

1 **H. B. 3183**

2
3 (By Delegate Shaver)

4 [Introduced February 18, 2011; referred to the
5 Committee on Roads and Transportation then Finance.]

6
7 **FISCAL
NOTE**

8
9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §17-29-1, §17-29-2,
12 §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8,
13 §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13 and §17-
14 29-14, all relating to creating the Tourist-Oriented
15 Directional Signs Program; stating the legislative purpose;
16 setting forth application and eligibility requirements;
17 establishing design and content guidelines; establishing sign
18 location and placement criteria; establishing a fee schedule;
19 setting forth maintenance responsibility; permitting
20 revocation of participation in the program; authorizing
21 rulemaking to be exempt from the state Administrative
22 Procedures Act; and defining terms.

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

24 That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new article, designated §17-29-1, §17-29-2,
2 §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8, §17-29-
3 9, §17-29-10, §17-29-11, §17-29-12, §17-29-13 and §17-29-14, all to
4 read as follows:

5 **ARTICLE 29. TOURIST-ORIENTED DIRECTIONAL SIGNS PROGRAM.**

6 **§17-29-1. Short title.**

7 This article shall be known and may be cited as the "Tourist-
8 Oriented Directional Signs Program."

9 **§17-29-2. Legislative Purpose.**

10 The purpose of the Tourist-Oriented Directional Signs Program
11 is to establish criteria for participation in and administration of
12 a program for the installation of tourist-oriented directional
13 signs within the rights-of-way of state highways in rural areas of
14 the State of West Virginia. Tourist-oriented directional signs are
15 guide signs to be placed within the rights-of-way of state highways
16 in rural areas of the State of West Virginia to display business
17 identification and directional information for tourist-oriented
18 businesses not located on a state highway that attract highway
19 users from outside the immediate area of the business.

20 **§17-29-3. Definitions.**

21 The following words when used in this article have the meaning
22 ascribed to them unless the context clearly indicates a different
23 meaning:

24 (1) "Commissioner" means the West Virginia Commissioner of

1 Highways.

2 (2) "Division" means the West Virginia Division of Highways.

3 (3) "Eligibility distance" means the total roadway distance
4 from the turn on a state highway where a tourist-oriented
5 directional sign is located to the entry driveway of a tourist-
6 oriented business and, if necessary, to break a tie between two
7 otherwise eligible businesses, the eligibility distance shall also
8 include the distance from the beginning of the entry driveway to
9 the entry door of the business.

10 (4) "Immediate area of the business" means the area within a
11 twenty-mile radius of the business.

12 (5) "Rural" means an area outside the limits of an
13 incorporated municipality having a population of two thousand or
14 more according to the most recent decennial census of the United
15 States Bureau of Census.

16 (6) "State highway" means a highway designated by the
17 commissioner as part of the state highway system of the State of
18 West Virginia.

19 (7) "Tourist-oriented directional sign" means an official sign
20 structure placed within the right-of-way of a state highway that
21 contains one or more tourist-oriented directional sign panels.

22 (8) "Tourist-oriented directional sign panel" means an
23 individual sign panel on a tourist-oriented directional sign that
24 identifies the name of a participating tourist-oriented business,

1 the direction of turn to reach the business, and the distance to
2 the business from the turn off the state highway.

3 (9) "Tourist-oriented business" means a private or public
4 entity, which offers lawful cultural, historical, recreational,
5 agricultural, educational, entertainment and/or commercial
6 activities, services or products to the general public, and the
7 major portion of whose income or visitors are derived during its
8 normal business season from highway users residing outside the
9 immediate area of the business.

10 **§17-29-4. Tourist-Oriented Directional Signs Program**

11 **Authorization.**

12 (a) There is hereby created and established a tourist-oriented
13 directional signs program.

14 (b) Tourist-oriented directional signs shall be available to
15 lawful cultural, historical, recreational, agricultural,
16 educational, or entertaining activities, state and national parks,
17 and commercial activities that are unique and local in nature, and
18 the major portion of whose income or visitors are derived during
19 its normal business season from motorists not residing in the
20 immediate area of the activity.

