WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011

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ENROLLED

House Bill No. 2695
(By Delegates Morgan, Givens and Stephens)

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Passed March 12, 2011
In Effect From Passage
ENROLLED

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to the educational broadcasting authority; modifying organizational structure; declaring legislative findings; deleting outdated language; authorizing the authority and its employees to work with certain private nonprofit corporations; authorizing the use of the authority’s property and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.

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

1. Building Commission provided in article six, chapter five of this code;
2. Public Employees Insurance Agency provided in article sixteen, chapter five of this code;
3. Governor’s Mansion Advisory Committee provided in article five, chapter five-a of this code;
4. Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;
5. West Virginia Public Employees Grievance Board provided in article three, chapter six-c of this code;
6. Board of Risk and Insurance Management provided in article twelve, chapter twenty-nine of this code;
(7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;

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

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

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

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

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

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

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

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

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

(2) Office of Miners’ Health, Safety and Training provided 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:

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

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

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

(3) The West Virginia Development Office provided in article two, chapter five-b of this code;

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

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

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

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

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and
(D) Division of Research, Information and Analysis; and

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

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

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

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

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

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

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

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

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

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

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

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:

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

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

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

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

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

(1) Human Rights Commission provided in article eleven, chapter five of this code;
(2) Division of Human Services provided in article two, chapter nine of this code;

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

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

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

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

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

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

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

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

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

(3) Military Awards Board provided in article one-g, chapter fifteen of this code;
(4) West Virginia State Police provided in article two, chapter fifteen of this code;

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

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

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

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

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

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

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

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

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

(2) Racing Commission provided in article twenty-three, chapter nineteen of this code;
(3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;

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

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

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

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

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

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

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

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

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

(k) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:
199  (1) Division of Highways provided in article two-a, chapter seventeen of this code;

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

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

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

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

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

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

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

219  (m) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the position of administrator and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.
(n) Except for powers, authority and duties that 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 the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(o) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

(p) 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 is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or 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.

(a) The Legislature hereby finds and declares that:

1. It is the duty of this state to provide the best educational training possible for all its citizens;

2. The encouragement and use of noncommercial educational radio, television and related media operating and originating from educational broadcasting, closed circuit or related facilities located at a site or sites within this state serving all the citizens of this state on a regional basis or as part of a coordinated statewide plan is a proper, necessary and beneficial means of providing and extending enriched educational instruction to all the citizens of this state at the preschool, elementary, secondary and higher education and adult levels;

3. Private nonprofit corporations have been established in this state for the sole purpose of raising funds for the financial support of the state's Public Broadcasting Network, which funds have been a vital source of private funding for the authority and enure to the benefit of all the citizens of the state; and

4. Because of the unique educational benefit conferred upon and available to all the citizens of the state by the efforts of the authority and the private nonprofit corporations established for the sole purpose of providing support for public broadcasting in this state, authorizing the authority to allow its employees to work with, and its property and facilities to be used by, the private nonprofit corporations is a proper, necessary and beneficial means of providing financial support for the state's Public Broadcasting Network.
(b) The following terms have the following meanings:

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

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

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

(4) "SatNet" means those individuals identified as an enterprise of the state college and university systems who are delegated the responsibility for developing and providing distance learning.

§10-5-2. West Virginia Educational Broadcasting Authority; members; organization; officers; employees; meetings; expenses.

(a) The West Virginia Educational Broadcasting Authority is continued as a public benefit corporation. The
Authority shall consist of eleven voting members, who shall be residents of the state, including:

(1) The Governor or designee;

(2) The State Superintendent of Schools;

(3) One member of the West Virginia Board of Education to be selected by it annually;

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

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

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

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

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

(e) The authority shall appoint the executive director and fix his or her salary. The executive director is responsible for managing and administering the daily functions of the authority and for performing all other functions necessary to
the effective operation of the authority. The authority is authorized to establish offices for the proper performance of its duties.

(f) The authority shall hold at least one annual meeting. The time and place of the meetings shall be established upon its own resolution or at the call of the chairperson of the authority. The members shall serve without compensation but may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.


