WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2006

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4210

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

Passed March 10, 2006
In Effect from Passage
AN ACT 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 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 the Division of Forestry to promulgate a legislative rule relating to ginseng; authorizing the Office of Miners Health, Safety and Training to promulgate a legislative rule relating to safety provisions for clearing crews; authorizing the Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; authorizing the Division of Natural Resources to promulgate a legislative rule relating to boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to the rules governing the public use of West Virginia State Parks, State Forests and State Wildlife Management Areas under the Division; authorizing the Division of Natural Resources to promulgate a legislative rule relating to terms defining the terms to be used concerning all hunting and trapping rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to wild boar hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special waterfowl hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to falconry; authorizing the Division of Natural Resources to promulgate a legislative rule relating to lifetime hunting, trapping and fishing licenses; authorizing the Division of Natural Resources to promulgate a legislative rule relating to miscellaneous permits and licenses; authorizing the Division of Labor to promulgate a legislative rule relating to the West Virginia Manufactured Housing Construction and Safety Standards Board; authorizing the Division of Labor to promulgate a legislative rule relating to nurse overtime complaints; and authorizing the Division of Tourism to promulgate a legislative rule relating to the Direct Advertising Grants Program.

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. Division of Forestry.

The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section three, article one-a, chapter nineteen of this code, modified by the Division of Forestry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of October, two thousand five, relating to the Division of Forestry (Ginseng, 22 CSR 1), is authorized, with the following amendment:

On page six, by striking out subsection 13.1 in its entirety and renumbering the remaining subsections.


The legislative rule filed in the State Register on the sixteenth day of March, two thousand five, authorized under the authority of section six, article one, chapter twenty-two-a of this code, modified by the Office of Miners Health, Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the tenth day of June, two thousand five, relating to the Office of Miners Health, Safety and Training (Safety provisions for clearing crews, 56 CSR 2), is authorized, with the following amendments:

On page twelve, section twenty-one, following subsection 21.2, by inserting the following:

"21.3. The employer shall provide annual continuing training of at least eight hours covering the subjects listed in subdivision 21.1.b for each employee, including supervisors, at no cost to the employee."
§64-10-3. Division of Natural Resources.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, 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 seventeenth day of October, two thousand five, relating to the Division of Natural Resources (Commercial whitewater outfitters, 58 CSR 12), is authorized.

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of sections thirteen, twenty-two, twenty-two-a and twenty-three, 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 seventeenth day of October, two thousand five, relating to the Division of Natural Resources (Boating, 58 CSR 25), is authorized.

(c) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, 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 eighteenth day of October, two thousand five, 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 one, subsection 1.1, after the words, “Division of Natural Resources” by inserting the words “Parks and Recreation Section”;
On page three, subsection 2.21, after the words “Chief Logan,” by changing the comma to a colon, striking out “except in the” and inserting following: “Provided, That beer, wine and alcoholic beverages may be served in the restaurant.”;

On page three, subsection 2.21, after the words “conference center” by inserting the words “without prior written authorization from the Director”;

And,

On page four, subsection 2.21, after the words “prohibited by posted signs” by changing the period to a colon and inserting the following: “Provided, That any person, group or association sponsoring a private party at the multi-purpose log barn at Prickett’s Fort State Park may provide beer, wine, liquor and all other alcoholic beverages for guests at a private party as long as the party is not open to the general public.”

(d) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, 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 seventeenth day of October, two thousand five, relating to the Division of Natural Resources (Terms defining the terms to be used concerning all hunting and trapping rules, 58 CSR 46), is authorized, with the following amendment:

On page two, subsection 2.10, after the words “Individual Permanently Disabled in the Lower Extremities” by striking out the remainder of subsection 2.10 and inserting in lieu thereof the following: “means an individual who is permanently and totally disabled due to paralysis or disease in the lower half of
the body, which makes it impossible to ambulate successfully more than two hundred feet without assistance”.

(e) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section seven, article one, chapter twenty of this code, 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-ninth day of July, two thousand five, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (Special waterfowl hunting, 58 CSR 58), is authorized.

