

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED

Com. Sub. for
HOUSE BILL No. 4164

(By Delegate Mr. SPEAKER, Mr. CHAMBERS AND
DELEGATE BURK)

[By Request of the Executive]
— ● —

Passed March 7, 1992

In Effect From Passage

®  C 641

RECEIVED
1992 APR - 1 PM 4:40
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4164

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)
[By Request of the Executive]

[Passed March 7, 1992; in effect from passage.]

AN ACT to amend and reenact article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the reorganization of the governor's office of community and industrial development; redesignating office the West Virginia office of development; creating a council for community and economic development; members, appointment and expenses; providing that the council employ an executive director to serve at its will and pleasure; powers and duties of the council; council required to develop plan for internal reorganization of office and authorized to terminate inactive or ineffective programs; economic development initiatives; mandating plan for creating regional economic development corporations funded through matching grant program; requiring council to make certain reports to the Legislature; authorizing office to contract with nonprofit private corporation funded from private sources; permitting payment of performance-based incentives by the nonprofit private corporation to the director and economic development representatives; authorizing public-private joint ventures; authorizing employment of economic development representatives exempted from civil service protections;

transition and savings provision; and staff reorganization.

Be it enacted by the Legislature of West Virginia:

That article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

ARTICLE 2. WEST VIRGINIA OFFICE OF DEVELOPMENT.

§5B-2-1. Governor's office of community and industrial development redesignated West Virginia development office.

1 The governor's office of community and industrial
2 development is hereby continued but is hereafter
3 designated and shall be known as the West Virginia
4 development office. All references in this code to the
5 office of community and industrial development or the
6 governor's office of community and industrial develop-
7 ment shall be construed as references to the West
8 Virginia development office.

**§5B-2-2. Council for community and economic develop-
ment created; members, appointment and
expenses; appointment and compensation of
director.**

1 There is hereby created within the West Virginia
2 development office a council for community and eco-
3 nomic development, which is a body corporate and
4 politic, constituting a public corporation and govern-
5 ment instrumentality. Membership on the council shall
6 consist of:

7 (1) Nine members to be appointed by the governor,
8 with the advice and consent of the Senate, representing
9 community or regional interests, including economic
10 development, commerce, banking, manufacturing, the
11 utility industry, the mining industry, the telecommu-
12 nications/data processing industry, small business, labor,
13 tourism, or agriculture: *Provided*, That one member
14 appointed pursuant to this subsection shall be a member

15 of a regional planning and development council. Of the
16 nine members representing community or regional
17 interests, three members shall be from each congres-
18 sional district of the state, and shall be appointed in such
19 a manner as to provide a broad geographical distribu-
20 tion of members of the council.

21 (2) Two at-large members to be appointed by the
22 governor with the advice and consent of the senate;

23 (3) One member to be appointed by the governor from
24 a list of two persons recommended by the speaker of the
25 House of Delegates;

26 (4) One member to be appointed by the governor from
27 a list of two persons recommended by the president of
28 the Senate;

29 (5) The president of the West Virginia economic
30 development council; and

31 (6) The secretary of the department of commerce,
32 labor and environmental resources.

33 (b) Not later than the first day of July, one thousand
34 nine hundred ninety-two, the governor shall appoint the
35 thirteen appointed members of the council for staggered
36 terms. The terms of the board members first taking
37 office on or after the effective date of this legislation
38 shall expire as designated by the governor at the time
39 of the nomination, three at the end of the first year,
40 three at the end of the second year, three at the end of
41 the third year, and four at the end of the fourth year,
42 after the first day of July, one thousand nine hundred
43 ninety-two. As these original appointments expire, each
44 subsequent appointment shall be for a full four year
45 term. Any member whose term has expired shall serve
46 until his successor has been duly appointed and quali-
47 fied. Any person appointed to fill a vacancy shall serve
48 only for the unexpired term. Any member shall be
49 eligible for reappointment. In cases of any vacancy in
50 the office of a member, such vacancy shall be filled by
51 the governor in the same manner as the original
52 appointment.

53 (c) Members of the council shall not be entitled to

54 compensation for services performed as members, but
55 shall be entitled to reimbursement for all reasonable
56 and necessary expenses actually incurred in the perfor-
57 mance of their duties. A majority of the members shall
58 constitute a quorum for the purpose of conducting
59 business. The council shall elect its chair for a term to
60 run concurrent with the term of office of the member
61 elected as chair. The chair is eligible for successive
62 terms in that position.

