SENATE BILL NO. 353

(By Senator Minard, et al.)

PASSED March 11, 2006

In Effect from Passage
AN ACT to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended; all relating generally to the promulgation of administrative rules by the Department of Transportation 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 Legisla-
tive Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Highways to promulgate a legislative rule relating to use of state road rights-of-way and adjacent areas; authorizing Division of Highways promulgate a legislative rule relating to transportation of hazardous waste upon roads and highways; authorizing Division of Motor Vehicles promulgate legislative rule relating to denial, suspension, revocation, restriction or nonrenewal of driving privileges; and authorizing Division of Motor Vehicles promulgate legislative rule relating to motor vehicle dealers and other business regulated by the Division.

Be it enacted by the Legislature of West Virginia:

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of Highways.

(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 three, article seventeen-a, chapter seventeen-c of this code, relating to the Division of Highways (use of state roads' rights-of-way and adjacent areas, 157 CSR 6), is authorized with the following amendment:

On page two, after subsection 2.16., by inserting a new subsection, designated subsection 2.17, to read as follows:

"2.17. 'Focal point' means the location from which an LED, OLED or other illuminated message center, display or sign appears brightest." and by renumbering the subsequent subsections accordingly;

On page two, subsection 2.24, after the word "slats", by inserting a comma and the words "or by LED, OLED or other illuminated message center, ";
On page two, subsection 2.24, by striking out the words "lighting devices forming part of the message or border" and inserting in lieu thereof the word "moving";

On page eighteen, paragraph 7.8.d.4., by striking out the words "twenty-four (24) hours" and inserting in lieu thereof the words "eight seconds";

On page eighteen, paragraph 7.8.e.1., line two, by inserting the following words: "For purposes of this section, the illumination of an advertising device containing a message center display does not constitute the use of a flashing, intermittent or moving light. No message center display may include an illumination that is in motion or appears to be in motion or that changes in intensity or exposes its message for less than eight (8) seconds or that has an interval between messages of two (2) seconds or less. No LED, OLED, illuminated message center display or similar device may exceed the following brightness limits measured as candelas per square feet at any focal point on any roadway or berm or any vehicular approach to any roadway:

<table>
<thead>
<tr>
<th></th>
<th>Day</th>
<th>Night</th>
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<tbody>
<tr>
<td>Red</td>
<td>300</td>
<td>100</td>
</tr>
<tr>
<td>Green</td>
<td>600</td>
<td>200</td>
</tr>
<tr>
<td>Amber</td>
<td>450</td>
<td>150</td>
</tr>
<tr>
<td>Blue</td>
<td>800</td>
<td>350</td>
</tr>
<tr>
<td>White</td>
<td>550</td>
<td>50</td>
</tr>
<tr>
<td>All color</td>
<td>650</td>
<td>250&quot;</td>
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and,

On page twenty-nine, by striking out section ten of the rule in its entirety and by creating a new series, designated Title 157, Series 9 of the Code of State Rules, to read as follows:

“157 CSR 9

Title 157
Legislative Rule
Department of Transportation
Division of Highways
Series 9
Special Crossing Permits


1.1. Scope. - This legislative rule establishes the procedures and standards for issuance of special crossing permits authorizing certain vehicles to operate or move a vehicle or combination of vehicles which exceed the maximum weight allowance specified in W. Va. Code §17C-17A-3 (120,000 pounds) on limited sections of public highways. Special crossing permits may be issued only for vehicles hauling coal or coal by-products in the Coal Resource Transportation Road System.

1.2. Authority. - This rule is issued pursuant to the provisions of W. Va. Code §17C-17A-3.

1.3. Filing Date. -

1.4. Effective Date. -


2.1. An applicant for a special crossing permit must complete an application form developed by the Division of Highways and submit it to a Highways District Permit Clerk within the district wherein the road that will be crossed or traveled is located or where it originates if the route lies within two districts.
2.2. The application must be accompanied by:

2.2.a. A $500 application fee;

2.2.b. A list of all vehicles or combinations of vehicles, including axle weights and spacings and gross vehicle weights, that will be moving on or crossing the highway for which the permit is requested. If a vehicle will be hauling various tonnages of loads, the maximum weights will be listed; and

2.2.c. An estimate of the number of times per day that each listed vehicle or combination of vehicles will cross or travel the route.

2.3. Prior to the issuance of the permit, the applicant must:

2.3.a. Agree, in writing, to pay the actual costs for any necessary upgrading or repair of the public highway, including any necessary traffic control, which the applicant seeks the permit to cross;

2.3.b. Agree to post a bond in an amount of no less than $50,000, as recommended to and approved by the Commissioner of Highways;

2.3.c. Furnish evidence of having at least the minimum amounts of insurance required of “West Virginia Division of Highways, Standard Specifications, Roads and Bridges, Adopted 2000”, and supplements thereto;

2.3.d. Agree, in writing, to pay for the restoration of the public highway to its original condition after the permit has expired. The original condition of the highway may be documented by the applicant and/or the Division of Highways by photography, video recording, or any other means acceptable to both parties.


