

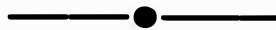
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CLARENCE J. BANTA  
SECRETARY OF STATE

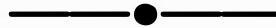
**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2008



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 4209**

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



Passed March 8, 2008

In Effect from Passage

**E N R O L L E D**

FILED

2009 MAR 23 AM 10:18

COMMITTEE SUBSTITUTE

FOR

OFFICE OF THE CLERK  
LEGISLATIVE BRANCH  
DEPARTMENT OF STATE

**H. B. 4209**

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

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[Passed March 8, 2008; 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 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  
2 twenty-nine-a of the Code of West Virginia, the Legislature  
3 expressly authorizes the promulgation of the rules described  
4 in articles two through eleven, inclusive, of this chapter,  
5 subject only to the limitations set forth with respect to each  
6 such rule in the section or sections of this chapter authorizing  
7 its promulgation. Legislative rules promulgated pursuant to  
8 the provisions of articles one through eleven, inclusive, of  
9 this chapter in effect at the effective date of this section shall  
10 continue in full force and effect until reauthorized in this  
11 chapter by legislative enactment or until amended by  
12 emergency rule pursuant to the provisions of article three,  
13 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-seventh day of July, two thousand seven, authorized  
3 under the authority of section eleven, article ten, chapter five-  
4 a, of this code, modified by the Department of  
5 Administration to meet the objections of the legislative rule-  
6 making review committee and refiled in the state register on  
7 the second day of November, two thousand seven, relating to  
8 the Department of Administration (leasing of space and

9 acquisition of real property on behalf of state spending units,  
10 148 CSR 19), is authorized with the following amendment:

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

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

17 “5.3.c. When the lessor is a limited liability company  
18 which is member managed, any member authorized to bind  
19 the limited liability company shall execute the lease. When  
20 the lessor is a limited liability company which is manager  
21 managed, the manager shall execute the lease on behalf of the  
22 limited liability company.”;

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

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

29 “9.8.a. When the seller is a limited liability company  
30 which is member managed, any member authorized to bind  
31 the limited liability company shall execute the contract.  
32 When the seller is a limited liability company which is  
33 manager managed, the manager shall execute the contract on  
34 behalf of the limited liability company.”.

35 (b) The legislative rule filed in the state register on the  
36 twenty-seventh day of July, two thousand seven, authorized  
37 under the authority of section four, article three, chapter five-

38 a, of this code, relating to the Department of Administration  
39 (leasing space on behalf of state spending units, 148 CSR 2),  
40 is authorized.

41 (c) The legislative rule filed in the state register on the  
42 twenty-seventh day of July, two thousand seven, authorized  
43 under the authority of section four, article eleven, chapter  
44 five-a, of this code, modified by the Department of  
45 Administration to meet the objections of the legislative rule-  
46 making review committee and refiled in the state register on  
47 the twenty-first day of December, two thousand seven,  
48 relating to the Department of Administration (controlling the  
49 Public Land Corporation's sale, lease, exchange or transfer  
50 of lands and minerals, 148 CSR 20), is authorized with the  
51 following amendment:

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

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

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

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

65 On page one, subsection 2.8, following the word  
66 "appointed" by inserting the words "by the"; and

67 On page one, subdivision 3.1.a, at the end of the second  
68 line of the subdivision, by striking the word “independent”;

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

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

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

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

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

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

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

24 And,

25 On page four, subsection 6.3, in the last line of the  
26 subsection, following the word “Board”, by inserting the  
27 word “staff”.

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

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

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

44 (e) The legislative rule filed in the state register on the  
45 twenty-fourth day of July, two thousand seven, authorized  
46 under the authority of section one, article ten-d, chapter five,  
47 of this code, modified by the Consolidated Public Retirement  
48 Board to meet the objections of the legislative rule-making  
49 review committee and refiled in the state register on the  
50 second day of November, two thousand seven, relating to the  
51 Consolidated Public Retirement Board (Public Employees  
52 Retirement System, 162 CSR 5), is authorized.