63 (d) The council shall employ an executive director of
64 the West Virginia development office qualified by
65 reason of extensive education and experience in the field
66 of professional economic development, to serve at the
67 will and pleasure of the council. The salary of the
68 director shall be fixed by the council. The director shall
69 have overall management responsibility and administra-
70 tive control and supervision within the West Virginia
71 development office. It is the intention of the Legislature
72 that the director shall provide professional and technical
73 expertise in the field of professional economic develop-
74 ment in order to support the policymaking functions of
75 the council, but that the director is not a public officer,
76 agent, servant or contractor within the meaning of
77 section thirty-eight, article six of the Constitution of the
78 state. Subject to the provisions of the contract provided
79 for in section four of this article, the director is
80 authorized to hire and fire economic development
81 representatives employed pursuant to the provisions of
82 section five of this article.

**§5B-2-3. Powers and duties of council for community and
economic development.**

1 (a) The council for community and economic develop-
2 ment shall enhance economic growth and development
3 through the development of a comprehensive economic
4 development strategy for West Virginia. "Comprehen-
5 sive economic development strategy" means a plan that
6 outlines strategies and activities designed to continue,
7 diversify, or expand the economic base of the state as
8 a whole; create jobs; develop a highly skilled work force;
9 facilitate business access to capital, including venture
10 capital; advertise and market the resources offered by

11 the state with respect to the needs of business and
 12 industry; facilitate cooperation among local, regional
 13 and private economic development enterprises; improve
 14 infrastructure on a state, regional, and community level;
 15 improve the business climate generally; and leverage
 16 funding from sources other than the state, including
 17 federal and private sources.

18 (b) The council shall develop a plan for the internal
 19 reorganization of the West Virginia development office.
 20 The plan shall evaluate programs and policies in place
 21 within the governor's office of community and industrial
 22 development on the first day of February, one thousand
 23 nine hundred ninety-two, with respect to their efficacy
 24 in yielding results with respect to economic development
 25 and is authorized to terminate, by resolution of the
 26 council, programs and policies which are either inactive,
 27 or ineffective in design or in application, in enhancing
 28 economic development. In developing its reorganization
 29 plan, the council shall consider the following initiatives:

30 (1) Creation of a competitiveness council composed of
 31 public and private members having as its primary goal
 32 the generation of new ideas for economic development
 33 and meeting on a periodic basis to develop broad
 34 ranging recommendations for the governor and the
 35 Legislature;

36 (2) Creation of a private nonprofit corporation for
 37 rural innovation to attract federal and foundation
 38 funding to develop and implement rural economic
 39 development initiatives;

40 (3) Creation of a consortium for work force readiness
 41 composed of members from vocational-technical-occupa-
 42 tional education and higher education to develop
 43 initiatives for work force development, which may
 44 include mobile technology training centers;

45 (4) Creation of a one-stop capital access program to
 46 attract capital from sources inside and outside the state;
 47 to work with the private sector, including lending
 48 institutions; to assist entrepreneurs and businesses to
 49 access capital; and to coordinate all state economic
 50 development loan programs;

51 (5) Creation of a seed capital fund to be used for small
52 business start-ups. Loans from the interest on the fund
53 would match loans from private sources on a one-to-one
54 basis to assist new small businesses in need of operating
55 capital;

56 (6) Promotion of cooperation among municipalities
57 and counties in funding physical infrastructure, includ-
58 ing regional business parks; and

59 (7) The council shall develop a plan for the creation
60 of regional economic development corporations or
61 authorities and funding assistance to such corporations
62 or authorities through a matching grant program. The
63 council shall establish criteria for awarding funding
64 assistance to such corporations or authorities within the
65 limits of funds appropriated by the Legislature for the
66 program. The West Virginia development office shall
67 recognize existing county, regional or multi-county
68 corporations or authorities where appropriate.

69 In developing its plan, the West Virginia development
70 office shall consider resources and technical support
71 available through other agencies, both public and
72 private, including, but not limited to, the state college
73 and university systems; the West Virginia housing
74 development fund; the West Virginia economic develop-
75 ment authority; the West Virginia parkways, economic
76 development and tourism authority; the West Virginia
77 roundtable; the West Virginia chamber of commerce;
78 regional planning and development councils; regional
79 partnership for progress councils; and state appropria-
80 tions.

81 (c) On or before the first day of December, one
82 thousand nine hundred ninety-two, the council shall
83 report to the governor and the Legislature on its plan
84 for the internal reorganization of the West Virginia
85 development office, including its recommendations with
86 respect to necessary legislation.

