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2001 MAY -2 A 11: 14

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



# ENROLLED

## House Bill No. 2958

(By Delegates Amores, Staton, Webster,  
R. Thompson, Wills and Faircloth)



Passed April 13, 2001

In Effect from Passage

FILED

2001 MAY -2 A 11: 18

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

**H. B. 2958**

(BY DELEGATES AMORES, STATON, WEBSTER,  
R. THOMPSON, WILLS AND FAIRCLOTH)

[Passed April 13, 2001; in effect from passage.]

AN ACT to amend and reenact section nine, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article four, chapter seven of said code; and to amend article seven of said chapter by adding thereto a new section, designated section four-a, all relating to prosecuting attorneys; providing for certain authorization and use of special prosecuting attorneys; and authorizing the option of full-time status for certain part-time prosecuting attorneys.

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

That section nine, article two, chapter six-b of code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section six, article four, chapter seven of said code be amended and reenacted; and that article seven of said chapter be amended by adding thereto a new section, designated section four-a, all to read as follows:

FILED

**CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES;  
ETHICS; CONFLICTS OF INTEREST;  
FINANCIAL DISCLOSURE.**

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND  
DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY  
PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES  
BEFORE PUBLIC AGENCIES.**

**§6B-2-9. Special prosecutor authorized.**

1 (a) If the ethics commission finds as the result of an  
2 investigation of a complaint that a pattern of ethics violations  
3 or criminal violations under this chapter or under article five-a,  
4 chapter sixty-one of this code, exists in a state, county or  
5 covered municipal government, county school board or one of  
6 their respective departments, agencies, boards or commissions,  
7 and also finds that the prosecuting attorney of the county in  
8 which the violation occurred is, for some reason, unable or  
9 unwilling to take appropriate action, the chairman of the ethics  
10 commission may, upon a two-thirds vote of the members of the  
11 ethics commission, petition the appropriate circuit court for the  
12 appointment of a special prosecutor for the purpose of conduct-  
13 ing an investigation to determine whether a violation of the  
14 criminal law of this state has occurred.

15 (b) A special prosecutor shall have the same authority as a  
16 county prosecutor to investigate and prosecute persons subject  
17 to this act for criminal violations committed in connection with  
18 their public office or employment which constitute felonies. No  
19 person who is serving as a prosecuting attorney or assistant  
20 prosecuting attorney of any county is required to take an  
21 additional oath when appointed to serve as a special prosecuting  
22 attorney.

23 (c) The ethics committee shall be authorized to employ and  
24 assign the necessary professional and clerical staff to assist any

25 such special prosecutor in the performance of his or her duties  
26 and to pay and to set the compensation to be paid to a special  
27 prosecutor in an amount not to exceed seventy-five dollars per  
28 hour up to a maximum of fifty thousand dollars per annum.

29 (d) The special prosecutor shall be empowered to make a  
30 presentment to any regularly or specially impaneled grand jury  
31 in the appointing circuit court. The special prosecutor shall be  
32 empowered to prosecute any person indicted by such grand  
33 jury.

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **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 attorneys in  
4 the state. The institute shall meet at least once each calendar  
5 year and the presence of twenty-eight of the fifty-five prosecu-  
6 tors at any meeting constitutes a quorum for the conduct of the  
7 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 membership  
11 of the West Virginia prosecuting attorneys institute at its annual  
12 meeting and two persons appointed annually by the county  
13 commissioner's association of West Virginia. The executive  
14 council shall elect one member of the council to serve as  
15 chairman of the institute for a term of one year without com-  
16 pensation. The executive council shall serve as the regular  
17 executive body of the institute.

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

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

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

37 (2) To establish and to implement general and specialized  
38 training programs for prosecuting attorneys and their profes-  
39 sional staffs;

40 (3) To provide materials for prosecuting attorneys and their  
41 professional staffs, including legal research, technical assis-  
42 tance and technical and professional publications;

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

47 (5) To establish and to implement uniform reporting  
48 procedures for prosecuting attorneys and their professional

49 staffs in order to maintain and to provide accurate and timely  
50 data and information relative to criminal prosecutorial matters;

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

53 (7) To enter into agreements and contracts with public or  
54 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, to  
60 make uniform the processing of juvenile cases in the fifty-five  
61 counties of the state; and

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

66 (e) Each prosecuting attorney is subject to appointment by  
67 the institute to serve as a special prosecuting attorney in any  
68 county where the prosecutor for that county or his or her office  
69 has been disqualified from participating in a particular criminal  
70 case. The circuit judge of any county of this state, who disquali-  
71 fies the prosecutor or his or her office from participating in a  
72 particular criminal case in that county, shall seek the appoint-  
73 ment by the institute of a special prosecuting attorney to  
74 substitute for the disqualified prosecutor. The executive director  
75 of the institute shall, upon written request to the institute by any  
76 circuit judge as a result of disqualification of the prosecutor or  
77 for other good cause shown, and upon approval of the executive  
78 council, appoint a prosecuting attorney to serve as a special  
79 prosecuting attorney. The special prosecuting attorney ap-

80 pointed shall serve without any further compensation other than  
81 that paid to him or her by his or her county, except that he or  
82 she is entitled to be reimbursed for his or her legitimate  
83 expenses associated with travel, mileage and room and board  
84 from the county to which he or she is appointed as a prosecutor.  
85 The county commission in which county he or she is special  
86 prosecutor is responsible for all expenses associated with the  
87 prosecution of the criminal action. No person who is serving as  
88 a prosecuting attorney or assistant prosecuting attorney of any  
89 county is required to take an additional oath when appointed to  
90 serve as a special prosecuting attorney.

