

Senate Bill No. 241

(By Senators Kessler (Acting President) and Hall,

By Request of the Executive)

[Introduced January 24, 2011; referred to the Committee on
Government Organization; and then to the Committee on Finance.]

A BILL to amend and reenact §5B-1-2 of the Code of West Virginia,
1931, as amended; to amend and reenact §5B-2-8 and §5B-2-9 of
said code; and to amend and reenact §5F-2-1 of said code, all
relating generally to Division of Tourism and Tourism
Commission; clarifying that Division of Tourism and the
Tourism Commission are separate entities within Department of
Commerce; modifying composition of Tourism Commission; and
modifying the Tourism Commission's annual reporting
requirement.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (A) Division of Unemployment Compensation;

15 (B) Division of Employment Service;

16 (C) Division of Workforce Development; and

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

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

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

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

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

1 (a) There is hereby ~~created~~ continued within the ~~West Virginia~~
2 ~~Development Office~~ Department of Commerce the Division of Tourism
3 and an independent Tourism Commission, which is a body corporate
4 and politic, constituting a public corporation and government
5 instrumentality. The commission consists of ~~thirteen~~ fifteen
6 members:

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

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

22 ~~(3)~~ (2) One member to be appointed by the Governor to
23 represent public sector nonstate participants in the tourism
24 industry within the state;

1 ~~(4)~~ (3) The Secretary of Transportation or his or her
2 designee, ex officio; and

3 ~~(5)~~ (4) The Director of the Division of Natural Resources or
4 his or her designee, ex officio.

5 (b) Each member appointed by the Governor shall serve
6 staggered terms of four years. Any member whose term has expired
7 shall serve until his or her successor has been appointed. Any
8 person appointed to fill a vacancy shall serve only for the
9 unexpired term. Any member shall be eligible for reappointment.
10 In cases of vacancy in the office of member, such vacancy shall be
11 filled by the Governor in the same manner as the original
12 appointment.

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

20 **§5B-2-9. Powers and duties of tourism commission.**

21 (a) The commission shall develop a comprehensive tourism
22 promotion and development strategy for West Virginia.
23 "Comprehensive tourism promotion and development strategy" means a
24 plan that outlines strategies and activities designed to continue,

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

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

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

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

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

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

1 support the purposes of this article;

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

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

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

24 (5) To promote and disseminate information related to the

1 attractions of the state through the operation of the state's
2 telemarketing initiative, which telemarketing initiative shall
3 include a centralized reservation and information system for state
4 parks and recreational facilities; and

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

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

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

20 (f) The commission shall promulgate legislative rules pursuant
21 to the provisions of chapter twenty-nine-a of this code to carry
22 out its purposes and programs, to include generally the programs
23 available, the procedure and eligibility of applications relating
24 to assistance under such programs and the staff structure necessary

1 to support such programs, which structure shall include the
2 qualifications for a professional staff person qualified by reason
3 of exceptional training and experience in the field of advertising
4 to supervise the advertising and promotion functions of the
5 commission, and shall further include provision for the management
6 of West Virginia welcome centers. The commission is further
7 authorized to promulgate procedural rules pursuant to said chapter
8 to include instructions and forms for applications relating to
9 assistance.

10 **CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE**

11 **BRANCH OF STATE GOVERNMENT.**

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

13 **§5F-2-1. Transfer and incorporation of agencies and boards; funds.**

14 (a) 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 Administration:

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

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

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

24 (4) Commission on Uniform State Laws provided in article

1 one-a, chapter twenty-nine of this code;

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

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

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

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

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

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

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

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

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

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

24 (A) Occupational Safety and Health Review Commission provided

1 in article three-a, chapter twenty-one of this code; and

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

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

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

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

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

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

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

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

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

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

3 (A) Division of Unemployment Compensation;

4 (B) Division of Employment Services;

5 (C) Division of Workforce Development; and

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (f) 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 Education and the Arts:

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

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

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

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

23 (g) The following agencies and boards, including all of the
24 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 Health and Human
3 Resources:

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

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

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

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

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

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

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

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

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

- 1 (1) Adjutant General's Department provided in article one-a,
2 chapter fifteen of this code;
- 3 (2) Armory Board provided in article six, chapter fifteen of
4 this code;
- 5 (3) Military Awards Board provided in article one-g, chapter
6 fifteen of this code;
- 7 (4) West Virginia State Police provided in article two,
8 chapter fifteen of this code;
- 9 (5) Division of Homeland Security and Emergency Management and
10 Disaster Recovery Board provided in article five, chapter fifteen
11 of this code and Emergency Response Commission provided in article
12 five-a of said chapter;
- 13 (6) Sheriffs' Bureau provided in article eight, chapter
14 fifteen of this code;
- 15 (7) Division of Justice and Community Services provided in
16 article nine a, chapter fifteen of this code;
- 17 (8) Division of Corrections provided in chapter twenty-five of
18 this code;
- 19 (9) Fire Commission provided in article three, chapter
20 twenty-nine of this code;
- 21 (10) Regional Jail and Correctional Facility Authority
22 provided in article twenty, chapter thirty-one of this code;
- 23 (11) Board of Probation and Parole provided in article twelve,
24 chapter sixty-two of this code; and

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

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

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

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

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

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

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

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

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

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

24 (9) The State Budget Office provided in article two of this
25 chapter;

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

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

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

7 (j) 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 Transportation:

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

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

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

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

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

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

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

25 (k) Except for powers, authority and duties that have been

1 delegated to the secretaries of the departments by the provisions
2 of section two of this article, the position of administrator and
3 the powers, authority and duties of each administrator and agency
4 are not affected by the enactment of this chapter.

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

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

21 (n) When an agency, board or commission is transferred under
22 a bureau or agency other than a department headed by a secretary
23 pursuant to this section, that transfer is solely for purposes of
24 administrative support and liaison with the Office of the Governor,
25 a department secretary or a bureau. Nothing in this section extends

1 the powers of department secretaries under section two of this
2 article to any person other than a department secretary and nothing
3 limits or abridges the statutory powers and duties of statutory
4 commissioners or officers pursuant to this code.

NOTE: The purpose of this bill is to clarify that Division of
Tourism is a separate division within the Department of Commerce;
to increase the number of members of the Tourism Commission; and to
change the makeup of the Commission.

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