

H. B. 3161

(By Delegate Lane)

[Introduced February 16, 2011; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §5-3-2 of the Code of West Virginia, 1931, as amended, relating to assignment of cases to private attorneys by bid; requiring that the Joint Committee on Government and Finance approve any proposed settlement involving the office of the Attorney General; and, providing that any proceeds received in any civil action involving the office of the Attorney General be deposited in the General Revenue Fund to be appropriated by the Legislature.

Be it enacted by the Legislature of West Virginia:

That §5-3-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ATTORNEY GENERAL.

§5-3-2. Act as counsel for state; duties and powers as to prosecuting attorneys; defense of National Guardsmen.

The Attorney General shall appear as counsel for the state in all causes pending in the Supreme Court of Appeals, or in any federal court, in which the state is interested; ~~he~~ the Attorney

1 General shall appear in any cause in which the state is interested
2 that is pending in any other court in the state, on the written
3 request of the Governor, and when such appearance is entered ~~he~~
4 the Attorney General shall take charge of and have control of such
5 cause; ~~he~~ the Attorney General shall defend all actions and
6 proceedings against any state officer in his official capacity in
7 any of the courts of this state or any of the federal courts when
8 the state is not interested in such cause against such officer, but
9 should the state be interested against such officer, ~~he~~ the
10 Attorney General shall appear for the state; ~~he~~ the Attorney
11 General shall institute and prosecute all civil actions and
12 proceedings in favor of or for the use of the state which may be
13 necessary in the execution of the official duties of any state
14 officer, board or commission on the written request of such
15 officer, board or commission. Notwithstanding any provision of law
16 to the contrary, he or she shall not enter into any proposed
17 settlement in any civil action until the Joint Committee on
18 Government and Finance approves of the settlement. Also, any
19 proceeds from any judgment or settlement from any such civil action
20 shall be deposited into the General Revenue Fund to be appropriated
21 by the Legislature. In contracting with private attorneys to
22 pursue legal action on behalf of the state, the Attorney General
23 shall seek bids from attorneys licensed to practice in this state
24 and shall contract with the best qualified attorney submitting the
25 lowest bid. ~~he~~ The Attorney General shall, when requested by the
26 prosecuting attorney of a county wherein a state institution of

1 correction is located, provide attorneys for appointment as special
2 prosecuting attorneys to assist the prosecuting attorney of said
3 county in the prosecution of criminal proceedings when, in the
4 opinion of the circuit judge of said county, or a justice of the
5 West Virginia Supreme Court of Appeals, extraordinary circumstances
6 exist at said institution which render the financial resources of
7 the office of the prosecuting attorney inadequate to prosecute said
8 cases; ~~he~~ the Attorney General may consult with and advise the
9 several prosecuting attorneys in matters relating to the official
10 duties of their office, and may require a written report from them
11 of the state and condition of the several causes, in which the
12 state is a party, pending in the courts of their respective
13 counties; ~~he~~ the Attorney General may require the several
14 prosecuting attorneys to perform, within the respective counties in
15 which they are elected, any of the legal duties required to be
16 performed by the Attorney General which are not inconsistent with
17 the duties of the prosecuting attorneys as the legal
18 representatives of their respective counties; when the performance
19 of any such duties by the prosecuting attorney conflicts with his
20 or her duties as the legal representative of his or her county, or
21 for any reason any prosecuting attorney is disqualified from
22 performing such duties, the Attorney General may require the
23 prosecuting attorney of any other county to perform such duties in
24 any county other than that in which such prosecuting attorney is
25 elected and for the performance of which duties outside of the
26 county in which he or she is elected the prosecuting attorney shall

1 be paid his or her actual traveling and other expenses out of the
2 appropriation for contingent expenses for the department for which
3 such services are rendered; the Attorney General shall keep in
4 proper books, a register of all causes prosecuted or defended by
5 him or her in behalf of the state or its officers and of the
6 proceedings had in relation thereto, and deliver the same to his or
7 her successor in office; and ~~he~~ the Attorney General shall preserve
8 in his or her office all ~~his~~ official opinions of the office of the
9 Attorney General and publish the same in his or her biennial
10 report.

11 Upon request of any member of the West Virginia National Guard
12 who has been named defendant in any civil action arising out of
13 that guardsman's action while under orders from the Governor
14 relating to National Guard assistance in disasters and civil
15 disorders, the Attorney General shall appear as counsel for and
16 represent such guardsman.

NOTE: The purpose of this bill is to require that the Joint Committee on Government and Finance approve any proposed settlement involving the office of the Attorney General while, additionally, providing that any proceeds received in any civil action involving the office of the Attorney General be deposited in the General Revenue Fund to be appropriated by the Legislature. In addition, the bill requires that the Attorney General seek bids from private attorneys when seeking outside legal assistance.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.