21 **§17-29-5. Compliance with our requirements.**

22 In all respects, the erection of tourist-oriented directional
23 signs shall comply with:

24 (1) The manual and specifications for uniform system of

1 traffic-control devices adopted by the commissioner pursuant to
2 section one, article three, chapter seventeen-c of this code;

3 (2) Local zoning and local zoning authorities; and

4 (3) Outdoor advertising laws and rules set forth in article
5 twenty-two of this chapter.

6 **§17-29-6. Eligibility for participation in program.**

7 Participation in the tourist-oriented directional signs
8 program is open to tourist-oriented businesses that are unique and
9 local in nature and located in a rural area. More specifically, to
10 be eligible for identification on a tourist-oriented directional
11 sign panel, a tourist-oriented business shall have each of the
12 following characteristics:

13 (1) It shall offer lawful cultural, historical, recreational,
14 agricultural, educational, entertainment, or commercial activities,
15 services and/or products to the general public;

16 (2) It shall be unique and local in nature, and not part of a
17 chain of businesses having a common name under common ownership and
18 management or under a franchise arrangement;

19 (3) It shall derive the major portion of its income or
20 visitors, during its normal business season, from highway users
21 residing outside the immediate area of the business;

22 (4) It shall have a permanent location:

23 (A) In a rural area or within the limits of an incorporated
24 municipality having a population of less than two thousand; and

1 (B) On a road within ten miles of the nearest intersection
2 with a state highway where a tourist-oriented directional sign may
3 be located.

4 (5) It shall be open to the public on a regular schedule, at
5 least five days per week and eight hours per day (holidays
6 excepted), throughout the year; Provided, That a tourist-oriented
7 business open on a seasonal basis may be eligible for participation
8 in the tourist-oriented directional sign program.

9 (6) A tourist-oriented business offering multiple activities,
10 services and/or products to the public shall not be eligible for
11 separate tourist-oriented directional sign panels for separate
12 portions of the business but only as a single entity.

13 **§17-29-7. Design and content of signs.**

14 (a) Each tourist-oriented directional sign shall have no more
15 than four tourist-oriented directional sign panels.

16 (b) Each tourist-oriented directional sign panel shall be
17 constructed as follows:

18 (1) It shall have a standard size of sixty inches wide by
19 fifteen inches high;

20 (2) It shall have a white legend and border on a blue
21 background; and

22 (3) It shall have a sign face fabricated from reflective
23 sheeting applied to one-tenth inch flat sheet aluminum sign blank.

24 (c) The legend on each tourist-oriented directional sign panel

1 shall be designed as follows:

2 (1) It shall have a message block forty-eight inches wide by
3 fifteen inches high identifying the legal name or "doing business
4 as" name of the eligible tourist-oriented business, which message
5 shall be in upper case letters and shall not exceed two lines nor
6 more than fifteen characters per line, including all letters,
7 symbols and spaces;

8 (2) It shall have a directional information block twelve
9 inches wide by fifteen inches high with an arrow pointing in the
10 direction of the turn and a number stating the distance (to the
11 nearest tenth of a mile) to the identified business, which block
12 shall appear on the left side of the panel for left-turn businesses
13 and on the right side of the panel for right-turn businesses; and

14 (3) All letters and numerals in the legend shall be four
15 inches in height.

16 (d) The content of the legend on each tourist-oriented
17 directional sign panel shall be limited to the business
18 identification and directional information described above in this
19 rule. The legend shall not include any type of business logo or any
20 form of promotional advertising.

21 **§17-29-8. Criteria for sign location and placement.**

22 (a) The location criteria for erecting tourism-oriented
23 directional signs are as follows:

24 (1) The division will erect tourist-oriented directional signs

1 along state highways at intersections with roads where highway
2 users will turn to reach eligible tourist-oriented businesses that
3 have qualified to participate in the tourist-oriented directional
4 signs program.

5 (2) The division will not erect a new tourist-oriented
6 directional sign on any state highway within the limits of an
7 incorporated municipality having a population of two thousand or
8 more according to the most recent decennial census of the United
9 States Bureau of Census. Tourist-oriented directional signs shall
10 not be erected outside of such a municipality for a tourist-
11 oriented business within the limits of such a municipality.

