

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: BUREAU OF COMMERCE, DIVISION OF NATURAL RESOURCES TITLE NUMBER: 58

CITE AUTHORITY: 20-1-7(30)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 51

TITLE OF RULE BEING AMENDED: WILD TURKEY

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

**THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.**



ROBERT A. REINTSEMA, COMMISSIONER



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**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

*State Capitol - Room MB-49*  
*Charleston, West Virginia 25305*  
*(304) 347-4840*

*Senator: Mike Ross, Co-Chairman*  
*Delegate: Mark Hunt, Co-Chairman*  
*Counsel: Debra A. Graham*

*Joseph A. Altizer, Associate Counsel*  
*Rita Pauley, Associate Counsel*  
*Audrey R. Ross, Admin. Assistant*

August 22, 1997

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Gordon Robertson  
Department of Natural Resources  
State Capitol Complex  
Building 3, Room 842  
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: *Wild Turkey Regulations (58CSR51)*

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed
  - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

**TITLE 58  
LEGISLATIVE RULE  
BUREAU OF COMMERCE  
DIVISION OF NATURAL RESOURCES**

**SERIES 51  
WILD TURKEY REGULATIONS**

**§58-51-1. General.**

- 1.1. Scope. -- The purpose of ~~these regulations~~ this rule is to establish a rule to manage the wild turkey within the boundaries of this State.
- 1.2. Authority. -- W.Va. Code §20-1-7(30).
- 1.3. Filing Date. --
- 1.4. Effective Date. --

**§58-51-2. Definitions.**

- 2.1. All terms have the meaning prescribed to them in the Division of Natural Resources Rule, Regulations Defining The Terms To Be Used Concerning All Hunting and Trapping Regulations (58 C.S.R. 46). In addition, for the purposes of this ~~regulation rule~~, the following terms have the meaning set forth in this section.
- 2.2. Game farm or pen-raised turkeys -- Game farm or pen raised turkeys are those birds or their offspring hatched from eggs taken by humans from a wild turkey nest or wild hen turkey raised under human control, and therefore imprinted to humans or other poultry under human control instead of a wild hen.
- 2.3. Domestic turkey -- A domestic turkey is a turkey that normally lives in and about the residences of West Virginians and depends upon humans for habitation, husbandry and/or as ~~their~~ its sole source of year round sustenance.
- 2.4. Wild turkey -- A wild turkey is a turkey from wild native genetic stock living under the control of the laws of nature.
- 2.5. Release into the wild -- Release into the wild means a release into any area not enclosed by a fence or bounded by other like structure from which under normal circumstances a bird does not escape.

**§58-51-3. Wild Turkey Hunting Rules.**

3.1. The use of electronic turkey calling devices is prohibited during the wild turkey seasons.

3.2. The use of dogs to hunt wild turkeys is prohibited during the spring wild turkey season.

3.3. Each person receiving a limited fall turkey hunting permit as provided under the Division of Natural Resources Rule, Management of Federal Lands Within the State Hunting and Trapping Regulations (58 C.S.R. 45) shall return a completed survey form as prescribed by the Director.

3.3.1. Any permittee who fails to return a completed survey form is disqualified from receiving a permit the following year.

**§58-51-4. Possession, Propagation and Release of Pen-raised Turkeys.**

4.1. It is unlawful to possess, propagate, or release into the wild, game farm or pen-raised turkeys. ~~Provided, That existing stock may be possessed until December 31, 1993, but during this period the turkeys shall not be propagated or released into the wild.~~

4.2. It is unlawful to release domestic turkeys into the wild.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Natural Resources

Subject: Wild Turkey, 58CSR51

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PERTINENT DATES

Filed for public comment: May 30, 1997  
Public comment period ended: July 1, 1997  
Filed following public comment period: July 25, 1997  
Filed LRMRC: July 25, 1997  
Filed as emergency:

Fiscal Impact: \$4,467 increase

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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FILED

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments. The amendment would require limited fall turkey hunting permittees to return a completed survey form in order to qualify for a permit the next year.

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AUTHORITY

Statutory authority: W.Va. Code, §20-1-7, which provides, in part, as follows:

In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

...(30) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him or her by the provisions of this chapter and take such other steps as may be necessary in his or her discretion for the proper and effective enforcement of the provisions of this chapter

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has minor technical modifications to suggest.

