

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 4086

By Delegate Smith

[Originating in the Committee on the Judiciary;

Reported on February 9, 2024]

1 A BILL to amend and reenact §64-10-1 of the Code of West Virginia, 1931, as amended, all
2 relating generally to authorizing certain agencies of the Department of Commerce to
3 promulgate legislative rules; authorizing the rules as filed, as modified, and as amended by
4 the Legislative Rule-Making Review Committee and as amended by Legislature;
5 authorizing the Division of Forestry to promulgate a legislative rule relating to sediment
6 control during commercial timber-harvesting operations – licensing; authorizing the
7 Division of Forestry to promulgate a legislative rule relating to sediment control during
8 commercial timber-harvesting operations - logger certification; authorizing the Division of
9 Labor to promulgate a legislative rule relating to minimum wage, maximum hours, and
10 overtime compensation; authorizing the Division of Labor to promulgate a legislative rule
11 relating to licensing of elevator mechanics, accessibility technicians, and limited
12 technicians and registration of elevator mechanic apprentices; authorizing the Office of
13 Miners' Health, Safety and Training to promulgate a legislative rule relating to safety
14 provisions for clearing crews; authorizing the Office of Miners' Health, Safety and Training
15 to promulgate a legislative rule relating to protective clothing and equipment; authorizing
16 the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to
17 reporting requirements for independent contractors; authorizing the Office of Miners'
18 Health, Safety and Training to promulgate a legislative rule relating to assessing health
19 and safety violation penalties; authorizing the Office of Miners' Health, Safety and Training
20 to promulgate a legislative rule relating to the application process for the West Virginia
21 Innovative Mine Safety Technology Tax Credit Act; authorizing the Office of Miners' Health,
22 Safety and Training to promulgate a legislative rule relating to the program for the sharing
23 of information between employers; authorizing the Office of Miners' Health, Safety and
24 Training to promulgate a legislative rule relating to substance abuse screening, standards
25 and procedures; authorizing the Miners' Health, Safety and Training to promulgate a
26 legislative rule relating to operating diesel equipment in underground mines in West

27 Virginia; authorizing the Division of Natural Resources to promulgate a legislative rule
28 relating to hunting, fishing and other outfitters and guides; authorizing the Division of
29 Natural Resources to promulgate a legislative rule relating to commercial whitewater
30 outfitters; authorizing the Division of Natural Resources to promulgate a legislative rule
31 relating to revocation of hunting and fishing licenses; authorizing the Division of Natural
32 Resources to promulgate a legislative rule relating to Cabwaylingo State Forest Trail
33 System two-year pilot project permitting ATVs and ORVs; authorizing the Division of
34 Natural Resources to promulgate a legislative rule relating to lifetime hunting, trapping,
35 and fishing licenses; and authorizing the Public Energy Authority to promulgate a
36 legislative rule relating to petitioning the Public Energy Authority for approval of
37 decommissioning or deconstruction activities related to any coal, oil, or natural gas fueled
38 power plant.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 10. AUTHORIZATION FOR DEPARTMENT OF COMMERCE TO
PROMULGATE LEGISLATIVE RULES.**

§64-10-1. West Virginia Division of Forestry.

1 (a) The legislative rule filed in the State Register on July 27, 2023, authorized under the
2 authority of §19-1B-4 of this code, modified by the Division of Forestry to meet the objections of the
3 Legislative Rule-Making Review Committee and refiled in the State Register on November 13,
4 2023, relating to the Division of Forestry (sediment control during commercial timber-harvesting
5 operations - licensing, 22 CSR 02), is authorized with the following amendment:

6 On page 5, subsection 7.1, by striking the words “or entity”.

7 (b) The legislative rule filed in the State Register on July 27, 2023, authorized under the
8 authority of §19-1B-7 of this code, modified by the Division of Forestry to meet the objections of the
9 Legislative Rule-Making Review Committee and refiled in the State Register on November 13,

10 2023, relating to the Division of Forestry (sediment control during commercial timber-harvesting
11 operations - logger certification, 22 CSR 03), is authorized with the following amendment:

12 On page 4, subsection 7.1, by striking the words "or entity".

§64-10-2. West Virginia Division of Labor.

