

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 4220**

5
6 (By Delegates Brown, D. Poling, Fleischauer and Talbott)

7 [Passed March 6, 2012; in effect from passage.]

8
9 AN ACT to amend and reenact article 10, chapter 64 of the code of
10 West Virginia, 1931, as amended, all relating generally to the
11 promulgation of administrative rules by the Department of
12 Commerce; legislative mandate or authorization for the
13 promulgation of certain legislative rules by various executive
14 or administrative agencies of the state; authorizing certain
15 of the agencies to promulgate certain legislative rules in the
16 form that the rules were filed in the State Register;
17 authorizing certain of the agencies to promulgate certain
18 legislative rules with various modifications presented to and
19 recommended by the Legislative Rule-Making Review Committee;
20 authorizing certain of the agencies to promulgate certain
21 legislative rules as amended by the Legislature; authorizing
22 certain of the agencies to promulgate certain legislative
23 rules with various modifications presented to and recommended
24 by the Legislative Rule-Making Review Committee and as amended
25 by the Legislature; authorizing the Development Office to

1 promulgate a legislative rule relating to brownfield economic
2 development districts; authorizing the Development Office to
3 promulgate a legislative rule relating to the use of coalbed
4 methane severance tax proceeds; authorizing the Board of
5 Registration for Foresters to promulgate a legislative rule
6 relating to the certification of registered foresters;
7 authorizing the Board of Registration for Foresters to
8 promulgate a legislative rule relating to a schedule of fees;
9 authorizing the Board of Registration for Foresters to
10 promulgate a legislative rule relating to a code of ethics;
11 authorizing the Division of Forestry to promulgate a
12 legislative rule relating to sediment control during
13 commercial timber-harvesting operations - licensing;
14 authorizing the Division of Forestry to promulgate a
15 legislative rule relating to sediment control during
16 commercial timber-harvesting operations - logger
17 certification; authorizing the Division of Labor to promulgate
18 a legislative rule relating to the Zipline and Canopy Tour
19 Responsibility Act; authorizing the Division of Labor to
20 promulgate a legislative rule relating to the Amusement Rides
21 and Amusement Attractions Safety Act; authorizing the Division
22 of Labor to promulgate a legislative rule relating to the
23 supervision of elevator mechanics and apprentices;
24 authorizing the Office of Miners' Health, Safety and Training

1 to promulgate a legislative rule relating to the application
2 process for the West Virginia Innovative Mine Safety
3 Technology Tax Credit Act; authorizing the Division of Natural
4 Resources to promulgate a legislative rule relating to special
5 boating; authorizing the Division of Natural Resources to
6 promulgate a legislative rule relating to special motor
7 boating; authorizing the Division of Natural Resources to
8 promulgate a legislative rule relating to hunting, trapping
9 and fishing; authorizing the Division of Natural Resources to
10 promulgate a legislative rule relating to defining the terms
11 used in all hunting and trapping; authorizing the Division of
12 Natural Resources to promulgate a legislative rule relating to
13 prohibitions when hunting and trapping; authorizing the
14 Division of Natural Resources to promulgate a legislative rule
15 relating to general trapping; and authorizing the Division of
16 Natural Resources to promulgate a legislative rule relating to
17 special fishing.

18 *Be it enacted by the Legislature of West Virginia:*

19 That article 10, chapter 64 of the code of West Virginia,
20 1931, as amended, be amended and reenacted to read as follows:

21 **ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE**
22 **LEGISLATIVE RULES.**

23 **§64-10-1. Development Office.**

24 (a) The legislative rule filed in the State Register on the

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

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

17 On page one, section three, by striking out "W.Va. Code §11-
18 12-1" and inserting in lieu thereof "W.Va. Code §7-12-1".