87 (d) The council shall conduct a comprehensive survey
88 of value-added products and report the results of the
89 survey to the Legislature on or before the thirty-first
90 day of December, one thousand nine hundred ninety-

91 two. The survey shall determine the following:

92 (1) What products are produced in West Virginia to
93 which value is added at some location outside the state,
94 and what value is added to the product;

95 (2) Current West Virginia businesses which add value
96 to products produced in or outside the state, and what
97 value is added;

98 (3) Opportunities which exist in the state to create jobs
99 by establishing businesses to add value to products
100 produced in or outside the state; and

101 (4) Products that are utilized by businesses in the state
102 that are received from sources outside the state.

103 (e) The council shall promulgate rules and regulations
104 to carry out the purposes and programs of the West
105 Virginia development office to include generally the
106 programs available, and the procedure and eligibility of
107 applications relating to assistance under such programs;
108 these rules and regulations shall not be subject to the
109 provisions of chapter twenty-nine-a of this code, but
110 shall be filed with the secretary of state.

**§5B-2-3a. Advertising and promotion reports; reporting
same to Legislature.**

1 By the thirty-first day of December, one thousand nine
2 hundred ninety-two, all state governmental entities
3 having an advertising and promotion allocation within
4 their budget shall make a report to the council contain-
5 ing the dollar amounts spent for advertising and
6 promotion, to whom and for what such moneys are
7 expended and any other information pertinent to the
8 entity's advertising and promotion activities which may
9 be of interest and use to the council. The council shall
10 compile such information received pursuant to this
11 section and shall report to the Legislature during the
12 one thousand nine hundred ninety-three Legislative
13 session.

§5B-2-4. Public-private partnerships.

1 The West Virginia development office is authorized to
2 enter into contractual or joint venture agreements with

3 a nonprofit corporation organized pursuant to the
4 corporate laws of the state, organized to permit
5 qualification pursuant to section 501(c) of the Internal
6 Revenue Code and for purposes of the economic devel-
7 opment of West Virginia, and funded from sources other
8 than the state. Members of the council are authorized
9 to sit on the board of directors of the private nonprofit
10 corporation. The contract shall include provisions
11 relating to the employment of economic development
12 representatives assigned to the West Virginia develop-
13 ment office to be paid a base salary by the state and
14 performance-based economic incentives from private
15 funds of the nonprofit corporation. Provisions relating
16 to hiring practices with respect to economic develop-
17 ment representatives, job descriptions, accountability,
18 public-private liaison, and performance standards may
19 be the subject of contract negotiations. The contract
20 shall include provision for continuing education and
21 certification in the field of economic or industrial
22 development for persons employed as economic develop-
23 ment representatives. Agreements providing for the
24 payment of performance-based incentives to the director
25 of the West Virginia development office are authorized.
26 Agreements providing for the payment of travel and
27 expenses to the director of the West Virginia develop-
28 ment office or to economic development representatives
29 from private funds by the nonprofit corporation are
30 authorized. The prohibitions of subdivisions (b) and (d),
31 section five, article two, chapter six-b of this code are
32 not applicable to the receipt by economic development
33 representatives or by the director of performance-based
34 incentives and other payments made by the nonprofit
35 corporation and specifically authorized pursuant to this
36 section.

37 From time to time the council may enter into joint
38 ventures wherein the West Virginia development office
39 and the nonprofit corporation share in the development
40 and funding of economic development programs.

41 All contracts and joint venture agreements must be
42 approved by vote of the council. Contracts entered into
43 pursuant to this section for longer than one fiscal year

44 shall contain, in substance, a provision that the contract
 45 shall be considered cancelled without further obligation
 46 on the part of the state if the state Legislature or, where
 47 appropriate, the federal government, shall fail to
 48 appropriate sufficient funds therefor or shall act to
 49 impair the contract or cause it to be cancelled.

§5B-2-5. Economic development representatives.

1 The director is expressly authorized to employ
 2 economic development representatives to be paid a base
 3 salary within legislative appropriations to the West
 4 Virginia development office, subject to provisions set
 5 forth by the council in its reorganization plan and
 6 applicable contract provisions pursuant to section four
 7 of this article. Economic development representatives
 8 may receive performance-based incentives and expenses
 9 paid from private funds from a nonprofit corporation
 10 contracting with the West Virginia development office
 11 pursuant to the provisions of section four of this article.
 12 The director shall establish job descriptions and
 13 responsibilities of economic development representa-
 14 tives, subject to the provisions of any contract with a
 15 nonprofit corporation entered into pursuant to section
 16 four of this article.

