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HB 4135

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

## House Bill No. 4135

(By Delegates Mahan, Palumbo, Cann,  
Pino, Armstead and Overington)



Passed March 11, 2006

In Effect from Passage

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## H. B. 4135

(BY DELEGATES MAHAN, PALUMBO, CANN,  
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AN ACT to amend and reenact article 3, chapter 64 of the code of West Virginia, 1931, as amended; all 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 recom-

mended by the legislative rule-making review committee and as amended by the legislature; directing studies and reports to the Legislature and further rulemaking in certain circumstances; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Nox Budget Trading Program as a means of the control and reduction of nitrogen oxides from non-electric generating units as a means to mitigate the transport of ozone precursors; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 61; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources Pursuant to 40 CFR Part 60; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to acid rain provisions and permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants for source categories pursuant to 40 CFR Part 63; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Mercury Budget Trading Program to reduce mercury emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual nitrogen oxide emissions to mitigate interstate transport of fine particulate matter and nitrogen oxides; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of ozone season nitrogen oxide emissions to mitigate interstate transport of ozone and nitrogen oxides; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual sulfur dioxide emissions to mitigate interstate transport of fine particulate matter and sulfur dioxides; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to coalbed

methane wells; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Oil and Gas Conservation Commission; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to solid waste management; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management; relating to authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the requirements governing water quality standards; relating to authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Community Infrastructure Investment Program;

authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Environmental Excellence Program.

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

That article 3, chapter 64 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULES.**

**§64-3-1. Division of environmental protection.**

1       (a) The legislative rule filed in the state register on the  
2 twenty-second day of March, two thousand five, authorized  
3 under the authority of section four, article five, chapter twenty-  
4 two, of this code, relating to the Department of Environmental  
5 Protection (Nox Budget Trading Program as a means of the  
6 control and reduction of nitrogen oxides from non-electric

7 generating units as a means to mitigate the transport of ozone  
8 precursors, 45 CSR 1), is authorized.

9 (b) The legislative rule filed in the state register on the  
10 twenty-ninth day of July, two thousand five, authorized under  
11 the authority of section four, article five, chapter twenty-two, of  
12 this code, relating to the Department of Environmental Protec-  
13 tion (emission standards for hazardous air pollutants pursuant  
14 to 40 CFR Part 61, 45 CSR 15), is authorized.

15 (c) The legislative rule filed in the state register on the  
16 twenty-ninth day of July, two thousand five, authorized under  
17 the authority of section four, article five, chapter twenty-two, of  
18 this code, relating to the Department of Environmental Protec-  
19 tion (standards of performance for new stationary sources  
20 Pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

21 (d) The legislative rule filed in the state register on the  
22 twenty-ninth day of July, two thousand five, authorized under  
23 the authority of section four, article five, chapter twenty-two, of  
24 this code, relating to the Department of Environmental Protec-  
25 tion (acid rain provisions and permits, 45 CSR 33), is autho-  
26 rized.

27 (e) The legislative rule filed in the state register on the  
28 twenty-ninth day of July, two thousand five, authorized under  
29 the authority of section four, article five, chapter twenty-two, of  
30 this code, relating to the Department of Environmental Protec-  
31 tion (emission standards for hazardous air pollutants for source  
32 categories pursuant to 40 CFR Part 63, 45 CSR 34), is autho-  
33 rized.

34 (f) The legislative rule filed in the state register on the  
35 twenty-ninth day of July, two thousand five, authorized under  
36 the authority of section four, article five, chapter twenty-two, of  
37 this code, relating to the Department of Environmental Protec-

38 tion (Mercury Budget Trading Program to reduce mercury  
39 emissions, 45 CSR 37), is authorized.

40 (g) The legislative rule filed in the state register on the  
41 twenty-ninth day of July, two thousand five, authorized under  
42 the authority of section four, article five, chapter twenty-two, of  
43 this code, relating to the Department of Environmental Protec-  
44 tion (control of annual nitrogen oxide emissions to mitigate  
45 interstate transport of fine particulate matter and nitrogen  
46 oxides, 45 CSR 39), is authorized.

47 (h) The legislative rule filed in the state register on the  
48 twenty-ninth day of July, two thousand five, authorized under  
49 the authority of section four, article five, chapter twenty-two, of  
50 this code, relating to the Department of Environmental Protec-  
51 tion (control of ozone season nitrogen oxide emissions to  
52 mitigate interstate transport of ozone and nitrogen oxides, 45  
53 CSR 40), is authorized.

