WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2002

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4219

(By Delegates Mahan, Wills, Cann, Kominar, Faircloth and Riggs)

Passed March 9, 2002

In Effect from Passage
AN ACT to amend and reenact article ten, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; 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 development office to promulgate legislative rules relating to workforce development initiative; authorizing economic development; authority to promulgate legislative rule relating to general administration of West Virginia capital company act; establishment of application procedures to implement act; authorizing economic development authority to promulgate legislative rule relating to general administration of West Virginia venture capital act; authorizing division of labor to promulgate legislative rule relating to steam boiler inspection; authorizing manufactured housing construction and safety standards board to promulgate legislative rule relating to board; authorizing division of natural resources to promulgate legislative rule relating to commercial whitewater outfitters; authorizing division of natural resources to promulgate legislative rule relating to small arms hunting; authorizing division of natural resources to promulgate legislative rule relating to special boating; authorizing division of natural resources to promulgate legislative rule relating to public use of West Virginia state parks, state forests and state wildlife management areas under division; authorizing division of natural resources to promulgate legislative rule relating to wild boar hunting; authorizing division of natural resources to promulgate legislative rule relating to general trapping; and authorizing division of natural resources to promulgate legislative rule relating to issuance of hunting, trapping and fishing licenses by telephone and other electronic methods.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 10. AUTHORIZATION FOR THE BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.
§64-10-1. Development office.

The legislative rule filed in the state register on the tenth day of July, two thousand one, under the authority of section five, article three-d, chapter eighteen-b of this code, relating to the development office (workforce development initiative program), is authorized with the following amendment:

On page four, subdivision 8.1.4 after the word “modernization” by striking out the word “of” and inserting in lieu thereof the word “and”.

§64-10-2. Economic development authority.

(a) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, under the authority of section five, article one, chapter five-e of this code, modified by the economic development authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of November, two thousand one, relating to the economic development authority (general administration of the West Virginia capital company act; establishment of the application procedures to implement the act, 117 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, authorized under the authority of section three, article two, chapter five-e of this code, modified by the economic development authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of November, two thousand one, relating to the economic development authority (general administration of the West Virginia venture capital act, 117 CSR 3), is authorized with the following amendments:
On pages one and two of the rule, Section 2. Definitions, by inserting four new definitions as designated below and renumbering the existing definitions in section two accordingly:

"2.8. "Federal Program Participant" means (a) An SBIC; (b) a New Markets Venture Capital Company; or (c) an Entity which is not an SBIC or a New Markets Venture Capital Company but which is designated by the Authority as a Federal Program Participant due to the Entity’s participation in a venture capital program administered by the United States Small Business Administration or other federal agency”;

"2.17. ‘New Markets Venture Capital Company’ means an Entity which has been designated by the United States Small Business Administration as a New Markets Venture Capital Company pursuant to 13 C.F.R. §108 et seq.”;

"2.19. ‘Participation Agreement’ means a written agreement executed by a Fund Manager and the applicable Fund or Governing Entity, as the case may require, setting forth the terms and conditions of the Fund Manager’s service to the Fund or Fund Share. In instances where the Fund or Fund Share purchases an ownership interest in its Fund Manager, ‘participation agreement’ may, as applicable, include the limited partnership agreement, limited liability company operating agreement or other applicable written agreement entered into by the Fund and other owners of the Fund Manager.”; and

"2.22. “SBIC” or ‘Small Business Investment Company’ means only an Entity which is licensed by the United States Small Business Administration as a Small Business Investment Company under the Small Business Investment Act of 1958, 15 U.S.C. §661 et seq., as amended.”;
On page 2, section 4.1 by following the words ‘or Entity’ inserting a comma and the following: “including, without limitation, a Federal Program Participant,”

On page 4, section 4.4, in the third sentence, following the words “between the applicant and the” by inserting the words “Fund or”;

On page 11, section 7.1 by following the words “Fund Manager is assigned” by inserting the words “or which it receives”;

On page 11, by striking all of sections 7.1.a., 7.1.b., and 7.1.c.;

On page 11, section 7.2. By following the words “and the applicable” by inserting the words “Fund or”;