(g) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (Miscellaneous permits and licenses, 58 CSR 64), is authorized, with the following amendments:

On page four, subsection 3.6, by striking out the words “A public hearing will be conducted” and inserting in lieu thereof the words “The Division of Natural Resources will conduct a public hearing”;

On page four, subsection 3.7, after the period, by inserting the following: “If the chief accepts a recommendation to deny the granting of a permit or license, he must notify the applicant of the denial and the reasons therefor.” and by striking out subdivision 3.7.1 in its entirety;

On page four, subsection 4.1, by striking out the words “Except as provided in Section 4.1.1 of this rule, all” and inserting in lieu thereof the words “A commercial shooting
On page four, subsection 4.1, by striking out the word "will";

On page four, by striking out subdivision 4.1.1 in its entirety;

On page five, subsection 5.3, by striking out the word "as";

On page five, subsection 6.2, by striking out "A captive deer facility must be inspected by both Division of Natural Resources, Wildlife Resources and Law Enforcement personnel and an inspection form completed." and inserting in lieu thereof the following: "Personnel from both the Division of Natural Resources, Wildlife Resources Section and the Division of Natural Resources, Law Enforcement Section will inspect captive cervid facilities and complete an inspection form."

On page eleven, subsection 7.4, by striking out the word "will";

On page eleven, subsection 7.4, by striking out the words "or not the license" and inserting in lieu thereof the word "it";

On page eleven, subsection 7.4.1, by striking out "There shall be a" and inserting in lieu thereof "The";

On page eleven, subsection 7.4.1, by striking out "of" and inserting in lieu thereof "is";

On page eleven, subsection 7.4.1, by adding the following sentence at the end of the subdivision: "The fee for renewal of a captive cervid facility license is $250."
On page eleven, subdivision 7.4.2, by striking out the words “A public hearing will be conducted” and inserting in lieu thereof the words “The Division of Natural Resources will conduct a public hearing”;

On page eleven, by striking out subdivision 7.4.3 in its entirety and inserting in lieu thereof the following:

“7.4.3. “A unique and permanent identifying license number, corresponding to the number assigned to the premises by the National Animal Identification System, shall be issued to each licensed captive cervid facility. The applicant must supply this number to the West Virginia Division of Natural Resources with the application for a captive cervid facility license.”;

On page eleven, subdivision 7.4.5, by striking out the words “direct or”;

On pages eleven and twelve, by striking out all of subdivision 7.4.7 and by renumbering the remaining subdivisions;

On page twelve, subdivision 7.4.8, by striking out the words “posts must be spaced at 20 feet maximum for T post or 30 feet maximum for rigid post; brace posts must be buried at least 4 feet in rocky soil and 6 feet in sandy soil or concrete must be used to provide equal stability; line posts must be buried to 3 feet” and inserting in lieu thereof the words “posts must be properly spaced and anchored”;

On page twelve, subdivision 7.4.13, by striking out the word “daily”;

On page twelve, subdivision 7.4.13, after the word “pests” by striking out the words “Food and water containers shall be kept clean. Hay, straw or other bedding material must be replaced as needed. All waste must be disposed of in a legal
manner.” and inserting in lieu thereof “and is in accordance with best management practices”;

On page twelve, subdivision 7.4.14, by striking out the word “state” and inserting in lieu thereof the words “West Virginia”;

On page twelve, subdivision 7.4.14, by striking out the word “accredited” and inserting in lieu thereof the words “West Virginia licensed”;

On page twelve, at the end of subdivision 7.4.14, after the words “brucellosis testing,” by inserting the following: “The collection of samples for CWD testing shall be performed by trained personnel within the West Virginia Division of Natural Resources or by a trained veterinarian employed by the West Virginia Department of Agriculture. For the purpose of collecting tissue for CWD testing, the captive cervid facility licensee has four options: (1) the licensee may deliver to a West Virginia Division of Natural Resources District Office the head of the cervid; (2) the licensee may deliver to a West Virginia Division of Natural Resources District Office the entire cervid with the head intact; (3) the licensee may contact the West Virginia Division of Natural Resources and a trained representative of the West Virginia Division of Natural Resources and/or a trained veterinarian employed by the West Virginia Department of Agriculture shall go to the facility and obtain the tissue samples; or (4) the licensee may deliver the entire cervid with the head intact to the West Virginia Department of Agriculture lab in Moorefield, West Virginia, and upon delivery of the cervid carcass, the West Virginia Department of Agriculture shall notify the West Virginia Division of Natural Resources of the delivery. After the West Virginia Division of Natural Resources and/or the West Virginia Department of Agriculture have obtained sufficient and necessary tissue
samples, the remaining tissue may be shared with the captive cervid facility licensee.’’;

