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HB4047

FILED

2006 MAR 13 P 3: 34

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4047

(By Delegates Pethel, Varner and Proudfoot)



Passed March 2, 2006

In Effect Ninety Days from Passage

FILED

2006 MAR 13 P 3: 34

OFFICE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 4047

(BY DELEGATES PETHTEL, VARNER AND PROUDFOOT)

[Passed March 2, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §7-7-4 of the Code of West Virginia, 1931, as amended, relating to prosecuting attorneys generally; providing that a prosecuting attorney for a class VI county which subsequently becomes a class V county may remain part-time; and providing that the part-time attorney be compensated at the class VI county level.

Be it enacted by the Legislature of West Virginia:

That §7-7-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.

1 (a)(1) All county commissioners shall be paid compensation
2 out of the county treasury in amounts and according to the
3 schedule set forth in subdivision (2) of this subsection for each
4 class of county as determined by the provisions of section three
5 of this article: *Provided*, That as to any county having a tribunal
6 in lieu of a county commission, the county commissioners of the
7 county may be paid less than the minimum compensation limits
8 of the county commission for the particular class of such county.

9 (2) COUNTY COMMISSIONERS

10	Class I	\$ 20,000
11	Class II	\$ 15,500
12	Class III	\$ 14,000
13	Class IV	\$ 10,000
14	Class V	\$ 7,000
15	Class VI	\$ 4,000

16 (3) The compensation, set out in subdivision (2) of this
17 subsection, shall be paid on and after the first day of January,
18 one thousand nine hundred eighty-five, to each county commis-
19 sioner. Within each county, every county commissioner whose
20 term of office commenced prior to the first day of January, one
21 thousand nine hundred eighty-five, shall receive the same
22 annual compensation as commissioners commencing a term of
23 office on or after that date by virtue of the new duties imposed
24 upon county commissioners pursuant to the provisions of
25 chapter fifteen, Acts of the Legislature, first extraordinary
26 session, one thousand nine hundred eighty-three.

27 (4) For the purpose of determining the compensation to be
28 paid to the elected county officials of each county, the compen-
29 sations for each office by class, set out in subdivision (5) of this
30 subsection, are established and shall be used by each county
31 commission in determining the compensation of each of their
32 county officials other than compensation of members of the
33 county commission.

34 (5) OTHER ELECTED OFFICIALS

35			County	Circuit		Prosecuting
36		Sheriff	Clerk	Clerk	Assessor	Attorney
37	Class I	\$24,200	\$31,300	\$31,300	\$24,200	\$41,500
38	Class II	\$24,200	\$28,000	\$28,000	\$24,200	\$39,500
39	Class III	\$24,200	\$28,000	\$28,000	\$24,200	\$30,000
40	Class IV	\$22,300	\$24,000	\$24,000	\$22,300	\$26,500
41	Class V	\$20,400	\$22,000	\$22,000	\$20,400	\$23,500
42	Class VI	\$17,200	\$17,200	\$17,200	\$17,200	\$17,000

43 (6) Any county clerk, circuit clerk, joint clerk of the county
 44 commission and circuit court, if any, county assessor, sheriff
 45 and prosecuting attorney of a Class I county, any assessor of a
 46 Class II and Class III county, any sheriff of a Class II and Class
 47 III county and any prosecuting attorney of a Class II county
 48 shall devote full-time to his or her public duties to the exclusion
 49 of any other employment: *Provided*, That any public official,
 50 whose term of office begins when his or her county's classifica-
 51 tion imposes no restriction on his or her outside activities, shall
 52 not be restricted on his or her outside activities during the
 53 remainder of the term for which he or she is elected. The
 54 compensation, set out in subdivision (5) of this subsection, shall
 55 be paid on and after the first day of January, one thousand nine
 56 hundred eighty-five, to each elected county official.

57 (7) In the case of a county that has a joint clerk of the
 58 county commission and circuit court, the compensation of the
 59 joint clerk shall be fixed in an amount twenty-five percent
 60 higher than the compensation would be fixed for the county
 61 clerk if it had separate offices of county clerk and circuit clerk.

