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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

Committee Substitute for
SENATE BILL NO. 382

(By Senator Minard, et al)

PASSED April 9, 2005

In Effect from Passage

FILED

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CITIZEN WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 382

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

[Passed April 9, 2005; in effect from passage.]

AN ACT to amend and reenact §64-1-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact article 2, chapter 64 of said code, 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 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 Department of Administration to promulgate a legislative rule relating to leasing space on behalf of state spending units; authorizing Department of Administration to promulgate a legislative rule relating to state-owned vehicles; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to general provisions; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to Deputy Sheriff Retirement System; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to benefit determination and appeal; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers Defined Contribution System; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers Defined Benefit Plan; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to the Public Employees Retirement System; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to West Virginia State Police disability determination and appeal process; authorizing Ethics Commission to promulgate a legislative rule relating to code of conduct for administrative law judges; authorizing Division of Information Services and Communications to promulgate a legislative rule relating to telecommunications payments by spending units; authorizing Division of Personnel to promulgate a legislative rule relating to administration of the Division; authorizing Division of Personnel to promulgate a legislative rule relating to preemployment references and inquiries; authorizing Board of Risk and Insurance Management to promulgate a legislative rule relating to the Public Entities Insurance Program; and authorizing Board of Risk and Insurance Management to promulgate a legislative rule relating to the Patient Injury Compensation Fund.

Be it enacted by the Legislature of West Virginia:

That §64-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that article 2, chapter 64 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

1 Under the provisions of article three, chapter
2 twenty-nine-a of the Code of West Virginia, the Legisla-
3 ture expressly authorizes the promulgation of the rules
4 described in articles two through eleven, inclusive, of this
5 chapter, subject only to the limitations set forth with
6 respect to each such rule in the section or sections of this
7 chapter authorizing its promulgation. Legislative rules
8 promulgated pursuant to the provisions of articles one
9 through eleven, inclusive, of this chapter in effect at the
10 effective date of this section shall continue in full force
11 and effect until reauthorized in this chapter by legislative
12 enactment or until amended by emergency rule pursuant
13 to the provisions of article three, chapter twenty-nine-a of
14 this code.

**ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION
TO PROMULGATE LEGISLATIVE RULES.**

§64-2-1. Department of Administration.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of August, two thousand four, under
3 the authority of section forty-two, article three, chapter
4 five-a of this code modified by the Department of Admin-
5 istration to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Regis-
7 ter on the sixteenth day of November, two thousand four,
8 relating to the Department of Administration (leasing
9 space on behalf of state spending units, 148 CSR 2) is
10 authorized, with the following amendment:

11 On page seven, by striking out all of subsection 12.6.

12 (b) The legislative rule filed in the State Register on the
13 twenty-seventh day of August, two thousand four, under
14 the authority of section forty-eight, article three, chapter
15 five-a of this code relating to the Department of Adminis-
16 tration (state-owned vehicles, 148 CSR 3) is authorized.

§64-2-2. Consolidated Public Retirement Board.

1 (a) The legislative rule filed in the State Register on the
2 twenty-fourth day of August, two thousand four, under the
3 authority of section one, article ten-d, chapter five of this
4 code modified by the Consolidated Public Retirement
5 Board to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Regis-
7 ter on the seventeenth day of November, two thousand
8 four, relating to the Consolidated Public Retirement Board
9 (general provisions, 162 CSR 1) is authorized, with the
10 following amendment:

11 On page three, subdivision 6.2.1., lines sixteen and
12 seventeen, by striking out the words “Accrued Retirement
13 Benefit” and inserting in lieu thereof the words “vested
14 accrued retirement benefit”;

15 On page three, paragraph 6.2.1.1., by striking out the
16 paragraph in its entirety and inserting in lieu thereof the
17 following:

18 6.2.1.1. “Vested accrued retirement benefit’ means the
19 benefit due to the member as of the date specified by the
20 parties in the Qualified Domestic Relations Order set out
21 in subdivision 6.2.2. of this rule.;