On page twelve, subdivision 7.4.15, by striking out “The co-mingling of different Cervid species or Cervid species and livestock will not be permitted in the same pens without written approval of the Director. If different Cervid species are housed at the same facility, they must be separated into different pens that are double-fenced or otherwise prohibit contact between the different species.” and inserting in lieu thereof the following: “Co-mingling of different cervid species will be allowed if the population density is at least 20,000 square feet per animal and if all best management practices are followed by the captive cervid facility.’’;

On page twelve, subdivision 7.4.15, after the words “material from” by striking out “different Cervid species” and inserting in lieu thereof the words “captive cervids’’;

On page twelve, subdivision 7.4.15, after the word “exposed” by striking out “to other Cervids in separate pens or”;

On page thirteen, subdivision 7.4.16, by striking out the word “shall” and inserting in lieu thereof the word “may’’;

On page thirteen, subdivision 7.4.16, by striking out the words “such verification”;

On page thirteen, subdivision 7.4.18, after the words “50 yards” by striking out the words “Except that a” and inserting in lieu thereof the word “A’’;

On page thirteen, subdivision 7.4.18, after the words “in the ear” by striking out the word “shall” and inserting in lieu thereof the word “is’’;
On page thirteen, subdivision 7.4.19, by striking out the word "An" and inserting in lieu thereof the words "A licensee shall maintain an";

On page thirteen, subdivision 7.4.19, by striking out the words "will be maintained";

On page thirteen, subdivision 7.4.19, after the word "permits" by striking out the period and the words "Records shall show" and inserting in lieu thereof the words "and shall include";

On page thirteen, subdivision 7.4.20, by striking out the word "A" and inserting in lieu thereof the words "A licensee shall forward a";

On page thirteen, subdivision 7.4.20, by striking out the words "shall be forwarded";

On page thirteen, subdivision 7.4.20, by striking out the words "Prior approval shall be obtained from the Director for the movement of captive cervids, and shall be conditional on negative test results and herd accreditation for TB and brucellosis as defined by the USDA." and inserting in lieu thereof the following: "A licensee must obtain prior approval from the Director to move captive cervids. The Director may grant approval on a case-by-case basis. All captive cervid facilities must enroll the cervid herds in accreditation programs for brucellosis and TB as defined by the USDA: Provided, That captive cervid facilities licensed after August 9, 2005 may only accept cervids from TB accredited herds that also meet all requirement of CWD monitoring and surveillance programs";

On page thirteen, subdivision 7.4.20, after the words "performed by" by striking out the words "an accredited" and inserting in lieu thereof the words "a West Virginia licensed";
On page thirteen, by striking out subdivision 7.4.21 in its entirety and inserting in lieu thereof the following:

"7.4.20. A captive cervid facility licensed after August 9, 2005, may receive animals coming from a herd within the state only if the proposed transfer is from a herd that has an ongoing and appropriate CWD surveillance record for at least 60 months. If a licensee has a monitoring program which has been in effect for at least 36 months, the Director may, after reviewing the facility’s monitoring records, approve intra-state movement of cervids from the facility’s herd: Provided, That intra-state movement of captive cervids may be approved by the Director on a case-by-case basis.”;

On page thirteen, by striking out subdivision 7.4.22 in its entirety and inserting in lieu thereof the following:

"7.4.21. A captive cervid facility in this state may not receive animals that have originated from or been housed with animals originating from any state that has a confirmed CWD or tuberculosis (TB) positive cervid in the last 60 months. A captive cervid facility in this state may not receive genetic material that originates from any state that has a confirmed CWD or tuberculosis (TB) positive cervid in the last 60 months.”;