58-51 ✓

Senate Bill No. 327

1 (By Senator(s) Ross, Anderson, Bowman,  
2 Macnaughtan, Boley and Buckalew)

3 [Introduced January 30, 1998; referred to the  
4 Committee on Natural Resources; then to the  
5 Committee on Finance; and then to the Committee  
6 on the Judiciary.]  
7  
8  
9

10 A BILL to amend and reenact section one, article ten,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of natural resources to  
14 promulgate a legislative rule relating to wild  
15 turkeys.

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

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

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

23 §64-10-1. Division of natural resources.

1           (a) The legislative rule filed in the state register  
2 on the sixteenth day of August, one thousand nine hundred  
3 ninety-six, authorized under the authority of section five-  
4 d, article two, chapter twenty of this code, modified by  
5 the division of natural resources to meet the objections of  
6 the legislative rule-making review committee and refiled  
7 in the state register on the twenty-seventh day of  
8 September, one thousand nine hundred ninety-six, relating  
9 to the division of natural resources (fertility control of  
10 free roaming wildlife, 58 CSR 66), is authorized.

11           (b) The legislative rule filed in the state register  
12 on the sixteenth day of August, one thousand nine hundred  
13 ninety-six, authorized under the authority of section  
14 seven, article one, chapter twenty of this code, modified  
15 by the division of natural resources to meet the objections  
16 of the legislative rule-making review committee and  
17 refiled in the state register on the twenty-seventh day  
18 of September, one thousand nine hundred ninety-six,  
19 relating to the division of natural resources (prohibitions  
20 when hunting and trapping, 58 CSR 47), is authorized.

21           (c) The legislative rule filed in the state register  
22 on the sixteenth day of August, one thousand nine hundred  
23 ninety-six, authorized under the authority of section

1 seven, article one, chapter twenty of this code, modified  
2 by the division of natural resources to meet the objections  
3 of the legislative rule-making review committee and  
4 refiled in the state register on the twenty-seventh day of  
5 September, one thousand nine hundred ninety-six, relating  
6 to the division of natural resources (falconry, 58 CSR 65),  
7 is authorized.

8 (d) The legislative rule filed in the state register  
9 on the twenty-fifth day of July, one thousand nine hundred  
10 ninety-seven, authorized under the authority of section  
11 seven, article one, chapter twenty, of this code, modified  
12 by the division of natural resources to meet the objections  
13 of the legislative rule-making review committee and refiled  
14 in the state register on the twenty-eighth day of August,  
15 one thousand nine hundred ninety-seven, relating to the  
16 division of natural resources (wild turkey, 58 CSR 51), is  
17 authorized.

18

19 NOTE: The purpose of this bill is to authorize the  
20 Division of Natural Resources to promulgate a legislative  
21 rule relating to Wild Turkeys.

22

23 Strike-throughs indicate language that would be  
24 stricken from the present law, and underscoring indicates  
25 new language that would be added.

✓  
881h  
58-51

1 Bill-DNR,

H. B. 4188

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(By Delegates Hunt, Linch, Compton, Jenkins,  
Faircloth and Riggs)

[Introduced January 30, 1998, referred to the  
Committee on Agriculture and Natural Resources  
then the Judiciary.]

10 A BILL to amend and reenact section one, article ten,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of natural resources to  
14 promulgate a legislative rule relating to wild  
15 turkeys.

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

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

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

23 **§64-10-1. Division of natural resources.**

4188

1 (a) The legislative rule filed in the state register  
2 on the sixteenth day of August, one thousand nine hundred  
3 ninety-six, authorized under the authority of section five-  
4 d, article two, chapter twenty of this code, modified by  
5 the division of natural resources to meet the objections of  
6 the legislative rule-making review committee and refiled  
7 in the state register on the twenty-seventh day of  
8 September, one thousand nine hundred ninety-six, relating  
9 to the division of natural resources (fertility control of  
10 free roaming wildlife, 58 CSR 66), is authorized.

11 (b) The legislative rule filed in the state register  
12 on the sixteenth day of August, one thousand nine hundred  
13 ninety-six, authorized under the authority of section  
14 seven, article one, chapter twenty of this code, modified  
15 by the division of natural resources to meet the objections  
16 of the legislative rule-making review committee and  
17 refiled in the state register on the twenty-seventh day  
18 of September, one thousand nine hundred ninety-six,  
19 relating to the division of natural resources (prohibitions  
20 when hunting and trapping, 58 CSR 47), is authorized.

21 (c) The legislative rule filed in the state register  
22 on the sixteenth day of August, one thousand nine hundred  
23 ninety-six, authorized under the authority of section