54 (i) The legislative rule filed in the state register on the  
55 twenty-ninth day of July, two thousand five, authorized under  
56 the authority of section four, article five, chapter twenty-two, of  
57 this code, relating to the Department of Environmental Protec-  
58 tion (control of annual sulfur dioxide emissions to mitigate  
59 interstate transport of fine particulate matter and sulfur diox-  
60 ides, 45 CSR 41), is authorized.

61 (j) The legislative rule filed in the state register on the  
62 second day of November, two thousand five, authorized under  
63 the authority of section four, article three, chapter twenty-two,  
64 of this code, relating to the Department of Environmental  
65 Protection (West Virginia surface mining reclamation, 38 CSR  
66 2), is authorized, with the following amendments:

67 On page seventy-one, section two, paragraph §38-2.7.2.e.1,  
68 after line five, by inserting a new paragraph, designated §38-  
69 2.7.2.e.1, to read as follows:

70 §38-2.7.2.e.1. Bio-oil Cropland. Agricultural production  
71 of renewable energy crops through long-term intensive cultiva-  
72 tion of close-growing commercial biological oil species (such  
73 as soybeans, rapeseed or canola) for harvest and ultimate  
74 production of bio-fuels as an alternative to petroleum based  
75 fuels and other valuable products;

76 On page seventy-one, section two, paragraph §38-2.7.3.d,  
77 after §38-2.7.3.c, by inserting a new paragraph, designated §38-  
78 2.7.3.d, to read as follows:

79 §38-2.7.3.d. A change in postmining land use to bio-oil  
80 cropland constitutes an equal or better use of the affected land,  
81 as compared with pre-mining use for purposes of W. Va. Code  
82 §22-3-13(c) in the determination of variances of approximate  
83 original contour for mountaintop removal operations subject to  
84 §38-2-7.8 of this rule;

85 On page one hundred two, after §38-2-7.7.f.3, by inserting  
86 a new subsection, designated §38-2-7.8, to read as follows:

87 **7.8. Bio-oil Crop Land.**

88 **7.8.1. Criteria for Approving Bio-oil Cropland Postmining**  
89 **Land Use.**

90 7.8.1.a. An alternative postmining land use for bio-oil  
91 cropland may be approved by the secretary after consultation  
92 with the landowner and or land management agency having  
93 jurisdiction over state or federal lands: *Provided*, That the  
94 following conditions have been met.

95 7.8.1.a.1. There is a reasonable likelihood for the achieve-  
96 ment of bio-oil crop production (such as soybeans, rapeseed or  
97 canola) as witnessed by a contract between the landowner and  
98 a commercially viable individual or entity, binding the parties  
99 to the production of bio-oil crops for a measurement period of

100 at least two years after the completion of all restoration activity  
101 within the permitted boundaries;

102 7.8.1.a.2. The bio-oil crop reclamation plan is reviewed  
103 and approved by an agronomist employed by the West Virginia  
104 Department of Agriculture. The applicants shall pay for any  
105 review under this section;

106 7.8.1.a.3. The use does not present any actual or probable  
107 hazard to the public health or safety or threat of water diminu-  
108 tion or pollution;

109 7.8.1.a.4. Bio-oil crop production is not:

110 7.8.1.a.4.A. Impractical or unreasonable;

111 7.8.1.a.4.B. Inconsistent with applicable land use policies  
112 or plans;

113 7.8.1.a.4.C. Going to involve unreasonable delays in  
114 implementation; or

115 7.8.1.a.4.D. In violation of any applicable law.

116 7.8.2. Soil reconstruction specifications for bio-oil crop  
117 postmining land use shall be established by the W. Va. Depart-  
118 ment of Agriculture in consultation with the U. S. Natural  
119 Resources Conservation Service and based upon the standards  
120 of the National Cooperative Soil Survey and shall include, at a  
121 minimum, physical and chemical characteristics of recon-  
122 structed soils and soil descriptions containing soil-horizon  
123 depths, soil densities, soil pH, and other specifications such that  
124 constructed soils will have the capability of achieving levels of  
125 yield equal to, or higher than, those required for the production  
126 of commercial seed oils species (such as soybeans, rapeseed or  
127 canola) and meets the requirement of 14.3 of this rule.

128        7.8.3. Bond Release.

129        7.8.3.a. Phase I bond release shall not be approved until W.  
130        Va. Department of Agriculture certifies and the secretary finds  
131        that the soil meets the criteria established in this rule and has  
132        been placed in accordance with this rule. The applicants shall  
133        pay for any review under this section.

