

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 4217**

DELEGATE FOSTER

[Originating in the Committee on Judiciary;

February 11, 2020.]



1 A BILL to amend and reenact §64-3-1 *et seq.* of the Code of West Virginia, 1931, as amended,  
2 all relating generally to authorizing certain agencies of the Department of Environmental  
3 Protection to promulgate legislative rules; authorizing the rules as filed, as modified by the  
4 Legislative Rule-Making Review Committee, and as amended by the Legislature;  
5 authorizing the Department of Environmental Protection to promulgate a legislative rule  
6 relating to ambient air quality standards; authorizing the Department of Environmental  
7 Protection to promulgate a legislative rule relating to standards of performance for new  
8 stationary sources; authorizing the Department of Environmental Protection to promulgate  
9 a legislative rule relating to control of air pollution from hazardous waste treatment,  
10 storage, and disposal facilities; authorizing the Department of Environmental Protection to  
11 promulgate a legislative rule relating to emission standards for hazardous air pollutants;  
12 authorizing the Department of Environmental Protection to promulgate a legislative rule  
13 relating to control of ozone season nitrogen oxides emissions; authorizing the Department  
14 of Environmental Protection to promulgate a legislative rule relating to West Virginia  
15 surface mining reclamation rule; authorizing the Department of Environmental Protection  
16 to promulgate a legislative rule relating to groundwater protection rules for coal mining  
17 operations; authorizing the Department of Environmental Protection to promulgate a  
18 legislative rule relating to hazardous waste management system; authorizing the  
19 Department of Environmental Protection to promulgate a legislative rule relating to  
20 voluntary remediation and redevelopment rule; and authorizing the Oil and Gas  
21 Conservation Commission to promulgate a legislative rule relating to rules of the  
22 commission.

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

**ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.**

**§64-3-1. Department of Environmental Protection.**

1 (a) The legislative rule filed in the State Register on July 19, 2019, authorized under the  
2 authority of §22-5-4 of this code, relating to the Department of Environmental Protection (ambient  
3 air quality standards, 45 CSR 08), is authorized.

4 (b) The legislative rule filed in the State Register on July 19, 2019, authorized under the  
5 authority of §22-5-4 of this code, relating to the Department of Environmental Protection  
6 (standards of performance for new stationary sources, 45 CSR 16), is authorized.

7 (c) The legislative rule filed in the State Register on July 19, 2019, authorized under the  
8 authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet  
9 the objections of the Legislative Rule-Making Review Committee and refiled in the State Register  
10 on October 2, 2019, relating to the Department of Environmental Protection (control of air pollution  
11 from hazardous waste treatment, storage and disposal facilities, 45 CSR 25), is authorized.

12 (d) The legislative rule filed in the State Register on July 19, 2019, authorized under the  
13 authority of §22-5-4 of this code, relating to the Department of Environmental Protection (emission  
14 standards for hazardous air pollutants, 45 CSR 34), is authorized.

15 (e) The legislative rule filed in the State Register on July 19, 2019, authorized under the  
16 authority of §22-5-4 of this code, relating to the Department of Environmental Protection (control  
17 of ozone season nitrogen oxides emissions, 45 CSR 40), is authorized.

18 (f) The legislative rule filed in the State Register on July 25, 2019, authorized under the  
19 authority of §22-3-4 of this code, relating to the Department of Environmental Protection (West  
20 Virginia surface mining reclamation rule, 38 CSR 02), is authorized with the amendments set forth  
21 below:

22 On page 183, subdivision 16.2.c.2, by striking out subdivision 16.2.c.2 in its entirety and  
23 inserting in lieu thereof an amended subdivision 16.2.c.2 to read as follows:

24 “16.2.c.2. ~~Either~~ At the owner’s election, either correct material damage resulting from  
25 subsidence caused to any structures or facilities by compensating the owner in the amount of the  
26 cost to repair repairing the damage, but not to exceed one hundred and twenty percent of the pre-  
27 mining value of the structure or facility, or compensate the owner of such structures or facilities in  
28 the full amount of the diminution in value resulting from the subsidence. Repair of damage  
29 includes rehabilitation, restoration, or replacement of damaged structures or facilities.  
30 Compensation may also be accomplished by the purchase prior to mining of a non-cancelable  
31 premium-prepaid insurance policy. The requirements of this paragraph only apply to subsidence  
32 related damage caused by underground mining activities conducted after October 24, 1992:  
33 Provided, That 16.2.c.2 does not create additional property rights nor may it be construed as  
34 vesting in the secretary the jurisdiction to adjudicate property rights disputes. and”

35 And,

36 On page 120, subdivision 11.3.a.3, by striking out subdivision 11.3.a.3 and inserting in lieu  
37 thereof an amended subdivision 11.3.a.3 to read as follows:

38 “11.3.a.3. Any company that executes surety bonds in the State after July 1, 2001, must:  
39 (i) be recognized by the treasurer to the state as holding a current certificate of authority from the  
40 United States Department of the Treasury as an acceptable surety on federal bonds by being  
41 included on the Treasury Department’s listing of approved sureties (Department Circular 570); or  
42 (ii) submit proof to the secretary that it holds a valid license issued by the West Virginia Insurance  
43 Commissioner, and agree to submit to the secretary on at least a quarterly basis a certificate of  
44 good standing from the West Virginia Insurance Commissioner and such other evidence from the  
45 insurance regulator of its domiciliary state, if other than West Virginia, demonstrating that it is also  
46 in good standing in that state: ~~Companies not included on the United States Treasury~~  
47 ~~Department’s listing of approved sureties~~ Provided, That those companies electing to execute

48 bonds under the provisions of (i) above in this subdivision must diligently pursue application for  
49 listing, submit evidence on a semi-annual basis demonstrating that they are pursuing such listing,  
50 and within four (4) years, obtain a certificate of authority from the United States Department of  
51 the Treasury as an acceptable surety on federal bonds.”

52 (g) The legislative rule filed in the State Register on July 25, 2019, authorized under the  
53 authority of §22-12-5 of this code, relating to the Department of Environmental Protection  
54 (groundwater protection rules for coal mining operations, 38 CSR 02F), is authorized.

55 (h) The legislative rule filed in the State Register on July 25, 2019, authorized under the  
56 authority of §22-18-6 of this code, relating to the Department of Environmental Protection  
57 (hazardous waste management system, 33 CSR 20), is authorized.

58 (i) The legislative rule filed in the State Register on July 25, 2019, authorized under the  
59 authority of §22-22-3 of this code, relating to the Department of Environmental Protection  
60 (voluntary remediation and redevelopment rule, 60 CSR 03), is authorized.

**§64-3-2. Oil and Gas Conservation Commission.**

1 The legislative rule filed in the State Register on July 25, 2019, authorized under the  
2 authority of §22C-9-4 of this code, modified by the Oil and Gas Conservation Commission to meet  
3 the objections of the Legislative Rule-Making Review Committee and refiled in the State Register  
4 on January 3, 2020, relating to the Oil and Gas Conservation Commission (rules of the  
5 commission, 39 CSR 01), is authorized.