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

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

110 **MONTHLY PREMIUMS**  
111 Assessed Valuation of Property  
112 of All Classes in the County

| 113 | Category | Minimum         | Maximum         | Premium |
|-----|----------|-----------------|-----------------|---------|
| 114 | A        | \$1,500,000,000 | Unlimited       | \$400   |
| 115 | B        | \$1,000,000,000 | \$1,499,999,000 | \$375   |
| 116 | C        | \$ 800,000,000  | \$ 999,999,000  | \$350   |
| 117 | D        | \$ 700,000,000  | \$ 799,999,000  | \$325   |
| 118 | E        | \$ 600,000,000  | \$ 699,999,000  | \$300   |
| 119 | F        | \$ 500,000,000  | \$ 599,999,000  | \$250   |
| 120 | G        | \$ 400,000,000  | \$ 499,999,000  | \$200   |
| 121 | H        | \$ 300,000,000  | \$ 399,999,000  | \$150   |
| 122 | I        | \$ 200,000,000  | \$ 299,999,000  | \$100   |
| 123 | J        | -0-             | \$ 199,999,000  | \$ 50   |

124       Upon receipt of a premium, grant, reimbursement or other  
125 funding source, excluding federal funds as provided in article  
126 two, chapter four of this code, the treasurer shall deposit the  
127 funds into a special revenue fund to be known as the “West  
128 Virginia prosecuting attorneys institute fund”. All costs of  
129 operating the West Virginia prosecuting attorneys institute shall  
130 be paid from the West Virginia prosecuting attorneys institute  
131 fund upon proper authorization by the executive council or by  
132 the executive director of the institute and subject to annual  
133 appropriation by the Legislature of the amounts contained  
134 within the fund.

135       (h) The West Virginia prosecuting attorneys institute shall  
136 continue to exist until the first day of July, two thousand five,  
137 unless continued by an act of the Legislature. The institute shall  
138 annually by the first day of the regular legislative session  
139 provide the joint committee on government and finance with a  
140 report setting forth the activities of the institute and suggestions  
141 for legislative action.

142       (i) Neither the institute nor its employees acting in their  
143 employment capacity shall engage in activities before govern-  
144 mental bodies which advocate positions on issues other than

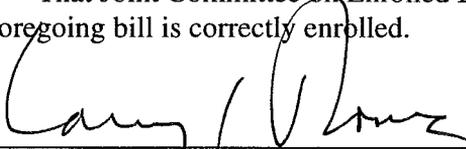
145 those issues consistent with the duties of the institute set forth  
146 in subsection (d) of this section.

**ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.**

**§7-7-4a. Authorizing the option of full-time status for part-time  
prosecuting attorneys.**

1 Notwithstanding any provision of this code to the contrary,  
2 in any county which has a part-time prosecuting attorney the  
3 county commission may, on the request of the prosecuting  
4 attorney, find that such facts and circumstances exist that  
5 require the prosecuting attorney to devote full time to his or her  
6 public duties. If the county commission makes such a finding,  
7 by proper order adopted and entered, it shall require the  
8 prosecuting attorney to devote full time to his or her public  
9 duties and the county commission shall then compensate the  
10 prosecuting attorney at the same rate of compensation estab-  
11 lished for a prosecuting attorney in a Class V county: *Provided,*  
12 That nothing contained herein may be interpreted to affect the  
13 status of a prosecuting attorney who has heretofore, by proper  
14 order so entered, become full time.

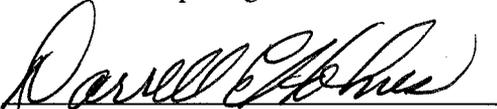
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman Senate Committee

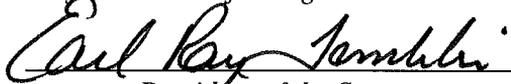
  
\_\_\_\_\_  
Chairman House Committee

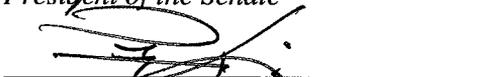
Originating in the House.

In effect from passage.

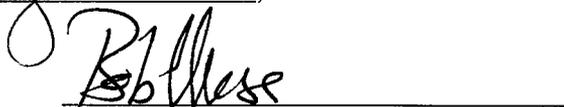
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 1<sup>st</sup>  
day of May, 2001.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR

Date 5/1/01

Time 2:35 pm