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SECRETARY OF STATE

## WEST VIRGINIA LEGISLATURE

THIRD EXTRAORDINARY SESSION, 1991

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**ENROLLED**  
*Committee Substitute for*  
**SENATE BILL NO. 2**

(By Senators *Burdette, Mr. President, &  
and Jones*)

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**PASSED** *December 7th* **1991**  
**In Effect** *from* **Passage**

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 2**

(BY SENATORS BURDETTE, MR. PRESIDENT, AND JONES,  
*original sponsors*)

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[Passed December 7, 1991; in effect from passage.]

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AN ACT to amend and reenact sections two, three, eight and nine, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eight, article three of said chapter, relating to establishing the number of magistrates in the state and apportioning the number of magistrates among the magistrate courts of each county; providing for additional magistrate court deputy clerks; establishing the salaries of magistrates, magistrate court clerks, magistrate assistants and magistrate court deputy clerks; and audits as to magistrate court case filings.

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

That sections two, three, eight and nine, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section eight, article three of said chapter be amended and reenacted to read as follows:

**ARTICLE 1. COURTS AND OFFICERS.**

**§50-1-2. Number of magistrates.**

1 (a) The number of magistrates to be elected in each  
2 county of this state shall be determined in accordance  
3 with the provisions of this section.

4 (b) On or before the first day of January, one  
5 thousand nine hundred ninety-two, and on or before  
6 the first day of January in every fourth year thereaf-  
7 ter, the supreme court of appeals shall certify to the  
8 board of ballot commissioners of each county the  
9 number of magistrates to be elected in that county for  
10 the term of office commencing on the first day of  
11 January of the succeeding year. The number of  
12 magistrates so certified shall be determined in accor-  
13 dance with the following:

14 (1) The court shall not provide:

15 (A) For the total number of magistrates in the state  
16 to exceed one hundred fifty-six in number;

17 (B) For the number of magistrates in any one  
18 county to exceed ten in number; or

19 (C) For the number of magistrates in any one  
20 county to be less than two in number.

21 (2) The court shall determine the number of magis-  
22 trates that would be apportioned for each county by  
23 the application of an equal proportions formula, as  
24 follows:

25 (A) Two magistrates shall be allocated to each  
26 county;

27 (B) The population of the county shall be divided by  
28 a mathematical factor, as established by the equal  
29 proportion method, to establish each county's priority  
30 claim to additional magistrates above the two magis-  
31 trates provided for by paragraph (A) of this subdivi-  
32 sion; and

33 (C) Additional numbers of magistrates shall be  
34 allocated to the several counties in order of priority  
35 claims, beginning with the largest claim, until magis-

36 trates have been assigned within the limits of this  
37 section.

38 For purposes of this article, a determination made in  
39 accordance with the provisions of this subdivision is  
40 the "equal proportion number".

41 (3) The court shall determine the number of magis-  
42 trates elected in each county at the last general  
43 election in which magistrates were regularly elected  
44 next prior to the preceding census taken under the  
45 authority of the United States government. For pur-  
46 poses of this article, that number shall be referred to  
47 as the "election number".

48 (4) The court shall determine the number of case  
49 filings per magistrate in each magistrate court for the  
50 most recent fiscal year preceding the date of certifica-  
51 tion, and shall rank the magistrate courts from one  
52 through fifty-five, in the order of their case filings per  
53 magistrate, with the court having the most filings per  
54 magistrate being ranked number one, and the court  
55 with the least filings per magistrate being ranked  
56 number fifty-five.

57 (5) If the court determines that the equal proportion  
58 number for a county is the same as the election  
59 number for such county, the court shall certify that  
60 number as the number of magistrates to be elected in  
61 that county at the next election.

