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DEPARTMENTAL REVIEW

# DEPARTMENT OF ADMINISTRATION PROSECUTING ATTORNEYS INSTITUTE

## AUDIT OVERVIEW

The Prosecuting Attorneys Institute Has Enacted Policy Changes In Order to Prevent Issues Identified in Previous Legislative Audit Reports

Recommendations Requiring Legislative Action Could Have a Positive Impact on the Institute



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## EXECUTIVE SUMMARY

### **Issue 1: The Prosecuting Attorneys Institute Has Enacted Policy Changes In Order to Prevent Issues Identified in Previous Legislative Audit Reports**

The West Virginia Prosecuting Attorneys Institute was created in 1995 and stands to provide special prosecuting attorneys upon the request of a circuit judge, in addition to acting as a resource for the 55 elected county prosecutors. The Legislative Auditor conducted several audits of the Prosecuting Attorneys Institute from June 2004 through November 2005. The Legislative Auditor's 2004 Post Audit Report made nine recommendations, and the Institute has fully complied with eight of them. The 2004 Post Audit Report found that the Institute had a lack of internal controls, had ineffective accounting practices, the Institute was misusing the Forensic Medical Fund, the Institute's Executive Council meeting minutes were prepared incorrectly, and the Institute did not use timesheets for its employees. Currently, the Institute complies with all of the Legislative Auditor's recommendations, except the Institute still does not fully comply with the preparation of Executive Council meeting minutes. Furthermore, the Legislative Auditor found in its 2005 reports conducted by the Performance Evaluation and Research Division that the Institute was not using timesheets for its employees, the Institute's employees were using state-issued cellular telephones for personal calls, and the former Executive Director was using the Institute's resources to run political campaigns. As a result of the recommendations, the Institute has kept timesheets for all employees, a uniformed cellular telephone policy has been adopted by the Institute, and a policy pertaining to an Executive Director's political candidacy has been adopted.

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*The Legislative Auditor's 2004 Post Audit Report made nine recommendations, and the Institute has fully complied with eight of them.*

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This review of the Prosecuting Attorneys Institute uses the following designations for the levels of compliance with previous Legislative Auditor recommendations:

<b>Level of Compliance</b>
<u>In Compliance</u> : The West Virginia Prosecuting Attorneys Institute has corrected problem(s) identified in the Legislative Auditor's 2004 and 2005 reports.
<u>Partial Compliance</u> : The West Virginia Prosecuting Attorneys Institute has partially corrected problem(s) identified in the Legislative Auditor's 2004 and 2005 reports.
<u>Planned Compliance</u> : The West Virginia Prosecuting Attorneys Institute has not corrected the problem but has provided sufficient documentary evidence to find that the agency will do so in the future.
<u>In Dispute</u> : The West Virginia Prosecuting Attorneys Institute does not agree with either the problem(s) identified or proposed a solution.
<u>Non Compliance</u> : The West Virginia Prosecuting Attorneys Institute has not corrected the problem(s) identified in the Legislative Auditor's 2004 and 2005 reports.
<u>Requires Legislative Action</u> : The recommendation was intended to call the attention of the Legislature to one or more statutory issues.
<u>Legislation Enacted</u> : The Legislature responded to issues raised in the Legislative Auditor's 2004 and 2005 reports.

## **Issue 2: Recommendations Requiring Legislative Action Could Have a Positive Impact on the Institute**

The main source of revenue for the Prosecuting Attorneys Institute is statutory premiums paid monthly by all West Virginia counties. Counties pay premiums based on their population size and range from Class 1 through Class 10. Class 1 counties have the largest population and pay the highest premiums, and Class 10 counties have the smallest population and pay the lowest premiums. These statutory county premiums allow the Institute to offer appointments of special prosecution when a county prosecutor is disqualified by a judge. Since its inception, the Institute estimates it has saved West Virginia counties \$5,540,040. Furthermore, since the creation of the Institute in 1995, the statutory county premiums have not changed. With an increase in county premiums, the Institute could expand the training which it offers. The Institute is governed by an Executive Council of seven members. Currently, the Executive Council is operating with six members. Of the six current members, many of them are from the western half of the state and represent Class 1 counties. Adding two additional positions on the Institute's Executive Council would possibly allow for representation from different county classes.

