

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4800

FISCAL
NOTE

BY DELEGATES CADLE, HICKS, PAYNTER, FOSTER,

AZINGER AND BIBBY

[Introduced February 11, 2020; Referred to the
Committee on Agriculture and Natural Resources
then Government Organization]

1 A BILL to amend and reenact §5B-1-2 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §5F-2-1 of said code; to amend and reenact §6-7-2a of said code; to amend
 3 said code by adding thereto a new section, designated §19-1-3c; to amend and reenact
 4 §19-1A-5 of said code; to amend and reenact §19-1B-3 of said code, all relating generally
 5 to transferring the Division of Forestry from the Department of Commerce to the
 6 Department of Agriculture effective July 1, 2019; transferring all authorities, powers, funds,
 7 duties, and affiliated boards or commissions of the Division of Forestry from the Division
 8 of Forestry to the Department of Agriculture; ensuring legislative rules remain in effect and
 9 transfer; permitting the Commissioner of Agriculture to hire the Director of the Division of
 10 Forestry and set the director's salary; transferring Division of Forestry employees and
 11 director with same salary and benefits; making employees and Director of the Division of
 12 Forestry will and pleasure employees of the Commissioner of Agriculture; directing the
 13 Commissioner of Agriculture and the Secretary of Commerce to work with the Director of
 14 the Division of Forestry to ensure smooth transition; and making technical corrections to
 15 recognize the transfer elsewhere in the code.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 1. 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 agencies, boards, commissions,
 2 divisions, and offices, including all of the allied, advisory, affiliated, or related entities, which are
 3 incorporated in and administered as part of the Department of Commerce:

4 (1) Division of Labor provided in §21-1-1 et seq. of this code, which includes:

5 (A) Occupational Safety and Health Review Commission provided in §21-3A-1 et seq. of

6 this code; and

7 (B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 et seq.
8 of this code;

9 (2) Office of Miners’ Health, Safety and Training provided in §22A-1-1 et seq. of this code.

10 The following boards are transferred to the Office of Miners’ Health, Safety, and Training for
11 purposes of administrative support and liaison with the Office of the Governor:

12 (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review
13 Committee provided in §22A-6-1 et seq. of this code;

14 (B) Board of Miner Training, Education, and Certification provided in §22A-7-1 et seq. of
15 this code; and

16 (C) Mine Inspectors’ Examining Board provided in §22A-9-1 et seq. of this code;

17 (3) The West Virginia Development Office provided in §5B-2-1 et seq. of this code;

18 (4) Division of Natural Resources and Natural Resources Commission provided in §20-1-
19 1 et seq. of this code;

20 ~~(5) Division of Forestry provided in article one a, chapter nineteen of this code~~

21 ~~(6)~~ (5) Geological and Economic Survey provided in §29-2-1 et seq. of this code;

22 ~~(7)~~ (6) Workforce West Virginia provided in 21A of this code, which includes:

23 (A) Division of Unemployment Compensation;

24 (B) Division of Employment Service;

25 (C) Division of Workforce Development; and

26 (D) Division of Research, Information and Analysis;

27 (8) ~~(7)~~ Division of Energy provided in §5B-2F-1 et seq. of this code; and

28 ~~(9)~~ (8) West Virginia Tourism Office and the Tourism Commission provided in §5B-2i-1 et
29 seq. of this code.

