

ENGROSSED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 241

(By Senators Kessler (Acting President) and Hall,
By Request of the Executive)

[Originating in the Committee on Government Organization;
reported February 3, 2011.]

A BILL to amend and reenact §5B-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5B-2-8 and §5B-2-9 of said code; and to amend and reenact §5F-2-1 of said code, all relating generally to Division of Tourism and Tourism Commission; clarifying that Division of Tourism and the Tourism Commission are separate entities within Department of Commerce; modifying composition of Tourism Commission; and modifying the Tourism Commission's annual reporting requirement.

Be it enacted by the Legislature of West Virginia:

That §5B-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5B-2-8 and §5B-2-9 of said code be amended and reenacted; and that §5F-2-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 5B. DEPARTMENT OF COMMERCE.

§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the Department of Commerce.

1 The Department of Commerce consists of the following
2 agencies, boards, commissions, divisions and offices, includ-
3 ing all of the allied, advisory, affiliated or related entities,
4 which are incorporated in and administered as part of the
5 Department of Commerce:

6 (1) Division of Labor provided in article one, chapter
7 twenty-one of this code, which includes:

8 (A) Occupational Safety and Health Review Commission
9 provided in article three-a, chapter twenty-one of this code;
10 and

11 (B) Board of Manufactured Housing Construction and
12 Safety provided in article nine, chapter twenty-one of this
13 code;

14 (2) Office of Miners' Health, Safety and Training provided
15 in article one, chapter twenty-two-a of this code. The
16 following boards are transferred to the Office of Miners'
17 Health, Safety and Training for purposes of administrative
18 support and liaison with the Office of the Governor:

19 (A) Board of Coal Mine Health and Safety and Coal Mine
20 Safety and Technical Review Committee provided in article
21 six, chapter twenty-two-a of this code;

22 (B) Board of Miner Training, Education and Certification
23 provided in article seven, chapter twenty-two-a of this code;
24 and

25 (C) Mine Inspectors' Examining Board provided in article
26 nine, chapter twenty-two-a of this code;

27 (3) The West Virginia Development Office ~~which includes~~
28 ~~the Division of Tourism and the Tourism Commission;~~
29 provided in article two, chapter five-b of this code;

30 (4) Division of Natural Resources and Natural Resources
31 Commission provided in article one, chapter twenty of this
32 code;

33 (5) Division of Forestry provided in article one-a, chapter
34 nineteen of this code;

35 (6) Geological and Economic Survey provided in article
36 two, chapter twenty-nine of this code;

37 (7) Workforce West Virginia provided in chapter twenty-
38 one-a of this code, which includes:

39 (A) Division of Unemployment Compensation;

40 (B) Division of Employment Service;

41 (C) Division of Workforce Development; and

42 (D) Division of Research, Information and Analysis; ~~and~~

43 (8) Division of Energy provided in article one, chapter
44 five-h of this code; and

45 (9) Division of Tourism and the Tourism Commission
46 provided in article two, chapter five-b of this code.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

**§5B-2-8. Division of Tourism and Tourism Commission created;
members, appointment and expenses.**

1 (a) There is hereby ~~created~~ continued within the ~~West~~
2 ~~Virginia Development Office~~ Department of Commerce the
3 Division of Tourism and an independent Tourism Commis-
4 sion, which is a body corporate and politic, constituting a
5 public corporation and government instrumentality. ~~The~~
6 ~~commission consists of thirteen members:~~

7 (b) Prior to July 1, 2011, the Governor, by and with the
8 advice and consent of the Senate, shall appoint to the
9 Tourism Commission three members from the private sector
10 to represent participants in the state's tourism industry, one
11 for a term of four years, one for a term of three years and one
12 for a term of two years.

13 (c) Commencing July 1, 2011, the Tourism Commission
14 shall consist of the following fifteen members with staggered
15 terms:

16 (1) ~~Nine~~ Twelve members ~~to be~~ appointed by the Governor,
17 with the advice and consent of the Senate, representing
18 participants in the state's tourism industry. ~~At least seven~~
19 Ten of the members shall be from the private sector. ~~Of the~~
20 ~~nine members so appointed~~, one shall ~~represent~~ be a director
21 employed by a convention and visitors bureau and ~~another~~
22 one shall be a member of a convention and visitors bureau.
23 In making the appointments the Governor may select from a
24 list provided by the West Virginia Hospitality and Travel
25 Association of qualified applicants. Of the ~~nine~~ twelve
26 members so appointed, no ~~more~~ less than three shall be from
27 each congressional district within the state and shall be

