

1 proposals; requiring certain reports to be prepared for the
2 Governor and the Joint Committee on Government and Finance
3 regarding certain contracts for legal services with the
4 Attorney General; limiting the amount of fees payable for
5 legal services for the Attorney General; providing for the
6 disposition of funds or assets recovered in a legal action or
7 settlement by or on behalf of the general public, the state or
8 its officers, agencies or political subdivisions; establishing
9 the Attorney General's litigation support fund; providing for
10 the deposit of certain money into the fund; providing for the
11 deposit of certain money into the General Revenue Fund of the
12 state and exceptions thereto; requiring certification, records
13 and reports of certain moneys recovered and prescribing the
14 use thereof; requiring certain disposition of funds to be held
15 in trust; limiting certain powers to administrate certain
16 funds; requiring legislative appropriation of certain funds;
17 requiring certain advice be given to courts; prohibiting
18 agreements to settle contrary to law; and requiring that
19 contracts proposed by the Attorney General be approved as to
20 form by the Secretary of State.

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

22 That the Code of West Virginia, 1931, as amended, be amended
23 by adding thereto a new section, designated §5-3-1a; that §5-3-2,
24 §5-3-3, §5-3-4 and §5-3-5 of said code be amended and reenacted;

1 that said code be amended by adding thereto a new section,
2 designated §5-3-6; and that §5A-3-13 of said code be amended and
3 acted, all to read as follows:

4 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**
5 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD**
6 **OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS,**
7 **OFFICES, PROGRAMS, ETC.**

8 **ARTICLE 3. ATTORNEY GENERAL.**

9 §5-3-1a. General authority of Attorney General; recusal when
10 conflict or perceived conflict of interest; and
11 common law abrogation.

12 (a) (1) Conflicts of interest- Because the Attorney General is
13 the legal representative of the State of West Virginia there exists
14 with this office the highest duty to provide legal services in a
15 manner that preserves public trust and confidence. Therefore, the
16 following ethical standards apply to the Attorney General:

17 (A) When a perceived or actual conflict of interest arises
18 under the West Virginia State Court rules of Professional
19 Responsibility arises in any litigation wherein the Attorney
20 General represents the interests of the state, consumers pursuant
21 to chapter forty-six-a of this code, or other proceeding in his or
22 her legal capacity, the Attorney General shall recuse him or
23 herself and office from participation in litigation and shall

1 forthwith select a special assistant attorney general pursuant to
2 section three of this article. The Attorney General shall not allow
3 any employee or other person subject to his or her directive to
4 advise or otherwise participate in the litigation;

5 (B) An appearance of conflict of interest exists when the
6 Attorney General has previously accepted any monetary campaign
7 contributions from a party to any case, complaint or other
8 proceeding under the jurisdiction of his or her office;

9 (C) An appearance of conflict of interest exists if the
10 Attorney General or any immediate family member of the Attorney
11 General has been employed, under contract or otherwise received
12 economic compensation from a party; and

13 (D) A conflict exists if the Attorney General asserts any
14 legal position or takes any action in a legal proceeding or other
15 representation that is inconsistent with the legal position taken
16 by the state officer, board, agency or other political subdivision
17 whom his or her office is representing.

18 (2) Disqualification of any assistant or special assistant
19 Attorney General does not disqualify the entire office but requires
20 the Attorney General to remove any such employee from participation
21 and knowledge of the case.

22 (3) The Attorney General shall withdrawal from a case when the
23 Attorney General determines that perceived or actual conflict of
24 interest exists, and forthwith appoint a special attorney general

1 pursuant to section three of this article.

2 (4) Upon adoption of a Rule of Professional Conduct by the
 3 Supreme Court of West Virginia that conflicts with the provisions
 4 of this subsection, this subsection is superceded by that rule or
 5 rules.

6 (b) Common law powers.- The common law authority of the
 7 Attorney General is specifically abrogated to the extent it is
 8 inconsistent with any provision of this article.