62 (8) The Legislature finds that the duties imposed upon
 63 county clerks by the provisions of chapter sixty-four, acts of the
 64 Legislature, regular session, one thousand nine hundred
 65 eighty-two, and by chapter fifteen, Acts of the Legislature, first

66 extraordinary session, one thousand nine hundred eighty-three,
67 constitute new and additional duties for county clerks and as
68 such justify the additional compensation provided in this section
69 without violating the provisions of section thirty-eight, article
70 VI of the Constitution of West Virginia.

71 (9) The Legislature further finds that the duties imposed
72 upon circuit clerks by the provisions of chapters sixty-one and
73 one hundred eighty-two, Acts of the Legislature, regular session,
74 one thousand nine hundred eighty-one, and by chapter sixty,
75 Acts of the Legislature, regular session, one thousand nine
76 hundred eighty-three, constitute new and additional duties for
77 circuit clerks and as such justify the additional compensation
78 provided by this section without violating the provisions of
79 section thirty-eight, article VI of the Constitution of West
80 Virginia.

81 (b)(1) Prior to the primary election in the year one thousand
82 nine hundred ninety-two, and for the fiscal year beginning on
83 the first day of July, one thousand nine hundred ninety-two, or
84 for any subsequent fiscal year if the approval, set out in subdivi-
85 sion (2) of this subsection, is not granted for any fiscal year, and
86 at least thirty days prior to the meeting to approve the county
87 budget, the commission shall provide notice to the public of the
88 date and time of the meeting and that the purpose of the meeting
89 of the county commission is to decide upon their budget
90 certification to the auditor.

91 (2) Upon submission by the county commission to the
92 auditor of a proposed annual budget which contains anticipated
93 receipts into the county's general revenue fund, less anticipated
94 moneys from the unencumbered fund balance, equal to antici-
95 pated receipts into the county's general revenue fund, less
96 anticipated moneys from the unencumbered fund balance and
97 any federal or state special grants, for the immediately preced-

98 ing fiscal year, plus such additional amount as is necessary for
 99 payment of the increases in the salaries set out in subdivisions
 100 (3) and (5) of this subsection, and related employment taxes
 101 over that paid for the immediately preceding fiscal year, and
 102 upon approval thereof by the auditor, which approval shall not
 103 be granted for any proposed annual budget containing antici-
 104 pated receipts which are unreasonably greater or lesser than that
 105 of the immediately preceding fiscal year, for the purpose of
 106 determining the compensation to be paid to the elected county
 107 officials of each county office by class are established and shall
 108 be used by each county commission in determining the compen-
 109 sation of each of their county officials: *Provided*, That as to any
 110 county having a tribunal in lieu of a county commission, the
 111 county commissioners of the county may be paid less than the
 112 minimum compensation limits of the county commission for the
 113 particular class of the county.

114 (3) COUNTY COMMISSIONERS

115	Class I	\$24,000
116	Class II	\$18,600
117	Class III	\$16,800
118	Class IV	\$12,000
119	Class V	\$8,400

120 (4) If the approval, set out in subdivision (2) of this subsec-
 121 tion, is granted, the compensation, set out in subdivision (3) of
 122 this subsection, shall be paid on and after the first day of
 123 January, one thousand nine hundred ninety-three, to each county
 124 commissioner. Within each county, every county commissioner
 125 shall receive the same annual compensation by virtue of the new
 126 duties imposed upon county commissioners pursuant to the
 127 provisions of chapter one hundred seventy-two, Acts of the
 128 Legislature, second regular session, one thousand nine hundred
 129 ninety and chapter five, Acts of the Legislature, third extraordi-
 130 nary session, one thousand nine hundred ninety.

