

SB 1003

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
FIRST EXTRAORDINARY SESSION, 2013



ENROLLED

Senate Bill No. 1003

(BY SENATORS KESSLER (MR. PRESIDENT) AND M. HALL,
BY REQUEST OF THE EXECUTIVE)

[PASSED APRIL 18, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

SECRETARY OF STATE

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E N R O L L E D

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AN ACT to amend and reenact §50-1-3, §50-1-8, §50-1-9 and §50-1-9a of the Code of West Virginia, 1931, as amended, all relating generally to the magistrate court system; making legislative findings; adjusting the population line upon which salaries for magistrates and certain magistrate employees are calculated; providing that the Joint Committee on Government and Finance shall request a study from the National Center for State Courts on the weighted case loads, salaries, jurisdiction and apportionment of resources within the magistrate court system; requiring presentation of report and recommendations regarding redistribution of magistrate court personnel and resources by December 1, 2014; requiring the Supreme Court of Appeals of West Virginia to present recommendations to the Legislature regarding allocation and assignment of resources; adjusting certain salaries for certain magistrates and magistrate court employees effective January 1, 2013; equalizing the pay for all magistrates and certain magistrate employees on January 1, 2017; providing for an effective date; and providing that the amendments are 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.

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 based upon
4 the population that each magistrate serves does not violate the
5 equal protection clause of the Constitution of the United
6 States;

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

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

17 (4) Organizing the two tiers of the salary schedule into
18 one tier for magistrates serving less than seven thousand three
19 hundred in population and a second tier for magistrates
20 serving seven thousand three hundred or more in population
21 is no longer rational and equitable given current statistical
22 information relating to population and caseload; and

23 (5) That, by January 1, 2017, all magistrates should be
24 compensated equally.

25 (b) The salary of each magistrate shall be paid by the
26 state. Magistrates who serve fewer than seven thousand three
27 hundred in population shall be paid annual salaries of

28 \$51,125 and magistrates who serve seven thousand three
29 hundred or more in population shall be paid annual salaries
30 of \$57,500.

31 (c) For the purpose of determining the population served
32 by each magistrate, the number of magistrates authorized for
33 each county shall be divided into the population of each
34 county. For the purpose of this article, the population of each
35 county is the population as determined by the last preceding
36 decennial census taken under the authority of the United
37 States government.

38 (d) Notwithstanding any provision of this code to the
39 contrary, the amendments made to this section during the
40 2013 First Extraordinary Session are effective upon passage
41 and are retroactive to January 1, 2013.

42 (e) On or before July 1, 2013, the Joint Committee on
43 Government and Finance shall request a study by the
44 National Center for State Courts, working in conjunction with
45 the Administrative Office of the Supreme Court of Appeals
46 of West Virginia, to review the weighted case loads in each
47 of the magistrate courts in this state, and present
48 recommendations as to how the present resources and
49 personnel in the magistrate court system could be better
50 apportioned to equitably and timely meet the collective needs
51 of the magistrate court system in West Virginia. Based on
52 the findings and data generated by that study, the National
53 Center for State Courts shall make recommendations as to the
54 equitable redistribution of personnel and resources, by
55 temporary or permanent reassignment, to better meet the
56 needs and weighted loads that are demonstrated to exist in the
57 various magistrate courts in this state. This study shall be
58 presented to the Joint Committee on Government and Finance
59 no later than December 1, 2014, and shall include
60 recommendations and proposed legislation resulting from
61 such study and shall also include a plan to continue the

62 efficient delivery of justice by the magistrate court system
63 and the justification for equalization of pay for all
64 magistrates. As a part of the submitted study, the plan shall
65 consider the reassignment of magistrates or the extension of
66 their duties and jurisdiction to include holding court or
67 delivering services to adjacent counties with higher
68 caseloads, as part of their regular duties, or being on call as
69 needed to serve other needs in other adjacent counties or
70 within the same judicial circuit.