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 allied, advisory, affiliated, or
2 related entities and funds associated with any agency or board, are incorporated in and
3 administered as a part of the Department of Administration:

4 (1) Public Employees Insurance Agency provided in §5-16-1 *et seq.* of this code;

5 (2) Governor's Mansion Advisory Committee provided in §5A-5-1 *et seq.* of this code;

6 (3) Commission on Uniform State Laws provided in §29-1A-1 *et seq.* of this code;

7 (4) West Virginia Public Employees Grievance Board provided in §6C-3-1 *et seq.* of this
8 code;

9 (5) Board of Risk and Insurance Management provided in §29-12-1 *et seq.* of this code;

10 (6) Boundary Commission provided in §29-23-1 *et seq.* of this code;

11 (7) Public Defender Services provided in §29-21-1 *et seq.* of this code;

12 (8) Division of Personnel provided in §29-6-1 *et seq.* of this code;

13 (9) The West Virginia Ethics Commission provided in §6B-2-1 *et seq.* of this code;

14 (10) Consolidated Public Retirement Board provided in §5-10D-1 *et seq.* of this code; and

15 (11) Real Estate Division provided in §5A-10-1 *et seq.* of this code.

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

19 (1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes:

20 (A) Occupational Safety and Health Review Commission provided in §21-3A-1 *et seq.* of
21 this code; and

22 (B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.*

23 of this code.

24 (2) Office of Miners' Health, Safety, and Training provided in §22A-1-1 *et seq.* of this code.

25 The following boards are transferred to the Office of Miners' Health, Safety, and Training for
26 purposes of administrative support and liaison with the Office of the Governor:

27 (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review
28 Committee provided in §22A-6-1 *et seq.* of this code;

29 (B) Board of Miner Training, Education and Certification provided in §22A-7-1 *et seq.* of
30 this code; and

31 (C) Mine Inspectors' Examining Board provided in §22A-9-1 *et seq.* of this code.

32 (3) The West Virginia Development Office provided in §5B-2-1 *et seq.* of this code;

33 (4) Division of Natural Resources and Natural Resources Commission provided in §20-1-
34 1 *et seq.* of this code;

35 ~~(5) Division of Forestry provided in §19-1A-1 *et seq.* of this code~~

36 ~~(6)~~ (5) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code; and

37 ~~(7)~~ (6) Workforce West Virginia provided in chapter 21A of this code, which includes:

38 (A) Division of Unemployment Compensation;

39 (B) Division of Employment Service;

40 (C) Division of Workforce Development; and

41 (D) Division of Research, Information and Analysis.

42 ~~(8)~~ (7) Office of Energy, within the Development Office, provided in §5B-2F-1 *et seq.* of
43 this code.

44 ~~(9)~~ (8) West Virginia Tourism Office and Tourism Commission provided in §5B-2I-1 *et seq.*
45 of this code; and

46 ~~(10)~~ (9) Division of Rehabilitation Services provided in §18-10A-1 *et seq.* of this code.

47 (c) The Economic Development Authority provided in §31-15-1 *et seq.* of this code is
48 continued as an independent agency within the executive branch.

49 (d) The Water Development Authority and the Water Development Authority Board
50 provided in §22C-1-1 *et seq.* of this code is continued as an independent agency within the
51 executive branch.

52 (e) The West Virginia Educational Broadcasting Authority provided in §10-5-1 *et seq.* of
53 this code and the State Library Commission provided in §10-1-1 *et seq.* of this code are each
54 continued as separate independent agencies within the Department of Arts, Culture, and History,
55 which shall provide administrative support for both entities.

56 (f) The Division of Culture and History as established in §29-1-1 *et seq.* of this code is
57 continued as a separate independent agency within the executive branch as the Department of
58 Arts, Culture, and History. All references throughout this code to the “Division of Culture and
59 History” means the “Department of Arts, Culture, and History”.

60 (g) The following agencies and boards, including all of the allied, advisory, and affiliated
61 entities, are transferred to the Department of Environmental Protection for purposes of
62 administrative support and liaison with the Office of the Governor:

63 (1) Air Quality Board provided in §22B-2-1 *et seq.* of this code;

64 (2) Solid Waste Management Board provided in §22C-3-1 *et seq.* of this code;

65 (3) Environmental Quality Board, or its successor board, provided in §22B-3-1 *et seq.* of
66 this code;

67 (4) Surface Mine Board provided in §22B-4-1 *et seq.* of this code;

68 (5) Oil and Gas Inspectors’ Examining Board provided in §22C-7-1 *et seq.* of this code;

69 (6) Shallow Gas Well Review Board provided in §22C-8-1 *et seq.* of this code; and

70 (7) Oil and Gas Conservation Commission provided in §22C-9-1 *et seq.* of this code.