On page thirteen, subdivision 7.4.23, by striking out the words “an accredited” and inserting in lieu thereof the words “a West Virginia licensed”;

On page thirteen, at the end of subdivision 7.4.24, by changing the period to a colon and adding the following proviso: “Provided, That fawns below the age of six (6) months may be moved or transferred if the fawn originates from a certified tuberculous free herd and is tagged with a unique marker visible from 50 yards.”;
On page fourteen, subdivision 7.4.25, by striking out the word "Every" and inserting the word "A licensee will make every";

On page fourteen, subdivision 7.4.25, by striking out the words "will be made";

On page fourteen, subdivision 7.4.25, by striking out the word "All" and inserting in lieu thereof the words "A licensee shall report all known";

On page fourteen, subdivision 7.4.25, by striking out the words "shall be reported";

On page fourteen, subdivision 7.4.25, by striking out "24" and inserting in lieu thereof "8";

On page fourteen, subdivision 7.4.25, after the word "Captain" by changing the period to a comma and inserting the following: "District WRS Game Biologist or the county conservation officer.";

On page fourteen, subdivision 7.4.25, after the words "captive Cervid license" by striking out the remainder of the subdivision and inserting in lieu thereof the following: "Any negligent act that results in captive cervids escaping is a violation of the license.";

On page fourteen, subdivision 7.4.26, after the words "transmissible diseases." by striking out the remainder of the subdivision and inserting in lieu thereof the following: "All costs for killing an animal that escapes due to a negligent act, including collecting samples and testing, are the responsibility of the licensee.";

On page fourteen, subdivision 7.4.27, by striking out "shall" and inserting in lieu thereof the word "may";
299  On page fourteen, subdivision 7.4.28, by striking out the
300  words “The” and inserting in lieu thereof the words “An
301  authorized representative of the Director shall periodically
302  inspect the”;
303  
304  On page fourteen, subdivision 7.4.28, by striking out the
305  words “shall be periodically inspected by an authorized
306  representative of the Director”;
307  
308  On page fourteen, subdivision 7.4.30, by striking out the
309  word “Any” and inserting in lieu thereof the words “The
310  licensee shall report any”;
311  
312  On page fourteen, subdivision 7.4.30, by striking out the
313  words “shall be reported”;
314  
315  On page fourteen, subdivision 7.4.31, by striking out the
316  word “Appropriate” and inserting in lieu thereof the words “The
317  licensee shall submit appropriate”;  
318  
319  On page fourteen, subdivision 7.4.31, by striking out the
320  word “must be submitted”;
321  
322  On page fourteen, subdivision 7.4.31, by striking out the
323  words “may also be required.” and inserting in lieu thereof the
324  following: “is also required. Any captive cervid that is fourteen
325  months of age or older that dies or is slaughtered must be tested
326  for TB and brucellosis by a USDA certified, West Virginia
327  licensed veterinarian if sufficient samples are available. These
328  test results shall be made available to the West Virginia
329  Department of Agriculture and the West Virginia Division of
330  Natural Resources.”;
331  
332  On page fourteen, subdivision 7.4.32, by striking out the
333  words “It shall be the licensee’s responsibility to ensure that”
334  and insert in lieu thereof “The licensee shall notify”;
On page fourteen, subdivision 7.4.32, by striking out the words “is notified”;

On page fourteen, subdivision 7.4.33, after the words “outside the infected captive Cervid facility.” by striking out the remainder of the subdivision.

And,

On page fourteen, after subdivision 7.4.33, by adding a new subdivision to read as follows:

“7.4.33. The West Virginia Department of Agriculture and the West Virginia Division of Natural Resources shall work together to develop accreditation programs for captive cervids for diseases including Tuberculosis (TB), brucellosis, and chronic wasting disease (CWD). Captive cervid facilities are required to enroll their herds in the USDA-APHIS CWD herd certification program, when the program becomes effective. In addition, a herd plan shall be developed that minimally includes actions described in the USDA-APHIS final rule, or if not available the proposed rule, that apply to the positive herd, epidemiologically linked herds, and the facility.”

