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SB 353

FILED

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COMPTROLLER OF THE TREASURY
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

Committee Substitute for

SENATE BILL NO. 353

(By Senator Minard, et al)

PASSED March 11, 2006

In Effect from Passage

FILED

2006 APR -5 P 6: 24

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 353

(SENATORS MINARD, FANNING, PREZIOSO, UNGER,
BOLEY AND MINEAR, *original sponsors*)

[Passed March 11, 2006; in effect from passage.]

AN ACT to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended; all relating generally to the promulgation of administrative rules by the Department of Transportation 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 Legisla-

tive Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Highways to promulgate a legislative rule relating to use of state road rights-of-way and adjacent areas; authorizing Division of Highways promulgate a legislative rule relating to transportation of hazardous waste upon roads and highways; authorizing Division of Motor Vehicles promulgate legislative rule relating to denial, suspension, revocation, restriction or nonrenewal of driving privileges; and authorizing Division of Motor Vehicles promulgate legislative rule relating to motor vehicle dealers and other business regulated by the Division.

Be it enacted by the Legislature of West Virginia:

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION
TO PROMULGATE LEGISLATIVE RULES.**

§64-8-1. Division of Highways.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized
3 under the authority of section three, article seventeen-a,
4 chapter seventeen-c of this code, relating to the Division
5 of Highways (use of state roads' rights-of-way and adja-
6 cent areas, 157 CSR 6), is authorized with the following
7 amendment:

8 On page two, after subsection 2.16., by inserting a new
9 subsection, designated subsection 2.17, to read as follows:

10 "2.17. 'Focal point' means the location from which an
11 LED, OLED or other illuminated message center, display
12 or sign appears brightest." and by renumbering the
13 subsequent subsections accordingly;

14 On page two, subsection 2.24, after the word "slats", by
15 inserting a comma and the words "or by LED, OLED or
16 other illuminated message center,";

17 On page two, subsection 2.24, by striking out the words
 18 "lighting devices forming part of the message or border"
 19 and inserting in lieu thereof the word "moving";

20 On page eighteen, paragraph 7.8.d.4., by striking out the
 21 words "twenty-four (24) hours" and inserting in lieu
 22 thereof the words "eight seconds";

23 On page eighteen, paragraph 7.8.e.1., line two, by
 24 inserting the following words: "For purposes of this
 25 section, the illumination of an advertising device contain-
 26 ing a message center display does not constitute the use of
 27 a flashing, intermittent or moving light. No message
 28 center display may include an illumination that is in
 29 motion or appears to be in motion or that changes in
 30 intensity or exposes its message for less than eight (8)
 31 seconds or that has an interval between messages of two
 32 (2) seconds or less. No LED, OLED, illuminated message
 33 center display or similar device may exceed the following
 34 brightness limits measured as candelas per square feet at
 35 any focal point on any roadway or berm or any vehicular
 36 approach to any roadway:

37		Day	Night
38	Red	300	100
39	Green	600	200
40	Amber	450	150
41	Blue	800	350
42	White	550	50
43	All color	650	250"

44 and,

45 On page twenty-nine, by striking out section ten of the
46 rule in its entirety and by creating a new series, designated
47 Title 157, Series 9 of the Code of State Rules, to read as
48 follows:

49 **“157 CSR 9**
50 **Title 157**
51 **Legislative Rule**
52 **Department of Transportation**
53 **Division of Highways**
54 **Series 9**
55 **Special Crossing Permits**

§157-9-1. General.

1 1.1. Scope. - This legislative rule establishes the proce-
2 dures and standards for issuance of special crossing
3 permits authorizing certain vehicles to operate or move a
4 vehicle or combination of vehicles which exceed the
5 maximum weight allowance specified in W. Va. Code
6 §17C-17A-3 (120,000 pounds) on limited sections of public
7 highways. Special crossing permits may be issued only for
8 vehicles hauling coal or coal by-products in the Coal
9 Resource Transportation Road System.

10 1.2. Authority. - This rule is issued pursuant to the
11 provisions of W. Va. Code §17C-17A-3.

12 1.3. Filing Date. -

13 1.4. Effective Date. -

§157-9-2. Application for permit.

1 2.1. An applicant for a special crossing permit must
2 complete an application form developed by the Division of
3 Highways and submit it to a Highways District Permit
4 Clerk within the district wherein the road that will be
5 crossed or traveled is located or where it originates if the
6 route lies within two districts.