3.1. No listed vehicle or combination of vehicles is permitted to haul more than the manufacturer's weight rating.
3.2. Except as provided in the permit, all listed vehicles or combinations of vehicles must be in compliance with all other specifications given in W. Va. Code §17C.

3.3. All listed vehicles must be identified by vehicle identification number or, if a vehicle identification number is not available, by serial number.

3.4. If any vehicle is replaced during the course of a three year permit period, the applicant must submit supplemental information on each vehicle to the District Permit Clerk. The District Maintenance Engineer and/or Bridge Engineer shall review the supplemental information and may require additional route analysis, route upgrading, an increase in the bond amount, or any other consideration deemed necessary.


4.1. Prior to the issuance of any Special Crossing Permit:

4.1.a. The District Maintenance Engineer(s) in the district(s) in which the proposed route is located will initiate a route analysis to determine the feasibility and potential costs associated with the applicant being permitted to cross or travel the route with any of the listed vehicles or combinations of vehicles. Considerations will include the road surface and any existing height or width restrictions, bridges, culverts, and potential traffic or safety problems;

4.1.b. If there are bridges or culverts on the route, the District Bridge Engineer(s) in the district(s) in which the route is located will initiate a bridge analysis to determine whether these structures can safely bear the weight of the listed vehicles or combinations of vehicles, or whether any will require reinforcement or replacement; and
4.1.c. The District Traffic Engineer(s) in the district(s) in which the route is located will perform an analysis to evaluate potential traffic and safety problems and recommend appropriate traffic control actions and/or devices.

4.2. The Commissioner of Highways may require additional evaluations or analyses in his or her discretion.

4.3. Once all of the necessary analyses have been performed by the appropriate party(ies), all necessary conditions and addendums required have been identified, and a proposed bond amount has been agreed upon, the District Maintenance Engineer will submit the application to the Commissioner of Highways for approval.

§157-9-5. Approval or denial of permit application.

5.1. The Commissioner of Highways may deny the application if there is an existing alternate off-road route available, if the road or any bridge thereon is unsuitable for the load, or if it is determined that the permit cannot be granted without jeopardizing public safety.

5.1.a. The Commissioner of Highways may not approve an application which, in combination with another permit or permit application, would authorize a vehicle or combination of vehicles to operate in excess of the maximum weight allowance specified in W. Va. Code §17C-17A-3 on sections of public highways longer than one-half mile.

5.1.b. In the event the application is denied, the Commissioner of Highways may (at his or her discretion) refund any unexpended portion of the application fee to the applicant.

5.2. The Commissioner of Highways may require additional evaluations or agreements prior to approving any special crossing permit application.

5.3. If the application for a special crossing permit is approved by the Commissioner of Highways, the District
Maintenance Engineer(s) shall assure that all necessary conditions and addendums are satisfied before delivering the permit to the applicant.

5.4. Any special crossing permit approved by the Commissioner of Highways must include requirement that any vehicle or vehicles authorized to operate on limited sections of public highways pursuant to this rule may not travel on the section of public highway included in the special crossing permit until or unless all other traffic on the public highway is stopped by flaggers or traffic-control signals and that no other unauthorized vehicles may access the section public highway until all authorized vehicles have exited the public highway.

§157-9-6. Duration, suspension, revocation or renewal of permit.

6.1. A special crossing permit is valid for three years from the date of issuance.

6.2. While a special crossing permit is in effect, the permit holder shall maintain the road in a condition that is passable to the traveling public. The District Maintenance Engineer(s), accompanied by a representative of the permit holder, shall review the conditions of the approved route at least quarterly, or more frequently, if deemed appropriate by the District Maintenance Engineer(s), to assure the integrity of the roadway and any structures adjacent thereto.

6.3. A special crossing permit may be suspended or revoked by the Commissioner of Highways at any time if the permit holder is found to be in violation of any of the conditions, requirements, addendums or provisions of the permit or to have maintained the roadway or crossing as required by the permit or this rule.

6.4. At the end of three years, a permit holder may apply to the Commissioner of Highways to renew the permit in the same manner as an application for an initial permit.
The renewal application fee is $500. The Commissioner of Highways may require the same stipulations, conditions and requirements, including the posting of a bond in excess of $50,000, attendant to the issuance of the original permit or may impose additional stipulations, conditions or requirements as a condition of renewal. The Commissioner of Highways may also, in his or her discretion, require any or all of the route and safety evaluations described in required for issuance of an initial permit or require additional evaluations, analyses or requirements before renewing the permit.

6.5. The Commissioner may deny renewal of the permit for any of the reasons for which an initial application for a permit may be denied, if the permit holder failed to comply with any of the conditions or requirements of the previous permit or if the permit holder failed to satisfactorily maintain the highway or protect public safety."