On page 11, section 7.3. By following the words “and the applicable” by inserting the words “Fund or”;

On page 11, section 7.4 before the words “Investment Restrictions.” by designating the paragraph number “7.4.1.”;

On page 11, section 7.4.1 by following the words “of the applicable” by inserting the words “Fund or”;

On page 11, following section 7.4.1, inserting a new section 7.4.2. to read as follows:

“Unless the prior written consent of the applicable Fund or Governing Entity is obtained, a Fund Manager may not invest any portion of or contribution from a Fund or Fund Share in any West Virginia Business where there is a direct or indirect economic relationship, in the form of ownership, compensation or otherwise, between the West Virginia Business, including the
relatives, affiliates and members of the Managing Body of the West Virginia Business, and an investor in the Fund or Fund Share, including relatives, affiliates and members of the Managing Body of the investor.”

On page 11, following section 7.5, by inserting two new sections, sections 7.6 and 7.7 to read as follows:

“7.6 Purchase of Ownership Interest in a Fund Manager.

7.6.1. Structure.- At the discretion of the Authority or applicable Governing Entity, a Fund or Fund Share may invest its assets by purchasing an ownership interest in a Federal Program Participant or other Entity serving as the Fund Manager. Such purchase of an ownership interest in the Fund Manager may be by original issue from the Fund Manager or purchased on the secondary market from an owner of the Fund Manager.

7.6.2. Pooling of Assets. - The assets of the Fund or Fund Share used to purchase an ownership interest in its Fund Manager may be pooled with that of other private or public investors holding ownership interests in the Fund Manager so that the assets of the Fund or Fund Share contributed to the Fund Manager may become indistinguishable from those of the other owners of the Fund Manager.

7.6.3. Investments. - In situations where the Fund or Fund Share purchases an ownership interest in its Fund Manager, the Fund Manager may invest its assets, including those of the Fund or Fund Share, in businesses located in various states: Provided, That the Fund Manager must invest an amount equal to or exceeding the amount contributed by the Fund or Fund Share, net of reasonable management fees and operational expenses allocable to the Fund under the applicable Participa-
7.6.4. Investment Guidelines. - In the Participation Agreement or other agreement executed by the applicable Fund or Governing Entity and the Fund Manager, the Fund or Governing Entity and the Fund Manager shall contractually agree on the investment guidelines to be followed by the Fund Manager when investing in West Virginia Businesses.

7.7. Where the Fund or Fund Share Does Not Purchase an Ownership Interest In Its Fund Manager. - In situations where the Fund or Fund Share does not purchase an ownership interest in its Fund Manager:

7.7.1. Unless the prior written consent of the Governing Entity is obtained, the Fund Manager shall not obtain ownership of assets of the Fund or the Fund Share. Rather, the Fund Manager, at least fifteen (15) days before the closing of an investment in a West Virginia Business, shall advise the applicable Governing Entity in writing of the funds to be invested to allow the applicable Governing Entity to make the funds available for investment by the Fund Manager at closing;

7.7.2. Unless the prior written consent of the Governing Entity is obtained, the Fund Manager shall make, and at all times maintain, all investments on the name of the applicable Fund; and

7.7.3. The Fund Manager shall have discretion as to the selection of West Virginia Businesses for investment and the terms upon which such investments are made; however, the applicable Fund or Governing Entity may at all times revoke or restrict such discretion of the Fund Manager and submit investment guidelines to be followed by the Fund Manager.”
On page 12, section 8.2, lines fourteen and fifteen, following the words “Governing Entity and the investor” by striking out the remainder of the sentence, and inserting a period and the following sentence:

“Upon such repurchase of the investor’s ownership interest, the investor shall receive, in the discretion of the applicable Governing Entity, cash and/or a distribution in kind of assets of the Fund or Fund Share which collectively equals the value agreed to by the Governing Entity and the investor.”

And,

On page 12, section 9.2.a., by striking out “2.20” and inserting in lieu thereof “2.25”.

§64-10-3. Division of labor.

The legislative rule filed in the state register on the fourth day of September, two thousand one, authorized under the authority of section seven, article three, chapter twenty-one of this code, modified by the division of labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of December, two thousand one, relating to the division of Labor (steam boiler inspection, 42 CSR 3), is authorized.


