

**Senate Bill No. 436**

(By Senators Laird, M. Hall, Miller, Plymale and Stollings)

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[Introduced January 27, 2014; referred to the Committee on the  
 Judiciary; and then to the Committee on Finance.]

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A BILL to amend and reenact §6-7-2a of the Code of West Virginia,  
 1931, as amended; and to amend and reenact §7-4-6 of said  
 code, all relating to providing that the salary of the  
 Executive Director of the West Virginia Prosecuting Attorneys  
 Institute shall be established by the executive council of the  
 institute, with a minimum salary of \$70,000.

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

That §6-7-2a of the Code of West Virginia, 1931, as amended,  
 be amended and reenacted; and that §7-4-6 of said code be amended  
 and reenacted, all to read as follows:

**CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

**ARTICLE 7. COMPENSATION AND ALLOWANCES.**

**§6-7-2a. Terms of certain appointive state officers; appointment;  
 qualifications; powers and salaries of such officers.**

(a) Each of the following appointive state officers named in

1 this subsection shall be appointed by the Governor, by and with the  
2 advice and consent of the Senate. Each of the appointive state  
3 officers serves at the will and pleasure of the Governor for the  
4 term for which the Governor was elected and until the respective  
5 state officers' successors have been appointed and qualified. Each  
6 of the appointive state officers are subject to the existing  
7 qualifications for holding each respective office and each has and  
8 is hereby granted all of the powers and authority and shall perform  
9 all of the functions and services heretofore vested in and  
10 performed by virtue of existing law respecting each office.

11 The annual salary of each named appointive state officer is as  
12 follows:

13 Commissioner, Division of Highways, \$92,500; Commissioner,  
14 Division of Corrections, \$80,000; Director, Division of Natural  
15 Resources, \$75,000; Superintendent, State Police, \$85,000;  
16 Commissioner, Division of Banking, \$75,000; Commissioner, Division  
17 of Culture and History, \$65,000; Commissioner, Alcohol Beverage  
18 Control Commission, \$75,000; Commissioner, Division of Motor  
19 Vehicles, \$75,000; Chairman, Health Care Authority, \$80,000;  
20 members, Health Care Authority, \$70,000; Director, Human Rights  
21 Commission, \$55,000; Commissioner, Division of Labor, \$70,000;  
22 prior to July 1, 2011, Director, Division of Veterans Affairs,  
23 \$65,000; Chairperson, Board of Parole, \$55,000; members, Board of  
24 Parole, \$50,000; members, Employment Security Review Board,

1 \$17,000; and Commissioner, Workforce West Virginia, \$75,000.  
2 Secretaries of the departments shall be paid an annual salary as  
3 follows: Health and Human Resources, \$95,000: *Provided*, That  
4 effective July 1, 2013, the Secretary of the Department of Health  
5 and Human Resources shall be paid an annual salary not to exceed  
6 \$175,000; Transportation, \$95,000: *Provided*, That if the same  
7 person is serving as both the Secretary of Transportation and the  
8 Commissioner of Highways, he or she shall be paid \$120,000;  
9 Revenue, \$95,000; Military Affairs and Public Safety, \$95,000;  
10 Administration, \$95,000; Education and the Arts, \$95,000; Commerce,  
11 \$95,000; Veterans' Assistance, \$95,000; and Environmental  
12 Protection, \$95,000: *Provided, however*, That any officer specified  
13 in this subsection whose salary is increased by more than \$5,000 as  
14 a result of the amendment and reenactment of this section during  
15 the 2011 regular session of the Legislature shall be paid the  
16 salary increase in increments of \$5,000 per fiscal year beginning  
17 July 1, 2011 up to the maximum salary provided in this subsection.

18 (b) Each of the state officers named in this subsection shall  
19 continue to be appointed in the manner prescribed in this code, and  
20 shall be paid an annual salary as follows:

21 Director, Board of Risk and Insurance Management, \$80,000;  
22 Director, Division of Rehabilitation Services, \$70,000; Director,  
23 Division of Personnel, \$70,000; Executive Director, Educational  
24 Broadcasting Authority, \$75,000; Secretary, Library Commission,

1 \$72,000; Director, Geological and Economic Survey, \$75,000;  
2 ~~Executive Director, prosecuting attorneys Institute, \$70,000;~~  
3 Executive Director, Public Defender Services, \$70,000;  
4 Commissioner, Bureau of Senior Services, \$75,000; Director, State  
5 Rail Authority, \$65,000; Executive Director, Women's Commission,  
6 \$45,000; Director, Hospital Finance Authority, \$35,000; member,  
7 Racing Commission, \$12,000; Chairman, Public Service Commission,  
8 \$85,000; members, Public Service Commission, \$85,000; Director,  
9 Division of Forestry, \$75,000; Director, Division of Juvenile  
10 Services, \$80,000; and Executive Director, Regional Jail and  
11 Correctional Facility Authority, \$80,000.

