

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 241**

4 (By Senators Kessler (Acting President) and Hall,

5 By Request of the Executive)

6 _____
7 [Originating in the Committee on Government Organization;
8 reported February 3, 2011.]
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11
12 A BILL to amend and reenact §5B-1-2 of the Code of West Virginia,
13 1931, as amended; to amend and reenact §5B-2-8 and §5B-2-9 of
14 said code; and to amend and reenact §5F-2-1 of said code, all
15 relating generally to Division of Tourism and Tourism
16 Commission; clarifying that Division of Tourism and the
17 Tourism Commission are separate entities within Department of
18 Commerce; modifying composition of Tourism Commission; and
19 modifying the Tourism Commission's annual reporting
20 requirement.

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

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

26 **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

1 **ARTICLE 5B. DEPARTMENT OF COMMERCE.**

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

4 The Department of Commerce consists of the following agencies,
5 boards, commissions, divisions and offices, including all of the
6 allied, advisory, affiliated or related entities, which are
7 incorporated in and administered as part of the Department of
8 Commerce:

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

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

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

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

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

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

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

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

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

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

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

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

12 (A) Division of Unemployment Compensation;

13 (B) Division of Employment Service;

14 (C) Division of Workforce Development; and

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

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

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

20 **ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

21 **§5B-2-8. Division of Tourism and Tourism Commission created;**
22 **members, appointment and expenses.**

23 (a) There is hereby ~~created~~ continued within the ~~West Virginia~~
24 ~~Development Office~~ Department of Commerce the Division of Tourism
25 and an independent Tourism Commission, which is a body corporate
26 and politic, constituting a public corporation and government

1 instrumentality. ~~The commission consists of thirteen members:~~

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

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

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

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

26 ~~(3)~~ (2) One member to be appointed by the Governor to

1 represent public sector nonstate participants in the tourism
2 industry within the state;

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

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

7 ~~(b)~~ (d) Each member appointed by the Governor shall serve
8 staggered terms of four years. Any member whose term has expired
9 shall serve until his or her successor has been appointed. Any
10 person appointed to fill a vacancy shall serve only for the
11 unexpired term. Any member shall be eligible for reappointment.

12 In cases of vacancy in the office of member, such vacancy shall be
13 filled by the Governor in the same manner as the original
14 appointment.

15 ~~(c)~~ (e) Members of the commission shall not be entitled to
16 compensation for services performed as members. A majority of
17 these members shall constitute a quorum for the purpose of
18 conducting business. The Governor shall appoint a chair of the
19 commission for a term to run concurrent with the term of the office
20 of the member appointed to be the chair. The chair is eligible for
21 successive terms in that position.

22 **§5B-2-9. Powers and duties of tourism commission.**

23 (a) The commission shall develop a comprehensive tourism
24 promotion and development strategy for West Virginia.

25 "Comprehensive tourism promotion and development strategy" means a
26 plan that outlines strategies and activities designed to continue,

1 diversify or expand the tourism base of the state as a whole;
2 create tourism jobs; develop a highly skilled tourism work force;
3 facilitate business access to capital for tourism; advertise and
4 market the resources offered by the state with respect to tourism
5 promotion and development; facilitate cooperation among local,
6 regional and private tourism enterprises; improve infrastructure on
7 a state, regional and community level in order to facilitate
8 tourism development; improve the tourism business climate
9 generally; and leverage funding from sources other than the state,
10 including local, federal and private sources.

11 (b) In developing its strategies, the commission shall
12 consider the following:

13 (1) Improvement and expansion of existing tourism marketing
14 and promotion activities;

15 (2) Promotion of cooperation among municipalities, counties,
16 and the West Virginia infrastructure and jobs development council
17 in funding physical infrastructure to enhance the potential for
18 tourism development.