71 (h) The following agencies and boards, including all of the allied, advisory, affiliated, or
72 related entities and funds associated with any agency or board, are incorporated in and
73 administered as a part of the Department of Health and Human Resources:

74 (1) Human Rights Commission provided in §5-11-1 *et seq.* of this code;

75 (2) Bureau for Public Health provided in §16-1-1 *et seq.* of this code;

76 (3) Office of Emergency Medical Services and the Emergency Medical Service Advisory
77 Council provided in §16-4C-1 *et seq.* of this code;

78 (4) Health Care Authority provided in §16-29B *et seq.* of this code;

79 (5) State Commission on Intellectual Disability provided in §29-15-1 *et seq.* of this code;

80 (6) Women's Commission provided in §29-20-1 *et seq.* of this code; and

81 (7) Bureau for Child Support Enforcement provided in chapter 48 of this code.

82 (i) The following agencies and boards, including all of the allied, advisory, affiliated, or
83 related entities and funds associated with any agency or board, are incorporated in and
84 administered as a part of the Department of Military Affairs and Public Safety:

85 (1) Adjutant General's Department provided in §15-1A-1 *et seq.* of this code;

86 (2) State Armory Board provided in §15-6-1 *et seq.* of this code;

87 (3) Military Awards Board provided in §15-1G-1 *et seq.* of this code;

88 (4) West Virginia State Police provided in §15-2-1 *et seq.* of this code;

89 (5) Division of Homeland Security and Emergency Management and Disaster Recovery
90 Board provided in §15-5-1 *et seq.* of this code and Emergency Response Commission provided
91 in §15-5A-1 *et seq.* of this code;

92 (6) Sheriffs' Bureau provided in §15-8-1 *et seq.* of this code;

93 (7) Division of ~~Justice and Community~~ Administrative Services provided in ~~§15-9A-1 *et*~~
94 ~~*seq.*~~ chapter 15A of this code;

95 (8) Division of Corrections and Rehabilitation provided in chapter ~~25~~ 15A of this code;

96 (9) Fire Commission provided in §29-3-1 *et seq.* of this code;

97 (10) Regional Jail and Correctional Facility Authority Board provided in ~~§31-20-1 *et seq.*~~
98 chapter 15A of this code; and

99 (11) Board of Probation and Parole provided in §62-12-1 *et seq.* of this code.

100 (j) The following agencies and boards, including all of the allied, advisory, affiliated, or

101 related entities and funds associated with any agency or board, are incorporated in and
102 administered as a part of the Department of Revenue:

- 103 (1) Tax Division provided in chapter 11 of this code;
- 104 (2) Racing Commission provided in §19-23-1 *et seq.* of this code;
- 105 (3) Lottery Commission and position of Lottery Director provided in §29-22-1 of this code;
- 106 (4) Insurance Commissioner provided in §33-2-1 *et seq.* of this code;
- 107 (5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of
108 this code and §60-2-1 *et seq.* of this code;
- 109 (6) Board of Banking and Financial Institutions provided in §31A-3-1 *et seq.* of this code;
- 110 (7) Lending and Credit Rate Board provided in chapter 47A of this code;
- 111 (8) Division of Financial Institutions provided in §31A-2-1 *et seq.* of this code;
- 112 (9) The State Budget Office provided in §11B-2-1 *et seq.* of this code;
- 113 (10) The Municipal Bond Commission provided in §13-3-1 *et seq.* of this code;
- 114 (11) The Office of Tax Appeals provided in §11-10A-1 of this code; and
- 115 (12) The State Athletic Commission provided in §29-5A-1 *et seq.* of this code.

