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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4220

(By Delegates Brown, D. Poling, Fleischauer and Talbott)



Passed March 6, 2012

To Take Effect From Passage

HB 4220

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FOR

OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 4220

(BY DELEGATES BROWN, D. POLING, FLEISCHAUER AND TALBOTT)

[Passed March 6, 2012; to take 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; 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 Development Office to promulgate a legislative rule relating to brownfield economic development districts; authorizing the Development Office to promulgate a

legislative rule relating to the use of coalbed methane severance tax proceeds; authorizing the Board of Registration for Foresters to promulgate a legislative rule relating to the certification of registered foresters; authorizing the Board of Registration for Foresters to promulgate a legislative rule relating to a schedule of fees; authorizing the Board of Registration for Foresters to promulgate a legislative rule relating to a code of ethics; authorizing the Division of Forestry to promulgate a legislative rule relating to sediment control during commercial timber-harvesting operations - licensing; authorizing the Division of Forestry to promulgate a legislative rule relating to sediment control during commercial timber-harvesting operations - logger certification; authorizing the Division of Labor to promulgate a legislative rule relating to the Zipline and Canopy Tour Responsibility Act; authorizing the Division of Labor to promulgate a legislative rule relating to the Amusement Rides and Amusement Attractions Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the supervision of elevator mechanics and apprentices; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to the application process for the West Virginia Innovative Mine Safety Technology Tax Credit Act; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special motor boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to hunting, trapping and fishing; authorizing the Division of Natural Resources to promulgate a legislative rule relating to defining the terms used in all hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general trapping; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to special fishing.

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. Development Office.

1 (a) The legislative rule filed in the State Register on the
2 fifth day of July, two thousand eleven, authorized under the
3 authority of section six-a, article two, chapter five-b, of this
4 code, modified by the Development Office to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the twenty-
7 third day of December, two thousand eleven, relating to the
8 Development Office (brownfield economic development
9 districts, 145 CSR 11), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 fourteenth day of July, two thousand eleven, authorized under
12 the authority of section twenty-a, article thirteen-a, chapter
13 eleven, of this code, modified by the Development Office to
14 meet the objections of the Legislative Rule-Making Review
15 Committee and refiled in the State Register on the sixteenth
16 day of December, two thousand eleven, relating to the
17 Development Office (use of coalbed methane severance tax
18 proceeds, 145 CSR 13), is authorized, with the following
19 amendment:

20 On page one, section three, by striking out "*W. Va. Code*
21 *§11-12-1*" and inserting in lieu thereof "*W. Va. Code §7-12-*
22 *1*".

§64-10-2. Board of Registration for Foresters.

1 (a) The legislative rule filed in the State Register on the
2 third day of August, two thousand eleven, authorized under
3 the authority of section six, article nineteen, chapter thirty, of
4 this code, modified by the Board of Registration for Foresters
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 fifth day of December, two thousand eleven, relating to the
8 Board of Registration for Foresters (certification of registered
9 foresters, 200 CSR 1), is authorized, with the following
10 amendment:

11 On page 1, subsection 1.1, after the words “rule
12 establishes” by striking out the remainder of the sentence and
13 inserting in lieu thereof the words “educational and
14 experience requirements, approved job titles and continuing
15 education requirements for foresters and forestry technicians,
16 and meeting requirements for the board.”;

17 On page 2, subsection 2.9, at the end of the subsection,
18 by striking out the words “this article” and inserting in lieu
19 thereof the words “*W. Va. Code §30-19-1 et seq.* and this
20 rule.”;

21 On page 2, in the first subsection 2.10, by striking out the
22 word “Permittee” and inserting in lieu thereof the word
23 “Permittee”, and at the end of the subsection, by striking out
24 the words “this article” and inserting in lieu thereof the words
25 “*W. Va. Code §30-19-1 et seq.* and this rule.”;

26 On page 2, subsection 2.11, at the end of the subsection,
27 by striking out the words “this article” and inserting in lieu
28 thereof the words “*W. Va. Code §30-19-1 et seq.* and this
29 rule.”;

30 On page 2, in the second subsection 2.10, at the end of
31 the subsection, by striking out the words "this article" and
32 inserting in lieu thereof the words "*W. Va. Code §30-19-1 et*
33 *seq.* and this rule.";

34 On page 2, by redesignating the second subsection 2.10
35 as subsection 2.12;

36 On page 2, section 3, after the section heading, by
37 striking out section 3 in its entirety and inserting in lieu
38 thereof a new section 3 to read as follows:

"§200-1-3. Applications.