71 On or before January 15, 2015, the Supreme Court of
72 Appeals of West Virginia shall present its recommendations
73 to the Legislature regarding how to allocate or assign a
74 maximum of one hundred fifty- eight magistrates throughout
75 this state to improve the magistrate process, and more
76 equitably distribute the magistrate court resources to
77 efficiently and effectively meet the needs of the citizens of
78 this state.

79 (f) Notwithstanding any provision of this code to the
80 contrary, beginning January 1, 2017, all magistrates shall be
81 compensated equally and the annual salary of all magistrates
82 shall be \$57,500.

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

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

11 (b) Magistrate court clerks shall be paid a monthly salary
12 by the state. Magistrate court clerks serving magistrates who
13 serve less than seven thousand three hundred in population
14 shall be paid up to \$39,552 per year and magistrate court
15 clerks serving magistrates who serve seven thousand three
16 hundred or more in population shall be paid up to \$44,712
17 per year: *Provided*, That after the effective date of this
18 section, any general salary increase granted to all state
19 employees, whose salaries are not set by statute, expressed as
20 a percentage increase or an across-the-board increase, may
21 also be granted to magistrate court clerks. For the purpose of
22 determining the population served by each magistrate, the
23 number of magistrates authorized for each county shall be
24 divided into the population of each county. The salary of the
25 magistrate court clerk shall be established by the judge of the
26 circuit court, or the chief judge of the circuit court if there is
27 more than one judge of the circuit court, within the limits set
28 forth in this section.

29 (c) In addition to other duties that may be imposed by the
30 provisions of this chapter or by the rules of the Supreme
31 Court of Appeals or the judge of the circuit court or the chief
32 judge of the circuit court if there is more than one judge of
33 the circuit court, it is the duty of the magistrate court clerk to
34 establish and maintain appropriate dockets and records in a
35 centralized system for the magistrate court, to assist in the
36 preparation of the reports required of the court and to carry
37 out on behalf of the magistrates or chief magistrate if a chief
38 magistrate is appointed, the administrative duties of the court.

39 (d) The magistrate court clerk, or if there is no magistrate
40 court clerk in the county, the clerk of the circuit court, may
41 issue all manner of civil process and require the enforcement
42 of subpoenas and subpoenas duces tecum in magistrate court.

43 (e) Notwithstanding any provision of this code to the
44 contrary, the amendments made to this section during the

45 2013 First Extraordinary Session are effective upon passage
46 and are retroactive to January 1, 2013.

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

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

1 (a) In each county there shall be one magistrate assistant
2 for each magistrate. Each magistrate assistant shall be
3 appointed by the magistrate under whose authority and
4 supervision and at whose will and pleasure he or she shall
5 serve. The assistant shall not be a member of the immediate
6 family of any magistrate and shall not have been convicted of
7 a felony or any misdemeanor involving moral turpitude and
8 shall reside in the State of West Virginia. For the purpose of
9 this section, "immediate family" means the relationships of
10 mother, father, sister, brother, child or spouse.

11 (b) A magistrate assistant shall have the duties, clerical or
12 otherwise, assigned by the magistrate and prescribed by the
13 rules of the Supreme Court of Appeals or the judge of the
14 circuit court or the chief judge of the circuit court if there is
15 more than one judge of the circuit court. In addition to these
16 duties, magistrate assistants shall perform and are
17 accountable to the magistrate court clerks with respect to the
18 following duties:

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

20 (2) The assignment of civil actions to the various
21 magistrates;

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

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

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

28 (6) All duties related to the gathering of information and
29 documents necessary for the preparation of administrative
30 reports and documents required by the rules of the Supreme
31 Court of Appeals or the judge of the circuit court or the chief
32 judge of the circuit court if there is more than one judge of
33 the circuit court;

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

37 (8) All other duties or responsibilities whereby the
38 magistrate assistant is accountable to the magistrate court
39 clerk as determined by the magistrate.

