WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4209

(By Delegates Brown, Miley, Burdiss, Talbott and Overington)

Passed March 8, 2008

In Effect from Passage
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FOR
H. B. 4209

(BY DELEGATES BROWN, MILEY, BURDISS,
TALBOTT AND OVERINGTON)

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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 the leasing of space and acquisition of real property on behalf of state spending units; 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 controlling the Public Land Corporation’s sale, lease, exchange or transfer of lands and minerals; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to general provisions; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to benefit determination and appeal; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers’ Defined Contribution System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers’ Retirement System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Public Employee’s Retirement System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement, retroactive service and loan interest factors; 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; and authorizing the Ethics Commission to promulgate a legislative rule relating to the solicitation and receipt of gifts and charitable contributions by public employees and 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 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.

1 (a) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section eleven, article ten, 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 second day of November, two thousand seven, relating to the Department of Administration (leasing of space and
acquisition of real property on behalf of state spending units, 148 CSR 19), is authorized with the following amendment:

On page four, subdivision 5.3.b, at the beginning of the second line of the subdivision, by striking the words “limited liability company”;

On page four, following subsection 5.3.b. by inserting a new subsection 5.3.c as follows and relettering the remaining subdivisions:

“5.3.c. When the lessor is a limited liability company which is member managed, any member authorized to bind the limited liability company shall execute the lease. When the lessor is a limited liability company which is manager managed, the manager shall execute the lease on behalf of the limited liability company.”;

On page six, subdivision 9.8.a, at the beginning of the second line of the subdivision, by striking the words “limited liability company”; and

On page six, following subdivision 9.8.a, by inserting a new subdivision 9.8.a as follows and relettering the remaining subdivisions:

“9.8.a. When the seller is a limited liability company which is member managed, any member authorized to bind the limited liability company shall execute the contract. When the seller is a limited liability company which is manager managed, the manager shall execute the contract on behalf of the limited liability company.”.

(b) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section four, article three, chapter five-
(c) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand seven, authorized under the authority of section four, article eleven, 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 twenty-first day of December, two thousand seven, relating to the Department of Administration (controlling the Public Land Corporation's sale, lease, exchange or transfer of lands and minerals, 148 CSR 20), is authorized with the following amendment:

On page one, subsection 2.4, following the words "appraisal made by" by striking the remainder of the subsection and inserting in lieu thereof the words "the Real Estate Division using the principles contained in the current Uniform Appraisal Standards for Federal Land Acquisitions published under the auspices of the Interagency Land Acquisition Conference" and a period;

On page one, subsection 2.5, by striking the subsection in its entirety and renumbering the remaining subsections;

On page one, subsection 2.7, following the words "Public Land Corporation", by inserting the words "or corporation";

On page one, subsection 2.8, following the word "be" by striking the word "the";

On page one, subsection 2.8, following the word "appointed" by inserting the words "by the"; and
On page one, subdivision 3.1.a, at the end of the second line of the subdivision, by striking the word “independent”;

On page one, subdivision 3.1.b, on the sixth line of the subdivision, following words “shall be”, by striking the word “available” and inserting in lieu thereof the words “made available by the corporation”.


(a) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand seven, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the Consolidated Public Retirement Board (general provisions, 162 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand seven, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the Consolidated Public Retirement Board (benefit determination and appeal, 162 CSR 2), is authorized with the following:

On page one, subsection 2.3, by striking out the language of the subsection and inserting in lieu thereof the following: “After a member receives either a lump sum distribution of contributions or the initial payment of a retirement benefit from the retirement system in which the member was or is a participant, the member is not eligible to apply for or receive disability retirement benefits.”;

On page one, subsection 3.1, line twelve, following the word “physician”, by inserting the word “licensed”;

On page four, subsection 6.3, in the last sentence of the subsection, by striking out the words “Consolidated Public Retirement”;
And,

On page four, subsection 6.3, in the last line of the subsection, following the word "Board", by inserting the word "staff".

(c) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand seven, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the Consolidated Public Retirement Board (Teachers' Defined Contribution System, 162 CSR 3), is authorized.

