

**H. B. 2695**

(By Delegates Morgan, Givens and Stephens)  
[Introduced January 21, 2011; referred to the  
Committee on Government Organization then the Judiciary.]

A BILL to amend and reenact §5F-2-1, of the Code of West Virginia, 1931, as amended; to amend and reenact §10-5-1, §10-5-2, §10-5-3 and §10-5-4 of said code; and to amend said code by adding thereto a new section, designated §10-5-6, all relating to the educational broadcasting authority; modifying organizational structure; declaring legislative findings; deleting outdated language; authorizing the authority and its employees to work with certain private nonprofit corporations; authorizing the use of the authority's property and facilities for fundraising purposes; authorizing the authority to solicit funds for the support of public broadcasting; requiring memoranda of understanding; and providing exemption from disclosure for names of private donors.

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

That §5F-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §10-5-1, §10-5-2, §10-5-3 and §10-5-



1 chapter twenty-nine of this code;

2 (8) Public Defender Services provided in article twenty-one,  
3 chapter twenty-nine of this code;

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

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

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

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

12 (b) 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 Commerce:

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

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

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

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

1 the office of the Governor:

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

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

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

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

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

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

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

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

20 (A) Division of Unemployment Compensation;

21 (B) Division of Employment Services;

22 (C) Division of Workforce Development; and

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

24 (8) Division of Energy provided in article two-f, chapter  
25 five-b of this code.

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

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

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

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

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

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

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

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

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

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

25 (f) The following agencies and boards, including all of the

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

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

6 ~~(2) Educational Broadcasting Authority provided in article  
7 five, chapter ten of this code;~~

8 ~~(3)~~ (2) Division of Culture and History provided in article  
9 one, chapter twenty-nine of this code;

10 ~~(4)~~ (3) Division of Rehabilitation Services provided in  
11 section two, article ten-a, chapter eighteen of this code.

12 (g) The Educational Broadcasting Authority provided in article  
13 five, chapter ten of this code, is part of the Department of  
14 Education and the Arts for purposes of administrative support and  
15 liaison with the office of the Governor.

16 ~~(g)~~ (h) The following agencies and boards, including all of  
17 the allied, advisory, affiliated or related entities and funds  
18 associated with any agency or board, are incorporated in and  
19 administered as a part of the Department of Health and Human  
20 Resources:

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

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

25 (3) Bureau for Public Health provided in article one, chapter

1 sixteen of this code;

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

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

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

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

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

12 ~~(h)~~ (i) The following agencies and boards, including all of  
13 the 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 Military Affairs and  
16 Public Safety:

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

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

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

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

25 (5) Division of Homeland Security and Emergency Management and

1 Disaster Recovery Board provided in article five, chapter fifteen  
2 of this code and Emergency Response Commission provided in article  
3 five-a of said chapter;

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

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

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

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

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

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

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

18 ~~(i)~~ (j) The following agencies and boards, including all of  
19 the allied, advisory, affiliated or related entities and funds  
20 associated with any agency or board, are incorporated in and  
21 administered as a part of the Department of Revenue:

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

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

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

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

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

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

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

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

14          (9) The State Budget Office provided in article two of this  
15 chapter;

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

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

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

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

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

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

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

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

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

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

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

15 ~~(k)~~ (l) Except for powers, authority and duties that have been  
16 delegated to the secretaries of the departments by the provisions  
17 of section two of this article, the position of administrator and  
18 the powers, authority and duties of each administrator and agency  
19 are not affected by the enactment of this chapter.

20 ~~(l)~~ (m) Except for powers, authority and duties that have been  
21 delegated to the secretaries of the departments by the provisions  
22 of section two of this article, the existence, powers, authority  
23 and duties of boards and the membership, terms and qualifications  
24 of members of the boards are not affected by the enactment of this  
25 chapter. All boards that are appellate bodies or are independent

1 decision makers shall not have their appellate or independent  
2 decision-making status affected by the enactment of this chapter.

