~~eight~~ seven thousand ~~four~~ three hundred or  
2 more in population shall be paid annual salaries of \$57,500.

3 (c) For the purpose of determining the population served by  
4 each magistrate, the number of magistrates authorized for each  
5 county shall be divided into the population of each county. For  
6 the purpose of this article, the population of each county is the  
7 population as determined by the last preceding decennial census  
8 taken under the authority of the United States government.

9 (d) Notwithstanding any provision of this code to the  
10 contrary, the amendments made to this section during the 2013 First  
11 Extraordinary Session are effective upon passage and are  
12 retroactive to January 1, 2013.

13 (e) On or before July 1, 2013, the Joint Committee on  
14 Government and Finance shall request a study by the National Center  
15 for State Courts, working in conjunction with the Administrative  
16 Office of the Supreme Court of Appeals of West Virginia, to review  
17 the weighted case loads in each of the magistrate courts in this  
18 state, and present recommendations as to how the present resources  
19 and personnel in the magistrate court system could be better  
20 apportioned to equitably and timely meet the collective needs of  
21 the magistrate court system in West Virginia. Based on the  
22 findings and data generated by that study, the National Center for  
23 State Courts shall make recommendations as to the equitable  
24 redistribution of personnel and resources, by temporary or

1 permanent reassignment, to better meet the needs and weighted loads  
2 that are demonstrated to exist in the various magistrate courts in  
3 this state. This study shall be presented to the Joint Committee  
4 on Government and Finance no later than December 1, 2014, and shall  
5 include recommendations and proposed legislation resulting from  
6 such study and shall also include a plan to continue the efficient  
7 delivery of justice by the magistrate court system and the  
8 justification for equalization of pay for all magistrates. As a  
9 part of the submitted study, the plan shall consider the  
10 reassignment of magistrates or the extension of their duties and  
11 jurisdiction to include holding court or delivering services to  
12 adjacent counties with higher caseloads, as part of their regular  
13 duties, or being on call as needed to serve other needs in other  
14 adjacent counties or within the same judicial circuit.

15 On or before January 15, 2015, the Supreme Court of Appeals of  
16 West Virginia shall present its recommendations to the Legislature  
17 regarding how to allocate or assign a maximum of one hundred fifty  
18 eight magistrates throughout this state, to improve the magistrate  
19 process, and more equitably distribute the magistrate court  
20 resources to efficiently and effectively meet the needs of the  
21 citizens of this state.

22 (f) Notwithstanding any provision of this code to the  
23 contrary, beginning January 1, 2017, all magistrates shall be  
24 compensated equally and the annual salary of all magistrates shall

1 be \$57,500.

2 **§50-1-8. Magistrate court clerks; salaries; duties; duties of**  
3 **circuit clerk.**

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

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

1 ~~however, That on and after July 1, 2007,~~ Magistrate court clerks  
2 serving magistrates who serve less than ~~eight~~ seven thousand ~~four~~  
3 three hundred in population shall be paid up to ~~\$36,436~~ \$39,552 per  
4 year and magistrate court clerks serving magistrates who serve  
5 ~~eight~~ seven thousand ~~four~~ three hundred or more in population shall  
6 be paid up to ~~\$41,344~~ \$44,712 per year: *Provided, ~~further,~~* That  
7 after the effective date of this section, any general salary  
8 increase granted to all state employees, whose salaries are not set  
9 by statute, expressed as a percentage increase or an  
10 "across-the-board" increase, may also be granted to magistrate  
11 court clerks. For the purpose of determining the population served  
12 by each magistrate, the number of magistrates authorized for each  
13 county shall be divided into the population of each county. The  
14 salary of the magistrate court clerk shall be established by the  
15 judge of the circuit court, or the chief judge of the circuit court  
16 if there is more than one judge of the circuit court, within the  
17 limits set forth in this section.

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

1 reports required of the court and to carry out on behalf of the  
2 magistrates or chief magistrate if a chief magistrate is appointed,  
3 the administrative duties of the court.

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

8 (e) Notwithstanding any provision of this code to the  
9 contrary, the amendments made to this section during the 2013 First  
10 Extraordinary Session are effective upon passage and are  
11 retroactive to January 1, 2013.

12 (f) Beginning January 1, 2017, the annual salary of all  
13 magistrate court clerks is \$44,720. After the effective date of  
14 this section, a general salary increase granted to state employees,  
15 whose salaries are not set by statute, expressed as a percentage  
16 increase or an "across-the-board" increase, may also be granted to  
17 magistrate court clerks.

18 **§50-1-9. Magistrate assistants; salary; duties.**

19 (a) In each county there shall be one magistrate assistant for  
20 each magistrate. Each magistrate assistant shall be appointed by  
21 the magistrate under whose authority and supervision and at whose  
22 will and pleasure he or she shall serve. The assistant shall not  
23 be a member of the immediate family of any magistrate and shall not  
24 have been convicted of a felony or any misdemeanor involving moral



1 turpitude and shall reside in the State of West Virginia. For the  
2 purpose of this section, "immediate family" means the relationships  
3 of mother, father, sister, brother, child or spouse.

