

FILED

2009 JUN -5 PM 4: 08

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009

**SECOND
ENROLLMENT**

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 3120**

(By Delegates Morgan, Marshall, Talbott, Martin, Klempa, and Paxton)

Amended and again passed May 27, 2009,
as a result of the objections of the Governor

In Effect Ninety Days From Passage

HB 3120
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E N R O L L M E N T

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COMMITTEE SUBSTITUTE

FOR

H. B. 3120

(BY DELEGATES MORGAN, MARSHALL, TALBOTT, MARTIN,
KLEMPA AND PAXTON)

[Amended and again passed May 27, 2009, as a result of the objections of the Governor; in effect ninety days from passage.]

AN ACT to repeal §7-4-6a of the Code of West Virginia, 1931, as amended; and to amend and reenact §7-4-6 of said code, relating to the West Virginia Prosecuting Attorneys Institute; increasing the membership of the executive council; permitting the appointment of special prosecutors in matters of juvenile delinquency and child abuse and neglect; and repealing outdated section that continued the Prosecuting Attorneys Institute.

Be it enacted by the Legislature of West Virginia:

That §7-4-6a of the Code of West Virginia, 1931, as amended, be repealed, and that §7-4-6 of said code be amended and reenacted to read as follows: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 continued the West Virginia Prosecuting
2 Attorneys Institute, a public body whose membership shall
3 consist of the fifty-five elected county prosecuting attorneys
4 in the state. The Institute shall meet at least once each
5 calendar year and the presence of twenty-eight of the
6 fifty-five prosecutors at any meeting constitutes a quorum for
7 the conduct of the Institute's business.

8 (b) There is continued the Executive Council of the
9 West Virginia Prosecuting Attorneys Institute which shall
10 consist of seven 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 of
16 one year without compensation. The executive council shall
17 serve as the regular executive body of the institute.

18 (c) There is continued the position of Executive Director
19 of the West Virginia Prosecuting Attorneys Institute to be
20 employed by the executive council of the institute. The
21 Executive Director of the West Virginia Prosecuting
22 Attorneys Institute shall serve at the will and pleasure of the
23 executive council of the institute. The executive director
24 shall be licensed to practice law in the State of West Virginia
25 and shall devote full time to his or her official duties and may
26 not engage in the private practice of law.

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

30 (1) The provision for special prosecuting attorneys to
31 pursue a criminal matter, a juvenile delinquency matter or a
32 matter involving child abuse neglect pursuant to chapter
33 forty-nine of this code, or in any matter wherein a special
34 prosecutor previously appointed has failed to take any action
35 thereon within such time as the Executive Director deems
36 unreasonable, not to exceed three terms of court from the
37 date on which the special prosecutor was appointed:
38 *Provided*, That such replacement or original appointment
39 may be any attorney with a license in good standing in this
40 state in any county upon the request of a circuit court judge
41 of that county and upon the approval of the executive
42 council;

43 (2) The establishment and implementation of general
44 and specialized training programs for prosecuting attorneys,
45 their staffs and, where determined practical by the executive
46 council and executive director, all statutorily authorized
47 law-enforcement or investigative agencies of the state or its
48 political subdivisions;

49 (3) The provision of materials for prosecuting attorneys
50 and their staffs, including legal research, technical assistance
51 and technical and professional publications;

52 (4) The compilation and dissemination of information on
53 behalf of prosecuting attorneys and their staffs on current
54 developments and changes in the law and the administration
55 of criminal justice;

56 (5) The establishment and implementation of uniform
57 reporting procedures for prosecuting attorneys and their
58 professional staffs in order to maintain and to provide
59 accurate and timely data and information relative to criminal
60 prosecutorial matters;

61 (6) The acceptance and expenditure of grants, moneys
62 for reimbursement of expenses, gifts and acceptance of
63 services from any public or private source;

64 (7) The entering into of agreements and contracts with
65 public or private agencies, groups, organizations or
66 educational institutions;

67 (8) The identification of experts and other resources for
68 use by prosecutors in criminal matters;

69 (9) The recommendation to the Legislature or the
70 Supreme Court of Appeals of the State of West Virginia on
71 measures required, or procedural rules to be promulgated, to
72 make uniform the processing of juvenile cases in the
73 fifty-five counties of the state; and

74 (10) The development of a written handbook for
75 prosecutors and their assistants to use which delineates
76 relevant information concerning the elements of various
77 crimes in West Virginia and other information the institute
78 considers appropriate.

