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Commerce Legislation

Mark B. D'Antoni

West Virginia University College of Law

Mark A. Stach

West Virginia University College of Law

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COMMERCE LEGISLATION

I. INTRODUCTION

Governor Moore, in his 1985 State of the State Address, called for the establishment of a Department of Commerce for West Virginia. He proposed legislation that would “provide for the gathering of all those aspects of park, recreation, tourism, and general positive promotion of the State as a vacation land and place the management of these assets under one department rather than spread out among a half dozen agencies.”¹

In response to Governor Moore’s call, the State Senate passed Senate Bill No. 196 on April 13, 1985. The bill created the Department of Commerce, the West Virginia Office of Community and Industrial Development, the West Virginia Export Development Authority, the Labor-Management Council, the West Virginia Development Authority, the West Virginia Auto Assistance Corporation, the West Virginia Industrial and Trade Jobs Development Corporation, and the Public Energy Authority. Additionally, the bill removed the Division of Parks and Resources from the Department of Natural Resources and placed it in the newly formed Department of Commerce, and the bill removed the Division of Forestry from the Department of Natural Resources and placed it in the Department of Agriculture. Governor Moore signed the bill into law on May 2, 1985, and it went into effect on July 1, 1985. Senate Bill No. 196 added a number of provisions to the West Virginia Code, the most important of which was Chapter 5B, the Economic Development Act of 1985.

II. CHAPTER 5B: THE ECONOMIC DEVELOPMENT ACT OF 1985

The West Virginia Legislature cited a number of reasons for establishing the Economic Development Act. The Legislature found that seriously high unemployment existed in the State; that economic insecurity due to unemployment was undermining the health, safety, and general welfare of State residents; and that many residents were leaving the State because of a lack of employment opportunities.² For these reasons and for the purpose of promoting and developing business and tourism within the State, the Legislature passed the Economic Development Act.

A. *Department of Commerce*

Senate Bill No. 196 created the Department of Commerce.³ The Department was given the authority to promote and facilitate the expansion and development of markets for West Virginia products and to promote and encourage the development of business and tourism in the State.⁴

¹ State of the State Address by West Virginia Governor Arch Moore (Feb. 13, 1985).

² W.VA. CODE § 5B-1-2 (Supp. 1985).

³ W.VA. CODE § 5B-1-4 (Supp. 1985).

⁴ W.VA. CODE § 5B-1-5 (Supp. 1985).

In connection with the addition of Chapter 5B to the West Virginia Code, Senate Bill No. 196 repealed the Office of Community and Economic Development.⁵ Ironically, in 1977 the Office of Community and Economic Development abolished an earlier Department of Commerce.

The bill created six divisions within the Department of Commerce. The divisions are the Division of Tourism, the Division of Advertising and Promotion, the Division of Research and Strategic Planning, the Division of Product Marketing, the Division of Small Business Development, and the Division of Parks and Recreation.⁶

The key division is the Division of Parks and Recreation. The duties, records, and equipment of the division were transferred from the Department of Natural Resources (DNR) to the Department of Commerce.⁷ The Act also abolished the existing Division of Parks and Recreation within the Department of Natural Resources, thus transferring the Division from the DNR to the new Department of Commerce.⁸

The commissioner of the Department of Commerce, with the approval of the governor, can issue park development revenue bonds to fund any project.⁹ A special fund will be created to pay the principal and interest on the bonds. The proceeds of the bonds will be used solely for the payment of the cost of the project with which they are associated.¹⁰ This ability to raise funds under the new law gives the commissioner more power than was granted to the head of the Department of Natural Resources. The issuance of bonds to fund new parks projects allows the Department of Commerce to meet some of the stated goals of Senate Bill No. 196—to promote and encourage tourism and to make the State more attractive as a place for vacationers.

Park development projects and property acquired by the commissioner and income derived therefrom are exempt from taxes.¹¹ Like the ability to issue bonds, this should enable the Department of Commerce to develop parks and recreation facilities within the State for the purpose of encouraging tourism.