12 (3) In addition, the division will not erect a new tourist-
13 oriented directional sign, or renew an existing tourist-oriented
14 directional sign, on any state highway within any incorporated
15 municipality without the prior written consent of the municipal
16 government. This written consent must be obtained by the tourist-
17 oriented business seeking to qualify for participation in the
18 tourist-oriented directional signs program or by a tourist-oriented
19 business seeking to renew participation in the tourist-oriented
20 directional signs program.

21 (4) At intersections where tourist-oriented directional signs
22 may be erected, the division will erect tourist-oriented
23 directional signs for each direction of travel along the state
24 highway. Generally, the division will erect a separate tourist-

1 oriented directional sign for each direction of turn in each
2 direction of travel, unless the division decides to erect only one
3 tourist-oriented directional sign in each direction of travel as
4 provided in subdivision (5), subsection (b) of this section.

5 (5) Tourist-oriented directional signs should be located at
6 least two hundred feet in advance of the intersection, and they
7 should be spaced at least two hundred feet from another tourist-
8 oriented directional sign or any other traffic control sign.

9 (6) The location of other traffic control devices, including
10 regulatory, warning and guide signs, shall take precedence over the
11 location of tourist-oriented directional signs.

12 (b) The criteria for installing and placing tourist-oriented
13 directional sign panels are as follows:

14 (1) No more than four tourist-oriented directional sign panels
15 may be installed on any one tourist-oriented directional sign.

16 (2) Subject to space limitations, the division will install
17 one tourist-oriented directional sign panel for a qualified
18 tourist-oriented business on a tourist-oriented directional sign in
19 each direction of travel at the intersection that provides the
20 shortest eligibility distance to that business.

21 (3) In the division's discretion, a second set of tourist-
22 oriented directional sign panels may be installed for a qualified
23 tourist-oriented business at an additional intersection on a second
24 state highway, but only if the second set of tourist-oriented

1 directional sign panels does not prevent another qualified tourist-
2 oriented business from obtaining a first set of tourist-oriented
3 directional sign panels at that intersection.

4 (4) Tourist-oriented directional sign panels for qualified
5 tourist-oriented businesses shall be grouped by direction of turn.
6 The placement of tourist-oriented directional sign panels on
7 tourist-oriented directional signs will be as follows, except as
8 provided in subdivision (5) of this subsection:

9 (A) All qualified tourist-oriented businesses that can be
10 reached by turning left will be placed on the tourist-oriented
11 directional sign farthest from the intersection in each direction
12 of travel.

13 (B) All qualified tourist-oriented businesses that can be
14 reached by turning right will be placed on the tourist-oriented
15 directional sign nearest to the intersection in each direction of
16 travel.

17 (C) On each tourist-oriented directional sign, the tourist-
18 oriented directional sign panels for each qualified tourist-
19 oriented business will be placed in order of eligibility distance,
20 with the business having the shortest eligibility distance at the
21 top and the business with the greatest eligibility distance at the
22 bottom.

23 (5) If there are not more than four tourist-oriented
24 directional sign panels to be installed for each direction of

1 travel at an intersection, the division may choose to erect only
2 one tourist-oriented directional sign for each direction of travel.
3 In such case, the tourist-oriented directional sign panels for
4 qualified tourist-oriented businesses that can be reached by
5 turning left will be installed at the top of the tourist-oriented
6 directional sign, in order of eligibility distance from shortest to
7 greatest, and the tourist-oriented directional sign panels for
8 businesses that can be reached by turning right will be installed
9 below, in order of eligibility distance from shortest to greatest.

10 **§17-29-9. Application for participation in program.**

11 (a) To qualify for participation in the tourist-oriented
12 directional signs program, an eligible tourist-oriented business
13 must complete an application, including business identification and
14 directional information, on a form provided by the commissioner.

15 (b) The business shall provide to the commissioner an
16 affidavit and/or such other evidence as the commissioner may
17 reasonably request to demonstrate that the major portion of the
18 business's income or visitors are derived during its normal
19 business season from highway users residing outside the immediate
20 area of the business.

21 (c) The business shall obtain and submit to the commissioner
22 all required written approvals from local governments for erecting
23 tourist-oriented directional signs within an incorporated
24 municipality.