(h) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, 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 thirteenth day of October, two thousand five, relating to the Division of Natural Resources (Falconry, 58 CSR 65), is authorized.

(i) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section seven, article two-b, chapter twenty of this code, relating to the Division of Natural Resources (Life-
time hunting, trapping and fishing licenses, 58 CSR 67), is authorized.

§64-10-4. Division of Labor.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article nine, 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 first day of November, two thousand five, relating to the Division of Labor (West Virginia Manufactured Housing Construction and Safety Standards Board, 42 CSR 19), is authorized, with the following amendments:

On page thirteen, section ten-a, subsection two, subdivision (a), paragraph (iii), by striking the words “American National Standards Institute, A225.1 Installation Standard for Manufactured Homes” and inserting in lieu thereof the words “National Fire Protection Association 225 Model Manufactured Home Installation Standard”; 

On page nineteen, section fifteen, by striking subsection 15.1 in its entirety;

On page twenty, section fifteen, by striking subsections 15.4 and 15.5 in their entirety;

On page twenty-one, section fifteen, by striking subsection 15.12 in its entirety; and

By renumbering the remaining subsections in section fifteen of the Legislative rule.

(b) The legislative rule filed in the State Register on the tenth day of February, two thousand five, authorized under the
authority of section four, article five-f, 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 eighteenth day of January,
two thousand six, relating to the Division of Labor (nurse
time complaints, 42 CSR 30), is authorized.

§64-10-5. Division of Tourism.

The legislative rule filed in the State Register on the
twenty-seventh day of July, two thousand five, authorized under
the authority of section nine, article two, chapter five-b of this
code, modified by the Division of Tourism to meet the objec-
tions of the legislative rule-making review committee and
refiled in the State Register on the eleventh day of January, two
thousand six, relating to the Division of Tourism (Direct
Advertising Grants Program, 144 CSR 1), is authorized, with
the following amendments:

On page one, following section 144-1-1, by striking out all
of section 144-1-2 and inserting in lieu thereof the following:

"§144-1-2. Definitions.

2.1 “Applicant” means a for profit or non-profit entity or
organization located within the state that promotes tourism
within the state and is also a destination. The term “applicant”
may not include vendors that would be supplying services paid
for out of grant funds, schools or camps.

2.2 “Application” means a written request for tourism
promotion funds pursuant to this rule containing all forms,
information and attachments executed by the applicant and all
partners, if applicable.
2.3. “Amenity” includes spa services, golf courses, full-service restaurants, skiing or snow activities, tennis, horseback riding, hiking trails, boating or fishing.

2.4. “Attraction” means an entity which is at least one of the following:

2.4.1. A cultural or historic site or event which includes, but is not limited to, fairs or festivals, heritage and historic sites and museums;

2.4.2. Entertainment establishments which include, but are not limited to, pari-mutuel gaming establishments, live performing art centers, sporting organizations or arenas, vineyards or wineries;

2.4.3. Scenic or natural areas such as show caves or caverns;

2.4.4. Theme or Amusement Parks;

2.4.5. Zoos, Aquariums or Wild Animal Parks;

2.4.6. Recreational Activities, including but not limited to whitewater rafting, skiing and snow activities, mountain biking, hunting and fishing.


2.6. “Commission” means the Tourism Commission created pursuant to §5B-2-8 of the Code.

2.7. “Destination” means one of the following:

2.7.1. A region or area located within the state containing three or more attractions;

2.7.2. An independent activity located within the state;
2.7.3. A cultural or historic site or event which includes, but is not limited to, fairs or festivals, heritage and historic sites and museums;

2.7.4. Entertainment establishments which include, but are not limited to, pari-mutuel gaming establishments, live performing art centers, sporting organizations or arenas, vineyards or wineries;

2.7.5. Scenic or natural sites such as show caves or caverns;

2.7.6. Theme or Amusement Parks; or

2.7.7. Zoos, Aquariums or Wild Animal Parks;

2.8. "Destination Inn or Bed and Breakfast" means a lodging facility located within the state whose recognized reputation for service and amenities are the primary motivating factor for visitors to travel to the area where it is located.