B. *Office of Community and Industrial Development*

Article 2 of Chapter 5B creates the Office of Community and Industrial Development to conduct studies determining the feasibility of establishing programs or

⁵ W.VA. CODE § 5-1-27 (repealed 1985).

⁶ W.VA. CODE § 5B-1-6 (Supp. 1985).

⁷ W.VA. CODE § 5B-1-12(a) (Supp. 1985).

⁸ W.VA. CODE §§ 20-4-1 to -14 (repealed 1985).

⁹ W.VA. CODE § 5B-1-13b (Supp. 1985).

¹⁰ W.VA. CODE § 5B-1-13b(k) (Supp. 1985).

¹¹ W.VA. CODE § 5B-1-13c (Supp. 1985).

recommending legislation for various economic programs. These programs include measures relative to coal processing, farm development, enterprise zones, forest resources, and jobs development. The Office is required to report its findings in these areas to the Legislature by the first day of the regular session of the Legislature in 1986 and every two years thereafter.¹²

The Office of Community and Industrial Development received the records and property of the Office of Community and Economic Development, which was abolished by Senate Bill No. 196.¹³ As mentioned earlier, the Office of Community and Economic Development was abolished in connection with the adoption of Chapter 5B.¹⁴

The Office of Community and Industrial Development, like the Department of Commerce, is split into six divisions. The divisions are the Division of Community Development, the Division of Financial and Technical Assistance, the Division of Administration, the Division of Industrial Development, the Division of Small Business, and the Division of Employment and Training. Each division is headed by a director who is appointed by the director of the Office of Community and Industrial Development.

This Office does not have any real power besides the authority to conduct studies and make recommendations to the legislature. For this reason, there appears to be little practical effect in the change from the Office of Community and Economic Development to the Office of Community and Industrial Development.

C. *West Virginia Export Development Authority*

Article 3 of Chapter 5B established the West Virginia Export Development Authority for the purpose of encouraging the development of businesses involved in international exports. The Legislature found that the State's economy was becoming increasingly dependent upon the international exports of West Virginia manufactured goods and services.¹⁵ The Legislature also cited the use of public funds by other states to facilitate and promote international exports and the need for the use of public funds by West Virginia to compete with these states.¹⁶

The Export Development Authority, like the Commerce Department, can issue revenue bonds to fund its activities. One of these activities is to provide a source of funding credit guarantees and insurance that would not otherwise be available

¹² W.VA. CODE § 5B-2-4 (Supp. 1985).

¹³ W.VA. CODE § 5B-2-1 (Supp. 1985).

¹⁴ The Office of Community and Industrial Development is very similar in purpose and nature to the abolished Office of Community and Economic Development. Compare W.VA. CODE § 5-1-27 (repealed 1985) with W.VA. CODE § 5B-2-2 (Supp. 1985).

¹⁵ W.VA. CODE § 5B-3-1(a) (Supp. 1985).

¹⁶ W.VA. CODE § 5B-3-1(b) (Supp. 1985).

to State businesses involved in the export business.¹⁷ One way this will be done is through the use of export loans. Export loans are loans from the Authority to any participating banking organization within the State to finance an international export from the State. The international export financed must, in the judgment of the authority, create or maintain employment in the State and contain at least twenty-five percent of the value in manufactured goods, coal products, lumber and wood products, or services whose final processing occurs in West Virginia.¹⁸

The Export Development Authority is also exempt from all taxes under West Virginia Code section 5B-3-9. Because of this and because of its ability to raise funds, the authority has the potential to meet its stated goals of promoting and encouraging the development of international exports from the State.

