

COMMITTEE SUBSTITUTE

FOR

H. B. 4220

(BY DELEGATES BROWN, D. POLING,
FLEISCHAUER AND TALBOTT)

(Originating in the Committee on the Judiciary)
[February 17, 2012]

A BILL to amend and reenact article 10, chapter 64 of the code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Commerce; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by

the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Development Office to promulgate a legislative rule relating to brownfield economic development districts; authorizing the Development Office to promulgate a legislative rule relating to the use of coalbed methane severance tax proceeds; authorizing the Board of Registration for Foresters to promulgate a legislative rule relating to the certification of registered foresters; authorizing the Board of Registration for Foresters to promulgate a legislative rule relating to a schedule of fees; authorizing the Board of Registration for Foresters to promulgate a legislative rule relating to a code of ethics; authorizing the Division of Forestry to promulgate a legislative rule relating to sediment

control during commercial timber-harvesting operations - licensing; authorizing the Division of Forestry to promulgate a legislative rule relating to sediment control during commercial timber-harvesting operations - logger certification; authorizing the Division of Labor to promulgate a legislative rule relating to the Zipline and Canopy Tour Responsibility Act; authorizing the Division of Labor to promulgate a legislative rule relating to the Amusement Rides and Amusement Attractions Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the supervision of elevator mechanics and apprentices; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to the application process for the West Virginia Innovative Mine Safety Technology Tax Credit Act; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special motor boating; authorizing

the Division of Natural Resources to promulgate a legislative rule relating to hunting, trapping and fishing; authorizing the Division of Natural Resources to promulgate a legislative rule relating to defining the terms used in all hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general trapping; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to special fishing.

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Development Office.

- 1 (a) The legislative rule filed in the State Register on the
- 2 fifth day of July, two thousand eleven, authorized under the

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3 authority of section six-a, article two, chapter five-b, of this
4 code, modified by the Development Office to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the twenty-
7 third day of December, two thousand eleven, relating to the
8 Development Office (brownfield economic development
9 districts, 145 CSR 11), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 fourteenth day of July, two thousand eleven, authorized under
12 the authority of section twenty-a, article thirteen-a, chapter
13 eleven, of this code, modified by the Development Office to
14 meet the objections of the Legislative Rule-Making Review
15 Committee and refiled in the State Register on the sixteenth day
16 of December, two thousand eleven, relating to the Development
17 Office (use of coalbed methane severance tax proceeds, 145
18 CSR 13), is authorized, with the following amendment:
19 On page one, section three, by striking out “*W.Va. Code*
20 §11-12-1” and inserting in lieu thereof “*W.Va. Code* §7-12-1”.

§64-10-2. Board of Registration for Foresters.

1 (a) The legislative rule filed in the State Register on the
2 third day of August, two thousand eleven, authorized under
3 the authority of section six, article nineteen, chapter thirty, of
4 this code, modified by the Board of Registration for Foresters
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 fifth day of December, two thousand eleven, relating to the
8 Board of Registration for Foresters (certification of registered
9 foresters, 200 CSR 1), is authorized, with the following
10 amendment:

11 On page 1, subsection 1.1, after the words “rule
12 establishes” by striking out the remainder of the sentence and
13 inserting in lieu thereof the words “educational and
14 experience requirements, approved job titles and continuing
15 education requirements for foresters and forestry technicians,
16 and meeting requirements for the board.”;

17 On page 2, subsection 2.9, at the end of the subsection,
18 by striking out the words “this article” and inserting in lieu

19 thereof the words “*W. Va. Code §30-19-1 et seq.* and this
20 rule.”;

21 On page 2, in the first subsection 2.10, by striking out the
22 word “Permittee” and inserting in lieu thereof the word
23 “Permittee”, and at the end of the subsection, by striking out
24 the words “this article” and inserting in lieu thereof the
25 words “*W. Va. Code §30-19-1 et seq.* and this rule.”;

26 On page 2, subsection 2.11, at the end of the subsection,
27 by striking out the words “this article” and inserting in lieu
28 thereof the words “*W. Va. Code §30-19-1 et seq.* and this
29 rule.”;

30 On page 2, in the second subsection 2.10, at the end of
31 the subsection, by striking out the words “this article” and
32 inserting in lieu thereof the words “*W. Va. Code §30-19-1 et*
33 *seq.* and this rule.”;

34 On page 2, by redesignating the second subsection 2.10
35 as subsection 2.12;

36 On page 2, section 3, after the section heading, by
37 striking out section 3 in its entirety and inserting in lieu
38 thereof a new section 3 to read as follows:

“§200-1-3. Applications.

1 3.1. An applicant for certification as a registered forester
2 shall submit evidence to the board of the following:
3 3.1.a. A bachelor's degree in forestry from a four year
4 school, college or university accredited by the Society of
5 American Foresters and at least two years of full-time
6 equivalent work experience as a professional forester within
7 the ten years preceding the date of filing an application for
8 registration; or
9 3.1.b. An associate's degree from a two year technical
10 forestry program recognized by the Society of American
11 Foresters plus a bachelor's degree in another natural science
12 or business and at least four years of full-time equivalent
13 work experience in the field of forestry acceptable to the
14 board within the ten years preceding the date of filing an
15 application for registration.

