WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

ENROLLED

Committee Substitute for
SENATE BILL NO. 317

(By Senators Tomblin, Mr. President, and Backer, by request of the Executive)

PASSED April 12, 1997

In Effect From Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 317

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND BUCKALEW,
BY REQUEST OF THE EXECUTIVE)

[Passed April 12, 1997; in effect from passage.]

AN ACT to repeal article fourteen, chapter twenty-nine of the
code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article
two, chapter five-f of said code; and to amend chapter sixteen of said code by adding thereto a new article,
designated article five-n, all relating to abolishing the
state commission on aging and creating the bureau of
senior services; making technical changes, deletions and
corrections to the structure of the executive branch and
listing of executive agencies; providing a purpose, short
title and definitions; providing for appointment of a
commissioner of the bureau and providing for qualifica-
tions, oath, offices, compensation and expenses; powers and duties of commissioner; creating the council on aging; composition of council and terms of members; officers; meetings; expenses; providing programs and services for the aging; prevention of crimes against the elderly; designating the bureau as the state agency for handling federal programs; providing for donations, records, rules and reports; and continuation of bureau.

Be it enacted by the Legislature of West Virginia:

That article fourteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article two, chapter five-f of said code be amended and reenacted; and that chapter sixteen of said code be amended by adding thereto a new article, designated article five-n, 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.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of administration:

(1) Building commission provided for in article six, chapter five of this code;

(2) Public employees insurance agency and public employees insurance agency advisory board provided for in article sixteen, chapter five of this code;

(3) Governor's mansion advisory committee provided for in article five, chapter five-a of this code;

(4) Commission on uniform state laws provided for in article one-a, chapter twenty-nine of this code;

(5) Education and state employees grievance board provided for in article twenty-nine, chapter eighteen of
this code and article six-a, chapter twenty-nine of this code;

(6) Board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;

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

(8) Public defender services provided for in article twenty-one, chapter twenty-nine of this code;

(9) Division of personnel provided for in article six, chapter twenty-nine of this code;

(10) The West Virginia ethics commission provided for in article two, chapter six-b of this code;

(11) Consolidated public retirement board provided for in article ten-d, chapter five of this code; and

(12) The child support enforcement division designated in chapter forty-eight-a of this code.

(b) The department of commerce, labor and environmental resources and the office of secretary of the department of commerce, labor and environmental resources are hereby abolished. For purposes of administrative support and liaison with the office of the governor, the following agencies and boards, including all allied, advisory and affiliated entities shall be grouped under three bureaus as follows:

(1) Bureau of commerce:

(A) Division of labor provided for in article one, chapter twenty-one of this code, which shall include:

(i) Occupational safety and health review commission provided for in article three-a, chapter twenty-one of this code; and

(ii) Board of manufactured housing construction and safety provided for in article nine, chapter twenty-one of this code;

(B) Office of miners' health, safety and training provided for in article one, chapter twenty-two-a of this code. The
following boards are transferred to the office of miners’ health, safety and training for purposes of administrative support and liaison with the office of the governor:

(i) Board of coal mine health and safety and coal mine safety and technical review committee provided for in article six, chapter twenty-two-a of this code;

(ii) Board of miner training, education and certification provided for in article seven, chapter twenty-two-a of this code; and

(iii) Mine inspectors’ examining board provided for in article nine, chapter twenty-two-a of this code;

(C) The West Virginia development office provided for in article two, chapter five-b of this code, which shall include:

(i) Enterprise zone authority provided for in article two-b, chapter five-b of this code;

(ii) Economic development authority provided for in article fifteen, chapter thirty-one of this code; and

(iii) Tourism commission provided for in article two, chapter five-b of this code and the office of the tourism commissioner;

(D) Division of natural resources and natural resources commission provided for in article one, chapter twenty of this code. The Blennerhassett historical state park provided for in article eight, chapter twenty-nine of this code shall be under the division of natural resources;

(E) Division of forestry provided for in article one-a, chapter nineteen of this code;

(F) Geological and economic survey provided for in article two, chapter twenty-nine of this code;

(G) Water development authority and board provided for in article one, chapter twenty-two-a of this code;

(2) Bureau of employment programs provided for in article one, chapter twenty-one-a of this code;

(3) Bureau of environment:
(A) Air quality board provided for in article two, chapter twenty-two-b of this code;

(B) Solid waste management board provided for in article three, chapter twenty-two-c of this code;

(C) Environmental quality board, or its successor board, provided for in article three, chapter twenty-two-b of this code;

(D) Division of environmental protection provided for in article one, chapter twenty-two of this code;

(E) Surface mine board provided for in article four, chapter twenty-two-b of this code;

(F) Oil and gas inspectors' examining board provided for in article seven, chapter twenty-two-c of this code; and

(G) Shallow gas well review board provided for in article eight, chapter twenty-two-c of this code.