D. *Labor-Management Council*

Article 4 of Chapter 5B established a twenty-six member Labor-Management Council. The Council is actually a continuation of the Labor-Management Advisory Council.¹⁹ The stated objective of the Council is to improve labor-management relations in the State. The Labor-Management Council is designed to act as an advisor and consultant to State government, labor, and management. The Council is empowered to conduct seminars and other programs designed to improve labor-management relations in West Virginia.²⁰ The Council will also develop a resource network of experts and other resources for resolving labor-management disputes.²¹ Along with these programs, the Council will develop a long-range plan for improving labor-management relations in the State²² and will conduct and publicize case studies of successful businesses in the State with excellent labor-management relations.²³

Despite the fact that Article 4 is a new provision in the West Virginia Code, the Labor-Management Council is a continuation of a program that was already in existence in the State. The former Labor-Management Advisory Council was empowered to make recommendations to the governor and legislature. While the powers of the new Labor-Management Council are set out with greater specificity, they are almost identical to those given to the former Labor-Management Advisory Council under the repealed West Virginia Code section 21-1c-2.

¹⁷ W.VA. CODE § 5B-3-3(c) (Supp. 1985).

¹⁸ W.VA. CODE § 5B-3-6(b)(1), (2) (Supp. 1985).

¹⁹ W.VA. CODE § 5B-4-1 (Supp. 1985).

²⁰ W.VA. CODE § 5B-4-3(a) (Supp. 1985).

²¹ W.VA. CODE § 5B-4-3(b) (Supp. 1985).

²² W.VA. CODE § 5B-4-3(g) (Supp. 1985).

²³ W.VA. CODE § 5B-4-3(d) (Supp. 1985).

III. CHAPTER 5C: BASIC ASSISTANCE FOR INDUSTRY AND TRADE

A. *West Virginia Automobile Assistance Corporation*

Senate Bill No. 196 also created the West Virginia Automobile Assistance Corporation (WVAAC)²⁴ for the purpose of aiding the establishment and expansion of the automobile industry in the State. At the time the bill was passed the governor and legislators were trying to convince General Motors Corporation to locate its "Saturn" automobile plant in the State. WVAAC was designed to help the State in its efforts to be chosen as the site for the plant. Because General Motors has subsequently chosen to locate the Saturn Plant in Tennessee, WVAAC will probably have little use through its expiration on December 31, 1987.

WVAAC was created as a public corporation to act for public benefit and as an instrumentality of the State. Senate Bill No. 196 empowered WVAAC to construct gas and oil pipelines, electric transmission lines, means of ingress and egress to industrial sites, and waterworks and sewage systems that would be needed to build an automobile plant in the State.²⁵ WVAAC is also authorized to acquire land, and the governor is empowered to transfer to WVAAC state-owned land,²⁶ that would be needed to establish and expand the automobile industry in West Virginia.

Again, it is important to note that at the time bill was passed, West Virginia was trying to attract the Saturn plant. Since the article will remain in effect until the end of 1987 it may be used at some time between now and its expiration. However, since Article 1 was enacted with the purpose of attracting a particular facility which will locate in another state, its usefulness is doubtful.

B. *West Virginia Industrial and Trade Jobs Corporation*

The Act sets out the legislative purpose behind creating the West Virginia Industrial and Trade Jobs Development Corporation.²⁷ Some of the reasons given for the establishment of this public corporation are to encourage and increase the use of energy derived from hydrocarbon sources within the State, to develop and maintain property owned or to be owned by the State, and to enhance employment opportunities within the State.

The Act establishes an investment fund which will be used to further the purposes of the corporation.²⁸ To this end, the Act empowers the corporation to in-

²⁴ W.VA. CODE § 5C-1-5 (Supp. 1985).

²⁵ W.VA. CODE § 5C-1-9 (Supp. 1985).

²⁶ W.VA. CODE § 5C-1-10 (Supp. 1985).

²⁷ W.VA. CODE § 5C-2-2 (Supp. 1985).

