

Senate Bill No. 378

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

[Introduced February 27, 2013; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and enact §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
increasing salaries of those magistrates and their staffs
whose salaries were reduced as a result of the 2010 census to
precensus amounts; providing an effective date; and providing
that the salary increase is retroactive to January 1, 2013.

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

1 a salary system for magistrates which is based upon the population
2 that each magistrate serves does not violate the equal protection
3 clause of the Constitution of the United States;

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

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

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

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

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

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

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

20 (d) Notwithstanding any provision of this code to the
21 contrary, any magistrate whose salary was decreased as a result of
22 the 2010 United States census shall have his or her salary
23 increased to the precensus amount. This section is effective upon

1 date of passage and is 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

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

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

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

9 (e) Notwithstanding any provision of this code to the
10 contrary, any magistrate court clerk whose salary was decreased as
11 a result of the 2010 United States census shall have his or her
12 salary increased to the precensus amount. This section is
13 effective upon date of passage and is retroactive to January 1,
14 2013.

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.

8 (d) Notwithstanding any provision of this code to the
9 contrary, any magistrate assistant whose salary was decreased as a
10 result of the 2010 United States census shall have his or her
11 salary increased to the precensus amount. This section is
12 effective upon date of passage and is retroactive to January 1,
13 2013.

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.

21 (e) Notwithstanding any provision of this code to the
22 contrary, any magistrate court deputy clerk whose salary was
23 decreased as a result of the 2010 United States census shall have

1 his or her salary increased to the precensus amount. This section
2 is effective upon date of passage and is retroactive to January 1,
3 2013.

NOTE: The purpose of this bill is to increasing salaries of those magistrates and their staffs whose salaries were reduced as a result of the 2010 census to precensus amounts. The bill provides an effective date. The bill provides that the salary increase is retroactive to January 1, 2013.

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