19 **§64-10-2. Board of Registration for Foresters.**

20 (a) The legislative rule filed in the State Register on the
21 third day of August, two thousand eleven, authorized under the
22 authority of section six, article nineteen, chapter thirty, of this
23 code, modified by the Board of Registration for Foresters to meet
24 the objections of the Legislative Rule-Making Review Committee and

1 refiled in the State Register on the fifth day of December, two
2 thousand eleven, relating to the Board of Registration for
3 Foresters (certification of registered foresters, [200 CSR 1](#)), is
4 authorized, with the following amendment:

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

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

14 On page 2, in the first subsection 2.10, by striking out the
15 word "Permitee" and inserting in lieu thereof the word "Permittee",
16 and at the end of the subsection, by striking out the words "this
17 article" and inserting in lieu thereof the words "*W. Va. Code §30-*
18 *19-1 et seq.* and this rule.";

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

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

1 rule.”;

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

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

7 “**§200-1-3. Applications.**

8 3.1. An applicant for certification as a registered forester
9 shall submit evidence to the board of the following:

10 3.1.a. A bachelor’s degree in forestry from a four year
11 school, college or university accredited by the Society of American
12 Foresters and at least two years of full-time equivalent work
13 experience as a professional forester within the ten years
14 preceding the date of filing an application for registration; or

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

21 3.2. An applicant for certification as a registered forestry
22 technician shall submit evidence to the board of an associate’s
23 degree from a two year technical forestry program recognized by the
24 Society of American Foresters and at least four years of full-time

1 equivalent work experience in the field of forestry acceptable to
2 the board within the ten years preceding the date of filing an
3 application for registration.

4 3.3. All applicants must complete the application form
5 provided by the Board and supply the following:

6 3.3.a. Personal information;

7 3.3.b. Educational information;

8 3.3.c. Qualifying work experience;

9 3.3.d. Verification of license, certification or other
10 authority to practice from other state licensing boards, if
11 applicable;

12 3.3.e. Written responses to questions regarding criminal
13 offenses;

14 3.3.f. Written responses to questions regarding child
15 support obligations; and

16 3.3.g. Applicable fee or fees as provided in 200 CSR 4.";

17 On page 3, subsection 6.1, after the words "name and" by
18 striking out the word "license" and inserting in lieu thereof the
19 word "certification";

20 On page 4, subsection 6.7, by striking out the words "will
21 automatically" and inserting in lieu thereof the words "will be
22 automatically classified as";

23 On page 4, subsection 6.9, after the words "non-renewal of
24 any" by striking out the word "license" and inserting in lieu

1 thereof the word "certification" and after the words "return the
2 certificate" by striking out the words "of registration";

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

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

11 And,

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

19 (b) The legislative rule filed in the State Register on the
20 third day of August, two thousand eleven, authorized under the
21 authority of section six, article nineteen, chapter thirty, of this
22 code, modified by the Board of Registration for Foresters to meet
23 the objections of the Legislative Rule-Making Review Committee and
24 refiled in the State Register on the fifth day of December, two

1 thousand eleven, relating to the Board of Registration for
2 Foresters (schedule of fees, [200 CSR 4](#)), is authorized, with the
3 following amendments:

4 On page 1, in the first subsection 2.2, after the word "fee"
5 by striking out the word "for";

6 On page 1, in the second subsection 2.2, after the word
7 "certification" by striking out the word "license"; and

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

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

18 **§64-10-3. Division of Forestry.**

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

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

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

15 On page two, section two, subsection 2.13, after the word
16 “Operations”, by inserting the words “or the singular”.

17 **§64-10-4. Division of Labor.**

18 (a) The legislative rule filed in the State Register on the
19 twenty-eighth day of July, two thousand eleven, authorized under
20 the authority of section six, article fifteen, chapter twenty-one,
21 of this code, modified by the Division of Labor to meet the
22 objections of the Legislative Rule-Making Review Committee and
23 refiled in the State Register on the twenty-fifth day of October,
24 two thousand eleven, relating to the Division of Labor (Zipline and

1 Canopy Tour Responsibility Act, [42 CSR 10](#)), is authorized with the
2 following amendments:

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

6 3.5. "Serious injury," means an injury that is directly
7 related to any mechanical, electrical, operational or structural
8 malfunction of a zipline or canopy tour that results in death, loss
9 of consciousness, or requires medical treatment other than first
10 aid by a physician or other medical professional for which a record
11 is created.;

12 And,

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

15 **§42-10-10. Unscheduled Cessation of Operation.**

16 10.1. Following any unscheduled cessation of operation, the
17 operator of a zipline or canopy tour shall immediately have the
18 participants safely removed or unloaded from the zipline or canopy
19 tour.

