WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2011

COMMITTEE SUBSTITUTE FOR
Senate Bill No. 238

(By Senators Kessler (Acting President) and Hall, By Request of the Executive)

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

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 238

(BY SENATORS KESSLER (ACTING PRESIDENT) AND HALL, BY REQUEST OF THE EXECUTIVE)

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

AN ACT to amend and reenact §4-10-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §5F-1-2 of said code; to amend and reenact §5F-2-1 of said code; to amend and reenact §6-7-2a of said code; to amend and reenact §9A-1-1, §9A-1-2 and §9A-1-4 of said code; and to amend said code by adding thereto four new sections, designated §9A-1-1a, §9A-1-1b, §9A-1-1c and §9A-1-1d, all relating to redesignating the Division of Veterans’ Affairs as the Department of Veterans’ Assistance within the executive branch; establishing the time period for review of the Department of Veterans’ Assistance by the Joint Standing Committee on Government Organization and the Joint Committee on Government Operations; providing that the Veterans’ Council be part of the Department of Veterans’ Assistance; providing that the department be supervised by a secretary-level administrator; establishing the salary of the secretary; providing an effective date for redesignation; clarifying the purpose of the Department of Veterans’ Assistance; making other changes to the code to comport with the amendment; and providing technical and clerical cleanup.
Be it enacted by the Legislature of West Virginia:

That §4-10-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5F-1-2 of said code be amended and reenacted; that §5F-2-1 of said code be amended and reenacted; that §6-7-2a of said code be amended and reenacted; that §9A-1-1, §9A-1-2 and §9A-1-4 of said code be amended and reenacted; and that said code be amended by adding thereto four new sections, designated §9A-1-1a, §9A-1-1b, §9A-1-1c and §9A-1-1d, all to read as follows:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 10. PERFORMANCE REVIEW ACT.

§4-10-8. Schedule of departments for agency review.

(a) Each department shall make a presentation pursuant to the provisions of this article, to the Joint Standing Committee and the committee during the first interim meeting after the regular session of the year in which the department is to be reviewed pursuant to the schedule set forth in subsection (b) of this section.

(b) An agency review shall be performed on one or more agencies under the purview of each department at least once every six years, commencing as follows:

(1) 2008, the Department of Administration;

(2) 2009, the Department of Education and the Arts, and the Department of Education, including the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education;

(3) 2010, the Department of Revenue and the Department of Commerce;

(4) 2011, the Department of Environmental Protection and the Department of Military Affairs and Public Safety;

(5) 2012, the Department of Health and Human Resources, including the Bureau of Senior Services;
CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

(a) There are created, within the executive branch of the state government, the following departments:

1. Department of Administration;
2. Department of Education and the Arts;
3. Department of Environmental Protection;
4. Department of Health and Human Resources;
5. Department of Military Affairs and Public Safety;
6. Department of Revenue;
7. Department of Transportation;
8. Department of Commerce; and
9. Effective July 1, 2011, Department of Veterans' Assistance.

(b) Each department will be headed by a secretary appointed by the Governor with the advice and consent of the Senate. Each secretary serves at the will and pleasure of the Governor.

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, which includes the Division of Tourism and the Tourism Commission, 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.

(8) Division of Energy provided in article two-f, 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) Educational Broadcasting Authority provided in article five, chapter ten of this code;

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

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

(g) 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 Emergency Medical Service 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.

(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 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; and

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

(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 Transportation:

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

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

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

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

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

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

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

(k) 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 a part of the Department of Veterans' Assistance.

(l) 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.
(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 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.

(n) 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.

(o) 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 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the
appointive state officers serves at the will and pleasure of the
Governor for the term for which the Governor was elected
and until the respective state officers' successors have been
appointed and qualified. Each of the appointive state officers
are subject to the existing qualifications for holding each
respective office and each has and is hereby granted all of
the powers and authority and shall perform all of the
functions and services heretofore vested in and performed by
virtue of existing law respecting each office.