The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section four, article nine, chapter twenty-one of this code, modified by the manufactured housing construction and safety standards board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of December, two thousand one, relating
§64-10-5. Division of natural resources.

(a) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section twenty-three-a, article two, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of August, two thousand one, relating to the division of natural resources (commercial whitewater outfitters, 58 CSR 12), is authorized with the following amendment:

On page eight, section 4.9.3, following the words “supplement the guide”, by striking out the word “trainee” and inserting in lieu thereof the words “Trip Leader”; 

On page eight, following section 4.9.3, by inserting a new section, numbered 4.9.4 and the words “The licensee is responsible for keeping on file the original or a certified copy of the completed whitewater guide Trip Leader information sheet. These records shall be maintained by the licensee for two (2) years following the last date of employment. The licensee shall provide the guide Trip Leader with a certified copy of the guide Trip Leader information sheet and shall forward a copy to the Division of Natural Resources, Law Enforcement Section, Capitol Complex, Building 3, Charleston, West Virginia 25305 upon request.”;

On page thirteen, section 9.12.2, following the words “No duckie expeditions”, by striking out the words “or kayak instruction”;

And,
On page fourteen, by striking the provisions of section 9.12.4.b, in its entirety, and inserting in lieu thereof:

“From the confluence of Manns Creek to Teays Landing there shall be a minimum of one (1) trip guide in each watercraft except on a kayak clinic where the instructor and guests are in kayaks. Kayak clinics may be held by a commercial whitewater outfitter. Daily use is restricted to nine students per day per license and must have a ratio of one (1) trip guide per three (3) students. Kayak clinics are not permitted in this section of the New River on Saturdays between Memorial Day and Labor Day. There shall be a minimum of two (2) trip guides per trip on all other trips. Inflatable kayak expeditions or trips are not permitted in this section of the New River.”

(b) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of August, two thousand one, relating to the division of natural resources (small arms hunting, 58 CSR 14), is authorized.

(c) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section twenty-two, article seven, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of August, two thousand one, relating to the division of natural resources (special boating, 58 CSR 26), is authorized.

(d) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section two, article five, chapter twenty of this
code, modified by the division of natural resources to meet the
objections of the legislative rule-making review committee and
refiled in the state register on the fourteenth day of August, two
thousand one, relating to the division of natural resources
(public use of West Virginia state parks, state forests and state
wildlife management areas under the division of natural
resources, 58 CSR 31), is authorized with the amendments set
forth below:

On page 3, subsection 2.21, after the words ‘boundaries of’
by inserting the words ‘the following’;

On page 3, subsection 2.1 by striking out the comma and
the words ‘which include’;

On page 3, subsection 2.1 after the word ‘Audra’ by
inserting a comma and the words ‘except in reserved picnic
shelters’;

On page 3, subsection 2.21 by striking out the words
‘Tomlinson Run except in reserved picnic shelters, in all boat
launch ramp parking areas, and all camping areas within the
boundary of Bluestone State Park; all camping areas within the
boundary of Beech Fork State Park; and in all of Hawks Nest
State Park except the lodge and Hawks Nest golf course which
is operated as part of Hawks Nest State Park’ and inserting in
lieu thereof the following;

‘Tomlinson Run, except in reserved picnic shelters,

Bluestone State Park, in all boat launch ramp parking areas
and all camping areas within its boundaries,

Beech Fork State Park, in all camping areas within its
boundaries, and
Hawks Nest State Park, except the lodge and Hawks Nest Golf course which is operated as part of Hawks Nest State Park;"

(e) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of August, two thousand one, relating to the division of natural resources (wild boar hunting, 58 CSR 52), is authorized.

(f) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of August, two thousand one, relating to the division of natural resources (general trapping, 58 CSR 53), is authorized.

(g) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section thirty-three, article two, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of August, two thousand one, relating to the division of natural resources (issuance of hunting, trapping and fishing licenses by telephone and other electronic methods, 58 CSR 68), is authorized.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect 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 30th day of April, 2002.

Governor