9 **§5-3-2. Act as counsel for state; duties and powers as to**
 10 **prosecuting attorneys; defense of National Guardsmen.**

11 (a) The Attorney General shall appear as counsel for the state
 12 in all causes pending in the Supreme Court of Appeals, or in any
 13 federal court, in which the state, ~~is interested~~ officer, board or
 14 agency of the state is a party. ~~he~~ The Attorney General shall
 15 appear in any cause in which the state is interested that is
 16 pending in any other court in the state, on the written request of
 17 the Governor, and when such appearance is entered ~~he~~ the Attorney
 18 General shall take charge of and have control of such cause; ~~he~~ the
 19 Attorney General shall defend all actions and proceedings against
 20 any state officer in his or her official capacity in any of the
 21 courts of this state or any of the federal courts when the state is
 22 ~~not interested in such cause against such officer, but should the~~
 23 ~~state be interested against such officer, he~~ a party the Attorney
 24 General shall appear for the state; ~~he~~ the Attorney General shall

1 also institute and prosecute all civil actions and proceedings in
2 favor of or for the use of the state which may be necessary in the
3 execution of the official duties of any state officer, board or
4 commission on the written request of such officer, board or
5 commission.

6 ~~(b) he~~ The Attorney General shall, when requested by the
7 prosecuting attorney of a county wherein a state institution of
8 correction is located, provide attorneys for appointment as special
9 prosecuting attorneys to assist the prosecuting attorney of said
10 county in the prosecution of criminal proceedings when, in the
11 opinion of the circuit judge of said county, or a justice of the
12 West Virginia Supreme Court of Appeals, extraordinary circumstances
13 exist at said institution which render the financial resources of
14 the office of the prosecuting attorney inadequate to prosecute said
15 cases; ~~he~~ the Attorney General may consult with and advise the
16 several prosecuting attorneys in matters relating to the official
17 duties of their office. ~~and may require a written report from them~~
18 ~~of the state and condition of the several causes, in which the~~
19 ~~state is a party, pending in the courts of their respective~~
20 ~~counties; he~~ The Attorney General may require ~~the several~~
21 prosecuting attorneys to perform, within the respective counties in
22 which they are elected, any of the legal duties required to be
23 performed by the Attorney General which are not inconsistent with
24 the duties of the prosecuting attorneys as the legal

1 representatives of their respective counties; when the performance
2 of any such duties by the prosecuting attorney conflicts with his
3 or her duties as the legal representative of his or her county, or
4 for any reason any prosecuting attorney is disqualified, ~~from~~
5 ~~performing such duties,~~ the Attorney General may require the
6 prosecuting attorney of any other county to perform such duties. ~~in~~
7 ~~any county other than that in which such prosecuting attorney is~~
8 ~~elected and for the performance of which duties outside of the~~
9 ~~county in which he is elected~~ The prosecuting attorney shall be
10 paid his or her actual traveling and other expenses out of the
11 appropriation for contingent expenses for the department for which
12 such services to another county are rendered.

13 (c) The Attorney General shall keep in proper books, a
14 register of all causes prosecuted or defended by him or her in
15 behalf of the state or its officers and of the proceedings had in
16 relation thereto, and deliver the same to his or her successor in
17 office. ~~and he~~ The Attorney General shall preserve in his or her
18 office all ~~his~~ official opinions of the Office of the Attorney
19 General and publish the same in his or her biennial report.

20 (d) Upon request of any member of the West Virginia National
21 Guard who has been named defendant in any civil action arising out
22 of that guardsman's action while under orders from the Governor
23 relating to National Guard assistance in disasters and civil
24 disorders, the Attorney General shall appear as counsel for and

1 represent such guardsman.