28 appointed to provide the broadest geographic distribution
29 which is feasible;

30 ~~(2) One member to be appointed by the Governor from the~~
31 ~~membership of the Council for Community and Economic~~
32 ~~Development created pursuant to the provisions of section~~
33 ~~two of this article;~~

34 ~~(3)~~ (2) One member to be appointed by the Governor to
35 represent public sector nonstate participants in the tourism
36 industry within the state;

37 ~~(4)~~ (3) The Secretary of Transportation or his or her
38 designee, ex officio; and

39 ~~(5)~~ (4) The Director of the Division of Natural Resources or
40 his or her designee, ex officio.

41 ~~(b)~~ (d) Each member appointed by the Governor shall serve
42 staggered terms of four years. Any member whose term has
43 expired shall serve until his or her successor has been
44 appointed. Any person appointed to fill a vacancy shall serve
45 only for the unexpired term. Any member shall be eligible
46 for reappointment. In cases of vacancy in the office of
47 member, such vacancy shall be filled by the Governor in the
48 same manner as the original appointment.

49 ~~(c)~~ (e) Members of the commission shall not be entitled to
50 compensation for services performed as members. A majority
51 of these members shall constitute a quorum for the purpose
52 of conducting business. The Governor shall appoint a chair
53 of the commission for a term to run concurrent with the term
54 of the office of the member appointed to be the chair. The
55 chair is eligible for successive terms in that position.

§5B-2-9. Powers and duties of tourism commission.

1 (a) The commission shall develop a comprehensive tourism
2 promotion and development strategy for West Virginia.
3 “Comprehensive tourism promotion and development
4 strategy” means a plan that outlines strategies and activities
5 designed to continue, diversify or expand the tourism base of
6 the state as a whole; create tourism jobs; develop a highly
7 skilled tourism work force; facilitate business access to
8 capital for tourism; advertise and market the resources
9 offered by the state with respect to tourism promotion and
10 development; facilitate cooperation among local, regional
11 and private tourism enterprises; improve infrastructure on a
12 state, regional and community level in order to facilitate
13 tourism development; improve the tourism business climate

14 generally; and leverage funding from sources other than the
15 state, including local, federal and private sources.

16 (b) In developing its strategies, the commission shall
17 consider the following:

18 (1) Improvement and expansion of existing tourism
19 marketing and promotion activities;

20 (2) Promotion of cooperation among municipalities,
21 counties, and the West Virginia infrastructure and jobs
22 development council in funding physical infrastructure to
23 enhance the potential for tourism development.

24 (c) The tourism commission shall have the power and duty:

25 (1) To acquire for the state in the name of the commission
26 by purchase, lease or agreement, or accept or reject for the
27 state, in the name of the commission, gifts, donations,
28 contributions, bequests or devises of money, security or
29 property, both real and personal, and any interest in such
30 property, to effectuate or support the purposes of this article;

31 (2) To make recommendations to the Governor and the
32 Legislature of any legislation deemed necessary to facilitate
33 the carrying out of any of the foregoing powers and duties
34 and to exercise any other power that may be necessary or
35 proper for the orderly conduct of the business of the commis-

36 sion and the effective discharge of the duties of the commis-
37 sion;

38 (3) To cooperate and assist in the production of motion
39 pictures and television and other communications;

40 (4) To purchase advertising time or space in or upon any
41 medium generally engaged or employed for said purpose to
42 advertise and market the resources of the state or to inform
43 the public at large or any specifically targeted group or
44 industry about the benefits of living in, investing in, produc-
45 ing in, buying from, contracting with, or in any other way
46 related to, the state of West Virginia or any business,
47 industry, agency, institution or other entity therein: *Pro-*
48 *vided*, That of any funds appropriated and allocated for
49 purposes of advertising and marketing expenses for the
50 promotion and development of tourism, not less than twenty
51 percent of the funds shall be expended with the approval of
52 the Director of the Division of Natural Resources to adver-
53 tise, promote and market state parks, state forests, state
54 recreation areas and wildlife recreational resources;

55 (5) To promote and disseminate information related to the
56 attractions of the state through the operation of the state's
57 telemarketing initiative, which telemarketing initiative shall

58 include a centralized reservation and information system for
59 state parks and recreational facilities; and

60 (6) To take such additional actions as may be necessary to
61 carry out the duties and programs described in this article.