## Recommendations

1. *The Legislative Auditor recommends that the Executive Council's meeting minutes include the names of absent members as required by West Virginia Code §6-9A-5.*
2. *The Legislative Auditor recommends that the Legislature should consider amending West Virginia Code §7-4-6(g) to allow for an increase in county premiums paid to the Prosecuting Attorneys Institute.*
3. *The Legislative Auditor recommends the Executive Council of the Prosecuting Attorneys Institute fill the Council's open position.*
4. *The Legislative Auditor recommends that the Legislature consider revising West Virginia Code §7-4-6(b), to allow for additional seats on the Prosecuting Attorneys Institute's Executive Council, which may improve representation.*



## OBJECTIVE, SCOPE & METHODOLOGY

This agency review of the West Virginia Prosecuting Attorneys Institute was conducted as part of the Departmental Review of the Department of Administration and is authorized by the Performance Review Act, Chapter 4, Article 10, of the West Virginia Code.

### **Objective**

The objective of this report was to determine if the Prosecuting Attorneys Institute complied with previous Legislative Auditor reports from 2004 and 2005, and to identify any other areas of concern since the release of the reports.

### **Scope**

The scope of the report focused on the activities of the Prosecuting Attorneys Institute since the release of the Legislative Auditor reports starting in 2004 through 2008.

### **Methodology**

The Legislative Auditor utilized information contained in interviews with Institute personnel, meeting minutes from the Institute's Executive Council, West Virginia State Code, previous reports conducted by the Legislative Auditor in 2004 and 2005, Annual reports compiled by the Institute, Institute internal policy and financial documents provided by the Institute. Every aspect of this review complied with the Generally Accepted Governmental Auditing Standards (GAGAS) as set forth by the Comptroller General of the United States of America.



## ISSUE 1

### **The Prosecuting Attorneys Institute Has Enacted Policy Changes In Order to Prevent Issues Identified in Previous Legislative Audit Reports.**

#### **Issue Summary**

The Legislative Auditor conducted several audits of the Prosecuting Attorneys Institute from June 2004 through November 2005. It was found by the Legislative Auditor that the Institute did not have effective internal controls and it had ineffective accounting practices. Since the Legislative Auditor's reports the Institute has enacted improvements in these internal controls and accounting practices. Furthermore, the Legislative Auditor found employees of the Prosecuting Attorneys Institute were using state-issued cellular telephones for personal calls. Since the Legislative Auditor's report, current and former employees have repaid the state for personal charges incurred on the state-issued wireless telephone. Additionally, the Institute has enacted a wireless telephone policy. Finally, due to issues found in Legislative Auditor reports, the Institute has begun keeping timesheets for all employees and a political candidacy policy has been adopted.

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*The Institute is overseen by an Executive Council comprised of five prosecutors elected by their peers and two county commissioners appointed annually by the County Commissioner's Association of West Virginia.*

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#### **Overview**

The Prosecuting Attorneys Institute was created in 1995 and consists of the 55 elected county prosecutors in West Virginia. The Institute is overseen by an Executive Council comprised of five prosecutors elected by their peers and two county commissioners appointed annually by the County Commissioner's Association of West Virginia. An Executive Director oversees the daily business of the Institute and is employed at the will and pleasure of the Executive Council.

The Institute stands to provide special prosecuting attorneys to pursue criminal matters in any county upon the request of a circuit judge. Furthermore, the duties of the Institute include the following:

- establish training programs for prosecutors and other law enforcement personnel,
- provide relevant material and technical assistance for prosecutors,

- establish uniform reporting procedures for prosecutors,
- identify experts and other resources,
- develop a handbook for prosecutors with relevant information, and
- recommend to the Legislature uniform treatment of juvenile cases.

The Legislative Auditor released four audit reports evaluating the Institute in 2004 and 2005.<sup>1</sup> The Legislative Auditor made several recommendations, and the Executive Council has since taken action to correct most problems found in the reviews.

## **The Prosecuting Attorneys Institute Has Addressed the Majority of the Issues Raised in the Legislative Auditor's Post Audit Division June 2004 Audit Report**

The Legislative Auditor's Post Audit Division released an Audit Report of the Prosecuting Attorneys Institute in June 2004. Since this report, the Institute has enacted changes to improve upon areas identified in the recommendations. Below are the recommendations from the June 2004 Post Audit Report in addition to the compliance by the Prosecuting Attorneys Institute since the report.

### **Recommendation 1**

*We recommend the Institute comply with Chapter 5A, Article 8, Section 9 of West Virginia Code.*

### **Compliance Level: In Compliance**

In the June 2004 Post Audit Report, it was concluded that the Prosecuting Attorneys Institute had a lack of internal controls. West Virginia Code §5A-8-9 sets standards for management and record keeping to ensure an effective system of internal controls. Furthermore, West Virginia Code §5A-8-9 outlines the duties of agency heads. Following

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<sup>1</sup>Issues identified in the audit reports occurred during the employ of a former Executive Director. The current Executive Director began his employment with the Prosecuting Attorneys Institute in February 2005.

the June 2004 Post Audit Report, the Prosecuting Attorneys Institute has enacted effective internal controls, and the Institute is able to provide documents upon the request of the Legislative Auditor.