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

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

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

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

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

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

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

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

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

7 (c) Magistrate assistants shall be paid a monthly salary by  
8 the state. ~~Magistrate assistants serving magistrates who serve~~  
9 ~~less than eight thousand four hundred in population shall be paid~~  
10 ~~up to \$23,148 per year and magistrate assistants serving~~  
11 ~~magistrates who serve eight thousand four hundred or more in~~  
12 ~~population shall be paid up to \$26,244 per year: *Provided, That on*~~  
13 ~~and after July 1, 2006, magistrate assistants serving magistrates~~  
14 ~~who serve less than eight thousand four hundred in population shall~~  
15 ~~be paid up to \$28,148 per year and magistrate assistants serving~~  
16 ~~magistrates who serve eight thousand four hundred or more in~~  
17 ~~population shall be paid up to \$31,244 per year: *Provided,*~~  
18 ~~however, That on and after July 1, 2007, Magistrate assistants~~  
19 ~~serving magistrates who serve less than eight seven thousand four~~  
20 ~~three hundred in population shall be paid up to ~~\$33,148~~ \$36,048 per~~  
21 ~~year and magistrate assistants serving magistrates who serve eight~~  
22 ~~seven thousand four three hundred or more in population shall be~~  
23 ~~paid up to ~~\$36,244~~ \$39,348 per year: *Provided, further,* That after~~  
24 the effective date of this section, any general salary increase

1 granted to all state employees, whose salaries are not set by  
2 statute, expressed as a percentage increase or an  
3 "across-the-board" increase, may also be granted to magistrate  
4 assistants. For the purpose of determining the population served  
5 by each magistrate, the number of magistrates authorized for each  
6 county shall be divided into the population of each county. The  
7 salary of the magistrate assistant shall be established by the  
8 magistrate within the limits set forth in this section.

9 (d) Notwithstanding any provision of this code to the  
10 contrary, the amendments made to this section during the 2013 First  
11 Extraordinary Session are effective upon passage and are  
12 retroactive to January 1, 2013.

13 (e) Beginning January 1, 2017, the annual salary of all  
14 magistrate assistants is \$39,348. After the effective date of this  
15 section, a general salary increase granted to state employees,  
16 whose salaries are not set by statute, expressed as a percentage  
17 increase or an "across-the-board" increase, may also be granted to  
18 magistrate assistants.

19 **§50-1-9a. Magistrate court deputy clerks; duties; salary.**

20 (a) Whenever required by workload and upon the recommendation  
21 of 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,  
23 the Supreme Court of Appeals may, by rule, provide for the  
24 appointment of magistrate court deputy clerks, not to exceed

1 seventy-two in number. The magistrate court deputy clerks shall be  
2 appointed by the judge of the circuit court, or the chief judge if  
3 there is more than one judge of the circuit court, to serve at his  
4 or her will and pleasure under the immediate supervision of the  
5 magistrate court clerk.

6 (b) Magistrate court deputy clerks shall have the duties,  
7 clerical or otherwise, as may be assigned by the magistrate court  
8 clerk and as may be prescribed by the rules of the Supreme Court of  
9 Appeals or the judge of the circuit court or the chief judge if  
10 there is more than one judge of the circuit court. Magistrate  
11 court deputy clerks may also exercise the power and perform the  
12 duties of the magistrate court clerk as may be delegated or  
13 assigned by the magistrate court clerk.

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

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

1       (e) Notwithstanding any provision of this code to the  
2 contrary, the amendments made to section nine of this article  
3 during the 2013 First Extraordinary Session, and the effects of  
4 those amendments on subsection (d) of this section, are effective  
5 upon passage and are retroactive to January 1, 2013.

6       (f) Beginning January 1, 2017, the annual salary of all  
7 magistrate court deputy clerks is \$39,348. After the effective  
8 date of this section, a general salary increase granted to state  
9 employees, whose salaries are not set by statute, expressed as a  
10 percentage increase or an "across-the-board" increase, may also be  
11 granted to magistrate court deputy clerks.

NOTE: The purpose of this bill is to immediately increase salaries of those magistrates and their staffs whose salaries were reduced as a result of the 2010 census to precensus amounts. The bill also requires the Joint Committee on Government and Finance to request a study by the National Center for State Courts on the weighted caseload, salaries, jurisdiction, and apportionment of the magistrate court system. The bill also requires the Supreme Court of Appeals of West Virginia to present recommendations regarding the allocation or assignment of magistrates to improve the magistrate process and more equitably distribute the magistrate court resources. The bill provides an internal effective date. The bill provides that the salary increases are retroactive to January 1, 2013. The bill also requires pay equalization for all magistrates and certain magistrate employees beginning January 1, 2017.

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