62 (6) If the court determines that the equal proportion  
63 number for a county is different from the election  
64 number for such county, the court shall apply the  
65 ranking established by subdivision (4) of this subsec-  
66 tion and determine the number of magistrates for  
67 such county, as follows:

68 (A) If the equal proportion number exceeds the  
69 election number, the number of magistrates to be  
70 elected in that county at the next election shall be the  
71 election number: *Provided*, That if the county is  
72 ranked as one through five, inclusive, in accordance  
73 with subdivision (4) of this subsection, the court shall  
74 certify the equal proportion number as the number of

75 magistrates to be elected in that county at the next  
76 election.

77 (B) If the equal proportion number is less than the  
78 election number, the number of magistrates to be  
79 elected in that county at the next election shall be the  
80 equal proportion number: *Provided*, That if the county  
81 is ranked as one through five, inclusive, in accordance  
82 with subdivision (4) of this subsection, the court shall  
83 certify the election number as the number of magis-  
84 trates to be elected in that county at the next election.

85 (c) If the number of magistrates in a county would  
86 have been increased but for the application of the  
87 proviso contained in paragraph (A), subdivision (6),  
88 subsection (b) of this section, and if the county is  
89 ranked as six through ten, inclusive, in accordance  
90 with the provisions of subdivision (4), subsection (b) of  
91 this section, then the supreme court of appeals shall  
92 provide for the appointment of an additional magis-  
93 trate court deputy clerk for that county, notwithstand-  
94 ing the limitation on the total number of deputy clerks  
95 otherwise provided for under the provisions of section  
96 nine-a of this article.

97 (d) Any magistrate in office at the time of the  
98 effective date of this section shall continue as a  
99 magistrate, unless sooner removed or retired as  
100 provided by law, until the first day of January, one  
101 thousand nine hundred ninety-three.

**§50-1-3. Salary of magistrates.**

1 (a) The Legislature finds and declares that:

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

7 (2) The West Virginia supreme court of appeals has  
8 held that a salary system for magistrates which is  
9 based upon the population that each magistrate serves  
10 does not violate article VI, section 39 of the constitu-  
11 tion of the state of West Virginia;

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

16 (4) Organizing the two tiers of the salary schedule  
17 into one tier for magistrates serving less than eight  
18 thousand five hundred in population and the second  
19 tier for magistrates serving eight thousand five hun-  
20 dred or more in population is rational and equitable  
21 given current statistical information relating to popu-  
22 lation and caseload; and

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

25 (b) The salary of each magistrate shall be paid by  
26 the state. Magistrates who serve less than ten thou-  
27 sand in population shall be paid annual salaries of  
28 twenty thousand six hundred twenty-five dollars and  
29 magistrates who serve ten thousand or more in  
30 population shall be paid annual salaries of twenty-  
31 seven thousand dollars: *Provided*, That on and after  
32 the first day of January, one thousand nine hundred  
33 ninety-two, magistrates who serve less than ten  
34 thousand in population shall be paid annual salaries of  
35 twenty-one thousand six hundred twenty-five dollars  
36 and magistrates who serve ten thousand or more in  
37 population shall be paid annual salaries of twenty-  
38 eight thousand dollars: *Provided, however*, That on  
39 and after the first day of January, one thousand nine  
40 hundred ninety-three, magistrates who serve less than  
41 eight thousand five hundred in population shall be  
42 paid annual salaries of twenty-three thousand six  
43 hundred twenty-five dollars and magistrates who  
44 serve eight thousand five hundred or more in popula-  
45 tion shall be paid annual salaries of thirty thousand  
46 dollars.

47 (c) For the purpose of determining the population  
48 served by each magistrate, the number of magistrates  
49 authorized for each county shall be divided into the  
50 population of each county. For the purpose of this  
51 article, the population of each county is the population

52 as determined by the last preceding decennial census  
53 taken under the authority of the United States  
54 government.

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

1 In each county having three or more magistrates the  
2 judge of the circuit court or the chief judge thereof, if  
3 there is more than one judge of the circuit court, shall  
4 appoint a magistrate court clerk. In all other counties  
5 such judge may appoint a magistrate court clerk or  
6 may by rule require the duties of the magistrate court  
7 clerk to be performed by the clerk of the circuit court,  
8 in which event such circuit court clerk shall be  
9 entitled to additional compensation in the amount of  
10 two thousand five hundred dollars per year. The  
11 magistrate court clerk shall serve at the will and  
12 pleasure of the circuit judge.