134        7.8.3.b. The secretary may authorize in consultation with  
135        the W. Va. Department of Agriculture, the Phase III bond  
136        release only after the applicant affirmatively demonstrates, and  
137        the secretary finds, that the reclaimed land can support bio-oil  
138        production; and there is a binding contract for production which  
139        meets the requirements of subdivision 7.8.1.a of this rule; and  
140        the requirements of paragraph 9.3.f.2 of this rule are met. The  
141        applicant shall pay for any review under this section.

142        7.8.3.c. Once final bond release is authorized, the  
143        permittee's responsibility for implementing the bio-oil cropland  
144        reclamation plan shall cease.

145        (k) The legislative rule filed in the state register on the  
146        twenty-eighth day of July, two thousand five, authorized under  
147        the authority of section four, article twenty-one, chapter twenty-  
148        two, of this code, relating to the Department of Environmental  
149        Protection (coalbed methane wells, 35 CSR 3), is authorized.

150        (l) The legislative rule filed in the state register on the  
151        nineteenth day of July, two thousand five, authorized under the  
152        authority of section five, article fifteen, chapter twenty-two, of  
153        this code, relating to the Department of Environmental Protec-  
154        tion (solid waste management, 33 CSR 1), is authorized.

155        (m) The legislative rule filed in the state register on the  
156        twenty-eighth day of July, two thousand five, authorized under  
157        the authority of section six, article eighteen, chapter twenty-  
158        two, of this code, relating to the Department of Environmental

159 Protection (hazardous waste management, 33 CSR 20), is  
160 authorized.

161 (n) The legislative rule filed in the state register on the  
162 twenty-ninth day of July, two thousand five, authorized under  
163 the authority of section seven-b, article eleven, chapter twenty-  
164 two, of this code, relating to the Department of Environmental  
165 Protection (requirements governing water quality standards, 47  
166 CSR 2), is authorized.

167 (o) The legislative rule filed in the state register on the  
168 twenty-sixth day of October, two thousand five, authorized  
169 under the authority of section nine, article twenty-eight, chapter  
170 twenty-two, of this code, relating to the Department of Environ-  
171 mental Protection (Community Infrastructure Investment  
172 Program, 47 CSR 61), is authorized.

173 (p) The legislative rule filed in the state register on the  
174 twenty-ninth day of July, two thousand five, authorized under  
175 the authority of section four, article five, chapter twenty-two, of  
176 this code, modified by the Department of Environmental  
177 Protection to meet the objections of the legislative rule-making  
178 review committee and refiled in the state register on the twenty-  
179 first day of November, two thousand five, relating to the  
180 Department of Environmental Protection (to prevent and  
181 control air pollution from hazardous waste treatment, storage or  
182 disposal facilities, 45 CSR 25), is authorized.

183 (q) The legislative rule filed in the state register on the  
184 twenty-ninth day of July, two thousand five, authorized under  
185 the authority of section four, article twenty-five, chapter  
186 twenty-two, of this code, modified by the Department of  
187 Environmental Protection to meet the objections of the legisla-  
188 tive rule-making review committee and refiled in the state  
189 register on the eighteenth day of January, two thousand six,

190 relating to the Department of Environmental Protection  
191 (Environmental Excellence Program, 60 CSR 8), is authorized.

**§64-3-2. Oil and Gas Conservation Commission.**

1 The legislative rule filed in the state register on the twenty-  
2 eighth day of July, two thousand five, authorized under the  
3 authority of section five, article nine, chapter twenty-two-c, of  
4 this code, relating to the Department of Environmental Protec-  
5 tion (rules of the Commission, 39 CSR 1), is authorized.

**§64-3-3. Directing further study of 45CSR37.**

1 (a) The Legislature declares that mercury is highly toxic,  
2 persistent and bioaccumulates in the food chain and is trans-  
3 ported through the atmosphere and deposits on land and water  
4 bodies, and according to the Environmental Protection Agency,  
5 other serious human health risks, known and unknown, may  
6 result from human exposure of mercury in any amount.  
7 Emissions from electric utility coal fired steam generating units  
8 and other industrial activities cause significant discharges of  
9 mercury in West Virginia, therefore, it is appropriate to closely  
10 monitor these activities and study this pollutant.

11 (b) The Commissioner of the Bureau for Public Health,  
12 pursuant to and consistent with section six, article one, chapter  
13 sixteen of this code, is directed to participate with the Depart-  
14 ment of Environmental Protection to conduct an assessment on  
15 the actual and potential human health pathways and risks from  
16 mercury consumption and make appropriate recommendations  
17 to the Department of Environmental Protection.