The authority shall have the power:

(1) To act as advisor and consultant to television and radio stations concerning noncommercial educational programs supported by federal, state, county, city or private funds;

(2) To cooperate with and assist all local and state educational institutions in planning and development of the use of educational radio, television and related media;

(3) To promote and coordinate the use of these media for noncommercial educational purposes;

(4) To construct, maintain and operate educational broadcasting, closed circuit or related facilities located at a suitable site or sites within this state including, without limitation thereby, production centers, broadcasting stations and an audio-video microwave system for a statewide broadcasting network connecting such communities or stations as may be designated by the authority;
(5) To acquire in the name of the state for the use and benefit of the authority by purchase, lease or agreement, any property, both real and personal, and any interest in such property necessary to carry out the provisions of this article;

(6) To apply for and receive any license from the appropriate federal agency necessary to operate any educational broadcasting, closed circuit or related facility;

(7) To supervise and approve the origination and transmission of all noncommercial educational radio, television and related media programs in this state which would be carried through the facilities of a state network;

(8) To employ such personnel as may be necessary to operate and maintain any facility created under the provisions of this article, and to work with private nonprofit corporations to raise funds for the financial support of the state's public broadcasting network;

(9) To lease from communications common carriers and use such transmission channels as may be necessary or, if it determines it could more economically construct and maintain such transmission channels, it may design, construct, maintain and operate the same, including an audio-video microwave network;

(10) To sue and be sued, plead and be impleaded;

(11) To contract and be contracted with, including the power to enter into contracts with any person, firm or corporation, including any like authority of neighboring states; and shall have the authority, within state regulations, to enter into program royalty and distribution contracts and receive moneys for these purposes: Provided, That any
proceeds from such contracts shall be used by the authority for noncommercial purposes only;

(12) To have and use a corporate seal;

(13) To promulgate reasonable rules and regulations to carry out the provisions of this article in accordance with the provisions of article three, chapter twenty-nine-a of the code, and

(14) To perform such other services in behalf of noncommercial educational radio, television and related media as it may consider to be in the best interest of the state, including the use of the authority's employees, property and facilities for the purpose of raising funds for the support of public broadcasting.

§10-5-4. Funds; right of state agencies, etc., to contribute to authority.

(a) The authority may solicit, apply for and receive appropriations, gifts, bequests or grants from any agency of the United States government, any agency of the State of West Virginia, any municipality or county within this state, any school board or college or university supported in whole or in part by this state or any other person, firm, partnership, association or corporation, within or without this state, and any agency of the State of West Virginia, any municipality or county within this state, or any school board or college or university supported in whole or in part by this state is hereby authorized and empowered to make appropriations or grants to the authority, to assist in achieving the public purpose of the authority.

(b) All such funds shall be deposited with the State Treasurer of West Virginia or with a private nonprofit
corporation established for the sole purpose of providing support for public broadcasting in this state which has entered into a memorandum of understanding with the authority pursuant to the provisions of section six of this article, and used exclusively for carrying out the provisions of this article: Provided, That any appropriations, gifts, bequests or grants received by the authority with any restriction or restrictions on the use thereof shall be expended by the authority in accordance with such restriction or restrictions.

§10-5-6. Cooperation with private nonprofit corporations.

(a) In furtherance of its mission and fulfillment of its duties, the authority is expressly authorized to allow its employees to work with, and its property and facilities to be used by, private nonprofit corporations established for the sole purpose of providing support for public broadcasting in this state.

(b) To document the implementation of subsection (a) of this section, the authority shall enter into memoranda of understanding with private nonprofit corporations established for the sole purpose of providing support for public broadcasting in this state, to delineate the rights and responsibilities of the parties.

(c) Notwithstanding any provision in this code to the contrary, the names of individual donors to the authority or to a private nonprofit corporation established for the sole purpose of providing support for public broadcasting in this state are not subject to the provisions of chapter twenty-nine-
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
PRESENTED TO THE GOVERNOR

MAR 31 2011

Time 11:30 am
EDT