17 Notwithstanding any provision of this code to the
 18 contrary, economic development representatives em-
 19 ployed within the West Virginia development office are
 20 not subject to the procedures and protections provided
 21 by article six and six-a, chapter twenty-nine of this code.
 22 Any employee of the West Virginia development office
 23 on the effective date of this article who applies for
 24 employment as an economic development representative
 25 is not entitled to the protections of article six, chapter
 26 twenty-nine with respect to hiring procedures and
 27 qualifications; and upon accepting employment as a
 28 economic development representative, the employee
 29 relinquishes the protections provided for in articles six
 30 and six-a, chapter twenty-nine.

§5B-2-6. Transition; savings provision.

1 All programs, orders, determinations, rules, permits,
 2 grants, contracts, certificates, bonds, authorizations and

3 privileges which have been issued, made, granted, or
4 allowed to become effective pursuant to any prior
5 enactments of this article or by the governor, the
6 governor's office of community and industrial develop-
7 ment or its director, or by a court of competent
8 jurisdiction, and which are in effect on the first day of
9 February, one thousand nine hundred ninety-two, shall
10 continue in effect according to their terms until
11 modified, terminated, superseded, set aside, or revoked
12 by the governor, the council for community and
13 economic development or the director of the West
14 Virginia development office pursuant to this article, by
15 a court of competent jurisdiction, or by operation of law.

§5B-2-7. Staff reorganization.

1 It is the intention of the Legislature that research and
2 support staff for the council and for professional
3 economic development staff, including the director of
4 the West Virginia development office and economic
5 development representatives, be drawn, where possible,
6 in the reorganization developed by the council, from
7 qualified employees employed within the governor's
8 office of community and industrial development on the
9 first day of February, one thousand nine hundred
10 ninety-two.

11 The director, pursuant to the reorganization plan as
12 approved by the council, may eliminate or consolidate
13 positions, and name a person to fill more than one
14 position; delegate, assign, transfer or combine responsi-
15 bilities or duties to or among employees; and reorganize
16 internal functions or operations.

17 Except as provided in section five of this article,
18 nothing contained in this article shall be construed to
19 abridge the rights of employees within the classified
20 service of the state as provided in sections ten and ten-
21 a, article six, chapter twenty-nine of this code. The
22 layoff and recall rights of employees within the classi-
23 fied service of the state as provided in subsections five
24 and six, section ten, article six, chapter twenty-nine of
25 this code shall be applicable within the agency as a
26 whole: *Provided*, That the employee shall possess the

27 qualifications established for the job class. The duration
28 of recall rights provided in this section shall be limited
29 to two years or the length of tenure, whichever is less.

30 The department of commerce, labor and environmen-
31 tal resources, the public employees retirement system
32 and the public employees insurance agency shall work
33 with all employees whose jobs are terminated as a result
34 of the reorganization of the West Virginia development
35 office as provided for in this article in order to
36 recommend benefits, services, training, an interagency
37 employment transfer or other employment. The director
38 of the West Virginia development office and directors
39 of all other state agencies shall use best efforts to employ
40 qualified employees who were employed in positions
41 directly affected by the reorganization: *Provided*, That
42 notwithstanding any other provision of the code to the
43 contrary, in filling vacancies at other state agencies, the
44 directors of such agencies shall, for a period of twenty-
45 four months or the length of tenure, whichever is less,
46 after the effective date of this article, give preference
47 over all but existing employees to those qualified
48 employees whose jobs were terminated as a result of the
49 reorganization: *Provided, however*, That such preference
50 shall not supersede those employees with recall rights
51 in other state agencies. The director of the West
52 Virginia development office shall provide to the division
53 of personnel a list of those employees directly affected
54 by the reorganization.

Enr. Com. Sub. for H. B. 4164] 12

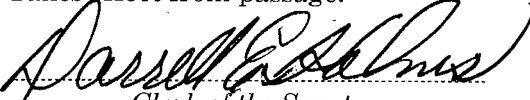
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

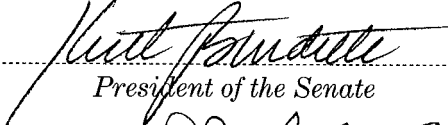

.....
Chairman House Committee

Originating in the House.

Takes effect from passage.

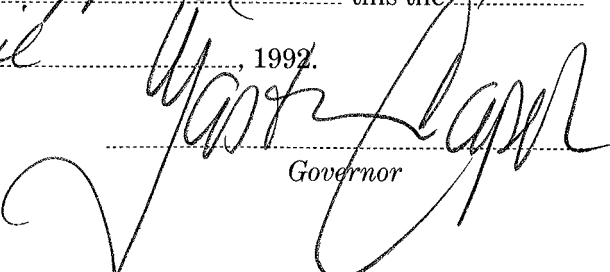

.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker of the House of Delegates

The within is approved this the 15th
day of April, 1992.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/92

Time 3:45pm