WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED
Committee Substitute for Senate Bill No. 329

(By Senator Ross, et al)

PASSED March 14, 1998
In Effect From Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 329

(SENATORS ROSS, ANDERSON, BOWMAN, MACNAUGHTAN, BOLEY AND BUCKALEW, original sponsors)

[Passed March 14, 1998; in effect from passage.]

AN ACT to amend and reenact sections one, two, three, five, seven, nine, eleven and fourteen, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto nine new sections, designated sections twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight, all 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 and 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 legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; disapproving and not authorizing certain rules; approving an amendment to an existing rule and directing a certain agency to refile the rule with amendment; authorizing commissioner of agriculture to promulgate legislative rules relating to fish processing; authorizing commissioner of agriculture to promulgate legislative rules relating to meat and poultry inspection; authorizing secretary of state to promulgate legislative rules relating to electronic records; authorizing secretary of state to promulgate legislative rules relating to certain filings; authorizing governor's committee on crime, delinquency and correction to promulgate legislative rules relating to basic training academy; authorizing governor's committee on crime, delinquency and correction to promulgate legislative rules relating to law-enforcement protocol in response to domestic violence; authorizing auditor to promulgate legislative rules relating to transaction fee and rate structure; authorizing auditor to promulgate legislative rules relating to voluntary payroll deductions; authorizing board of dental examiners to promulgate legislative rules relating to professional limited liability companies; authorizing board of medicine to promulgate legislative rules relating to licensing; authorizing board of examiners of psychologists to promulgate legislative rules relating to fees; authorizing board of architects to promulgate legislative rules relating to board; authorizing board of examiners in counseling to promulgate legislative rules relating to licensing; disapproving and not authorizing human rights commission to promulgate legislative rules relating to definition of employer; authorizing board of occupational therapy to promulgate legislative rules relating to board; authorizing board of examiners in optometry to promulgate legislative
rules relating to expanded prescriptive authority rules; authorizing board of examiners of radiologic technology to promulgate legislative rules relating to continuing education; authorizing board of examiners of radiologic technology to promulgate legislative rules relating to fees for services; authorizing board of social work examiners to promulgate legislative rules relating to social worker licensure; authorizing soil conservation committee to promulgate legislative rules relating to committee; authorizing treasurer to promulgate legislative rules relating to imprest funds; authorizing treasurer to promulgate legislative rules relating to deposit of moneys by state agencies; authorizing treasurer to promulgate legislative rules relating to payment processing; authorizing treasurer to promulgate legislative rules relating to debt capacity reporting; authorizing treasurer to promulgate legislative rules relating to state debt reporting; authorizing treasurer to promulgate legislative rules relating to selection of state depositories for disbursement of certain accounts; authorizing treasurer to promulgate legislative rules relating to selection of state depositories for receipt accounts; and reauthorizing the board of pharmacy rules relating to rules and regulations of the board of pharmacy.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, five, seven, nine, eleven and fourteen, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto nine new sections, designated sections twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight, all to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of agriculture.

(a) The legislative rule filed in the state register on the
first day of August, one thousand nine hundred ninety-seven, authorized under the authority of section one, article twenty-nine, chapter nineteen of this code, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of November, one thousand nine hundred ninety-seven, relating to the commissioner of agriculture (fish processing, 61 CSR 23A), is authorized.

(b) The legislative rule filed in the state register on the eighth day of July, one thousand nine hundred ninety-seven, authorized under the authority of section three, article two-b, chapter nineteen of this code, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred ninety-seven, relating to the commissioner of agriculture (inspection of meat and poultry, 61 CSR 16), is authorized.

§64-9-2. Secretary of state.

(a) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-seven, authorized under the authority of section two, article one, chapter fifty-nine of this code, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of November, one thousand nine hundred ninety-seven, relating to the secretary of state (fees relating to electronic records, 153 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-seven, authorized under the authority of section sixty-seven, article one, chapter thirty-one of this code, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled
in the state register on the fifth day of January, one thousand nine hundred ninety-eight, relating to the secretary of state (matters relating to corporations and other business entity filing, 153 CSR 5), is authorized.

§64-9-3. Governor’s committee on crime, delinquency and correction.