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

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

26 (2) To make recommendations to the Governor and the

1 Legislature of any legislation deemed necessary to facilitate the
2 carrying out of any of the foregoing powers and duties and to
3 exercise any other power that may be necessary or proper for the
4 orderly conduct of the business of the commission and the effective
5 discharge of the duties of the commission;

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

8 (4) To purchase advertising time or space in or upon any
9 medium generally engaged or employed for said purpose to advertise
10 and market the resources of the state or to inform the public at
11 large or any specifically targeted group or industry about the
12 benefits of living in, investing in, producing in, buying from,
13 contracting with, or in any other way related to, the state of West
14 Virginia or any business, industry, agency, institution or other
15 entity therein: *Provided*, That of any funds appropriated and
16 allocated for purposes of advertising and marketing expenses for
17 the promotion and development of tourism, not less than twenty
18 percent of the funds shall be expended with the approval of the
19 Director of the Division of Natural Resources to advertise, promote
20 and market state parks, state forests, state recreation areas and
21 wildlife recreational resources;

22 (5) To promote and disseminate information related to the
23 attractions of the state through the operation of the state's
24 telemarketing initiative, which telemarketing initiative shall
25 include a centralized reservation and information system for state
26 parks and recreational facilities; and

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

3 (d) The commission shall submit a report annually to the
4 ~~council for community and economic development~~ Secretary of
5 Commerce, the Governor and the Legislature about the development of
6 the tourism industry in the state and the necessary funding
7 required by the state to continue the development of the tourism
8 industry.

9 (e) The ~~executive director of the West Virginia development~~
10 ~~office~~ Commissioner of the Division of Tourism shall assist the
11 commission in the performance of its powers and duties and the
12 ~~executive director~~ commissioner is hereby authorized in providing
13 this assistance to employ necessary personnel, contract with
14 professional or technical experts or consultants and to purchase or
15 contract for the necessary equipment or supplies.

16 (f) The commission shall promulgate legislative rules pursuant
17 to the provisions of chapter twenty-nine-a of this code to carry
18 out its purposes and programs, to include generally the programs
19 available, the procedure and eligibility of applications relating
20 to assistance under such programs and the staff structure necessary
21 to support such programs, which structure shall include the
22 qualifications for a professional staff person qualified by reason
23 of exceptional training and experience in the field of advertising
24 to supervise the advertising and promotion functions of the
25 commission, and shall further include provision for the management
26 of West Virginia welcome centers. The commission is further

1 authorized to promulgate procedural rules pursuant to said chapter
2 to include instructions and forms for applications relating to
3 assistance.

4 **CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE**

5 **BRANCH OF STATE GOVERNMENT.**

6 **ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.**

7 **§5F-2-1. Transfer and incorporation of agencies and boards; funds.**

8 (a) The following agencies and boards, including all of the
9 allied, advisory, affiliated or related entities and funds
10 associated with any agency or board, are incorporated in and
11 administered as a part of the Department of Administration:

12 (1) Building Commission provided in article six, chapter five
13 of this code;

14 (2) Public Employees Insurance Agency provided in article
15 sixteen, chapter five of this code;

16 (3) Governor's Mansion Advisory Committee provided in article
17 five, chapter five-a of this code;

18 (4) Commission on Uniform State Laws provided in article
19 one-a, chapter twenty-nine of this code;

20 (5) West Virginia Public Employees Grievance Board provided in
21 article three, chapter six-c of this code;

22 (6) Board of Risk and Insurance Management provided in article
23 twelve, chapter twenty-nine of this code;

24 (7) Boundary Commission provided in article twenty-three,
25 chapter twenty-nine of this code;

26 (8) Public Defender Services provided in article twenty-one,

1 chapter twenty-nine of this code;

2 (9) Division of Personnel provided in article six, chapter
3 twenty-nine of this code;

4 (10) The West Virginia Ethics Commission provided in article
5 two, chapter six-b of this code;

6 (11) Consolidated Public Retirement Board provided in article
7 ten-d, chapter five of this code; and

8 (12) Real Estate Division provided in article ten, chapter
9 five-a of this code.