### **Recommendation 2**

*We recommend the Institute comply with Chapter 7, Article 4, Section 6(g) of West Virginia Code, as amended.*

### **Compliance Level: In Compliance**

The Prosecuting Attorneys Institute is statutorily required by West Virginia Code §7-4-6(g) to collect monthly premiums from West Virginia counties. In the June 2004 Post Audit Report, it was found that the Institute did not retain records of county premiums collected. Counties are statutorily required to pay monthly premiums to the Institute in exchange for the use of special prosecutors. County premiums are based on population and range from Class 1 through Class 10. Class 1 counties pay the highest premiums and Class 10 counties pay the lowest premiums. Thus, Class 1 counties have the largest population and Class 10 counties have the smallest population.

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*West Virginia Code §7-4-6(g) has been amended so that county premiums are paid directly to the State Treasurer's Office.*

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Since the Legislative Auditor's review of the Institute, West Virginia Code §7-4-6(g) has been amended so that county premiums are paid directly to the State Treasurer's Office. The State Treasurer's Office began collecting county premiums in 2008, and provides a spreadsheet of the transactions to the Institute.

### **Recommendation 3**

*We recommend the Institute comply with Chapter 7, Article 4, Section 6, Subsection (d) of West Virginia Code, as amended.*

### **Compliance Level: In Compliance**

West Virginia Code §7-4-6(d) describes in detail the duties and responsibilities of the Institute. The June 2004 Post Audit Report found the Prosecuting Attorneys Institute was acting beyond what was applicable by Code. For example, the June 2004 Post Audit Report found the Institute was providing training for law enforcement and

other individuals in the criminal justice system. Since this report, the scope of the Prosecuting Attorneys Institute's duties has been modified in State Code. Furthermore, West Virginia State Code now allows the Prosecuting Attorneys Institute to offer training opportunities for other areas of government and law enforcement.

#### **Recommendation 4**

*We recommend the Institute comply with Chapter 61, Article 8B, Section 15 and 16 of the West Virginia Code, and Title 168, Series I, Sections 3.1.7 and 3.1.8. Further, we recommend the Institute reimburse the Forensic Medical Examination Fund (No. 0557-683) for: (1) the unrelated travel expense; (2) the 2004 membership dues for county prosecuting attorneys to the National District Attorneys Association; and (3) the amount overpaid to Charleston Area Medical Center for a forensic medical examination charged to the Fund.*

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*The current Executive Director fears that the repayment may be deemed inappropriate.*

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#### **Compliance Level: In Compliance**

West Virginia Code §61-8B-15 and §61-8B-16 describes the administration of the Forensic Medical Examination Fund. These code cites do not allow for the Forensic Medical Examination Fund to be used for travel expenses and membership dues. In the June 2004 Post Audit Report, it was found that the Prosecuting Attorneys Institute was using Forensic Medical Examination funds to pay for these above-mentioned services. The travel related expenses inappropriately paid from the Fund were \$15,826, and membership dues for county prosecutors were \$7,870 for a total of \$23,696.

The Prosecuting Attorneys Institute has not reimbursed the Forensic Medical Examination Fund. The current Executive Director fears that the repayment may be deemed inappropriate. In a letter to the Legislative Auditor, the current Executive Director of the Prosecuting Attorneys Institute stated:

*The Institute does not condone the use of the Forensic Medical Fund monies for any purpose other than that which is statutorily permitted. Since January 2005 the Institute has not used funds for anything other than the*

*reimbursement for costs associated with sexual assault examinations, the purchase and distribution of the kits used in these examinations, Sexual Assault Nurse Examiner training and cost of administering the fund.*

The Executive Director also stated that the Fund is solvent annually, and that no requests for Examination Kits have gone unfunded since 2005. As for repayment to the Forensic Medical Examination Fund, the Executive Director stated:

*The issue of what to do about the Forensic Fund Monies used for non-statutorily intended uses during the audit period is more problematic. While we at the Institute would like to see the Forensic Fund made whole examination of the issue raises several concerns.*

*Assuming the Institute should consider righting an internal wrong committed by an individual in its employ the question becomes where to get the money. The Institute has one general revenue source (explained below). The other two revenue sources come from the Legislature and are limited in the scope of their use. They are the Forensic Fund itself and the fund the Legislature intends we use for the purpose of matching federal funding. Obviously neither of these funding sources could be the source of restorative monies.*

*WV Code §7-4-6 designates premiums be paid by the counties for the statutory purpose of operation of the Institute. This is the Institute's source of general operating revenue. Since that code section specifically designates these premiums as operating revenue it begs the question of the propriety of using any of these monies to restore the Forensic fund. Additionally there is a question of the propriety of using 2009 tax payer funds to redress an obligation from fiscal year 02, 03 and 04.*