(c) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of education and the arts:

(1) Library commission provided for in article one, chapter ten of this code;

(2) Educational broadcasting authority provided for in article five, chapter ten of this code;

(3) University of West Virginia board of trustees provided for in article two, chapter eighteen-b of this code;

(4) Board of directors of the state college system provided for in article three, chapter eighteen-b of this code;

(5) Joint commission for vocational-technical-occupational education provided for in article three-a, chapter eighteen-b of this code;
(6) Division of culture and history provided for in article one, chapter twenty-nine of this code; and

(7) Division of rehabilitation services provided for in section two, article ten-a, chapter eighteen of this code.

(d) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of health and human resources:

(1) Human rights commission provided for in article eleven, chapter five of this code;

(2) Division of human services provided for in article two, chapter nine of this code;

(3) Bureau of public health provided for in article one, chapter sixteen of this code;

(4) Office of emergency medical services and advisory council thereto provided for in article four-c, chapter sixteen of this code;

(5) Health care cost review authority provided for in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on mental retardation provided for in article fifteen, chapter twenty-nine of this code;

(7) Women’s commission provided for in article twenty, chapter twenty-nine of this code; and

(8) The child support enforcement division designated in chapter forty-eight-a of this code.

(e) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of military affairs and public safety:

(1) Adjutant general’s department provided for in article one-a, chapter fifteen of this code;
(2) Armory board provided for in article six, chapter fifteen of this code;

(3) Military awards board provided for in article one-g, chapter fifteen of this code;

(4) West Virginia state police provided for in article two, chapter fifteen of this code;

(5) Office of emergency services and disaster recovery board provided for in article five, chapter fifteen of this code and emergency response commission provided for in article five-a of said chapter;

(6) Sheriffs' bureau provided for in article eight, chapter fifteen of this code;

(7) Division of corrections provided for in chapter twenty-five of this code;

(8) Fire commission provided for in article three, chapter twenty-nine of this code;

(9) Regional jail and correctional facility authority provided for in article twenty, chapter thirty-one of this code;

(10) Board of probation and parole provided for in article twelve, chapter sixty-two of this code; and

(11) Division of veterans' affairs and veterans' council provided for in article one, chapter nine-a of this code.

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of tax and revenue:

(1) Tax division provided for in article one, chapter eleven of this code;

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

(3) Lottery commission and position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;
(4) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;

(5) Office of alcohol beverage control commissioner provided for in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(6) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

(7) Lending and credit rate board provided for in chapter forty-seven-a of this code;

(8) Division of banking provided for in article two, chapter thirty-one-a of this code; and

(9) The child support enforcement division as designated in chapter forty-eight-a of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of transportation:

(1) Division of highways provided for in article two-a, chapter seventeen of this code;

(2) Parkways, economic development and tourism authority provided for in article sixteen-a, chapter seventeen of this code;

(3) Division of motor vehicles provided for in article two, chapter seventeen-a of this code;

(4) Driver's licensing advisory board provided for in article two, chapter seventeen-b of this code;

(5) Aeronautics commission provided for in article two-a, chapter twenty-nine of this code;

(6) State rail authority provided for in article eighteen, chapter twenty-nine of this code; and

(7) Port authority provided for in article sixteen-b, chapter seventeen of this code.

(h) Except for such powers, authority and duties as have
been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency shall not be affected by the enactment of this chapter.

(i) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of such boards shall not be affected by the enactment of this chapter and all boards which are appellate bodies or were otherwise established to be independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(j) Any department previously transferred to and incorporated in a department created in section two, article one of this chapter by prior enactment of this section in chapter three, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-nine, and subsequent amendments thereto, shall henceforth be read, construed and understood to mean a division of the appropriate department so created. Wherever elsewhere in this code, in any act, in general or other law, in any rule or regulation, or in any ordinance, resolution or order, reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, such reference shall henceforth be read, construed and understood to mean a division of the appropriate department so created, and any such reference elsewhere to a division of a department so transferred and incorporated shall henceforth be read, construed and understood to mean a section of the appropriate division of the department so created.

(k) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer shall be construed to be solely for purposes of administrative support and liaison with the office of the governor, a
department secretary or a bureau. The bureaus created by the Legislature upon the abolishment of the department of commerce, labor and environmental resources in the year one thousand nine hundred ninety-four shall be headed by a commissioner or other statutory officer of an agency within that bureau. Nothing in this section shall be construed to extend the powers of department secretaries under section two of this article to any person other than a department secretary and nothing herein shall be construed to limit or abridge the statutory powers and duties of statutory commissioners or officers pursuant to this code. Upon the abolishment of the office of secretary of the department of commerce, labor and environmental resources, the governor may appoint a statutory officer serving functions formerly within that department to a position which was filled by the secretary ex officio.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5N. SENIOR SERVICES.