20 10.2. If the operator determines that the zipline or canopy
21 tour can safely resume operation, the qualified person shall first
22 operate the zipline or canopy tour without participants to ensure
23 that the cause of the unscheduled cessation of operation has been
24 corrected.

1 10.3. The operator shall document any unscheduled cessation of
2 operation, including the identification of the zipline or canopy
3 tour, the name of the employee operating the zipline or canopy tour
4 during the unscheduled cessation, and a complete description of the
5 incident, including the date, time, weather conditions, location,
6 number of participants, etc.

7 **§42-10-11. Imminent Danger.**

8 11.1. If the Commissioner or a special inspector determines
9 that a zipline or canopy tour presents an imminent danger, he or
10 she shall immediately give written notification to the zipline or
11 canopy tour owner or operator, advising him or her that the zipline
12 or canopy tour shall be immediately removed from service.

13 11.2. If the owner or operator does not immediately remove the
14 zipline or canopy tour from service, the inspector shall
15 immediately report the imminent danger to the Commissioner.

16 11.3. If the owner or operator does not immediately remove the
17 zipline or canopy tour from service, the Commissioner may seek a
18 temporary or permanent restraining order or injunction to prohibit
19 the continuing operation of the zipline or canopy tour.

20 **§ 42-10-12. Serious Injury or Fatality.**

21 12.1. If a participant or member of the general public is
22 involved in an accident related to the operation of a zipline or
23 canopy tour that results in a serious injury or a fatality, the
24 owner or operator shall immediately shut down the operation of the

1 zipline or canopy tour and secure the safety of other participants
2 and the general public.

3 12.2. An owner or operator shall ensure that the scene of a
4 serious injury or fatality is left intact from the time of the
5 accident and shall ensure that the zipline or canopy tour involved
6 is not removed from the scene of the accident without written
7 authorization from the Commissioner or a law enforcement officer.

8 12.3. The owner, operator, and any employees who witnessed the
9 accident or who operated the zipline or canopy tour when the
10 accident occurred shall be available to be interviewed by the
11 Commissioner.

12 12.4. The owner of the zipline or canopy tour shall make a
13 report of the injury or fatality to the Commissioner within 24
14 hours of its occurrence, using the Division's emergency contact
15 protocol.

16 12.4.a. After the owner of the zipline or canopy tour notifies
17 the Commissioner of a serious injury or fatality, the Commissioner
18 shall, with reasonable promptness, advise the owner whether the
19 zipline or canopy tour shall remain shut down pending investigation
20 and inspection or whether it can be placed back in service.

21 12.4.b. In deciding whether the zipline or canopy tour shall
22 remain shut down or whether it can be placed back in service, the
23 Commissioner's sole consideration shall be the safety of
24 participants and the general public.

1 12.5. The owner shall document the accident, to include the
2 full name, address and telephone number of the injured person, a
3 description of his or her injuries, identification of the zipline
4 or canopy tour involved, the names and addresses of the owner and
5 employees who witnessed the accident, and any other pertinent
6 information describing the events leading up to the accident.

7 12.6. An owner or operator shall keep a record of every
8 accident or fatality with the certificate of inspection, which
9 shall be readily accessible to the general public. The record
10 shall include the following information:

11 12.6.a. The date of every accident or fatality;

12 12.6.b. A description of the type of accident;

13 12.6.c. The number of people injured or killed; and

14 12.6.d. A description of the types of injuries.