(b) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand five, authorized under the authority of section seven, article eighteen, chapter twenty-two of this code, relating to the Division of Highways (transportation of hazardous wastes upon the roads and highways, 157 CSR 7), is authorized.

§64-8-2. Division of Motor Vehicles.

(a) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand five, authorized under the authority of section nine, article two, chapter seventeen-a of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fifteenth day of December, two thousand five, relating to the Division of Motor Vehicles (denial, suspension, revocation, restriction or nonrenewal of driving privileges, 91 CSR 5), is authorized with the following amendment:
On page five, subsection 5.1., line one, after the word "shall", by inserting a comma;

On page five, subsection 5.1., by striking out the words "time shall begin to toll from" and inserting in lieu thereof the words "revocation shall begin on";

On page five, subsection 5.2., by striking out the words "time shall begin to toll from" and inserting in lieu thereof the words "suspension shall begin on";

On page six, subsection 7.2., after the words "disqualification or", by striking out the word "is" and inserting in lieu thereof the words "the offense was";

On page nine, subdivision 7.3.e., after the words "W. Va. Code §17C-6-1" by striking out "(g) or (h)" and inserting in lieu thereof "(i) or (j)" and a period;

On page nine, subsection 7.4., after the words "involving a conviction.", by striking out the remainder of the subsection;

On page eleven, subsection 7.14., by striking out the words "pertaining to a conviction for a", and inserting in lieu thereof a comma and the words "which exempt convictions for"

On page eleven, subsection 7.14., the last line, by striking out the word "does" and inserting in lieu thereof the words "from being reported to the Division, do";

On page fourteen, subdivision 9.4.d., by striking out the word "shall" and inserting in lieu thereof the word "may";

On page seventeen, subsection 12.1., after the words "W. Va. Code §17B-3-6" by striking out "(10)" and inserting in lieu thereof "(a)(9)";

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On page eighteen, subsection 13.1., line five, after the words "The Division", by striking out the word "shall" and inserting in lieu thereof the word "may";

On page twenty, subsection 15.1., line one, after the words "with the provisions of W. Va. Code", by striking out "§48A-5A-1 et seq." and inserting in lieu thereof "§48-15-101 et seq.";


On page twenty, subsection 15.1., by striking out the words "Dababnah v. West Virginia Board of Medicine, No. 27751 slip op (W. Va. 2000)" and inserting in lieu thereof the words "Dababnah v. West Virginia Board of Medicine, 207 W. Va. 621, 535 S.E.2d 20 (2000);"


On page twenty, subdivision 15.2.a., after the words "W. Va. Code §17B-3-6" by inserting "(a)";


On page twenty-one, paragraph 15.2.c.3., following "Subsection" by striking out "5.6" and inserting in lieu thereof "15.6";

On page twenty-one, paragraph 15.2.c.4., after the word "Subsection", by striking out "5.7" and inserting in lieu thereof "15.7";

75 On page twenty-one, subsection 15.4., after the words
76 "W. Va. Code", by striking out "§48A-5A-5(b)" and
77 inserting in lieu thereof "§48-15-302";

78 On page twenty-one, subsection 15.5., after the words
79 "W. Va. Code", by striking out "§48A-5A-5(a)" and
80 inserting in lieu thereof "§48-15-301(e)";

81 On page twenty-two, paragraph 15.6.b.1., after the word
82 "Subsection", by striking out "5.5" and inserting in lieu
83 thereof "15.5";

84 On page nineteen, subsection 14.1, at the end of the
85 subsection by inserting the following sentence:
86 "For the purposes of this rule, a plea of nolo contendre
87 stands as neither an admission of guilt nor a conviction for
88 administrative revocation proceedings."

89 On page twenty-two, subsection 15.7., after the words
90 "W. Va. Code", by striking out "§48A-5A-5(b)" and
91 inserting in lieu thereof "§48-15-302";

92 On page twenty-two, subdivision 16.2.c., after the word
93 "Commercial", by inserting "Motor"; and,

94 On page twenty-five, subdivision 16.3.f., after the word
95 "subdivision", by striking out "16.2.e." and inserting in
96 lieu thereof "16.2.f."

97 (b) The legislative rule filed in the State Register on the
98 twenty-fifth day of July, two thousand five, authorized
99 under the authority of section nine, article two, chapter
100 seventeen-a of this code, modified by the Division of Motor
101 Vehicles to meet the objections of the Legislative Rule-
102 Making Review Committee and refiled in the State Regis-
103 ter on the fifteenth day of December, two thousand five,
104 relating to the Division of Motor Vehicles (motor vehicle
105 dealers and other businesses regulated by the Division of
106 Motor Vehicles, 91 CSR 6), is authorized.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the

Day of , 2006.

Governor