62 (d) The commission shall submit a report annually to the
63 ~~council for community and economic development~~ Secretary
64 of Commerce, the Governor and the Legislature about the
65 development of the tourism industry in the state and the
66 necessary funding required by the state to continue the
67 development of the tourism industry.

68 (e) The ~~executive director of the West Virginia develop-~~
69 ~~ment office~~ Commissioner of the Division of Tourism shall
70 assist the commission in the performance of its powers and
71 duties and the ~~executive director~~ commissioner is hereby
72 authorized in providing this assistance to employ necessary
73 personnel, contract with professional or technical experts or
74 consultants and to purchase or contract for the necessary
75 equipment or supplies.

76 (f) The commission shall promulgate legislative rules
77 pursuant to the provisions of chapter twenty-nine-a of this
78 code to carry out its purposes and programs, to include
79 generally the programs available, the procedure and eligibil-

80 ity of applications relating to assistance under such pro-
81 grams and the staff structure necessary to support such
82 programs, which structure shall include the qualifications
83 for a professional staff person qualified by reason of excep-
84 tional training and experience in the field of advertising to
85 supervise the advertising and promotion functions of the
86 commission, and shall further include provision for the
87 management of West Virginia welcome centers. The commis-
88 sion is further authorized to promulgate procedural rules
89 pursuant to said chapter to include instructions and forms
90 for applications relating to assistance.

CHAPTER 5F. REORGANIZATION OF

THE EXECUTIVE

BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

- 1 (a) The following agencies and boards, including all of the
2 allied, advisory, affiliated or related entities and funds
3 associated with any agency or board, are incorporated in and
4 administered as a part of the Department of Administration:
- 5 (1) Building Commission provided in article six, chapter
6 five of this code;

- 7 (2) Public Employees Insurance Agency provided in article
8 sixteen, chapter five of this code;
- 9 (3) Governor's Mansion Advisory Committee provided in
10 article five, chapter five-a of this code;
- 11 (4) Commission on Uniform State Laws provided in article
12 one-a, chapter twenty-nine of this code;
- 13 (5) West Virginia Public Employees Grievance Board
14 provided in article three, chapter six-c of this code;
- 15 (6) Board of Risk and Insurance Management provided in
16 article twelve, chapter twenty-nine of this code;
- 17 (7) Boundary Commission provided in article twenty-three,
18 chapter twenty-nine of this code;
- 19 (8) Public Defender Services provided in article
20 twenty-one, chapter twenty-nine of this code;
- 21 (9) Division of Personnel provided in article six, chapter
22 twenty-nine of this code;
- 23 (10) The West Virginia Ethics Commission provided in
24 article two, chapter six-b of this code;
- 25 (11) Consolidated Public Retirement Board provided in
26 article ten-d, chapter five of this code; and
- 27 (12) Real Estate Division provided in article ten, chapter
28 five-a of this code.

29 (b) The following agencies and boards, including all of the
30 allied, advisory, affiliated or related entities and funds
31 associated with any agency or board, are incorporated in and
32 administered as a part of the Department of Commerce:

33 (1) Division of Labor provided in article one, chapter
34 twenty-one of this code, which includes:

35 (A) Occupational Safety and Health Review Commission
36 provided in article three-a, chapter twenty-one of this code;
37 and

38 (B) Board of Manufactured Housing Construction and
39 Safety provided in article nine, chapter twenty-one of this
40 code;

41 (2) Office of Miners' Health, Safety and Training provided
42 in article one, chapter twenty-two-a of this code. The
43 following boards are transferred to the Office of Miners'
44 Health, Safety and Training for purposes of administrative
45 support and liaison with the office of the Governor:

46 (A) Board of Coal Mine Health and Safety and Coal Mine
47 Safety and Technical Review Committee provided in article
48 six, chapter twenty-two-a of this code;

49 (B) Board of Miner Training, Education and Certification
50 provided in article seven, chapter twenty-two-a of this code;
51 and

52 (C) Mine Inspectors' Examining Board provided in article
53 nine, chapter twenty-two-a of this code;

54 (3) The West Virginia Development Office ~~which includes~~
55 ~~the Division of Tourism and the Tourism Commission~~
56 provided in article two, chapter five-b of this code;

57 (4) Division of Natural Resources and Natural Resources
58 Commission provided in article one, chapter twenty of this
59 code;

60 (5) Division of Forestry provided in article one-a, chapter
61 nineteen of this code;

62 (6) Geological and Economic Survey provided in article
63 two, chapter twenty-nine of this code; and

64 (7) Workforce West Virginia provided in chapter
65 twenty-one-a of this code, which includes:

66 (A) Division of Unemployment Compensation;

67 (B) Division of Employment ~~Services~~ Service;

68 (C) Division of Workforce Development; and

69 (D) Division of Research, Information and Analysis; ~~and~~

70 (8) Division of Energy provided in article two-f, chapter
71 five-b of this code; and

72 (9) Division of Tourism and the Tourism Commission
73 provided in article two, chapter five-b of this code.