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

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

64 (g) The legislative rule filed in the state register on the  
65 twenty-fourth day of July, two thousand seven, authorized  
66 under the authority of section one, article ten-d, chapter five,  
67 of this code, modified by the Consolidated Public Retirement  
68 Board to meet the objections of the legislative rule-making  
69 review committee and refiled in the state register on the  
70 fourth day of January, two thousand eight, relating to the  
71 Consolidated Public Retirement Board (West Virginia State  
72 Police, 162 CSR 9), is authorized.

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

### **§64-9-3. Ethics Commission.**

1 The legislative rule filed in the state register on the  
2 twenty-sixth day of July, two thousand seven, authorized  
3 under the authority of section two, article two, chapter six-b,

4 of this code, modified by the Ethics Commission to meet the  
5 objections of the legislative rule-making review committee  
6 and refiled in the state register on the fifteenth day of  
7 January, two thousand eight, relating to the Ethics  
8 Commission (solicitation and receipt of gifts and charitable  
9 contributions by public employees and officials, 158 CSR 7),  
10 is authorized with the following amendments:

11 On page six, section six, by deleting subsections 6.8 and  
12 6.9 in their entirety and inserting in lieu thereof the  
13 following:

14 “6.8. Fund-raising activities based on an exchange of  
15 value are not gift solicitations and are permissible.”

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

18 On page six, section seven, subdivision 7.1 .a., after the  
19 word “months” by adding the following:

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

25 On page six, section seven, subsection 7.2., after the word  
26 “agency” by adding the following:

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

32 On page six, section seven, subsection 7.4, by deleting  
33 the words “or infer”;

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

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

39 “8.3 Law enforcement officers may not solicit for charity  
40 while in uniform except as otherwise provided for in this  
41 rule, but may show identification upon request.”;

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

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

49 “Law enforcement officers or associations composed of  
50 law enforcement officers may not provide signs, stickers,  
51 decals or other items of display by individual donors showing  
52 whether or not a donation has been made on account of any  
53 charitable contribution solicited on behalf of law enforcement  
54 officers or their association, unless the signs, stickers, decals  
55 or other items of display contain the following disclaimer:  
56 ‘The holder of this item is not entitled to any special  
57 treatment.’; *Provided*, That certificates, plaques or other  
58 items of display which are not intended for display on motor  
59 vehicles may be distributed to donors without the inclusion  
60 of the disclaimer; *Provided, However*, That an association  
61 may provide to its members who are currently serving as law

62 enforcement officers, or who previously served as law  
63 enforcement officers, a sign, sticker, decal or other item of  
64 display, including those items intended for display in a motor  
65 vehicle, which demonstrate that a present or former law  
66 enforcement officer is a member of an association or fraternal  
67 group primarily composed of law enforcement officers,  
68 without the inclusion of the disclaimer.”;

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

72 “8.7 Law enforcement officers may not pick up a  
73 donation while in uniform except as otherwise provided for in  
74 this rule.”;

75 And,

76 On page eight, section eight, subsection 8.8, by deleting  
77 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

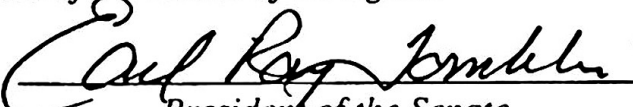
  
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Chairman House Committee

Originating in the House.

In effect from passage.

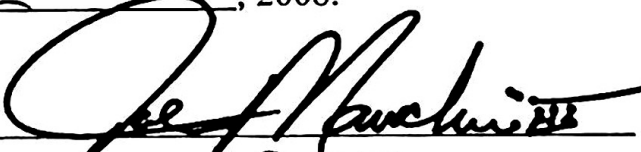
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 27<sup>th</sup>  
day of March, 2008.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 20 2008

Time 2:10 pm