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
SECOND ENROLLMENT

COMMITTEE SUBSTITUTE

FOR

H. B. 4172

(BY DELEGATES MAHAN, PALUMBO, CANN, PINO, ARMSHEAD 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.

Under the provisions of article three, chapter twenty-nine-a of the Code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in articles two through eleven, inclusive, of this chapter, subject only to the limitations set forth with respect to each such rule in the section or sections of this chapter authorizing its promulgation. Legislative rules promulgated pursuant to the provisions of articles one through eleven, inclusive, of this chapter in effect at the effective date of this section shall continue in full force and effect until reauthorized in this chapter by legislative enactment or until amended by emergency rule pursuant to the 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.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section forty-two, article three, chapter five-a of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the third day of January, two thousand six, relating to the Department of Administration (Leasing space on behalf of state spending units, 148 CSR 2), is authorized, with the following amendments:
On page one, subsection 3.2, following the word "re-requested" and the comma by striking out the remainder of subsection 3.2;

And,

On page seven, subsection 12.4, by striking out the word "disbar" and inserting in lieu thereof the word "debar".

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

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

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


15.1. If an application for a Design-Build proposal is filed which indicates a public emergency, the Design-Build Board shall take immediate action to determine if the project meets the criteria for a design-build project."
15.2. If the criteria are satisfied, the Board shall meet to approve or disapprove the application. If this situation occurs, the Board shall file a notice of emergency meeting with the Secretary of State in accordance with the Open Governmental Meetings Act.

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

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

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


(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section one, article ten-d, chapter five of this
code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the third day of January, two thousand six, relating to the Consolidated Public Retirement Board (Benefit determination and appeal, 162 CSR 2), is authorized.

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

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

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

"7.2. Limitation on the Accrual of Unused Sick and Annual Leave. – If the West Virginia State Police policy for the accrual of unused sick and annual leave is more generous than that of the State of West Virginia for its state agency employees, trooper members shall receive service credit only for unused
sick and annual leave as provided for by the state of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel, except as provided in 7.2.1.

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

7.2.2. If the amount of a trooper member’s unused annual leave carried over from 2005 to 2006, or from any year to the next thereafter, is less than the amount of unused annual leave permitted to be carried over as provided for by the state of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel, the provisions of 7.2.1 of this rule do not apply and the trooper member shall thereafter be governed by the provisions of 7.2 of this rule and for purposes of determining service credit that may be received by a trooper member for accrued and unused annual leave, is permitted to carry over annual leave up to but not exceeding the amounts permitted to be carried over as provided for by the state of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel.
7.2.3. The provisions of this rule govern the determination of service credit that may be received by a trooper member for accrued and unused annual leave, and may not be construed to supersede any West Virginia State Police policy for the accrual of unused sick and annual leave applicable to contributing trooper members before retirement.”

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

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


(a) The legislative rule filed in the State Register on the twentieth day of July, two thousand five, authorized under the authority of section two, article two, chapter six-b of this code, modified by the Ethics Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of January, two thousand
six, relating to the Ethics Commission (West Virginia Ethics Commission, 158 CSR 1), is authorized.

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

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

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

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

(f) The legislative rule filed in the State Register on the twentieth day of July, two thousand five, authorized under the authority of section two, article two, chapter six-b of this code, modified by the Ethics Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of January, two thousand
(g) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand five, authorized under the authority of section two, article two, chapter six-b of this code, modified by the Ethics Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of January, two thousand six, relating to the Ethics Commission (Ethics training requirements for designated public officials, 158 CSR 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