1 (a) The legislative rule filed in the State Register on June 6, 2023, authorized under the
2 authority of §21-5C-6 of this code, modified by the Division of Labor to meet the objections of the
3 Legislative Rule-Making Review Committee and refiled in the State Register on September 19,
4 2023, relating to the Division of Labor (minimum wage, maximum hours, and overtime
5 compensation, 42 CSR 08), is authorized.

6 (b) The legislative rule filed in the State Register on July 27, 2023, authorized under the
7 authority of §21-3C-11 of this code, relating to the Division of Labor (licensing of elevator
8 mechanics, accessibility technicians, and limited technicians and registration of elevator mechanic
9 apprentices, 42 CSR 21A), is authorized.

§64-10-3. Office of Miners' Health, Safety, and Training.

1 (a) The legislative rule filed in the State Register on July 27, 2023, authorized under the
2 authority of §22A-1-38 of this code, modified by the Office of Miners' Health, Safety and Training to
3 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
4 Register on September 14, 2023, relating to the Office of Miners' Health, Safety and Training
5 (safety provisions for clearing crews, 56 CSR 02), is authorized.

6 (b) The legislative rule filed in the State Register on July 27, 2023, authorized under the
7 authority of §22A-2-55 of this code, modified by the Office of Miners' Health, Safety and Training to
8 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
9 Register on September 15, 2023, relating to the Office of Miners' Health, Safety and Training
10 (protective clothing and equipment, 56 CSR 04), is authorized.

11 (c) The legislative rule filed in the State Register on July 27, 2023, authorized under the
12 authority of §22A-1-6 of this code, relating to the Office of Miners' Health, Safety and Training
13 (reporting requirements for independent contractors, 56 CSR 10), is authorized.

14 (d) The legislative rule filed in the State Register on July 27, 2023, authorized under the
15 authority of §22A-1-6 of this code, modified by the Office of Miners' Health, Safety and Training to
16 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
17 Register on September 15, 2023, relating to the Office of Miners' Health, Safety and Training
18 (assessing health and safety violation penalties, 56 CSR 12), is authorized,

19 (e) The legislative rule filed in the State Register on July 27, 2023, authorized under the
20 authority of §11-13BB-13 of this code, modified by the Office of Miners' Health, Safety and Training
21 to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
22 Register on September 15, 2023, relating to the Office of Miners' Health, Safety and Training
23 (application process for the West Virginia Innovative Mine Safety Technology Tax Credit Act, 56
24 CSR 14), is authorized.

25 (f) The legislative rule filed in the State Register on July 27, 2023, authorized under the
26 authority of §22A-1-4 of this code, modified by the Office of Miners' Health, Safety and Training to
27 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
28 Register on September 15, 2023, relating to the Office of Miners' Health, Safety and Training
29 (rules governing the program for the sharing of information between employers, 56 CSR 18), is
30 authorized.

31 (g) The legislative rule filed in the State Register on July 27, 2023, authorized under the
32 authority of §22A-1A-2 of this code, modified by the Office of Miners' Health, Safety and Training to
33 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
34 Register on September 15, 2023, relating to the Office of Miners' Health, Safety and Training
35 (substance abuse screening, standards and procedures, 56 CSR 19), is authorized.

36 (h) The legislative rule filed in the State Register on July 27, 2023, authorized under the
37 authority of §22A-2A-1001 of this code, relating to the Miners' Health, Safety and Training (rules
38 for operating diesel equipment in underground mines in West Virginia, 56 CSR 23), is authorized.

§64-10-4. Division of Natural Resources.

1 (a) The legislative rule filed in the State Register on July 27, 2023, authorized under the
2 authority of §20-1-7 of this code, modified by the Division of Natural Resources to meet the
3 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
4 November 16, 2023, relating to the Division of Natural Resources (hunting, fishing and other
5 outfitters and guides, 58 CSR 11), is authorized.

6 (b) The legislative rule filed in the State Register on July 27, 2023, authorized under the
7 authority of §20-2-23a of this code, modified by the Division of Natural Resources to meet the
8 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
9 November 16, 2023, relating to the Division of Natural Resources (commercial whitewater
10 outfitters, 58 CSR 12), is authorized.