*If the Institute considered using these premiums to restore the amounts, enumerated in the post audit findings, to the Forensic Fund we may violate other Statues. Primarily it may be that, in attempting to restore the Fund, we may*

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***The Executive Director also stated that the Fund is solvent annually, and that no requests for Examination Kits have gone unfunded since 2005.***

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*commit embezzlement by government officer found in paragraph two of WV Code §61-3-20 as interpreted in State v. Brown, 188 W. Va. 12, 422 S.E.2d 489 (1992).*

The Legislative Auditor agrees with the Executive Director's concerns, and finds that the Institute should continue to spend its funds for the manner in which the Legislature intends.

### **Recommendation 5**

*We recommend the Institute comply with Chapter 5A, Article 3, Section 35 of the West Virginia Code, as amended.*

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*Since the June 2004 Post Audit Report, the Institute has kept a record of inventory in its possession, which is filed with the Department of Administration's Purchasing Division.*

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### **Compliance Level: In Compliance**

West Virginia Code §5A-3-3 requires state agencies to report inventory of property, equipment, supplies and commodities in its possession. The June 2004 Post Audit Report found that the Institute did not have a complete inventory record. Since the June 2004 Post Audit Report, the Institute has kept a record of inventory in its possession, which is filed with the Department of Administration's Purchasing Division.

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*The Prosecuting Attorneys Institute's Executive Council now complies with State Code which requires documentation of members who propose motions and present members, but still does not list names of absent members, which West Virginia Code requires.*

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### **Recommendation 6**

*We recommend the Institute comply with Chapter 6, Article 9A, Section 5 of West Virginia Code, as amended.*

### **Compliance Level: Partial Compliance**

West Virginia Code §6-9A-5 creates standards for meeting minutes for governing bodies. The June 2004 Post Audit Report found the Institute did not comply with State Code in its preparation of meeting minutes. The Prosecuting Attorneys Institute's Executive Council now complies with State Code which requires documentation of members who propose motions and present members, but still does not list names of absent members, which West Virginia Code requires. **The Legislative Auditor recommends that the Executive Council's meeting minutes include the names of absent members and comply with West Virginia Code §6-9A-5.**

**Recommendation 7**

*We recommend the Institute comply with Section 6.1.2, of the West Virginia Purchasing Division’s Policies and Procedures Handbook; Chapter 12, Article 3, Section 10f; and Chapter 12, Article 3, Section 9 of the West Virginia Code, as amended.*

**Compliance Level: In Compliance**

The June 2004 Post Audit Report found the Prosecuting Attorneys Institute’s accounting records were insufficient or missing information. Table 1 below shows the issues regarding Recommendation 7 and the corrective actions taken by the Institute.

<b>Table 1 Accounting Issues Found in Recommendation 7 and Institute’s Action Since the Post Audit Report</b>	
<b>Issues found in the June 2004 Post Audit Report</b>	<b>Action Taken by Institute Since June 2004 Post Audit Report</b>
There were equipment transactions without evidence of bid process or the purchase order.	The Institute has not made purchases that require the bid process.
The Institute was unable to provide travel expense settlement form and the rental lease agreement for the agency.	Upon the Legislative Auditor’s request the Institute was able to provide travel expense settlement forms and the rental lease agreement.
Invoices were not canceled in some manner after payment follows.	The Institute’s bills are now done through the FIMS system. A member of the Institute’s staff does a daily review of FIMS, prints out paid notices, and attaches these notices to the invoice.

## Recommendation 8

*We recommend the Institute comply with Part 553 and Part 516, of the Fair Labor Standards Act of 1938, as amended, the Annual Budget Bills, and Section 14.3 and 14.4 of the Division of Personnel's Administrative Rule. Also, we recommend the Institute maintain time records for those employees whose salaries are allocated between two accounts.*

### Compliance Level: In Compliance

In the June 2004 Post Audit Report, the Legislative Auditor could not determine if the Institute was complying with federal and state standards because of an absence of timesheets for employees. The current Executive Director began requiring timesheets for all employees beginning February 1, 2005. The Executive Council also voted to require the Executive Director to approve and sign employees' timesheets. Additionally, the Institute has kept a record of timesheets for all employees, which are stored on the Institute's electronic network server.

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*The current Executive Director began requiring timesheets for all employees beginning February 1, 2005.*

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## Recommendation 9

*We recommend the Institute comply with Chapter 12, Article 3, Section 13 of West Virginia Code, and Chapter 5, Article 5, Section 2, of the West Virginia Code, as amended.*

### Compliance Level: In Compliance

The June 2004 Post Audit Report found that a staff member of the Prosecuting Attorneys Institute was being paid excess increment pay. The staff member was paid \$100 in excess over two years. This staff member is no longer employed by the Prosecuting Attorneys Institute, thus overpayment is not occurring.