22 On page three, subdivision 6.2.3., line nine, by striking
23 out the words “Accrued Retirement Benefit” and inserting
24 in lieu thereof the words “vested accrued retirement
25 benefit”;

26 On page three, subdivision 6.2.4., line nine, by striking
27 out the words “Accrued Retirement Benefit” and inserting

28 in lieu thereof the words “vested accrued retirement
29 benefit”;

30 On page four, paragraph 6.2.5.3., lines three and four, by
31 striking out the words “Accrued Retirement Benefit” and
32 inserting in lieu thereof the words “vested accrued retire-
33 ment benefit”;

34 And,

35 On page four, subdivision 6.2.8., line six, by striking out
36 the words “Moreover, no qualified domestic relations
37 order will be honored by the board while a loan under the
38 above two sections is outstanding” and inserting in lieu
39 thereof the words “Provided, That, a member may borrow
40 from that portion of his or her individual account not
41 subject to the qualified domestic relations order.”.

42 (b) The legislative rule filed in the State Register on the
43 twenty-fourth day of August, two thousand four, under the
44 authority of section one, article ten-d, chapter five of this
45 code modified by the Consolidated Public Retirement
46 Board to meet the objections of the Legislative Rule-
47 Making Review Committee and refiled in the State Regis-
48 ter on the seventeenth day of November, two thousand
49 four, relating to the Consolidated Public Retirement Board
50 (Deputy Sheriff Retirement System, 162 CSR 10) is
51 authorized, with the following amendment:

52 On page six, by striking out section fourteen in its
53 entirety, and redesignating the remaining sections and
54 their components accordingly.

55 (c) The legislative rule filed in the State Register on the
56 twenty-fourth day of August, two thousand four, under the
57 authority of section one, article ten-d, chapter five of this
58 code modified by the Consolidated Public Retirement
59 Board to meet the objections of the Legislative Rule-
60 Making Review Committee and refiled in the State Regis-
61 ter on the seventeenth day of November, two thousand

62 four, relating to the Consolidated Public Retirement Board
63 (benefit determination and appeal, 162 CSR 2) is autho-
64 rized.

65 (d) The legislative rule filed in the State Register on the
66 twenty-fourth day of August, two thousand four, under the
67 authority of section one, article ten-d, chapter five of this
68 code modified by the Consolidated Public Retirement
69 Board to meet the objections of the Legislative Rule-
70 Making Review Committee and refiled in the State Regis-
71 ter on the seventeenth day of November, two thousand
72 four, relating to the Consolidated Public Retirement Board
73 (Teachers Defined Contribution System, 162 CSR 3) is
74 authorized, with the following amendment:

75 On page one, subsection 3.1, line four, after the words
76 “different meaning” by inserting a new subdivision to read
77 as follows: “3.1.1. ‘Accrued benefit’ is the amount credited
78 to the member’s annuity account.”, and by redesignating
79 the remaining subdivisions accordingly;

80 On page three, subsection 4.1, line thirteen, following the
81 words “fifteen (15) days of the end of the pay period.”, by
82 striking out the remainder of the subsection;

83 On page three, subsection 4.2, twenty-one, following the
84 words “fifteen (15) days of the end of the pay period.”, by
85 striking out the remainder of the subsection;

86 And,

87 On page eight, subsection 7.5, line fourteen, after the
88 words “default fund for distribution to the member”, by
89 inserting the words “or beneficiary”.