²⁸ W.VA. CODE § 5C-2-7 (Supp. 1985).

vest in qualified securities issued by an enterprise.²⁹ The corporation will invest only in securities which have potential to create a substantial amount of employment for unskilled and semiskilled individuals, within the State.³⁰ The Legislature's concern for unemployment problems within West Virginia is also evident in West Virginia Code section 5C-2-9 which provides for the corporation's financing of development projects. One of the prerequisites that a development project must meet is that it too will provide for substantial employment opportunities for unskilled and semiskilled individuals.³¹

IV. CHAPTER 5D: PUBLIC ENERGY AUTHORITY ACT

The availability of reliable sources of energy is a major concern of the Legislature as seen in the creation of the West Virginia Public Energy Authority.³² The Authority may "initiate, acquire, construct, maintain, repair and operate electric power generating projects and transmission facilities."³³ In most instances, the Authority may also request the issuance of revenue bonds by the Economic Development Authority, payable solely from revenues, to finance or pay the cost of the various projects.³⁴ The Authority may purchase any land, property rights, rights of way, franchises, easements, leases, and other interests in lands that it believes is necessary or convenient for the construction and operation of any electric power generating project, natural gas transmission project, or other energy project.³⁵

V. CHAPTER 12: PUBLIC MONEYS AND SECURITIES

The Legislature has stressed its concern for the decline and economic stagnation of small businesses within West Virginia. The Legislature felt that high interest rates were the main reason for this decline which was resulting in higher unemployment.³⁶ To counter the trend, the Legislature created the linked deposit program which will provide for lower cost funds for lending purposes to small businesses and will inject needed capital into the business community. Business profitability should be increased which will in turn help to reduce unemployment within the State.³⁷

VI. CHAPTER 19: AGRICULTURE

West Virginia has abundant forest resources. The legislative purpose of the article is to promote West Virginia products; promote new forest product industries;

²⁹ W.VA. CODE § 5C-2-8 (Supp. 1985).

³⁰ W.VA. CODE § 5C-2-8(b)(4) (Supp. 1985).

³¹ W.VA. CODE § 5C-2-9(b)(4) (Supp. 1985).

³² W.VA. CODE § 5D-1-4 (Supp. 1985).

³³ W.VA. CODE § 5D-1-6 (Supp. 1985).

³⁴ W.VA. CODE § 5D-1-5(5) (Supp. 1985).

³⁵ W.VA. CODE § 5D-1-15 (Supp. 1985).

³⁶ W.VA. CODE § 12-1A-2 (Supp. 1985).

³⁷ *Id.*

develop existing forest product industries; promote coordination of all State forests resources; and advise the governor and Legislature on all aspects of forestry, the management of State forests for preservation and conservation purposes, and hunting and fishing concerns.³⁸ The Legislature believed that the development of the existing forest products industries and the promotion of new forest products industries should benefit the State in terms of employment and additional revenues.³⁹

West Virginia Code section 19-1A-3 removes the Division of Forestry from the Department of Natural Resources and places the Division of Forestry in the Department of Agriculture. The duties of the director of the Division of Forestry include promoting, expanding, and researching the forestry industry in West Virginia.⁴⁰ The director of the Division of Forestry will be appointed by the Forestry Commission as created by West Virginia Code section 19-1A-5. The Commission will serve as an advisory board for the director and will approve the division budget before it is submitted by the Department of Agriculture to the Department of Finance and Administration.⁴¹

VII. CONCLUSION

Senate Bill No. 196 did not make major changes in the substantive laws of the State. The primary changes brought about by its passage were changes to state administrative structures. It moved a number of divisions from existing agencies into newly created agencies. The purposes and powers of these departments, for the most part, remained the same.

The aggregation of these divisions was the goal of Governor Moore when he called for the development of the Department of Commerce in his State of the State Address.⁴² This aggregation will probably make the administration of the departments more efficient and, thus, perhaps will achieve the goals of making the State more attractive to businesses and tourists. It remains to be seen if the administrative efficiency resulting from the passage of Senate Bill No. 196 will bring about the changes in the State's economy and unemployment situation sought by the Legislature.

Mark B. D'Antoni
Mark A. Stach

³⁸ W.VA. CODE § 19-1A-2 (Supp. 1985).

³⁹ W.VA. CODE § 19-1A-1 (Supp. 1985).

⁴⁰ W.VA. CODE § 19-1A-4 (Supp. 1985).

⁴¹ W.VA. CODE § 19-1A-5 (Supp. 1985).