

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENGROSSED**

## **House Bill 3360**

By Delegates Kelly and Hott

(By Request of the West Virginia Department of  
Homeland Security)

[Introduced February 10, 2023; Referred to the  
Committee on the Judiciary]



1 A BILL to amend and reenact §15A-1-9 of the Code of West Virginia, 1931, as amended, relating  
2 to the Department of Homeland security; and authorizing the Secretary of the Department  
3 of Homeland Security to establish within the department an Office of the Inspector General  
4 for the purpose of conducting and supervising investigations and other tasks.

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

**ARTICLE 1. DEFINITIONS.**

**§15A-1-9. Department of Homeland Security; Secretary of the Department of Homeland Security; power and duties.**

1 (a)(1) The Department of Homeland Security is established within the Executive Branch as  
2 a criminal justice agency. In addition to all other powers and duties set forth in this code, the  
3 department is designated as the principal state agency to coordinate the receipt, distribution, and  
4 monitoring of all funds available from any source for the purpose of equipping, training, research,  
5 and education in regard to homeland security related items, issues, or services. The department is  
6 authorized to coordinate and establish standards for all operations and activities of the state  
7 related to homeland security efforts and to establish protocols for coordinating and sharing  
8 information with state and federal law enforcement and intelligence agencies responsible for  
9 investigating and collecting information related to homeland security and national security threats.

10 (2) The department is designated as the state administrative agency responsible for  
11 homeland security and emergency management for the planning and development of state  
12 programs and grants which may be funded by federal, state, or other allocations in the areas of  
13 homeland security and emergency management, unless such administration has been specifically  
14 entrusted to another state agency by the Governor or the Legislature.

15 (3) Notwithstanding any other provision of this code to the contrary, whenever in this code,  
16 or a rule promulgated thereunder, a reference is made to the Department of Military Affairs and  
17 Public Safety, it means the Department of Homeland Security.

18           (b) The secretary is the chief executive officer of the department. Subject to §5F-2-2 of this  
19 code, the secretary shall organize the department into such offices, sections, agencies, and other  
20 units of activity as may be found by the secretary to be desirable for the orderly, efficient and  
21 economical administration of the department and for the accomplishment of its objects and  
22 purposes. The secretary may appoint a deputy secretary, chief of staff, assistants, hearing  
23 officers, clerks, stenographers, and other officers, technical personnel, and employees needed for  
24 the operation of the department and may prescribe their powers and duties and fix their  
25 compensation within amounts appropriated.

26           (c) The secretary ~~has the power to and~~ may designate supervisory officers or other officers  
27 or employees of the department to substitute for him or her on any board or commission  
28 established under this code or to sit in his or her place in any hearings, appeals, meetings, or other  
29 activities with such substitute having the same powers, duties, authority, and responsibility as the  
30 secretary. The secretary ~~has the power to~~ may delegate, as he or she considers appropriate, to  
31 supervisory officers or other officers or employees of the department his or her powers, duties,  
32 authority and responsibility relating to such duties and functions set forth in this chapter or  
33 elsewhere in this code.

34           (d) The secretary has responsibility for the conduct of the intergovernmental relations of  
35 the department, including assuring:

36           (1) That the department carries out its functions in a manner which supplements and  
37 complements the homeland security and public safety policies, programs and procedures of the  
38 federal government, other state governments, and other instrumentalities of this state; and

39           (2) That appropriate officers and employees of the department consult with individuals  
40 responsible for making policy relating to homeland security and public safety issues in the federal  
41 government, other state governments, and other instrumentalities of this state concerning  
42 differences over policies, programs, and procedures and concerning the impact of statutory law  
43 and rules upon the homeland security and public safety of this state.

44 (e) The secretary may establish within the department an Office of the Inspector General  
45 for the purpose of conducting and supervising investigations; including the authority to oversee  
46 and direct existing investigations and units within the department and any other function the  
47 secretary considers necessary.

48 (1) The Inspector General shall be appointed by the secretary, but may be removed by the  
49 Secretary only for:

50 (A) Misconduct in office;

51 (B) Persistent failure to perform the duties of the Inspector General; or

52 (C) Conduct prejudicial to the proper administration of justice.

53 (2) The Inspector General shall perform inspections, evaluations, and reviews, and provide  
54 quality control for all investigations within the department and supervise all personnel of the Office  
55 of the Inspector General.

56 (3) Neither the secretary, nor any employee of the department, may impede, interfere, or  
57 inhibit the Inspector General from initiating, conducting, or completing any investigation,  
58 inspection, evaluation, review, or other activity regarding oversight of any investigation conducted  
59 by the Office of the Inspector General.

60 (4) The Office of the Inspector General, including that of the position of the Inspector  
61 General, shall be governed by the classified-exempt service provisions in §29-6-4 of this code.