2 **§5-3-3. Assistants to Attorney General; appointment of special**
3 **assistants to the Attorney General.**

4 (a) The Attorney General may appoint such assistant attorneys
5 general as may be necessary to properly perform the duties of his
6 or her office. The total compensation of all such assistants shall
7 be within the limits of the amounts appropriated by the Legislature
8 for personal services. All assistant attorneys general so appointed
9 shall serve at the pleasure of the Attorney General and shall
10 perform such duties as ~~he~~ the Attorney General may require of them.

11 (b) If the Attorney General seeks to obtain legal services of
12 any kind from any person who is neither a full-time assistant
13 attorney general on his or her staff nor a full-time employee of
14 another state agency, whether or not such person is designated at
15 any time as an assistant or special assistant attorney general, he
16 or she shall contract for such services regardless of the amount of
17 fees and expenses to be incurred, and to the extent applicable,
18 shall comply with the general purchasing requirements under article
19 three, chapter five-a of this code. The contract shall be subject
20 to the following requirements: (1) A statement of the reimbursement
21 rate by the Attorney General of expenses that may be incurred by
22 the applicant, including, but not limited to, items such as travel,
23 telephone and copying; (2) certification by the applicant of the
24 hourly rate or fee he or she will charge under the contract and

1 agreement to the reimbursement rate for expenses set forth by the
2 Attorney General; (3) certification by the applicant that he or she
3 will agree to any relevant statutory confidentiality requirements;
4 (4) certification by the applicant that he or she will submit an
5 annual budget of fees and expenses to be incurred for any matter
6 that may extend for more than six months; and (5) certification by
7 the applicant that neither he or she, nor any person in practice
8 with the applicant, represents nor may represent during the
9 pendency of the contract, a person who has a claim or punitive
10 claim involving any matter for which the applicant or any person in
11 practice with the applicant has been retained by the Attorney
12 General. Consistent with the general purchasing requirements, the
13 Attorney General shall submit a request for proposal when he or she
14 seeks to obtain these legal services, and the request for proposal
15 shall include the following elements: (1) A statement by the
16 Attorney General as to why the matter cannot be handled by the
17 regular full-time staff of the Attorney General; (2) a statement of
18 the particular experience and expertise required of the person or
19 persons being sought under the contract; and (3) the estimated
20 total amount of time and fees to be expended by the persons under
21 the contract.

22 Nothing in this section creates or expands any rights of the
23 Attorney General that do not otherwise exist in this code. All laws
24 or parts of laws inconsistent with the provisions hereof are hereby

1 amended to be in harmony with the provisions of this section.

2 **§5-3-4. Annual report to Governor.**

3 The Attorney General shall ~~annually~~ biennially, on or before
4 May 1 and November 1, deliver to the Governor a report of the state
5 and condition of the several causes, in which the state or the
6 Attorney General is a party, pending in courts mentioned in section
7 two of this article, or in any other chapter of this code, as of
8 December 30 and June 30, immediately preceding May 1 and November
9 1, or closed or concluded during the preceding six month period.
10 This report shall also include the terms and conditions upon which
11 the Attorney General has engaged any Special Assistant Attorney
12 General or any other person to perform legal services of any kind,
13 including a copy of all contracts for such legal services,
14 including the fees and expenses to be paid to these persons; and
15 the amount of judgments, settlements, costs and fees awarded by the
16 courts to the Attorney General or persons with whom he or she has
17 contracted for legal services, including any Special Assistant
18 Attorney General, in cases closed or concluded during the preceding
19 fiscal year of the state, and that amount paid to any Special
20 Assistant Attorney General, or other persons under contract with
21 the Attorney General to perform legal services, for representing
22 the state or a public officer or employee of the state. This report
23 shall also include copies of the report provided in the preceding
24 six months under subsection (b) of this section.

1 (b) Whenever the Attorney General contracts for legal services
 2 for a person other than as a full-time member of his or her staff,
 3 in accordance with section three of this article, he or she shall
 4 immediately deliver to the Governor and to the Joint Committee on
 5 Government and Finance a list of the persons with whom he or she
 6 has such contract; a list of all persons who responded to the
 7 proposal and copies of all communication in response to the
 8 proposal; and a review of the current and prior relationship of the
 9 Attorney General and his or her deputies with the persons to whom
 10 he or she has awarded the contracts.

