WEST virginia legislature

2024 regular session

Committee Substitute

for

House Bill 4086

By Delegate Smith

[Originating in the Committee on the Judiciary; Reported on February 9, 2024]

A BILL to amend and reenact §64-10-1 of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Commerce to promulgate legislative rules; authorizing the rules as filed, as modified, and as amended by the Legislative Rule-Making Review Committee and as amended by Legislature; 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 minimum wage, maximum hours, and overtime compensation; authorizing the Division of Labor to promulgate a legislative rule relating to licensing of elevator mechanics, accessibility technicians, and limited technicians and registration of elevator mechanic apprentices; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to safety provisions for clearing crews; 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 reporting requirements for independent contractors; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to assessing health and safety violation penalties; 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 Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to the program for the sharing of information between employers; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to substance abuse screening, standards and procedures; authorizing the Miners' Health, Safety and Training to promulgate a legislative rule relating to operating diesel equipment in underground mines in West Virginia; authorizing the Division of Natural Resources to promulgate a legislative rule relating to hunting, fishing and other outfitters and guides; 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 revocation of hunting and fishing licenses; authorizing the Division of Natural Resources to promulgate a legislative rule relating to Cabwaylingo State Forest Trail System two-year pilot project permitting ATVs and ORVs; authorizing the Division of Natural Resources to promulgate a legislative rule relating to lifetime hunting, trapping, and fishing licenses; and authorizing the Public Energy Authority to promulgate a legislative rule relating to petitioning the Public Energy Authority for approval of decommissioning or deconstruction activities related to any coal, oil, or natural gas fueled power plant.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. Authorization for Department of commerce to promulgate legislative rules.

**§64-10-1. West Virginia Division of Forestry.**

(a) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §19-1B-4 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 November 13, 2023, relating to the Division of Forestry (sediment control during commercial timber-harvesting operations - licensing, [22 CSR 02](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=22-02)), is authorized with the following amendment:

On page 5, subsection 7.1, by striking the words “or entity”.

(b) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §19-1B-7 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 November 13, 2023, relating to the Division of Forestry (sediment control during commercial timber-harvesting operations - logger certification, [22 CSR 03](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=22-03)), is authorized with the following amendment:

On page 4, subsection 7.1, by striking the words “or entity”.

**§64-10-2. West Virginia Division of Labor.**

(a) The legislative rule filed in the State Register on June 6, 2023, authorized under the authority of §21-5C-6 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 September 19, 2023, relating to the Division of Labor (minimum wage, maximum hours, and overtime compensation, [42 CSR 08](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=42-08)), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §21-3C-11 of this code, relating to the Division of Labor (licensing of elevator mechanics, accessibility technicians, and limited technicians and registration of elevator mechanic apprentices, [42 CSR 21A](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=42-21A)), is authorized.

**§64-10-3. Office of Miners’ Health, Safety, and Training.**

(a) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §22A-1-38 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 September 14, 2023, relating to the Office of Miners' Health, Safety and Training (safety provisions for clearing crews, [56 CSR 02](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=56-02)), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §22A-2-55 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 September 15, 2023, relating to the Office of Miners' Health, Safety and Training (protective clothing and equipment, [56 CSR 04](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=56-04)), is authorized.

(c) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §22A-1-6 of this code, relating to the Office of Miners' Health, Safety and Training (reporting requirements for independent contractors, [56 CSR 10](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=56-10)), is authorized.

(d) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §22A-1-6 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 September 15, 2023, relating to the Office of Miners' Health, Safety and Training (assessing health and safety violation penalties, [56 CSR 12](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=56-12)), is authorized,

(e) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §11-13BB-13 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 September 15, 2023, 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](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=56-14)), is authorized.

(f) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §22A-1-4 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 September 15, 2023, relating to the Office of Miners' Health, Safety and Training (rules governing the program for the sharing of information between employers, [56 CSR 18](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=56-18)), is authorized.

(g) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §22A-1A-2 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 September 15, 2023, relating to the Office of Miners' Health, Safety and Training (substance abuse screening, standards and procedures, [56 CSR 19](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=56-19)), is authorized.

