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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4219

(By Delegates Mahan, Wills, Cann, Kominar,
Faircloth and Riggs)



Passed March 9, 2002

In Effect from Passage

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FOR

H. B. 4219

(BY DELEGATES MAHAN, WILLS, CANN, KOMINAR,
FAIRCLOTH AND RIGGS)

[Passed March 9, 2002; in effect from passage.]

AN ACT to amend and reenact article ten, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; 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 development office to promulgate legislative rules relating to workforce development initiative; authorizing economic development; authority to promulgate legislative rule relating to general administration of West Virginia capital company act; establishment of application procedures to implement act; authorizing economic development authority to promulgate legislative rule relating to general administration of West Virginia venture capital act; authorizing division of labor to promulgate legislative rule relating to steam boiler inspection; authorizing manufactured housing construction and safety standards board to promulgate legislative rule relating to board; authorizing division of natural resources to promulgate legislative rule relating to commercial whitewater outfitters; authorizing division of natural resources to promulgate legislative rule relating to small arms hunting; authorizing division of natural resources to promulgate legislative rule relating to special boating; authorizing division of natural resources to promulgate legislative rule relating to public use of West Virginia state parks, state forests and state wildlife management areas under division; authorizing division of natural resources to promulgate legislative rule relating to wild boar hunting; authorizing division of natural resources to promulgate legislative rule relating to general trapping; and authorizing division of natural resources to promulgate legislative rule relating to issuance of hunting, trapping and fishing licenses by telephone and other electronic methods.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

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

§64-10-1. Development office.

1 The legislative rule filed in the state register on the tenth
2 day of July, two thousand one, under the authority of section
3 five, article three-d, chapter eighteen-b of this code, relating to
4 the development office (workforce development initiative
5 program), is authorized with the following amendment:

6 On page four, subdivision 8.1.4 after the word “moderniza-
7 tion” by striking out the word “of” and inserting in lieu thereof
8 the word “and”.

§64-10-2. Economic development authority.

1 (a) The legislative rule filed in the state register on the
2 twenty-fourth day July, two thousand one, under the authority
3 of section five, article one, chapter five-e of this code, modified
4 by the economic development authority to meet the objections
5 of the legislative rule-making review committee and refiled in
6 the state register on the twenty-ninth day of November, two
7 thousand one, relating to the economic development authority
8 (general administration of the West Virginia capital company
9 act; establishment of the application procedures to implement
10 the act, 117 CSR 1), is authorized.

11 (b) The legislative rule filed in the state register on the
12 twenty-fourth day of July, two thousand one, authorized under
13 the authority of section three, article two, chapter five-e of this
14 code, modified by the economic development authority to meet
15 the objections of the legislative rule-making review committee
16 and refiled in the state register on the twenty-ninth day of
17 November, two thousand one, relating to the economic develop-
18 ment authority (general administration of the West Virginia
19 venture capital act, 117 CSR 3), is authorized with the follow-
20 ing amendments:

21 On pages one and two of the rule, Section 2. Definitions, by
22 inserting four new definitions as designated below and renu-
23 mbering the existing definitions in section two accordingly:

24 “2.8. “Federal Program Participant” means (a) An SBIC;
25 (b) a New Markets Venture Capital Company; or (c) an Entity
26 which is not an SBIC or a New Markets Venture Capital
27 Company but which is designated by the Authority as a Federal
28 Program Participant due to the Entity’s participation in a
29 venture capital program administered by the United States
30 Small Business Administration or other federal agency”;

31 “2.17. ‘New Markets Venture Capital Company’ means an
32 Entity which has been designated by the United States Small
33 Business Administration as a New Markets Venture Capital
34 Company pursuant to 13 C.F.R. §108 et seq.”;

35 “2.19. ‘Participation Agreement’ means a written agree-
36 ment executed by a Fund Manager and the applicable Fund or
37 Governing Entity, as the case may require, setting forth the
38 terms and conditions of the Fund Manager’s service to the Fund
39 or Fund Share. In instances where the Fund or Fund Share
40 purchases an ownership interest in its Fund Manager, ‘partici-
41 pation agreement’ may, as applicable, include the limited
42 partnership agreement, limited liability company operating
43 agreement or other applicable written agreement entered into by
44 the Fund and other owners of the Fund Manager.”; and

45 “2.22. “SBIC” or ‘Small Business Investment Company’
46 means only an Entity which is licensed by the United States
47 Small Business Administration as a Small Business Investment
48 Company under the Small Business Investment Act of 1958, 15
49 U.S.C. §661 et seq., as amended.”;