11 **§5-3-5. Fees to be paid into State Treasury. Attorney General's**
 12 **Litigation Support Fund.**

13 ~~On the final determination of any cause in any of the courts~~
 14 ~~mentioned in the second section of this article, in which the~~
 15 ~~Attorney General appeared for the state, the clerk thereof shall~~
 16 ~~certify to the Auditor the fee of the Attorney General which was~~
 17 ~~taxed in the bill of costs against the defendant, and when such fee~~
 18 ~~shall be collected it shall be paid into the state Treasury and~~
 19 ~~placed to the credit of the state fund.~~

20 (a) There is established in the State Treasury a special fund
 21 to be known as the "Attorney General's Litigation Support Fund."

22 (b) (1) The fund shall consist of any and all moneys designated
 23 by a court order as reasonable attorney fees and related expenses
 24 received by the Attorney General pursuant to this section as a

1 result of any fees, fines, restitution, forfeitures, penalties,
2 costs, interest, or judgments collected pursuant to any civil
3 litigation, or any administrative proceedings, or in settlement of
4 any claim asserted by or against the people of West Virginia, the
5 State of West Virginia, or any of its departments, agencies,
6 institutions, officers, employees, or political subdivisions
7 thereof, not to exceed the actual expenses of the Office of the
8 Attorney General pursuant to the litigation or the issue settled.
9 Moneys in the fund shall be available for expenditure only upon
10 appropriation by the Legislature in accordance with the provisions
11 of West Virginia Constitution, article six, section fifty-one.

12 (2) From any moneys collected or recovered by the Attorney
13 General, pursuant to any civil litigation, or any administrative
14 proceedings, or in settlement of any claim asserted by or against
15 the people of West Virginia, the State of West Virginia, or any of
16 its departments, agencies, institutions, officers, employees, or
17 political subdivisions thereof, the Attorney General shall deduct
18 and deposit into the Attorney General's Litigation Support Fund the
19 net actual expenses of the office as more particularly described in
20 subdivision (1) of this subsection, if any such amounts were made
21 available by court order, and shall deposit the balance of any
22 fees, expenses, fines, restitution, forfeitures, penalties, costs,
23 interest, judgments or settlements received by the Office of the
24 Attorney General on behalf of the people of West Virginia, the

1 State of West Virginia, or any of its departments, agencies,
2 institutions, officers, employees, or political subdivisions
3 thereof that are in excess of the actual expenses of the Office of
4 the Attorney General pursuant to the litigation or the issue
5 settled in the treasury of the state to the credit of the state
6 fund, general revenue, unless:

7 (A) The recovery or a portion thereof was on behalf of a
8 special fund established under the provisions of this code, in
9 which event those moneys shall be deposited in the special fund if
10 it is established in the State Treasury, or into a special fund
11 established for that purpose in the State Treasury;

12 (B) The recovery or a portion thereof was on behalf of or
13 required to be held in a trust fund, in which event those moneys
14 shall be deposited in a special fund established in the State
15 Treasury to be held in trust;

16 (C) The recovery was on behalf of a political subdivision of
17 the state, in which event the remainder of the recovery shall be
18 transmitted to the treasurer of such political subdivision for
19 deposit in its general fund;

20 (D) Amounts were recovered as attorney fees and expenses
21 separate and apart from any amounts recovered by the state or the
22 Attorney General by a person not employed by the state who provided
23 legal services in the matter as a special assistant attorney
24 general appointed by the Attorney General for that purpose, in

1 which event, those attorney fees and expenses shall not be
2 deposited into the Treasury of the state nor into the Attorney
3 General's Litigation Support Fund, but retained by the special
4 assistant attorney general; or

5 (E) The recovery or a portion thereof was for specifically
6 identified persons, in which event those moneys shall be deposited
7 into a pass through account in a banking institution designated by
8 and administered subject to conditions established by the State
9 Treasurer to ensure the accountability of the disbursement of the
10 funds.

