

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4220**

4
5 (By Delegates Brown, D. Poling, Fleischauer and Talbott)

6 (Originating in the Committee on the Judiciary)

7
8 [February 17, 2012]

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

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

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

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

20 That article 10, chapter 64 of the code of West Virginia,
21 1931, as amended, be amended and reenacted to read as follows:

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

24 **§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 objections of
5 the Legislative Rule-Making Review Committee and refiled in the
6 State Register on the twenty-third day of December, two thousand
7 eleven, relating to the Development Office (brownfield economic
8 development districts, [145 CSR 11](#)), is authorized.

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

18 On page one, section three, by striking out "W.Va. Code §11-
19 12-1" and inserting in lieu thereof "W.Va. Code §7-12-1".

20 **§64-10-2. Board of Registration for Foresters.**

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

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

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

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

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

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

23 On page 2, in the second subsection 2.10, at the end of the
24 subsection, by striking out the words "this article" and inserting

1 in lieu thereof the words "W. Va. Code §30-19-1 et seq. and this
2 rule.";

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

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

8 **"§200-1-3. Applications.**

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

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

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

22 3.2. An applicant for certification as a registered forestry
23 technician shall submit evidence to the board of an associate's
24 degree from a two year technical forestry program recognized by the

1 Society of American Foresters and at least four years of full-time
2 equivalent work experience in the field of forestry acceptable to
3 the board within the ten years preceding the date of filing an
4 application for registration.

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

7 3.3.a. Personal information;

8 3.3.b. Educational information;

9 3.3.c. Qualifying work experience;

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

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

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

17 3.3.g. Applicable fee or fees as provided in 200 CSR 4.”;

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

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

24 On page 4, subsection 6.9, after the words “non-renewal of

1 any" by striking out the word "license" and inserting in lieu
2 thereof the word "certification" and after the words "return the
3 certificate" by striking out the words "of registration";

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

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

12 And,

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

20 (b) 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 (schedule of fees, [200 CSR 4](#)), is authorized, with the
4 following amendments:

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

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

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

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

19 **§64-10-3. Division of Forestry.**

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

1 authorized, with the following amendment:

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

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

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

18 **§64-10-4. Division of Labor.**

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

1 two thousand eleven, relating to the Division of Labor (Zipline and
2 Canopy Tour Responsibility Act, [42 CSR 10](#)), is authorized.

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

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

19 **§64-10-5. Office of Miners' Health Safety & Training.**

20 The legislative rule filed in the State Register on the
21 twenty-ninth day of July, two thousand eleven, authorized under the
22 authority of section thirteen, article thirteen-bb, chapter eleven,
23 of this code, modified by the Office of Miners' Health, Safety and
24 Training to meet the objections of the Legislative Rule-Making

1 Review Committee and refiled in the State Register on the twenty-
2 second day of November, two thousand eleven, relating to the Office
3 of Miners' Health, Safety and Training (application process for the
4 West Virginia Innovative Mine Safety Technology Tax Credit Act, [56](#)
5 [CSR 14](#)), is authorized.

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

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

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

23 (c) The legislative rule filed in the State Register on the
24 twenty-sixth day of July, two thousand eleven, authorized under the

1 authority of section seven, article one, chapter twenty, of this
2 code, relating to the Division of Natural Resources (hunting,
3 trapping and fishing, [58 CSR 45A](#)), is authorized.

4 (d) 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 (defining the terms used in all hunting and trapping, [58](#)
12 [CSR 46](#)), is authorized.

13 (e) The legislative rule filed in the State Register on the
14 twenty-fifth day of July, two thousand eleven, authorized under the
15 authority of section seven, article one, chapter twenty, of this
16 code, modified by the Division of Natural Resources to meet the
17 objections of the Legislative Rule-Making Review Committee and
18 refiled in the State Register on the twenty-second day of
19 September, two thousand eleven, relating to the Division of Natural
20 Resources (prohibitions when hunting and trapping, [58 CSR 47](#)), is
21 authorized.

22 (f) The legislative rule filed in the State Register on the
23 twenty-fifth day of July, two thousand eleven, authorized under the
24 authority of section seven, article one, chapter twenty, of this

1 code, modified by the Division of Natural Resources to meet the
2 objections of the Legislative Rule-Making Review Committee and
3 refiled in the State Register on the twenty-second day of
4 September, two thousand eleven, relating to the Division of Natural
5 Resources (general trapping, [58 CSR 53](#)), is authorized, with the
6 following amendment:

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

9 And,

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

12 (g) The legislative rule filed in the State Register on the
13 twenty-fifth day of July, two thousand eleven, authorized under the
14 authority of section seven, article one, chapter twenty, of this
15 code, modified by the Division of Natural Resources to meet the
16 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 fishing, [58 CSR 61](#)), is authorized.