## **The Prosecuting Attorneys Institute has Addressed Issues Raised in the Legislative Auditor's 2005 Special Reports Conducted by the Performance Evaluation and Research Division**

The Legislative Auditor's Performance Evaluation and Research Division released three Special Reports in 2005. Since these reports the Institute has enacted changes to improve upon areas identified in the recommendations and the findings from the 2005 Special Reports. Below are the recommendations from the Performance Evaluation and Research Division's 2005 Special Reports, and the agency's level of compliance with the recommendations.

### **May 2005 Special Report**

The following recommendation is from the Legislative Auditor's May 2005 Special Report, which was conducted by the Performance Evaluation and Research Division. Below each recommendation is an update on the Institute's compliance.

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*The Institute has not applied for or received any funding for the Byrne Grant since the end of FY 2005.*

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#### **Recommendation**

*The Legislative Auditor recommends that the Prosecuting Attorneys Institute enact policy requiring grant funded employees to maintain detailed time records including: a daily sign-in sheet or a time clock; detailed time sheets showing time spent working on the Byrne grant cases broken down into 30-minute increments; and total time spent working on cases that do not fall within the parameters of the Byrne grant.*

#### **Compliance Level: In Compliance**

As noted earlier, since the Legislative Auditor's recommendations in both the June 2004 Audit Report conducted by the Post Audit the Division and the Performance Evaluation and Research Division May 2005 Special Report, the Prosecuting Attorneys Institute requires all employees to keep time records. Furthermore, the Institute has not applied for or received any funding for the Byrne Grant since the end of FY 2005.

## June 2005 Special Report

The following recommendations are from the Legislative Auditor's June 2005 Special Report conducted by the Performance Evaluation and Research Division. The three recommendations are listed below followed by the agency's compliance level.

### Recommendations

*The Executive Council of the Prosecuting Attorneys Institute should consider requiring current employees and requesting former employees to reimburse the Institute for the charges associated with their personal use of the state-issued wireless telephones.*

*The Executive Director of the Prosecuting Attorneys Institute should reconsider the necessity of certain employees having state-issued wireless telephones.*

*The Executive Director of the Prosecuting Attorneys Institute should create an internal wireless telephone policy for Institute employees which addresses personal telephone calls.*

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*All employees repaid the Institute except one. The Prosecuting Attorneys Institute's Executive Council determined that this individual did not use his or her state-issued wireless telephone for personal calls.*

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### Compliance Level: In Compliance

In the June 2005 Special Report conducted by the Performance Evaluation and Research Division, the Legislative Auditor found that the former Executive Director and employees of the Institute were conducting personal telephone calls on state-issued cellular telephones, which led to unnecessary charges to the State. Per the June 2005 meeting minutes, the Executive Council instructed the current Executive Director to contact former employees of the Institute and give them the opportunity to reimburse the Institute for personal calls made on their cellular telephones. Table 2 below shows the employees with excess charges on their state-issued cellular phones, the amounts paid to the Institute for the excess charges and the dates payments were received by the Institute. Furthermore, all employees repaid the Institute except one. This individual had charges of \$76.59, but the Prosecuting Attorneys Institute's Executive Council determined that this individual did not use his or her state-issued wireless telephone for personal calls.

<b>Table 2</b>		
<b>Amount Paid and Date Paid to the Institute for Personal Use of Cellular Telephones by Former and Current Employees</b>		
	<b>Amount Paid</b>	<b>Date Repaid</b>
Database Administrator	\$143.37	June 6, 2005
Forensic Medical Fund Administrator	\$71.07	July 19, 2005
Drug and Violent Crime Assistant Prosecutor*	\$334.94	July 18, 2005
Drug and Violent Crime Assistant Prosecutor*	\$143.50	July 18, 2005
Paralegal	\$478.84	June 8, 2005
Executive Director**	\$3.85	June 8, 2005
Executive Director***	\$933.73	June 2, 2005
Traffic Safety Resource Assistant Prosecutor	\$301.62	June 8, 2005
<i>Source: Records of transactions made to the Prosecuting Attorneys Institute.</i>		
<i>*There were multiple Drug and violent Crime Assistant Prosecutors.</i>		
<i>** Current Executive Director.</i>		
<i>*** Former Executive Director.</i>		

Additionally, the Institute created an internal wireless telephone policy for the Institute’s employees. Meeting minutes from the Executive Council gave permission to the Executive Director to establish an acceptable use policy for state-paid cellular telephones. On June 16, 2005, the Executive Director of the Institute issued an acceptable use policy regarding all telephones and telecommunications equipment. The acceptable use policy was incorporated into the Prosecuting Attorneys Institute employee handbook in August 2005.