90 (e) The legislative rule filed in the State Register on the
91 twenty-fourth day of August, two thousand four, under the
92 authority of section one, article ten-d, chapter five of this
93 code modified by the Consolidated Public Retirement
94 Board to meet the objections of the Legislative Rule-
95 Making Review Committee and refiled in the State Regis-

96 ter on the seventeenth day of November, two thousand
97 four, relating to the Consolidated Public Retirement Board
98 (Teachers Defined Benefit Plan, 162 CSR 4) is authorized,
99 with the following amendment:

100 On page seven, by striking out section 10 in its entirety.

101 (f) The legislative rule filed in the State Register on the
102 twenty-fourth day of August, two thousand four, under the
103 authority of section one, article ten-d, chapter five of this
104 code modified by the Consolidated Public Retirement
105 Board to meet the objections of the Legislative Rule-
106 Making Review Committee and refiled in the State Regis-
107 ter on the seventeenth day of November, two thousand
108 four, relating to the Consolidated Public Retirement Board
109 (Public Employees Retirement System, 162 CSR 5) is
110 authorized with the following amendment:

111 On page three, by striking out section 10 in its entirety
112 and redesignating the remaining sections and their compo-
113 nents accordingly.

114 (g) The legislative rule filed in the State Register on the
115 twenty-fourth day of August, two thousand four, under the
116 authority of section one, article ten-d, chapter five of this
117 code relating to the Consolidated Public Retirement Board
118 (West Virginia State Police disability determination and
119 appeal process, 162 CSR 9) is authorized.

§64-2-3. West Virginia Ethics Commission.

1 The legislative rule filed in the State Register on the
2 twenty-sixth day of August, two thousand four, under the
3 authority of section five-a, article two, chapter six-b of
4 this code modified by the Ethics Commission to meet the
5 objections of the Legislative Rule-Making Review Com-
6 mittee and refiled in the State Register on the sixteenth
7 day of February, two thousand five, relating to the Ethics
8 Commission (code of conduct for administrative law
9 judges, 158 CSR 13) is authorized, with the following
10 amendment:

11 On pages eleven and twelve, by striking out paragraph
12 4.7.a.2. in its entirety and inserting in lieu thereof the
13 following:

14 "4.7.a.2. Personally solicit funds for a political organiza-
15 tion or political candidate; *Provided*, That, the provisions
16 of this paragraph do not apply to part-time state adminis-
17 trative law judges.

18 4.7.a.3. Be compelled to pay an assessment to a political
19 organization or candidate or purchase tickets for political
20 dinners or other similar functions."

§64-2-4. Division of Information Service and Communications.

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of August, two thousand four, under
3 the authority of section four-a, article seven, chapter five-
4 a of this code modified by the Division of Information
5 Services and Communications to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the State Register on the thirteenth day of January, two
8 thousand five, relating to the Division of Information
9 Services and Communications (telecommunications
10 payments by spending units, 161 CSR 2) is authorized,
11 with the following amendment:

12 On page one, section 2, subsection (g.), after the word
13 "IS&C", by inserting the words "or 'the Division'";

14 On page two, section 2, subsection "(k.) 'Shared Ac-
15 count'", after the words "in §5A-7-4a", by striking "(l)"
16 and inserting in lieu thereof "(k)";

17 On page two, section 2, by striking all of subsection (l.)
18 and inserting in lieu thereof the following:

19 "2.15. 'Spending Unit' means a department, agency or
20 institution of the state government for which an appropri-
21 ation is requested, or to which an appropriation is made by
22 the Legislature: *Provided*, That spending unit does not
23 include the Legislature or the judiciary.";

24 On page three, section 3, following the words “spending
25 units”, by striking out the remainder of the section and
26 inserting in lieu thereof “that have their telecommunica-
27 tions services billed on the state’s shared account.”;

28 On page three, section 4, subsection(b.), line 12, by
29 striking out the words “to ensure the legitimacy of the
30 charges.”;

31 On page three, section 4, by striking out subdivision (g.)
32 in its entirety and relettering the remaining subdivision;

33 On page three, section 5, by striking out the words
34 “IS&C will insure all of its duties and rights are executed
35 as defined below after the first billing period. This allows
36 IS&C to implement the new policies and allow for transi-
37 tion by all parties (vendors, spending units, etc.)”;