3 ~~(m)~~ (n) Any department previously transferred to and  
4 incorporated in a department by prior enactment of this section  
5 means a division of the appropriate department. Wherever reference  
6 is made to any department transferred to and incorporated in a  
7 department created in section two, article one of this chapter, the  
8 reference means a division of the appropriate department and any  
9 reference to a division of a department so transferred and  
10 incorporated means a section of the appropriate division of the  
11 department.

12 ~~(n)~~ (o) When an agency, board or commission is transferred  
13 under a bureau or agency other than a department headed by a  
14 secretary pursuant to this section, that transfer is solely for  
15 purposes of administrative support and liaison with the Office of  
16 the Governor, a department secretary or a bureau. Nothing in this  
17 section extends the powers of department secretaries under section  
18 two of this article to any person other than a department secretary  
19 and nothing limits or abridges the statutory powers and duties of  
20 statutory commissioners or officers pursuant to this code.

21 **CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION; ATHLETIC**  
22 **ESTABLISHMENTS; MONUMENTS AND MEMORIALS; ROSTER OF SERVICEMEN;**  
23 **EDUCATIONAL BROADCASTING AUTHORITY.**

24 **ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.**

1 **§10-5-1. Legislative findings; definitions.**

2 (a) The Legislature hereby finds and declares that:

3 (1) It is the duty of this state to provide the best  
4 educational training possible for all its citizens; ~~and that~~

5 (2) The encouragement and use of noncommercial educational  
6 radio, television and related media operating and originating from  
7 educational broadcasting, closed circuit or related facilities  
8 located at a site or sites within this state serving all the  
9 citizens of this state on a regional basis or as part of a  
10 coordinated statewide plan is a proper, necessary and beneficial  
11 means of providing and extending enriched educational instruction  
12 to all the citizens of this state at the preschool, elementary,  
13 secondary and higher education and adult levels;

14 (3) Private nonprofit corporations have been established in  
15 this state for the sole purpose of raising funds for the financial  
16 support of the state's Public Broadcasting Network, which funds  
17 have been a vital source of private funding for the authority and  
18 enure to the benefit of all the citizens of the state; and

19 (4) Because of the unique educational benefit conferred upon  
20 and available to all the citizens of the state by the efforts of  
21 the authority and the private nonprofit corporations established  
22 for the sole purpose of providing support for public broadcasting  
23 in this state, authorizing the authority to allow its employees to  
24 work with, and its property and facilities to be used by, the  
25 private nonprofit corporations is a proper, necessary and

1 beneficial means of providing financial support for the state's  
2 Public Broadcasting Network.

3 (b) The following ~~words used in this article and in any~~  
4 ~~proceedings pursuant thereto shall, unless the context clearly~~  
5 ~~indicates a different meaning, be construed as follows~~ terms have  
6 the following meanings:

7 (1) "Authority" means the Educational Broadcasting Authority  
8 established by the provisions of this article.

9 ~~(1)~~ (2) "Distance learning" means educational courses,  
10 seminars, programs and teleconferences transmitted electronically  
11 and designed to instruct students who are remote from the  
12 instructor or other participants; such courses, seminars, programs  
13 and teleconferences may constitute all or a significant portion of  
14 a class offered for college or public school credit, or they may be  
15 provided for faculty development, continuing professional  
16 education, for training employees of governmental agencies,  
17 nonprofit organizations, business or industry;

18 ~~(2)~~ (3) "EdNet" means those individuals identified as an  
19 enterprise of the university of West Virginia college of graduate  
20 studies and West Virginia state college on behalf of the state  
21 college and university systems who are delegated the responsibility  
22 for developing, operating and maintaining facilities for the  
23 production and transmission of distance learning; and

24 ~~(3)~~ (4) "SatNet" means those individuals identified as an  
25 enterprise of the state college and university systems who are

1 delegated the responsibility for developing and providing distance  
2 learning.