131 (5) OTHER ELECTED OFFICIALS

132			County	Circuit		Prosecuting
133		Sheriff	Clerk	Clerk	Assessor	Attorney
134	Class I	\$29,040	\$37,560	\$37,560	\$29,040	\$59,500
135	Class II	\$29,040	\$33,600	\$33,600	\$29,040	\$59,500
136	Class III	\$29,040	\$33,600	\$33,600	\$29,040	\$36,000
137	Class IV	\$26,760	\$28,800	\$28,800	\$26,760	\$31,800
138	Class V	\$24,480	\$26,400	\$26,400	\$24,480	\$28,200
139	Class VI	\$24,480	\$26,400	\$26,400	\$24,480	\$28,200

140 (6) Any county clerk, circuit clerk, joint clerk of the county
141 commission and circuit court, if any, county assessor, sheriff
142 and prosecuting attorney of a Class I county, any assessor of a
143 Class II and Class III county, any sheriff of a Class II and Class
144 III county and any prosecuting attorney of a Class II county
145 shall devote full-time to his or her public duties to the exclusion
146 of any other employment: *Provided*, That any public official,
147 whose term of office begins when his or her county's classifica-
148 tion imposes no restriction on his or her outside activities, shall
149 not be restricted on his or her outside activities during the
150 remainder of the term for which he or she is elected. If the
151 approval, set out in subdivision (2) of this subsection, is granted,
152 the compensation, set out in subdivision (5) of this subsection,
153 shall be paid on and after the first day of January, one thousand
154 nine hundred ninety-three, to each elected county official.

155 (7) In the case of a county that has a joint clerk of the
156 county commission and circuit court, the compensation of the
157 joint clerk shall be fixed in an amount twenty-five percent
158 higher than the compensation would be fixed for the county
159 clerk if it had separate offices of county clerk and circuit clerk.

160 (8) Prior to the primary election in the year one thousand
161 nine hundred ninety-two, in the case of a Class III, Class IV or
162 Class V county which has a part-time prosecuting attorney, the
163 county commission may find that such facts and circumstances

164 exist that require the prosecuting attorney to devote full-time to
165 his or her public duties for the four-year term, beginning the
166 first day of January, one thousand nine hundred ninety-three. If
167 the county commission makes such a finding, it may by proper
168 order adopted and entered, require the prosecuting attorney who
169 takes office on the first day of January, one thousand nine
170 hundred ninety-three, to devote full-time to his or her public
171 duties and the county commission shall then compensate said
172 prosecuting attorney at the same rate of compensation as that of
173 a prosecuting attorney in a Class II county.

174 (9) For any county: (A) Which on and after the first day of
175 July, one thousand nine hundred ninety-four, is classified as a
176 Class II county; and (B) which prior to such date was classified
177 as a Class III, Class IV or Class V county and maintained a
178 part-time prosecuting attorney, the county commission may
179 elect to maintain the prosecuting attorney as a part-time
180 prosecuting attorney: *Provided*, That prior to the first day of
181 January, one thousand nine hundred ninety-six, the county
182 commission shall make a finding, by proper order and entered,
183 whether to maintain a full-time or part-time prosecuting
184 attorney. The part-time prosecuting attorney shall be compen-
185 sated at the same rate of compensation as that of a prosecuting
186 attorney in the class for the county prior to being classified as a
187 Class II county.

188 (c)(1) Prior to the primary election in the year one thousand
189 nine hundred ninety-six, and for the fiscal year beginning on the
190 first day of July, one thousand nine hundred ninety-six, or for
191 any subsequent fiscal year if the approval, set out in subdivision
192 (2) of this subsection, is not granted for any fiscal year, and at
193 least thirty days prior to the meeting to approve the county
194 budget, the commission shall provide notice to the public of the
195 date and time of the meeting and that the purpose of the meeting
196 of the county commission is to decide upon their budget
197 certification to the Auditor.