2.9. "Division" means the Division of Tourism created pursuant to §5B-2-8 of the code.

2.10. "Fulfillment" means printed materials used to respond to an inquiry requesting additional information generated by direct advertising or printed materials provided to the division, a state park, the national park service or other government agency for direct advertising.

2.11. "Grant Period" means the twelve month period running from the beginning project date through the ending project date and any extensions granted by the commission pursuant to subdivision 8.4.3. of this rule.

2.12. "Independent Activity" means an entity or organization which attracts a minimum of eighty-five percent (85%) of
its visitors from outside the local market and is at least one of the following:

2.12.1. An entity or organization which provides recreational activities including, but not limited to, whitewater rafting, skiing and snow activities, mountain biking, hunting and fishing, bus tours, dinner cruises and sightseeing tours;

2.12.2. A Resort;

2.12.3. A Destination Inn or Bed and Breakfast;

2.12.4. An entity or organization offering vacation rentals; or

2.12.5. Destination shopping.

2.13. “Local Market” means the geographic area within fifty (50) miles of a destination.

2.14. “Partner” means an entity or organization located within the state making a financial contribution toward the applicant’s match requirement for an application for grant funds for a collaborative marketing program with a central advertising message directing tourists to a destination being represented by the applicant. The term “partner” may not include vendors that would be supplying services paid for out of grant funds.

2.15. “Resort” means a full-service lodging facility that is frequented for relaxation or recreational purposes and offers at least two amenities.

2.16. “Return on Investment” means the measure of a project’s ability to use grant funds to generate additional value, including, but not limited to additional bookings and reservations.
2.17. "Total project cost" means the total of all proposed eligible expenditures contained within an application.

2.18. "Vacation Rental" means a lodging facility including chalets, cabins or condominiums. The term "vacation rental" may not include hotels or motels.”;

On page two, subsection 3.2, following the word “destination” by striking “/attraction”;

On page two, subsection 3.7, following the word “destination” by striking the words “or attraction”;

On page four, subdivision 4.3.4., following the word “funding” and the period, by adding the following:

“Applications for projects that include repeat marketing efforts shall contain information demonstrating that such repeat marketing efforts are in addition to regular ongoing advertising activities.”;

On page four, following subdivision 4.3.9. by adding the following:

“4.3.10. The project supports advertising activities that are over and above regular ongoing advertising activities.”;

On page four, following section 144-1-5, by striking out all of section 144-1-6 and inserting in lieu thereof the following:

“§144-1-6. Eligible and ineligible expenditures of grant funds.

6.1. Grant funds may only be used to pay for eligible expenditures for direct advertising. Eligible expenses for direct advertising include, but are not limited to the following:

6.1.1. The costs of advertising on television, radio, or other telecommunications media, in newspapers, magazines or other
6.1.2. The costs of purchasing and using mailing lists for direct mail promotions;

6.1.3. The costs for United States postage used for direct mail and fulfillment for direct advertising: Provided, That if bulk mail is appropriate, the applicant must use bulk mail and reimbursement will be limited to the bulk mail rate; and if bulk mail is not appropriate, reimbursement will be limited to the cost of United States mail first class postage;

6.1.4. The costs of printing travel related literature: Provided, That sixty percent (60%) of such literature is used as fulfillment for direct advertising within the approved application or approved request for modification of an approved application; or

6.1.5. Registration fees for consumer and trade shows: Provided, That the participation in such shows is for the purpose of attracting visitors to the state.

6.2. Eighty percent (80%) of a project's direct advertising must be directed toward areas outside of the local market or in major out-of-state markets, except for direct advertising for a fair or festival grant authorized by subsection 7.3 of this rule.

6.3. Notwithstanding the provisions of subsection 6.2 of this rule, all direct advertising in the form of billboards must be directed toward areas outside of the local market or in major out-of-state markets, except billboards for a fair or festival grant authorized by subsection 7.3 of this rule.

6.4. All direct advertising in the form of billboards must have a creative concept or layout approved by the Division in
order for any of its cost to be considered an eligible expenditure.