11 (c) The legislative rule filed in the State Register on July 27, 2023, authorized under the
12 authority of §20-2-38 of this code, modified by the Division of Natural Resources to meet the
13 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
14 November 16, 2023, relating to the Division of Natural Resources (revocation of hunting and
15 fishing licenses, 58 CSR 23), is authorized.

16 (d) The legislative rule filed in the State Register on July 20, 2023, authorized under the
17 authority of §20-3-3a of this code, relating to the Division of Natural Resources (Cabwaylingo
18 State Forest Trail System two year pilot project permitting ATVs and ORVs, 58 CSR 36), is
19 authorized.

20 (e) The legislative rule filed in the State Register on July 27, 2023, authorized under the
21 authority of §20-2B-7 of this code, modified by the Division of Natural Resources to meet the
22 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on

23 November 14, 2023, relating to the Division of Natural Resources (lifetime hunting, trapping, and
24 fishing licenses , 58 CSR 67), is authorized.

§64-10-5. Public Energy Authority.

1 The legislative rule filed in the State Register on September 7, 2023, authorized under the
2 authority of §5D-1-5c of this code, relating to the Public Energy Authority (rule to petition the
3 Public Energy Authority for approval of decommissioning or deconstruction activities related to
4 any coal, oil, or natural gas fueled power plant, 53 CSR 05), is authorized with the following
5 amendments:

6 On page 3, by striking out subsection 4.3 in its entirety and inserting in lieu thereof a new
7 subsection 4.3 to read as follows:

8 “4.3. One paper copy and one electronic PDF version of the Notice shall be filed with the
9 Authority, in addition to the requirements set forth in subsections 6.1., 6.2., 6.3., and 6.4. of this
10 rule.”;

11 On page 7, subsection 5.3. by striking out the word “five (5)” and inserting in lieu thereof
12 “20”;

13 On page 7, subdivision 5.3.1. by striking out the word “five (5)” and inserting in lieu thereof
14 “20”;

15 On page 7, subdivision 5.3.3. by striking out the words “Eight (8) copies” and inserting in
16 lieu thereof the words: “One paper copy and one electronic PDF version”;

17 On page 7, by striking out subdivision 6.2.1. in its entirety;

18 On page 7, subsection 6.3., after the word “A”, by striking the word “copy” and inserting in
19 lieu thereof the words “paper copy or electronic PDF version”;

20 On page 8, subsection 7.6., by striking out the words “not to exceed three (3) pages”;

21 On page 8, subdivision 8.1.3. by striking out the words “three-page”;

22 On page 8, by inserting a new subdivision, designated 8.1.4, to read as follows:

23 “8.1.4. The Authority shall make a decision on the Petition within one year after the
24 submission of the Petition.”;

25 On page 9, by striking out subsection 9.2. and subdivision 9.2.1. in their entirety and
26 inserting in lieu thereof the new subsections 9.2. and 9.2.1. to read as follows:

27 9.2. A Petitioner may redact or withhold any confidential or proprietary information that the
28 Petitioner cannot legally disclose. The Petitioner shall include with the petition a letter generally
29 describing the nature of the information redacted or withheld and the legal justification for the
30 redaction or withholding of the information.

31 9.2.1. The Authority may determine in executive session what additional information is
32 exempt from public disclosure under the West Virginia Freedom of Information Act and may make
33 any additional redactions prior to publishing the Petition on the Authority’s website.

34 And,

35 On page 9, by adding a new section, designated §53-5-10 to read as follows:

36 “**§53-5-10. Appeals.**

37 10.1. All proceedings in the appeal of the Authority’s actions concerning a Petition or the
38 proceedings therefore, and any judicial review thereof, shall be conducted in accordance with the
39 provisions of §29A-5-1 *et seq.* of this code and any procedural rules adopted pursuant thereto.”

NOTE: The purpose of this bill is to authorize the Division of Forestry to promulgate a legislative rule relating to sediment control during commercial timber-harvesting operations - licensing.

This section is new; therefore, strike-throughs and underscoring have been omitted.