18 (c) Pursuant to and consistent with section three-a, article  
19 one, chapter twenty-two if this code, The Division of Air  
20 Quality and the Department of Environmental Protection are  
21 directed to further study 45CSR37 [Mercury Budget Trading  
22 Program to Reduce Mercury Emissions] to evaluate scientific

..... 23 evidence, considering specific environmental characteristics of  
24 West Virginia, hold public hearings and accept and review  
25 appropriate evidence regarding mercury exposure, including  
26 recommendations from the Bureau for Public Health. The  
27 Department of Environmental Protection shall also conduct an  
28 assessment which is also to include an evaluation of the  
29 available mercury control technologies for coal-fired steam  
30 generating units and other industrial activities that emit  
31 mercury, the availability and cost of mercury measurements  
32 technology and an analysis of feasibility of implementation of  
33 these technologies. The Division of Air Quality shall also  
34 consider and address any Bureau for Public Health recommen-  
35 dations considering health risks of West Virginians, and enter  
36 a finding as to whether the citizens of West Virginia or regions  
37 of West Virginia are exposed to a potential health risk because  
38 of mercury contamination, and if so, to propose for legislative  
39 promulgation prior to the first day of January, two thousand  
40 seven, revisions to 45 CSR 37 and any other appropriate  
41 rulemaking to effectuate its findings. The division may also  
42 recommend legislation that may be necessary to protect human  
43 health and the environment consistent with the division's  
44 findings.

**§64-3-4. Directing further study of 35CSR3.**

1 (a) Department of Environmental Protection's Office of Oil  
2 and Gas's Legislative Rule 35CSR3, [Coalbed Methane Wells]  
3 authorized pursuant to section one of this article, addresses the  
4 new technology of horizontal drilling of coalbed methane, the  
5 process of drilling along coal seams to increase production of  
6 a single coalbed methane well. However, the Legislature finds,  
7 because of the newness of the technology and drilling methods,  
8 further review and study is required to consider and address any  
9 potential adverse environmental impacts from coalbed methane  
10 wells. The Office of Oil and Gas is directed to conduct a study  
11 of this new process as follows:

12     ...(1) Conduct an analysis of literature and seek input from  
13 experts in hydrology, geology and engineering, to develop a  
14 thorough understanding of coalbed methane drilling, how the  
15 drilling is physically done, the type of equipment utilized, fluids  
16 used or encountered, and pressures induced or encountered in  
17 the drilling process;

18     (2) Review the regulatory scheme of other states in the  
19 Appalachian basin to determine if innovative regulatory  
20 approaches would be instructive and should be incorporated  
21 into West Virginia's regulatory scheme;

22     (3) Review the potential effect of drilling coalbed methane  
23 wells in areas where abandoned or active gas or oil wells are  
24 located; and

25     (4) Assess whether special requirements should be adopted  
26 providing protections for groundwater and water wells, to  
27 prevent contamination and other adverse impacts.

28     (b) The Office of Oil and Gas shall call upon other divi-  
29 sions of the Department of Environmental Protection as needed  
30 to assist in this review, and report to the Legislature by the first  
31 of January, two thousand seven, and propose further legislative  
32 rule amendments to the rule as are necessary and appropriate.

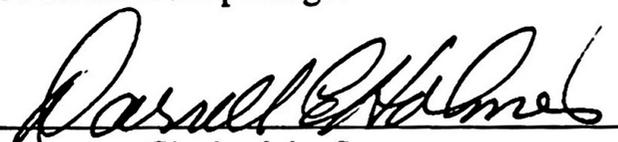
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

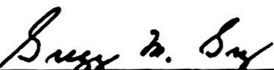
  
Chairman Senate Committee

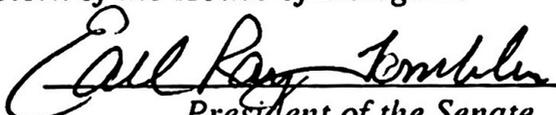
  
Chairman House Committee

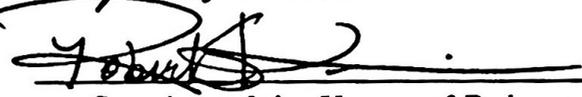
Originating in the House.

In effect from passage.

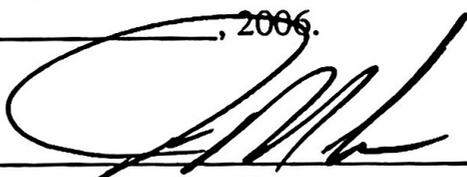
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 4<sup>th</sup>  
day of April, 2006.

  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 30 2006

Time 2:55 pm