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*On June 16, 2005, the Executive Director of the Institute issued an acceptable use policy regarding all telephones and telecommunications equipment.*

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In addition to a uniform cellular telephone policy, the Institute has reduced its number of cellular telephones in the office. The total number of cellular telephones in the office is three, which belong to the Executive Director and the office Paralegal. The third phone is maintained by the office for an anticipated additional staff person being hired.

## The Institute Enacted Policy Changes After the November 2005 Special Report

The Legislative Auditor found that the former Executive Director ran his campaign for Kanawha County Prosecutor and his family member's campaigns during work hours, and used state-provided resources and staff to do so. As a result of the report, the Institute's Executive Council enacted policy pertaining to an Executive Director's candidacy for political office. The policy which was adopted in February 2006 states the following:

*The Executive Director of the West Virginia Prosecuting Attorneys Institute is prohibited from retaining his or her position upon filing for candidacy forms or papers for any primary election for elective office, or upon becoming a candidate for political office by accepting the nomination of any party to become a candidate for elective office in any general election.*

*In such a case the Executive Director shall resign upon either the foregoing events or be removed from office when he or she becomes a candidate of political office.*

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*The Institute's Executive Council enacted policy pertaining to an Executive Director's candidacy for political office.*

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The Legislative Auditor commends the Prosecuting Attorneys Institute for enacting policy which should prevent issues identified in the November 2005 audit report from occurring again.

## Conclusion

The Legislative Auditor conducted several assessments of the Prosecuting Attorneys Institute in 2004 and 2005. The Legislative Auditors' 2004 and 2005 audits found the following: the Institute lacked internal controls, the Institute had no record of monthly premiums, the Institute was acting beyond its statutory scope, the Forensic Medical Fund monies were being misused, the Institute did not keep inventory records, and the Institute's meeting minutes were incomplete. Furthermore, it was found the Institute had incomplete accounting records, the Institute lacked time sheets, an employee of the Institute had incorrect increment pay, state-issued cellular telephones were being misused, and the former Executive Director was running campaigns out of the Institute's office.

Since the Legislative Auditor's 2004 and 2005 reviews, the Institute's Executive Council has enacted changes which will prevent issues found in previous Legislative Auditor reports. **The Legislative Auditor commends the Institute for addressing its recommendations.**

### **Recommendation**

1. *The Legislative Auditor recommends that the Executive Council's meeting minutes include the names of absent members as required by West Virginia Code §6-9A-5.*



## ISSUE 2

### **Recommendations Requiring Legislative Action Could Have a Positive Impact on the Institute.**

#### **Issue Summary**

The main source of revenue for the Prosecuting Attorneys Institute is statutory premiums paid monthly by all West Virginia counties. Since the creation of the Institute in 1995 these premiums have not been changed. With an increase in county premiums, the Institute could expand the training which it offers. Furthermore, the leadership on the Institute's Executive Council could be changed to offer more diverse leadership. This could be done by adding two additional positions on the Executive Council. This would possibly allow for representations from different county classes.

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*The Prosecuting Attorneys Institute's main source of revenue is derived from statutory, county premiums.*

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#### **County Premiums Paid to the Prosecuting Attorneys Institute Should be Increased**

The Prosecuting Attorneys Institute's main source of revenue is derived from statutory, county premiums. County premiums are paid to the Institute to allow for special prosecutors to be appointed when a county prosecutor is disqualified by a judge from serving in a case. Prosecutors are disqualified from cases due to conflicts of interest, and a special prosecutor must be appointed to the case by the Institute. In CY 2007, the Prosecuting Attorneys Institute appointed 200 special prosecutors from 43 counties. Since the Institute's inception, there have been 2,798 requests for special prosecutors in all of West Virginia's 55 counties. The appointment of special prosecutors by the Institute allows for substantial savings for the counties and allows them to avoid high, private attorneys' fees for representation in these cases. Furthermore, the Institute estimates it saved West Virginia counties \$396,000 in CY 2007, and has saved \$5,540,040 since the creation of the Institute. Table 3 below shows the estimated total savings to the counties made possible by the Prosecuting Attorneys Institute from CY 2005 through CY 2007.