79 (e) Each prosecuting attorney is subject to appointment
80 by the institute to serve as a special prosecuting attorney in
81 any county where the prosecutor for that county or his or her
82 office has been disqualified from participating in a particular
83 criminal case, a juvenile delinquency matter or a matter
84 involving child abuse neglect pursuant to chapter forty-nine
85 of this code, or in any matter wherein a special prosecutor
86 previously appointed has failed to take any action thereon
87 within such time as the Executive Director deems
88 unreasonable, not to exceed three terms of court from the
89 date on which the special prosecutor was appointed:
90 *Provided*, That such replacement or original appointment
91 may be any attorney with a license in good standing in this

92 state. The circuit judge of any county of this state, who
93 disqualifies the prosecutor or his or her office from
94 participating in a particular criminal case, a juvenile
95 delinquency matter or a matter involving child abuse or
96 neglect pursuant to chapter forty-nine of this code in that
97 county, shall seek the appointment by the institute of a
98 special prosecuting attorney to substitute for the disqualified
99 prosecutor. The executive director of the institute shall, upon
100 written request to the institute by any circuit judge as a result
101 of disqualification of the prosecutor or for other good cause
102 shown, and upon approval of the executive council, appoint
103 a prosecuting attorney to serve as a special prosecuting
104 attorney. The special prosecuting attorney appointed shall
105 serve without any further compensation other than that paid
106 to him or her by his or her county, except that he or she is
107 entitled to be reimbursed for his or her legitimate expenses
108 associated with travel, mileage and room and board from the
109 county to which he or she is appointed as a prosecutor. The
110 county commission in which county he or she is special
111 prosecutor is responsible for all expenses associated with the
112 prosecution of the criminal action. No person who is serving
113 as a prosecuting attorney or an assistant prosecuting attorney
114 of any county is required to take an additional oath when
115 appointed to serve as a special prosecuting attorney.

116 (f) The executive director of the institute shall maintain
117 an appointment list that shall include the names of all
118 fifty-five prosecuting attorneys and that shall also include the
119 names of any assistant prosecuting attorney who wishes to
120 serve as a special prosecuting attorney upon the same terms
121 and conditions as set forth in this section. The executive
122 director of the institute, with the approval of the executive
123 council, shall appoint special prosecuting attorneys from the
124 appointment list for any particular matter giving due
125 consideration to the proximity of the proposed special
126 prosecuting attorney's home county to the county requesting

127 a special prosecutor and giving due consideration to the
 128 expertise of the special prosecuting attorney.

129 (g) Each county commission shall pay, on a monthly
 130 basis, a special prosecution premium to the Treasurer of the
 131 state for the funding of the West Virginia Prosecuting
 132 Attorneys Institute. The monthly premiums shall be paid
 133 according to the following schedule:

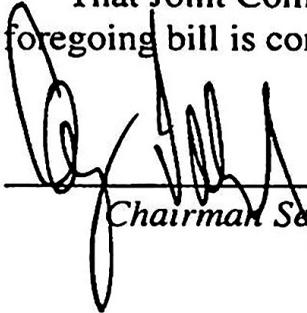
134	MONTHLY PREMIUMS			
135	Assessed Valuation of Property			
136	of All Classes in the County			
137	Category	Minimum	Maximum	Premium
138	A	\$1,500,000,000	Unlimited	\$400
139	B	\$1,000,000,000	\$1,499,999,000	\$375
140	C	\$ 800,000,000	\$ 999,999,000	\$350
141	D	\$ 700,000,000	\$ 799,999,000	\$325
142	E	\$ 600,000,000	\$ 699,999,000	\$300
143	F	\$ 500,000,000	\$ 599,999,000	\$250
144	G	\$ 400,000,000	\$ 499,999,000	\$200
145	H	\$ 300,000,000	\$ 399,999,000	\$150
146	I	\$ 200,000,000	\$ 299,999,000	\$100
147	J	-0-	\$ 199,999,000	\$ 50

148 (h) Upon receipt of a premium, grant, reimbursement or
149 other funding source, excluding federal funds as provided in
150 article two, chapter four of this code, the Treasurer shall
151 deposit the funds into a special revenue fund to be known as
152 the "West Virginia Prosecuting Attorneys Institute Fund".
153 All costs of operating the West Virginia Prosecuting
154 Attorneys Institute shall be paid from the West Virginia
155 Prosecuting Attorneys Institute Fund upon proper
156 authorization by the executive council or by the executive
157 director of the institute and subject to annual appropriation by
158 the Legislature of the amounts contained within the fund.

159 (i) The institute shall annually, by the first day of the
160 regular Legislative session, provide the Joint Committee on
161 Government and Finance with a report setting forth the
162 activities of the institute and suggestions for legislative
163 action.

164 (j) Neither the institute nor its employees acting in their
165 employment capacity shall engage in activities before
166 governmental bodies which advocate positions on issues
167 other than those issues consistent with the duties of the
168 institute set forth in subsection (d) of this section.

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.

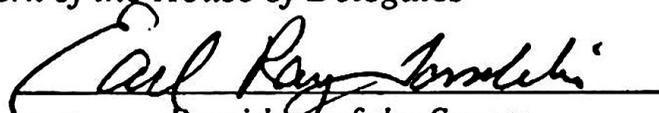
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

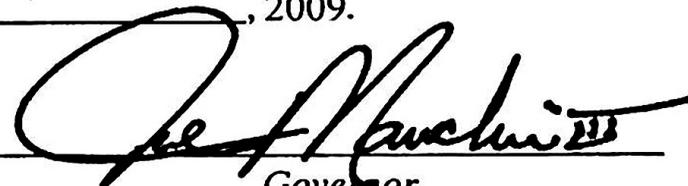


President of the Senate



Speaker of the House of Delegates

The within is approved this the 5th
day of June, 2009.



Governor

PRESENTED TO THE
GOVERNOR

JUN - 1 2009

Time 10:10 am