§16-5N-1. Purpose of article.

  1 The purpose of this article is to create a bureau in state government which promotes services to enhance the health, safety and welfare of West Virginia's senior population and serves as the primary agency within state government to provide services to the senior population.

§16-5N-2. Short title.

  1 This article may be cited as the "Senior Services Act of 1997".

§16-5N-3. Definitions.

  1 (a) "Bureau" means the bureau of senior services.
  2 (b) "Care management" means the planning, arrangement for and coordination of appropriate community-based, in-home services and alternative living arrangements for the frail elderly, disabled or terminally ill.
  3 (c) "Care services" means housekeeping, personal care, chore, escort/transportation, meals, in-home nursing, day care and/or respite services.
(d) "Commissioner" means the commissioner of the bureau of senior services.

(e) "Community care" means a system of community-based, in-home services and alternative living arrangements which provide a full range of preventive, maintenance and restorative services for the frail elderly, disabled or terminally ill.

(f) "Comprehensive assessment" means the assessment of needs, counseling in the development of a case plan, arrangements for services and on-going monitoring of the frail elderly, disabled or terminally ill.

(g) "Continuum of care" means a system of services which has a primary emphasis on in-home care and community service and which includes services such as nursing, medical, transportation and other health and social services available to an individual in an appropriate setting over an extended period of time.

(h) "Council" means the West Virginia council on aging.

(i) "Disabled" for the purposes of this act means a person who has temporary or permanent impairments which require services within the continuum of care.

(j) "Frail elderly" for the purposes of this act means any person sixty years of age or older, with limitations which restrict the person's ability to perform the normal activities of daily living.

(k) "Senior", "Elderly" or "Aging" means any person sixty years of age or older as defined by the term "older individual" in the Older American's Act of 1965 as amended.

(l) "Sliding fee scale" means a fee for services provided based on an individual client's ability to pay.

§16-5N-4. Appointment of commissioner; term of office; reporting; qualifications; oath.

(a) There is hereby established the bureau of senior services. As of the effective date of this article, all references to the commission on aging shall be construed to
mean the bureau of senior services.

(b) The bureau shall be under the supervision of a commissioner of the bureau of senior services. The commissioner shall be appointed by the governor, with the advice and consent of the Senate, and shall hold office subject to the will and pleasure of the governor. The commissioner shall be selected with consideration to training and experience in senior issues.

c) The commissioner shall devote his or her entire time to the duties of his or her office, and may not be a candidate for nor hold any other public office or trust nor be a member of a political committee.

d) The commissioner, before entering upon the duties of office, shall take and subscribe to the oath prescribed by article IV, section five of the state constitution. The oath shall be filed with the secretary of state.

e) The commissioner shall report directly to the governor or the governor's designee.

§16-5N-5. Compensation; traveling expenses.

Notwithstanding the provisions of section two-a, article seven, chapter six of this code, the commissioner of the bureau of senior services shall receive a yearly salary of sixty-five thousand dollars and the necessary traveling expenses incident to the performance of his or her duties. Requisition for traveling expenses shall be accompanied by a sworn itemized statement which shall be filed with the auditor and preserved as a public record.

§16-5N-6. Powers and duties generally.

The commissioner shall be the executive and administrative head of the bureau and shall have the power and duty to:

(a) Exercise general supervision of the bureau;

(b) Propose legislative rules for the effective and expeditious performance and discharge of the duties and responsibilities placed upon the commissioner by law;

(c) Conduct and coordinate studies of the problems of
the state's older people;
(d) Encourage and promote the establishment of local programs and services for the aging;
(e) Conduct programs of public education on the problems of the aging;
(f) Review state programs for the aging, and annually make recommendations to the governor and the Legislature;
(g) Encourage and assist governmental and private agencies to coordinate effective efforts on behalf of the aging;
(h) Coordinate statewide local and voluntary efforts to serve the aging and develop programs at the local level;
(i) Supervise fiscal management and responsibilities of the bureau;
(j) Keep an accurate and complete record of all bureau proceedings, record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the bureau;
(k) Submit an annual report to the governor on the condition, operation and functioning of the bureau;
(l) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter;
(m) Standardize administration, expedite bureau business, revise rules and promote the efficiency of the service;
(n) Provide a program of continuing professional, technical and specialized instruction for the personnel of the bureau and local service providers; and
(o) Receive on behalf of the state any grant or gift and accept the same, so that the title shall pass to the state.
All moneys from grants or gifts shall be deposited with the state treasurer in a special fund and shall be used for the purposes set forth in the grant or gift.
§16-5N-7. Creation and composition of the West Virginia coun-
cil on aging; terms of citizen representative; vacancies; officers; meetings.

(a) There is hereby created the West Virginia council on aging, which shall be composed of five government members and ten citizen members, and shall serve as an advisory board to the commissioner.

