

**ENROLLED**

**H. B. 2695**

(By Delegates Morgan, Givens and Stephens)

[Passed March 12, 2011; in effect from passage.]

10 AN ACT to amend and reenact §5F-2-1, of the Code of West Virginia,  
11 1931, as amended; to amend and reenact §10-5-1, §10-5-2, §10-  
12 5-3 and §10-5-4 of said code; and to amend said code by adding  
13 thereto a new section, designated §10-5-6, all relating  
14 generally to organization and authority of executive branch  
15 agencies and departments; relating to the educational  
16 broadcasting authority; modifying organizational structure;  
17 declaring legislative findings; deleting outdated language;  
18 authorizing the authority and its employees to work with  
19 certain private nonprofit corporations; authorizing the use of  
20 the authority's property and facilities for fundraising  
21 purposes; authorizing the authority to solicit funds for the  
22 support of public broadcasting; requiring memoranda of  
23 understanding; and providing exemption from disclosure for  
24 names of private donors.

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

1       That §5F-2-1 of the Code of West Virginia, 1931, as amended,  
2 be amended and reenacted; that §10-5-1, §10-5-2, §10-5-3 and §10-5-  
3 4 of said code be amended and reenacted; and that said code be  
4 amended by adding thereto a new section, designated §10-5-6, all to  
5 read as follows:

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

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

9       **§5F-2-1. Transfer and incorporation of agencies and boards; funds.**

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

- 14       (1) Building Commission provided in article six, chapter five  
15 of this code;
- 16       (2) Public Employees Insurance Agency provided in article  
17 sixteen, chapter five of this code;
- 18       (3) Governor’s Mansion Advisory Committee provided in article  
19 five, chapter five-a of this code;
- 20       (4) Commission on Uniform State Laws provided in article  
21 one-a, chapter twenty-nine of this code;
- 22       (5) West Virginia Public Employees Grievance Board provided in  
23 article three, chapter six-c of this code;
- 24       (6) Board of Risk and Insurance Management provided in article

1 twelve, chapter twenty-nine of this code;

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

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

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

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

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

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

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

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

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

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

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

1 boards are transferred to the Office of Miners' Health, Safety and  
2 Training for purposes of administrative support and liaison with  
3 the office of the Governor:

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

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

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

11 (3) The West Virginia Development Office provided in article  
12 two, chapter five-b of this code;

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

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

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

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

21 (A) Division of Unemployment Compensation;

22 (B) Division of Employment Service;

23 (C) Division of Workforce Development; and

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

25 (8) Division of Energy provided in article two-f, chapter

1 five-b of this code;

2 (9) Division of Tourism Commission provided in article two-h,  
3 chapter five-b of this code.

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

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

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

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

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

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

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

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

25 (6) Shallow Gas Well Review Board provided in article eight,

1 chapter twenty-two-c of this code; and

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

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

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

10       ;

11       (2) Division of Culture and History provided in article one,  
12 chapter twenty-nine of this code;

13       (3) Division of Rehabilitation Services provided in section  
14 two, article ten-a, chapter eighteen of this code.

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

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

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

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

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

5           (4) Office of Emergency Medical Services and the Emergency  
6 Medical Services Advisory Council provided in article four-c,  
7 chapter sixteen of this code;

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

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

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

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

16          (i) The following agencies and boards, including all of the  
17 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 Military Affairs and  
20 Public Safety:

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

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

25           (3) Military Awards Board provided in article one-g, chapter

1 fifteen of this code;

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

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

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

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

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

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

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

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

20

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

25 (1) Tax Division provided in chapter eleven of this code;



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

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

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

7           (5) West Virginia Alcohol Beverage Control Commissioner  
8 provided in article sixteen, chapter eleven of this code and  
9 article two, chapter sixty of this code;

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

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

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

16          (9) The State Budget Office provided in article two of this  
17 chapter;

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

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

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

24          (k) The following agencies and boards, including all of the  
25 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 Transportation:

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

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

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

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

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

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

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

17 (1) The Veterans' Council provided in article one, chapter  
18 nine-a of this code, including all of the allied, advisory,  
19 affiliated or related entities and funds associated with it is,  
20 incorporated in and administered as part of the Department of  
21 Veteran's Assistance.

22 (m) Except for powers, authority and duties that have been  
23 delegated to the secretaries of the departments by the provisions  
24 of section two of this article, the position of administrator and  
25 the powers, authority and duties of each administrator and agency

1 are not affected by the enactment of this chapter.

2       (n) Except for powers, authority and duties that have been  
3 delegated to the secretaries of the departments by the provisions  
4 of section two of this article, the existence, powers, authority  
5 and duties of boards and the membership, terms and qualifications  
6 of members of the boards are not affected by the enactment of this  
7 chapter. All boards that are appellate bodies or are independent  
8 decision makers shall not have their appellate or independent  
9 decision-making status affected by the enactment of this chapter.

10       (o) Any department previously transferred to and incorporated  
11 in a department by prior enactment of this section means a division  
12 of the appropriate department. Wherever reference is made to any  
13 department transferred to and incorporated in a department created  
14 in section two, article one of this chapter, the reference means a  
15 division of the appropriate department and any reference to a  
16 division of a department so transferred and incorporated means a  
17 section of the appropriate division of the department.

