WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2011

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 241
(By Senators Kessler (Acting President) and Hall,
By Request of the Executive)

[Passed March 12, 2011; in effect ninety days from passage.]
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Senate Bill No. 241

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

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

AN ACT to amend and reenact §5B-1-1a and §5B-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5B-2-8 and §5B-2-9 of said code; to amend said code by adding thereto a new section designated §5B-2-8a; and to amend and reenact §5F-2-1 of said code, all relating to the organization and authority of state agencies generally; continuing the Marketing and Communications Office of the Department of Commerce; authorizing the Marketing and Communications Office to sell partnerships, sponsorships or advertising in certain circumstances; providing that Division of Tourism and the Tourism Commission are separate entities within Department of Commerce; continuing the Division of Tourism and the Tourism Commission; providing qualifications for the commissioner; providing powers of the commissioner; modifying the composition of the Tourism Commission; modifying the Tourism Commission’s annual reporting requirement; providing that the Educational Broadcasting Authority is part of the Department of Education and the Arts for administrative support and liaison with the office of the Governor; and
providing that the Veterans' Council and its allied, advisory, affiliated or related entities and funds are part of the Department of Veteran's Assistance.

Be it enacted by the Legislature of West Virginia:

That §5B-1-1a and §5B-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5B-2-8 and §5B-2-9 of said code be amended and reenacted; that said code be amended by adding thereto a new section designated §5B-2-8a; and that §5F-2-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 5B. DEPARTMENT OF COMMERCE.

§5B-1-1a. Marketing and Communications Office.

(a) There is continued in the Department of Commerce the Marketing and Communications Office. The office is created to provide marketing and communications goods and services to other state agencies, departments, units of state or local government or other entity or person.

(b) The office is authorized to charge for goods and services it provides to other state agencies. The Secretary of the Department of Commerce shall approve a fee schedule determining the amounts that may be charged for goods and services provided by the office to other state agencies. At the discretion of and with the approval of the Secretary of the Department of Commerce, the office may also sell partnerships, sponsorships or advertising in its publications, events or promotions to help offset the cost of producing and distributing its products and services.

(c) All moneys collected shall be deposited in a special account in the State Treasury to be known as the Department of Commerce Marketing and Communications Operating Fund. Expenditures from the fund shall be for the operation of the office and are not authorized from collections but are to be made only in accordance with appropria-
(d) Any balance remaining at the end of any fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund for expenditures in accordance with the purposes set forth in this section.

(e) The Department of Commerce shall develop and maintain a system of annual or more frequent performance measures useful in gauging the efficiency and effectiveness of the office's marketing and communications activities. The measures shall also reflect the office's efficiency and effectiveness with respect to commercially available marketing and communications services and any private sector benchmarks which might be identified or created. For the purposes of this section, "performance measures" means income, output, quality, self-sufficiency and outcome metrics.

(f) On January 1 of each year the Secretary of the Department of Commerce shall report to the Joint Committee on Government and Finance, the Joint Standing Committee on Finance and the Joint Commission on Economic Development on the performance of the office. This report is to include a statement of the performance measurements for the office developed by the Secretary of the Department of Commerce and an analysis of the office's performance.

§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the Department of Commerce.

The Department of Commerce consists of the following agencies, boards, commissions, divisions and offices, including all of the allied, advisory, affiliated or related entities, which are incorporated in and administered as 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;

(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; and

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

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE AND THE DIVISION OF TOURISM.

§5B-2-8. Division of Tourism and Tourism Commission continued; members, appointment and expenses.

(a) There is hereby continued within the Department of Commerce the Division of Tourism and an independent Tourism Commission, which is a body corporate and politic, constituting a public corporation and government instrumentality.

(b) Prior to July 1, 2011, the Governor, by and with the advice and consent of the Senate, shall appoint to the Tourism Commission three members from the private sector to represent participants in the state's tourism industry, one for a term of four years, one for a term of three years and one for a term of two years.

(c) Commencing July 1, 2011, the Tourism Commission shall consist of the following fifteen members with staggered terms:

(1) Twelve members appointed by the Governor, with the advice and consent of the Senate, representing participants in the state's tourism industry. Ten of the members shall be from the private sector, one shall be a director employed by a convention and visitors bureau and one shall be a member of a convention and visitors bureau. In making the appointments the Governor may select from a list provided by the West Virginia Hospitality and Travel Association of qualified
applicants. Of the twelve members so appointed, no less than three shall be from each congressional district within the state and shall be appointed to provide the broadest geographic distribution which is feasible;

(2) One member to be appointed by the Governor to represent public sector nonstate participants in the tourism industry within the state;

(3) The Secretary of Transportation or his or her designee, ex officio; and

(4) The Director of the Division of Natural Resources or his or her designee, ex officio.

(d) Each member appointed by the Governor shall serve staggered terms of four years. Any member whose term has expired shall serve until his or her successor has been appointed. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall be eligible for reappointment. In cases of vacancy in the office of member, such vacancy shall be filled by the Governor in the same manner as the original appointment.

