WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

ENROLLED

Con. Sub. for
HOUSE BILL No. 9164

(By Delegate Mr. Speaker, Mr. Changes and Delegate Brea)
[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.

The governor's office of community and industrial development is hereby continued but is hereafter designated and shall be known as the West Virginia development office. All references in this code to the office of community and industrial development or the governor's office of community and industrial development shall be construed as references to the West Virginia development office.

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

There is hereby created within the West Virginia development office a council for community and economic development, which is a body corporate and politic, constituting a public corporation and government instrumentality. Membership on the council shall consist of:

(1) Nine members to be appointed by the governor, with the advice and consent of the Senate, representing community or regional interests, including economic development, commerce, banking, manufacturing, the utility industry, the mining industry, the telecommunications/data processing industry, small business, labor, tourism, or agriculture: Provided, That one member appointed pursuant to this subsection shall be a member
of a regional planning and development council. Of the
nine members representing community or regional
interests, three members shall be from each congres-
sional district of the state, and shall be appointed in such
a manner as to provide a broad geographical distribu-
tion of members of the council.

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

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

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

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

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

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

(c) Members of the council shall not be entitled to
compensation for services performed as members, but
shall be entitled to reimbursement for all reasonable
and necessary expenses actually incurred in the perfor-
mane of their duties. A majority of the members shall
constitute a quorum for the purpose of conducting
business. The council shall elect its chair for a term to
run concurrent with the term of office of the member
elected as chair. The chair is eligible for successive
terms in that position.

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

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

(a) The council for community and economic develop-
ment shall enhance economic growth and development
through the development of a comprehensive economic
development strategy for West Virginia. “Comprehen-
sive economic development strategy” means a plan that
outlines strategies and activities designed to continue,
diversify, or expand the economic base of the state as
a whole; create jobs; develop a highly skilled work force;
facilitate business access to capital, including venture
capital; advertise and market the resources offered by
the state with respect to the needs of business and
industry; facilitate cooperation among local, regional
and private economic development enterprises; improve
infrastructure on a state, regional, and community level;
approve the business climate generally; and leverage
funding from sources other than the state, including
federal and private sources.

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

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

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

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

(4) Creation of a one-stop capital access program to
attract capital from sources inside and outside the state;
to work with the private sector, including lending
institutions; to assist entrepreneurs and businesses to
access capital; and to coordinate all state economic
development loan programs;
(5) Creation of a seed capital fund to be used for small business start-ups. Loans from the interest on the fund would match loans from private sources on a one-to-one basis to assist new small businesses in need of operating capital;

(6) Promotion of cooperation among municipalities and counties in funding physical infrastructure, including regional business parks; and

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

In developing its plan, the West Virginia development office shall consider resources and technical support available through other agencies, both public and private, including, but not limited to, the state college and university systems; the West Virginia housing development fund; the West Virginia economic development authority; the West Virginia parkways, economic development and tourism authority; the West Virginia roundtable; the West Virginia chamber of commerce; regional planning and development councils; regional partnership for progress councils; and state appropriations.

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

(d) The council shall conduct a comprehensive survey of value-added products and report the results of the survey to the Legislature on or before the thirty-first day of December, one thousand nine hundred ninety-
two. The survey shall determine the following:

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

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

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

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

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

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

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

§5B-2-4. Public-private partnerships.

The West Virginia development office is authorized to 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
corporation. The contract shall include provisions
10 relating to the employment of economic development
11 representatives assigned to the West Virginia develop-
12 ment office to be paid a base salary by the state and
13 performance-based economic incentives from private
14 funds of the nonprofit corporation. Provisions relating
15 to hiring practices with respect to economic develop-
16 ment representatives, job descriptions, accountability,
17 public-private liaison, and performance standards may
18 be the subject of contract negotiations. The contract
19 shall include provision for continuing education and
20 certification in the field of economic or industrial
21 development for persons employed as economic develop-
22 ment representatives. Agreements providing for the
23 payment of performance-based incentives to the director
24 of the West Virginia development office are authorized.
25 Agreements providing for the payment of travel and
26 expenses to the director of the West Virginia develop-
27 ment office or to economic development representatives
28 from private funds by the nonprofit corporation are
29 authorized. The prohibitions of subdivisions (b) and (d),
30 section five, article two, chapter six-b of this code are
31 not applicable to the receipt by economic development
32 representatives or by the director of performance-based
33 incentives and other payments made by the nonprofit
corporation and specifically authorized pursuant to this
34 section.
35
36 From time to time the council may enter into joint
37 ventures wherein the West Virginia development office
38 and the nonprofit corporation share in the development
39 and funding of economic development programs.
40
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
shall contain, in substance, a provision that the contract shall be considered cancelled without further obligation on the part of the state if the state Legislature or, where appropriate, the federal government, shall fail to appropriate sufficient funds therefor or shall act to impair the contract or cause it to be cancelled.

