

# H. B. 2695

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(BY DELEGATES MORGAN, STEPHENS AND GIVENS)

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[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to the educational broadcasting authority; modifying organizational structure; declaring legislative findings; deleting outdated language; authorizing the authority and its employees to work with certain private nonprofit corporations; authorizing the use of the authority's property and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 §10-5-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §10-5-6, all to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (2) Office of Miners' Health, Safety and Training  
42 provided in article one, chapter twenty-two-a of this code.

43 The following boards are transferred to the Office of Miners'

44 Health, Safety and Training for purposes of administrative  
45 support and liaison with the office of the Governor:

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

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

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

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

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

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

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

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

67           (A) Division of Unemployment Compensation;

68           (B) Division of Employment Services;

69           (C) Division of Workforce Development; and

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

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

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

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

80           (e) The following agencies and boards, including all of  
81 the allied, advisory and affiliated entities, are transferred to

82 the Department of Environmental Protection for purposes of  
83 administrative support and liaison with the office of the  
84 Governor:

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

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

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

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

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

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

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

99 (f) The following agencies and boards, including all of  
100 the allied, advisory, affiliated or related entities and funds

101 associated with any agency or board, are incorporated in and  
102 administered as a part of the Department of Education and  
103 the Arts:

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

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

108 ~~(3)~~ (2) Division of Culture and History provided in article  
109 one, chapter twenty-nine of this code;

110 ~~(4)~~ (3) Division of Rehabilitation Services provided in  
111 section two, article ten-a, chapter eighteen of this code.

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

116 ~~(g)~~ (h) The following agencies and boards, including all  
117 of the allied, advisory, affiliated or related entities and funds  
118 associated with any agency or board, are incorporated in and



119 administered as a part of the Department of Health and

120 Human Resources:

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

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

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

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

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

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

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

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

138        ~~(h)~~ (i) The following agencies and boards, including all  
139        of the allied, advisory, affiliated or related entities and funds  
140        associated with any agency or board, are incorporated in and  
141        administered as a part of the Department of Military Affairs  
142        and Public Safety:

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

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

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

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

151        (5) Division of Homeland Security and Emergency  
152        Management and Disaster Recovery Board provided in  
153        article five, chapter fifteen of this code and Emergency  
154        Response Commission provided in article five-a of said  
155        chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

192           (9) The State Budget Office provided in article two of  
193 this chapter;

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

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

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

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

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

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

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

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

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

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

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

219 ~~(k)~~ (l) Except for powers, authority and duties that have  
220 been delegated to the secretaries of the departments by the  
221 provisions of section two of this article, the position of  
222 administrator and the powers, authority and duties of each  
223 administrator and agency are not affected by the enactment  
224 of this chapter.

225 ~~(t)~~ (m) Except for powers, authority and duties that have  
226 been delegated to the secretaries of the departments by the  
227 provisions of section two of this article, the existence,  
228 powers, authority and duties of boards and the membership,  
229 terms and qualifications of members of the boards are not

230 affected by the enactment of this chapter. All boards that are  
231 appellate bodies or are independent decision makers shall not  
232 have their appellate or independent decision-making status  
233 affected by the enactment of this chapter.

234 ~~(m)~~ (n) Any department previously transferred to and  
235 incorporated in a department by prior enactment of this  
236 section means a division of the appropriate department.  
237 Wherever reference is made to any department transferred to  
238 and incorporated in a department created in section two,  
239 article one of this chapter, the reference means a division of  
240 the appropriate department and any reference to a division of  
241 a department so transferred and incorporated means a section  
242 of the appropriate division of the department.

243 ~~(n)~~ (o) When an agency, board or commission is  
244 transferred under a bureau or agency other than a department  
245 headed by a secretary pursuant to this section, that transfer is  
246 solely for purposes of administrative support and liaison with  
247 the Office of the Governor, a department secretary or a  
248 bureau. Nothing in this section extends the powers of

249 department secretaries under section two of this article to any  
250 person other than a department secretary and nothing limits  
251 or abridges the statutory powers and duties of statutory  
252 commissioners or officers pursuant to this code.

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

**ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.**

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

1 (a) The Legislature hereby finds and declares that:  
2 (1) It is the duty of this state to provide the best  
3 educational training possible for all its citizens; ~~and that~~  
4 (2) The encouragement and use of noncommercial  
5 educational radio, television and related media operating and  
6 originating from educational broadcasting, closed circuit or  
7 related facilities located at a site or sites within this state  
8 serving all the citizens of this state on a regional basis or as  
9 part of a coordinated statewide plan is a proper, necessary  
10 and beneficial means of providing and extending enriched



11 educational instruction to all the citizens of this state at the  
12 preschool, elementary, secondary and higher education and  
13 adult levels;

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

20 (4) Because of the unique educational benefit conferred  
21 upon and available to all the citizens of the state by the  
22 efforts of the authority and the private nonprofit corporations  
23 established for the sole purpose of providing support for  
24 public broadcasting in this state, authorizing the authority to  
25 allow its employees to work with, and its property and  
26 facilities to be used by, the private nonprofit corporations is  
27 a proper, necessary and beneficial means of providing  
28 financial support for the state's Public Broadcasting  
29 Network.

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

34 (1) “Authority” means the Educational Broadcasting  
35 Authority established by the provisions of this article.

