

1 ENGROSSED

2 **Senate Bill No. 1003**

3 (By Senators Kessler (Mr. President) and M. Hall,

4 By Request of the Executive)

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6 [Introduced April 17, 2013.]
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10 A BILL to amend and reenact §50-1-3, §50-1-8, §50-1-9 and §50-1-9a
11 of the Code of West Virginia, 1931, as amended, all relating
12 generally to the magistrate court system; making legislative
13 findings; adjusting the population line upon which salaries
14 for magistrates and certain magistrate employees are
15 calculated; providing that the Joint Committee on Government
16 and Finance shall request a study from the National Center for
17 State Courts on the weighted case loads, salaries,
18 jurisdiction and apportionment of resources within the
19 magistrate court system; requiring presentation of report and
20 recommendations regarding redistribution of magistrate court
21 personnel and resources by December 1, 2014; requiring the
22 Supreme Court of Appeals of West Virginia to present

1 recommendations to the Legislature regarding allocation and
2 assignment of resources; adjusting certain salaries for
3 certain magistrates and magistrate court employees effective
4 January 1, 2013; equalizing the pay for all magistrates and
5 certain magistrate employees on January 1, 2017; providing for
6 an effective date; and providing that the amendments are
7 retroactive to January 1, 2013.

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

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

12 **ARTICLE 1. COURTS AND OFFICERS.**

13 **§50-1-3. Salaries of magistrates.**

14 (a) The Legislature finds and declares that:

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

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

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

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

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

14 (b) The salary of each magistrate shall be paid by the state.
15 ~~Magistrates who serve fewer than eight thousand four hundred in~~
16 ~~population shall be paid annual salaries of \$30,625 and magistrates~~
17 ~~who serve eight thousand four hundred or more in population shall~~
18 ~~be paid annual salaries of \$37,000: *Provided,* That on and after~~
19 ~~July 1, 2003, magistrates who serve fewer than eight thousand four~~
20 ~~hundred in population shall be paid annual salaries of \$33,625 and~~
21 ~~magistrates who serve eight thousand four hundred or more in~~
22 ~~population shall be paid annual salaries of \$40,000: *Provided,*~~

1 ~~however, That on and after July 1, 2005, magistrates who serve~~
2 ~~fewer than eight thousand four hundred in population shall be paid~~
3 ~~annual salaries of \$43,625 and magistrates who serve eight thousand~~
4 ~~four hundred or more in population shall be paid annual salaries of~~
5 ~~\$50,000: Provided further, That on and after July 1, 2011,~~
6 Magistrates who serve fewer than eight seven thousand four three
7 hundred in population shall be paid annual salaries of \$51,125 and
8 magistrates who serve eight seven thousand four three hundred or
9 more in population shall be paid annual salaries of \$57,500.

10 (c) For the purpose of determining the population served by
11 each magistrate, the number of magistrates authorized for each
12 county shall be divided into the population of each county. For
13 the purpose of this article, the population of each county is the
14 population as determined by the last preceding decennial census
15 taken under the authority of the United States government.

16 (d) Notwithstanding any provision of this code to the
17 contrary, the amendments made to this section during the 2013 First
18 Extraordinary Session are effective upon passage and are
19 retroactive to January 1, 2013.

20 (e) On or before July 1, 2013, the Joint Committee on
21 Government and Finance shall request a study by the National Center
22 for State Courts, working in conjunction with the Administrative

1 Office of the Supreme Court of Appeals of West Virginia, to review
2 the weighted case loads in each of the magistrate courts in this
3 state, and present recommendations as to how the present resources
4 and personnel in the magistrate court system could be better
5 apportioned to equitably and timely meet the collective needs of
6 the magistrate court system in West Virginia. Based on the
7 findings and data generated by that study, the National Center for
8 State Courts shall make recommendations as to the equitable
9 redistribution of personnel and resources, by temporary or
10 permanent reassignment, to better meet the needs and weighted loads
11 that are demonstrated to exist in the various magistrate courts in
12 this state. This study shall be presented to the Joint Committee
13 on Government and Finance no later than December 1, 2014, and shall
14 include recommendations and proposed legislation resulting from
15 such study and shall also include a plan to continue the efficient
16 delivery of justice by the magistrate court system and the
17 justification for equalization of pay for all magistrates. As a
18 part of the submitted study, the plan shall consider the
19 reassignment of magistrates or the extension of their duties and
20 jurisdiction to include holding court or delivering services to
21 adjacent counties with higher caseloads, as part of their regular
22 duties, or being on call as needed to serve other needs in other

1 adjacent counties or within the same judicial circuit.

2 On or before January 15, 2015, the Supreme Court of Appeals of
3 West Virginia shall present its recommendations to the Legislature
4 regarding how to allocate or assign a maximum of one hundred fifty
5 eight magistrates throughout this state, to improve the magistrate
6 process, and more equitably distribute the magistrate court
7 resources to efficiently and effectively meet the needs of the
8 citizens of this state.

9 (f) Notwithstanding any provision of this code to the
10 contrary, beginning January 1, 2017, all magistrates shall be
11 compensated equally and the annual salary of all magistrates shall
12 be \$57,500.

13 **§50-1-8. Magistrate court clerks; salaries; duties; duties of**
14 **circuit clerk.**

15 (a) In each county having three or more magistrates the judge
16 of the circuit court or the chief judge of the circuit court, if
17 there is more than one judge of the circuit court, shall appoint a
18 magistrate court clerk. In all other counties the judge may
19 appoint a magistrate court clerk or may by rule require the duties
20 of the magistrate court clerk to be performed by the clerk of the
21 circuit court, in which event the circuit court clerk is entitled
22 to additional compensation in the amount of \$2,500 per year. The

1 magistrate court clerk serves at the will and pleasure of the
2 circuit judge.

