

# **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

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

## **H. B. 4220**

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

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[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 three-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.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

To take effect from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2012.

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*Governor*