16 3.2. An applicant for certification as a registered forestry
17 technician shall submit evidence to the board of an
18 associate's degree from a two year technical forestry
19 program recognized by the Society of American Foresters
20 and at least four years of full-time equivalent work
21 experience in the field of forestry acceptable to the board
22 within the ten years preceding the date of filing an
23 application for registration.

24 3.3. All applicants must complete the application form
25 provided by the Board and supply the following:

26 3.3.a. Personal information;
27 3.3.b. Educational information;
28 3.3.c. Qualifying work experience;
29 3.3.d. Verification of license, certification or other
30 authority to practice from other state licensing boards, if
31 applicable;
32 3.3.e. Written responses to questions regarding criminal
33 offenses;

34 3.3.f. Written responses to questions regarding child

35 support obligations; and

36 3.3.g. Applicable fee or fees as provided in 200 CSR 4.”;

37 On page 3, subsection 6.1, after the words “name and” by

38 striking out the word “license” and inserting in lieu thereof

39 the word “certification”;

40 On page 4, subsection 6.7, by striking out the words “will

41 automatically” and inserting in lieu thereof the words “will

42 be automatically classified as”;

43 On page 4, subsection 6.9, after the words “non-renewal

44 of any” by striking out the word “license” and inserting in

45 lieu thereof the word “certification” and after the words

46 “return the certificate” by striking out the words “of

47 registration”;

48 On page 4, subsection 7.1, after the words “issuing of a

49 certificate” by striking out the words “of registration”;

50 On page 5, subsection 7.2, after the words “working

51 toward eligibility for” by striking out the word “licensing”

52 and inserting in lieu thereof the word “certification”, and
53 after the words “leading to the issuance of a” by striking out
54 the words “license and” and after the word “certificate” by
55 striking out the words “of registration”;

56 And,

57 On page 6, subsection 10.1, after the words “To renew a”
58 by striking out the word “license” and inserting in lieu
59 thereof the word “certificate” and after the words “renewal
60 or initial” by striking out the word “registration” and
61 inserting in lieu thereof the word “certification” and after the
62 words “The board shall not renew a” by striking out the word
63 “license” and inserting in lieu thereof the word “certificate”.

64 (b) The legislative rule filed in the State Register on the
65 third day of August, two thousand eleven, authorized under
66 the authority of section six, article nineteen, chapter thirty, of
67 this code, modified by the Board of Registration for Foresters
68 to meet the objections of the Legislative Rule-Making
69 Review Committee and refiled in the State Register on the

70 fifth day of December, two thousand eleven, relating to the
71 Board of Registration for Foresters (schedule of fees, 200
72 CSR 4), is authorized, with the following amendments:
73 On page 1, in the first subsection 2.2, after the word
74 "fee" by striking out the word "for";
75 On page 1, in the second subsection 2.2, after the word
76 "certification" by striking out the word "license"; and
77 On page 1, section 2, by numbering the subsections of
78 said section 2 sequentially.
79 (c) The legislative rule filed in the State Register on the
80 third day of August, two thousand eleven, authorized under
81 the authority of section six, article nineteen, chapter thirty, of
82 this code, modified by the Board of Registration for Foresters
83 to meet the objections of the Legislative Rule-Making
84 Review Committee and refiled in the State Register on the
85 fifth day of December, two thousand eleven, relating to the
86 Board of Registration for Foresters (code of ethics, 200 CSR
87 5), is authorized.

§64-10-3. Division of Forestry.

1 (a) The legislative rule filed in the State Register on the
2 twentieth day of July, two thousand eleven, authorized under
3 the authority of section four, article one-b, chapter nineteen,
4 of this code, relating to the Division of Forestry (sediment
5 control during commercial timber-harvesting operations -
6 licensing, 22 CSR 2), is authorized, with the following
7 amendment:

8 On page two, section two, subsection 2.22, after “§19-
9 1B-3e” by striking out the remainder of the subsection and
10 inserting in lieu thereof the following: “includes all aspects
11 of logging, including but not limited to severing and
12 delimbing of trees, cutting of the delimbed tree into logs
13 either at the point of severing or at a landing, the preparation
14 of any skid and haul roads and the skidding or otherwise
15 moving of logs to landings.”.

16 (b) The legislative rule filed in the State Register on the
17 twentieth day of July, two thousand eleven, authorized under

18 the authority of section seven, article one-b, chapter nineteen,
19 of this code, relating to the Division of Forestry (sediment
20 control during commercial timber-harvesting operations -
21 logger certification, 22 CSR 3), is authorized, with the
22 following amendment:

23 On page two, section two, subsection 2.13, after the word
24 “Operations”, by inserting the words “or the singular”.

§64-10-4. Division of Labor.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand eleven, authorized
3 under the authority of section six, article fifteen, chapter
4 twenty-one, of this code, modified by the Division of Labor
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 twenty-fifth day of October, two thousand eleven, relating to
8 the Division of Labor (Zipline and Canopy Tour
9 Responsibility Act, 42 CSR 10), is authorized.