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*The Institute estimates it saved West Virginia counties \$396,000 in CY 2007, and has saved \$5,540,040 since the creation of the Institute.*

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**Table 3**  
**Total Counties Served by PAI and Total Savings to Counties by PAI**  
**CY 2005 – CY 2007**

<b>Year</b>	<b>Total counties served by PAI</b>	<b>Estimated total savings to counties by PAI</b>
CY 2007	43	\$396,000
CY 2006	41	\$436,000
CY 2005	45	\$542,520

*Source: Prosecuting Attorneys Institute annual reports.*

West Virginia Code §7-4-6(g) created statutory premiums which counties pay monthly to the Institute, by way of the State Treasurer’s Office. Since the inception of the Prosecuting Attorneys Institute in 1995, the statutory premiums paid by the counties have not been changed. In a letter to the Legislative Auditor, the Executive Director of the Prosecuting Attorneys Institute stated that the Executive Council of the Prosecuting Institute wishes to increase the county premiums. The Executive Council of the Institute suggests an increase of \$50 a month is necessary. This increase in premiums would cost each county an additional \$600 a year and give the Institute an additional \$33,000 in funding per year.

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*Since the inception of the Prosecuting Attorneys Institute in 1995, the statutory premiums paid by the counties have not been changed.*

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The additional funding would allow the Institute to offer additional training opportunities for prosecutors throughout the state. The Executive Director of the Institute states it costs roughly \$25,000 to produce a week long training session for prosecutors. With the additional funding from an increase in county premiums, the Institute would be able to hold a “Train the Trainers” training session, which it has been unable to do since 2005 because of a lack of financial resources. The “Train the Trainers” training program trains individuals, who then in-turn train prosecutors within West Virginia. This training program allows the Institute to train prosecutors and offer continuing education for prosecutors. With an increase in county premiums there would be no fiscal impact on the State because the premiums are paid to the Institute by the counties.

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*The Legislative Auditor is of the opinion that with the additional funding, the Prosecuting Attorneys Institute will be able to offer further training for prosecuting attorneys in West Virginia.*

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The Legislative Auditor is of the opinion that with the additional funding, the Prosecuting Attorneys Institute will be able to offer further training for prosecuting attorneys in West Virginia. **The Legislative Auditor recommends the Legislature amend West Virginia Code §7-4-6(g) to allow for an increase in county premiums paid to the Prosecuting Attorneys Institute.**

## The Executive Council's Membership Can Be Changed to Allow For a Different Cross-Section of Leadership

West Virginia Code §7-4-6(b) states that the Executive Council of the Prosecuting Attorneys Institute shall consist of five prosecuting attorneys elected by the membership of the West Virginia Prosecuting Attorneys Institute and two members appointed by the County Commissioner's Association. Currently, the Executive Council is operating with only six members. **The Legislative Auditor recommends the Prosecuting Attorneys Institute fill the open position on the Executive Council.**

In an August 2008 meeting of the Executive Council, the Council discussed the possibility of adding active members. The Executive Director stated in his letter to the Legislative Auditor that the Council wishes to increase its membership from seven to nine members. Additionally, the Executive Council expressed concerns regarding quorums at Executive Council meetings. The Executive Director noted that prosecutors have work-related obligations and unexpected matters, which may lead to poor attendance at Executive Council meetings.

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*Upon review of the meeting minutes from May 2005 through August 2008, the Legislative Auditor found in 3 of 12 meetings the Executive Council was unable to obtain quorum.*

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Furthermore, upon review of the meeting minutes from May 2005 through August 2008, the Legislative Auditor found in 3 of 12 meetings the Executive Council was unable to obtain quorum.<sup>2</sup> In June 2008, the Executive Director of the Institute attempted to call a meeting of the Executive Council but was unable to because a quorum could not be reached. The Executive Director of the Council states in a letter to the Legislative Auditor that an increase in Executive Council members would potentially allow for the attainment of quorum.

The Executive Director notes with an increase of Executive Council members there would be a possibility of a representation from different cross-sections of prosecutors from different geographical regions and jurisdiction size. Currently, as shown in Figure 1, the membership of the Executive Council is heavily represented by the western portion of the state. Additionally, five of the six current Executive Council members represent Class 1 counties. County classes range from Class 1 through Class 10. County classes are based on county premiums which are proportional with the population size of each county. (A list of the counties and their class can be found in Appendix B of this report.) Thus, counties with larger populations are heavily represented on the Executive Council, opposed

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<sup>2</sup>The Institute was unable to reach quorum in June 2005, October 2006 and January 2007.



## Conclusion

The Prosecuting Attorneys Institute's main source of revenue comes from statutory, county premiums. County premiums allow for special prosecution to be appointed to cases when a county prosecutor has been disqualified. According to the Institute, appointments of special prosecutors have saved West Virginia counties over \$5.5 million since the creation of the Institute in 1995. An increase in county premiums would allow for additional training sessions to be offered to prosecutors at no fiscal impact on the State. The Legislature should amend West Virginia Code to allow for an increase in county premiums. The Institute is statutorily overseen by an Executive Council comprised of five prosecutors and two appointed county commissioners. The Executive Committee is currently operating with only six members. The Prosecuting Attorneys Institute should elect a new member to sit on the Executive Council.