38 On page three, by striking out subdivisions 5.1.2. and
39 5.1.3. in their entirety and renumbering the remaining
40 subdivision;

41 On page four, section 5.1.4., following the word
42 “Charges” by striking out the words “not rejected during
43 this preliminary review by IS&C”;

44 On page five, section 6, by striking out the words “Any
45 spending unit that is utilizing the services and pricing of
46 a telecommunications provider via a state-issued contract
47 must agree to have its charges included in the shared
48 account and all requests for telecommunications services
49 must be obtained by submitting to IS&C a Telecommuni-
50 cations Change Request form for approval.”;

51 On page eight, section 8, line 3, after the word “via” by
52 striking out the words “a state-issued contract” and
53 inserting in lieu thereof the words “via a shared account”;

54 On page eight, by striking out subsection 8.1 in its
55 entirety;

56 And,

57 On page eight, section 8, by striking out the words “8.2
58 Invoices submitted for payment.

59 8.2.1. Vendors are required to submit all invoices to
60 IS&C that include more than one spending unit. If ven-
61 dors are providing services to spending units governed by
62 the pricing included in the applicable state-issued contract
63 then the charges for these services must be included on the
64 shared account.”.

§64-2-5. Division of Personnel.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of August, two thousand four, under
3 the authority of section ten, article six, chapter twenty-
4 nine of this code modified by the Division of Personnel to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the twenty-
7 third day of November, two thousand four, relating to the
8 Division of Personnel (administration, 143 CSR 1) is
9 authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-seventh day of August, two thousand four, under
12 the authority of section ten, article six, chapter twenty-
13 nine of this code modified by the Division of Personnel to
14 meet the objections of the Legislative Rule-Making Review
15 Committee and refiled in the State Register on the twenti-
16 eth day of January, two thousand five, relating to the
17 Division of Personnel (preemployment reference and
18 inquiries, 143 CSR 4) is authorized, with the following
19 amendment:

20 On page one, subsection 1.1., by striking out the word
21 ‘eligibility’ and inserting in lieu thereof the word ‘rejec-
22 tion’;

23 On page one, subsection 2.1., line one, after the word
24 ‘employment’ by striking out the word ‘with’ and inserting
25 in lieu thereof the words ‘in the classified service of’;

26 On page one, subsection 2.1., line two, by striking out the
27 semi-colon and inserting a comma, and by striking out the
28 word 'includes' and inserting in lieu thereof the word
29 'including';

30 On page one, subsection 2.2., line two, after the word
31 'service.', by striking out the remainder of the subsection;

32 On page one, by striking out subsection 2.6. in its
33 entirety and inserting in lieu thereof the following:

34 '2.5. Disqualifying event: Conviction of a crime of an
35 infamous crime or other crime involving moral turpitude
36 which has a reasonable connection to the position/class for
37 which the applicant or employee is applying. For purposes
38 of this rule, a plea of "guilty" or "no contest" is considered
39 a conviction unless the charge was subsequently invali-
40 dated by a court decision.';

41 On page one, subsection 2.5., by striking out the entire
42 subsection and inserting in lieu thereof the following:

43 '2.6. Director: The Director of the Division of Personnel
44 or his or her designee.';

45 On page two, subsection 2.11., by striking out the words
46 'actions by the individual that would cause', and, after the
47 word 'damage', by inserting the words 'or injury';

48 On page two, subsection 2.12., line one, after the word
49 'to' by inserting the words 'a classified service position in';

50 On page two, by striking out section 3 in its entirety and
51 renumbering the succeeding sections accordingly;

52 On page two, section 4, by striking out the words 'the
53 Director shall prescribe information required to be
54 submitted by applicants, including fingerprints and
55 driver's license number, that is needed by the State Police
56 and other entities for processing or as is otherwise neces-
57 sary to facilitate access to information.';

58 On pages two and three, by striking out the subsections
59 4.1. and 4.2. in their entirety, and inserting in lieu thereof
60 the following:

61 '4.1. To establish the eligibility of an applicant or
62 employee, the Director may verify information provided
63 by the applicant, including, but not limited to:

64 a. Current and previous employment and/or volunteer
65 and/or student activities;

66 b. Military service;

67 c. Formal education; and

68 d. Professional licensure and/or certification.

