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WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011



ENROLLED

House Bill No. 2695

(By Delegates Morgan, Givens and Stephens)



Passed March 12, 2011

In Effect From Passage

HB 2695

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H. B. 2695

(BY DELEGATES MORGAN, GIVENS AND STEPHENS)

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

AN ACT 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 generally to organization and authority of executive branch agencies and departments; 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to the educational broadcasting authority; modifying organizational structure; declaring legislative findings; deleting outdated language; authorizing the authority and its employees to work with certain private nonprofit corporations; authorizing the use of the authority's property and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 provided in
55 article two, chapter five-b of this code;

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

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

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

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

65 (A) Division of Unemployment Compensation;

66 (B) Division of Employment Service;

67 (C) Division of Workforce Development; and

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

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

71 (9) Division of Tourism Commission provided in article
72 two-h, chapter 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 the Water
77 Development Authority Board provided in article one,
78 chapter twenty-two-c of this code is continued as an
79 independent agency within the executive 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 in
94 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) Division of Culture and History provided in article
107 one, chapter twenty-nine of this code;

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

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

114 (h) The following agencies and boards, including all of
115 the allied, advisory, affiliated or related entities and funds
116 associated with any agency or board, are incorporated in and
117 administered as a part of the Department of Health and
118 Human Resources:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

158 (8) Division of Corrections provided in chapter
159 twenty-five of this code;

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

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

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

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

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

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

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

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

178 (5) West Virginia Alcohol Beverage Control
179 Commissioner provided in article sixteen, chapter eleven of
180 this code and article two, chapter sixty of this code;

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

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

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

187 (9) The State Budget Office provided in article two of
188 this chapter;

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

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

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

195 (k) The following agencies and boards, including all of
196 the allied, advisory, affiliated or related entities and funds
197 associated with any agency or board, are incorporated in and
198 administered as a part of the Department of Transportation:

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

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

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

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

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

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

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

214 (l) The Veterans' Council provided in article one, chapter
215 nine-a of this code, including all of the allied, advisory,
216 affiliated or related entities and funds associated with it is,
217 incorporated in and administered as part of the Department of
218 Veteran's Assistance.

219 (m) 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 (n) Except for powers, authority and duties that have been
226 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 (o) 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 (p) When an agency, board or commission is transferred
244 under a bureau or agency other than a department headed by
245 a secretary pursuant to this section, that transfer is solely for
246 purposes of administrative support and liaison with the Office
247 of the Governor, a department secretary or a bureau. Nothing
248 in this section extends the powers of department secretaries
249 under section two of this article to any person other than a
250 department secretary and nothing limits or abridges the
251 statutory powers and duties of statutory commissioners or
252 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;

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 Network.

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

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

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

42 (3) "EdNet" means those individuals identified as an
43 enterprise of the University of West Virginia College of
44 Graduate Studies and West Virginia State College on behalf
45 of the state college and university systems who are delegated
46 the responsibility for developing, operating and maintaining
47 facilities for the production and transmission of distance
48 learning; and

49 (4) "SatNet" means those individuals identified as an
50 enterprise of the state college and university systems who are
51 delegated the responsibility for developing and providing
52 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 continued as a public benefit corporation. The

3 Authority shall consist of eleven voting members, who shall
4 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;

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

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

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

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

21 (d) The authority shall annually select a member to serve
22 as the chair. The authority shall annually select one of its
23 public members as vice chair and shall appoint a secretary
24 who need not be a member of the Authority and who shall
25 keep records of its proceedings.

26 (e) The authority shall appoint the executive director and
27 fix his or her salary. The executive director is responsible for
28 managing and administering the daily functions of the
29 authority and for performing all other functions necessary to

30 the effective operation of the authority. The authority is
31 authorized to establish offices for the proper performance of
32 its duties.

33 (f) The authority shall hold at least one annual meeting.
34 The time and place of the meetings shall be established upon
35 its own resolution or at the call of the chairperson of the
36 authority. The members shall serve without compensation
37 but may be reimbursed for all reasonable and necessary
38 expenses actually incurred in the performance of their duties
39 in a manner consistent with the guidelines of the Travel
40 Management Office of the 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 may solicit, apply for and receive
2 appropriations, gifts, bequests or grants from any agency of
3 the United States government, any agency of the State of
4 West Virginia, any municipality or county within this state,
5 any school board or college or university supported in whole
6 or in part by this state or any other person, firm, partnership,
7 association or corporation, within or without this state, and
8 any agency of the State of West Virginia, any municipality or
9 county within this state, or any school board or college or
10 university supported in whole or in part by this state is hereby
11 authorized and empowered to make appropriations or grants
12 to the authority, to assist in achieving the public purpose of
13 the authority.

14 (b) All such funds shall be deposited with the State
15 Treasurer of West Virginia or with a private nonprofit

16 corporation established for the sole purpose of providing
17 support for public broadcasting in this state which has
18 entered into a memorandum of understanding with the
19 authority pursuant to the provisions of section six of this
20 article, and used exclusively for carrying out the provisions
21 of this article: *Provided*, That any appropriations, gifts,
22 bequests or grants received by the authority with any
23 restriction or restrictions on the use thereof shall be expended
24 by the authority in accordance with such restriction or
25 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.

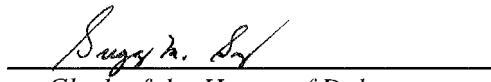
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman, House Committee



Chairman, Senate Committee

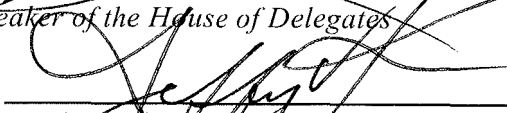
Originating in the House.

To take effect from passage.



Clerk of the House of Delegates


Clerk of the Senate


Speaker of the House of Delegates


President of the Senate

The within is approved this the 4th
day of April, 2011.


Governor

2011 APR -4 PM 2:47
SECRETARIAT OF STATE

PRESENTED TO THE GOVERNOR

MAR 31 2011

Time 11:30 am
EDT