

**H. B. 4392**

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(By Delegates Boggs, M. Poling, Moore, Barill, L. Phillips,  
White, Hall, Pethtel, Jones and Frazier)

[By Request of the Supreme Court of Appeals]

[Introduced February 2, 2012; referred to the

Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact § 50-1-3, §50-1-8, §50-1-9 and § 50-1-9a, of the Code of West Virginia, 1931, as amended, all relating to equally compensating all state magistrates, magistrate assistants, magistrate court clerks and magistrate court deputy clerks.

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

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

**ARTICLE 1. COURTS AND OFFICERS.**

**§50-1-3. Salaries of magistrates.**

~~(a) The Legislature finds and declares that:~~

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

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

5       ~~(3) The utilization of a two-tiered salary schedule for~~  
6 ~~magistrates is an equitable and rational manner by which~~  
7 ~~magistrates should be compensated for work performed;~~

8       ~~(4) Organizing the two tiers of the salary schedule into one~~  
9 ~~tier for magistrates serving less than eight thousand four hundred~~  
10 ~~in population and the second tier for magistrates serving eight~~  
11 ~~thousand four hundred or more in population is rational and~~  
12 ~~equitable given current statistical information relating to~~  
13 ~~population and caseload; and~~

14       ~~(5) That all magistrates who fall under the same tier should~~  
15 ~~be compensated equally.~~

16       ~~(b) The salary of each magistrate shall be paid by the state.~~  
17 ~~Magistrates who serve fewer than eight thousand four hundred in~~  
18 ~~population shall be paid annual salaries of thirty thousand six~~  
19 ~~hundred twenty-five dollars and magistrates who serve eight~~  
20 ~~thousand four hundred or more in population shall be paid annual~~  
21 ~~salaries of thirty-seven thousand dollars: *Provided,* That on and~~  
22 ~~after the first day of July, two thousand three, magistrates who~~  
23 ~~serve fewer than eight thousand four hundred in population shall be~~

1 ~~paid annual salaries of thirty-three thousand six hundred twenty-~~  
2 ~~five dollars and magistrates who serve eight thousand four hundred~~  
3 ~~or more in population shall be paid annual salaries of forty~~  
4 ~~thousand dollars: *Provided, however,* That on and after the first~~  
5 ~~day of July, two thousand five, magistrates who serve fewer than~~  
6 ~~eight thousand four hundred in population shall be paid annual~~  
7 ~~salaries of forty-three thousand six hundred twenty-five dollars~~  
8 ~~and magistrates who serve eight thousand four hundred or more in~~  
9 ~~population shall be paid annual salaries of fifty thousand dollars.~~  
10 ~~*Provided further,* That on and after the first day of July, 2011,~~  
11 ~~magistrates who serve fewer than eight thousand four hundred in~~  
12 ~~population shall be paid annual salaries of \$51,125 and magistrates~~  
13 ~~who serve eight thousand four hundred or more in population shall~~  
14 ~~be paid annual salaries of \$57,500.~~

15 ~~(c) For the purpose of determining the population served by~~  
16 ~~each magistrate, the number of magistrates authorized for each~~  
17 ~~county shall be divided into the population of each county. For the~~  
18 ~~purpose of this article, the population of each county is the~~  
19 ~~population as determined by the last preceding decennial census~~  
20 ~~taken under the authority of the United States government.~~

21 ~~All magistrates shall be compensated equally. Beginning July~~  
22 ~~1, 2012, the annual salary of all magistrates is \$57,500.~~

23 **§50-1-8. Magistrate court clerks; salaries; duties; duties of**

1                   **circuit clerk.**

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

12           (b) Magistrate court clerks shall be ~~paid a monthly salary by~~  
13 ~~the state. Magistrate court clerks serving magistrates who serve~~  
14 ~~less than eight thousand four hundred in population shall be paid~~  
15 ~~up to \$26,436 per year and magistrate court clerks serving~~  
16 ~~magistrates who serve eight thousand four hundred or more in~~  
17 ~~population shall be paid up to \$31,344 per year: *Provided, That on*~~  
18 ~~and after July 1, 2006, magistrate court clerks serving magistrates~~  
19 ~~who serve less than eight thousand four hundred in population shall~~  
20 ~~be paid up to \$31,436 per year and magistrate court clerks serving~~  
21 ~~magistrates who serve eight thousand four hundred or more in~~  
22 ~~population shall be paid up to \$36,344 per year: *Provided,*~~  
23 ~~however, That on and after July 1, 2007, magistrate court clerks~~

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

17 (c) Beginning July 1, 2012, the annual salary of all  
18 magistrate court clerks is \$44,720: Provided, That after the  
19 effective date of this section, any general salary increase granted  
20 to state employees, whose salaries are not set by statute,  
21 expressed as a percentage increase or an "across-the-board"  
22 increase, may also be granted to magistrate court clerks.

23 (e) (d) In addition to other duties that may be imposed by the

1 provisions of this chapter or by the rules of the Supreme Court of  
2 Appeals or the judge of the circuit court or the chief judge of the  
3 circuit court if there is more than one judge of the circuit court,  
4 it is the duty of the magistrate court clerk to establish and  
5 maintain appropriate dockets and records in a centralized system  
6 for the magistrate court, to assist in the preparation of the  
7 reports required of the court and to carry out on behalf of the  
8 magistrates or chief magistrate if a chief magistrate is appointed,  
9 the administrative duties of the court.