116 (k) The following agencies and boards, including all of the allied, advisory, affiliated, or
117 related entities and funds associated with any agency or board, are incorporated in and
118 administered as a part of the Department of Transportation:

- 119 (1) Division of Highways provided in §17-2A-1 *et seq.* of this code;
- 120 (2) Parkways Authority provided in §17-16A-1 *et seq.* of this code;
- 121 (3) Division of Motor Vehicles provided in §17A-2-1 *et seq.* of this code;
- 122 (4) Driver's Licensing Advisory Board provided in §17B-2-1 *et seq.* of this code;
- 123 (5) Aeronautics Commission provided in §29-2A-1 *et seq.* of this code;
- 124 (6) State Rail Authority provided in §29-18-1 *et seq.* of this code; and
- 125 (7) Public Port Authority provided in §17-16B-1 *et seq.* of this code.
- 126 (l) Effective July 1, 2011, the Veterans' Council provided in §9A-1-1 *et seq.* of this code,

127 including all of the allied, advisory, affiliated, or related entities and funds associated with it, is
128 incorporated in and administered as a part of the Department of Veterans' Assistance.

129 (m) Except for powers, authority, and duties that have been delegated to the secretaries
130 of the departments by the provisions of §5F-2-2 of this code, the position of administrator and the
131 powers, authority, and duties of each administrator and agency are not affected by the enactment
132 of this chapter.

133 (n) Except for powers, authority, and duties that have been delegated to the secretaries
134 of the departments by the provisions of §5F-2-2 of this code, the existence, powers, authority,
135 and duties of boards and the membership, terms, and qualifications of members of the boards
136 are not affected by the enactment of this chapter. All boards that are appellate bodies or are
137 independent decision makers shall not have their appellate or independent decision-making
138 status affected by the enactment of this chapter.

139 (o) Any department previously transferred to and incorporated in a department by prior
140 enactment of this section means a division of the appropriate department. Wherever reference is
141 made to any department transferred to and incorporated in a department created in §5F-1-2 of
142 this code, the reference means a division of the appropriate department and any reference to a
143 division of a department so transferred and incorporated means a section of the appropriate
144 division of the department.

145 (p) When an agency, board, or commission is transferred under a bureau or agency other
146 than a department headed by a secretary pursuant to this section, that transfer is solely for
147 purposes of administrative support and liaison with the Office of the Governor, a department
148 secretary or a bureau. Nothing in this section extends the powers of department secretaries under
149 §5F-2-2 of this code to any person other than a department secretary and nothing limits or
150 abridges the statutory powers and duties of statutory commissioners or officers pursuant to this
151 code.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.

1 (a) Each of the following appointive state officers named in this subsection shall be
2 appointed by the Governor, by and with the advice and consent of the Senate. Each of the
3 appointive state officers serves at the will and pleasure of the Governor for the term for which the
4 Governor was elected and until the respective state officers' successors have been appointed
5 and qualified. Each of the appointive state officers are subject to the existing qualifications for
6 holding each respective office and each has and is hereby granted all of the powers and authority
7 and shall perform all of the functions and services heretofore vested in and performed by virtue
8 of existing law respecting each office.

9 The annual salary of each named appointive state officer is as follows:

10 Commissioner, Division of Highways, \$92,500; Commissioner, Division of Corrections and
11 Rehabilitation, \$90,000; Director, Division of Natural Resources, \$75,000; Superintendent, State
12 Police, \$85,000; Commissioner, Division of Financial Institutions, \$75,000; Commissioner,
13 Division of Culture and History, \$65,000; Commissioner, Alcohol Beverage Control Commission,
14 \$75,000; Commissioner, Division of Motor Vehicles, \$75,000; Director, Human Rights
15 Commission, \$55,000; Commissioner, Division of Labor, \$70,000; Chairperson, Board of Parole,
16 \$55,000; members, Board of Parole, \$50,000; members, Employment Security Review Board,
17 \$17,000; and Commissioner, Workforce West Virginia, \$75,000. Secretaries of the departments
18 shall be paid an annual salary as follows: Health and Human Resources, \$95,000: *Provided*, That
19 effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall be
20 paid an annual salary not to exceed \$175,000; Transportation, \$95,000: *Provided, however*, That
21 if the same person is serving as both the Secretary of Transportation and the Commissioner of

