

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 241**

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

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

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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  
38 twenty-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;

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 Board provided  
78 in article one, chapter twenty-two-c of this code is continued  
79 as an independent agency within the executive branch.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

195 (j) The following agencies and boards, including all of the  
196 allied, advisory, affiliated or related entities and funds

197 associated with any agency or board, are incorporated in and  
198 administered as a part of the Department of Transportation:

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

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

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

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

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

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

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

214 (k) Except for powers, authority and duties that have been  
215 delegated to the secretaries of the departments by the  
216 provisions of section two of this article, the position of  
217 administrator and the powers, authority and duties of each

218 administrator and agency are not affected by the enactment  
219 of this chapter.

220 (l) Except for powers, authority and duties that have been  
221 delegated to the secretaries of the departments by the  
222 provisions of section two of this article, the existence,  
223 powers, authority and duties of boards and the membership,  
224 terms and qualifications of members of the boards are not  
225 affected by the enactment of this chapter. All boards that are  
226 appellate bodies or are independent decision makers shall  
227 not have their appellate or independent decision-making  
228 status affected by the enactment of this chapter.

229 (m) Any department previously transferred to and incorpo-  
230 rated in a department by prior enactment of this section  
231 means a division of the appropriate department. Wherever  
232 reference is made to any department transferred to and  
233 incorporated in a department created in section two, article  
234 one of this chapter, the reference means a division of the  
235 appropriate department and any reference to a division of a  
236 department so transferred and incorporated means a section  
237 of the appropriate division of the department.

238 (n) When an agency, board or commission is transferred  
239 under a bureau or agency other than a department headed by

240 a secretary pursuant to this section, that transfer is solely for  
 241 purposes of administrative support and liaison with the  
 242 Office of the Governor, a department secretary or a bureau.  
 243 Nothing in this section extends the powers of department  
 244 secretaries under section two of this article to any person  
 245 other than a department secretary and nothing limits or  
 246 abridges the statutory powers and duties of statutory  
 247 commissioners or officers pursuant to this code.

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(NOTE: The purpose of this bill is to clarify that Division of Tourism is a separate division within the Department of Commerce; to increase the number of members of the Tourism Commission; and to change the makeup of the Commission.

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