7 2.2. The application must be accompanied by:

8 2.2.a. A \$500 application fee;

9 2.2.b. A list of all vehicles or combinations of vehicles,
10 including axle weights and spacings and gross vehicle
11 weights, that will be moving on or crossing the highway
12 for which the permit is requested. If a vehicle will be
13 hauling various tonnages of loads, the maximum weights
14 will be listed; and

15 2.2.c. An estimate of the number of times per day that
16 each listed vehicle or combination of vehicles will cross or
17 travel the route.

18 2.3. Prior to the issuance of the permit, the applicant
19 must:

20 2.3.a. Agree, in writing, to pay the actual costs for any
21 necessary upgrading or repair of the public highway,
22 including any necessary traffic control, which the appli-
23 cant seeks the permit to cross;

24 2.3.b. Agree to post a bond in an amount of no less than
25 \$50,000, as recommended to and approved by the Commis-
26 sioner of Highways;

27 2.3.c. Furnish evidence of having at least the minimum
28 amounts of insurance required of "West Virginia Division
29 of Highways, Standard Specifications, Roads and Bridges,
30 Adopted 2000", and supplements thereto;

31 2.3.d. Agree, in writing, to pay for the restoration of the
32 public highway to its original condition after the permit
33 has expired. The original condition of the highway may be
34 documented by the applicant and/or the Division of
35 Highways by photography, video recording, or any other
36 means acceptable to both parties.

§157-9-3. Vehicles.

1 3.1. No listed vehicle or combination of vehicles is
2 permitted to haul more than the manufacturer's weight
3 rating.

4 3.2. Except as provided in the permit, all listed vehicles
5 or combinations of vehicles must be in compliance with all
6 other specifications given in W. Va. Code §17C.

7 3.3. All listed vehicles must be identified by vehicle
8 identification number or, if a vehicle identification
9 number is not available, by serial number.

10 3.4. If any vehicle is replaced during the course of a
11 three year permit period, the applicant must submit
12 supplemental information on each vehicle to the District
13 Permit Clerk. The District Maintenance Engineer and/or
14 Bridge Engineer shall review the supplemental informa-
15 tion and may require additional route analysis, route
16 upgrading, an increase in the bond amount, or any other
17 consideration deemed necessary.

§157-9-4. Evaluation of permit application.

1 4.1. Prior to the issuance of any Special Crossing Permit:

2 4.1.a. The District Maintenance Engineer(s) in the
3 district(s) in which the proposed route is located will
4 initiate a route analysis to determine the feasibility and
5 potential costs associated with the applicant being permit-
6 ted to cross or travel the route with any of the listed
7 vehicles or combinations of vehicles. Considerations will
8 include the road surface and any existing height or width
9 restrictions, bridges, culverts, and potential traffic or
10 safety problems;

11 4.1.b. If there are bridges or culverts on the route, the
12 District Bridge Engineer(s) in the district(s) in which the
13 route is located will initiate a bridge analysis to determine
14 whether these structures can safely bear the weight of the
15 listed vehicles or combinations of vehicles, or whether any
16 will require reinforcement or replacement; and

17 4.1.c. The District Traffic Engineer(s) in the district(s) in
18 which the route is located will perform an analysis to
19 evaluate potential traffic and safety problems and recom-
20 mend appropriate traffic control actions and/or devices.

21 4.2. The Commissioner of Highways may require addi-
22 tional evaluations or analyses in his or her discretion.

23 4.3. Once all of the necessary analyses have been
24 performed by the appropriate party(ies), all necessary
25 conditions and addendums required have been identified,
26 and a proposed bond amount has been agreed upon, the
27 District Maintenance Engineer will submit the application
28 to the Commissioner of Highways for approval.

§157-9-5. Approval or denial of permit application.

1 5.1. The Commissioner of Highways may deny the
2 application if there is an existing alternate off-road route
3 available, if the road or any bridge thereon is unsuitable
4 for the load, or if it is determined that the permit cannot
5 be granted without jeopardizing public safety.

6 5.1.a. The Commissioner of Highways may not approve
7 an application which, in combination with another permit
8 or permit application, would authorize a vehicle or
9 combination of vehicles to operate in excess of the maxi-
10 mum weight allowance specified in W. Va. Code §17C-
11 17A-3 on sections of public highways longer than one-half
12 mile.

13 5.1.b. In the event the application is denied, the Commis-
14 sioner of Highways may (at his or her discretion) refund
15 any unexpended portion of the application fee to the
16 applicant.

