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
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
Enr. Com. Sub. for H. B. 4220

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 Application of 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.

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

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

On page one, section three, by striking out "W. Va. Code §11-12-1" and inserting in lieu thereof "W. Va. Code §7-12-1".
§64-10-2. Board of Registration for Foresters.

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

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

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

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

On page 2, subsection 2.11, at the end of the subsection, by striking out the words “this article” and inserting in lieu thereof the words “W. Va. Code §30-19-1 et seq. and this rule.”;
On page 2, in the second subsection 2.10, at the end of the subsection, by striking out the words “this article” and inserting in lieu thereof the words “W. Va. Code §30-19-1 et seq. and this rule.”;

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

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

"§200-1-3. Applications.

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

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

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

3.2. An applicant for certification as a registered forestry technician shall submit evidence to the board of an associate’s degree from a two year technical forestry program 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
lieu thereof the word "certification" and after the words "return the certificate" by striking out the words "of registration";

On page 4, subsection 7.1, after the words "issuing of a certificate" by striking out the words "of registration";

On page 5, subsection 7.2, after the words "working toward eligibility for" by striking out the word "licensing" and inserting in lieu thereof the word "certification", and after the words "leading to the issuance of a" by striking out the words "license and" and after the word "certificate" by striking out the words "of registration";

And,

On page 6, subsection 10.1, after the words "To renew a" by striking out the word "license" and inserting in lieu thereof the word "certificate" and after the words "renewal or initial" by striking out the word "registration" and inserting in lieu thereof the word "certification" and after the words "The board shall not renew a" by striking out the word "license" and inserting in lieu thereof the word "certificate".

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

On page 1, in the first subsection 2.2, after the word "fee" by striking out the word "for";
On page 1, in the second subsection 2.2, after the word “certification” by striking out the word “license”; and

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

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

§64-10-3. Division of Forestry.

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

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

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

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

§64-10-4. Division of Labor.

(a) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand eleven, authorized under the authority of section six, article fifteen, 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 twenty-fifth day of October, two thousand eleven, relating to the Division of Labor (Zipline and Canopy Tour Responsibility Act, 42 CSR 10), is authorized with the following amendments:

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

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

And,

On pages four through six, by striking out the remainder of the rule and inserting in lieu thereof the following:
§42-10-10. Unscheduled Cessation of Operation.

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

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

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

§42-10-11. Imminent Danger.

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

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

11.3. If the owner or operator does not immediately remove the zipline or canopy tour from service, the
Commissioner may seek a temporary or permanent restraining order or injunction to prohibit the continuing operation of the zipline or canopy tour.

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

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

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

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

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

12.4.a. After the owner of the zipline or canopy tour notifies the Commissioner of a serious injury or fatality, the Commissioner shall, with reasonable promptness, advise the owner whether the zipline or canopy tour shall remain shut down pending investigation and inspection or whether it can be placed back in service.
12.4.b. In deciding whether the zipline or canopy tour shall remain shut down or whether it can be placed back in service, the Commissioner's sole consideration shall be the safety of participants and the general public.

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

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

12.6.a. The date of every accident or fatality;
12.6.b. A description of the type of accident;
12.6.c. The number of people injured or killed; and


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

13.2. If an owner violates any provision of this section of the rule, the Commissioner may permanently revoke the permit to operate.
(h) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand eleven, authorized under the authority of section three, article ten, 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 twenty-fifth day of October, two thousand eleven, relating to the Division of Labor (Amusement Rides and Amusement Attractions Safety Act, 42 CSR 17), is authorized.

(c) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand eleven, authorized under the authority of section eleven, article threc-c, 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 twenty-fifth day of October, two thousand eleven, relating to the Division of Labor (supervision of elevator mechanics and apprentices, 42 CSR 21A), is authorized.

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

The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section thirteen, article threc-bb, chapter eleven, 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 twenty-second day of November, two thousand eleven, relating to the Office of Miners’ Health, Safety and Training (application process for the West Virginia Innovative Mine Safety Technology Tax Credit Act, 56 CSR 14), is authorized.
§64-10-6. Division of Natural Resources

(a) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand eleven, 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 twenty-second day of September, two thousand eleven, relating to the Division of Natural Resources (special boating, 58 CSR 26), is authorized.

(b) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand eleven, authorized under the authority of section 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 twenty-second day of September, two thousand eleven, relating to the Division of Natural Resources (special motorboating, 58 CSR 27), is authorized.

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

(d) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand eleven, 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 twenty-second day of September, two thousand
eleven, relating to the Division of Natural Resources (defining the terms used in all hunting and trapping, 58 CSR 46), is authorized.

(e) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand eleven, 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 twenty-second day of September, two thousand eleven, relating to the Division of Natural Resources (prohibitions when hunting and trapping, 58 CSR 47), is authorized.

(f) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand eleven, 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 twenty-second day of September, two thousand eleven, relating to the Division of Natural Resources (general trapping, 58 CSR 53), is authorized, with the following amendment:

On page one, section three, subsection 3.2, in the first sentence, after the word “Areas” by adding “and State Forests”,

And,

On page one, section three, subsection 3.2, in the second sentence, after the word “Area” by adding “or State Forest”. 
(g) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand eleven, 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 twenty-second day of September, two thousand eleven, relating to the Division of Natural Resources (special 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
PRESENTED TO THE GOVERNOR

MAR 12 2012

Time 10:25 am