

Senate Bill No. 554

(By Senators Carmichael and Blair)

[Introduced March 18, 2013; referred to the Committee on the
Judiciary; and then to the Committee on 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 authorizing a new court to be known as the Intermediate Court of Appeals; setting forth how judges are to be selected; providing that its judges may not receive additional compensation; setting forth the court's jurisdictional authority; providing that the Supreme Court of Appeals controls its pleading, practice, procedure, scheduling of terms and adjournment; authorizing the hiring of a clerk of the court and other employees; setting forth the duties of the clerk; providing that the court's budget be part of the Supreme Court of Appeals' budget; and permitting appeals to the Supreme Court of

1 Appeals.

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

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

7 **ARTICLE 1B. INTERMEDIATE COURTS OF APPEALS.**

8 **§51-1B-1. Judges; qualifications; how selected.**

9 An Intermediate Court of Appeals is established and shall
10 operate by one or more panels, each panel consisting of three
11 judges, any two of whom constitutes a quorum for that panel. No
12 judge may be permanently assigned to this court, but a judge shall
13 be assigned to a panel to hear cases before that panel of the court
14 by designation. Two of the three member judges of a panel shall be
15 selected from sitting or retired circuit court judges and one shall
16 be a sitting Justice of the West Virginia Supreme Court of Appeals.
17 The Supreme Court of Appeals shall establish a process for
18 determining the members of each panel by random selection, except
19 in those cases where special expertise is desirable. The decision
20 of a majority of the panel is the decision of the panel and is a
21 final decision of the Intermediate Court of Appeals for all
22 purposes. When a judgment or order of another court is reversed,
23 modified or affirmed by the Intermediate Court of Appeals, all

1 points fairly arising upon the record shall be considered and
2 decided. The reasoning of the court shall be concisely stated in
3 writing and preserved with the record. The court shall also
4 prepare a syllabus of the points adjudicated in each case in which
5 an opinion is written and where a majority of the judges concurred.
6 The syllabus shall be prefixed to the published report of the case.

7 **§51-1B-2. Jurisdiction.**

8 The Intermediate Court of Appeals has no original
9 jurisdiction. It shall have appellate jurisdiction in civil cases
10 where the matter in controversy, exclusive of costs, is of greater
11 value or amount than \$100; in controversies concerning the title or
12 boundaries of land, the probate of wills, the appointment or
13 qualification of a personal representative, guardian, committee or
14 curator, or concerning a mill, road, way, ferry or landing, or the
15 right of a corporation or county to levy tolls or taxes; in cases
16 of quo warranto, habeas corpus, mandamus, certiorari and
17 prohibition; and in cases involving freedom or the
18 Constitutionality of a law. It shall have appellate jurisdiction in
19 criminal cases where there has been a conviction for felony or
20 misdemeanor in a circuit court, and where a conviction has been
21 made in any inferior court and been affirmed in a circuit court,
22 and in cases relating to the public revenue, the right of appeal
23 shall belong to the state, as well as the defendant, and such other

1 appellate jurisdiction, in both civil and criminal cases, as may be
2 prescribed by law. It has appellate jurisdiction in all cases
3 involving appeals of worker's compensation cases. Appeal to the
4 Intermediate Court of Appeals shall be an appeal of right upon an
5 assignment of error in the judgment or proceedings of a circuit
6 court; it shall have no discretion to reject any appeal.

7 **§51-1B-3. Regulation of pleading, practice and procedure.**

8 The Supreme Court of Appeals may, from time to time, make and
9 promulgate general rules and regulations governing pleading,
10 practice and procedure in the Intermediate Court of Appeals as in
11 all other courts of record of this state.

12 **§51-1B-4. Scheduling of terms.**

13 The Supreme Court of Appeals shall, from time to time,
14 determine the time and place that the Intermediate Court of Appeals
15 shall convene and transact its business, which may, depending on
16 the volume of appeals that need to be heard, consist of one or more
17 terms, each of which shall continue until the business assigned to
18 the court is dispatched.

19 **§51-1B-5. Adjournment.**

20 The court may adjourn from day to day or from time to time, as
21 the judges, or a majority thereof, may order, until it disposes of
22 all of the cases assigned to it.

23 **§51-1B-6. Salary of judges; no additional compensation.**

1 The salary of each of the judges appointed to serve as members
2 of an Intermediate Court of Appeals shall be his or her regular
3 salary in his or her elected capacity, and each judge so appointed
4 shall receive no additional compensation for this service.

5 **§51-1B-7. Clerk; deputy, associate and assistant clerks; other**
6 **clerical assistants; compensation.**

7 The Supreme Court of Appeals system shall appoint one chief
8 clerk to exclusively serve the Intermediate Court of Appeals and
9 may appoint one deputy clerk, one assistant clerk and such other
10 full-time and part-time clerical assistants necessary and
11 reasonable to properly perform the functions and duties of the
12 office of the clerk of the Intermediate Court of Appeals. The
13 annual compensation of the chief clerk and all other employees of
14 the court shall be fixed by the Supreme Court of Appeals, payable
15 in the same manner and on the same schedule as the regular
16 employees of the Supreme Court of Appeals, and shall be payable out
17 of the biennium appropriations made by the Legislature according to
18 law. All of these officers shall be removable at the pleasure of
19 the Supreme Court of Appeals or its Justices. Vacancies in the
20 office of the clerk occurring during vacation may be filled by
21 appointment, in writing, made by the Justices of the Supreme Court
22 of Appeals, or by a majority thereof.

23 **§51-1B-8. Duties of clerk.**

1 It shall be the duty of the clerk of the Intermediate Court of
2 Appeals to attend in person, or by an employee of the clerk's
3 office deputized for that purpose, all the sessions of the court,
4 to obey its orders and directions in term time and in vacation, to
5 take care of and preserve in an office, kept for the purpose, all
6 records and papers of the court, and to perform such other duties
7 as may be prescribed by law or required by the court.

8 **§51-1B-9. Budget of the Intermediate Court of Appeals.**

9 The budget for the payment of the salaries and benefits of the
10 clerical and secretarial staff of the Intermediate Court of Appeals
11 shall be included in the appropriation for the Supreme Court of
12 Appeals.

13 **§51-1B-10. Supreme Court of Appeals review.**

14 Any final decision rendered by the Intermediate Court of
15 Appeals may be appealed by any aggrieved party in interest to the
16 Supreme Court of Appeals by writ of certiorari pursuant to the
17 rules promulgated by the Supreme Court of Appeals.

NOTE: The purpose of this bill is to create and authorize a new court to be known as the Intermediate Court of Appeals. The bill sets forth how its judges are to be selected. The bill provides that its judges may not receive additional compensation. The bill sets forth the court's jurisdictional authority. The bill provides that the Supreme Court of Appeals controls its pleading, practice, procedure, scheduling of terms and adjournment. The bill authorizes the hiring of a clerk of the court and other employees. The bill sets forth the duties of the clerk. The bill provides that

the court's budget be part of the Supreme Court of Appeals' budget.
The bill permits appeals to the Supreme Court of Appeals.

This article is new; therefore, strike-throughs and underscoring have been omitted.