3 **§10-5-2. West Virginia Educational Broadcasting Authority;**  
4 **members; organization; officers; employees;**  
5 **meetings; expenses.**

6 (a) The West Virginia Educational Broadcasting Authority is  
7 ~~hereby~~ continued as a public benefit corporation. The Authority  
8 shall consist of eleven voting members, who shall be residents of  
9 the state, including:

10 (1) The Governor or designee;

11 (2) The State Superintendent of Schools;

12 (3) One member of the West Virginia Board of Education to be  
13 selected by it annually; ~~and~~

14 (4) One member of the West Virginia Higher Education Policy  
15 Commission to be selected by it annually; and

16 (5) ~~The other~~ Seven members ~~shall be~~ appointed by the Governor  
17 by and with the advice and consent of the Senate for overlapping  
18 terms of seven years, one term expiring each year.

19 (b) Not less than one appointive member shall come from each  
20 congressional district. Any vacancy among the appointed members  
21 shall be filled by the Governor by appointment for the unexpired  
22 term.

23 (c) Employees of noncommercial broadcasting stations in West  
24 Virginia are not eligible for appointment to the Authority. ~~Any~~  
25 ~~vacancy among the appointive members shall be filled by the~~

1 ~~Governor by appointment for the unexpired term.~~

2 ~~(b) As of the effective date of the reenactment of this~~  
3 ~~section during the Regular Session of 2005, the Governor or~~  
4 ~~designee serves as chair, for a term not to exceed four years~~  
5 ~~unless extended by act of the Legislature. Thereafter,~~

6 (d) The authority shall annually select a member to serve as  
7 the chair. The authority shall annually select one of its public  
8 members as vice chair and shall appoint a secretary who need not be  
9 a member of the Authority and who shall keep records of its  
10 proceedings.

11 ~~(c) As of the effective date of the reenactment of this~~  
12 ~~section during the Regular Session of 2005, the Governor shall~~  
13 ~~appoint an Executive Director, at a salary fixed by the Governor,~~  
14 ~~to serve for a term not to exceed four years unless extended by act~~  
15 ~~of the Legislature. Thereafter~~

16 (e) The authority shall appoint the executive director and fix  
17 his or her salary. The executive director is responsible for  
18 managing and administering the daily functions of the authority and  
19 for performing all other functions necessary to the effective  
20 operation of the authority. The authority is authorized to  
21 establish offices for the proper performance of its duties.

22 ~~(d)~~ (f) The authority shall hold at least one annual meeting.  
23 The time and place of the meetings shall be established upon its  
24 own resolution or at the call of the chairperson of the authority.  
25 The members shall serve without compensation but may be reimbursed

1 for all reasonable and necessary expenses actually incurred in the  
2 performance of their duties in a manner consistent with the  
3 guidelines of the Travel Management Office of the Department of  
4 Administration.

5 **§10-5-3. Powers of authority.**

6 The authority shall have the power:

7 (1) To act as advisor and consultant to television and radio  
8 stations concerning noncommercial educational programs supported by  
9 federal, state, county, city or private funds;

10 (2) To cooperate with and assist all local and state  
11 educational institutions in planning and development of the use of  
12 educational radio, television and related media;

13 (3) To promote and coordinate the use of these media for  
14 noncommercial educational purposes;

15 (4) To construct, maintain and operate educational  
16 broadcasting, closed circuit or related facilities located at a  
17 suitable site or sites within this state including, without  
18 limitation thereby, production centers, broadcasting stations and  
19 an audio-video microwave system for a statewide broadcasting  
20 network connecting such communities or stations as may be  
21 designated by the authority;

22 (5) To acquire in the name of the state for the use and  
23 benefit of the authority by purchase, lease or agreement, any  
24 property, both real and personal, and any interest in such property  
25 necessary to carry out the provisions of this article;

1           (6) To apply for and receive any license from the appropriate  
2 federal agency necessary to operate any educational broadcasting,  
3 closed circuit or related facility;

4           (7) To supervise and approve the origination and transmission  
5 of all noncommercial educational radio, television and related  
6 media programs in this state which would be carried through the  
7 facilities of a state network;