50 On page 2, section 4.1 by following the words ‘or Entity’
51 inserting a comma and the following: “including, without
52 limitation, a Federal Program Participant,”

53 On page 4, section 4.4, in the third sentence, following the
54 words “between the applicant and the” by inserting the words
55 “Fund or”;

56 On page 11, section 7.1 by following the words “Fund
57 Manager is assigned” by inserting the words “or which it
58 receives”;

59 On page 11, by striking all of sections 7.1.a., 7.1.b., and
60 7.1.c.;

61 On page 11, section 7.2. By following the words “and the
62 applicable” by inserting the words “Fund or”;

63 On page 11, section 7.3. By following the words “and the
64 applicable” by inserting the words “Fund or”;

65 On page 11, section 7.4 before the words “Investment
66 Restrictions.” by designating the paragraph number “7.4.1.”;

67 On page 11, section 7.4.1 by following the words “of the
68 applicable” by inserting the words “Fund or”;

69 On page 11, following section 7.4.1, inserting a new section
70 7.4.2. to read as follows:

71 “ Unless the prior written consent of the applicable Fund or
72 Governing Entity is obtained, a Fund Manager may not invest
73 any portion of or contribution from a Fund or Fund Share in any
74 West Virginia Business where there is a direct or indirect
75 economic relationship, in the form of ownership, compensation
76 or otherwise, between the West Virginia Business, including the

77 relatives, affiliates and members of the Managing Body of the
78 West Virginia Business, and an investor in the Fund or Fund
79 Share, including relatives, affiliates and members of the
80 Managing Body of the investor.”

81 On page 11, following section 7.5, by inserting two new
82 sections, sections 7.6 and 7.7 to read as follows:

83 “7.6 Purchase of Ownership Interest in a Fund Manager.

84 7.6.1. Structure.- At the discretion of the Authority or
85 applicable Governing Entity, a Fund or Fund Share may invest
86 its assets by purchasing an ownership interest in a Federal
87 Program Participant or other Entity serving as the Fund
88 Manager. Such purchase of an ownership interest in the Fund
89 Manager may be by original issue from the Fund Manager or
90 purchased on the secondary market from an owner of the Fund
91 Manager.

92 7.6.2. Pooling of Assets. - The assets of the Fund or Fund
93 Share used to purchase an ownership interest in its Fund
94 Manager may be pooled with that of other private or public
95 investors holding ownership interests in the Fund Manager so
96 that the assets of the Fund or Fund Share contributed to the
97 Fund Manager may become indistinguishable from those of the
98 other owners of the Fund Manager.

99 7.6.3. Investments. - In situations where the Fund or Fund
100 Share purchases an ownership interest in its Fund Manager, the
101 Fund Manager may invest its assets, including those of the
102 Fund or Fund Share, in businesses located in various states:
103 *Provided*, That the Fund Manager must invest an amount equal
104 to or exceeding the amount contributed by the Fund or Fund
105 Share, net of reasonable management fees and operational
106 expenses allocable to the Fund under the applicable Participa-

107 tion Agreement, in the form of debt or equity investments in
108 West Virginia Businesses in accordance with this section.

109 7.6.4. Investment Guidelines. - In the Participation Agree-
110 ment or other agreement executed by the applicable Fund or
111 Governing Entity and the Fund Manager, the Fund or Govern-
112 ing Entity and the Fund Manager shall contractually agree on
113 the investment guidelines to be followed by the Fund Manager
114 when investing in West Virginia Businesses.

115 7.7. Where the Fund or Fund Share Does Not Purchase an
116 Ownership Interest In Its Fund Manager. - In situations where
117 the Fund or Fund Share does not purchase an ownership interest
118 in its Fund Manager:

119 7.7.1. Unless the prior written consent of the Governing
120 Entity is obtained, the Fund Manager shall not obtain ownership
121 of assets of the Fund or the Fund Share. Rather, the Fund
122 Manager, at least fifteen (15) days before the closing of an
123 investment in a West Virginia Business, shall advise the
124 applicable Governing Entity in writing of the funds to be
125 invested to allow the applicable Governing Entity to make the
126 funds available for investment by the Fund Manager at closing;

127 7.7.2. Unless the prior written consent of the Governing
128 Entity is obtained, the Fund Manager shall make, and at all
129 times maintain, all investments on the name of the applicable
130 Fund; and

131 7.7.3. The Fund Manager shall have discretion as to the
132 selection of West Virginia Businesses for investment and the
133 terms upon which such investments are made; however, the
134 applicable Fund or Governing Entity may at all times revoke or
135 restrict such discretion of the Fund Manager and submit
136 investment guidelines to be followed by the Fund Manager.”