74 (c) The Economic Development Authority provided in
75 article fifteen, chapter thirty-one of this code is continued as
76 an independent agency within the executive branch.

77 (d) The Water Development Authority and the Water
78 Development Authority Board provided in article one,
79 chapter twenty-two-c of this code is continued as an inde-
80 pendent agency within the executive branch.

81 (e) The following agencies and boards, including all of the
82 allied, advisory and affiliated entities, are transferred to the
83 Department of Environmental Protection for purposes of
84 administrative support and liaison with the office of the
85 Governor:

86 (1) Air Quality Board provided in article two, chapter
87 twenty-two-b of this code;

88 (2) Solid Waste Management Board provided in article
89 three, chapter twenty-two-c of this code;

90 (3) Environmental Quality Board, or its successor board,
91 provided in article three, chapter twenty-two-b of this code;

92 (4) Surface Mine Board provided in article four, chapter
93 twenty-two-b of this code;

94 (5) Oil and Gas Inspectors' Examining Board provided in
95 article seven, chapter twenty-two-c of this code;

96 (6) Shallow Gas Well Review Board provided in article
97 eight, chapter twenty-two-c of this code; and

98 (7) Oil and Gas Conservation Commission provided in
99 article nine, chapter twenty-two-c of this code.

100 (f) The following agencies and boards, including all of the
101 allied, advisory, affiliated or related entities and funds
102 associated with any agency or board, are incorporated in and
103 administered as a part of the Department of Education and
104 the Arts:

105 (1) Library Commission provided in article one, chapter ten
106 of this code;

107 (2) Educational Broadcasting Authority provided in article
108 five, chapter ten of this code;

109 (3) Division of Culture and History provided in article one,
110 chapter twenty-nine of this code; and

111 (4) Division of Rehabilitation Services provided in ~~section~~
112 ~~two~~, article ten-a, chapter eighteen of this code.

113 (g) The following agencies and boards, including all of the
114 allied, advisory, affiliated or related entities and funds
115 associated with any agency or board, are incorporated in and
116 administered as a part of the Department of Health and
117 Human Resources:

118 (1) Human Rights Commission provided in article eleven,
119 chapter five of this code;

120 (2) Division of Human Services provided in article two,
121 chapter nine of this code;

122 (3) Bureau for Public Health provided in article one,
123 chapter sixteen of this code;

124 (4) Office of Emergency Medical Services and Emergency
125 Medical Service Advisory Council provided in article four-c,
126 chapter sixteen of this code;

127 (5) Health Care Authority provided in article
128 twenty-nine-b, chapter sixteen of this code;

129 (6) Commission on Mental Retardation provided in article
130 fifteen, chapter twenty-nine of this code;

131 (7) Women's Commission provided in article twenty,
132 chapter twenty-nine of this code; and

133 (8) The Child Support Enforcement Division provided in
134 chapter forty-eight of this code.

135 (h) The following agencies and boards, including all of the
136 allied, advisory, affiliated or related entities and funds
137 associated with any agency or board, are incorporated in and
138 administered as a part of the Department of Military Affairs
139 and Public Safety:

140 (1) Adjutant General's Department provided in article
141 one-a, chapter fifteen of this code;

142 (2) Armory Board provided in article six, chapter fifteen of
143 this code;

144 (3) Military Awards Board provided in article one-g,
145 chapter fifteen of this code;

146 (4) West Virginia State Police provided in article two,
147 chapter fifteen of this code;

148 (5) Division of Homeland Security and Emergency Man-
149 agement and Disaster Recovery Board provided in article
150 five, chapter fifteen of this code and Emergency Response
151 Commission provided in article five-a of said chapter;

152 (6) Sheriffs' Bureau provided in article eight, chapter
153 fifteen of this code;

154 (7) Division of Justice and Community Services provided
155 in article nine a, chapter fifteen of this code;

156 (8) Division of Corrections provided in chapter twenty-five
157 of this code;

158 (9) Fire Commission provided in article three, chapter
159 twenty-nine of this code;