8           (8) To employ such personnel as may be necessary to operate  
9 and maintain any facility created under the provisions of this  
10 article, and to work with private nonprofit corporations to raise  
11 funds for the financial support of the state's public broadcasting  
12 network;

13           (9) To lease from communications common carriers and use such  
14 transmission channels as may be necessary or, if it determines it  
15 could more economically construct and maintain such transmission  
16 channels, it may design, construct, maintain and operate the same,  
17 including an audio-video microwave network;

18           (10) To sue and be sued, plead and be impleaded;

19           (11) To contract and be contracted with, including the power  
20 to enter into contracts with any person, firm or corporation,  
21 including any like authority of neighboring states; and shall have  
22 the authority, within state regulations, to enter into program  
23 royalty and distribution contracts and receive moneys for these  
24 purposes: *Provided*, That any proceeds from such contracts shall be  
25 used by the authority for noncommercial purposes only;

1 (12) To have and use a corporate seal;

2 (13) To promulgate reasonable rules and regulations to carry  
3 out the provisions of this article in accordance with the  
4 provisions of article three, chapter twenty-nine-a of the code, and

5 (14) To perform such other services in behalf of noncommercial  
6 educational radio, television and related media as it may consider  
7 to be in the best interest of the state, including the use of the  
8 authority's employees, property and facilities for the purpose of  
9 raising funds for the support of public broadcasting.

10 **§10-5-4. Funds; right of state agencies, etc., to contribute to**  
11 **authority.**

12 (a) The authority ~~is further authorized and empowered to~~ may  
13 solicit, apply for and receive appropriations, gifts, bequests or  
14 grants from any agency of the United States government, any agency  
15 of the State of West Virginia, any municipality or county within  
16 this state, any school board or college or university supported in  
17 whole or in part by this state or any other person, firm,  
18 partnership, association or corporation, within or without this  
19 state, and any agency of the State of West Virginia, any  
20 municipality or county within this state, or any school board or  
21 college or university supported in whole or in part by this state  
22 is hereby authorized and empowered to make appropriations or grants  
23 to the authority, to assist in achieving the public purpose of the  
24 authority.

25 (b) All such funds shall be deposited with the State

1 Treasurer of West Virginia or with a private nonprofit corporation  
2 established for the sole purpose of providing support for public  
3 broadcasting in this state which has entered into a memorandum of  
4 understanding with the authority pursuant to the provisions of  
5 section six of this article, and ~~dispersed by the authority to be~~  
6 used exclusively for carrying out the provisions of this article:  
7 *Provided,* That any appropriations, gifts, bequests or grants  
8 received by the authority with any restriction or restrictions on  
9 the use thereof shall be expended by the authority in accordance  
10 with such restriction or restrictions.

11 **§10-5-6. Cooperation with private nonprofit corporations.**

12 (a) In furtherance of its mission and fulfillment of its  
13 duties, the authority is expressly authorized to allow its  
14 employees to work with, and its property and facilities to be used  
15 by, private nonprofit corporations established for the sole purpose  
16 of providing support for public broadcasting in this state.

17 (b) To document the implementation of subsection (a) of this  
18 section, the authority shall enter into memoranda of understanding  
19 with private nonprofit corporations established for the sole  
20 purpose of providing support for public broadcasting in this state,  
21 to delineate the rights and responsibilities of the parties.

22 (c) Notwithstanding any provision in this code to the  
23 contrary, the names of individual donors to the authority or to a  
24 private nonprofit corporation established for the sole purpose of  
25 providing support for public broadcasting in this state are not

1 subject to the provisions of chapter twenty-nine-b of this code.

NOTE: The purpose of this bill is to clarify the Educational Broadcasting Authority's power to engage in fundraising activities with certain private nonprofit corporations, to clarify the organizational structure of the authority, to exempt the names of private donors from disclosure, to delete outdated language and to make technical corrections.

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

§10-5-6 is new; therefore, it has been completely underscored.