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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

Comm. Sub. For Comm. Sub. For

SENATE BILL NO. 25

(By Senators *Toussaint, Mr. President and Boley, By Request of the Executive*)



PASSED March 10, 1995

In Effect 20 Days From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 25

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND BOLEY,
BY REQUEST OF THE EXECUTIVE)

[Passed March 10, 1995; in effect ninety days from passage.]

AN ACT to amend article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to the creation of the West Virginia prosecuting attorneys institute, its executive council and its executive director; duties and responsibilities of the institute; the appointment of special prosecutors to serve in the various counties where the elected prosecuting attorney in that county is disqualified from the prosecution of a criminal case in that county; assessing the cost of the operation of the West Virginia prosecuting attorneys institute upon the various counties; providing a mecha-

nism for county commission to be exempt from participating; providing for the termination of the West Virginia prosecuting attorneys institute; and annual reporting to the Legislature.

Be it enacted by the Legislature of West Virginia:

That article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section six, to read as follows:

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-6. West Virginia prosecuting attorneys institute.

1 (a) There is hereby created the West Virginia prosecut-
2 ing attorneys institute, a public body whose membership
3 shall consist of the fifty-five elected county prosecuting
4 attorneys in the state. The institute shall meet at least
5 once each calendar year and the presence of twenty-
6 eight of the fifty-five prosecutors at any meeting consti-
7 tutes a quorum for the conduct of the institute's busi-
8 ness.

9 (b) There is hereby created the executive council of the
10 West Virginia prosecuting attorneys institute which shall
11 consist of five prosecuting attorneys elected by the
12 membership of the West Virginia prosecuting attorneys
13 institute at its annual meeting and two persons ap-
14 pointed annually by the county commissioner's associa-
15 tion of West Virginia. The executive council shall elect
16 one member of the council to serve as chairman of the
17 institute for a term of one year without compensation.
18 The executive council shall serve as the regular execu-
19 tive body of the institute.

20 (c) There is hereby created the position of executive
21 director of the West Virginia prosecuting attorneys
22 institute to be employed by the executive council of the
23 institute. The executive director of the West Virginia
24 prosecuting attorneys institute shall serve at the will and
25 pleasure of the executive council of the institute at an
26 annual salary of fifty thousand dollars per year. The

27 executive director shall be licensed to practice law in the
28 state of West Virginia and shall devote full-time to his or
29 her official duties and may not engage in the private
30 practice of law.

31 (d) The duties and responsibilities of the institute, as
32 implemented by and through its executive council and
33 its executive director, shall include the following:

34 (1) To provide for special prosecuting attorneys to
35 pursue a criminal matter in any county upon the request
36 of a circuit court judge of that county and upon the
37 approval of the executive council;

38 (2) To establish and to implement general and special-
39 ized training programs for prosecuting attorneys and
40 their professional staffs;

41 (3) To provide materials for prosecuting attorneys and
42 their professional staffs, including legal research,
43 technical assistance and technical and professional
44 publications;

45 (4) To compile and disseminate information on behalf
46 of prosecuting attorneys and their professional staffs on
47 current developments and changes in the law and the
48 administration of criminal justice;

49 (5) To establish and to implement uniform reporting
50 procedures for prosecuting attorneys and their profes-
51 sional staffs in order to maintain and to provide accurate
52 and timely data and information relative to criminal
53 prosecutorial matters;

54 (6) To accept and expend funds, grants and gifts and
55 accept services from any public or private source;

56 (7) To enter into agreements and contracts with public
57 or private agencies or educational institutions;

58 (8) To identify experts and other resources for use by
59 prosecutors in criminal matters;

60 (9) To make recommendations to the Legislature or the
61 supreme court of appeals of the state of West Virginia on

62 measures required, or procedural rules to be promul-
63 gated, to make uniform the processing of juvenile cases
64 in the fifty-five counties of the state; and

65 (10) To develop a written handbook for prosecutors
66 and their assistants to use which delineates relevant
67 information concerning the elements of various crimes in
68 West Virginia and other information as the institutes
69 deems appropriate.

70 (e) Each prosecuting attorney is subject to appointment
71 by the institute to serve as a special prosecuting attorney
72 in any county where the prosecutor for that county or his
73 or her office has been disqualified from participating in
74 a particular criminal case. The circuit judge of any
75 county of this state, who disqualifies the prosecutor or
76 his or her office from participating in a particular
77 criminal case in that county, shall seek the appointment
78 by the institute of a special prosecuting attorney to
79 substitute for the disqualified prosecutor. The executive
80 director of the institute shall, upon written request to the
81 institute by any circuit judge as a result of disqualifica-
82 tion of the prosecutor or for other good cause shown, and
83 upon approval of the executive council, appoint a
84 prosecuting attorney to serve as a special prosecuting
85 attorney. The special prosecuting attorney appointed
86 shall serve without any further compensation other than
87 that paid to him or her by his or her county, except that
88 he or she is entitled to be reimbursed for his or her
89 legitimate expenses associated with travel, mileage,
90 room and board from the county to which he or she is
91 appointed as a prosecutor. The county commission in
92 which county he or she is special prosecutor is responsi-
93 ble for all expenses associated with the prosecution of
94 the criminal action.