1 3.1. An applicant for certification as a registered forester
2 shall submit evidence to the board of the following:

3 3.1.a. A bachelor's degree in forestry from a four
4 year school, college or university accredited by the Society
5 of American Foresters and at least two years of full-time
6 equivalent work experience as a professional forester within
7 the ten years preceding the date of filing an application for
8 registration; or

9 3.1.b. An associate's degree from a two year
10 technical forestry program recognized by the Society of
11 American Foresters plus a bachelor's degree in another
12 natural science or business and at least four years of full-time
13 equivalent work experience in the field of forestry acceptable
14 to the board within the ten years preceding the date of filing
15 an application for registration.

16 3.2. An applicant for certification as a registered forestry
17 technician shall submit evidence to the board of an
18 associate's degree from a two year technical forestry program
19 recognized by the Society of American Foresters and at least

20 four years of full-time equivalent work experience in the field
21 of forestry acceptable to the board within the ten years
22 preceding the date of filing an application for registration.

23 3.3. All applicants must complete the application form
24 provided by the Board and supply the following:

25 3.3.a. Personal information;

26 3.3.b. Educational information;

27 3.3.c. Qualifying work experience;

28 3.3.d. Verification of license, certification or other
29 authority to practice from other state licensing boards, if
30 applicable;

31 3.3.e. Written responses to questions regarding
32 criminal offenses;

33 3.3.f. Written responses to questions regarding child
34 support obligations; and

35 3.3.g. Applicable fee or fees as provided in 200 CSR
36 4.”;

37 On page 3, subsection 6.1, after the words “name and” by
38 striking out the word “license” and inserting in lieu thereof
39 the word “certification”;

40 On page 4, subsection 6.7, by striking out the words “will
41 automatically” and inserting in lieu thereof the words “will be
42 automatically classified as”;

43 On page 4, subsection 6.9, after the words “non-renewal
44 of any” by striking out the word “license” and inserting in

45 lieu thereof the word “certification” and after the words
46 “return the certificate” by striking out the words “of
47 registration”;

48 On page 4, subsection 7.1, after the words “issuing of a
49 certificate” by striking out the words “of registration”;

50 On page 5, subsection 7.2, after the words “working
51 toward eligibility for” by striking out the word “licensing”
52 and inserting in lieu thereof the word “certification”, and after
53 the words “leading to the issuance of a” by striking out the
54 words “license and” and after the word “certificate” by
55 striking out the words “of registration”;

56 And,

57 On page 6, subsection 10.1, after the words “To renew a”
58 by striking out the word “license” and inserting in lieu
59 thereof the word “certificate” and after the words “renewal or
60 initial” by striking out the word “registration” and inserting
61 in lieu thereof the word “certification” and after the words
62 “The board shall not renew a” by striking out the word
63 “license” and inserting in lieu thereof the word “certificate”.

64 (b) The legislative rule filed in the State Register on the
65 third day of August, two thousand eleven, authorized under
66 the authority of section six, article nineteen, chapter thirty, of
67 this code, modified by the Board of Registration for Foresters
68 to meet the objections of the Legislative Rule-Making
69 Review Committee and refiled in the State Register on the
70 fifth day of December, two thousand eleven, relating to the
71 Board of Registration for Foresters (schedule of fees, 200
72 CSR 4), is authorized, with the following amendments:

73 On page 1, in the first subsection 2.2, after the word “fee”
74 by striking out the word “for”;

75 On page 1, in the second subsection 2.2, after the word
76 “certification” by striking out the word “license”; and

77 On page 1, section 2, by numbering the subsections of
78 said section 2 sequentially.

79 (c) The legislative rule filed in the State Register on the third
80 day of August, two thousand eleven, authorized under the
81 authority of section six, article nineteen, chapter thirty, of this
82 code, modified by the Board of Registration for Foresters to meet
83 the objections of the Legislative Rule-Making Review Committee
84 and refiled in the State Register on the fifth day of December, two
85 thousand eleven, relating to the Board of Registration for Foresters
86 (code of ethics, 200 CSR 5), is authorized.

