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HB 4172

FILED

2006 APR -4 P 2: 29

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006

**SECOND
ENROLLMENT**

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4172

(By Delegates Mahan, Palumbo, Cann,
Pino, Armstead and Overington)

Passed March 19, 2006

In Effect from Passage

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**S E C O N D
E N R O L L M E N T**

COMMITTEE SUBSTITUTE

FOR

H. B. 4172

(BY DELEGATES MAHAN, PALUMBO, CANN,
PINO, ARMSTEAD AND OVERINGTON)

[Amended and again passed March 19, 2006,
as a result of the objections of the Governor; 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; the promulgation of administrative rules by the Department of Administration and the procedures relating thereto legislative mandate or authorization; 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; and disapproving certain rules; authorizing the Department of Administration to promulgate a legislative rule relating to leasing space on behalf of state spending units; authorizing the Department of Administration to promulgate a legislative rule relating to selecting design-builders under the Design Build Procurement Act; disapproving promulgation of a rule by the Department of Administration relating to cannibalization of state property; disapproving promulgation of a rule by the Department of Administration relating to waste disposal of state property; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to benefit determination and appeals; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers' Defined Benefit Plan; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to service credit for accrued and unused sick and annual leave; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the West Virginia State Police; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Deputy Sheriff Retirement System; authorizing the Ethics Commission to promulgate a legislative rule relating to the Commission; authorizing the Ethics Commission to promulgate a legislative rule relating to complaints, investigations and hearings; authorizing the Ethics Commission to promulgate a legislative rule relating to lobbying; authorizing the Ethics Commission to promulgate a legislative rule relating to a code of conduct for administrative law judges; authorizing the Ethics Commission to promulgate a legislative rule relating to the filing of verified time records; authorizing the Ethics Commission to promulgate a legislative rule relating to compliance audits; and authorizing the Ethics Commission to promulgate a legislative rule relating to ethics training requirements for designated public officials.

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 twenty-nine-a
2 of the Code of West Virginia, the Legislature expressly
3 authorizes the promulgation of the rules described in articles
4 two through eleven, inclusive, of this chapter, subject only to
5 the limitations set forth with respect to each such rule in the
6 section or sections of this chapter authorizing its promulgation.
7 Legislative rules promulgated pursuant to the provisions of
8 articles one through eleven, inclusive, of this chapter in effect
9 at the effective date of this section shall continue in full force
10 and effect until reauthorized in this chapter by legislative
11 enactment or until amended by emergency rule pursuant to the
12 provisions of article three, chapter twenty-nine-a of 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-ninth day of July, two thousand five, authorized under
3 the authority of section forty-two, article three, chapter five-a
4 of this code, modified by the Department of Administration to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the third day of
7 January, two thousand six, relating to the Department of
8 Administration (Leasing space on behalf of state spending
9 units, 148 CSR 2), is authorized, with the following amend-
10 ments:

11 On page one, subsection 3.2, following the word “re-
12 quested” and the comma by striking out the remainder of
13 subsection 3.2;

14 And,

15 On page seven, subsection 12.4, by striking out the word
16 “disbar” and inserting in lieu thereof the word “debar”.

17 (b) The legislative rule filed in the State Register on the
18 twenty-ninth day of July, two thousand five, authorized under
19 the authority of section six, article twenty-two-a, chapter five of
20 this code, modified by the Department of Administration to
21 meet the objections of the Legislative Rule-Making Review
22 Committee and refiled in the State Register on the eighteenth
23 day of January, two thousand six, relating to the Department of
24 Administration (Selecting design-builders under the Design
25 Build Procurement Act, 148 CSR 11), is authorized, with the
26 following amendments:

27 On page seven, subsection 13.2, following the word
28 “Agency” by striking out the remainder of subsection 13.2 and
29 inserting in lieu thereof the following: “at any time prior to the
30 start of construction if any requirement of the project is not
31 satisfied.”; and

32 On page eight, following subsection 14.7 by inserting the
33 following:

34 **“§148-11-15. Public emergencies.**

35 15.1. If an application for a Design-Build proposal is filed
36 which indicates a public emergency, the Design-Build Board
37 shall take immediate action to determine if the project meets the
38 criteria for a design-build project.

39 15.2. If the criteria are satisfied, the Board shall meet to
40 approve or disapprove the application. If this situation occurs,
41 the Board shall file a notice of emergency meeting with the
42 Secretary of State in accordance with the Open Governmental
43 Meetings Act.

44 15.3. A design-build project application may not indicate a
45 public emergency if the emergency indicated is the result of
46 self-imposed hardships, such as, neglect, poor planning, or a
47 lack of organization by the applicant.”