(a) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-seven, under the authority of section three, article twenty-nine, chapter thirty of this code, modified by the governor’s committee on crime, delinquency and correction to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of January, one thousand nine hundred ninety-eight, relating to the governor’s committee on crime, delinquency and correction (basic training academy, annual in-service and biennial in-service training standards, 149 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-seven, authorized under the authority of section nine, article two-a, chapter forty-eight of this code, modified by the governor’s committee on crime, delinquency and correction to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of January, one thousand nine hundred ninety-eight, relating to the governor’s committee on crime, delinquency and correction (protocol for law enforcement response to domestic violence, 149 CSR 3), is authorized.

§64-9-5. Auditor.

(a) The legislative rule filed in the state register on the sixth day of January, one thousand nine hundred ninety-eight, authorized under the authority of section ten-c, article three, chapter twelve of this code, modified
by the auditor to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-eight, relating to the auditor (transaction fee and rate structure, 155 CSR 4), is authorized.

(b) The legislative rule filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-seven, authorized under the authority of section thirteen-b, article three, chapter twelve of this code, modified by the auditor to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of September, one thousand nine hundred ninety-seven, relating to the auditor (standards for voluntary payroll deductions, 155 CSR 3), is authorized.


The legislative rule filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-seven, authorized under the authority of section one thousand three hundred four, article thirteen, chapter thirty-one-b of this code, modified by the board of dental examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of November, one thousand nine hundred ninety-seven, relating to the board of dental examiners (formation and approval of professional limited liability companies, 5 CSR 2), is authorized.


The legislative rule filed in the state register on the sixteenth day of July, one thousand nine hundred ninety-seven, authorized under the authority of section sixteen, article three, chapter thirty of this code, modified by the board of medicine to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the seventh day of November, one
thousand nine hundred ninety-seven, relating to the board
of medicine (licensing, disciplinary and complaint proce-
dures, continuing education and physician assistants, 11
CSR 1B), is authorized with the following amendment:

On page five, by striking out all of section 2.6.1 and the
first line of section 2.6.2 and inserting in lieu thereof the
following language:

2.6.1. A supervising physician may not supervise more
than two (2) physician assistants at any one time, except
that a physician may supervise up to four (4) hospital
employed physician assistants.

2.6.2. A supervising physician may also serve as an
alternate supervising physician in the absence of another
supervising physician. The supervising physician is
legally responsible.


The legislative rule relating to the board of pharmacy
(rules and regulations of the board of pharmacy, 15 CSR
1), effective the fourteenth day of June, one thousand nine
hundred ninety-three, is reauthorized and shall be refiled
by the board of pharmacy, with only the following amend-
ment:

Page 2, Subsection 2.9, is amended by adding at the end
of the subsection, the following sentence: ‘The terms
Pharmacy, Drug Store or Apothecary do not include a free
clinic or a physician’s office that dispenses medicines for
free.’

§64-9-14. Board of examiners of psychologists.

The legislative rule filed in the state register on the
twenty-fifth day of July, one thousand nine hundred
ninety-seven, authorized under the authority of section six, article twenty-one, chapter thirty of this code, modified by the board of examiners of psychologists to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of January, one thousand nine hundred ninety-eight, relating to the board of examiners of psychologists (fees, 17 CSR 1), is authorized.

§64-9-20. Board of architects.

The legislative rule filed in the state register on the twenty-fifth day of July, one thousand nine hundred ninety-seven, under the authority of section one, article twelve, chapter thirty of this code, modified by the board of architects to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of December, one thousand nine hundred ninety-seven, relating to the board of architects (rules of the West Virginia board of architects, 2 CSR 1), is authorized.


The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, under the authority of section five, article thirty-one, chapter thirty of this code, modified by the board of examiners in counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of December, one thousand nine hundred ninety-seven, relating to the board of examiners in counseling (licensing, 27 CSR 1), is authorized.


The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred
ninetysseven, under the authority of section eight, article
eleven, chapter five of this code, modified by the human
rights commission to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the twenty-first day of November, one thou-
sand nine hundred ninety-seven, relating to the human
rights commission (definition of employer under the West
Virginia human rights act, 77 CSR 9), is disapproved and
not authorized.

§64-9-23. Board of occupational therapy.

The legislative rule filed in the state register on the first
day of August, one thousand nine hundred ninety-seven,
authorized under the authority of section six, article
twenty-eight, chapter thirty of this code, modified by the
board of occupational therapy to meet the objections of
the legislative rule-making review committee and refiled
in the state register on the eighth day of December, one
thousand nine hundred ninety-seven, relating to the board
of occupational therapy (administrative rules of the board
of occupational therapy, 13 CSR 1), is authorized.