## Recommendations:

2. *The Legislative Auditor recommends that the Legislature should consider amending West Virginia Code §7-4-6(g) to allow for an increase in county premiums paid to the Prosecuting Attorneys Institute.*
3. *The Legislative Auditor recommends that the Executive Council of the Prosecuting Attorneys Institute fill the Council's open position.*
4. *The Legislative Auditor recommends that the Legislature consider revising West Virginia Code §7-4-6(b), to allow for additional seats on the Prosecuting Attorneys Institute's Executive Council, which may improve representation.*



## Appendix A: Transmittal Letter

### WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
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John Sylvia  
Director

January 22, 2009

Philip W. Morrison, II  
West Virginia Prosecuting Attorneys Institute  
The Cambridge Center, Suite 202  
90 MacCorkle Ave, SW  
South Charleston, WV 25303

Dear Mr. Morrison:

This is to transmit a draft copy of the Performance Review of the West Virginia Prosecuting Attorneys Institute as part of the Departmental Review of the Department of Administration. This report is scheduled to be presented during a February 8-10, 2009 interim meeting of the Joint Committee on Government Operations and the Joint Committee on Government Organizations. We will inform you of an exact time and location once the information becomes available. It is expected a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by January 27, 2009. Please contact Megan Kueck, Research Analyst to schedule an exact time. In addition, we need your written response by noon on January 29, 2009 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members, please contact the House Government Organization staff at (304) 340-3192 by Friday, February 6, 2009 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

  
Denny Rhodes  
Research Manager

Enclosure

c: Robert W. Ferguson, Jr., Cabinet Secretary,  
West Virginia Department of Administration

\_\_\_\_\_ *Joint Committee on Government and Finance* \_\_\_\_\_



## Appendix B: List of County Classes and Premiums

<b>County Classes and Premiums Paid to the Prosecuting Attorneys Institute</b>			
<b>County Class</b>	<b>Monthly County Premium</b>	<b>Total Premiums Collected by Class Per Month</b>	<b>Counties in Class</b>
Class 1	\$4,800	\$76,000	Berkeley, Boone, Cabell, Greenbrier, Hampshire, Harrison, Jefferson, Kanawha, Marion, Marshall, Mercer, Monongalia, Ohio, Putnam, Raleigh, Wood
Class 2	\$4,500	\$54,000	Fayette, Hancock, Jackson, Logan, Mason, Mineral, Mingo, Morgan, Nicholas, Preston, Randolph, Wayne
Class 3	\$4,200	\$33,600	Brooke, Grant, Hardy, Lewis, McDowell, Pocahontas, Upshur, Wyoming
Class 4	\$3,900	\$3,900	Wetzel
Class 5	\$3,600	\$3,600	Pleasants
Class 6	\$3,000	\$12,000	Braxton, Lincoln, Taylor, Tucker
Class 7	\$2,400	\$9,600	Doddridge, Pendleton, Ritchie, Roane
Class 8	\$1,800	\$12,600	Barbour, Clay, Gilmer, Monroe, Summers, Tyler, Webster
Class 9	\$1,200	\$1,200	Calhoun
Class 10	\$600	\$600	Wirt



## Appendix C: Agency Response



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DAVID SIMS

January 26, 2009

Megan Kueck, Research Analyst  
West Virginia Legislative Auditor's Office  
Performance Evaluation and Research Division  
Building 1, Room W-314, State Capitol  
Charleston, WV 25305-0610



Dear Ms. Kueck;

Please consider this letter as a continuation of our reply to the draft version of the performance review of the Institute. You already have our concerns about any repayment of monies to the Forensic fund and, in reply to the only remaining issues raised by the draft the Institute answers as follows;

1. Obviously we will reorganize our record keeping in such a manner so as to comply with the record keeping requirements of West Virginia Code § 6-9A-5 in listing absent Executive Council members at future meetings.
2. We expect to have the vacant Executive Council position filled by Thursday January 29<sup>th</sup>, 2009.
3. Given the economic downturn it is unlikely that the Executive Council will ask the legislature to increase premiums in the 2009 legislative year but it is likely that the Executive Council will ask to increase the number of members on the Executive Council.

Thank you for the opportunity to respond. Until we speak again I remain,

Sincerely,

Philip W. Morrison, II

*AN EQUAL OPPORTUNITY EMPLOYER*





WEST VIRGINIA LEGISLATIVE AUDITOR

**PERFORMANCE EVALUATION & RESEARCH DIVISION**

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