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
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:

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

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

(c) The ethics committee shall be authorized to employ and assign the necessary professional and clerical staff to assist any
such special prosecutor in the performance of his or her duties
and to pay and to set the compensation to be paid to a special
prosecutor in an amount not to exceed seventy-five dollars per
hour up to a maximum of fifty thousand dollars per annum.

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

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

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 prosecu-
tors 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 com-
pensation. 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: Beginning the first day of July, one thousand nine hundred ninety-nine, the executive director shall receive an annual salary of fifty-five thousand dollars. 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 institute 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 disquali-
fies the prosecutor or his or her office from participating in a
particular criminal case in that county, shall seek the appoint-
ment 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 ap-
pointed 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 and 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. No person who is serving as
a prosecuting attorney or assistant prosecuting attorney of any
county is required to take an additional oath when appointed to
serve as a special prosecuting attorney.

(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 upon the same terms and condi-
tions as set forth in this section. The executive director of the
institute, with the approval of the executive council, shall
appoint special prosecuting attorneys from the appointment list
for any particular matter giving due consideration to the
proximity of the proposed special prosecuting attorney’s home
county to the county requesting a special prosecutor and giving
due consideration to the expertise of the special prosecuting
attorney.

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

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<th>MONTHLY PREMIUMS</th>
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<td>Assessed Valuation of Property</td>
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Upon receipt of a premium, grant, reimbursement or other funding source, excluding federal funds as provided in article two, chapter four of this code, the treasurer shall deposit the funds into a special revenue fund to be known as the “West Virginia prosecuting attorneys institute fund”. All costs of operating the West Virginia prosecuting attorneys institute shall be paid from the West Virginia prosecuting attorneys institute fund upon proper authorization by the executive council or by the executive director of the institute and subject to annual appropriation by the Legislature of the amounts contained within the fund.

(h) The West Virginia prosecuting attorneys institute shall continue to exist until the first day of July, two thousand five, 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 on government and finance with a report setting forth the activities of the institute and suggestions for legislative action.

(i) Neither the institute nor its employees acting in their employment capacity shall engage in activities before governmental bodies which advocate positions on issues other than
those issues consistent with the duties of the institute set forth 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.

Notwithstanding any provision of this code to the contrary, in any county which has a part-time prosecuting attorney the county commission may, on the request of the prosecuting attorney, find that such facts and circumstances exist that require the prosecuting attorney to devote full time to his or her public duties. If the county commission makes such a finding, by proper order adopted and entered, it shall require the prosecuting attorney to devote full time to his or her public duties and the county commission shall then compensate the prosecuting attorney at the same rate of compensation established for a prosecuting attorney in a Class V county: Provided, That nothing contained herein may be interpreted to affect the status of a prosecuting attorney who has heretofore, by proper 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 1st day of May, 2001.

Governor