40 (c) Magistrate assistants shall be paid a monthly salary by
41 the state. Magistrate assistants serving magistrates who serve
42 less than seven thousand three hundred in population shall be
43 paid up to \$36,048 per year and magistrate assistants serving
44 magistrates who serve seven thousand three hundred or more
45 in population shall be paid up to \$39,348 per year: *Provided*,
46 That after the effective date of this section, any general salary
47 increase granted to all state employees, whose salaries are not
48 set by statute, expressed as a percentage increase or an
49 across-the-board increase, may also be granted to magistrate
50 assistants. For the purpose of determining the population
51 served by each magistrate, the number of magistrates
52 authorized for each county shall be divided into the

53 population of each county. The salary of the magistrate
54 assistant shall be established by the magistrate within the
55 limits set forth in this section.

56 (d) Notwithstanding any provision of this code to the
57 contrary, the amendments made to this section during the
58 2013 First Extraordinary Session are effective upon passage
59 and are retroactive to January 1, 2013.

60 (c) Beginning January 1, 2017, the annual salary of all
61 magistrate assistants is \$39,348. After the effective date of
62 this section, a general salary increase granted to state
63 employees, whose salaries are not set by statute, expressed as
64 a percentage increase or an across-the-board increase, may
65 also be granted to magistrate assistants.

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

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

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

18 power and perform the duties of the magistrate court clerk as
19 may be delegated or assigned by the magistrate court clerk.

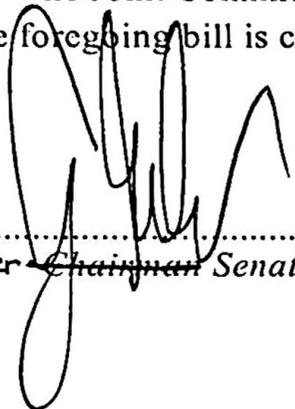
20 (c) A magistrate court deputy clerk may not be an
21 immediate family member of any magistrate, magistrate court
22 clerk, magistrate assistant or judge of the circuit court within
23 the same county, may not have been convicted of a felony or
24 any misdemeanor involving moral turpitude and must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

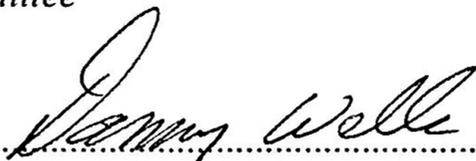
28 (d) Magistrate court deputy clerks shall be paid an annual
29 salary by the state on the same basis and in the same amounts
30 established for magistrate assistants in each county, as
31 provided in section nine of this article.

32 (e) Notwithstanding any provision of this code to the
33 contrary, the amendments made to section nine of this article
34 during the 2013 First Extraordinary Session, and the effects
35 of those amendments on subsection (d) of this section, are
36 effective upon passage and are retroactive to January 1, 2013.

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

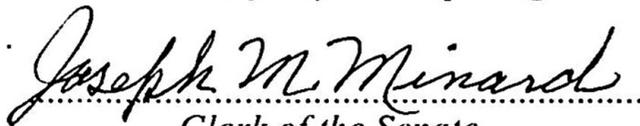
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Member Chairman Senate Committee

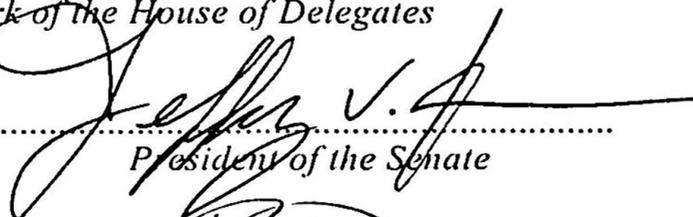

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker of the House of Delegates

The within is approved this the 3rd
Day of May, 2013.


.....
Governor

PRESENTED TO THE GOVERNOR

APR 29 2013

Time 2:00 pm