ENROLLED

Committee Substitute

for

Senate Bill 535

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Passed April 8, 2017; in effect 90 days from passage]
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[Passed April 8, 2017; in effect 90 days from passage]
AN ACT to repeal §5B-2-8, §5B-2-8a, §5B-2-9, §5B-2-11, §5B-2-12 and §5B-2-12a of the Code of West Virginia, 1931, as amended; to amend and reenact §5B-1-2 of said code; and to amend said code by adding thereto a new article, designated §5B-21-1, §5B-21-2, §5B-21-3, §5B-21-4, §5B-21-5, §5B-21-6, §5B-21-7 and §5B-21-8, all relating generally to tourism promotion; continuing the West Virginia Division of Tourism Office; creating the West Virginia Tourism Act of 2017; creating the position of Executive Director of the West Virginia Tourism Office and setting forth the authority of the executive director; authorizing the Governor to appoint the executive director and set his or her salary; clarifying that the executive director shall serve as Commissioner of Tourism until establishment of the West Virginia Tourism Office; making the position of executive director one of will and pleasure; establishing qualifications for the position of executive director; establishing powers and duties of the West Virginia Tourism Office; authorizing the West Virginia Tourism Office to enter into private-public agreements and to change and collect fees for goods and services it supplies; authorizing the West Virginia Tourism Office to retain services necessary to carry out its duties; establishing criteria for retaining services; authorizing the executive to employ necessary personnel and to contract for professional, technical and consulting services and purchase equipment and supplies; authorizing the executive director, at the consent of the Secretary of Commerce, to compile a list on classified service exempt positions; requiring the West Virginia Tourism Office to publish and disseminate an annual report; directing the West Virginia Tourism Office and its director to collaborate with the West Virginia Development Office; authorizing cancellation of contracts and joint venture agreements without further obligation of the state and setting the conditions precedent therefor; continuing the Tourism Promotion Fund in the State Treasury; directing that moneys in the fund be spent solely for tourism promotion; defining terms; exempting unspent moneys in fund from reverting to the General Revenue Fund; eliminating the Tourism Advertising Partnership Program effective July 1, 2017, with exceptions for
resolution of outstanding obligations; directing the establishment of a cooperative advertising program within the West Virginia Tourism Office; authorizing the West Virginia Tourism Office to establish a fee schedule for participants in the cooperative advertising program; continuing an independent Tourism Commission within the Department of Commerce; establishing membership of Tourism Commission; requiring that gubernatorial appointments to the board be subject to the advice and consent of the Senate; setting forth qualifications of board members; establishing duties of the commission; and providing that documents, data and other writings related to furnishing assistance to businesses, other than agreements entered into by the West Virginia Tourism Office or West Virginia Development Office which obligate public funds, are exempt from disclosure under the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:

1 That §5B-2-8, §5B-2-8a, §5B-2-9, §5B-2-11, §5B-2-12 and §5B-2-12a of the Code of West Virginia, 1931, as amended, be repealed; that §5B-1-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §5B-21-1, §5B-21-2, §5B-21-3, §5B-21-4, §5B-21-5, §5B-21-6, §5B-21-7 and §5B-21-8, all to read as follows:

ARTICLE 1. DEPARTMENT OF COMMERCE.

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

1 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:

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

3 (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) West Virginia Tourism Office and the Tourism Commission provided in article two-i, chapter five-b of this code.
ARTICLE 2l. WEST VIRGINIA TOURISM OFFICE.

§5B-2l-1. Short title.
1 This article shall be known and cited as the West Virginia Tourism Act of 2017.

§5B-2l-2. West Virginia Tourism Office.
1 The Division of Tourism is continued within the Department of Commerce but is hereafter
designated and shall be known as the West Virginia Tourism Office. All references in this code
to the Division of Tourism shall be construed as references to the West Virginia Tourism Office.

§5B-2l-3. Appointment and compensation of the Executive Director of the West Virginia
Tourism Office.
1 (a) The West Virginia Tourism Office is under the direction and charge of the Executive
Director of the West Virginia Tourism Office.

(b) The Executive Director shall be appointed by the Governor: Provided, That the person
serving as Commissioner of Tourism at the time of enactment of this section in 2017, shall be the
Executive Director of the West Virginia Tourism Office and serve at the will and pleasure of the
Governor. The executive director's salary shall be set by the Governor. The executive director
shall be a competent person, having executive ability and knowledge of publicity, advertising and
tourism promotion.

