

Senate Bill No. 306

(By Senators Ferns, Carmichael, D. Hall, Mullins and Blair)

[Introduced January 26, 2015; 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, §51-1B-10, §51-1B-11 and §51-1B-12, all relating to creation of a new court to be known as the West Virginia Intermediate Court of Appeals; requiring court to be operational by January 1, 2016; establishing northern and southern districts; providing three judges for each district; establishing qualifications for judges; establishing jurisdiction of the court; providing for defluctive review; providing that the West Virginia Supreme Court of Appeals will either keep an appeal or transfer it to the Intermediate Court; providing that appeals in certain administrative cases are discretionary; authorizing appeals from the Intermediate Court to the Supreme Court; authorizing the Governor to make initial appointments by July 1, 2016; creating staggered terms; providing for elections for ten-year terms after initial appointments; authorizing a Chief Judge of the Intermediate Court; authorizing staff for court and judges; providing for compensation and expenses of judges

1 and staff; providing for temporary assignment of circuit court judges; authorizing the
2 Supreme Court to provide facilities, furniture, fixtures and equipment for the Intermediate
3 Court; establishing precedential effect of Intermediate Court orders and decisions; providing
4 that budget of the Intermediate Court will be part of the Supreme Court budget; and
5 providing for severability of this article.

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

7 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
8 article, designated §51-1B-1, §51-1B-2, §51-1B-3, §51-1B-4, §51-1B-5, §51-1B-6, §51-1B-7, §51-
9 1B-8, §51-1B-9, §51-1B-10, §51-1B-11 and §51-1B-12, all to read as follows:

10 **ARTICLE 1B. THE WEST VIRGINIA INTERMEDIATE COURT OF APPEALS.**

11 **§51-1B-1. The West Virginia Intermediate Court of Appeals established; location.**

12 (a) In accordance with Article VIII, Section one of the West Virginia Constitution, the "West
13 Virginia Intermediate Court of Appeals" is created. The court shall be established and operable on
14 or before January 1, 2016. The West Virginia Intermediate Court of Appeals "Intermediate Court"
15 shall be divided into two districts. The two intermediate courts of appeals shall be designated as the
16 "Intermediate Court of Appeals for the Northern District" or "Northern District Intermediate Court
17 of Appeals" and the "Intermediate Court of Appeals for the Southern District" or "Southern District
18 Intermediate Court of Appeals." Each court shall be located in the district it serves. The
19 Intermediate Court is a court of record and shall issue, as appropriate in each appeal, written
20 opinions, orders and decisions.

21 (b) The Northern District Intermediate Court of Appeals is comprised of the following
22 judicial circuits: first, second, third, fourth, fifth, fifteenth, sixteenth, seventeenth, eighteenth,

1 nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-sixth.

2 (c) The Southern District Intermediate Court of Appeals is comprised of the following
3 judicial circuits: Sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, twenty-
4 fourth, twenty-fifth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth and thirty-first.

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

7 **§51-1B-2. Judges; qualifications.**

8 (a) The Intermediate Court of Appeals shall consist of six judges, three judges in each
9 district, initially appointed by the Governor in accordance with section five of this article.

10 (b) An Intermediate Court of Appeals judge must be a resident of the district in which he or
11 she ~~will~~ presides, a member in good standing of the West Virginia State Bar and admitted to practice
12 law in this state for at least ten years prior to appointment or election to the Intermediate Court of
13 Appeals.

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

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

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

21 (b) Petitions for appeal shall be filed with the West Virginia Supreme Court of Appeals
22 ("Supreme Court"). Those cases for which the Supreme Court elects not to grant petitions for appeal

1 shall be transferred to the Intermediate Court of Appeals.

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

5 (d) All appeals shall be reviewed, and a written decision on the merits shall be issued by
6 either the Supreme Court or the Intermediate Court of Appeals as a matter of right except for the
7 following appeals, which shall be discretionary with the courts:

8 (1) Appeals from the Workers' Compensation Board of Review established by section eleven,
9 article five, chapter twenty-three of this code;

10 (2) Appeals from orders of the Public Service Commission established by article one, chapter
11 twenty-four of this code;

12 (3) Appeals from decisions of circuit courts of administrative appeals of an agency as defined
13 in article one, chapter twenty-nine-a of this code; and

14 (4) Appeals of misdemeanor convictions.

15 (e) Within thirty days after a decision by the Intermediate Court of Appeals, any aggrieved
16 party may petition the Supreme Court by petition for writ of certiorari as provided by the West
17 Virginia Rules of Appellate Procedure.

18 **§51-1B-4. Precedential effect of Intermediate Appeals Court decisions.**

19 Unless stated by the court to be per curiam or unpublished, all orders and decisions of the
20 Intermediate Court of Appeals shall have precedential effect.

21 **§51-1B-5. Number of Intermediate Court judges; initial appointment; election; term of office;**
22 **vacancy; chief judge.**

1 (a) There shall be three judges for each district of the Intermediate Court of Appeals. The
2 Governor shall, on or before July 1, 2015, appoint the initial judges from names submitted by the
3 Judicial Vacancy Advisory Committee established pursuant to section three-a, article ten, chapter
4 three of the West Virginia Code. The committee shall recommend three qualified nominees for each
5 position for Intermediate Court of Appeals judge. If the Governor does not select a nominee for the
6 position of judge from the names provided by the committee, he or she shall notify the committee
7 of that circumstance and the committee shall provide additional names for consideration by the
8 Governor.