(d) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand seven, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the Consolidated Public Retirement Board (Teachers' Retirement System, 162 CSR 4), is authorized with the following amendment:

On page seven, subsection 8.4, line three, following the words "calendar month", by striking out the words "being reported" and inserting in lieu thereof the words "for which the payment is made".

(e) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand seven, 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 second day of November, two thousand seven, relating to the Consolidated Public Retirement Board (Public Employees Retirement System, 162 CSR 5), is authorized.
(f) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand seven, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the Consolidated Public Retirement Board (refund, reinstatement, retroactive service and loan interest factors, 162 CSR 7), is authorized with the following amendment:

On page five, subsection 6.3, line three, following the words "calendar month", by striking out the words "being reported" and inserting in lieu thereof the words "for which the payment is made".

(g) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand seven, 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 fourth day of January, two thousand eight, relating to the Consolidated Public Retirement Board (West Virginia State Police, 162 CSR 9), is authorized.

(h) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand seven, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the Consolidated Public Retirement Board (Deputy Sheriff Retirement System, 162 CSR 10), is authorized.


The legislative rule filed in the state register on the twenty-sixth day of July, two thousand seven, 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 fifteenth day of January, two thousand eight, relating to the Ethics Commission (solicitation and receipt of gifts and charitable contributions by public employees and officials, 158 CSR 7), is authorized with the following amendments:

On page six, section six, by deleting subsections 6.8 and 6.9 in their entirety and inserting in lieu thereof the following:

"6.8. Fund-raising activities based on an exchange of value are not gift solicitations and are permissible."

On page six, section six by renumbering the remaining subsection;

On page six, section seven, subdivision 7.1.a., after the word "months" by adding the following:

"This subsection does not apply to purely law enforcement agencies, officials or employees who do not actually regulate or exercise regulatory control over other persons but merely enforce existing laws and rules as to all applicable persons";

On page six, section seven, subsection 7.2., after the word "agency" by adding the following:

"This subsection does not apply to purely law enforcement agencies, officials or employees who do not actually regulate or exercise regulatory control over other persons but merely enforce existing laws and rules as to all applicable persons";
On page six, section seven, subsection 7.4, by deleting the words "or infer";

On pages six and seven, section seven by deleting subsections 7.5 and 7.6 in their entirety;

On page seven, section eight, subsection 8.3, by deleting the subsection in its entirety and inserting in lieu thereof the following:

"8.3 Law enforcement officers may not solicit for charity while in uniform except as otherwise provided for in this rule, but may show identification upon request."

On page seven, section eight, subsection 8.4, by deleting the comma and the words "employees or members of an association of law enforcement officers" and inserting in lieu thereof the following words "or employees";

On pages seven and eight, section eight, subsection 8.5, by deleting the subsection in its entirety and inserting in lieu thereof the following:

"Law enforcement officers or associations composed of law enforcement officers may not provide signs, stickers, decals or other items of display by individual donors showing whether or not a donation has been made on account of any charitable contribution solicited on behalf of law enforcement officers or their association, unless the signs, stickers, decals or other items of display contain the following disclaimer: "The holder of this item is not entitled to any special treatment."; Provided, That certificates, plaques or other items of display which are not intended for display on motor vehicles may be distributed to donors without the inclusion of the disclaimer; Provided, However, That an association may provide to its members who are currently serving as law
enforcement officers, or who previously served as law
enforcement officers, a sign, sticker, decal or other item of
display, including those items intended for display in a motor
vehicle, which demonstrate that a present or former law
enforcement officer is a member of an association or fraternal
group primarily composed of law enforcement officers,
without the inclusion of the disclaimer.”;

On page eight, section eight, subsection 8.7, by deleting
the subsection in its entirety and inserting in lieu thereof the
following:

“8.7 Law enforcement officers may not pick up a
donation while in uniform except as otherwise provider for in
this rule.”;

And,

On page eight, section eight, subsection 8.8, by deleting
the words “such as a sale of baked goods or a car wash”. 
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 27th day of ___, 2008.

Governor