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

The director is expressly authorized to employ economic development representatives to be paid a base salary within legislative appropriations to the West Virginia development office, subject to provisions set forth by the council in its reorganization plan and applicable contract provisions pursuant to section four of this article. Economic development representatives may receive performance-based incentives and expenses paid from private funds from a nonprofit corporation contracting with the West Virginia development office pursuant to the provisions of section four of this article. The director shall establish job descriptions and responsibilities of economic development representatives, subject to the provisions of any contract with a nonprofit corporation entered into pursuant to section four of this article.

Notwithstanding any provision of this code to the contrary, economic development representatives employed within the West Virginia development office are not subject to the procedures and protections provided by article six and six-a, chapter twenty-nine of this code. Any employee of the West Virginia development office on the effective date of this article who applies for employment as an economic development representative is not entitled to the protections of article six, chapter twenty-nine with respect to hiring procedures and qualifications; and upon accepting employment as a economic development representative, the employee relinquishes the protections provided for in articles six and six-a, chapter twenty-nine.

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

All programs, orders, determinations, rules, permits, grants, contracts, certificates, bonds, authorizations and
privileges which have been issued, made, granted, or
allowed to become effective pursuant to any prior
enactments of this article or by the governor, the
governor's office of community and industrial develop-
ment or its director, or by a court of competent
jurisdiction, and which are in effect on the first day of
February, one thousand nine hundred ninety-two, shall
continue in effect according to their terms until
modified, terminated, superseded, set aside, or revoked
by the governor, the council for community and
economic development or the director of the West
Virginia development office pursuant to this article, by
a court of competent jurisdiction, or by operation of law.

§5B-2-7. Staff reorganization.

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

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

Except as provided in section five of this article,
nothing contained in this article shall be construed to
abridge the rights of employees within the classified
service of the state as provided in sections ten and ten-
a, article six, chapter twenty-nine of this code. The
layoff and recall rights of employees within the classi-
fied service of the state as provided in subsections five
and six, section ten, article six, chapter twenty-nine of
this code shall be applicable within the agency as a
whole: Provided, That the employee shall possess the
qualifications established for the job class. The duration
of recall rights provided in this section shall be limited
to two years or the length of tenure, whichever is less.

The department of commerce, labor and environmental
resources, the public employees retirement system
and the public employees insurance agency shall work
with all employees whose jobs are terminated as a result
of the reorganization of the West Virginia development
office as provided for in this article in order to
recommend benefits, services, training, an interagency
employment transfer or other employment. The director
of the West Virginia development office and directors
of all other state agencies shall use best efforts to employ
qualified employees who were employed in positions
directly affected by the reorganization: Provided, That
notwithstanding any other provision of the code to the
contrary, in filling vacancies at other state agencies, the
directors of such agencies shall, for a period of twenty-
four months or the length of tenure, whichever is less,
after the effective date of this article, give preference
over all but existing employees to those qualified
employees whose jobs were terminated as a result of the
reorganization: Provided, however, That such preference
shall not supersede those employees with recall rights
in other state agencies. The director of the West
Virginia development office shall provide to the division
of personnel a list of those employees directly affected
by the reorganization.

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.

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Clerk of the Senate

__________________________
Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within is approved this the 1st
day of April, 1992.

__________________________
Governor
PRESENTED TO THE
GOVERNOR

Date 3/27/92
Time 3:45 PM