198 (2) Upon submission by the county commission to the
 199 auditor of a proposed annual budget which contains anticipated
 200 receipts into the county's general revenue fund, less anticipated
 201 moneys from the unencumbered fund balance, equal to antici-
 202 pated receipts into the county's general revenue fund, less
 203 anticipated moneys from the unencumbered fund balance and
 204 any federal or state special grants, for the fiscal year beginning
 205 the first day of July, one thousand nine hundred ninety-six, plus
 206 such additional amount as is necessary for payment of the
 207 increases in the salaries set out in subdivisions (3) and (6) of this
 208 subsection, and related employment taxes over that paid for the
 209 immediately preceding fiscal year, and upon approval thereof by
 210 the auditor, which approval shall not be granted for any pro-
 211 posed annual budget containing anticipated receipts which are
 212 unreasonably greater or lesser than that of the immediately
 213 preceding fiscal year for the purpose of determining the
 214 compensation to be paid to the elected county officials of each
 215 county office by class are established and shall be used by each
 216 county commission in determining whether county revenues are
 217 sufficient to pay the compensation mandated herein for their
 218 county officials: *Provided*, That as to any county having a
 219 tribunal in lieu of a county commission, the county commission-
 220 ers of the county may be paid less than the minimum compensa-
 221 tion limits of the county commission for the particular class of
 222 the county: *Provided, however*, That should there be an
 223 insufficient projected increase in revenues to pay the increased
 224 compensation and related employment taxes, then the compen-
 225 sation of that county's elected officials shall remain at the level
 226 in effect at the time certification was sought.

227 (3) COUNTY COMMISSIONERS

228	Class I	\$28,000
229	Class II	\$27,500
230	Class III	\$27,000
231	Class IV	\$26,500

232	Class V	\$26,000
233	Class VI	\$21,500
234	Class VII	\$21,000
235	Class VIII	\$19,000
236	Class IX	\$18,500
237	Class X	\$15,000

238 (4) The compensation, set out in subdivision (3) of this
 239 subsection, shall be paid on and after the first day of January,
 240 one thousand nine hundred ninety-seven, to each county
 241 commissioner. Every county commissioner in each county,
 242 whose term of office commenced prior to or on or after the first
 243 day of January, one thousand nine hundred ninety-seven, shall
 244 receive the same annual compensation by virtue of legislative
 245 findings of extra duties as set forth in section one of this article.

246 (5) For the purpose of determining the compensation to be
 247 paid to the elected county officials of each county, the compen-
 248 sations for each county office by class, set out in subdivision (6)
 249 of this subsection, are established and shall be used by each
 250 county commission in determining the compensation of each of
 251 their county officials other than compensation of members of
 252 the county commission.

253 (6) OTHER ELECTED OFFICIALS

254		County	Circuit	Prosecuting		
255		Sheriff	Clerk	Assessor	Attorney	
256	Class I	\$34,000	\$42,000	\$42,000	\$34,000	\$76,000
257	Class II	\$33,500	\$41,500	\$41,500	\$33,500	\$74,000
258	Class III	\$33,250	\$40,500	\$40,500	\$33,250	\$72,000
259	Class IV	\$33,000	\$40,250	\$40,250	\$33,000	\$70,000
260	Class V	\$32,750	\$40,000	\$40,000	\$32,750	\$68,000
261	Class VI	\$32,500	\$37,500	\$37,500	\$32,500	\$45,000
262	Class VII	\$32,250	\$37,000	\$37,000	\$32,250	\$43,000
263	Class VIII	\$32,000	\$36,500	\$36,500	\$32,000	\$41,000
264	Class IX	\$31,750	\$36,000	\$36,000	\$31,750	\$38,000
265	Class X	\$29,000	\$32,000	\$32,000	\$29,000	\$35,000

266 (7) The compensation, set out in subdivision (6) of this
267 subsection, shall be paid on and after the first day of January,
268 one thousand nine hundred ninety-seven, to each elected county
269 official. Any county clerk, circuit clerk, joint clerk of the
270 county commission and circuit court, if any, county assessor or
271 sheriff of a Class I through Class V county, inclusive, any
272 assessor or any sheriff of a Class VI through Class IX county,
273 inclusive, shall devote full-time to his or her public duties to the
274 exclusion of any other employment: *Provided*, That any public
275 official, whose term of office begins when his or her county's
276 classification imposes no restriction on his or her outside
277 activities, shall not be restricted on his or her outside activities
278 during the remainder of the term for which he or she is elected.

279 (8) In the case of a county that has a joint clerk of the
280 county commission and circuit court, the compensation of the
281 joint clerk shall be fixed in an amount twenty-five percent
282 higher than the compensation would be fixed for the county
283 clerk if it had separate offices of county clerk and circuit clerk.

