

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939



# ENROLLED

HOUSE BILL No. 53

(By Mr. Matthews)



PASSED March 11, 1939

In Effect ninety days from Passage

**ENROLLED**  
**House Bill No. 53**

(By MR. MATTHEWS)

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[Passed March 11, 1939; in effect ninety days from passage.]

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AN ACT to amend and reenact sections five and six, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapters eighty-three and sixty-nine, respectively, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to salaries of prosecuting attorneys; and to assistants and stenographers or clerks for prosecuting attorneys; and when the court may appoint attorney to prosecute.

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

That sections five and six, article seven, chapter seven, of the code of West Virginia, one thousand nine hundred thirty-one, as last amended and reenacted by chapters eighty-three and sixty-nine, respectively, acts of the Legislature, regular session, one thousand

nine hundred thirty-seven, be amended and reenacted to read as follows:

**Article 7. Salaries; Deputies and Assistants and Their Salaries.**

Section 5. *Salaries of Prosecuting Attorneys.* The annual  
2 compensation of the prosecuting attorney in each county,  
3 including the compensation provided by law for his services  
4 as attorney for boards of education and other administrative  
5 boards and officers in the county, shall be as follows: Barbour  
6 county, two thousand dollars; Berkeley county, one thousand  
7 eight hundred dollars; Boone county, two thousand four  
8 hundred dollars; Braxton county, one thousand eight hun-  
9 dred dollars; Brooke county, two thousand five hundred  
10 dollars; Cabell county, four thousand eight hundred dollars;  
11 Calhoun county, one thousand two hundred dollars; Clay  
12 county, one thousand six hundred dollars; Doddridge county,  
13 one thousand two hundred dollars; Fayette county, not less  
14 than three thousand and six hundred nor more than four  
15 thousand two hundred dollars; Gilmer county, one thousand  
16 five hundred dollars; Grant county, one thousand dollars;  
17 Greenbrier county, two thousand five hundred dollars; Hamp-  
18 shire county, one thousand dollars; Hancock county, two

19 thousand four hundred dollars; Hardy county, one thousand  
20 dollars; Harrison county, four thousand dollars; Jackson  
21 county, one thousand two hundred dollars; Jefferson county,  
22 not less than one thousand two hundred dollars nor in excess  
23 of one thousand eight hundred dollars, the amount to be fixed  
24 within such limits by the county court of said county; Kan-  
25 awha county, six thousand dollars; Lewis county, not less  
26 than two thousand dollars nor more than two thousand four  
27 hundred dollars; Lincoln county, two thousand four hun-  
28 dred dollars; Logan county, three thousand six hundred dol-  
29 lars; Marion county, four thousand eight hundred dollars;  
30 Marshall county, three thousand dollars; Mason county, two  
31 thousand dollars; McDowell county, four thousand eight  
32 hundred dollars; Mercer county, three thousand six hundred  
33 dollars; Mineral county, two thousand dollars; Mingo county,  
34 four thousand two hundred dollars; Monongalia county,  
35 four thousand dollars; Monroe county, six hundred dol-  
36 lars; Morgan county, one thousand dollars; Nicholas county,  
37 two thousand two hundred dollars; Ohio county, four thou-  
38 sand seven hundred dollars; Pendleton county, six hun-  
39 dred dollars; Pleasants county, one thousand two hundred

40 dollars; Pocahontas county, one thousand two hundred dol-  
41 lars; Preston county, two thousand five hundred dollars;  
42 Putnam county, one thousand eight hundred dollars; Raleigh  
43 county, not less than three thousand nor more than four  
44 thousand eight hundred dollars; Randolph county, three  
45 thousand dollars; Ritchie county, one thousand two hundred  
46 dollars; Roane county, one thousand five hundred dollars;  
47 Summers county, one thousand six hundred dollars; Taylor  
48 county, two thousand two hundred dollars; Tucker county,  
49 one thousand two hundred dollars; Tyler county, one thou-  
50 sand two hundred dollars; Upshur county, one thousand five  
51 hundred dollars; Wayne county, one thousand five hundred  
52 dollars; Webster county, one thousand eight hundred dollars;  
53 Wetzel county, two thousand dollars; Wirt county, six hun-  
54 dred dollars; Wood county, three thousand six hundred dol-  
55 lars; Wyoming county, not less than three thousand dollars  
56 nor more than four thousand dollars.

57 This act shall not apply to any prosecuting attorney now  
58 holding office, during the term for which he was elected or  
59 appointed, prior to the passage of this act.

Sec. 6. *Assistants and Stenographers for Prosecuting At-*

2 *torneys; Salaries; When Court May Appoint Attorney to*  
3 *Prosecute.* Any prosecuting attorney may, with the assent of  
4 the county court of his county, entered of record, appoint one  
5 (and Ohio, Harrison, Kanawha, Fayette and Raleigh coun-  
6 ties two each) practicing attorney to assist him in the dis-  
7 charge of his official duties for and during his term of office,  
8 and such assistant shall take the same oath and may perform  
9 the same duties as his principal; and he may be removed from  
10 office as such at any time by his principal; and further he may  
11 be removed from his office as such assistant by the circuit court  
12 of the county in which he is appointed, for any cause for which  
13 his principal might be so removed. The compensation of such  
14 assistant shall be paid by the principal, except in the coun-  
15 ties of Barbour, Berkeley, Boone, Brooke, Cabell, Calhoun,  
16 Fayette, Harrison, Hancock, Kanawha, Lewis, Lincoln, Logan,  
17 Marion, Marshall, McDowell, Mercer, Mineral, Mingo, Mo-  
18 nongalia, Nicholas, Ohio, Putnam, Raleigh, Randolph, Sum-  
19 mers, Taylor, Wayne, Wetzel, Wood and Wyoming, and in  
20 said counties the county court thereof shall allow annually  
21 to such assistants such compensation to be paid out of the  
22 county treasury as is deemed reasonable by the court; in