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10 (b) The legislative rule filed in the State Register on the
11 twenty-eighth day of July, two thousand eleven, authorized
12 under the authority of section three, article ten, chapter
13 twenty-one, of this code, modified by the Division of Labor
14 to meet the objections of the Legislative Rule-Making
15 Review Committee and refiled in the State Register on the
16 twenty-fifth day of October, two thousand eleven, relating to
17 the Division of Labor (Amusement Rides and Amusement
18 Attractions Safety Act, 42 CSR 17), is authorized.

19 (c) The legislative rule filed in the State Register on the
20 twenty-eighth day of July, two thousand eleven, authorized
21 under the authority of section eleven, article three-c, chapter
22 twenty-one, of this code, modified by the Division of Labor
23 to meet the objections of the Legislative Rule-Making
24 Review Committee and refiled in the State Register on the
25 twenty-fifth day of October, two thousand eleven, relating to
26 the Division of Labor (supervision of elevator mechanics and
27 apprentices, 42 CSR 21A), is authorized.

§64-10-5. Office of Miners' Health Safety & Training.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section thirteen, article thirteen-bb,
4 chapter eleven, of this code, modified by the Office of
5 Miners' Health, Safety and Training to meet the objections
6 of the Legislative Rule-Making Review Committee and
7 refiled in the State Register on the twenty-second day of
8 November, two thousand eleven, relating to the Office of
9 Miners' Health, Safety and Training (application process for
10 the West Virginia Innovative Mine Safety Technology Tax
11 Credit Act, 56 CSR 14), is authorized.

§64-10-6. Division of Natural Resources

1 (a) The legislative rule filed in the State Register on the
2 twenty-fifth day of July, two thousand eleven, authorized
3 under the authority of section seven, article one, chapter
4 twenty, of this code, modified by the Division of Natural
5 Resources to meet the objections of the Legislative Rule-

6 Making Review Committee and refiled in the State Register
7 on the twenty-second day of September, two thousand
8 eleven, relating to the Division of Natural Resources (special
9 boating, 58 CSR 26), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-sixth day of July, two thousand eleven, authorized
12 under the authority of section twenty-three, article seven,
13 chapter twenty, of this code, modified by the Division of
14 Natural Resources to meet the objections of the Legislative
15 Rule-Making Review Committee and refiled in the State
16 Register on the twenty-second day of September, two
17 thousand eleven, relating to the Division of Natural
18 Resources (special motorboating, 58 CSR 27), is authorized.

19 (c) The legislative rule filed in the State Register on the
20 twenty-sixth day of July, two thousand eleven, authorized
21 under the authority of section seven, article one, chapter
22 twenty, of this code, relating to the Division of Natural
23 Resources (hunting, trapping and fishing, 58 CSR 45A), is
24 authorized.

25 (d) The legislative rule filed in the State Register on the
26 twenty-fifth day of July, two thousand eleven, authorized
27 under the authority of section seven, article one, chapter
28 twenty, of this code, modified by the Division of Natural
29 Resources to meet the objections of the Legislative Rule-
30 Making Review Committee and refiled in the State Register
31 on the twenty-second day of September, two thousand
32 eleven, relating to the Division of Natural Resources
33 (defining the terms used in all hunting and trapping, 58 CSR
34 46), is authorized.

35 (e) The legislative rule filed in the State Register on the
36 twenty-fifth day of July, two thousand eleven, authorized
37 under the authority of section seven, article one, chapter
38 twenty, of this code, modified by the Division of Natural
39 Resources to meet the objections of the Legislative Rule-
40 Making Review Committee and refiled in the State Register
41 on the twenty-second day of September, two thousand
42 eleven, relating to the Division of Natural Resources

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43 (prohibitions when hunting and trapping, 58 CSR 47), is
44 authorized.

45 (f) The legislative rule filed in the State Register on the
46 twenty-fifth day of July, two thousand eleven, authorized
47 under the authority of section seven, article one, chapter
48 twenty, of this code, modified by the Division of Natural
49 Resources to meet the objections of the Legislative Rule-
50 Making Review Committee and refiled in the State Register
51 on the twenty-second day of September, two thousand
52 eleven, relating to the Division of Natural Resources (general
53 trapping, 58 CSR 53), is authorized, with the following
54 amendment:

55 On page one, section three, subsection 3.2, in the first
56 sentence, after the word “Areas” by adding “and State
57 Forests”,

58 And,

59 On page one, section three, subsection 3.2, in the second
60 sentence, after the word “Area” by adding “or State Forest”.

61 (g) The legislative rule filed in the State Register on the
62 twenty-fifth day of July, two thousand eleven, authorized
63 under the authority of section seven, article one, chapter
64 twenty, of this code, modified by the Division of Natural
65 Resources to meet the objections of the Legislative Rule-
66 Making Review Committee and refiled in the State Register
67 on the twenty-second day of September, two thousand
68 eleven, relating to the Division of Natural Resources (special
69 fishing, 58 CSR 61), is authorized.