9 (b) The committee is responsible for reviewing and evaluating candidates for possible
10 appointment to the Intermediate Court of Appeals by the Governor. In reviewing candidates, the
11 committee may accept applications from any attorney who believes to be qualified for the
12 judgeships. The committee may accept comments from and request information from any person
13 or source.

14 (c) Of the initial appointments for each district, one judge shall be appointed for a term set
15 to expire December 31, 2016, one judge shall be appointed for a term set to expire December 31,
16 2018, and one judge shall be appointed for a term set to expire December 31, 2020.

17 (d) After the initial appointment, Intermediate Court judges shall be elected for a ten-year
18 term of office. For election purposes, there shall be numbered divisions corresponding to the number
19 of judges in each district. The judges of the Intermediate Court shall be elected by division as
20 follows:

21 (1) The appointed term to be filled at the general election held in the year 2016 is division
22 one;

1 (2) The appointed term to be filled at the general election held in the year 2018 is division
2 two; and,

3 (3) The appointed term to be filled at the general election held in the year 2020 is division
4 three.

5 Each judge shall be elected at large from the entire district. In each numbered division of a
6 judicial district, the candidates for nomination or election shall be voted upon and the votes cast for
7 the candidates in each district shall be tallied separately from the votes cast for candidates in other
8 numbered divisions within the district. The candidate receiving the highest number of the votes cast
9 within a numbered division shall be nominated or elected, as the case may be.

10 (e) If a vacancy occurs in the office of Intermediate Court judge, the Governor shall fill the
11 vacancy by appointment as provided in section three, article ten, chapter three and section three-a,
12 article ten, chapter three of this code.

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

16 **§51-1B-6. Compensation and expenses of Intermediate Court of Appeals judges and staffs.**

17 (a) The annual salary of an Intermediate Court judge shall be \$118,000. Reimbursement for
18 expenses shall be at a rate established by the Supreme Court.

19 (b) Each judge of the Intermediate Court of Appeals may employ two law clerks and one
20 secretary. The Intermediate Court of Appeals may employ a clerk and the necessary staff to carry
21 out the administrative duties of the court or, with the permission of the Supreme Court, the
22 administrative and other support staff of the Supreme Court may carry out the administrative duties

1 of both courts. The compensation of the staff of the Intermediate Court of Appeals shall be
2 established by the judges of the Intermediate Court with the approval of the Supreme Court.

3 **§51-1B-7. Temporary assignment of circuit court judges.**

4 Upon the occurrence of a vacancy in the office of Intermediate Court of Appeals judge, the
5 disqualification of an Intermediate Court judge or the inability of an Intermediate Court judge to
6 attend to his or her duties because of illness, temporary absence, or any other reason, the Chief
7 Justice of the Supreme Court may assign any senior status circuit judge or circuit judge of any
8 judicial circuit that is not from the same circuit as the appeal before the Intermediate Court of
9 Appeals to hear and determine any and all matters then or thereafter pending in the Intermediate
10 Court of Appeals to which the absent Intermediate Court judge is assigned.

11 **§51-1B-8. Facilities.**

12 (a) The Administrative Director of the Supreme Court shall provide the requisite physical
13 facilities, furniture, fixtures and equipment necessary for the efficient operation of the Intermediate
14 Court of Appeals.

15 (b) In order to minimize any costs associated with the necessary facilities for the Intermediate
16 Court of Appeals, the director shall make existing courtrooms throughout the state available for use
17 by the Intermediate Court of Appeals at times convenient both to the Intermediate Court and the
18 local court.

19 (c) The director may also contract with the Department of Administration, county
20 commissions and private parties to provide for space that is suitable for the Intermediate Court of
21 Appeals.

22 **§51-1B-9. Rules of practice and procedure.**

1 All pleadings, practice and procedure in matters before the Intermediate Court of Appeals
2 shall be governed by the rules promulgated by the Supreme Court.

3 **§51-1B-10. Electronic filing of all documents.**

4 All documents filed in connection with an appeal to the Intermediate Court of Appeals shall
5 be filed electronically.

6 **§51-1B-11. Budget.**

7 The budget for the payment of the salaries and benefits for the Intermediate Court judges and
8 staff, facilities, furniture, fixtures and equipment shall be included in the appropriation for the
9 Supreme Court. To the extent possible, the Supreme Court shall designate existing facilities and
10 existing staff members for use by the Intermediate Court to minimize the costs for establishing and
11 operating the Intermediate Court of Appeals.

12 **§51-1B-12. Severability.**

13 The provisions of this article are severable. If any portion of this article is declared
14 unconstitutional or the application of any part of this article is held invalid, the remaining portions
15 of this article and their applicability shall remain valid and enforceable.

NOTE: The purpose of this bill is to create an Intermediate Court of Appeals.

Article §51-1B-1 through §51-1B-12 is new; therefore, strike-throughs and underscoring
have been omitted.