22 Highways, he or she shall be paid \$120,000; Revenue, \$95,000; Military Affairs and Public Safety,
23 \$95,000; Administration, \$95,000; Education and the Arts, \$95,000; Commerce, \$95,000;
24 Veterans' Assistance, \$95,000; and Environmental Protection, \$95,000: *Provided further*, That
25 any officer specified in this subsection whose salary is increased by more than \$5,000 as a result
26 of the amendment and reenactment of this section during the 2011 regular session of the
27 Legislature shall be paid the salary increase in increments of \$5,000 per fiscal year beginning
28 July 1, 2011, up to the maximum salary provided in this subsection.

29 (b) Each of the state officers named in this subsection shall continue to be appointed in
30 the manner prescribed in this code and shall be paid an annual salary as follows:

31 Director, Board of Risk and Insurance Management, \$80,000; Director, Division of
32 Rehabilitation Services, \$70,000; Director, Division of Personnel, \$70,000; Executive Director,
33 Educational Broadcasting Authority, \$75,000; Secretary, Library Commission, \$72,000; Director,
34 Geological and Economic Survey, \$75,000; Executive Director, Prosecuting Attorneys Institute,
35 \$80,000; Executive Director, Public Defender Services, \$70,000; Commissioner, Bureau of
36 Senior Services, \$75,000; Executive Director, Women's Commission, \$45,000; Director, Hospital
37 Finance Authority, \$35,000; member, Racing Commission, \$12,000; Chairman, Public Service
38 Commission, \$85,000; members, Public Service Commission, \$85,000; ~~Director, Division of~~
39 ~~Forestry, \$75,000~~ and Executive Director of the Health Care Authority, \$80,000.

40 (c) Each of the following appointive state officers named in this subsection shall be
41 appointed by the Governor, by and with the advice and consent of the Senate. Each of the
42 appointive state officers serves at the will and pleasure of the Governor for the term for which the
43 Governor was elected and until the respective state officers' successors have been appointed
44 and qualified. Each of the appointive state officers are subject to the existing qualifications for
45 holding each respective office and each has and is hereby granted all of the powers and authority
46 and shall perform all of the functions and services heretofore vested in and performed by virtue
47 of existing law respecting each office.

48 The annual salary of each named appointive state officer shall be as follows:
49 Commissioner, State Tax Division, \$92,500; Insurance Commissioner, \$92,500; Director,
50 Lottery Commission, \$92,500; Director, Division of Homeland Security and Emergency
51 Management, \$65,000; and Adjutant General, \$125,000.

52 (d) No increase in the salary of any appointive state officer pursuant to this section may
53 be paid until and unless the appointive state officer has first filed with the State Auditor and the
54 Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General,
55 certifying that his or her spending unit is in compliance with any general law providing for a salary
56 increase for his or her employees. The Attorney General shall prepare and distribute the form to
57 the affected spending units.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-3c. Division of forestry transfer to Department of Agriculture.

1 (a) Effective July 1, 2020, the Division of Forestry, previously part of the Department of
2 Commerce, is transferred to the Department of Agriculture, including all the allied, advisory,
3 affiliated or related entities, boards, commissions or funds associated with the division. All real
4 and personal property of the Division of Forestry or held by the Department of Commerce on
5 behalf of the Division of Forestry, is hereby transferred to the Department of Agriculture. All
6 general revenue appropriated to the Division of Forestry is hereby transferred to the Department
7 of Agriculture.

