

1 **Senate Bill No. 1003**

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

3 By Request of the Executive)

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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

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

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

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

11 **ARTICLE 1. COURTS AND OFFICERS.**

12 **§50-1-3. Salaries of magistrates.**

13 (a) The Legislature finds and declares that:

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

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

22 (3) The Administrative Office of the Supreme Court of Appeals

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

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

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

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

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

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

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

19 (e) On or before July 1, 2013, the Joint Committee on
20 Government and Finance shall request a study by the National Center
21 for State Courts, working in conjunction with the Administrative
22 Office of the Supreme Court of Appeals of West Virginia, to review

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

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

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

12 **§50-1-8. Magistrate court clerks; salaries; duties; duties of**
13 **circuit clerk.**

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

1 circuit judge.

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

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

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

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

22 (e) Notwithstanding any provision of this code to the

1 contrary, the amendments made to this section during the 2013 First
2 Extraordinary Session are effective upon passage and are
3 retroactive to January 1, 2013.

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

10 **§50-1-9. Magistrate assistants; salary; duties.**

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

20 (b) A magistrate assistant shall have the duties, clerical or
21 otherwise, assigned by the magistrate and prescribed by the rules
22 of the Supreme Court of Appeals or the judge of the circuit court

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

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

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

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

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

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

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

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

22 (8) All other duties or responsibilities whereby the

1 magistrate assistant is accountable to the magistrate court clerk
2 as determined by the magistrate.

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

1 "across-the-board" increase, may also be granted to magistrate
2 assistants. 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 assistant shall be established by the
6 magistrate within the limits set forth in this section.

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

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

17 **§50-1-9a. Magistrate court deputy clerks; duties; salary.**

18 (a) Whenever required by workload and upon the recommendation
19 of the judge of the circuit court, or the chief judge of the
20 circuit court if there is more than one judge of the circuit court,
21 the Supreme Court of Appeals may, by rule, provide for the
22 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

1 established for magistrate assistants in each county, as provided
2 in section nine of this article.

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

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