

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 241**

5 (By Senators Kessler (Acting President) and Hall,  
6 By Request of the Executive)

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

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

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

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

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

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

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

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

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

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

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

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

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

26           (C) Mine Inspectors' Examining Board provided in article nine,

1 chapter twenty-two-a of this code;

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

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

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

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

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

13 (A) Division of Unemployment Compensation;

14 (B) Division of Employment Service;

15 (C) Division of Workforce Development; and

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

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

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

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

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

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

1 and politic, constituting a public corporation and government  
2 instrumentality. ~~The commission consists of thirteen members:~~

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

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

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

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

1       ~~(3)~~ (2) One member to be appointed by the Governor to  
2 represent public sector nonstate participants in the tourism  
3 industry within the state;

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

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

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

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

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

23 **§5B-2-9. Powers and duties of tourism commission.**

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

26 "Comprehensive tourism promotion and development strategy" means a

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

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

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

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

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

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

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

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

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

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

1 parks and recreational facilities; and

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

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

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

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



1 of West Virginia welcome centers. The commission is further  
2 authorized to promulgate procedural rules pursuant to said chapter  
3 to include instructions and forms for applications relating to  
4 assistance.

5                   **CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE**  
6                   **BRANCH OF STATE GOVERNMENT.**

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

8 **§5F-2-1. Transfer and incorporation of agencies and boards; funds.**

9           (a) 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 Administration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (A) Board of Coal Mine Health and Safety and Coal Mine Safety

1 and Technical Review Committee provided in article six, chapter  
2 twenty-two-a of this code;

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

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

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

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

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

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

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

18 (A) Division of Unemployment Compensation;

19 (B) Division of Employment ~~Services~~ Service;

20 (C) Division of Workforce Development; and

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

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

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

26 (c) The Economic Development Authority provided in article

1 fifteen, chapter thirty-one of this code is continued as an  
2 independent agency within the executive branch.

3 (d) The Water Development Authority and the Water Development  
4 Authority Board provided in article one, chapter twenty-two-c of  
5 this code is continued as an independent agency within the  
6 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  
26 allied, advisory, affiliated or related entities and funds

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

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

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

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

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

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

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

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

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

22 (4) Office of Emergency Medical Services and Emergency Medical  
23 Service Advisory Council provided in article four-c, chapter  
24 sixteen of this code;

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

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

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

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

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

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

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

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

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

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

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

26           (7) Division of Justice and Community Services provided in

1 article nine a, chapter fifteen of this code;

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

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

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

8 (11) Board of Probation and Parole provided in article twelve,  
9 chapter sixty-two of this code. ~~and~~

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

12 (i) 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 Revenue:

16 (1) Tax Division provided in ~~article one,~~ chapter eleven of  
17 this code;

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

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

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

24 (5) ~~Office of~~ West Virginia Alcohol Beverage Control  
25 Commissioner provided in article sixteen, chapter eleven of this  
26 code and article two, chapter sixty of this code;

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

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

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

7 (9) The State Budget Office provided in article two of this  
8 chapter;

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

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

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

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

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

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

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

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



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

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

5 (7) Public Port Authority provided in article sixteen-b,  
6 chapter seventeen of this code.

7 (k) The Veterans' Council provided in article one, chapter  
8 nine-a of this code, including all of the allied, advisory,  
9 affiliated or related entities and funds associated with it is,  
10 incorporated in and administered as part of the Department of  
11 Veteran's Assistance.

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

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

25 ~~(m)~~ (n) Any department previously transferred to and  
26 incorporated in a department by prior enactment of this section

1 means a division of the appropriate department. Wherever reference  
2 is made to any department transferred to and incorporated in a  
3 department created in section two, article one of this chapter, the  
4 reference means a division of the appropriate department and any  
5 reference to a division of a department so transferred and  
6 incorporated means a section of the appropriate division of the  
7 department.

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