13 Magistrate court clerks shall be paid a monthly  
14 salary by the state. Magistrate court clerks serving  
15 magistrates who serve less than ten thousand in  
16 population shall be paid up to one thousand two  
17 hundred forty-one dollars per month and magistrate  
18 court clerks serving magistrates who serve ten thou-  
19 sand or more in population shall be paid up to one  
20 thousand six hundred fifty dollars per month: *Pro-*  
21 *vided*, That on and after the first day of January, one  
22 thousand nine hundred ninety-two, magistrate court  
23 clerks serving magistrates who serve less than ten  
24 thousand in population shall be paid up to one thou-  
25 sand three hundred twenty-five dollars per month and  
26 magistrate court clerks serving magistrates who serve  
27 ten thousand or more in population shall be paid up to  
28 one thousand seven hundred thirty-four dollars per  
29 month: *Provided, however*, That on and after the first  
30 day of January, one thousand nine hundred ninety-  
31 three, magistrate court clerks serving magistrates who  
32 serve less than eight thousand five hundred in popu-  
33 lation shall be paid up to one thousand four hundred  
34 fifty dollars per month and magistrate court clerks  
35 serving magistrates who serve eight thousand five  
36 hundred or more in population shall be paid up to one

37 thousand eight hundred fifty-nine dollars per month:  
38 *Provided further*, That after the effective date of this  
39 section, any general salary increase granted to all state  
40 employees, whose salaries are not set by statute,  
41 expressed as a percentage increase or an "across-the-  
42 board" increase, may also be granted to magistrate  
43 court clerks. For the purpose of determining the  
44 population served by each magistrate, the number of  
45 magistrates authorized for each county shall be  
46 divided into the population of each county. The salary  
47 of the magistrate court clerk shall be established by  
48 the judge of the circuit court, or the chief judge  
49 thereof if there is more than one judge of the circuit  
50 court, within the limits set forth in this section.

51 In addition to other duties as may be imposed by the  
52 provisions of this chapter or by the rules of the  
53 supreme court of appeals or the judge of the circuit  
54 court, or the chief judge thereof if there is more than  
55 one judge of the circuit court, it is the duty of the  
56 magistrate court clerk to establish and maintain  
57 appropriate dockets and records in a centralized  
58 system for the magistrate court, to assist in the  
59 preparation of such reports as may be required of the  
60 court and to carry out on behalf of the magistrates or  
61 chief magistrate if a chief magistrate is appointed, the  
62 administrative duties of the court.

63 The magistrate court clerk or, if there is no magis-  
64 trate court clerk in the county, the clerk of the circuit  
65 court has the authority to issue all manner of civil  
66 process and to require the enforcement of subpoenas  
67 and subpoenas duces tecum in magistrate court.

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

1 In each county there shall be one magistrate assis-  
2 tant for each magistrate. Each magistrate assistant  
3 shall be appointed by the magistrate under whose  
4 authority and supervision and at whose will and  
5 pleasure he or she shall serve. The assistant shall not  
6 be a member of the immediate family of any magis-  
7 trate and shall not have been convicted of a felony or  
8 any misdemeanor involving moral turpitude and shall



9 reside in the county where appointed. For the purpose  
10 of this section, immediate family means the relation-  
11 ships of mother, father, sister, brother, child or spouse.