6.5. Any direct advertising related to real estate must be for vacation rentals only. Any portion of direct advertising relating to the sale of real estate must be pro-rated. A creative concept must be submitted with any application or request for modification of an approved application for direct advertising relating to real estate. Advertisements for the sale of real estate in visitor guides and brochures must be grouped on a specific page or pages and those pages pro-rated from the grant at the time of the submission of the application. (Example: CVB X has a 32 page visitor guide and has determined that area realtors will take up 2 pages - CVB X must disclose this in its grant application and media breakout and the totals must request funding for only 30 pages.) No direct advertising for real estate sales or realty agencies are permitted within cooperative advertising, unless such ads are specifically and clearly delineated as vacation rentals only.

6.6. Direct advertising may be in the form of cooperative advertising which is advertising that represents a community, region, county, multi-county or statewide organization and may include tourism businesses or organizations that enhance the destination for which the grant is to cover. Cooperative advertising must be entirely directed toward areas outside the local market or in major out-of-state markets. All cooperative advertising must have a creative concept approved by the Division in order for any of its cost to be considered an eligible expenditure.

6.7. Eligible expenses may include production expenses for direct advertising in the media categories provided in this subsection. The total cost of such production expenses may not exceed fifteen (15%) of the total cost of the direct advertising and in no event may the total cost of such production expenses exceed $22,500, for any one of the following media categories:
6.7.1. Printed material, including the printing of direct mail and travel related literature;

6.7.2. Print media;

6.7.3. Television and radio; and

6.7.4. Billboards.

6.8. Grant funds may not be used to pay for ineligible expenditures. Ineligible expenditures include, but are not limited to the following:

6.8.1. Regular and ordinary business costs of the applicant including, but not limited to, supplies, personnel, phone, normal postage, distribution and shipping expenses or travel costs;

6.8.2. Any costs associated with preparation of the direct advertising grant application;

6.8.3. Costs for the rental or purchase of real estate;

6.8.4. Construction costs;

6.8.5. Costs of political or lobbying activities of any kind;

6.8.6. Membership fees or dues to any organization, or solicitation of membership to any organization through advertising within a grant program authorized by this rule;

6.8.7. Costs associated with the start up of any business or publication even if the business or publication may be totally or partially devoted to the promotion of tourism in the state;

6.8.8. The cost of purchase of audio/visual equipment;

6.8.9. Costs of alcoholic beverages;
6.8.10. Costs for any expenditure not identified in the application, unless the Commission grants prior approval in writing;

6.8.11. Costs of any public relations or research expense;

6.8.12. Costs for key rings, bumper stickers, mugs or any other similar promotional item;

6.8.13. Event production expenses, including costs for audio equipment, awards, entertainment, portable restrooms, labor or refreshments;

6.8.14. Costs relating to fund-raising activities;

6.8.15. Costs associated with retail advertising, except for destination shopping which is able to produce verification that said destination attracts a minimum of eighty-five (85%) of its visitors from outside the local market: Provided, That no retail advertising may include price point advertising;

6.8.16. Costs of Tourist Oriented Directional Signs (TODS) and logo signs for gas, food, lodging and camping;

6.8.17. Costs of sponsorships; or


On page six, in the fourth line of section 7.2, following the word “exceed” by striking “2,500” and inserting in lieu thereof “7,500”;

On page six, in the fourth line of section 7.2, following the word “applicant” by striking “in any given quarter as defined from time to time by the Division” and inserting in lieu thereof “and no applicant shall receive more than two grants per fiscal year”;
On page six, in the seventh line of section 7.2, following the words “minimum of” by striking “50” and inserting in lieu thereof “25”;

On page six, in the ninth line of section 7.2, following the word “exceed” by striking “750,000” and inserting in lieu thereof “2,000,000”;

On page six, in the fourteenth line of section 7.2, following the word “date” and the period by inserting the following:

“No applicant who has received a grant larger than $7,500 in any fiscal year may apply for a small grant under this section during the same fiscal year: Provided, That a nonprofit entity may apply for and receive small grants even if it has received large grants in the same fiscal year.”
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 4th day of April, 2006.

Governor