(b) The five government members shall be: (1) The director of the division of health; (2) the director of the bureau of medical services; (3) one administrator designated by the secretary of the department of health and human resources; (4) one administrator designated by the superintendent of the West Virginia state police; and (5) the director of the division of rehabilitation services.

(c) The citizen members shall be appointed by the governor with the advice and consent of the Senate. No more than five of the citizen members shall belong to the same political party, and no more than six members shall be of the same gender. The members shall be selected in a manner to provide balanced geographical distribution.

(d) The designated administrators and the citizen representatives of the council shall be appointed for terms of four years each, and shall serve until their successors are appointed and qualified. The citizen representatives appointed to staggered terms pursuant to section two, article fourteen, chapter twenty-nine of this code to the state commission on aging shall continue to serve the remainder of their term or until their successors are appointed and qualified.

(e) A majority of the members of the council shall constitute a quorum for the transaction of business. The council shall elect a chair, a vice-chair, and such other officers as it deems necessary. The council shall meet at least two times each year. Each government representative shall designate a person with the authority to attend meetings and act on behalf of the government representative, who shall be considered a member of the council for the purpose of obtaining a quorum for the transaction of business.
§16-5N-8. Expenses of citizen representatives.

Each citizen representative is entitled to receive travel and other necessary expenses actually incurred in the performance of official duties under the provisions of this article. Requisition for such expenses shall be accompanied by a sworn and itemized statement which shall be filed with the auditor.

§16-5N-9. Programs and services for the aging.

(a) The bureau may establish local programs of services for the aging as needed throughout the state. Insofar as possible, services shall be designed to foster continued participation of older people in family and community life and to avoid or postpone the onset of dependency and the need for long-term care.

(b) Any allocations by the bureau of appropriations for local programs may be made contingent upon local appropriations or gifts in money or in kind for the support of such programs. The county commission of any county or governing body of any municipality in this state may appropriate and expend money for establishing and maintaining programs. Funds appropriated by the county commission or by the governing body of any municipality in this state may be contributed from time to time to any committee or organization approved by the bureau for the purposes authorized by this section.

(c) The bureau as provided hereunder may receive and expend funding, including the state’s share of federal funds, designated for the construction, acquisition and renovation of senior centers.

(d) The Legislature may appropriate funds on a matching basis or funds from any other source to be used for the purposes stated in this section.

§16-5N-10. Community care services.

The bureau shall, within available funds, administer programs, including care management, comprehensive assessment and community and in-home care services, based on a sliding fee scale.
§16-5N-11. Prevention of crimes against the elderly.

(a) It is the intent of the Legislature that all state agencies cooperate with the bureau and the state police in carrying out the provisions of this section.

(b) In planning and developing programs and recommendations relating to the prevention of crime and the fear of crime, including fraud, against elderly persons, the bureau shall, within existing appropriations, evaluate the need for new or improved programs, including:

(1) Public education and awareness;

(2) Community coordination in areas of social services and criminal justice;

(3) Voluntary involvement of elderly persons and retired professionals in the criminal justice system;

(4) Victim and witness assistance;

(5) Reduction of the economic and physical consequences of crime against the elderly; and

(6) Reduction of isolation of the elderly in the community.

(c) State agencies shall cooperate with and assist the bureau, within their available resources, in gathering statistical data and implementing programs which have the potential to prevent crime against elderly persons.

§16-5N-12. Designated state agency for handling federal programs.

The bureau shall constitute the designated state agency for handling all programs of the federal government relating to the aging requiring action within the state, which are not the specific responsibility of another state agency under the provisions of federal law or which have not been specifically entrusted to another state agency by the Legislature. The bureau shall be empowered to comply with all regulations and requirements to qualify for federal grants and to administer such federal funds.

§16-5N-13. Records and files, existing programs and contracts;
rules.

(a) All records, files and other property belonging to the West Virginia commission on aging pursuant to article fourteen, chapter twenty-nine of this code shall be turned over to the bureau herein created and shall be continued as part of the records, files and other property thereof.

(b) All contracts, programs and agreements entered into or offered by the state commission on aging prior to the effective date of this statute shall continue in legal force and effect under the bureau of senior services.

(c) All existing rules promulgated by the state commission on aging shall remain in effect and be administered and interpreted by the commissioner until such time as they are revoked or modified.

§16-5N-14. Reports.

The bureau shall submit a report on the condition, operation and functioning of the bureau to the governor and to the members of the Legislature on or before the first day of January of each year, in addition to such other recommendations, studies and plans as it may submit from time to time.

§16-5N-15. Continuation of bureau.

Pursuant to the provisions of article ten, chapter four of this code, the bureau of senior services shall continue to exist until the first day of July, two thousand one.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ............... approved ............... this the ............... day of ............... , 1997.

Governor