17 5.2. The Commissioner of Highways may require addi-
18 tional evaluations or agreements prior to approving any
19 special crossing permit application.

20 5.3. If the application for a special crossing permit is
21 approved by the Commissioner of Highways, the District

22 Maintenance Engineer(s) shall assure that all necessary
23 conditions and addendums are satisfied before delivering
24 the permit to the applicant.

25 5.4. Any special crossing permit approved by the Com-
26 missioner of Highways must include requirement that any
27 vehicle or vehicles authorized to operate on limited
28 sections of public highways pursuant to this rule may not
29 travel on the section of public highway included in the
30 special crossing permit until or unless all other traffic on
31 the public highway is stopped by flaggers or traffic-
32 control signals and that no other unauthorized vehicles
33 may access the section public highway until all authorized
34 vehicles have exited the public highway.

§157-9-6. Duration, suspension, revocation or renewal of permit.

1 6.1. A special crossing permit is valid for three years
2 from the date of issuance.

3 6.2. While a special crossing permit is in effect, the
4 permit holder shall maintain the road in a condition that
5 is passable to the traveling public. The District Mainte-
6 nance Engineer(s), accompanied by a representative of the
7 permit holder, shall review the conditions of the approved
8 route at least quarterly, or more frequently, if deemed
9 appropriate by the District Maintenance Engineer(s), to
10 assure the integrity of the roadway and any structures
11 adjacent thereto.

12 6.3. A special crossing permit may be suspended or
13 revoked by the Commissioner of Highways at any time if
14 the permit holder is found to be in violation of any of the
15 conditions, requirements, addendums or provisions of the
16 permit or to have maintained the roadway or crossing as
17 required by the permit or this rule.

18 6.4. At the end of three years, a permit holder may apply
19 to the Commissioner of Highways to renew the permit in
20 the same manner as an application for an initial permit.

21 The renewal application fee is \$500. The Commissioner of
22 Highways may require the same stipulations, conditions
23 and requirements, including the posting of a bond in
24 excess of \$50,000, attendant to the issuance of the original
25 permit or may impose additional stipulations, conditions
26 or requirements as a condition of renewal. The Commis-
27 sioner of Highways may also, in his or her discretion,
28 require any or all of the route and safety evaluations
29 described in required for issuance of an initial permit or
30 require additional evaluations, analyses or requirements
31 before renewing the permit.

32 6.5. The Commissioner may deny renewal of the permit
33 for any of the reasons for which an initial application for
34 a permit may be denied, if the permit holder failed to
35 comply with any of the conditions or requirements of the
36 previous permit or if the permit holder failed to satisfacto-
37 rily maintain the highway or protect public safety.”

38 (b) The legislative rule filed in the State Register on the
39 twenty-sixth day of July, two thousand five, authorized
40 under the authority of section seven, article eighteen,
41 chapter twenty-two of this code, relating to the Division of
42 Highways (transportation of hazardous wastes upon the
43 roads and highways, 157 CSR 7), is authorized.

§64-8-2. Division of Motor Vehicles.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand five, authorized
3 under the authority of section nine, article two, chapter
4 seventeen-a of this code, modified by the Division of Motor
5 Vehicles to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Regis-
7 ter on the fifteenth day of December, two thousand five,
8 relating to the Division of Motor Vehicles (denial, suspen-
9 sion, revocation, restriction or nonrenewal of driving
10 privileges, 91 CSR 5), is authorized with the following
11 amendment:

12 On page five, subsection 5.1., line one, after the word
13 “shall”, by inserting a comma;

14 On page five, subsection 5.1., by striking out the words
15 “time shall begin to toll from” and inserting in lieu thereof
16 the words “revocation shall begin on”;

17 On page five, subsection 5.2., by striking out the words
18 “time shall begin to toll from” and inserting in lieu thereof
19 the words “suspension shall begin on”;

20 On page six, subsection 7.2., after the words “disqualifi-
21 cation or”, by striking out the word “is” and inserting in
22 lieu thereof the words “the offense was”;

23 On page nine, subdivision 7.3.e., after the words “W. Va.
24 Code §17C-6-1” by striking out “(g) or (h)” and inserting
25 in lieu thereof “(i) or (j)” and a period;

26 On page nine, subsection 7.4., after the words “involving
27 a conviction.”, by striking out the remainder of the
28 subsection;

29 On page eleven, subsection 7.14., by striking out the
30 words “pertaining to a conviction for a”, and inserting in
31 lieu thereof a comma and the words “which exempt
32 convictions for”;