48 (c) The legislative rule filed in the State Register on the
49 twenty-ninth day of July, two thousand five, authorized under
50 the authority of section forty-five, article three, chapter five-a
51 of this code, modified by the Department of Administration to
52 meet the objections of the Legislative Rule-Making Review
53 Committee and refiled in the State Register on the fifth day of
54 December, two thousand five, relating to the Department of
55 Administration (Cannibalization of state property, 148 CSR
56 16), is disapproved and not authorized.

57 (d) The legislative rule filed in the State Register on the
58 twenty-ninth day of July, two thousand five, authorized under
59 the authority of section forty-five, article three, chapter five-a
60 of this code, modified by the Department of Administration to
61 meet the objections of the Legislative Rule-Making Review
62 Committee and refiled in the State Register on the fifth day of
63 December, two thousand five, relating to the Department of
64 Administration (Waste disposal of state property, 148 CSR 17),
65 is disapproved and not authorized.

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

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section one, article ten-d, chapter five of this

4 code, modified by the Consolidated Public Retirement Board to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the third day of
7 January, two thousand six, relating to the Consolidated Public
8 Retirement Board (Benefit determination and appeal, 162 CSR
9 2), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-ninth day of July, two thousand five, authorized under
12 the authority of section one, article ten-d, chapter five of this
13 code, modified by the Consolidated Public Retirement Board to
14 meet the objections of the Legislative Rule-Making Review
15 Committee and refiled in the State Register on the third day of
16 January, two thousand six, relating to the Consolidated Public
17 Retirement Board (Teachers' Defined Benefit Plan, 162 CSR
18 4), is authorized.

19 (c) The legislative rule filed in the State Register on the
20 twenty-ninth day of July, two thousand five, authorized under
21 the authority of section one, article ten-d, chapter five of this
22 code, modified by the Consolidated Public Retirement Board to
23 meet the objections of the Legislative Rule-Making Review
24 Committee and refiled in the State Register on the third day of
25 January, two thousand six, relating to the Consolidated Public
26 Retirement Board (Service credit for accrued and unused sick
27 and annual leave, 162 CSR 8), is authorized, with the following
28 amendment:

29 On page four, line twenty-seven, by striking out subsection
30 7.2 in its entirety and inserting in lieu thereof the following:

31 "7.2. Limitation on the Accrual of Unused Sick and Annual
32 Leave. – If the West Virginia State Police policy for the accrual
33 of unused sick and annual leave is more generous than that of
34 the State of West Virginia for its state agency employees,
35 trooper members shall receive service credit only for unused

36 sick and annual leave as provided for by the state of West
37 Virginia for state employees who are covered by the rules of the
38 West Virginia Division of Personnel, except as provided in
39 7.2.1.

40 7.2.1. Except as provided in 7.2.2 of this rule, for purposes
41 of determining service credit that may be received by a trooper
42 member for accrued and unused annual leave, a trooper member
43 with up to 480 hours (60 work days) accrued and unused annual
44 leave that was carried forward from 2005 to 2006 may carry
45 forward accrued and unused annual leave from 2006 to 2007 in
46 an amount not to exceed either the amount of accrued and
47 unused annual leave actually carried over from 2005 to 2006 or
48 the amount of accrued and unused annual leave actually
49 remaining to the trooper member at the expiration of calendar
50 year 2006, whichever is lesser. At the end of each calendar year
51 thereafter, the trooper member may carry over the lesser of the
52 amount carried over the previous year or the amount actually
53 remaining to the trooper member at the expiration of calendar
54 year.

55 7.2.2. If the amount of a trooper member's unused annual
56 leave carried over from 2005 to 2006, or from any year to the
57 next thereafter, is less than the amount of unused annual leave
58 permitted to be carried over as provided for by the state of West
59 Virginia for state employees who are covered by the rules of the
60 West Virginia Division of Personnel, the provisions of 7.2.1 of
61 this rule do not apply and the trooper member shall thereafter
62 be governed by the provisions of 7.2 of this rule and for
63 purposes of determining service credit that may be received by
64 a trooper member for accrued and unused annual leave, is
65 permitted to carry over annual leave up to but not exceeding the
66 amounts permitted to be carried over as provided for by the
67 state of West Virginia for state employees who are covered by
68 the rules of the West Virginia Division of Personnel.

69 7.2.3. The provisions of this rule govern the determination
70 of service credit that may be received by a trooper member for
71 accrued and unused annual leave, and may not be construed to
72 supersede any West Virginia State Police policy for the accrual
73 of unused sick and annual leave applicable to contributing
74 trooper members before retirement.”