284 (9) Any prosecuting attorney of a Class I through Class V
285 county, inclusive, shall devote full-time to his or her public
286 duties to the exclusion of any other employment: *Provided*,
287 That any county which under the prior provisions of this section
288 was classified as a Class II county and elected to maintain a
289 part-time prosecutor may continue to maintain a part-time
290 prosecutor, until such time as the county commission, on request
291 of the part-time prosecutor, approves and makes a finding, by
292 proper order entered, that the prosecuting attorney shall devote
293 full-time to his or her public duties. The county commission
294 shall then compensate said prosecuting attorney at the same rate
295 of compensation as that of a prosecuting attorney in a Class V
296 county: *Provided, however*, That any county which under the
297 prior provisions of this section was classified as a Class II
298 county and which did not elect to maintain a part-time prosecu-
299 tor shall maintain a full-time prosecuting attorney and shall

300 compensate said prosecuting attorney at the same rate of
301 compensation as that of a prosecuting attorney in a Class V
302 county: *Provided further*, That, until the first day of January,
303 two thousand one, when a vacancy occurs in the office of
304 prosecuting attorney prior to the end of a term, the county
305 commission of a Class IV or Class V county may elect to allow
306 the position to become part-time for the end of that term, and
307 thereafter the position of prosecuting attorney shall become
308 full-time.

309 (d) (1) The increased salaries to be paid to the county
310 commissioners and the other elected county officials described
311 in this subsection on and after the first day of July, two thousand
312 two, are set out in subdivisions (5) and (7) of this subsection.
313 Every county commissioner and elected county official in each
314 county, whose term of office commenced prior to or on or after
315 the first day of July, two thousand two, shall receive the same
316 annual salary by virtue of legislative findings of extra duties as
317 set forth in section one of this article.

318 (2) Before the increased salaries, as set out in subdivisions
319 (5) and (7) of this subsection, are paid to the county commis-
320 sioners and the elected county officials, the following require-
321 ments must be met:

322 (A) The auditor has certified that the proposed annual
323 county budget for the fiscal year beginning the first day of July,
324 two thousand two, has increased over the previous fiscal year in
325 an amount sufficient for the payment of the increase in the
326 salaries, set out in subdivisions (5) and (7) of this subsection,
327 and the related employment taxes: *Provided*, That the auditor
328 may not approve the budget certification for any proposed
329 annual county budget containing anticipated receipts which are
330 unreasonably greater or lesser than that of the previous year.
331 For purposes of this subdivision, the term "receipts" does not
332 include unencumbered fund balance or federal or state grants;
333 and

334 (B) Each county commissioner or other elected official
335 described in this subsection in office on the effective date of the
336 increased salaries provided by this subsection who desires to
337 receive the increased salary has, prior to that date, filed in the
338 office of the clerk of the county commission his or her written
339 agreement to accept the salary increase. The salary for the
340 person who holds the office of county commissioner or other
341 elected official described in this subsection who fails to file the
342 written agreement as required by this paragraph shall be the
343 salary for that office in effect immediately prior to the effective
344 date of the increased salaries provided by this subsection until
345 the person vacates the office or his or her term of office expires,
346 whichever first occurs.

347 (3) If there is an insufficient projected increase in revenues
348 to pay the increased salaries and the related employment taxes,
349 then the salaries of that county's elected officials and commis-
350 sioners shall remain at the level in effect at the time certification
351 was sought.

352 (4) In any county having a tribunal in lieu of a county
353 commission, the county commissioners of that county may be
354 paid less than the minimum salary limits of the county commis-
355 sion for that particular class of the county.

356 (5) COUNTY COMMISSIONERS

357	Class I	\$30,800
358	Class II	\$30,250
359	Class III	\$29,700
360	Class IV	\$29,150
361	Class V	\$28,600
362	Class VI	\$23,650
363	Class VII	\$23,100
364	Class VIII	\$20,900
365	Class IX	\$20,350
366	Class X	\$16,500

367 (6) For the purpose of determining the salaries to be paid to
 368 the elected county officials of each county, the salaries for each
 369 county office by class, set out in subdivision (7) of this subsec-
 370 tion, are established and shall be used by each county commis-
 371 sion in determining the salaries of each of their county officials
 372 other than salaries of members of the county commission.