3 (b) Magistrate court clerks shall be paid a monthly salary by
4 the state. ~~Magistrate court clerks serving magistrates who serve~~
5 ~~less than eight thousand four hundred in population shall be paid~~
6 ~~up to \$26,436 per year and magistrate court clerks serving~~
7 ~~magistrates who serve eight thousand four hundred or more in~~
8 ~~population shall be paid up to \$31,344 per year: *Provided, That on*~~
9 ~~and after July 1, 2006, magistrate court clerks serving magistrates~~
10 ~~who serve less than eight thousand four hundred in population shall~~
11 ~~be paid up to \$31,436 per year and magistrate court clerks serving~~
12 ~~magistrates who serve eight thousand four hundred or more in~~
13 ~~population shall be paid up to \$36,344 per year: *Provided,*~~
14 ~~however, That on and after July 1, 2007, Magistrate court clerks~~
15 ~~serving magistrates who serve less than eight seven thousand four~~
16 ~~three hundred in population shall be paid up to \$36,436 \$39,552 per~~
17 ~~year and magistrate court clerks serving magistrates who serve~~
18 ~~eight seven thousand four three hundred or more in population shall~~
19 ~~be paid up to \$41,344 \$44,712 per year: *Provided, further,* That~~
20 ~~after the effective date of this section, any general salary~~
21 ~~increase granted to all state employees, whose salaries are not set~~
22 ~~by statute, expressed as a percentage increase or an~~

1 "across-the-board" increase, may also be granted to magistrate
2 court clerks. For the purpose of determining the population served
3 by each magistrate, the number of magistrates authorized for each
4 county shall be divided into the population of each county. The
5 salary of the magistrate court clerk shall be established by the
6 judge of the circuit court, or the chief judge of the circuit court
7 if there is more than one judge of the circuit court, within the
8 limits set forth in this section.

9 (c) In addition to other duties that may be imposed by the
10 provisions of this chapter or by the rules of the Supreme Court of
11 Appeals or the judge of the circuit court or the chief judge of the
12 circuit court if there is more than one judge of the circuit court,
13 it is the duty of the magistrate court clerk to establish and
14 maintain appropriate dockets and records in a centralized system
15 for the magistrate court, to assist in the preparation of the
16 reports required of the court and to carry out on behalf of the
17 magistrates or chief magistrate if a chief magistrate is appointed,
18 the administrative duties of the court.

19 (d) The magistrate court clerk, or if there is no magistrate
20 court clerk in the county, the clerk of the circuit court, may
21 issue all manner of civil process and require the enforcement of
22 subpoenas and subpoenas duces tecum in magistrate court.

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

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

11 **§50-1-9. Magistrate assistants; salary; duties.**

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

21 (b) A magistrate assistant shall have the duties, clerical or
22 otherwise, assigned by the magistrate and prescribed by the rules

1 of the Supreme Court of Appeals or the judge of the circuit court
2 or the chief judge of the circuit court if there is more than one
3 judge of the circuit court. In addition to these duties,
4 magistrate assistants shall perform and are accountable to the
5 magistrate court clerks with respect to the following duties:

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

7 (2) The assignment of civil actions to the various
8 magistrates;

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

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

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

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

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

22 and

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

4 (c) Magistrate assistants shall be paid a monthly salary by
5 the state. ~~Magistrate assistants serving magistrates who serve~~
6 ~~less than eight thousand four hundred in population shall be paid~~
7 ~~up to \$23,148 per year and magistrate assistants serving~~
8 ~~magistrates who serve eight thousand four hundred or more in~~
9 ~~population shall be paid up to \$26,244 per year: *Provided, That on*~~
10 ~~and after July 1, 2006, magistrate assistants serving magistrates~~
11 ~~who serve less than eight thousand four hundred in population shall~~
12 ~~be paid up to \$28,148 per year and magistrate assistants serving~~
13 ~~magistrates who serve eight thousand four hundred or more in~~
14 ~~population shall be paid up to \$31,244 per year: *Provided,*~~
15 ~~however, That on and after July 1, 2007, Magistrate assistants~~
16 ~~serving magistrates who serve less than eight seven thousand four~~
17 ~~three hundred in population shall be paid up to ~~\$33,148~~ \$36,048 per~~
18 ~~year and magistrate assistants serving magistrates who serve eight~~
19 ~~seven thousand ~~four~~ three hundred or more in population shall be~~
20 ~~paid up to ~~\$36,244~~ \$39,348 per year: *Provided, further,* That after~~
21 ~~the effective date of this section, any general salary increase~~
22 ~~granted to all state employees, whose salaries are not set by~~

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

8 (d) 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 (e) Beginning January 1, 2017, the annual salary of all
13 magistrate assistants is \$39,348. After the effective date of this
14 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 assistants.

18 **§50-1-9a. Magistrate court deputy clerks; duties; salary.**

19 (a) Whenever required by workload and upon the recommendation
20 of 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 the Supreme Court of Appeals may, by rule, provide for the

1 appointment of magistrate court deputy clerks, not to exceed
2 seventy-two in number. The magistrate court deputy clerks shall be
3 appointed by the judge of the circuit court, or the chief judge if
4 there is more than one judge of the circuit court, to serve at his
5 or her will and pleasure under the immediate supervision of the
6 magistrate court clerk.

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

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

22 (d) Magistrate court deputy clerks shall be paid an annual

1 salary by the state on the same basis and in the same amounts
2 established for magistrate assistants in each county, as provided
3 in section nine of this article.

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

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