The annual salary of each named appointive state officer
is as follows:

Commissioner, Division of Highways, $92,500; Commissioner, Division of Corrections, $80,000; Director, Division of Natural Resources, $75,000; Superintendent, State Police, $85,000; Commissioner, Division of Banking, $75,000; Commissioner, Division of Culture and History, $65,000; Commissioner, Alcohol Beverage Control Commission, $75,000; Commissioner, Division of Motor Vehicles, $75,000; Chairman, Health Care Authority, $80,000; members, Health Care Authority, $70,000; Director, Human Rights Commission, $55,000; Commissioner, Division of Labor, $70,000; Chairperson, Board of Parole, $55,000; members, Board of Parole, $50,000; members, Employment Security Review Board, $17,000; and Commissioner, Workforce West Virginia, $75,000. Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, $95,000; Transportation, $95,000: Provided, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid $120,000; Revenue, $95,000; Military Affairs and Public Safety, $95,000; Administration, $95,000; Education and the Arts, $95,000; Commerce, $95,000; Veterans' Assistance, $95,000; and Environmental Protection, $95,000; Provided, however, That, any officer whose salary is increased by the reenactment of this subsection during the regular session of the Legislature in 2011 by more than $5,000 shall be paid the salary increase in increments of $5,000 per fiscal year beginning July 1, 2011, up to the maximum salary provided in this subsection.
(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code, and shall be paid an annual salary as follows:

Director, Board of Risk and Insurance Management, $80,000; Director, Division of Rehabilitation Services, $70,000; Director, Division of Personnel, $70,000; Executive Director, Educational Broadcasting Authority, $75,000; Secretary, Library Commission, $72,000; Director, Geological and Economic Survey, $75,000; Executive Director, prosecuting attorneys Institute, $70,000; Executive Director, Public Defender Services, $70,000; Commissioner, Bureau of Senior Services, $75,000; Director, State Rail Authority, $65,000; Executive Director, Women's Commission, $45,000; Director, Hospital Finance Authority, $35,000; member, Racing Commission, $12,000; Chairman, Public Service Commission, $85,000; members, Public Service Commission, $85,000; Director, Division of Forestry, $75,000; Director, Division of Juvenile Services, $80,000; and Executive Director, Regional Jail and Correctional Facility Authority, $80,000.

(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, $92,500; Insurance Commissioner, $92,500; Director, Lottery Commission, $92,500; Director, Division of Homeland Security and
Emergency Management, $65,000; and Adjutant General, $92,500.

(d) No increase in the salary of any appointive state officer pursuant to this section may be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.

CHAPTER 9A. VETERANS’ AFFAIRS.

ARTICLE 1. DEPARTMENT OF VETERANS’ ASSISTANCE.


(a) Effective July 1, 2011, the West Virginia Division of Veterans' Affairs is redesignated the Department of Veterans' Assistance.

(b) The purpose of the department is to aid, assist, counsel and advise, and to encourage competition among counties and municipalities to develop, improve and enhance veteran-friendly services, benefits and assistance to, veterans who have served in and been honorably discharged or separated under honorable conditions from the Armed Forces of the United States and their widows, widowers and dependents, including populations of veterans who may have special needs as a result of homelessness, incarceration or physical or mental disabilities.

(c) All references in this code to the West Virginia Division of Veterans' Affairs and the Director of the West Virginia Division of Veterans' Affairs shall mean the Department of Veterans' Assistance and the Secretary of the Department of Veterans' Assistance, respectively.