23 Ohio county for the first assistant, three thousand dollars,  
24 and for the second assistant not to exceed two thousand four  
25 hundred dollars; in Kanawha county for the first assistant,  
26 not less than four thousand nor more than five thousand dol-  
27 lars, and for the second assistant not less than three thou-  
28 sand nor more than four thousand dollars; in Marion county  
29 not less than two thousand nor more than three thousand  
30 dollars; in Raleigh county not more than three thousand dol-  
31 lars; in Harrison, Logan, McDowell, Mercer and Mingo coun-  
32 ties, not less than one thousand five hundred nor more than  
33 three thousand dollars; in Cabell, Summers and Wood coun-  
34 ties, not less than one thousand nor more than two thousand  
35 dollars; in Fayette county for the first assistant, not less than  
36 two thousand four hundred nor more than three thousand  
37 two hundred dollars, and for the second assistant not to ex-  
38 ceed one thousand eight hundred dollars; in Boone and  
39 Wyoming counties, not less than one thousand two hundred  
40 nor more than one thousand eight hundred dollars; in Barbour  
41 county, one thousand dollars; in Monongalia county, two thou-  
42 sand dollars; in Berkeley and Wayne counties, not to exceed  
43 one thousand two hundred dollars; in Lewis, Lincoln, Mar-

44 shall, Mineral, Nicholas and Randolph counties, not to exceed  
45 nine hundred dollars; in Wetzel county, not less than six hun-  
46 dred nor more than nine hundred dollars; in Taylor county,  
47 not to exceed six hundred dollars; in Putnam and Calhoun  
48 counties, three hundred dollars. In each case such compensa-  
49 tion shall include the compensation provided by law for such  
50 assistant's services as attorney for boards of education and  
51 other administrative boards and officers of the county.

52 In any case in which it would, in the opinion of the court,  
53 be improper for the prosecuting attorney and his assistant  
54 (if he has one) to act; or if the prosecuting attorney and  
55 his assistant be unable to act, such court shall appoint some  
56 competent practicing attorney to prosecute such case, and  
57 upon the performance of the service for which he was ap-  
58 pointed, the court shall certify that fact, with its opinion of  
59 what would be a reasonable allowance to such attorney for  
60 the service rendered, to the county court of the county and  
61 such sum, or a different sum, when allowed by the county  
62 court, shall be paid out of the county treasury: *Provided,*  
63 That nothing in this section shall be construed to prohibit the  
64 employment by any person of a competent attorney or at-



65 torneys to assist in the prosecution of any person or corpor-  
66 ation charged with crime.

67 In each of the counties herein named except Harrison, and  
68 including Greenbrier, Lewis, Hampshire, Pocahontas, Pres-  
69 ton, Putnam, Ritchie, Roane, and Upshur, the prosecuting at-  
70 torney may employ a stenographer for his office at a salary  
71 payable out of the county treasury of not less than nine hun-  
72 dred nor more than two thousand dollars per annum; except,  
73 the annual salary of such stenographer in Barbour, Lewis,  
74 Pocahontas, Preston and Taylor counties shall not exceed one  
75 thousand two hundred dollars; in Upshur and Calhoun coun-  
76 ties shall not exceed nine hundred dollars; in Hampshire,  
77 Roane and Wetzel counties shall not exceed six hundred dol-  
78 lars; in Berkeley county shall not be less than six hundred  
79 dollars nor exceed one thousand two hundred dollars; in Put-  
80 nam and Ritchie counties shall be seven hundred dollars; in  
81 Boone county shall be one thousand two hundred dollars; in  
82 Webster county shall be six hundred dollars; and in Braxton  
83 and Jefferson counties shall not exceed nine hundred dollars:  
84 *Provided*, That in each of the last three named counties the  
85 prosecuting attorney may not employ a stenographer except

86 with the consent of the county court entered of record.

87 In the county of Harrison the prosecuting attorney may  
88 employ two stenographers for his office at a salary for each  
89 stenographer of not less than nine hundred nor more than  
90 one thousand two hundred dollars per annum, payable out of  
91 the county treasury.

92 In the county of Clay the prosecuting attorney may em-  
93 ploy a clerk or a stenographer for his office at a salary of  
94 one thousand two hundred dollars per annum, payable out of  
95 the county treasury.

96 In the county of Mingo the prosecuting attorney may em-  
97 ploy one stenographer for his office at a salary not to exceed  
98 one thousand five hundred dollars per annum, payable out  
99 of the county treasury.

100 In the county of Jackson the prosecuting attorney may em-  
101 ploy one stenographer or clerk for his office at a salary of six  
102 hundred dollars per annum, payable out of the county  
103 treasury.

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

*E. Q. Wiseman*

Chairman Senate Committee

*Lee W. Walker*

Chairman House Committee

Originated in the *House of Delegates*

Takes effect *ninety days from* passage.

*Charles D. Smith*

Clerk of the Senate

*Wes Hall*

Clerk of the House of Delegates

*James L. Thomas*

President of the Senate

*James L. Thomas*

Speaker House of Delegates

I certify that the foregoing act, having been presented to the Governor for his approval, ~~The without having been returned~~ this the \_\_\_\_\_ day of \_\_\_\_\_, 1939. by him to the House of the Legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

This the *17th* day of *March*, 19*39*.....

Governor.

19*39*.....

*Wm S. O'Brien*

SECRETARY OF STATE