WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

ENROLLED

Senate Bill No. 25

(Passed by Senators Tony For. and Bruce, By Request of The Executive)

PASSED March 10, 1995
In Effect 90 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.

(a) There is hereby created the West Virginia prosecuting attorneys institute, a public body whose membership shall consist of the fifty-five elected county prosecuting attorneys in the state. The institute shall meet at least once each calendar year and the presence of twenty-eight of the fifty-five prosecutors at any meeting constitutes a quorum for the conduct of the institute's business.

(b) There is hereby created the executive council of the West Virginia prosecuting attorneys institute which shall consist of five prosecuting attorneys elected by the membership of the West Virginia prosecuting attorneys institute at its annual meeting and two persons appointed annually by the county commissioner's association of West Virginia. The executive council shall elect one member of the council to serve as chairman of the institute for a term of one year without compensation. The executive council shall serve as the regular executive body of the institute.

(c) There is hereby created the position of executive director of the West Virginia prosecuting attorneys institute to be employed by the executive council of the institute. The executive director of the West Virginia prosecuting attorneys institute shall serve at the will and pleasure of the executive council of the institute at an annual salary of fifty thousand dollars per year. The
executive director shall be licensed to practice law in the state of West Virginia and shall devote full-time to his or her official duties and may not engage in the private practice of law.

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

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

(2) To establish and to implement general and specialized training programs for prosecuting attorneys and their professional staffs;

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

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

(5) To establish and to implement uniform reporting procedures for prosecuting attorneys and their professional staffs in order to maintain and to provide accurate and timely data and information relative to criminal prosecutorial matters;

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

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

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

(9) To make recommendations to the Legislature or the supreme court of appeals of the state of West Virginia on
measures required, or procedural rules to be promulgated, to make uniform the processing of juvenile cases in the fifty-five counties of the state; and

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

(e) Each prosecuting attorney is subject to appointment by the institute to serve as a special prosecuting attorney in any county where the prosecutor for that county or his or her office has been disqualified from participating in a particular criminal case. The circuit judge of any county of this state, who disqualifies the prosecutor or his or her office from participating in a particular criminal case in that county, shall seek the appointment by the institute of a special prosecuting attorney to substitute for the disqualified prosecutor. The executive director of the institute shall, upon written request to the institute by any circuit judge as a result of disqualification of the prosecutor or for other good cause shown, and upon approval of the executive council, appoint a prosecuting attorney to serve as a special prosecuting attorney. The special prosecuting attorney appointed shall serve without any further compensation other than that paid to him or her by his or her county, except that he or she is entitled to be reimbursed for his or her legitimate expenses associated with travel, mileage, room and board from the county to which he or she is appointed as a prosecutor. The county commission in which county he or she is special prosecutor is responsible for all expenses associated with the prosecution of the criminal action.

(f) The executive director of the institute shall maintain an appointment list that shall include the names of all fifty-five prosecuting attorneys and that shall also include the names of any assistant prosecuting attorney who wishes to serve as a special prosecuting attorney
5  [Enr. Com. Sub. for Com. Sub. for S. B. No. 25

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:

116 MONTHLY PREMIUMS
117
118 | Category | Minimum Assessed Valuation of Property of All Classes in the County | Maximum | Premium |
119 | A | $1,500,000,000 | Unlimited |
120 | B | $1,000,000,000 | $1,499,999,000 |
121 | C | $800,000,000 | $999,999,000 |
122 | D | $700,000,000 | $799,999,000 |
123 | E | $600,000,000 | $699,999,000 |
124 | F | $500,000,000 | $599,999,000 |
125 | G | $400,000,000 | $499,999,000 |
126 | H | $300,000,000 | $399,999,000 |
127 | I | $200,000,000 | $299,999,000 |
128 | J | $0- | $199,999,000 |

129 Upon receipt of a premium, the treasurer shall deposit
130 the premium into a special revenue fund to be known as
131 the “West Virginia Prosecuting Attorneys Institute
132 Fund”. All costs of operating the West Virginia prose-
133 cuting attorneys institute shall be paid from the West
134 Virginia prosecuting attorneys institute fund upon
135 proper authorization by the executive council or by the
136 executive director of the institute and subject to annual
(h) (1) A county shall be exempted from the requirements of subsection (g) of this section if the county commission of the county votes on or before the thirty-first day of December, one thousand nine hundred ninety-five, to exclude that county from participation in the West Virginia prosecuting attorneys institute. On or before the thirtieth day of September, one thousand nine hundred ninety-five, the chair of the executive council of the prosecuting attorneys institute shall notify each county commission by registered mail, return receipt requested, that the county commission will be subject to said subsection if the county does not vote to be exempted. The vote shall be during a regular public meeting of the county commission. The meeting shall be scheduled and notice of the meeting shall be provided in accordance with the provisions of article nine-a, chapter six of this code. If any county commission votes to exclude its county pursuant to the provisions of this subsection the county, its county prosecutor and assistant prosecutors and its circuit judges are prohibited from utilizing any of the services provided by the prosecuting attorneys institute unless those services are paid for by the county on an actual cost basis, including fees, expenses and other costs as determined and approved by the executive counsel of the prosecuting attorneys institute. Nothing contained within this subsection prohibits the use by a circuit court of the procedures provided in section eight, article seven of this chapter if the county commission of the county in which the subject prosecution has been brought has voted, pursuant to the provisions of this subsection, to exclude that county from the provisions of subsection (g) of this section.

(2) After a county commission votes to exempt the county from the provisions of subsection (g) of this section, it may not participate in the prosecuting attorneys institute nor be required to pay the premiums under
said section unless the county commission votes at a later meeting to participate.

(i) The West Virginia prosecuting attorneys institute shall continue to exist until the first day of July, one thousand nine hundred ninety-eight, unless continued by an act of the Legislature. The institute shall annually by the first day of the regular legislative session provide the joint committee of government and finance with a report setting forth the activities of the institute and suggestions for legislative action.
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 ... appears ... this the 21st ............

day of ... March ... 1995.

Governor