The legislative rule filed in the state register on the
twenty-eighth day of July, one thousand nine hundred
ninety-seven, under the authority of sections two-a and
two-b, article eight, chapter thirty of this code, modified
by the board of examiners in optometry to meet the
objections of the legislative rule-making review committee
and refiled in the state register on the first day of Decem-
ber, one thousand nine hundred ninety-seven, relating to
the board of examiners in optometry (rules for expanded
prescriptive authority, 14 CSR 2), is authorized with the
amendments set forth below:

On page 3, subdivision 14.2.7.1b before the word
“Corticosteroids” by inserting the word “Oral” and after the word “Corticosteroids” by inserting the words “for a duration of no more than six days; and’’

On page 3, subdivision 14.2.7.1c, after the word “Analgesics” by inserting a colon and the words “Provided, That no oral narcotic analgesic shall be prescribed for a duration of more than three days”;

And,

On page 3, by striking out subdivision 14.2.7.1.d.

§64-9-25. Board of examiners of radiologic technology.

(a) The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-seven, under the authority of section five, article twenty-three, chapter thirty of this code, modified by the board of examiners of radiologic technology to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred ninety-eight, relating to the board of examiners of radiologic technology (continuing education, 18 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-seven, under the authority of section five, article twenty-three, chapter thirty of this code, modified by the board of examiners of radiologic technology to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred ninety-eight, relating to the board of examiners of radiologic technology (schedule of fees for services rendered, 18 CSR 1), is authorized.

§64-9-26. Board of social work examiners.

The legislative rule filed in the state register on the
twenty-fifth day of July, one thousand nine hundred ninety-seven, under the authority of section three, article thirty, chapter thirty of this code, modified by the board of social work examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred ninety-eight, relating to the board of social work examiners (qualifications for licensure as a social worker, 25 CSR 1), is authorized with the amendments set forth below:

On page 3, subsection 3.3, line 3 of that paragraph, after the words “applicant” by inserting the following:

“with the exception of employees of the Department of Health and Human Resources,”;

And,

On page 3, subsection 3.3, line 3 of that paragraph, after the words “July 1” by striking out the number “1998” and inserting in lieu thereof the number “2000”;

And,

On page 4, subdivision 3.3.1(a), line 2 of this paragraph, after the word “college” by striking out the words “prior to July 1, 1998”;

And,

On page 4, after subsection 3.3.3, by adding a new subsection 3.3.4 to read as follows:

“The requirements of section 3.3 are to effectuate the Board’s goal of meeting the need for professionally trained social workers in West Virginia. However, the Board recognizes the unique position of the Department of Health and Human Resources and, therefore, has created a limited exemption to the requirement that applicants for
licensure obtain a degree in social work after July 1, 2000. This exemption is granted with the understanding that the Department will diligently pursue hiring professionally trained social workers. The Board and the Department shall file a progress report with the Joint Committee on Government and Finance on their efforts to achieve this goal on or before December 1, 2000.

And,

Renumbering the remainder of the section.

§64-9-27. Soil conservation committee.
1 The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-seven, under the authority of section four, article twenty-one-a, chapter nineteen of this code, modified by the soil conservation committee to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of December, one thousand nine hundred ninety-seven, relating to the soil conservation committee (state soil conservation committee, 63 CSR 1), is authorized.

1 (a) The legislative rule filed in the state register on the third day of July, one thousand nine hundred ninety-seven, under the authority of section two, article two, chapter twelve of this code, modified by the treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety-seven, relating to the treasurer (establishment of imprest funds, 112 CSR 3), is authorized.

(b) The legislative rule filed in the state register on the third day of July, one thousand nine hundred
ninety-seven, under the authority of section two, article two, chapter twelve of this code, modified by the treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-seven, relating to the treasurer (procedure for the deposit of moneys with the state treasurer's office by state agencies, 112 CSR 4), is authorized.

(c) The legislative rule filed in the state register on the third day of July, one thousand nine hundred ninety-seven, under the authority of section one, article three, chapter twelve of this code, modified by the treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-seven, relating to the treasurer (procedures for processing payments from the state treasury, 112 CSR 8), is authorized.

