

SB 239

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



# ENROLLED

SENATE BILL NO. 239

(By Senator WOOTON, ET AL)



PASSED FEBRUARY 20, 1998

In Effect NINETY DAYS FROM Passage

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SECRETARY OF STATE

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### Senate Bill No. 239

(BY SENATORS WOOTON, BALL, BOWMAN, DITTMAR, FANNING,  
HUNTER, KESSLER, OLIVERIO, ROSS, SCHOONOVER, SNYDER,  
WHITE, BUCKALEW, DEEM, KIMBLE AND SCOTT)

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[Passed February 20, 1998; in effect ninety days from passage.]

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AN ACT to amend and reenact section six, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishment of the prosecuting attorneys institute; establishing the executive counsel; creating the position of executive director; establishing duties of institute and personnel; establishing dues structure for counties; and limitations on scope of lobbying activities.

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

That section six, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted 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 prosecuting  
2 attorneys institute, a public body whose membership shall  
3 consist of the fifty-five elected county prosecuting attor-  
4 neys in the state. The institute shall meet at least once  
5 each calendar year and the presence of twenty-eight of the  
6 fifty-five prosecutors at any meeting constitutes a quorum  
7 for the conduct of the institute's business.

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

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

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

32 (1) To provide for special prosecuting attorneys to  
33 pursue a criminal matter in any county upon the request

34 of a circuit court judge of that county and upon the  
35 approval of the executive council;

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

39 (3) To provide materials for prosecuting attorneys and  
40 their professional staffs, including legal research, techni-  
41 cal assistance and technical and professional publications;

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

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

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

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

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

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

62 (10) To develop a written handbook for prosecutors and  
63 their assistants to use which delineates relevant informa-  
64 tion concerning the elements of various crimes in West  
65 Virginia and other information as the institute deems  
66 appropriate.

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

91 (f) The executive director of the institute shall maintain  
92 an appointment list that shall include the names of all  
93 fifty-five prosecuting attorneys and that shall also include  
94 the names of any assistant prosecuting attorney who  
95 wishes to serve as a special prosecuting attorney upon the  
96 same terms and conditions as set forth in this section. The  
97 executive director of the institute, with the approval of the  
98 executive council, shall appoint special prosecuting  
99 attorneys from the appointment list for any particular  
100 matter giving due consideration to the proximity of the  
101 proposed special prosecuting attorney's home county to  
102 the county requesting a special prosecutor and giving due  
103 consideration to the expertise of the special prosecuting

104 attorney.

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

112 **MONTHLY PREMIUMS**

113 Assessed Valuation of Property  
 114 of All Classes in the County

115 Category	Minimum	Maximum	Premium
116 A	\$1,500,000,000	Unlimited	\$400
117 B	\$1,000,000,000	\$1,499,999,000	\$375
118 C	\$ 800,000,000	\$ 999,999,000	\$350
119 D	\$ 700,000,000	\$ 799,999,000	\$325
120 E	\$ 600,000,000	\$ 699,999,000	\$300
121 F	\$ 500,000,000	\$ 599,999,000	\$250
122 G	\$ 400,000,000	\$ 499,999,000	\$200
123 H	\$ 300,000,000	\$ 399,999,000	\$150
124 I	\$ 200,000,000	\$ 299,999,000	\$100
125 J	-0-	\$ 199,999,000	\$ 50

126 Upon receipt of a premium, the treasurer shall deposit  
 127 the premium into a special revenue fund to be known as  
 128 the "West Virginia Prosecuting Attorneys Institute Fund".  
 129 All costs of operating the West Virginia prosecuting  
 130 attorneys institute shall be paid from the West Virginia  
 131 prosecuting attorneys institute fund upon proper authori-  
 132 zation by the executive council or by the executive  
 133 director of the institute and subject to annual appropri-  
 134 ation by the Legislature of the amounts contained within  
 135 the fund.

136 (h) The West Virginia prosecuting attorneys institute  
 137 shall continue to exist until the first day of July, two

138 thousand one, unless continued by an act of the Legisla-  
139 ture. The institute shall annually by the first day of the  
140 regular legislative session provide the joint committee on  
141 government and finance with a report setting forth the  
142 activities of the institute and suggestions for legislative  
143 action.

144 (i) Neither the institute nor its employees acting in their  
145 employment capacity shall engage in activities before  
146 governmental bodies which advocate positions on issues  
147 other than those issues consistent with the duties of the  
148 institute set forth in subsection (d) of this section.

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

*Randy Schanover*  
.....  
Chairman Senate Committee

*Nickie Fantasio*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Russell B. Baker*  
.....  
Clerk of the Senate

*Bryant D. Burd*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Frank*  
.....  
Speaker House of Delegates

The within *approved* ..... this the *5th* .....  
day of *March* ....., 1998.

*Jeffrey D. Abernethy*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date

3/2/98

Time

3:11 pm