11 (3) The actual expenses of the Office of the Attorney General
12 pursuant to litigation or the issue settled shall be certified by
13 the Attorney General to the Governor, the Secretary of the
14 Department of Administration, the President of the Senate and the
15 Speaker of the House of Delegates.

16 (4) Notwithstanding any provision of this subsection to the
17 contrary, or any other provision of law, the Attorney General may
18 not expend the proceeds of judgments or settlements of any kind, or
19 any part thereof, for the use of the Office of the Attorney General
20 in excess of the actual expenses of the Office of the Attorney
21 General pursuant to the litigation or the issue settled.

22 (c) The Attorney General may expend moneys appropriated by the
23 Legislature from the Attorney General's Litigation Support Fund for
24 the performance of any of the powers, functions, duties, and

1 responsibilities of the Office of the Attorney General.

2 (d) The Attorney General's Litigation Support Fund shall be
3 placed under the management or administration of the Attorney
4 General for the purpose of performing any of the functions, duties,
5 powers, and responsibilities of the Office of the Attorney General
6 and all moneys deposited in the fund are available for
7 appropriation to the Office of the Attorney General.

8 (e) The appropriation of these moneys may be in addition to
9 any moneys appropriated to the Office of the Attorney General from
10 any other sources.

11 (f) Neither the Attorney General, nor any employee of that
12 office, may have any financial interest in the investment of moneys
13 in the fund nor receive any commission with respect thereto.

14 (g) The Attorney General shall keep detailed permanent
15 records of all expenditures and disbursements from the fund.

16 (h) On or before the fifteenth day of January, April, July and
17 October, the Attorney General shall cause to be filed with the
18 Governor, with copies to the secretary of the Department of
19 Administration, the President of the Senate and the Speaker of the
20 House of Delegates, a full and complete account of the receipts and
21 disbursements from the fund in the previous calendar quarter.

22 **§5-3-6. Public accountability for funds or assets recovered by the**
23 **Attorney General and other officer or agencies of the**
24 **state through judgment or settlement; applicability of**

1 **open records and open meetings laws; administration and**
2 **disbursement of state judgment or settlement proceeds.**

3 (a) The Legislature hereby finds and declares that:

4 (1) Public accountability for funds or other assets recovered
5 in a legal action or settlement by or on behalf of the general
6 public, the state or its officers, agencies or political
7 subdivisions is appropriate and required, whether the character of
8 the assets or funds recovered is public or private;

9 (2) Accountability for assets or funds recovered by the
10 Attorney General or other officer or agency of the state is
11 essential to the public trust, and is even more critical when the
12 Attorney General or other officer of the state was a party to the
13 action that resulted in the recovery by virtue of the public office
14 he or she holds;

15 (3) Public accountability demands the applicability of the
16 freedom of information law, article one, chapter twenty-nine-b of
17 this code, and the open governmental proceedings law, article
18 nine-a, chapter six of this code, so that the actions of
19 individuals or agencies who are charged with the administration of
20 funds or other assets are conducted in full view, and are open to
21 public scrutiny;

22 (4) While it may be important that, in certain circumstances,
23 funds or assets received retain their character, identity, and
24 purpose, it is also important that the process by which funds are

1 administered be open to public scrutiny and be accountable to the
2 public; and

3 (5) The power to appropriate funds for public purposes is
4 solely within the purview of the legislative branch of government,
5 and the Legislature, as a steward of the budgetary process, shall
6 take steps to assure that settlements are handled in a manner that
7 assures maximum accountability to the citizens of the state and
8 their duly elected legislative representatives.