§5B-2l-4. Powers and duties of the West Virginia Tourism Office.
1 (a) The West Virginia Tourism Office, under the direction and charge of the Executive
Director of the West Virginia Tourism Office, shall develop and implement a comprehensive
tourism advertising, promotion and development strategy for West Virginia. “Comprehensive
tourism advertising, promotion and development strategy” means a plan that outlines strategies
and activities designed to continue, diversify and expand the tourism base of the state as a whole;
create tourism jobs; develop a highly skilled tourism workforce; facilitate business access to
capital for tourism; advertise and market the resources offered by the state with respect to tourism
advertising, 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. In addition
to all other power and duties of the West Virginia Tourism Office by other provisions of this code,
the West Virginia Tourism Office 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;

(4) Provide advertising, marketing and communications goods and services, including,
without limitation, a cooperative advertising program to facilitate and allow participation in the
West Virginia Tourism Office’s advertising and marketing campaigns and activities, to state
agencies, departments, units of state or local government, private tourism enterprises and other
persons, entities or private enterprises, including, without limitation, convention and visitors’
bureaus; and

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

(b) In developing its strategies, plans and campaigns, the West Virginia Tourism Office
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 West Virginia Tourism Office shall have the power and duty:

(1) To acquire for the state in the name of the West Virginia Tourism Office by purchase,
lease or agreement, or accept or reject for the state, in the name of the West Virginia Tourism
Office, 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 West Virginia Tourism Office and the effective discharge of the duties of the West Virginia
Tourism Office;

(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;

(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;

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

(7) To provide assistance to and assist with retention and expansion of existing tourism-
related enterprises in the state and to recruit or assist in the recruitment of new tourism-related
enterprises to the state.

(d) The West Virginia Tourism Office may charge and collect reasonable fees for goods
and services it provides to state agencies, departments, units of state or local government or other
person, entity or enterprise. All moneys collected by the West Virginia Tourism Office shall be
enr. cs for sb 535

61 deposited in the Tourism Promotion Fund and used in accordance with the provisions of this
62 article.

63 (e) The West Virginia Tourism Office may engage and retain one or more advertising and
64 marketing agencies, consultants, enterprises, firms or persons, as deemed by the Executive
65 Director of the West Virginia Tourism Office, in his or her sole discretion, necessary or advisable
66 to assist the West Virginia Tourism Office in carrying out its powers and duties as set forth in this
67 article. In the procurement of advertising agencies, consultants, enterprises or persons, from time
to time, estimated to cost $250,000 or more, the Executive Director of the West Virginia Tourism
69 Office shall encourage such advertising and marketing agencies, consultants, enterprises, firms
or persons to submit an expression of interest, which shall include a statement of qualifications,
including anticipated concepts and proposed advertising, marketing and advertising campaigns.
72 All potential contracts shall be announced by public notice published as a Class II legal
73 advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. A
74 committee of three to five representatives of the West Virginia Tourism Office and/or the Tourism
75 Commission, as selected by the chair of the Tourism Commission, shall evaluate the statements
of qualifications and other materials submitted by interested firms and select three firms which, in
their opinion, are best qualified to perform the desired service. The committee shall then rank, in
order of preference, the three firms selected and shall commence scope of service and price
negotiations with the first ranked firm. If the West Virginia Tourism Office is unable to negotiate
a satisfactory contract with the first ranked firm, at a fee determined to be fair and reasonable,
price negotiations with the firm of second choice shall commence. Failing accord with the second
ranked firm, the committee shall undertake price negotiations with the third ranked firm. If the
West Virginia Tourism Office is unable to negotiate a satisfactory contract with any of the selected
firms, the office shall select additional firms in order of their competence and qualifications and it
shall continue negotiations in accordance with this section until an agreement is reached.
If the procurement of the services is estimated by the executive director to cost less than $250,000, the West Virginia Tourism Office shall conduct discussions with three or more firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract; Provided, That if a judgment is made that special circumstances exist and that seeking competition is not practical, the West Virginia Tourism Office may, with the prior written approval of the Secretary of Commerce, select a firm on the basis of previous satisfactory performance and knowledge of the West Virginia Tourism Office's needs. After selection, the West Virginia Tourism Office and selected firm shall develop the scope of desired services and negotiate a contract.

(f) The Executive Director of the West Virginia Tourism Office may, in order to carry out the powers and duties of the West Virginia Tourism Office described in this article, employ necessary personnel, contract with professional or technical experts or consultants and purchase or contract for the necessary equipment or supplies.

(g) The Executive Director of the West Virginia Tourism Office may designate, in writing, with the written consent of the Secretary of Commerce, a list of positions within the West Virginia Tourism Office that shall be exempt from coverage under the state's classified service.

(h) The West Virginia Tourism Office shall submit a report annually to the Governor, Secretary of Commerce 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.

(i) The West Virginia Tourism Office and the Executive Director of the West Virginia Tourism Office shall engage, collaborate, assist and cooperate with the West Virginia Development Office, when and as appropriate, to facilitate retention, expansion, recruitment and location of existing and new tourism-related enterprises.