69 4.2. To the extent permitted by law and reasonably
70 relevant to established eligibility standards or the nature
71 of the position sought by the applicant, the Director may
72 obtain and review:

73 a. The applicant's state and/or federal criminal records
74 history;

75 b. The central abuse registry established pursuant to W.
76 Va. Code §15-2C-1, *et seq.*; and

77 c. The applicant's driving records.

78 4.3. To the extent permitted by law, the Director may
79 require an applicant to provide any information necessary
80 to afford the Director access to records reasonably rele-
81 vant to established eligibility standards or the nature of
82 the position sought by the applicant.

83 4.4. The Director shall conduct investigations and/or
84 secure reports necessary to assess the suitability of an
85 applicant. The Director may delegate some or all of the
86 responsibility to qualified appointing authorities in
87 accordance with the provisions of this rule.'

88 On page three, subsection 4.3, by renumbering the
89 subsection as subsection '4.5.';

90 On page three, section 5, by striking out the entire
91 section and renumbering the succeeding sections accord-
92 ingly;

93 On page four, subsection 7.1., after the words 'separate
94 file', by striking out the remainder of the subsection;

95 On page four, subsection 7.2., after the word 'all', by
96 striking out the words 'required and requested' and, after
97 the word 'reports', by inserting the words 'requested by the
98 Division of Personnel pursuant to this rule;

99 On page four, subsection 8.1., line one, by striking out
100 the words 'shall be' and inserting in lieu thereof the word
101 'is';

102 On page four, subsection 8.1, lines three and four, after
103 the word 'report', by striking out the word 'the' and
104 inserting in lieu thereof the word 'a', and by striking out
105 the word 'limit' and inserting in lieu thereof the word
106 'provided';

107 On page four, subsection 8.2., by striking out the words
108 'that is needed' and inserting in lieu thereof the word
109 'required', and by striking out the words 'as is otherwise
110 necessary';

111 On page four, subsection 9.1., line two, after the words
112 'employee to a' by inserting the words 'classified service';

113 And,

114 On page four, by striking out section 10 in its entirety.

§64-2-6. Board of Risk and Insurance Management.

1 (a) The legislative rule filed in the State Register on the
2 twenty-sixth day of August, two thousand four, under the
3 authority of section five, article twelve, chapter twenty-
4 nine of this code modified by the Board of Risk and

5 Insurance Management to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the State Register on the twentieth day of January, two
8 thousand five, relating to the Board of Risk and Insurance
9 Management (Public Entities Insurance Program, 115 CSR
10 2) is authorized.

11 (b) The legislative rule filed in the State Register on the
12 twenty-sixth day of August, two thousand four, under the
13 authority of section five, article twelve, chapter twenty-
14 nine of this code modified by the Board of Risk and
15 Insurance Management to meet the objections of the
16 Legislative Rule-Making Review Committee and refiled in
17 the State Register on the sixteenth day of February, two
18 thousand five, relating to the Board of Risk and Insurance
19 Management (Patient Injury Compensation Fund, 115 CSR
20 7) is authorized.

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

Wanda White

Chairman Senate Committee

H. Ruben Brown

Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell E. Helms

Clerk of the Senate

Gregory D. Sawyer

Clerk of the House of Delegates

Carl Roy Tomblin

President of the Senate

Robert S. Taylor

Speaker House of Delegates

The within *is approved* this the *2nd*

Day of *May*, 2005.

[Signature]

Governor

PRESENTED TO THE
GOVERNOR

APR 27 2005

Time 2:10 pm