WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 2670

(By Delegates Brown, Miley, Burdiss, Talbott and Overington)

Passed March 10, 2007
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 Office of Miners Health, Safety and Training to promulgate a legislative rule relating to protective clothing and equipment; authorizing the Office of Miners Health, Safety and Training to promulgate a legislative rule relating to standards for certification of coal mine electricians; authorizing the Bureau of Employment Programs to promulgate a legislative rule
relating to requiring agencies to revoke or not grant issue or renew approval documents with employing units on the bureau’s default list; authorizing the Division of Forestry to promulgate a legislative rule relating to ginseng; 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 special boating rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to wildlife disease management; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to public use of campgrounds and recreation areas in West Virginia state wildlife management areas under the Division of Natural Resources.

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. Office of Miners Health Safety and Training.

(a) The legislative rule filed in the State Register on the twenty-seventh day of April, two thousand six, authorized under the authority of section six, article two, chapter twenty-two-a, section thirty-eight, article two, chapter twenty-two-a and section fifty-five, article two, chapter twenty-two-a of this code, modified by the Office of Miners Health Safety and Training to meet the objections of the Legislative Rules Making Review Committee and refiled in the State Register on the eighteenth day of January, two thousand seven, relating to the Office of Miners Health Safety and Training (protective clothing and equipment, 56 CSR 4), is authorized with the following amendments:

On page one, subsection 1.1., by striking out the words “these emergency rules” and inserting in lieu thereof the words “this rule”;

On page one, subsection 2.1., by striking out the word “State’s” and inserting in lieu thereof the word “state’s”;
On page one, subsection 2.1., line four, by striking out the words “these legislative rules” and inserting in lieu thereof the words “this rule”;

On page two, subsection 2.2., by striking out the words “these rules” and inserting in lieu thereof the words “this rule”;

On page two, subsection 3.1., by striking out the words “as they are defined” and inserting in lieu thereof the word “used”;

On page two, subsection 3.2., by striking out the words “shall mean” and inserting in lieu thereof the word “means”;

On page two, subsection 3.3., by striking out the words “shall herein refer” and inserting in lieu thereof the word “means”;

On page three, subsection 4.1., by striking out the words “these rules” and inserting in lieu thereof the words “this rule”;

On page four, subsection 5.2., by striking out “department of labor” and inserting in lieu thereof “Department of Labor”;

On page four, subsection 5.2., after the word “Provided,” by striking out “However,”;

On page four, subsection 5.3., line three, after the word “training” by striking out the comma and the word “provided” and inserting in lieu thereof a colon and the words “Provided, That” and by striking out the word “manufacturers” and inserting in lieu thereof the word “manufacturers’”;

On page four, subsection 5.3., after the words “limited to” by changing the semi-colon to a colon;

On page five, subsection 6.1., by striking out the words “these rules” and inserting in lieu thereof the words “this rule”;

On page five, subsection 6.2., by striking out the words “these rules” and inserting in lieu thereof the words “this rule”;
On page eight, subparagraph 6.10.4.a.1., by striking out §56-4-6" and inserting in lieu thereof “56 CSR 4-6”;

On page nine, subsection 6.14., by striking out the words “these rules” and inserting in lieu thereof the words “this rule”;

On page nine, by striking out subsection 6.15. in its entirety;

On pages ten and eleven, by striking out subsection 7.4. in its entirety;

On page eleven, by redesignating subdivision 8.1.1. as subsection 8.2. and redesignating the remaining subsections accordingly;

On page eleven, by redesignating subdivision 8.3.1. as subsection 8.5. and redesignating the remaining subsections accordingly;

On page fifteen, subsection 8.13., by striking out the words “these rules” and inserting in lieu thereof the words “this rule”;

On pages fifteen and sixteen, by striking out subsection 8.15. in its entirety;

On page seventeen, subsection 9.10., by striking out the words “these rules” and inserting in lieu thereof the words “this rule”;

And,

On page twenty, by striking out subsection 9.18. in its entirety.