8 (b) Employees of the Division of Forestry are transferred to the Department of Agriculture
9 at their existing salary with all accrued benefits. All employees of the division are will and pleasure
10 employees of the Commissioner of Agriculture in accordance with §29-6-4 of this code and are
11 exempt from coverage by the classified service.

12 (c) The legislative rules of the Division of Forestry that were previously authorized remain

13 in effect as if they were proposed by the Division of Forestry under the Department of Agriculture,
14 unless and until amended, superseded or repealed.

15 (d) The Division of Forestry’s authorities, powers, and duties remain unchanged by this
16 transfer or this section.

17 (e) The rights and authority over the funds administered by the Division of Forestry are
18 transferred to the Department of Agriculture, including, but not limited to, Division of Forestry Fund
19 (3081) authorized in §19-1A-3 of this code; Timbering Operations Enforcement Fund (3082)
20 authorized in §19-1B-8 of this code; Severance Tax Operations Fund (3084) authorized in §11-
21 13A-20a(c) of this code; Gifts, grants, and Donations Fund (3090) authorized in §19-1A-4 of this
22 code; West Virginia Outdoor Heritage Conservation Fund (3091) authorized in §5B-2G-8 of this
23 code and Cons. Federal Funds (8703) authorized in §4-11-2 of this code.

24 (f) The Commissioner of Agriculture, in cooperation with the Director of the of the Division
25 of Forestry, shall work with the Secretary of the Department of Commerce to provide for the
26 orderly transition of the Division of Forestry from the Department of Commerce to the Department
27 of Agriculture.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-5. Director of Division of Forestry; appointment; qualifications.

1 The Director of the Division of Forestry shall ~~be appointed by the Governor, by and with~~
2 ~~the advice and consent of the Senate, and shall serve at the will and pleasure of the Governor~~
3 ~~commissioner.~~ The director shall be a graduate of a school of forestry accredited by the Society
4 of American Foresters and have a minimum of 10 years’ experience in forest management. The
5 director shall be paid an annual salary as provided in section two-a, article seven, chapter six of
6 this code: *Provided*, That the director's salary shall be paid solely from budget appropriations to
7 the division

ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL TIMBER HARVESTING

OPERATIONS.**§19-1B-3. Definitions.**

1 ~~(a)~~ “Best management practices” means sediment control measures, structural or
2 nonstructural, used singly or in combination, to reduce soil runoff from land disturbances
3 associated with commercial timber harvesting.

4 ~~(b)~~ “Chief” means the Director of the Division of Water and Waste Management of the
5 Department of Environmental Protection, or his or her designee.

6 ~~(c)~~ “Director” means the Director of the Division of Forestry of the Department of
7 ~~Commerce~~ Agriculture or his or her designee.

8 ~~(d)~~ “Operator” means any person who conducts timbering operations.

9 ~~(e)~~ “Timbering operation,” or the plural, means activities directly related to the severing or
10 removal of standing trees from the forest as a raw material for commercial processes or purposes.
11 For the purpose of this article, timbering operations do not include the severing of evergreens
12 grown for and severed for the traditional Christmas holiday season; the severing of trees
13 incidental to ground-disturbing construction activities, including well sites, access roads, and
14 gathering lines for oil and natural gas operations; the severing of trees for maintaining existing, or
15 during construction of, rights-of-way for public highways or public utilities or any company subject
16 to the jurisdiction of the Federal Energy Regulatory Commission unless the trees so severed are
17 being sold or provided as raw material for commercial wood product purposes; or the severing of
18 trees by an individual on the individual’s own property for his or her individual use provided that
19 the individual does not have the severing done by a person whose business is the severing or
20 removal of trees.

21 ~~(f)~~ “Sediment” means solid particulate matter, usually soil or minute rock fragments, moved
22 by wind, rainfall, or snowmelt into the streams of the state.

NOTE: The purpose of this bill is to transfer the Division of Forestry and its authorities,

powers, and duties from the Department of Commerce to the Department of Agriculture.

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