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

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

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

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

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

25 (A) Board of Coal Mine Health and Safety and Coal Mine Safety
26 and Technical Review Committee provided in article six, chapter

1 twenty-two-a of this code;

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

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

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

9 (4) Division of Natural Resources and Natural Resources
10 Commission provided in article one, chapter twenty of this code;

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

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

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

17 (A) Division of Unemployment Compensation;

18 (B) Division of Employment Services;

19 (C) Division of Workforce Development; and

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

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

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

25 (c) The Economic Development Authority provided in article
26 fifteen, chapter thirty-one of this code is continued as an

1 independent agency within the executive branch.

2 (d) The Water Development Authority and Board provided in
3 article one, chapter twenty-two-c of this code is continued as an
4 independent agency within the executive branch.

5 (e) The following agencies and boards, including all of the
6 allied, advisory and affiliated entities, are transferred to the
7 Department of Environmental Protection for purposes of
8 administrative support and liaison with the office of the Governor:

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

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

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

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

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

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

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

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

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

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

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

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

9 (g) The following agencies and boards, including all of the
10 allied, advisory, affiliated or related entities and funds
11 associated with any agency or board, are incorporated in and
12 administered as a part of the Department of Health and Human
13 Resources:

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

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

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

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

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

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

26 (7) Women's Commission provided in article twenty, chapter

1 twenty-nine of this code; and

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

4 (h) The following agencies and boards, including all of the
5 allied, advisory, affiliated or related entities and funds
6 associated with any agency or board, are incorporated in and
7 administered as a part of the Department of Military Affairs and
8 Public Safety:

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

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

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

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

17 (5) Division of Homeland Security and Emergency Management and
18 Disaster Recovery Board provided in article five, chapter fifteen
19 of this code and Emergency Response Commission provided in article
20 five-a of said chapter;

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

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

25 (8) Division of Corrections provided in chapter twenty-five of
26 this code;

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

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

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

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

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

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

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

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

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

21 (5) Office of Alcohol Beverage Control Commissioner provided
22 in article sixteen, chapter eleven of this code and article two,
23 chapter sixty of this code;

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

26 (7) Lending and Credit Rate Board provided in chapter

1 forty-seven-a of this code;

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

4 (9) The State Budget Office provided in article two of this
5 chapter;

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

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

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

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

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

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

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

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

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

26 (6) State Rail Authority provided in article eighteen, chapter

1 twenty-nine of this code; and

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

4 (k) Except for powers, authority and duties that have been
5 delegated to the secretaries of the departments by the provisions
6 of section two of this article, the position of administrator and
7 the powers, authority and duties of each administrator and agency
8 are not affected by the enactment of this chapter.

9 (l) Except for powers, authority and duties that have been
10 delegated to the secretaries of the departments by the provisions
11 of section two of this article, the existence, powers, authority
12 and duties of boards and the membership, terms and qualifications
13 of members of the boards are not affected by the enactment of this
14 chapter. All boards that are appellate bodies or are independent
15 decision makers shall not have their appellate or independent
16 decision-making status affected by the enactment of this chapter.

17 (m) Any department previously transferred to and incorporated
18 in a department by prior enactment of this section means a division
19 of the appropriate department. Wherever reference is made to any
20 department transferred to and incorporated in a department created
21 in section two, article one of this chapter, the reference means a
22 division of the appropriate department and any reference to a
23 division of a department so transferred and incorporated means a
24 section of the appropriate division of the department.

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

1 pursuant to this section, that transfer is solely for purposes of
2 administrative support and liaison with the Office of the Governor,
3 a department secretary or a bureau. Nothing in this section extends
4 the powers of department secretaries under section two of this
5 article to any person other than a department secretary and nothing
6 limits or abridges the statutory powers and duties of statutory
7 commissioners or officers pursuant to this code.

(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.)