9 (b) Therefore, any other provision of the common law or
10 statutory law to the contrary notwithstanding:

11 (1) Whenever the Attorney General or other officer or agency
12 of the state is a party to or has entered his or her appearance in,
13 a legal action on behalf of the State of West Virginia, including
14 ex rel. or other type actions, and a disposition of that action has
15 resulted in the recovery of funds or assets to be held in trust by
16 the state, through court action or otherwise, to administer the
17 trust funds or assets, for charitable, eleemosynary, benevolent,
18 educational, or similar public purposes, those funds shall be
19 deposited in a special revenue account or trust fund established in
20 the State Treasury. The Attorney General or other officer or agency
21 of the state or a person, organization, or entity created by the
22 Attorney General or other officer or agency of the state are
23 prohibited from administering trust funds or assets for charitable,
24 eleemosynary, benevolent, educational, or similar public purposes

1 except as is thereafter provided by law;

2 (2) Except as otherwise provided in this section, any funds or
3 assets not for charitable, eleemosynary, benevolent, educational,
4 or similar public purposes, of any kind or nature whatsoever,
5 including, but not limited to, public funds and private funds or
6 assets when recovered by judgment or settlement of a legal action
7 by or on behalf of the State of West Virginia, including ex rel. or
8 other type actions filed by the Attorney General or other officer
9 or agency of the state under their statutory or common law
10 authority shall be deemed public funds, and shall be deposited in
11 the State Treasury in the General Revenue Fund; and

12 (3) No funds to which this subsection applies when deposited
13 in an account in the State Treasury shall be disbursed without a
14 specific legislative appropriation of the deposited funds by the
15 Legislature.

16 (c) The common law, including the common law authority of any
17 duly elected statewide constitutional officer or other officer of
18 the state, is specifically abrogated to the extent it is
19 inconsistent with the provisions of this section.

20 (d) The provisions of this section do not apply to actions by
21 or on behalf of the state or its duly elected statewide
22 constitutional officers or any other state official or agency, if
23 the recovery sought and received is for specific individuals
24 identified as parties to the action either by individual social

1 security number, other individual identifying number, or by the
2 individual's proper name.

3 (e) In the preparation of a judgment order that will result in
4 the recovery of funds or assets by the state, the Attorney General
5 or other officer or agency of the state who is a party to or has
6 entered his or her appearance in the action on behalf of the State
7 of West Virginia shall advise the court of the provisions of this
8 section.

9 (f) In the event of an extra-judicial settlement that would
10 result in the recovery of funds or assets by the state, the
11 Attorney General or other officer or agency of the state acting on
12 behalf of the State of West Virginia may not agree to any terms
13 contrary to the provisions of this section.

14 **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

15 **ARTICLE 3. PURCHASING DIVISION.**

16 **§5A-3-13. Contracts to be approved as to form; filing.**

17 Contracts shall be approved as to form by the Attorney
18 General, except that a contract proposed by the Attorney General
19 shall be approved as to form by the Secretary of State. A contract
20 that requires more than six months for its fulfillment shall be
21 filed with the State Auditor.

NOTE: This bill establishes ethical guidelines and provides financial accountability for the Attorney General. It establishes ethical guidelines for when the Attorney General should remove

himself or herself from conflicts of interest. It clarifies the authority of the Attorney General to hire special assistants. It directs the Attorney General to comply with certain requirements when entering into contracts for legal services to be performed by persons other than full-time assistant attorneys general or other full-time employees of the state. It requires the Attorney General to report to the Governor and the Joint Committee on Government and Finance relative to these contracts, as well as report upon the conclusion of the legal services provided under each of them, including a statement of fees involved on an hourly basis; requires reporting of the payment of fees and expenses under these contracts. It requires the Attorney General to deposit any amounts received or recovered in providing legal services into the State General Revenue Fund, except in specific circumstances, and requires that certain funds recovered by the Attorney General may not be disbursed without a specific legislative appropriation. Lastly, the bill requires that contracts proposed by the Attorney General be approved as to form by the Secretary of State.

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

§5-3-1a and §5-3-6 are new; therefore, they have been completely underscored.