

1 **H. B. 4325**

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3 (By Delegates Mahan and Guthrie)  
4 [Introduced January 27, 2012; referred to the  
5 Committee on Government Organization then the Judiciary.]  
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10 A BILL to amend and reenact §5-3-2 of the Code of West Virginia,  
11 1931, as amended, relating to granting the Attorney General  
12 prosecutorial power.

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

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

16 **ARTICLE 3. ATTORNEY GENERAL.**

17 **§5-3-2. Act as counsel for state; duties and powers as to**  
18 **prosecuting attorneys; defense of National Guardsmen.**

19 The Attorney General shall appear as counsel for the state in  
20 all causes pending in the Supreme Court of Appeals, or in any  
21 federal court, in which the state is interested; ~~he~~ the Attorney  
22 General shall appear in any cause in which the state is interested  
23 that is pending in any other court in the state, on the written

1 request of the Governor, and when such appearance is entered ~~he~~  
2 the Attorney General shall take charge of and have control of such  
3 cause; ~~he~~ the Attorney General shall defend all actions and  
4 proceedings against any state officer in his or her official  
5 capacity in any of the courts of this state or any of the federal  
6 courts when the state is not interested in such cause against such  
7 officer, but should the state be interested against such officer,  
8 ~~he~~ the Attorney General shall appear for the state; ~~he~~ the Attorney  
9 General shall institute and prosecute all civil actions and  
10 proceedings in favor of or for the use of the state which may be  
11 necessary in the execution of the official duties of any state  
12 officer, board or commission on the written request of such  
13 officer, board or commission; ~~he~~ the Attorney General shall, when  
14 requested by the prosecuting attorney of a county wherein a state  
15 institution of correction is located, provide attorneys for  
16 appointment as special prosecuting attorneys to assist the  
17 prosecuting attorney of said county in the prosecution of criminal  
18 proceedings when, in the opinion of the circuit judge of said  
19 county, or a justice of the West Virginia Supreme Court of Appeals,  
20 extraordinary circumstances exist at said institution which render  
21 the financial resources of the office of the prosecuting attorney  
22 inadequate to prosecute said cases; ~~he~~ the Attorney General may  
23 consult with and advise the several prosecuting attorneys in  
24 matters relating to the official duties of their office, and may

1 require a written report from them of the state and condition of  
2 the several causes, in which the state is a party, pending in the  
3 courts of their respective counties; ~~he~~ the Attorney General may  
4 require the several prosecuting attorneys to perform, within the  
5 respective counties in which they are elected, any of the legal  
6 duties required to be performed by the Attorney General which are  
7 not inconsistent with the duties of the prosecuting attorneys as  
8 the legal representatives of their respective counties; when the  
9 performance of any such duties by the prosecuting attorney  
10 conflicts with his or her duties as the legal representative of his  
11 or her county, or for any reason any prosecuting attorney is  
12 disqualified from performing such duties, the Attorney General may  
13 require the prosecuting attorney of any other county to perform  
14 such duties in any county other than that in which such prosecuting  
15 attorney is elected and for the performance of which duties outside  
16 of the county in which he or she is elected the prosecuting  
17 attorney shall be paid his or her actual traveling and other  
18 expenses out of the appropriation for contingent expenses for the  
19 department for which such services are rendered; the Attorney  
20 General shall keep in proper books, a register of all causes  
21 prosecuted or defended by him or her in behalf of the state or its  
22 officers and of the proceedings had in relation thereto, and  
23 deliver the same to his or her successor in office; ~~and he~~ the  
24 Attorney General shall preserve in his or her office all ~~his~~

1 official opinions of the Office of the Attorney General and publish  
2 the same in his or her biennial report; and notwithstanding any  
3 provision in this code to the contrary, the Attorney General has  
4 general prosecutorial power to enforce any provision of this code  
5 under which the Attorney General has existing investigatory or  
6 regulatory authority.

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

NOTE: The purpose of this bill is to provide the Attorney General with prosecutorial power.

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