75 (d) The legislative rule filed in the State Register on the
76 twenty-ninth day of July, two thousand five, authorized under
77 the authority of section one, article ten-d, chapter five of this
78 code, modified by the Consolidated Public Retirement Board to
79 meet the objections of the Legislative Rule-Making Review
80 Committee and refiled in the State Register on the third day of
81 January, two thousand six, relating to the Consolidated Public
82 Retirement Board (West Virginia State Police, 162 CSR 9), is
83 authorized.

84 (e) The legislative rule filed in the State Register on the
85 twenty-ninth day of July, two thousand five, authorized under
86 the authority of section one, article ten-d, chapter five of this
87 code, modified by the Consolidated Public Retirement Board to
88 meet the objections of the Legislative Rule-Making Review
89 Committee and refiled in the State Register on the third day of
90 January, two thousand six, relating to the Consolidated Public
91 Retirement Board (Deputy Sheriff Retirement System, 162 CSR
92 10), is authorized.

§64-2-3. Ethics Commission.

1 (a) The legislative rule filed in the State Register on the
2 twentieth day of July, two thousand five, authorized under the
3 authority of section two, article two, chapter six-b of this code,
4 modified by the Ethics Commission to meet the objections of
5 the Legislative Rule-Making Review Committee and refiled in
6 the State Register on the twentieth day of January, two thousand

7 six, relating to the Ethics Commission (West Virginia Ethics
8 Commission, 158 CSR 1), is authorized.

9 (b) The legislative rule filed in the State Register on the
10 twentieth day of July, two thousand five, authorized under the
11 authority of section two, article two, chapter six-b of this code,
12 relating to the Ethics Commission (Complaints, investigations
13 and hearings, 158 CSR 3), is authorized.

14 (c) The legislative rule filed in the State Register on the
15 twenty-seventh day of July, two thousand five, authorized under
16 the authority of section two, article two, chapter six-b of this
17 code, modified by the Ethics Commission to meet the objec-
18 tions of the Legislative Rule-Making Review Committee and
19 refiled in the State Register on the twentieth day of January,
20 two thousand six, relating to the Ethics Commission (Lobbying,
21 158 CSR 12), is authorized.

22 (d) The legislative rule filed in the State Register on the
23 twentieth day of July, two thousand five, authorized under the
24 authority of section five-a, article two, chapter six-b of this
25 code, relating to the Ethics Commission (code of conduct for
26 administrative law judges, 158 CSR 13), is authorized.

27 (e) The legislative rule filed in the State Register on the
28 twenty-seventh day of July, two thousand five, authorized under
29 the authority of section two, article two, chapter six-b of this
30 code, relating to the Ethics Commission (filing of verified time
31 records, 158 CSR 14), is authorized.

32 (f) The legislative rule filed in the State Register on the
33 twentieth day of July, two thousand five, authorized under the
34 authority of section two, article two, chapter six-b of this code,
35 modified by the Ethics Commission to meet the objections of
36 the Legislative Rule-Making Review Committee and refiled in
37 the State Register on the twentieth day of January, two thousand

38 six, relating to the Ethics Commission (Compliance audits, 158
39 CSR 15), is authorized.

40 (g) The legislative rule filed in the State Register on the
41 twenty-seventh day of July, two thousand five, authorized under
42 the authority of section two, article two, chapter six-b of this
43 code, modified by the Ethics Commission to meet the objec-
44 tions of the Legislative Rule-Making Review Committee and
45 refiled in the State Register on the twentieth day of January,
46 two thousand six, relating to the Ethics Commission (Ethics
47 training requirements for designated public officials, 158 CSR
48 18), is authorized.


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

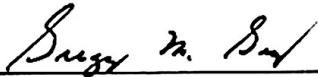

Chairman Senate Committee

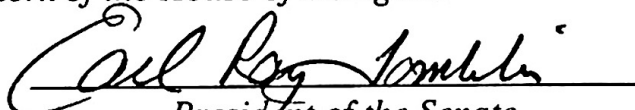

Chairman House Committee

Originating in the House.

In effect from passage.

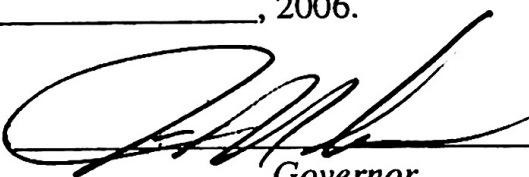

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 4th
day of April, 2006.


Governor

PRESENTED TO THE
GOVERNOR

MAR 29 2006

Time

4:00 pm