15 **§42-10-13. Reports and Records.**

16 13.1. The owner of the zipline or canopy tour shall retain all
17 reports, documents, photographs and records required by this rule
18 for not less than 3 years from the date of the unscheduled
19 cessation, imminent danger notification, or serious injury or
20 fatality.

21 13.2. If an owner violates any provision of this section of
22 the rule, the Commissioner may permanently revoke the permit to
23 operate.

24 (b) The legislative rule filed in the State Register on the

1 twenty-eighth day of July, two thousand eleven, authorized under
2 the authority of section three, article ten, chapter twenty-one, of
3 this code, modified by the Division of Labor to meet the objections
4 of the Legislative Rule-Making Review Committee and refiled in the
5 State Register on the twenty-fifth day of October, two thousand
6 eleven, relating to the Division of Labor (Amusement Rides and
7 Amusement Attractions Safety Act, [42 CSR 17](#)), is authorized.

8 (c) The legislative rule filed in the State Register on the
9 twenty-eighth day of July, two thousand eleven, authorized under
10 the authority of section eleven, article three-c, chapter twenty-
11 one, of this code, modified by the Division of Labor to meet the
12 objections of the Legislative Rule-Making Review Committee and
13 refiled in the State Register on the twenty-fifth day of October,
14 two thousand eleven, relating to the Division of Labor (supervision
15 of elevator mechanics and apprentices, [42 CSR 21A](#)), is authorized.

16 **§64-10-5. Office of Miners' Health Safety & Training.**

17 The legislative rule filed in the State Register on the
18 twenty-ninth day of July, two thousand eleven, authorized under the
19 authority of section thirteen, article thirteen-bb, chapter eleven,
20 of this code, modified by the Office of Miners' Health, Safety and
21 Training to meet the objections of the Legislative Rule-Making
22 Review Committee and refiled in the State Register on the twenty-
23 second day of November, two thousand eleven, relating to the Office
24 of Miners' Health, Safety and Training (application process for the

1 West Virginia Innovative Mine Safety Technology Tax Credit Act, 56
2 CSR 14), is authorized.

3 **§64-10-6. Division of Natural Resources**

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

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

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

1 (d) The legislative rule filed in the State Register on the
2 twenty-fifth day of July, two thousand eleven, authorized under the
3 authority of section seven, article one, chapter twenty, of this
4 code, modified by the Division of Natural Resources to meet the
5 objections of the Legislative Rule-Making Review Committee and
6 refiled in the State Register on the twenty-second day of
7 September, two thousand eleven, relating to the Division of Natural
8 Resources (defining the terms used in all hunting and trapping, 58
9 CSR 45), is authorized.

10 (e) The legislative rule filed in the State Register on the
11 twenty-fifth day of July, two thousand eleven, authorized under the
12 authority of section seven, article one, chapter twenty, of this
13 code, modified by the Division of Natural Resources to meet the
14 objections of the Legislative Rule-Making Review Committee and
15 refiled in the State Register on the twenty-second day of
16 September, two thousand eleven, relating to the Division of Natural
17 Resources (prohibitions when hunting and trapping, 58 CSR 470, is
18 authorized.

19 (f) The legislative rule filed in the State Register on the
20 twenty-fifth day of July, two thousand eleven, authorized under the
21 authority of section seven, article one, chapter twenty, of this
22 code, modified by the Division of Natural Resources to meet the
23 objections of the Legislative Rule-Making Review Committee and
24 refiled in the State Register on the twenty-second day of

1 September, two thousand eleven, relating to the Division of Natural
2 Resources (general trapping, 58 CSR 53), is authorized, with the
3 following amendment:

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

6 And,

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

9 (g) The legislative rule filed in the State Register on the
10 twenty-fifth day of July, two thousand eleven, authorized under the
11 authority of section seven, article one, chapter twenty, of this
12 code, modified by the Division of Natural Resources to meet the
13 objections of the Legislative Rule-Making Review Committee and
14 refiled in the State Register on the twenty-second day of
15 September, two thousand eleven, relating to the Division of Natural
16 Resources (special fishing, 58 CSR 61), is authorized.