12 A magistrate assistant shall have such duties, clerical  
13 or otherwise, as may be assigned by the magistrate  
14 and as may be prescribed by the rules of the supreme  
15 court of appeals or the judge of the circuit court, or  
16 the chief judge thereof if there is more than one judge  
17 of the circuit court. In addition to these duties,  
18 magistrate assistants shall perform and be accountable  
19 to the magistrate court clerks with respect to the  
20 following duties:

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

22 (2) The assignment of civil actions to the various  
23 magistrates;

24 (3) The collection of all costs, fees, fines, forfeitures  
25 and penalties which may be payable to the court;

26 (4) The submission of such moneys, along with an  
27 accounting thereof, to appropriate authorities as  
28 provided by law;

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

31 (6) All duties related to the gathering of information  
32 and documents necessary for the preparation of  
33 administrative reports and documents required by the  
34 rules of the supreme court of appeals or the judge of  
35 the circuit court, or the chief judge thereof if there is  
36 more than one judge of the circuit court;

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

40 (8) All other duties or responsibilities whereby the  
41 magistrate assistant is accountable to the magistrate  
42 court clerk as the magistrate determines.

43 Magistrates assistants shall be paid a monthly salary  
44 by the state. Magistrate assistants serving magistrates  
45 who serve less than ten thousand in population shall

46 be paid up to nine hundred sixty-seven dollars per  
 47 month and magistrate assistants serving magistrates  
 48 who serve ten thousand or more in population shall be  
 49 paid up to one thousand two hundred twenty-five  
 50 dollars per month: *Provided*, That on and after the  
 51 first day of January, one thousand nine hundred  
 52 ninety-two, magistrate assistants serving magistrates  
 53 who serve less than ten thousand in population shall  
 54 be paid up to one thousand fifty-one dollars per month  
 55 and magistrate assistants serving magistrates who  
 56 serve ten thousand or more in population shall be paid  
 57 up to one thousand three hundred nine dollars per  
 58 month: *Provided, however*, That on and after the first  
 59 day of January, one thousand nine hundred ninety-  
 60 three, magistrate assistants serving magistrates who  
 61 serve less than eight thousand five hundred in popu-  
 62 lation shall be paid up to one thousand one hundred  
 63 seventy-six dollars per month and magistrate assis-  
 64 tants serving magistrates who serve eight thousand  
 65 five hundred or more in population shall be paid up to  
 66 one thousand four hundred thirty-four dollars per  
 67 month: *Provided further*, That after the effective date  
 68 of this section, any general salary increase granted to  
 69 all state employees, whose salaries are not set by  
 70 statute, expressed as a percentage increase or an  
 71 "across-the-board" increase, may also be granted to  
 72 magistrate assistants. For the purpose of determining  
 73 the population served by each magistrate, the number  
 74 of magistrates authorized for each county shall be  
 75 divided into the population of each county. The salary  
 76 of the magistrate assistant shall be established by the  
 77 magistrate within the limits set forth in this section.

### ARTICLE 3. COSTS, FINES AND RECORDS.

#### §50-3-8. Audits.

1 The chief inspector of public offices shall perform an  
 2 annual financial audit of each magistrate court. In  
 3 addition to and in conjunction with the financial audit,  
 4 the chief inspector of public offices shall perform or  
 5 cause to be performed an audit of the case filings of  
 6 each magistrate court. The chief inspector shall report  
 7 the annual number of case filings of each magistrate

8 court to be included in the financial audit report to be  
9 made to the supreme court of appeals, circuit court of  
10 the county and the legislative auditor. The supreme  
11 court of appeals shall make a written finding that it  
12 has examined the report and that the annual number  
13 of case filings in each magistrate court accurately  
14 represents the total number of cases actually brought  
15 before that magistrate court. This finding shall be  
16 made prior to any redistribution of magistrates which  
17 is based upon the increase or decrease of case filings  
18 in any magistrate court.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Homer Heck*  
Chairman Senate Committee

*Ernest C. Moore*  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Harold E. E. E.*  
Clerk of the Senate

*Donald L. Hoff*  
Clerk of the House of Delegates

*Witt Furutte*  
President of the Senate

*B. B. B.*  
Speaker House of Delegates

The within is *approved* this the *13th*  
day of *December*, 1991.

*Gaston Caperton*  
Governor

PRESENTED TO THE

GOVERNOR

Date 12/13/91

Time 1:25 pm