

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2640**

BY Delegate Foster

[Originating in the Committee on the Judiciary;

Reported February 13, 2023]



1 A BILL to amend and reenact §64-3-1 of the Code of West Virginia, 1931, as amended, all relating  
2 generally to authorizing certain agencies of the Department of Environmental Protection to  
3 promulgate legislative rules; authorizing the rules as filed, as modified, and as modified  
4 and amended by the Legislative Rule-Making Review Committee and as amended by the  
5 Legislature; authorizing the Department of Environmental Protection to promulgate a  
6 legislative rule relating to standards of performance for new stationary sources; authorizing  
7 the Department of Environmental Protection to promulgate a legislative rule relating to  
8 requirements for operating permits; authorizing the Department of Environmental  
9 Protection to promulgate a legislative rule relating to emission standards for hazardous air  
10 pollutants; authorizing the Department of Environmental Protection to promulgate a  
11 legislative rule relating to control of ozone season nitrogen oxides emissions; authorizing  
12 the Department of Environmental Protection to promulgate a legislative rule relating to  
13 quarrying and reclamation; authorizing the Department of Environmental Protection to  
14 promulgate a legislative rule relating to the Recycling Assistance Grant Program;  
15 authorizing the Department of Environmental Protection to promulgate a legislative rule  
16 relating to the Reclamation of Abandoned and Dilapidated Properties Grant Program; and  
17 authorizing the Secretary's Office of the Department of Environmental Protection to  
18 promulgate a legislative rule relating to reclamation of solar and wind electricity generation  
19 facilities.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL  
PROTECTION. TO PROMULGATE LEGISLATIVE RULES.**

**§64-3-1. Department of Environmental Protection.**

1 (a) The legislative rule filed in the State Register on July 21, 2022, authorized under the  
2 authority of §22-5-4 of this code, relating to the Department of Environmental Protection  
3 (standards of performance for new stationary sources, 45 CSR 16), is authorized.

4 (b) The legislative rule filed in the State Register on July 21, 2022, authorized under the  
5 authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet  
6 the objections of the Legislative Rule-Making Review Committee and refiled in the State Register  
7 on December 20, 2022, relating to the Department of Environmental Protection (requirements for  
8 operating permits, 45 CSR 30), is authorized with the amendments set forth below:

9 On page 39, subdivision 8.1.a.1, by striking the number "\$15,000" and inserting in lieu  
10 thereof the number "\$5,000";

11 On page 41, subsection 8.4, by striking out "150%" and inserting in lieu thereof "110%"

12 And,

13 On page 41, by striking out subsection 8.6 and inserting in lieu thereof a new subsection 8.6  
14 to read as follows:

15 "8.6. The Secretary shall transition the base fee components under subdivision 8.1.a of this  
16 rule in accordance with the following, which shall apply when the rule becomes effective.

17 8.6.a. The Permitted Source Base Fee (PSBF) is \$ 5000.

18 8.6.b. The Deferred Source Base Fee (DSBF) is \$ 0.

19 8.6.c. These base fee components shall remain in effect until revised or superseded."

20 (c) The legislative rule filed in the State Register on July 21, 2022, authorized under the  
21 authority of §22-5-4 of this code, relating to the Department of Environmental Protection (emission  
22 standards for hazardous air pollutants, 45 CSR 34), is authorized.

23 (d) The legislative rule filed in the State Register on July 21, 2022, authorized under the  
24 authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet  
25 the objections of the Legislative Rule-Making Review Committee and refiled in the State Register

26 on September 16, 2022, relating to the Department of Environmental Protection (control of ozone  
27 season nitrogen oxides emissions, 45 CSR 40), is authorized.

28 (e) The legislative rule filed in the State Register on May 26, 2022, authorized under the  
29 authority of §22-4-4 of this code, modified by the Department of Environmental Protection to meet  
30 the objections of the Legislative Rule-Making Review Committee and refiled in the State Register  
31 on October 6, 2022, relating to the Department of Environmental Protection (rules for quarrying  
32 and reclamation, 38 CSR 03), is authorized.

33 (f) The legislative rule filed in the State Register on July 29, 2022, authorized under the  
34 authority of §22-15A-19 of this code, relating to the Department of Environmental Protection  
35 (recycling assistance grant program, 33 CSR 10), is authorized.

36 (g) The legislative rule filed in the State Register on July 29, 2022, authorized under the  
37 authority of §22-15A-30 of this code, modified by the Department of Environmental Protection to  
38 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State  
39 Register on October 14, 2022, relating to the Department of Environmental Protection  
40 (Reclamation of Abandoned and Dilapidated Properties Grant Program, 33 CSR 13), is  
41 authorized.

**§64-3-2. Department of Environmental Protection – Secretary’s Office.**

1 The legislative rule filed in the State Register on July 29, 2022, authorized under the  
2 authority of §22-32-7 of this code, relating to the Department of Environmental Protection –  
3 Secretary’s Office (reclamation of solar and wind electricity generating facilities, 60 CSR 11), is  
4 authorized with the following amendments:

5 On page 5, subparagraph 4.1.d.iii after the word, ‘slabs” by inserting the words “to a  
6 minimum depth of 36 inches below the surface”;

7 On page 5, subsection 4.4 after the word “receipt” by adding the following:

8 “The department shall only deny an alternative decommissioning agreement if they  
9 determine that it will not result in the restoration of the property to a condition in which it can be

10 used towards the same or a similar use as its use prior to the onset of the alternative  
11 decommissioning agreement.”;

12           And,

13           On page 7, by striking out subdivision 6.2.a and inserting in lieu thereof subdivision 6.2.a to  
14 read as follows:

15           “6.2.a. Estimated costs of decommissioning and salvage value as submitted by the owner  
16 in the decommissioning plan and in accordance with these rules with such costs estimated by the  
17 department using current machinery production handbooks and publications or other documented  
18 or substantiated cost estimates acceptable to the department.”