160 (10) Regional Jail and Correctional Facility Authority
161 provided in article twenty, chapter thirty-one of this code;

162 (11) Board of Probation and Parole provided in article
163 twelve, chapter sixty-two of this code. ~~and~~

164 ~~(12) Division of Veterans' Affairs and Veterans' Council~~
165 ~~provided in article one, chapter nine-a of this code.~~

166 (i) The following agencies and boards, including all of the
167 allied, advisory, affiliated or related entities and funds
168 associated with any agency or board, are incorporated in and
169 administered as a part of the Department of Revenue:

170 (1) Tax Division provided in ~~article one~~, chapter eleven of
171 this code;

172 (2) Racing Commission provided in article twenty-three,
173 chapter nineteen of this code;

174 (3) Lottery Commission and position of Lottery Director
175 provided in article twenty-two, chapter twenty-nine of this
176 code;

177 (4) ~~Agency of Insurance~~ Commissioner provided in article
178 two, chapter thirty-three of this code;

179 (5) ~~Office of~~ West Virginia Alcohol Beverage Control
180 Commissioner provided in article sixteen, chapter eleven of
181 this code and article two, chapter sixty of this code;

182 (6) Board of Banking and Financial Institutions provided
183 in article three, chapter thirty-one-a of this code;

184 (7) Lending and Credit Rate Board provided in chapter
185 forty-seven-a of this code;

186 (8) Division of Banking provided in article two, chapter
187 thirty-one-a of this code;

188 (9) The State Budget Office provided in article two of this
189 chapter;

190 (10) The Municipal Bond Commission provided in article
191 three, chapter thirteen of this code;

192 (11) The Office of Tax Appeals provided in article ten-a,
193 chapter eleven of this code; and

194 (12) The State Athletic Commission provided in article
195 five-a, chapter twenty-nine of this code.

196 (j) The following agencies and boards, including all of the
197 allied, advisory, affiliated or related entities and funds
198 associated with any agency or board, are incorporated in and
199 administered as a part of the Department of Transportation:

200 (1) Division of Highways provided in article two-a, chapter
201 seventeen of this code;

202 (2) Parkways, Economic Development and Tourism
203 Authority provided in article sixteen-a, chapter seventeen of
204 this code;

205 (3) Division of Motor Vehicles provided in article two,
206 chapter seventeen-a of this code;

207 (4) Driver's Licensing Advisory Board provided in article
208 two, chapter seventeen-b of this code;

209 (5) Aeronautics Commission provided in article two-a,
210 chapter twenty-nine of this code;

211 (6) State Rail Authority provided in article eighteen,
212 chapter twenty-nine of this code; and

213 (7) Public Port Authority provided in article sixteen-b,
214 chapter seventeen of this code.

215 (k) The Veterans' Council provided in article one, chapter
216 nine-a of this code, including all of the allied, advisory,
217 affiliated or related entities and funds associated with it is,
218 incorporated in and administered as part of the Department
219 of Veteran's Assistance.

220 ~~(k)~~ (l) Except for powers, authority and duties that have
221 been delegated to the secretaries of the departments by the
222 provisions of section two of this article, the position of
223 administrator and the powers, authority and duties of each
224 administrator and agency are not affected by the enactment
225 of this chapter.

226 (†) (m) Except for powers, authority and duties that have
227 been delegated to the secretaries of the departments by the
228 provisions of section two of this article, the existence,
229 powers, authority and duties of boards and the membership,
230 terms and qualifications of members of the boards are not
231 affected by the enactment of this chapter. All boards that are
232 appellate bodies or are independent decision makers shall
233 not have their appellate or independent decision-making
234 status affected by the enactment of this chapter.

235 ~~(m)~~ (n) Any department previously transferred to and
236 incorporated in a department by prior enactment of this
237 section means a division of the appropriate department.
238 Wherever reference is made to any department transferred to
239 and incorporated in a department created in section two,
240 article one of this chapter, the reference means a division of
241 the appropriate department and any reference to a division
242 of a department so transferred and incorporated means a
243 section of the appropriate division of the department.

244 ~~(n)~~ (o) When an agency, board or commission is transferred
245 under a bureau or agency other than a department headed by
246 a secretary pursuant to this section, that transfer is solely for
247 purposes of administrative support and liaison with the

248 Office of the Governor, a department secretary or a bureau.
249 Nothing in this section extends the powers of department
250 secretaries under section two of this article to any person
251 other than a department secretary and nothing limits or
252 abridges the statutory powers and duties of statutory
253 commissioners or officers pursuant to this code.