18       (p) When an agency, board or commission is transferred under  
19 a bureau or agency other than a department headed by a secretary  
20 pursuant to this section, that transfer is solely for purposes of  
21 administrative support and liaison with the Office of the Governor,  
22 a department secretary or a bureau. Nothing in this section  
23 extends the powers of department secretaries under section two of  
24 this article to any person other than a department secretary and  
25 nothing limits or abridges the statutory powers and duties of

1 statutory commissioners or officers pursuant to this code.

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

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

6 **§10-5-1. Legislative findings; definitions.**

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

8       (1) It is the duty of this state to provide the best  
9 educational training possible for all its citizens;

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

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

24       (4) Because of the unique educational benefit conferred upon

1 and available to all the citizens of the state by the efforts of  
2 the authority and the private nonprofit corporations established  
3 for the sole purpose of providing support for public broadcasting  
4 in this state, authorizing the authority to allow its employees to  
5 work with, and its property and facilities to be used by, the  
6 private nonprofit corporations is a proper, necessary and  
7 beneficial means of providing financial support for the state's  
8 Public Broadcasting Network.

9 (b) The following terms have the following meanings:

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

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

21 (3) "EdNet" means those individuals identified as an  
22 enterprise of the university of West Virginia college of graduate  
23 studies and West Virginia state college on behalf of the state  
24 college and university systems who are delegated the responsibility  
25 for developing, operating and maintaining facilities for the

1 production and transmission of distance learning; and

2 (4) "SatNet" means those individuals identified as an  
3 enterprise of the state college and university systems who are  
4 delegated the responsibility for developing and providing distance  
5 learning.

6 **§10-5-2. West Virginia Educational Broadcasting Authority;**

7 **members; organization; officers; employees;**

8 **meetings; expenses.**

9 (a) The West Virginia Educational Broadcasting Authority is  
10 continued as a public benefit corporation. The Authority shall  
11 consist of eleven voting members, who shall be residents of the  
12 state, including:

13 (1) The Governor or designee;

14 (2) The State Superintendent of Schools;

15 (3) One member of the West Virginia Board of Education to be  
16 selected by it annually;

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

19 (5) Seven members appointed by the Governor by and with the  
20 advice and consent of the Senate for overlapping terms of seven  
21 years, one term expiring each year.

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

1 term.

2 (c) Employees of noncommercial broadcasting stations in West  
3 Virginia are not eligible for appointment to the Authority.

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

9 (e) The authority shall appoint the executive director and fix  
10 his or her salary. The executive director is responsible for  
11 managing and administering the daily functions of the authority and  
12 for performing all other functions necessary to the effective  
13 operation of the authority. The authority is authorized to  
14 establish offices for the proper performance of its duties.

15 (f) The authority shall hold at least one annual meeting. The  
16 time and place of the meetings shall be established upon its own  
17 resolution or at the call of the chairperson of the authority. The  
18 members shall serve without compensation but may be reimbursed for  
19 all reasonable and necessary expenses actually incurred in the  
20 performance of their duties in a manner consistent with the  
21 guidelines of the Travel Management Office of the Department of  
22 Administration.

23 **§10-5-3. Powers of authority.**

24 The authority shall have the power:

25 (1) To act as advisor and consultant to television and radio

1 stations concerning noncommercial educational programs supported by  
2 federal, state, county, city or private funds;

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

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

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

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

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

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



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

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

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

12          (11) To contract and be contracted with, including the power  
13 to enter into contracts with any person, firm or corporation,  
14 including any like authority of neighboring states; and shall have  
15 the authority, within state regulations, to enter into program  
16 royalty and distribution contracts and receive moneys for these  
17 purposes: *Provided*, That any proceeds from such contracts shall be  
18 used by the authority for noncommercial purposes only;

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

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

23          (14) To perform such other services in behalf of noncommercial  
24 educational radio, television and related media as it may consider  
25 to be in the best interest of the state, including the use of the

1 authority's employees, property and facilities for the purpose of  
2 raising funds for the support of public broadcasting.

3 **§10-5-4. Funds; right of state agencies, etc., to contribute to**  
4 **authority.**

5 (a) The authority may solicit, apply for and receive  
6 appropriations, gifts, bequests or grants from any agency of the  
7 United States government, any agency of the State of West Virginia,  
8 any municipality or county within this state, any school board or  
9 college or university supported in whole or in part by this state  
10 or any other person, firm, partnership, association or corporation,  
11 within or without this state, and any agency of the State of West  
12 Virginia, any municipality or county within this state, or any  
13 school board or college or university supported in whole or in part  
14 by this state is hereby authorized and empowered to make  
15 appropriations or grants to the authority, to assist in achieving  
16 the public purpose of the authority.

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

1 restriction or restrictions on the use thereof shall be expended by  
2 the authority in accordance with such restriction or restrictions.

3 **§10-5-6. Cooperation with private nonprofit corporations.**

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

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

14 (c) Notwithstanding any provision in this code to the  
15 contrary, the names of individual donors to the authority or to a  
16 private nonprofit corporation established for the sole purpose of  
17 providing support for public broadcasting in this state are not  
18 subject to the provisions of chapter twenty-nine-b of this code.