(h) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §22A-2A-1001 of this code, relating to the Miners' Health, Safety and Training (rules for operating diesel equipment in underground mines in West Virginia, [56 CSR 23](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=56-23)), is authorized.

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

(a) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §20-1-7 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 November 16, 2023, relating to the Division of Natural Resources (hunting, fishing and other outfitters and guides, [58 CSR 11](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=58-11)), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §20-2-23a 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 November 16, 2023, relating to the Division of Natural Resources (commercial whitewater outfitters, [58 CSR 12](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=58-12)), is authorized.

(c) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §20-2-38 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 November 16, 2023, relating to the Division of Natural Resources (revocation of hunting and fishing licenses, [58 CSR 23](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=58-23)), is authorized.

(d) The legislative rule filed in the State Register on July 20, 2023, authorized under the authority of §20-3-3a of this code, relating to the Division of Natural Resources (Cabwaylingo State Forest Trail System two year pilot project permitting ATVs and ORVs, [58 CSR 36](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=58-36)), is authorized.

(e) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §20-2B-7 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 November 14, 2023, relating to the Division of Natural Resources (lifetime hunting, trapping, and fishing licenses , [58 CSR 67](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=58-67)), is authorized.

**§64-10-5. Public Energy Authority.**

The legislative rule filed in the State Register on September 7, 2023, authorized under the authority of §5D-1-5c of this code, relating to the Public Energy Authority (rule to petition the Public Energy Authority for approval of decommissioning or deconstruction activities related to any coal, oil, or natural gas fueled power plant, [53 CSR 05](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=53-05)), is authorized with the following amendments:

On page 3, by striking out subsection 4.3 in its entirety and inserting in lieu thereof a new subsection 4.3 to read as follows:

“4.3. One paper copy and one electronic PDF version of the Notice shall be filed with the Authority, in addition to the requirements set forth in subsections 6.1., 6.2., 6.3., and 6.4. of this rule.”;

On page 7, subsection 5.3. by striking out the word “five (5)” and inserting in lieu thereof “20”;

On page 7, subdivision 5.3.1. by striking out the word “five (5)” and inserting in lieu thereof “20”;

On page 7, subdivision 5.3.3. by striking out the words “Eight (8) copies” and inserting in lieu thereof the words: “One paper copy and one electronic PDF version”;

On page 7, by striking out subdivision 6.2.1. in its entirety;

On page 7, subsection 6.3., after the word “A”, by striking the word “copy” and inserting in lieu thereof the words “paper copy or electronic PDF version”;

On page 8, subsection 7.6., by striking out the words “not to exceed three (3) pages”;

On page 8, subdivision 8.1.3. by striking out the words “three-page”;

On page 8, by inserting a new subdivision, designated 8.1.4, to read as follows:

“8.1.4. The Authority shall make a decision on the Petition within one year after the submission of the Petition.”;

On page 9, by striking out subsection 9.2. and subdivision 9.2.1. in their entirety and inserting in lieu thereof the new subsections 9.2. and 9.2.1. to read as follows:

9.2. A Petitioner may redact or withhold any confidential or proprietary information that the Petitioner cannot legally disclose. The Petitioner shall include with the petition a letter generally describing the nature of the information redacted or withheld and the legal justification for the redaction or withholding of the information.

9.2.1. The Authority may determine in executive session what additional information is exempt from public disclosure under the West Virginia Freedom of Information Act and may make any additional redactions prior to publishing the Petition on the Authority’s website.

And,

On page 9, by adding a new section, designated §53-5-10 to read as follows:

“**§53-5-10. Appeals.**

10.1. All proceedings in the appeal of the Authority’s actions concerning a Petition or the proceedings therefore, and any judicial review thereof, shall be conducted in accordance with the provisions of §29A-5-1 *et seq.* of this code and any procedural rules adopted pursuant thereto.”

NOTE: The purpose of this bill is to authorize the Division of Forestry to promulgate a legislative rule relating to sediment control during commercial timber-harvesting operations - licensing.

This section is new; therefore, strike-throughs and underscoring have been omitted.