§5B-21-5. Public-private partnerships.
(a) The West Virginia Tourism Office may enter into contractual or joint venture agreements with one or more nonprofit corporations organized pursuant to the corporate laws of the state, organized to permit qualification pursuant to Section 501(c) of the Internal Revenue Code and organized for purposes of the promotion and development of tourism in West Virginia, and funded from sources other than the state. Members of the Tourism Commission provided in this article are authorized to sit on the board of directors of such private nonprofit corporations.

(b) From time to time the West Virginia Tourism Office may enter into joint ventures wherein the West Virginia Development Office and one or more said nonprofit corporations share in the development and funding of tourism advertising, promotion and development programs and campaigns.

(c) All contracts and joint venture agreements entered into pursuant to this section for longer than one fiscal year shall contain, in substance, a provision that the contract shall be considered canceled without further obligation on the part of the state if the Legislature, or, where appropriate, the federal government shall fail to appropriate sufficient funds therefor or shall act to impair the contract or cause it to be canceled.

§5B-21-6. Tourism Promotion Fund; use of funds.

(a) There is continued in the State Treasury the special revenue fund known as the Tourism Promotion Fund created under prior enactment of section nine, article one, chapter five-b of this code.

(b) Moneys deposited in the fund each year shall be used solely for marketing, direct advertising, business development and public relations promoting travel and tourism within the state and the state's image and brand identity at the discretion and direction of the Executive Director of the West Virginia Tourism Office. "Direct advertising" means advertising which includes, but is not limited to, television, radio, mailings, newspaper, magazines, digital marketing, including the Internet and social media, and outdoor billboards or any combination thereof. Any
balance remaining at the end of any fiscal year does not revert to the General Revenue Fund, but shall remain in the fund for expenditures in accordance with the provisions of this section.

(c) Effective July 1, 2017, the Tourism Advertising Partnership Program and all related legislative or procedural rules shall cease, except as necessary for the Tourism Commission to settle, finalize and conclude all outstanding advertising grants or other financial obligations of the Tourism Commission respecting funds in the Tourism Promotion Fund previously approved, expended or obligated by the Tourism Commission as of the effective date of this article pursuant to subdivision (2), subsection (e), section seven of this article and be replaced by a cooperative advertising program to be created and established by the West Virginia Tourism Office, under and pursuant to section four of this article, to offer, facilitate and allow participation in the West Virginia Tourism Office’s advertising and marketing campaigns and activities, to state agencies, departments, units of state or local government, private tourism enterprises and other persons, entities or private enterprises, including, without limitation, convention and visitors’ bureaus. The Executive Director of the West Virginia Tourism Office shall establish and publish a fee schedule, which shall include a match of state funds to program participant’s funds, for participation in the cooperative advertising program.

§5B-2I-7. Tourism Commission; members, appointment and expenses.

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

(b) The Tourism Commission consists of the following fifteen members:

(1) The Secretary of Commerce, or his or her designee, ex officio;

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

(3) 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;

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

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

(d) The chair of the Tourism Commission shall be appointed by the Governor from
members then serving on the commission, and serves at the will and pleasure of the Governor.

(e) The Tourism Commission shall:

(1) Assist the Executive Director of the West Virginia Tourism Office in the development
and implementation of the state’s comprehensive tourism advertising, marketing, promotion and
development strategy; and

(2) Take all actions necessary to settle, finalize and conclude all outstanding advertising
grants or other financial obligations of the Tourism Commission respecting funds in the Tourism
Promotion Fund previously approved, expended or obligated by the Tourism Commission as of
the effective date of this article.

(f) Members of the Tourism Commission are not entitled to compensation for services
performed as members. Each member from the private sector is entitled to reimbursement for
reasonable expenses incurred in the discharge of their official duties. All expenses incurred by
members from the private sector shall be paid in a manner consistent with guidelines of the Travel
Management Office of the Department of Administration and are payable solely from the funds of
the West Virginia Tourism Office or from funds appropriated for that purpose by the Legislature.

Liability or obligation is not incurred by the West Virginia Tourism Office beyond the extent to
which moneys are available from funds of the authority or from the appropriations.

(g) Members shall meet quarterly as designated by the chair.

§5B-2l-8. Confidentiality.

Any documentary material, data or other writing made or received by the West Virginia
Tourism Office, the West Virginia Development Office or the Tourism Commission, for the
purpose of furnishing assistance to a new or existing business are exempt from the provisions of
article one, chapter twenty-nine-b of this code: Provided, That any agreement entered into or
signed by the West Virginia Tourism Office or the West Virginia Development Office which
obligates public funds is subject to inspection and copying pursuant to the provisions of that article
as of the date the agreement is entered into, signed or otherwise made public.
Enr. CS for SB 535

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 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 24th Day of April 2017.

Governor