(d) The legislative rule filed in the state register on the third day of July, one thousand nine hundred ninety-seven, under the authority of section four, article six-b, chapter twelve of this code, modified by the treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety-seven, relating to the treasurer (reporting of debt capacity, 112 CSR 9), is authorized with the amendment set forth below:

On page two, by striking out all of subsection 2.8 and inserting in lieu thereof a new subsection 2.8 to read as follows:

2.8. "Net tax supported debt" means: (1) general obligation bonds of the state net of any refundings, defeasances, reserve requirements or sinking funds; (2)
moral obligation bonds of the state net of any refundings, defeasances, reserve requirements of sinking funds; (3) capital leases, lease purchases, mortgages, installment purchases, certificates of participation and any other debt financing transaction extending beyond one year, net of any refundings, defeasances, reserve requirements or sinking funds, which are payable through an annual appropriation of the Legislature. “Net tax supported debt” includes lottery bonds, but does not include revenue bonds or any other debt that is self-supporting from enterprise revenues: Provided, That the obligation shall not be excluded to the extent the obligations are in default.;

On page three, by striking out all of subsection 2.11 and inserting in lieu thereof a new subsection 2.11 to read as follows:

2.11. “Moral Obligation Bond” is a bond secured by a pledge of revenue and a moral commitment of the state of West Virginia to appropriate funds to make up any deficiency of the revenues needed to pay the debt service.;

On page three, by adding a new subsection 2.15 to read as follows:

2.15. “Revenue bonds” are bonds secured by a specified revenue stream, often with a lien imposed on the revenues. The revenue stream may be a tax or assessment or the revenues of the project financed.;

On page three, by adding a new subsection 2.16 to read as follows:

2.16. “Lottery bonds” are bonds secured by lottery revenues;

On page three, by adding a new subsection 2.17 to read as follows:
2.17. "Revenues" means: (1) total funds deposited in the general revenue; plus (2) the entire related revenue stream for any net tax supported debt which is funded from a source other than the state's general revenue fund; plus (3) an amount equal to any deductions from the gross general revenue for debt service of tax supported debt before the revenue is added to the general revenue fund.

An example of revenue as defined in this subdivision 2.17.2 of this subsection is the State Road Fund revenues. The total revenues of the State Road Fund (exclusive of Federal funds) are used to repay the Road Bonds and are therefore included in revenue.

An example of revenue as defined in subdivision 2.17.3 of this subsection is the amount of severance tax dedicated for repayment of the Infrastructure Bonds. Those dedicated severance taxes are therefore included in revenue;

On page three, by striking out all of subsection 3.1 and inserting in lieu thereof a new subsection 3.1 to read as follows:

3.1. Annual debt capacity report - The division with the cooperation and support of the Department of Administration, the Department of Tax and Revenue and the Bureau of Employment Programs shall issue an annual report, on or before October 1st of each year. The annual debt capacity report reviews the size and condition of the state's net tax supported debt and estimates the maximum amount of net tax supported debt which should be authorized based upon ratios and guidelines established by the major bond rating agencies. The ratios and guidelines shall be consistently applied based upon the state's definitions.;

On page three, subdivision 3.2.4 by striking out the word "and";
And,

On page three by adding the following new subdivisions:

3.2.6. The total debt service as a percentage of revenue;
3.2.7. Current ratios and guidelines as established and/or reported by the major rating agencies; and
3.2.8. A comparison of West Virginia’s ratio to other states with similar bonds ratings.

(e) The legislative rule filed in the state register on the third day of July, one thousand nine hundred ninety-seven, under the authority of section seven, article six-a, chapter twelve of this code, modified by the treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety-seven, relating to the treasurer (reporting of state debt to the state treasurer’s office, 112 CSR 10), is authorized.

(f) The legislative rule filed in the state register on the third day of July, one thousand nine hundred ninety-seven, under the authority of section two, article one, chapter twelve of this code, modified by the treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety-seven, relating to the treasurer (selection of state depositories for disbursement accounts through competitive bidding, 112 CSR 6), is authorized with the amendment set forth below:

‘On page two, subsection 3.5, line one of said subsection, following the words ‘the Treasurer’, by striking out the words “the bids.’

(g) The legislative rule filed in the state register on the
third day of July, one thousand nine hundred ninety-seven, under the authority of section two, article one, chapter twelve of this code, modified by the treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety-seven, relating to the treasurer (selection of state depositories for receipt accounts, 112 CSR 7), is authorized.
That 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 .................................. this the ..................................
day of .............................................., 1998.

[Signature]
Governor