

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 378**

6 (By Senators D. Hall, Kessler (Mr. President), Cann, Edgell,
7 Facemire, Green, Unger, Williams, Fitzsimmons and Plymale)

8 _____
9 [Originating in the Committee on Finance;
10 reported April 1, 2013.]

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14 A BILL to amend and reenact §50-1-3, §50-1-8, §50-1-9 and §50-1-9a
15 of the Code of West Virginia, 1931, as amended, all relating
16 to adjusting the population line upon which salaries for
17 magistrates and certain magistrate employees are calculated;
18 providing an effective date; and providing that the
19 adjustments are retroactive to January 1, 2013.

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

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

24 **ARTICLE 1. COURTS AND OFFICERS.**

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

2 (a) The Legislature finds and declares that:

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

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

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

14 (4) Organizing the two tiers of the salary schedule into one
15 tier for magistrates serving less than ~~eight~~ seven thousand ~~four~~
16 three hundred in population and the second tier for magistrates
17 serving ~~eight~~ seven thousand ~~four~~ three hundred or more in
18 population is rational and equitable given current statistical
19 information relating to population and caseload; and

20 (5) That all magistrates who fall under the same tier should
21 be compensated equally.

22 (b) The salary of each magistrate shall be paid by the state.
23 ~~Magistrates who serve fewer than eight thousand four hundred in~~
24 ~~population shall be paid annual salaries of \$30,625 and magistrates~~

1 ~~who serve eight thousand four hundred or more in population shall~~
2 ~~be paid annual salaries of \$37,000: Provided, That on and after~~
3 ~~July 1, 2003, magistrates who serve fewer than eight thousand four~~
4 ~~hundred in population shall be paid annual salaries of \$33,625 and~~
5 ~~magistrates who serve eight thousand four hundred or more in~~
6 ~~population shall be paid annual salaries of \$40,000: Provided,~~
7 ~~however, That on and after July 1, 2005, magistrates who serve~~
8 ~~fewer than eight thousand four hundred in population shall be paid~~
9 ~~annual salaries of \$43,625 and magistrates who serve eight thousand~~
10 ~~four hundred or more in population shall be paid annual salaries of~~
11 ~~\$50,000: Provided further, That on and after July 1, 2011,~~
12 Magistrates who serve fewer than eight seven thousand four three
13 hundred in population shall be paid annual salaries of \$51,125 and
14 magistrates who serve eight seven thousand four three hundred or
15 more in population shall be paid annual salaries of \$57,500.

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

22 (d) Notwithstanding any provision of this code to the
23 contrary, the amendments made to this section during the 2013
24 regular legislative session are effective upon date of passage and

1 are retroactive to January 1, 2013.

2 **§50-1-8. Magistrate court clerks; salaries; duties; duties of**
3 **circuit clerk.**

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

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

1 ~~however, That on and after July 1, 2007,~~ Magistrate court clerks
2 serving magistrates who serve less than ~~eight~~ seven thousand ~~four~~
3 three hundred in population shall be paid up to ~~\$36,436~~ \$39,552 per
4 year and magistrate court clerks serving magistrates who serve
5 ~~eight~~ seven thousand ~~four~~ three hundred or more in population shall
6 be paid up to ~~\$41,344~~ \$44,712 per year: *Provided, further,* That
7 after the effective date of this section, any general salary
8 increase granted to all state employees, whose salaries are not set
9 by statute, expressed as a percentage increase or an "across-the-
10 board" increase, may also be granted to magistrate court clerks.
11 For the purpose of determining the population served by each
12 magistrate, the number of magistrates authorized for each county
13 shall be divided into the population of each county. The salary of
14 the magistrate court clerk shall be established by the judge of the
15 circuit court, or the chief judge of the circuit court if there is
16 more than one judge of the circuit court, within the limits set
17 forth in this section.

18 (c) In addition to other duties that may be imposed by the
19 provisions of this chapter or by the rules of the Supreme Court of
20 Appeals or 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 it is the duty of the magistrate court clerk to establish and
23 maintain appropriate dockets and records in a centralized system
24 for the magistrate court, to assist in the preparation of the

1 reports required of the court and to carry out on behalf of the
2 magistrates or chief magistrate if a chief magistrate is appointed,
3 the administrative duties of the court.

4 (d) The magistrate court clerk, or if there is no magistrate
5 court clerk in the county, the clerk of the circuit court, may
6 issue all manner of civil process and require the enforcement of
7 subpoenas and subpoenas duces tecum in magistrate court.

8 (e) Notwithstanding any provision of this code to the
9 contrary, the amendments made to this section during the 2013
10 regular legislative session are effective upon date of passage and
11 are retroactive to January 1, 2013.

12 **§50-1-9. Magistrate assistants; salary; duties.**

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

22 (b) A magistrate assistant shall have the duties, clerical or
23 otherwise, assigned by the magistrate and prescribed by the rules
24 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
23 magistrate assistant is accountable to the magistrate court clerk
24 as determined by the magistrate.

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

1 the magistrate assistant shall be established by the magistrate
2 within the limits set forth in this section.

3 (d) Notwithstanding any provision of this code to the
4 contrary, the amendments made to this section during the 2013
5 regular legislative session are effective upon date of passage and
6 are retroactive to January 1, 2013.

7 **§50-1-9a. Magistrate court deputy clerks; duties; salary.**

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

18 (b) Magistrate court deputy clerks shall have the duties,
19 clerical or otherwise, as may be assigned by the magistrate court
20 clerk and as may be prescribed by the rules of the Supreme Court of
21 Appeals or the judge of the circuit court or the chief judge if
22 there is more than one judge of the circuit court. Magistrate
23 court deputy clerks may also exercise the power and perform the
24 duties of the magistrate court clerk as may be delegated or

1 assigned by the magistrate court clerk.

2 (c) A magistrate court deputy clerk may not be an immediate
3 family member of any magistrate, magistrate court clerk, magistrate
4 assistant or judge of the circuit court within the same county, may
5 not have been convicted of a felony or any misdemeanor involving
6 moral turpitude and must reside in this state. For purposes of
7 this subsection, "immediate family member" means a mother, father,
8 sister, brother, child or spouse.

9 (d) Magistrate court deputy clerks shall be paid an annual
10 salary by the state on the same basis and in the same amounts
11 established for magistrate assistants in each county, as provided
12 in section nine of this article.

13 (e) Notwithstanding any provision of this code to the
14 contrary, the amendments made to section nine of this article
15 during the 2013 regular legislative session, and the effects of
16 those amendments on subsection (d) of this section, are effective
17 upon date of passage and are retroactive to January 1, 2013.