12 (c) Each of the following appointive state officers named in  
13 this subsection shall be appointed by the Governor, by and with the  
14 advice and consent of the Senate. Each of the appointive state  
15 officers serves at the will and pleasure of the Governor for the  
16 term for which the Governor was elected and until the respective  
17 state officers' successors have been appointed and qualified. Each  
18 of the appointive state officers are subject to the existing  
19 qualifications for holding each respective office and each has and  
20 is hereby granted all of the powers and authority and shall perform  
21 all of the functions and services heretofore vested in and  
22 performed by virtue of existing law respecting each office.

23 The annual salary of each named appointive state officer shall  
24 be as follows:

1 Commissioner, State Tax Division, \$92,500; Insurance  
2 Commissioner, \$92,500; Director, Lottery Commission, \$92,500;  
3 Director, Division of Homeland Security and Emergency Management,  
4 \$65,000; and Adjutant General, \$125,000.

5 (d) No increase in the salary of any appointive state officer  
6 pursuant to this section may be paid until and unless the  
7 appointive state officer has first filed with the State Auditor and  
8 the Legislative Auditor a sworn statement, on a form to be  
9 prescribed by the Attorney General, certifying that his or her  
10 spending unit is in compliance with any general law providing for  
11 a salary increase for his or her employees. The Attorney General  
12 shall prepare and distribute the form to the affected spending  
13 units.

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

15 **ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.**

16 **§7-4-6. West Virginia prosecuting attorneys Institute.**

17 (a) There is continued the West Virginia prosecuting attorneys  
18 Institute, a public body whose membership shall consist of the  
19 fifty-five elected county prosecuting attorneys in the state. The  
20 Institute shall meet at least once each calendar year and the  
21 presence of twenty-eight of the fifty-five prosecutors at any  
22 meeting constitutes a quorum for the conduct of the Institute's  
23 business.

24 (b) There is continued the Executive Council of the West

1 Virginia prosecuting attorneys Institute which shall consist of  
2 seven prosecuting attorneys elected by the membership of the West  
3 Virginia prosecuting attorneys Institute at its annual meeting and  
4 two persons appointed annually by the county commissioner's  
5 association of West Virginia. The executive council shall elect  
6 one member of the council to serve as chairman of the institute for  
7 a term of one year without compensation. The executive council  
8 shall serve as the regular executive body of the institute.

9 (c) There is continued the position of Executive Director of  
10 the West Virginia prosecuting attorneys Institute to be employed by  
11 the executive council of the institute. The Executive Director of  
12 the West Virginia Prosecuting Attorneys Institute shall serve at  
13 the will and pleasure of the executive council of the institute.  
14 The executive director's salary shall be established by the  
15 executive council. The executive director's salary shall be  
16 \$70,000 per year or greater, subject to annual appropriation by the  
17 Legislature of amounts contained within the fund. The executive  
18 director shall be licensed to practice law in the State of West  
19 Virginia and shall devote full time to his or her official duties  
20 and may not engage in the private practice of law.

21 (d) The duties and responsibilities of the institute, as  
22 implemented by and through its executive council and its executive  
23 director, shall include the following:

24 (1) The provision for special prosecuting attorneys to pursue

1 a criminal matter, a juvenile delinquency matter or a matter  
2 involving child abuse neglect pursuant to chapter forty-nine of  
3 this code, or in any matter wherein a special prosecutor previously  
4 appointed has failed to take any action thereon within such time as  
5 the Executive Director deems unreasonable, not to exceed three  
6 terms of court from the date on which the special prosecutor was  
7 appointed: *Provided*, That such replacement or original appointment  
8 may be any attorney with a license in good standing in this state  
9 in any county upon the request of a circuit court judge of that  
10 county and upon the approval of the executive council;

11 (2) The establishment and implementation of general and  
12 specialized training programs for prosecuting attorneys, their  
13 staffs and, where determined practical by the executive council and  
14 executive director, all statutorily authorized law-enforcement or  
15 investigative agencies of the state or its political subdivisions;

16 (3) The provision of materials for prosecuting attorneys and  
17 their staffs, including legal research, technical assistance and  
18 technical and professional publications;

19 (4) The compilation and dissemination of information on behalf  
20 of prosecuting attorneys and their staffs on current developments  
21 and changes in the law and the administration of criminal justice;

22 (5) The establishment and implementation of uniform reporting  
23 procedures for prosecuting attorneys and their professional staffs  
24 in order to maintain and to provide accurate and timely data and

1 information relative to criminal prosecutorial matters;

2       (6) The acceptance and expenditure of grants, moneys for  
3 reimbursement of expenses, gifts and acceptance of services from  
4 any public or private source;

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

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

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

14       (10) The development of a written handbook for prosecutors and  
15 their assistants to use which delineates relevant information  
16 concerning the elements of various crimes in West Virginia and  
17 other information the institute considers appropriate.