§9A-1-1a. Department of Veterans’ Assistance; office of Secretary of Department of Veterans’ Assistance.
(a) The Secretary of the Department of Veterans' Assistance is the chief executive officer of the department. Subject to the requirements for the qualification and appointment of the secretary provided in section four of this article, the Governor shall appoint the secretary, by and with the advice and consent of the Senate, for the term for which the Governor is elected and until a successor shall have been appointed and qualified. The Secretary shall serve at the will and pleasure of the Governor. Any reference in this code to the Division of Veterans' Affairs or to the Department of Veterans' Affairs means the Department of Veterans' Assistance. Any reference in this code to the Director of the Division of Veterans' Affairs means the Secretary of the Department of Veterans' Assistance. As used in this chapter, "secretary" means the Secretary of Veterans' Assistance and "division" means Department of Veterans' Assistance.

(b) The department may receive federal funds.

(c) The secretary serves at the will and pleasure of the Governor. The annual compensation of the secretary shall be as specified in section two-a, article seven, chapter six of this code.

§9A-1-1b. Powers and duties of the secretary.

(a) The secretary controls and supervises the department and is responsible for the work of each department employee.

(b) The secretary has the power and authority specified in this article, in article two, chapter five-f of this code and as otherwise specified in this chapter.

(c) The secretary may employ staff, assistants and employees as necessary for the efficient operation of the department.

(d) The secretary may delegate his or her powers and duties to assistants and employees, but the secretary is responsible for all official acts of the department.

§9A-1-1c. Reports by secretary.

The secretary shall report annually to the Governor concerning the conduct of the department and make other reports as the Governor may require.
§9A-1-1d. Right of appeal from interference with functioning of agency.

Any governmental entity may appeal to the Governor for review upon a showing that application of the secretary's authority may interfere with the successful functioning of that entity. The Governor's decision controls on appeal.

§9A-1-2. Veterans' Council; administration of department.

There is continued the "Veterans' Council" consisting of nine members who must be citizens and residents of this state and who have served in and been honorably discharged or separated under honorable conditions from the Armed Forces of the United States and whose service was within a time of war as defined by the laws of the United States, either Public Law No. 2 — 73rd Congress, or Public Law No. 346 — 78th Congress, and amendments thereto. Where feasible, two members of the council shall be veterans of either World War II or the Korean Conflict, at least two members of the council shall be veterans of the Vietnam era, at least one member shall be a veteran of the first Gulf War and at least one member shall be a veteran of the Afghanistan or Iraqi Conflicts. The members of the veterans' council shall be selected with special reference to their ability and fitness to effectuate the purposes of this article. If an eligible veteran is not available or cannot be selected, a veteran who is a citizen and resident of this state, who served in and was honorably discharged or separated under honorable conditions from the Armed Forces of the United States and who served during any time of war or peace may be selected.

A secretary and such veterans' affairs officers, assistants and employees as the secretary considers advisable, shall administer the West Virginia Department of Veterans' Assistance.

§9A-1-4. Duties and functions of Veterans' Council; appointment of secretary; honoring academic achievement at military academies.

(a) It is the duty and function of the Veterans' Council to advise the secretary on the general administrative policies of
the department, to select, at their first meeting in each fiscal year commencing on July 1, a chairperson to serve one year, to advise the secretary on rules as may be necessary, to advise the Governor and the Legislature with respect to legislation affecting the interests of veterans, their widows, dependents and orphans and to make annual reports to the Governor respecting the service of the department. The secretary has the same eligibility and qualifications prescribed for members of the Veterans' Council. The secretary ex officio shall maintain all records of the Veterans' Council.

(b) The Veterans' Council may annually honor each West Virginian graduating from the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy and the U.S. Coast Guard Academy with the highest grade point average by bestowing upon him or her the “West Augusta Award.” The award shall be in a design and form established by the council and include the famous Revolutionary War phrase from which the award’s name is derived: “Once again our brethren from West Augusta have answered the call to duty.” The council shall coordinate the manner of recognition of the recipient at graduation ceremonies with each academy.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Vice Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within...was...disapproved...this...the...18th...
Day of...March...

Governor
PRESENTED TO THE GOVERNOR

MAR 17 2011

Time: 4:31 pm