1 (d) The business shall, as part of its application, agree to
2 hold the State of West Virginia, the division and its officers,
3 employees, representatives, contractors and/or agents harmless for
4 any loss of business that may be caused by any damage to or removal
5 of a tourist-oriented directional sign or tourist-oriented
6 directional sign panel as a result of highway construction, highway
7 maintenance or any other reason.

8 (e) The business shall tender the payment of all fees as
9 required in section eleven of this article.

10 **§17-29-10. Additional consideration for participation.**

11 (a) The division's approval of a tourist-oriented business's
12 application for participation in the tourist-oriented directional
13 signs program is subject to the availability of space as follows:

14 (1) The commissioner will approve the application only if
15 there is space available to install tourist-oriented directional
16 sign panels for the business as provided in section eight of this
17 article.

18 (2) When more than one eligible tourist-oriented business
19 applies for participation in the tourist-oriented directional signs
20 program at an intersection where there is not sufficient space to
21 install tourist-oriented directional sign panels for more than one
22 business, the division will award installation:

23 (A) To the business from which the commissioner first received
24 a qualified application; or

1 (B) If the commissioner received more than one qualified
2 application on the same date, the commissioner will award
3 installation to the business with the greatest eligibility
4 distance.

5 (3) The division shall refund payment of the Initial Permit
6 Fee (but not the Application Fee), as established in section eleven
7 of this article, to a tourist-oriented business whose application
8 for participation in the tourist-oriented directional signs program
9 has been denied based on insufficient space in accordance with
10 subdivision (2) of this subsection.

11 (4) Where, because of insufficient space, the commissioner has
12 zxlAdenied an eligible tourist-oriented business's application for
13 a tourist-oriented directional sign panel at the intersection.
14 Providing the shortest eligibility distance, the commissioner may
15 approve an application by that business for a tourist-oriented
16 directional sign panel at another intersection having a greater
17 eligibility distance where space is available if, in the judgment
18 of the commissioner, the sign would provide suitable directional
19 information to highway users.

20 (b) A tourist-oriented business that is open to the public
21 only on a seasonal basis rather than year-round may qualify for
22 participation in the tourist-oriented directional signs program
23 subject to the following additional considerations:

24 (1) In its application to the commissioner, the business must

1 provide a schedule of its regular seasonal dates of operation when
2 it is open to the public.

3 (2) The business shall pay an additional seasonal business fee
4 each year, as provided in section eleven of this article, for the
5 placement and removal of a "Closed" placard over the directional
6 information portion of the tourist-oriented directional sign panel,
7 or for the temporary removal and storage and reinstallation of the
8 tourist-oriented directional sign panel, during the seasons of the
9 year when the business is closed to the public. This additional fee
10 shall be payable to the division with the business's initial
11 application for participation in the tourist-oriented directional
12 signs program and with each annual renewal of participation.

13 (c) Annual Renewal of Participation.

14 (1) After the commissioner has approved an application to
15 participate in the Tourist-Oriented Directional Signs Program, the
16 qualifying tourist-oriented business may continue to participate in
17 the program on a renewable annual basis thereafter so long as the
18 business remains in compliance with this article and pays all
19 applicable fees in accordance with section eleven of this article.

20 (2) The annual term shall begin on the date the division
21 installs the business's tourist-oriented directional sign panels on
22 a state highway and shall expire on the anniversary of that date
23 each year thereafter unless timely renewed by payment of all
24 applicable renewal fees.

1 (3) The applicable annual renewal fees are due thirty days
2 prior to the expiration of the annual term.

3 (d) The division may inspect a tourist-oriented business at
4 any time after the business has made application for participation
5 in the Tourist-Oriented Directional Signs Program to assure that
6 the business meets all eligibility requirements or other
7 requirements to qualify for continuing participation in the
8 tourist-oriented directional signs program.

9 **§17-29-11. Fees.**

10 (a) To cover the cost of erecting signs and administering the
11 Tourist-Oriented Directional Signs Program, each participating
12 tourist-oriented business shall pay the division the following
13 fees:

14 (1) Application Fee \$25;

15 (2) Initial Permit Fee (per tourist-oriented directional sign
16 panel) \$150; and

17 (3) Annual Renewal Fee (per tourist-oriented directional sign
18 panel) \$50.