36 ~~(1)~~ (2) “Distance learning” means educational courses,  
37 seminars, programs and teleconferences transmitted  
38 electronically and designed to instruct students who are  
39 remote from the instructor or other participants; such courses,  
40 seminars, programs and teleconferences may constitute all or  
41 a significant portion of a class offered for college or public  
42 school credit, or they may be provided for faculty  
43 development, continuing professional education, for training  
44 employees of governmental agencies, nonprofit  
45 organizations, business or industry;

46 ~~(2)~~ (3) “EdNet” means those individuals identified as an  
47 enterprise of the university of West Virginia college of  
48 graduate studies and West Virginia state college on behalf of

49 the state college and university systems who are delegated  
 50 the responsibility for developing, operating and maintaining  
 51 facilities for the production and transmission of distance  
 52 learning; and

53       (3) (4) “SatNet” means those individuals identified as an  
 54 enterprise of the state college and university systems who are  
 55 delegated the responsibility for developing and providing  
 56 distance learning.

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

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

5       (1) The Governor or designee;

6       (2) The State Superintendent of Schools;

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

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

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

15           (b) Not less than one appointive member shall come from  
16 each congressional district. Any vacancy among the  
17 appointed members shall be filled by the Governor by  
18 appointment for the unexpired term.

19           (c) Employees of noncommercial broadcasting stations  
20 in West Virginia are not eligible for appointment to the  
21 Authority. ~~Any vacancy among the appointive members~~  
22 ~~shall be filled by the Governor by appointment for the~~  
23 ~~unexpired term.~~

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

28        (d) The authority shall annually select a member to serve  
29 as the chair. The authority shall annually select one of its  
30 public members as vice chair and shall appoint a secretary  
31 who need not be a member of the Authority and who shall  
32 keep records of its proceedings.

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

38        (e) The authority shall appoint the executive director and  
39 fix his or her salary. The executive director is responsible for  
40 managing and administering the daily functions of the  
41 authority and for performing all other functions necessary to  
42 the effective operation of the authority. The authority is  
43 authorized to establish offices for the proper performance of  
44 its duties.

45        ~~(d)~~ (f) The authority shall hold at least one annual  
46 meeting. The time and place of the meetings shall be

47 established upon its own resolution or at the call of the  
48 chairperson of the authority. The members shall serve  
49 without compensation but may be reimbursed for all  
50 reasonable and necessary expenses actually incurred in the  
51 performance of their duties in a manner consistent with the  
52 guidelines of the Travel Management Office of the  
53 Department of Administration.

**§10-5-3. Powers of authority.**

1 The authority shall have the power:

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

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

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

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

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

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

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

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

34       (9) To lease from communications common carriers and  
35       use such transmission channels as may be necessary or, if it  
36       determines it could more economically construct and  
37       maintain such transmission channels, it may design,  
38       construct, maintain and operate the same, including an audio-  
39       video microwave network;

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

41       (11) To contract and be contracted with, including the  
42       power to enter into contracts with any person, firm or  
43       corporation, including any like authority of neighboring  
44       states; and shall have the authority, within state regulations,  
45       to enter into program royalty and distribution contracts and  
46       receive moneys for these purposes: *Provided*, That any



47 proceeds from such contracts shall be used by the authority  
48 for noncommercial purposes only;

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

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

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

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

1 (a) ~~The authority is further authorized and empowered to~~  
2 may solicit, apply for and receive appropriations, gifts,  
3 bequests or grants from any agency of the United States  
4 government, any agency of the State of West Virginia, any

5 municipality or county within this state, any school board or  
6 college or university supported in whole or in part by this  
7 state or any other person, firm, partnership, association or  
8 corporation, within or without this state, and any agency of  
9 the State of West Virginia, any municipality or county within  
10 this state, or any school board or college or university  
11 supported in whole or in part by this state is hereby  
12 authorized and empowered to make appropriations or grants  
13 to the authority, to assist in achieving the public purpose of  
14 the authority.

15 (b) All such funds shall be deposited with the State  
16 Treasurer of West Virginia or with a private nonprofit  
17 corporation established for the sole purpose of providing  
18 support for public broadcasting in this state which has  
19 entered into a memorandum of understanding with the  
20 authority pursuant to the provisions of section six of this  
21 article, and ~~dispersed by the authority to be used~~ exclusively  
22 for carrying out the provisions of this article: *Provided*, That  
23 any appropriations, gifts, bequests or grants received by the

24 authority with any restriction or restrictions on the use  
25 thereof shall be expended by the authority in accordance with  
26 such restriction or restrictions.

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

1 (a) In furtherance of its mission and fulfillment of its  
2 duties, the authority is expressly authorized to allow its  
3 employees to work with, and its property and facilities to be  
4 used by, private nonprofit corporations established for the  
5 sole purpose of providing support for public broadcasting in  
6 this state.

7 (b) To document the implementation of subsection (a) of  
8 this section, the authority shall enter into memoranda of  
9 understanding with private nonprofit corporations established  
10 for the sole purpose of providing support for public  
11 broadcasting in this state, to delineate the rights and  
12 responsibilities of the parties.

13 (c) Notwithstanding any provision in this code to the  
14 contrary, the names of individual donors to the authority or  
15 to a private nonprofit corporation established for the sole

- 16 purpose of providing support for public broadcasting in this  
17 state are not subject to the provisions of chapter twenty-nine-  
18 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.