137 On page 12, section 8.2, lines fourteen and fifteen, follow-
138 ing the words “Governing Entity and the investor” by striking
139 out the remainder of the sentence, and inserting a period and the
140 following sentence:

141 “Upon such repurchase of the investor’s ownership interest,
142 the investor shall receive, in the discretion of the applicable
143 Governing Entity, cash and/or a distribution in kind of assets of
144 the Fund or Fund Share which collectively equals the value
145 agreed to by the Governing Entity and the investor.”

146 And,

147 On page 12, section 9.2.a., by striking out “2.20” and
148 inserting in lieu thereof “2.25”.

§64-10-3. Division of labor.

1 The legislative rule filed in the state register on the fourth
2 day of September, two thousand one, authorized under the
3 authority of section seven, article three, chapter twenty-one of
4 this code, modified by the division of labor to meet the objec-
5 tions of the legislative rule-making review committee and
6 refiled in the state register on the twentieth day of December,
7 two thousand one, relating to the division of Labor (steam
8 boiler inspection, 42 CSR 3), is authorized.

**§64-10-4. Manufactured housing construction and safety stan-
dards board.**

1 The legislative rule filed in the state register on the twenty-
2 seventh day of July, two thousand one, authorized under the
3 authority of section four, article nine, chapter twenty-one of this
4 code, modified by the manufactured housing construction and
5 safety standards board to meet the objections of the legislative
6 rule-making review committee and refiled in the state register
7 on the twentieth day of December, two thousand one, relating

8 to the manufactured housing construction and safety standards
9 board (West Virginia manufactured housing construction and
10 safety standards board, 42 CSR 19), is authorized.

§64-10-5. Division of natural resources.

1 (a) The legislative rule filed in the state register on the
2 twenty-seventh day of July, two thousand one, authorized under
3 the authority of section twenty-three-a, article two, chapter
4 twenty of this code, modified by the division of natural re-
5 sources to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the twenty-
7 second day of August, two thousand one, relating to the
8 division of natural resources (commercial whitewater outfitters,
9 58 CSR 12), is authorized with the following amendment:

10 On page eight, section 4.9.3, following the words “supple-
11 ment the guide”, by striking out the word “trainee” and insert-
12 ing in lieu thereof the words “Trip Leader”;

13 On page eight, following section 4.9.3, by inserting a new
14 section, numbered 4.9.4 and the words “The licensee is respon-
15 sible for keeping on file the original or a certified copy of the
16 completed whitewater guide Trip Leader information sheet.
17 These records shall be maintained by the licensee for two (2)
18 years following the last date of employment. The licensee shall
19 provide the guide Trip Leader with a certified copy of the guide
20 Trip Leader information sheet and shall forward a copy to the
21 Division of Natural Resources, Law Enforcement Section,
22 Capitol Complex, Building 3, Charleston, West Virginia 25305
23 upon request.”;

24 On page thirteen, section 9.12.2, following the words “No
25 duckie expeditions”, by striking out the words “or kayak
26 instruction”;

27 And,

28 On page fourteen, by striking the provisions of section
29 9.12.4.b, in its entirety, and inserting in lieu thereof:

30 “From the confluence of Manns Creek to Teays Landing
31 there shall be a minimum of one (1) trip guide in each
32 watercraft except on a kayak clinic where the instructor and
33 guests are in kayaks. Kayak clinics may be held by a commer-
34 cial whitewater outfitter. Daily use is restricted to nine students
35 per day per license and must have a ratio of one (1) trip guide
36 per three (3) students. Kayak clinics are not permitted in this
37 section of the New River on Saturdays between Memorial Day
38 and Labor Day. There shall be a minimum of two (2) trip guides
39 per trip on all other trips. Inflatable kayak expeditions or trips
40 are not permitted in this section of the New River.”

41 (b) The legislative rule filed in the state register on the
42 twenty-seventh day of July, two thousand one, authorized under
43 the authority of section seven, article one, chapter twenty of this
44 code, modified by the division of natural resources to meet the
45 objections of the legislative rule-making review committee and
46 refiled in the state register on the twenty-second day of August,
47 two thousand one, relating to the division of natural resources
48 (small arms hunting, 58 CSR 14), is authorized.