§64-10-3. Division of Forestry.

1 (a) The legislative rule filed in the State Register on the
2 twentieth day of July, two thousand eleven, authorized under the
3 authority of section four, article one-b, chapter nineteen, of this
4 code, relating to the Division of Forestry (sediment control
5 during commercial timber-harvesting operations - licensing, 22
6 CSR 2), is authorized, with the following amendment:

7 On page two, section two, subsection 2.22, after “§19-
8 1B-3e” by striking out the remainder of the subsection and
9 inserting in lieu thereof the following: “includes all aspects
10 of logging, including but not limited to severing and
11 delimiting of trees, cutting of the delimited tree into logs
12 either at the point of severing or at a landing, the preparation
13 of any skid and haul roads and the skidding or otherwise
14 moving of logs to landings.”.

15 (b) The legislative rule filed in the State Register on the
16 twentieth day of July, two thousand eleven, authorized under
17 the authority of section seven, article one-b, chapter nineteen,

18 of this code, relating to the Division of Forestry (sediment
19 control during commercial timber-harvesting operations -
20 logger certification, 22 CSR 3), is authorized, with the
21 following amendment:

22 On page two, section two, subsection 2.13, after the word
23 "Operations", by inserting the words "or the singular".

§64-10-4. Division of Labor.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand eleven, authorized
3 under the authority of section six, article fifteen, chapter
4 twenty-one, of this code, modified by the Division of Labor
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 twenty-fifth day of October, two thousand eleven, relating to
8 the Division of Labor (Zipline and Canopy Tour
9 Responsibility Act, 42 CSR 10), is authorized with the
10 following amendments:

11 On page two, subsection 3.5., by striking out all of
12 subsection 3.5. and inserting in lieu thereof a new subsection,
13 designated subsection 3.5., to read as follows:

14 3.5. "Serious injury," means an injury that is directly
15 related to any mechanical, electrical, operational or structural
16 malfunction of a zipline or canopy tour that results in death,
17 loss of consciousness, or requires medical treatment other
18 than first aid by a physician or other medical professional for
19 which a record is created.;

20 And,

21 On pages four through six, by striking out the remainder
22 of the rule and inserting in lieu thereof the following:

§42-10-10. Unscheduled Cessation of Operation.

1 10.1. Following any unscheduled cessation of operation,
2 the operator of a zipline or canopy tour shall immediately
3 have the participants safely removed or unloaded from the
4 zipline or canopy tour.

5 10.2. If the operator determines that the zipline or canopy
6 tour can safely resume operation, the qualified person shall
7 first operate the zipline or canopy tour without participants to
8 ensure that the cause of the unscheduled cessation of
9 operation has been corrected.

10 10.3. The operator shall document any unscheduled
11 cessation of operation, including the identification of the zipline
12 or canopy tour, the name of the employee operating the zipline
13 or canopy tour during the unscheduled cessation, and a complete
14 description of the incident, including the date, time, weather
15 conditions, location, number of participants, etc.

§42-10-11. Imminent Danger.

1 11.1. If the Commissioner or a special inspector
2 determines that a zipline or canopy tour presents an imminent
3 danger, he or she shall immediately give written notification
4 to the zipline or canopy tour owner or operator, advising him
5 or her that the zipline or canopy tour shall be immediately
6 removed from service.

7 11.2. If the owner or operator does not immediately
8 remove the zipline or canopy tour from service, the inspector
9 shall immediately report the imminent danger to the
10 Commissioner.

11 11.3. If the owner or operator does not immediately
12 remove the zipline or canopy tour from service, the

13 Commissioner may seek a temporary or permanent
14 restraining order or injunction to prohibit the continuing
15 operation of the zipline or canopy tour.

§ 42-10-12. Serious Injury or Fatality.

1 12.1. If a participant or member of the general public is
2 involved in an accident related to the operation of a zipline or
3 canopy tour that results in a serious injury or a fatality, the
4 owner or operator shall immediately shut down the operation
5 of the zipline or canopy tour and secure the safety of other
6 participants and the general public.