33 On page eleven, subsection 7.14., the last line, by striking
34 out the word “does” and inserting in lieu thereof the words
35 “from being reported to the Division, do”;

36 On page fourteen, subdivision 9.4.d., by striking out the
37 word “shall” and inserting in lieu thereof the word “may”;

38 On page seventeen, subsection 12.1., after the words “W.
39 Va. Code §17B-3-6” by striking out “(10)” and inserting in
40 lieu thereof “(a)(9)”;

41 On page eighteen, subsection 12.3., by striking out the
42 words “Means v. Sidiropolis 401 S.E.2d. Page 447 (W. Va.

43 1990)” and inserting in lieu thereof the words “Means v.
44 Sidiropolis, 184 W. Va. 514, 401 S.E.2d 447 (1990)”;

45 On page eighteen, subsection 13.1., line five, after the
46 words “The Division”, by striking out the word “shall”
47 and inserting in lieu thereof the word “may”;

48 On page twenty, subsection 15.1., line one, after the
49 words “with the provisions of W. Va. Code”, by striking
50 out “§48A-5A-1 et seq.” and inserting in lieu thereof “§48-
51 15-101 et seq.”;

52 On page twenty, subsection 15.1., line five, after the
53 words “The provisions of W. Va. Code”, by striking out
54 “§48A-5A-5c” and inserting in lieu thereof “48-15-101 et
55 seq.”;

56 On page twenty, subsection 15.1., by striking out the
57 words “Dababnah v. West Virginia Board of Medicine, No.
58 27751 slip op (W. Va. 2000)” and inserting in lieu thereof
59 the words “Dababnah v. West Virginia Board of Medicine,
60 207 W. Va. 621, 535 S.E.2d 20 (2000)”;

61 On page twenty, subsection 15.2., after the words “W.
62 Va. Code”, by striking out “§48A-5A-1 et seq.” and
63 inserting in lieu thereof “48-15-101 et seq.”;

64 On page twenty, subdivision 15.2.a., after the words “W.
65 Va. Code §17B-3-6” by inserting “(a)”;

66 On page twenty, subdivision 15.2.c., after the words “W.
67 Va. Code”, by striking out “§48-5A-5(a)” and inserting in
68 lieu thereof “§48-15-101 et seq.”;

69 On page twenty-one, paragraph 15.2.c.3., following
70 “Subsection” by striking out “5.6” and inserting in lieu
71 thereof “15.6”;

72 On page twenty-one, paragraph 15.2.c.4., after the word
73 “Subsection”, by striking out “5.7” and inserting in lieu
74 thereof “15.7”;

75 On page twenty-one, subsection 15.4., after the words
76 “W. Va. Code”, by striking out “§48A-5A-5(b)” and
77 inserting in lieu thereof “§48-15-302”;

78 On page twenty-one, subsection 15.5., after the words
79 “W. Va. Code”, by striking out “§48A-5A-5(a)” and
80 inserting in lieu thereof “§48-15-301(e)”;

81 On page twenty-two, paragraph 15.6.b.1., after the word
82 “Subsection”, by striking out “5.5” and inserting in lieu
83 thereof “15.5”;

84 On page nineteen, subsection 14.1, at the end of the
85 subsection by inserting the following sentence:

86 “For the purposes of this rule, a plea of nolo contendere
87 stands as neither an admission of guilt nor a conviction for
88 administrative revocation proceedings.”

89 On page twenty-two, subsection 15.7., after the words
90 “W. Va. Code”, by striking out “§48A-5A-5(b)” and
91 inserting in lieu thereof “§48-15-302”;

92 On page twenty-two, subdivision 16.2.c., after the word
93 “Commercial”, by inserting “Motor”; and,

94 On page twenty-five, subdivision 16.3.f., after the word
95 “subdivision”, by striking out “16.2.e.” and inserting in
96 lieu thereof “16.2.f.”

97 (b) The legislative rule filed in the State Register on the
98 twenty-fifth day of July, two thousand five, authorized
99 under the authority of section nine, article two, chapter
100 seventeen-a of this code, modified by the Division of Motor
101 Vehicles to meet the objections of the Legislative Rule-
102 Making Review Committee and refiled in the State Regis-
103 ter on the fifteenth day of December, two thousand five,
104 relating to the Division of Motor Vehicles (motor vehicle
105 dealers and other businesses regulated by the Division of
106 Motor Vehicles, 91 CSR 6), is authorized.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *5th*
Day of *April*, 2006.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 29 2006

Time 9:50am