373 (7) OTHER ELECTED OFFICIALS

374		County	Circuit	Prosecuting		
375	Sheriff	Clerk	Clerk	Assessor	Attorney	
376	Class I	\$37,400	\$46,200	\$46,200	\$37,400	\$83,600
377	Class II	\$36,850	\$45,650	\$45,650	\$36,850	\$81,400
378	Class III	\$36,575	\$44,550	\$44,550	\$36,575	\$79,200
379	Class IV	\$36,300	\$44,295	\$44,295	\$36,300	\$77,000
380	Class V	\$36,025	\$44,000	\$44,000	\$36,025	\$74,800
381	Class VI	\$35,750	\$41,250	\$41,250	\$35,750	\$49,500
382	Class VII	\$35,475	\$40,700	\$40,700	\$35,475	\$47,300
383	Class VIII	\$35,200	\$40,150	\$40,150	\$35,200	\$45,100
384	Class IX	\$34,925	\$39,600	\$39,600	\$34,925	\$41,800
385	Class X	\$31,900	\$35,200	\$35,200	\$31,900	\$38,500

386 (8) Any county clerk, circuit clerk, joint clerk of the county
 387 commission and circuit court, if any, county assessor or sheriff
 388 of a Class I through Class V county, inclusive, any assessor or
 389 any sheriff of a Class VI through Class IX county, inclusive,
 390 shall devote full-time to his or her public duties to the exclusion
 391 of any other employment: *Provided*, That any public official,
 392 whose term of office begins when his or her county's classifica-
 393 tion imposes no restriction on his or her outside activities, may
 394 not be restricted on his or her outside activities during the
 395 remainder of the term for which he or she is elected.

396 (9) In the case of a county that has a joint clerk of the
 397 county commission and circuit court, the salary of the joint clerk
 398 shall be fixed in an amount twenty-five percent higher than the
 399 salary would be fixed for the county clerk if it had separate
 400 offices of county clerk and circuit clerk.

401 (10) Any prosecuting attorney of a Class I through Class V
402 county, inclusive, shall devote full-time to his or her public
403 duties to the exclusion of any other employment: *Provided,*
404 That any county which under the prior provisions of this section
405 was classified as a Class II county and elected to maintain a
406 part-time prosecutor may continue to maintain a part-time
407 prosecutor, until such time as the county commission, on request
408 of the part-time prosecutor, approves and makes a finding, by
409 proper order entered, that the prosecuting attorney shall devote
410 full-time to his or her public duties. The county commission
411 shall then compensate said prosecutor at the same salary as that
412 of a prosecuting attorney in a Class V county: *Provided,*
413 *however,* That any county which under the prior provisions of
414 this section was classified as a Class II county and which did not
415 elect to maintain a part-time prosecutor shall maintain a full-
416 time prosecuting attorney and shall compensate said prosecuting
417 attorney at the same salary as that of a prosecuting attorney in
418 a Class V county: *Provided further,* That, until the first day of
419 January, two thousand three, when a vacancy occurs in the
420 office of prosecuting attorney prior to the end of a term, the
421 county commission of a Class IV or Class V county may elect
422 to allow the position to become part-time for the end of that
423 term and thereafter the position of prosecuting attorney shall
424 become full-time. *And provided further,* That a prosecuting
425 attorney for a Class VI county which subsequently becomes a
426 Class V county on or before the first day of July, two thousand
427 ten, may continue as a part-time attorney, and continue to be
428 compensated at the Class VI county level, until such time as
429 determined by the prosecuting attorney and the county commis-
430 sion that a full-time prosecuting attorney is needed.

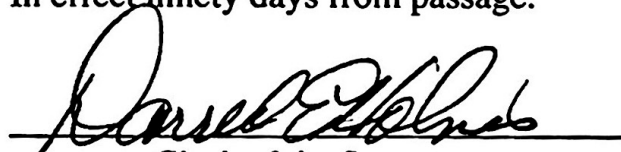
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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 13th
day of March, 2006.


Governor

PRESENTED TO THE
GOVERNOR

MAR 07 2006

Time 4:10 pm