(e) Members of the commission shall not be entitled to compensation for services performed as members. A majority of these members shall constitute a quorum for the purpose of conducting business. The Governor shall appoint a chair of the commission for a term to run concurrent with the term of the office of the member appointed to be the chair. The chair is eligible for successive terms in that position.

§5B-2-8a. Commissioner of Tourism.

(a) The division of tourism is under the direction and charge of the Commissioner of Tourism.

(b) The commissioner shall be appointed by the Governor: Provided, That the person serving as commissioner at the time of the enactment of this section in 2011, shall continue to serve in that capacity at the will and pleasure of the Governor. The commissioner's salary shall be set the Gover-
nor. The commissioner shall be a competent person, having
effective ability and knowledge of publicity, advertising and
tourist promotion.

(c) In addition to other duties required of the division by
other provisions of this code, the division shall:

(1) Coordinate media events to promote a positive image of
West Virginia and new investment in the tourist industry;

(2) Provide comprehensive strategic planning services to
existing tourism enterprises;

(3) Promote attractions of West Virginia in other states;
and

(4) Distribute West Virginia informational publications
and manage the West Virginia Welcome Centers.


(a) The commission shall develop a comprehensive tourism
promotion and development strategy for West Virginia.
"Comprehensive tourism promotion and development
strategy" means a plan that outlines strategies and activities
designed to continue, diversify or expand the tourism base of
the state as a whole; create tourism jobs; develop a highly
skilled tourism work force; facilitate business access to
capital for tourism; advertise and market the resources
offered by the state with respect to tourism promotion and
development; facilitate cooperation among local, regional
and private tourism enterprises; improve infrastructure on a
state, regional and community level in order to facilitate
tourism development; improve the tourism business climate
generally; and leverage funding from sources other than the
state, including local, federal and private sources.

(b) In developing its strategies, the commission shall
consider the following:

(1) Improvement and expansion of existing tourism
marketing and promotion activities;
(2) Promotion of cooperation among municipalities, counties, and the West Virginia infrastructure and jobs development council in funding physical infrastructure to enhance the potential for tourism development.

(c) The tourism commission shall have the power and duty:

(1) To acquire for the state in the name of the commission by purchase, lease or agreement, or accept or reject for the state, in the name of the commission, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, to effectuate or support the purposes of this article;

(2) To make recommendations to the Governor and the Legislature of any legislation deemed necessary to facilitate the carrying out of any of the foregoing powers and duties and to exercise any other power that may be necessary or proper for the orderly conduct of the business of the commission and the effective discharge of the duties of the commission;

(3) To cooperate and assist in the production of motion pictures and television and other communications;

(4) To purchase advertising time or space in or upon any medium generally engaged or employed for said purpose to advertise and market the resources of the state or to inform the public at large or any specifically targeted group or industry about the benefits of living in, investing in, producing in, buying from, contracting with, or in any other way related to, the state of West Virginia or any business, industry, agency, institution or other entity therein: Provided, That of any funds appropriated and allocated for purposes of advertising and marketing expenses for the promotion and development of tourism, not less than twenty percent of the funds shall be expended with the approval of the Director of the Division of Natural Resources to advertise, promote and market state parks, state forests, state recreation areas and wildlife recreational resources;
(5) To promote and disseminate information related to the attractions of the state through the operation of the state's telemarketing initiative, which telemarketing initiative shall include a centralized reservation and information system for state parks and recreational facilities; and

(6) To take such additional actions as may be necessary to carry out the duties and programs described in this article.

(d) The commission shall submit a report annually to the Secretary of Commerce, the Governor and the Legislature about the development of the tourism industry in the state and the necessary funding required by the state to continue the development of the tourism industry.

(e) The Commissioner of the Division of Tourism shall assist the commission in the performance of its powers and duties and the commissioner is hereby authorized in providing this assistance to employ necessary personnel, contract with professional or technical experts or consultants and to purchase or contract for the necessary equipment or supplies.

(f) The commission shall promulgate legislative rules pursuant to the provisions of chapter twenty-nine-a of this code to carry out its purposes and programs, to include generally the programs available, the procedure and eligibility of applications relating to assistance under such programs and the staff structure necessary to support such programs, which structure shall include the qualifications for a professional staff person qualified by reason of exceptional training and experience in the field of advertising to supervise the advertising and promotion functions of the commission, and shall further include provision for the management of West Virginia welcome centers. The commission is further authorized to promulgate procedural rules pursuant to said chapter to include instructions and forms for applications relating to assistance.
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;

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

(9) Division of Tourism and the Tourism Commission provided in article two, 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 affiliated, 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; and

(3) Division of Rehabilitation Services provided in 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 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;

(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 part of the Department of Veteran's Assistance.

(1) 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
250 abridges the statutory powers and duties of statutory
251 commissioners or officers pursuant to this code.
The 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 ninety days 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 is approved this the 30th Day of March, 2011.

Governor
PRESENTED TO THE GOVERNOR

MAR 24 2011

Time 10:30am