7 12.2. An owner or operator shall ensure that the scene of
8 a serious injury or fatality is left intact from the time of the
9 accident and shall ensure that the zipline or canopy tour
10 involved is not removed from the scene of the accident
11 without written authorization from the Commissioner or a
12 law enforcement officer.

13 12.3. The owner, operator, and any employees who
14 witnessed the accident or who operated the zipline or canopy
15 tour when the accident occurred shall be available to be
16 interviewed by the Commissioner.

17 12.4. The owner of the zipline or canopy tour shall make
18 a report of the injury or fatality to the Commissioner within
19 24 hours of its occurrence, using the Division's emergency
20 contact protocol.

21 12.4.a. After the owner of the zipline or canopy tour
22 notifies the Commissioner of a serious injury or fatality, the
23 Commissioner shall, with reasonable promptness, advise the
24 owner whether the zipline or canopy tour shall remain shut
25 down pending investigation and inspection or whether it can
26 be placed back in service.

27 12.4.b. In deciding whether the zipline or canopy
28 tour shall remain shut down or whether it can be placed back
29 in service, the Commissioner's sole consideration shall be the
30 safety of participants and the general public.

31 12.5. The owner shall document the accident, to include the
32 full name, address and telephone number of the injured person, a
33 description of his or her injuries, identification of the zipline or
34 canopy tour involved, the names and addresses of the owner and
35 employees who witnessed the accident, and any other pertinent
36 information describing the events leading up to the accident.

37 12.6. An owner or operator shall keep a record of every
38 accident or fatality with the certificate of inspection, which
39 shall be readily accessible to the general public. The record
40 shall include the following information:

41 12.6.a. The date of every accident or fatality;

42 12.6.b. A description of the type of accident;

43 12.6.c. The number of people injured or killed; and

44 12.6.d. A description of the types of injuries.

§42-10-13. Reports and Records.

1 13.1. The owner of the zipline or canopy tour shall retain
2 all reports, documents, photographs and records required by
3 this rule for not less than 3 years from the date of the
4 unscheduled cessation, imminent danger notification, or
5 serious injury or fatality.

6 13.2. If an owner violates any provision of this section of
7 the rule, the Commissioner may permanently revoke the
8 permit to operate.

9 (b) The legislative rule filed in the State Register on the
10 twenty-eighth day of July, two thousand eleven, authorized
11 under the authority of section three, article ten, chapter
12 twenty-one, of this code, modified by the Division of Labor
13 to meet the objections of the Legislative Rule-Making
14 Review Committee and refiled in the State Register on the
15 twenty-fifth day of October, two thousand eleven, relating
16 to the Division of Labor (Amusement Rides and
17 Amusement Attractions Safety Act, 42 CSR 17), is
18 authorized.

19 (c) The legislative rule filed in the State Register on the
20 twenty-eighth day of July, two thousand eleven, authorized
21 under the authority of section eleven, article threc-c, chapter
22 twenty-one, of this code, modified by the Division of Labor
23 to meet the objections of the Legislative Rule-Making
24 Review Committee and refiled in the State Register on the
25 twenty-fifth day of October, two thousand eleven, relating to
26 the Division of Labor (supervision of elevator mechanics and
27 apprentices, 42 CSR 21A), is authorized.

§64-10-5. Office of Miners' Health, Safety & Training.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section thirteen, article thirteen-bb,
4 chapter eleven, of this code, modified by the Office of
5 Miners' Health, Safety and Training to meet the objections of
6 the Legislative Rule-Making Review Committee and refiled
7 in the State Register on the twenty-second day of November,
8 two thousand eleven, relating to the Office of Miners' Health,
9 Safety and Training (application process for the West
10 Virginia Innovative Mine Safety Technology Tax Credit Act,
11 56 CSR 14), is authorized.