95 (f) The executive director of the institute shall main-
96 tain an appointment list that shall include the names of
97 all fifty-five prosecuting attorneys and that shall also
98 include the names of any assistant prosecuting attorney
99 who wishes to serve as a special prosecuting attorney

100 upon the same terms and conditions as set forth in this
 101 section. The executive director of the institute, with the
 102 approval of the executive council, shall appoint special
 103 prosecuting attorneys from the appointment list for any
 104 particular matter giving due consideration to the prox-
 105 imity of the proposed special prosecuting attorney's
 106 home county to the county requesting a special prosecu-
 107 tor and giving due consideration to the expertise of the
 108 special prosecuting attorney.

109 (g) Commencing on the first day of July, one thousand
 110 nine hundred ninety-six, each county commission shall
 111 pay, on a monthly basis, a special prosecution premium
 112 to the treasurer of the state for the funding of the West
 113 Virginia prosecuting attorneys institute. The monthly
 114 premiums shall be paid according to the following
 115 schedule:

| MONTHLY PREMIUMS | | | | |
|----------------------------------------------------------------|-----------------|-----------------|---------|--|
| Assessed Valuation of Property of All Classes in the County | | | | |
| Category | Minimum | Maximum | Premium | |
| A | \$1,500,000,000 | Unlimited | \$400 | |
| B | \$1,000,000,000 | \$1,499,999,000 | \$375 | |
| C | \$ 800,000,000 | \$ 999,999,000 | \$350 | |
| D | \$ 700,000,000 | \$ 799,999,000 | \$325 | |
| E | \$ 600,000,000 | \$ 699,999,000 | \$300 | |
| F | \$ 500,000,000 | \$ 599,999,000 | \$250 | |
| G | \$ 400,000,000 | \$ 499,999,000 | \$200 | |
| H | \$ 300,000,000 | \$ 399,999,000 | \$150 | |
| I | \$ 200,000,000 | \$ 299,999,000 | \$100 | |
| J | -0- | \$ 199,999,000 | \$ 50 | |

130 Upon receipt of a premium, the treasurer shall deposit
 131 the premium into a special revenue fund to be known as
 132 the "West Virginia Prosecuting Attorneys Institute
 133 Fund". All costs of operating the West Virginia prose-
 134 cuting attorneys institute shall be paid from the West
 135 Virginia prosecuting attorneys institute fund upon
 136 proper authorization by the executive council or by the
 137 executive director of the institute and subject to annual

138 appropriation by the Legislature of the amounts con-
139 tained within the fund.

140 (h) (1) A county shall be exempted from the require-
141 ments of subsection (g) of this section if the county
142 commission of the county votes on or before the thirty-
143 first day of December, one thousand nine hundred
144 ninety-five, to exclude that county from participation in
145 the West Virginia prosecuting attorneys institute. On or
146 before the thirtieth day of September, one thousand nine
147 hundred ninety-five, the chair of the executive council of
148 the prosecuting attorneys institute shall notify each
149 county commission by registered mail, return receipt
150 requested, that the county commission will be subject to
151 said subsection if the county does not vote to be ex-
152 empted. The vote shall be during a regular public
153 meeting of the county commission. The meeting shall be
154 scheduled and notice of the meeting shall be provided in
155 accordance with the provisions of article nine-a, chapter
156 six of this code. If any county commission votes to
157 exclude its county pursuant to the provisions of this
158 subsection the county, its county prosecutor and assis-
159 tant prosecutors and its circuit judges are prohibited
160 from utilizing any of the services provided by the prose-
161 cuting attorneys institute unless those services are paid
162 for by the county on an actual cost basis, including fees,
163 expenses and other costs as determined and approved by
164 the executive counsel of the prosecuting attorneys
165 institute. Nothing contained within this subsection
166 prohibits the use by a circuit court of the procedures
167 provided in section eight, article seven of this chapter if
168 the county commission of the county in which the
169 subject prosecution has been brought has voted, pursu-
170 ant to the provisions of this subsection, to exclude that
171 county from the provisions of subsection (g) of this
172 section.

173 (2) After a county commission votes to exempt the
174 county from the provisions of subsection (g) of this
175 section, it may not participate in the prosecuting attor-
176 neys institute nor be required to pay the premiums under

177 said section unless the county commission votes at a
178 later meeting to participate.

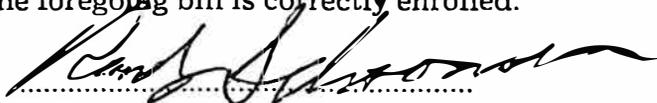
179 (i) The West Virginia prosecuting attorneys institute
180 shall continue to exist until the first day of July, one
181 thousand nine hundred ninety-eight, unless continued by
182 an act of the Legislature. The institute shall annually by
183 the first day of the regular legislative session provide the
184 joint committee of government and finance with a report
185 setting forth the activities of the institute and sugges-
186 tions for legislative action.

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



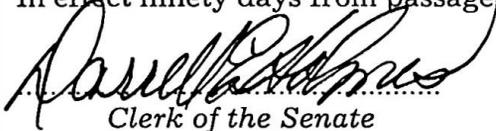
Chairman Senate Committee



Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker House of Delegates

The within *is approved* this the *21st*

day of *March*, 1995.



Governor

GVERNOR

Date 3/17/85

Time 3:15 pm