(b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of sections six and thirty-eight, 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 eighteenth day of January, two thousand seven, relating to the Office of Miners Health Safety and Training (standards for certification of coal mine electricians, 48 CSR 7), is authorized, with the following amendments:
“On page three, subsection 4.1., by striking out the words “Section 8.2.1.” and inserting in lieu thereof the words “8.3”;”

On page four, section five, by designating the last two paragraphs of the section as subsections 5.2. and 5.3., respectively;

On page four, section six, by designating the second paragraph of the section as subsection 6.2. and by redesignating the following subsection accordingly;

On page five, section six, by designating the last paragraph of the section as subsection 6.4.;

On page five, subsection 8.1., by striking out the words “Section 8.2.1.” and inserting in lieu thereof the words “Section 8.3”;

On pages five and six, by striking out subdivision 8.2.1. in its entirety and inserting in lieu thereof the following:

“8.3. Criteria and standards for alternative electrical training programs must be adopted by unanimous approval of the Director and the Board of Miner Training, Education and Certification. An alternative electrical training program will not become effective until approved by the Secretary of State as an emergency rule or by the Legislature as an amendment to this rule.” and redesignating the remaining subsection accordingly;

And,

On page six, section nine, by designating the last paragraph of the section as subsection 9.3.”

§64-10-2. Bureau of Employment Programs.

The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand six, authorized under the authority of section six, article two, chapter twenty-one-a, of this code, modified by the Bureau of Employment Programs to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twelfth day of January, two thousand seven, relating to the Bureau of Employment Programs (requiring state agencies to revoke or not to grant, issue or renew approval documents with employing units on the bureau’s default list, 96 CSR 1), is authorized.
§64-10-3. Division of Forestry.

The legislative rule filed in the State Register on the twenty-second day of June, two thousand six, authorized under the authority of section three-a, 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 twelfth day of January, two thousand seven, relating to the Division of Forestry (ginseng, 22 CSR 1), is authorized, with the following amendments:

On page two, section three, by striking out “3.1.”;

On page three, by redesignating subdivision 6.1.1. as subsection 6.2. and by redesignating the remaining subsections accordingly;

On page four, section seven, by striking out “7.1.”;

On page four, section eight, by striking out “8.1.”;

On page five, by redesignating subdivision paragraph 9.2.2.1. as subdivision 9.2.2.;

On page five, section ten, by striking out “10.1.”;

On page six, section eleven, by striking out “11.1.”;

And,

On page six, subsection 13.2., after the words “Freedom of Information Act” by striking out the remainder of the subsection and inserting in lieu thereof the following: “as having a significant commercial value to the extent permitted by W. Va. Code §29B-1-4(1).”.

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

(a) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section twenty-three-a, article two, chapter twenty, of this code, 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-eighth day of July, two thousand six, authorized under
the authority of section seven, article one, chapter twenty, of this code, relating to the Division of Natural Resources (special boating rules, 58 CSR 26), is authorized.

(c) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, 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 December, two thousand six, relating to the Division of Natural Resources (deer hunting, 58 CSR 50), is authorized.

(d) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, 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 second day of November, two thousand six, relating to the Division of Natural Resources (wildlife disease management, 58 CSR 69), is authorized, with the amendments:

On page 2, subsection 2.3, line eight, after the word "landscape" and the period, by striking the remainder of the subsection and inserting in lieu thereof, the following: "The Director shall, at least annually after the establishment of a containment area, review and evaluate any and all new information relating to wildlife disease epidemiology and surveillance to determine whether any such designation of a containment area should be modified or rescinded and shall report these findings to the Natural Resources Commission. Prior to the establishment of a containment area, the Director shall consult with:

2.3.a. wildlife biologists within the Wildlife Resources Section that are knowledgeable of wildlife diseases;

2.3.b. a Department of Agriculture veterinarian knowledgeable of wildlife diseases;

2.3.c. conservation officers familiar with local and regional landscape features; and

2.3.d. the Natural Resources Commission.";
And,

One page 3, by striking subsection 4.1 and inserting the following, “4.1. It is illegal to feed cervids or other wildlife in a containment area as determined by the Director and established for the management, control or eradication of chronic wasting disease, bovine tuberculosis, avian influenza or other wildlife diseases. Provided, that song and insectivorous birds may be fed so long as the person or persons feeding the same shall not do so in a manner that causes a congregation of cervids or other wildlife or in a manner that said person or persons reasonably should have known would cause a congregation of cervids or other wildlife. Provided further, that captive cervids may be fed inside cervid facilities permitted by the Division of Natural Resources.”.

(c) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, 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 second day of November, two thousand six, relating to the Division of Natural Resources (public use of campgrounds and recreation areas in West Virginia state wildlife management areas under the Division of Natural Resources, 58 CSR 70), is authorized, with the following amendments:

On page one, subsection 2.2., by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page two, section three, by striking out “3.1.”;

On page two, subsection 2.18., by striking out the word “shall” and inserting in lieu thereof the word “may”;

And,

On page two, by striking out subsection 3.2. In its entirety.
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 28th day of March, 2007.

Governor