19 (b) In addition, a participating tourist-oriented business
20 shall pay the division the following fees as applicable to that
21 particular business:

22 (1) Seasonal Business Fee (annually per tourist-oriented
23 directional sign panel) \$50; and

24 (2) Replacement Fee (per tourist-oriented directional sign

1 panel replaced or changed) \$150.

2 (c) Fees will not be prorated based on the seasonal closing of
3 any business.

4 (d) Fees will not be reimbursed if a business closes during an
5 annual term or if tourist-oriented directional sign panels are
6 removed by the division based on a violation of this article.

7 **§17-29-12. Maintenance and financial responsibility.**

8 (a) The division will install all tourist-oriented directional
9 signs and tourist-oriented directional sign panels on state highway
10 rights-of-way, subject to the payment of all required fees by
11 participating tourist-oriented businesses.

12 (b) Each participating tourist-oriented business shall be
13 responsible for the cost of replacing tourist-oriented directional
14 sign panels that have been damaged or destroyed by acts of
15 vandalism, natural causes or accidents. When it is necessary to
16 replace a sign, the division will assess, and the participating
17 tourist-oriented business shall pay, the required replacement fee,
18 as provided in section eleven of this article.

19 (c) The division shall have no liability for any loss of
20 business that may result because a tourist-oriented directional
21 sign panel is, for any reason, temporarily absent from a tourist-
22 oriented directional sign on a state highway.

23 **§17-29-13. Revocation of participation in program.**

24 (a) The commissioner may revoke the privilege of participation

1 in the tourist-oriented directional signs program if it finds that
2 any participating tourist-oriented business:

3 (1) Has made a false, deceptive or fraudulent statement in its
4 application or in any other information submitted to the
5 commissioner;

6 (2) Engages in any deceptive or fraudulent business practice;

7 (3) Fails to pay any required fee on a timely basis;

8 (4) No longer meets the eligibility requirements set forth in
9 this article;

10 (5) Ceases to operate as a business on a continuing basis in
11 accordance with the schedule submitted to the commissioner in its
12 application; or

13 (6) Alters or modifies any tourist-oriented directional sign
14 or tourist-oriented directional sign panel erected or installed by
15 the division.

16 (b) The procedures for revocation are as follows:

17 (1) Prior to revoking the privilege of participating in the
18 tourist-oriented directional signs program, the commissioner will
19 notify the tourist-oriented business in writing of the grounds for
20 the proposed revocation. The notice will be sent by certified and
21 regular mail. Notices sent by regular mail will be presumed to have
22 been received by the business within three business days after
23 mailing.

24 (2) Within fifteen days after receipt of the notice to correct

1 the condition cited as the ground for the proposed revocation, the
2 business shall either:

3 (A) Correct the condition cited as ground for the proposed
4 revocation, and provide sufficient written proof thereof to the
5 satisfaction of the commissioner; or

6 (B) If the business denies the cited ground for the proposed
7 revocation, the business shall deliver a written response to the
8 commissioner stating in detail the basis for the denial and
9 requesting a hearing before the commissioner or the commissioner's
10 designee.

11 (3) If the business fails to correct the cited ground(s) for
12 revocation or fails to respond within fifteen days, the
13 commissioner will send the business a written notice of revocation
14 and remove all tourist-oriented directional sign panels for that
15 business from the state highway rights-of-way.

16 (4) If the business requests a hearing, an informal hearing
17 will be held before the commissioner or the commissioner's designee
18 to consider the matter. The decision of the commissioner or the
19 commissioner's designee shall be made in writing to the business
20 and shall be final.

21 **§17-29-14. Promulgation of Rules.**

22 The commissioner may promulgate rules to implement the
23 application approval process and to describe the criteria and
24 procedures it has established in connection therewith. These rules

1 are not subject to the provisions of chapter twenty-nine-a of this
2 code, but shall be filed with the Secretary of State.

NOTE: The purpose of this bill is to create the Tourist-Oriented Directional Signs Program. The bill states the legislative purpose. The bill sets forth the application and eligibility requirements for the program. The bill establishes the design and content guidelines and sign location and placement criteria. The bill also establishes a fee schedule and sets forth maintenance responsibility. The bill permits revocation of participation in the program. Further, the bill authorizes rulemaking to be exempt from the state Administrative Procedures Act. The bill additionally defines terms.

This article is new; therefore, it has been completely underscored.