62 (5) The Inspector General shall have a current certified law-enforcement credential and be  
63 eligible to carry a firearm, or be eligible for the certified law-enforcement credential and be in the  
64 process of obtaining the certification.

65 (6) The Inspector General may employ investigators and other clerical personnel  
66 necessary for the proper administration of the office.

67 (7) The Inspector General may delegate duties to other employees or obtain services  
68 through contract, but the Inspector General is responsible for all official delegated tasks.

69           (8) The Inspector General may propose legislative and procedural rules in accordance with  
70 the provisions of chapter 29A of this code in order to implement provisions of this section and to  
71 carry out the duties prescribed therein.

72           ~~(e)~~ (f) In addition to other powers, duties, and responsibilities granted and assigned to the  
73 secretary by this code, the secretary ~~is authorized and empowered to~~ may:

74           (1) Sign and execute in the name of the state by the Department of Homeland Security any  
75 contract or agreement with the federal government or its departments or agencies, subdivisions of  
76 the state, corporations, associations, partnerships or individuals: *Provided*, That the powers  
77 granted to the secretary to enter into agreements or contracts and to make expenditures and  
78 obligations of public funds under this subdivision may not exceed or be interpreted as authority to  
79 exceed the powers granted by the Legislature to the various commissioners, directors, or board  
80 members of the various departments, agencies, or boards that comprise and are incorporated into  
81 each secretary's department pursuant to the provisions of chapter 5F of this code;

82           (2) Conduct research in improved homeland security and public safety methods and  
83 disseminate information to the citizens of this state;

84           (3) Require any persons contracting to install, establish, modify, operate, or close a  
85 correctional or other public safety facility to furnish the fingerprints of the person or persons; any  
86 officer, director, or manager of the contractor; any person owning a five percent or more interest,  
87 beneficial or otherwise, in the contractor's business; or any other person conducting or managing  
88 the affairs of the contractor, in whole or in part. These fingerprints may be used to obtain and  
89 review any police record for the purposes that may be in the interest of homeland security or public  
90 safety, and to use the fingerprints furnished to conduct a criminal records check through the  
91 Criminal Identification Bureau of the West Virginia State Police and a national criminal history  
92 check through the Federal Bureau of Investigation. The results of the checks shall be provided to  
93 the secretary;

94           (4) Acquire for the state in the name of the Department of Homeland Security by purchase,  
95 lease, or agreement, or accept or reject for the state, in the name of the Department of Homeland  
96 Security, gifts, donations, contributions, bequests, or devises of money, security, or property, both  
97 real and personal, and any interest in property; and

98           (5) Provide for workshops, training programs, and other educational programs, apart from  
99 or in cooperation with other governmental agencies, necessary to ensure adequate standards of  
100 public service in the department. The secretary may provide for technical training and specialized  
101 instruction of any employee. Approved educational programs, training and instruction time may be  
102 compensated for as a part of regular employment. The secretary is authorized to pay out of federal  
103 or state funds, or both, as such funds are available, fees and expenses incidental to the  
104 educational programs, training and instruction. Eligibility for participation by employees shall be in  
105 accordance with guidelines established by the secretary.

106           ~~(f)~~ (g) The secretary shall be appointed by the Governor, by and with the advice and  
107 consent of the Senate and serves at the will and pleasure of the Governor.

108           ~~(g)~~ (h) The secretary shall serve as the Homeland Security Advisor (HSA) for West  
109 Virginia, and shall be responsible for coordinating, designing, and implementing West Virginia's  
110 program for homeland security. The secretary shall be the principal point of contact between the  
111 State of West Virginia and the federal government with respect to homeland security issues. The  
112 HSA shall either possess at least a secret clearance through the federal government or be able to  
113 qualify for, and be in the process of obtaining, such clearance at the time of his or her appointment  
114 as HSA. The HSA shall keep the Governor advised of all homeland security matters and shall be  
115 the main point of contact for the Governor on these issues. The secretary, with permission of the  
116 Governor, may delegate all or a portion of the functions of the HSA to a designee who possesses  
117 at least a secret clearance.

118           ~~(h)~~ (i) Notwithstanding any other provision of this code to the contrary, any records  
119 compiled by the department or any division, agency, office, or unit thereof, the disclosure of which

120 could be used to create an endangerment to municipal, county, state, or national welfare and  
121 security, are not public records and are not subject to disclosure in response to a Freedom of  
122 Information Act request under §29B-1-1 *et seq.* of this code.

123           (†) (j) The Department of Homeland Security shall cooperate with the State Resiliency  
124 Office to the fullest extent practicable to assist that office in fulfilling its duties.

NOTE: The purpose of this bill is to allow Secretary of the Department of Homeland Security to establish within the department an Office of the Inspector General for the purpose of conducting and supervising investigations and other tasks, including the authority to oversee and direct existing investigations and units within the department.

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