10 ~~(d)~~ (e) The magistrate court clerk ~~or if there is no~~  
11 ~~magistrate court clerk in the county, the clerk of the circuit~~  
12 ~~court,~~ may issue all manner of civil process and require the  
13 enforcement of subpoenas and subpoenas duces tecum in magistrate  
14 court.

15 **§50-1-9. Magistrate assistants; salary; duties.**

16 (a) In each county there shall be one magistrate assistant for  
17 each magistrate. Each magistrate assistant shall be appointed by  
18 the magistrate under whose authority and supervision and at whose  
19 will and pleasure he or she shall serve. The assistant shall not  
20 be a member of the immediate family of any magistrate and shall not  
21 have been convicted of a felony or any misdemeanor involving moral  
22 turpitude and shall reside in the State of West Virginia. For the  
23 purpose of this section, "immediate family" means the relationships

1 of mother, father, sister, brother, child or spouse.

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

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

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

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

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

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

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

23 (7) All duties relating to the notification, certification and

1 payment of jurors serving pursuant to the terms of this chapter;

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

5 (c) Magistrate assistants shall be ~~paid a monthly salary by~~  
6 ~~the state. Magistrate assistants serving magistrates who serve~~  
7 ~~less than eight thousand four hundred in population shall be paid~~  
8 ~~up to \$23,148 per year and magistrate assistants serving~~  
9 ~~magistrates who serve eight thousand four hundred or more in~~  
10 ~~population shall be paid up to \$26,244 per year: Provided, That on~~  
11 ~~and after July 1, 2006, magistrate assistants serving magistrates~~  
12 ~~who serve less than eight thousand four hundred in population shall~~  
13 ~~be paid up to \$28,148 per year and magistrate assistants serving~~  
14 ~~magistrates who serve eight thousand four hundred or more in~~  
15 ~~population shall be paid up to \$31,244 per year: Provided,~~  
16 ~~however, That on and after July 1, 2007, magistrate assistants~~  
17 ~~serving magistrates who serve less than eight thousand four hundred~~  
18 ~~in population shall be paid up to \$33,148 per year and magistrate~~  
19 ~~assistants serving magistrates who serve eight thousand four~~  
20 ~~hundred or more in population shall be paid up to \$36,244 per year:~~  
21 ~~Provided further, That after the effective date of this section,~~  
22 ~~any general salary increase granted to all state employees, whose~~  
23 ~~salaries are not set by statute, expressed as a percentage increase~~



1 ~~or an "across-the-board" increase, may also be granted to~~  
2 ~~magistrate assistants. For the purpose of determining the~~  
3 ~~population served by each magistrate, the number of magistrates~~  
4 ~~authorized for each county shall be divided into the population of~~  
5 ~~each county. The salary of the magistrate assistant shall be~~  
6 ~~established by the magistrate within the limits set forth in this~~  
7 ~~section compensated equally.~~

8 (d) Beginning July 1, 2012, the annual salary of all  
9 magistrate assistants is \$39,348. Provided, That after the  
10 effective date of this section, any general salary increase granted  
11 to state employees, whose salaries are not set by statute,  
12 expressed as a percentage increase or an "across-the-board"  
13 increase, may also be granted to magistrate assistants.

14 **§50-1-9a. Magistrate court deputy clerks; duties; salary.**

15 (a) Whenever required by workload and upon the recommendation  
16 of the judge of the circuit court, or the chief judge of the  
17 circuit court if there is more than one judge of the circuit court,  
18 the Supreme Court of Appeals may, by rule, provide for the  
19 appointment of magistrate court deputy clerks, not to exceed  
20 seventy-two in number. The magistrate court deputy clerks shall be  
21 appointed by the judge of the circuit court, or the chief judge if  
22 there is more than one judge of the circuit court, to serve at his  
23 or her will and pleasure under the immediate supervision of the

1 magistrate court clerk.

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

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

17 (d) Magistrate court deputy clerks shall be ~~paid an annual~~  
18 ~~salary by the state on the same basis and in the same amounts~~  
19 ~~established for magistrate assistants in each county, as provided~~  
20 ~~in section nine of this article~~ compensated equally.

21 (e) Beginning July 1, 2012, the annual salary of all  
22 magistrate court deputy clerks is \$39,348. Provided, That after the  
23 effective date of this section, any general salary increase granted

1 to state employees, whose salaries are not set by statute,  
2 expressed as a percentage increase or an "across-the-board"  
3 increase, may also be granted to magistrate court deputy clerks.

NOTE: This bill is requested by the Supreme Court of Appeals Administrative Office. The purpose of this bill is to provide that all magistrates, magistrate assistants, magistrate court clerks and deputy clerks be paid equally. This bill will eliminate the two-tier system. The 2010 Census notes a decrease in population for Lewis, McDowell, Wetzel and Wyoming Counties. If the Legislature fails to pass legislation equalizing the magistrate court system in regard to pay, the magistrate court personnel's salary in those four counties will be drastically reduced January 1, 2013, as directed by the West Virginia Code.

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