§64-10-6. Division of Natural Resources

1 (a) The legislative rule filed in the State Register on the
2 twenty-fifth day of July, two thousand eleven, authorized
3 under the authority of section seven, article one, chapter
4 twenty, of this code, modified by the Division of Natural
5 Resources to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the twenty-second day of September, two thousand
8 eleven, relating to the Division of Natural Resources (special
9 boating, 58 CSR 26), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-sixth day of July, two thousand eleven, authorized
12 under the authority of section twenty-three, article seven,
13 chapter twenty, of this code, modified by the Division of
14 Natural Resources to meet the objections of the Legislative
15 Rule-Making Review Committee and refiled in the State
16 Register on the twenty-second day of September, two
17 thousand eleven, relating to the Division of Natural
18 Resources (special motorboating, 58 CSR 27), is authorized.

19 (c) The legislative rule filed in the State Register on the
20 twenty-sixth day of July, two thousand eleven, authorized
21 under the authority of section seven, article one, chapter
22 twenty, of this code, relating to the Division of Natural
23 Resources (hunting, trapping and fishing, 58 CSR 45A), is
24 authorized.

25 (d) The legislative rule filed in the State Register on the
26 twenty-fifth day of July, two thousand eleven, authorized
27 under the authority of section seven, article one, chapter
28 twenty, of this code, modified by the Division of Natural
29 Resources to meet the objections of the Legislative Rule-
30 Making Review Committee and refiled in the State Register
31 on the twenty-second day of September, two thousand

32 eleven, relating to the Division of Natural Resources
33 (defining the terms used in all hunting and trapping, 58 CSR
34 46), is authorized.

35 (e) The legislative rule filed in the State Register on the
36 twenty-fifth day of July, two thousand eleven, authorized
37 under the authority of section seven, article one, chapter
38 twenty, of this code, modified by the Division of Natural
39 Resources to meet the objections of the Legislative Rule-
40 Making Review Committee and refiled in the State Register
41 on the twenty-second day of September, two thousand
42 eleven, relating to the Division of Natural Resources
43 (prohibitions when hunting and trapping, 58 CSR 47), is
44 authorized.

45 (f) The legislative rule filed in the State Register on the
46 twenty-fifth day of July, two thousand eleven, authorized
47 under the authority of section seven, article one, chapter
48 twenty, of this code, modified by the Division of Natural
49 Resources to meet the objections of the Legislative Rule-
50 Making Review Committee and refiled in the State Register
51 on the twenty-second day of September, two thousand
52 eleven, relating to the Division of Natural Resources (general
53 trapping, 58 CSR 53), is authorized, with the following
54 amendment:

55 On page one, section three, subsection 3.2, in the first
56 sentence, after the word "Areas" by adding "and State
57 Forests",

58 And,

59 On page one, section three, subsection 3.2, in the second
60 sentence, after the word "Area" by adding "or State Forest".

61 (g) The legislative rule filed in the State Register on the
62 twenty-fifth day of July, two thousand eleven, authorized
63 under the authority of section seven, article one, chapter
64 twenty, of this code, modified by the Division of Natural
65 Resources to meet the objections of the Legislative Rule-
66 Making Review Committee and refiled in the State Register
67 on the twenty-second day of September, two thousand
68 eleven, relating to the Division of Natural Resources (special
69 fishing, 58 CSR 61), is authorized.

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

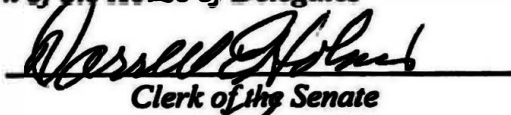

Chairman, House Committee


Chairman, Senate Committee

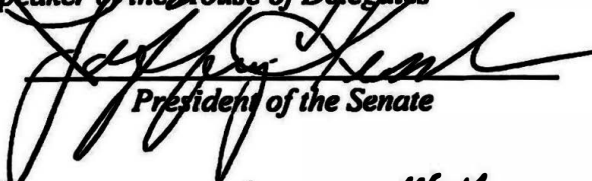
Originating in the House.

To take effect from passage.


Clerk of the House of Delegates


Clerk of the Senate


Speaker of the House of Delegates


President of the Senate

The within is approved this the 14th
day of March, 2012.


Governor

OFFICE OF THE
SECRETARY OF STATE

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FILED

PRESENTED TO THE GOVERNOR

MAR 12 2012

Time 10:25 am