49 (c) The legislative rule filed in the state register on the
50 twenty-seventh day of July, two thousand one, authorized under
51 the authority of section twenty-two, article seven, chapter
52 twenty of this code, modified by the division of natural re-
53 sources to meet the objections of the legislative rule-making
54 review committee and refiled in the state register on the twenty-
55 second day of August, two thousand one, relating to the
56 division of natural resources (special boating, 58 CSR 26), is
57 authorized.

58 (d) The legislative rule filed in the state register on the
59 twenty-seventh day of July, two thousand one, authorized under
60 the authority of section two, article five, chapter twenty of this

61 code, modified by the division of natural resources to meet the
62 objections of the legislative rule-making review committee and
63 refiled in the state register on the fourteenth day of August, two
64 thousand one, relating to the division of natural resources
65 (public use of West Virginia state parks, state forests and state
66 wildlife management areas under the division of natural
67 resources, 58 CSR 31), is authorized with the amendments set
68 forth below:

69 On page 3, subsection 2.21, after the words ‘boundaries of’
70 by inserting the words ‘the following’;

71 On page 3, subsection 2.1 by striking out the comma and
72 the words ‘which include’;

73 On page 3, subsection 2.1 after the word ‘Audra’ by
74 inserting a comma and the words ‘except in reserved picnic
75 shelters’;

76 On page 3, subsection 2.21 by striking out the words
77 ‘Tomlinson Run except in reserved picnic shelters, in all boat
78 launch ramp parking areas, and all camping areas within the
79 boundary of Bluestone State Park; all camping areas within the
80 boundary of Beech Fork State Park; and in all of Hawks Nest
81 State Park except the lodge and Hawks Nest golf course which
82 is operated as part of Hawks Nest State Park’ and inserting in
83 lieu thereof the following;

84 ‘Tomlinson Run, except in reserved picnic shelters,

85 Bluestone State Park, in all boat launch ramp parking areas
86 and all camping areas within its boundaries,

87 Beech Fork State Park, in all camping areas within its
88 boundaries, and

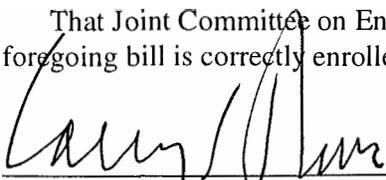
89 Hawks Nest State Park, except the lodge and Hawks Nest
90 golf course which is operated as part of Hawks Nest State
91 Park;”

92 (e) The legislative rule filed in the state register on the
93 twenty-seventh day of July, two thousand one, authorized under
94 the authority of section seven, article one, chapter twenty of this
95 code, modified by the division of natural resources to meet the
96 objections of the legislative rule-making review committee and
97 refiled in the state register on the twenty-second day of August,
98 two thousand one, relating to the division of natural resources
99 (wild boar hunting, 58 CSR 52), is authorized.

100 (f) The legislative rule filed in the state register on the
101 twenty-seventh day of July, two thousand one, authorized under
102 the authority of section seven, article one, chapter twenty of this
103 code, modified by the division of natural resources to meet the
104 objections of the legislative rule-making review committee and
105 refiled in the state register on the twenty-second day of August,
106 two thousand one, relating to the division of natural resources
107 (general trapping, 58 CSR 53), is authorized.

108 (g) The legislative rule filed in the state register on the
109 twenty-seventh day of July, two thousand one, authorized under
110 the authority of section thirty-three, article two, chapter twenty
111 of this code, modified by the division of natural resources to
112 meet the objections of the legislative rule-making review
113 committee and refiled in the state register on the twenty-second
114 day of August, two thousand one, relating to the division of
115 natural resources (issuance of hunting, trapping and fishing
116 licenses by telephone and other electronic methods, 58 CSR
117 68), is authorized.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



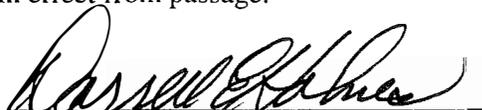
Chairman Senate Committee



Chairman House Committee

Originating in the House.

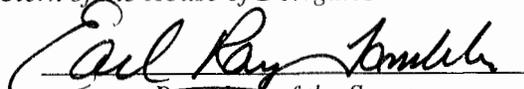
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates

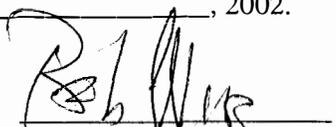


President of the Senate



Speaker of the House of Delegates

The within is approved this the 3rd
day of April, 2002.



Governor