18       (e) Each prosecuting attorney is subject to appointment by the  
19 institute to serve as a special prosecuting attorney in any county  
20 where the prosecutor for that county or his or her office has been  
21 disqualified from participating in a particular criminal case, a  
22 juvenile delinquency matter or a matter involving child abuse  
23 neglect pursuant to chapter forty-nine of this code, or in any  
24 matter wherein a special prosecutor previously appointed has failed



1 to take any action thereon within such time as the Executive  
2 Director deems unreasonable, not to exceed three terms of court  
3 from the date on which the special prosecutor was appointed:  
4 *Provided*, That such replacement or original appointment may be any  
5 attorney with a license in good standing in this state. The  
6 circuit judge of any county of this state, who disqualifies the  
7 prosecutor or his or her office from participating in a particular  
8 criminal case, a juvenile delinquency matter or a matter involving  
9 child abuse or neglect pursuant to chapter forty-nine of this code  
10 in that county, shall seek the appointment by the institute of a  
11 special prosecuting attorney to substitute for the disqualified  
12 prosecutor. The executive director of the institute shall, upon  
13 written request to the institute by any circuit judge as a result  
14 of disqualification of the prosecutor or for other good cause  
15 shown, and upon approval of the executive council, appoint a  
16 prosecuting attorney to serve as a special prosecuting attorney.  
17 The special prosecuting attorney appointed shall serve without any  
18 further compensation other than that paid to him or her by his or  
19 her county, except that he or she is entitled to be reimbursed for  
20 his or her legitimate expenses associated with travel, mileage and  
21 room and board from the county to which he or she is appointed as  
22 a prosecutor. The county commission in which county he or she is  
23 special prosecutor is responsible for all expenses associated with  
24 the prosecution of the criminal action. No person who is serving

1 as a prosecuting attorney or an assistant prosecuting attorney of  
 2 any county is required to take an additional oath when appointed to  
 3 serve as a special prosecuting attorney.

4 (f) The executive director of the institute shall maintain an  
 5 appointment list that shall include the names of all fifty-five  
 6 prosecuting attorneys and that shall also include the names of any  
 7 assistant prosecuting attorney who wishes to serve as a special  
 8 prosecuting attorney upon the same terms and conditions as set  
 9 forth in this section. The executive director of the institute,  
 10 with the approval of the executive council, shall appoint special  
 11 prosecuting attorneys from the appointment list for any particular  
 12 matter giving due consideration to the proximity of the proposed  
 13 special prosecuting attorney's home county to the county requesting  
 14 a special prosecutor and giving due consideration to the expertise  
 15 of the special prosecuting attorney.

16 (g) Each county commission shall pay, on a monthly basis, a  
 17 special prosecution premium to the Treasurer of the state for the  
 18 funding of the West Virginia prosecuting attorneys Institute. The  
 19 monthly premiums shall be paid according to the following schedule:

20 **MONTHLY PREMIUMS**

21 Assessed Valuation of Property  
 22 of All Classes in the County

23	Category	Minimum	Maximum	Premium
24	A	\$1,500,000,000	Unlimited	\$400

1	B	\$1,000,000,000	\$1,499,999,000	\$375
2	C	\$ 800,000,000	\$ 999,999,000	\$350
3	D	\$ 700,000,000	\$ 799,999,000	\$325
4	E	\$ 600,000,000	\$ 699,999,000	\$300
5	F	\$ 500,000,000	\$ 599,999,000	\$250
6	G	\$ 400,000,000	\$ 499,999,000	\$200
7	H	\$ 300,000,000	\$ 399,999,000	\$150
8	I	\$ 200,000,000	\$ 299,999,000	\$100
9	J	-0-	\$ 199,999,000	\$ 50

10 (h) Upon receipt of a premium, grant, reimbursement or other  
11 funding source, excluding federal funds as provided in article two,  
12 chapter four of this code, the Treasurer shall deposit the funds  
13 into a special revenue fund to be known as the "West Virginia  
14 prosecuting attorneys Institute Fund". All costs of operating the  
15 West Virginia prosecuting attorneys Institute shall be paid from  
16 the West Virginia prosecuting attorneys Institute Fund upon proper  
17 authorization by the executive council or by the executive director  
18 of the institute and subject to annual appropriation by the  
19 Legislature of the amounts contained within the fund. The executive  
20 director's gross salary shall be considered a "cost" and  
21 established by the council.

22 (I) The institute shall annually, by the first day of the  
23 regular Legislative session, provide the Joint Committee on  
24 Government and Finance with a report setting forth the activities

1 of the institute and suggestions for legislative action.

2       (j) Neither the institute nor its employees acting in their  
3 employment capacity shall engage in activities before governmental  
4 bodies which advocate positions on issues other than those issues  
5 consistent with the duties of the institute set forth in subsection  
6 (d) of this section.

NOTE: The purpose of this bill is to provide that the salary of the executive director of the West Virginia Prosecuting Attorneys Institute shall be established by the executive council of the institute, with a minimum salary of \$70,000.

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