WEST VIRGINIA CODE CHAPTER 29a ARTICLE 3

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§29A-3-1. Rules to be promulgated only in accordance with this article.

In addition to other rule-making requirements imposed by law and except to the extent specifically exempted by the provisions of this chapter or other applicable law, and except as provided for in article three-a of this chapter, every rule and regulation (including any amendment of or rule to repeal any other rule) shall be promulgated by an agency only in accordance with this article and shall be and remain effective only to the extent that it has been or is promulgated in accordance with this article.

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§29A-3-1a. Filing proposed amendments to an existing rule; and repealing an existing rule.

(a) An agency shall file all sections of the proposed rule when proposing an amendment to an existing rule. The proposed rule shall be accompanied by note of explanation as to the effect of the amendment and its relation to the existing rules.

(b) An agency proposing to repeal a rule, shall file the rule in its entirety with the provisions of the rule struck through. An agency may not repeal a rule by reference in another rule.

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§29A-3-1b. Rules of the tax department.

Notwithstanding the provisions of section eight, article two of this chapter, the Tax Commissioner may reproduce the same in his state tax bulletin and may, upon request, distribute copies of the proposed or emergency rule after such proposed or emergency rule has been filed in the state register and may charge a reasonable fee in an amount set to recover his cost of duplicating and mailing the same. The moneys so received shall be deposited in the treasury to the credit of the Tax Commissioner's account for printing, office supplies or postage.

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§29A-3-2. Limitations on authority to exercise rule-making power.

(a) Except when, and to the extent, that this chapter or any other provision of law now or hereafter made expressly exempts an agency, or a particular grant of the rule-making power, from the provisions of this article, every grant of rule-making authority to an executive or administrative officer, office or agency, heretofore provided, shall be construed and applied to be effective only:

(1) If heretofore lawfully exercised in accordance with the prior provisions of this chapter and the resulting rule has not been revoked or invalidated by the provisions hereof or by the agency, or

(2) If exercised in accordance with the provisions hereof.

(b) No executive or administrative agency shall be deemed to have power and authority to promulgate a legislative rule without compliance with this article unless: (1) The provision of this code, heretofore or hereafter enacted, granting such power and authority, expressly exempts its exercise from legislative rule-making review prior to promulgation or (2) the grant of such power and authority is exempted from the application of this chapter by the express provisions of this chapter. To the extent any such grant of power and authority, not so exempt, shall be deemed to exceed the limits and provisions of this article, such power and authority to promulgate legislative rules is hereby revoked.

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§29A-3-3. Rules of procedure required.

In addition to other rule-making requirements imposed by law:

(a) Each agency shall adopt procedural rules governing the formal and informal procedures prescribed or authorized by this chapter. Procedural rules shall include rules of practice before the agency, together with forms and instructions.

(b) To assist interested persons dealing with it, each agency, shall so far as deemed practicable, supplement its rules or regulations with descriptive statements of its procedures.

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§29A-3-4. Filing of proposed legislative exempt rules, procedural rules and interpretive rules.

(a) When an agency proposes a legislative exempt rule, procedural rule or an interpretive rule, the agency shall file in the State Register a notice of its action, including the text of the rule as proposed.

(b) All proposed rules filed under subsection (a) of this section shall have a fiscal note attached itemizing the cost of implementing the rules as they relate to this state and to persons affected by the rules. The fiscal note shall include all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents. The objectives of the rule shall be clearly and separately stated in the fiscal note by the agency issuing the proposed rules. A legislative exempt, procedural or interpretive rule is not void or voidable by virtue of noncompliance with this subsection.

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§29A-3-5. Notice of proposed rulemaking.

When an agency proposes to promulgate a rule other than an emergency rule, it shall file with the Secretary of State, for publication in the State Register, a notice of its action, including therein any request for the submission of evidence to be presented on any factual determinations or inquiries required by law to promulgate such rule. At the time of filing the notice of its action, the agency shall also file with the Secretary of State a copy of the full text of the rule proposed and a fiscal note as defined in subsection (b), section four of this article. If the agency is considering alternative draft proposals, it may also file with the Secretary of State the full text of such draft proposals.

The notice shall fix a date, time and place for the receipt of public comment in the form of oral statements, written statements and documents bearing upon any findings and determinations which are a condition precedent to the final approval by the agency of the proposed rule and shall contain a general description of the issues to be decided. If no specific findings and determinations are required as a condition precedent to the final approval by the agency of the approved rule, the notice shall fix a date, time and place for the receipt of general public comment on the proposed rule. To comply with the public comment provisions of this section, the agency may hold a public hearing or schedule a public comment period for the receipt of written statements and documents, or both.

If findings and determinations are a condition precedent to the promulgation of such rule, then an opportunity for general public comment on the merits of the rule shall be afforded after such findings and determinations are made. In such event, notice of the hearing or of the period for receiving public comment on the proposed rule shall be attached to and filed as a part of the findings and determinations of the agency when filed in the State Register.

In any hearing for public comment on the merits of the rule, the agency may limit presentations to written material. The time, date and place fixed in the notice shall constitute the last opportunity to submit any written material relevant to any hearing, all of which may be earlier submitted by filing with the agency. After the public hearing or the close of the public comment period, whichever is later, the agency shall not permit the filing or receipt of, nor shall it consider, any attempted ex parte communications directed to it in the form of additional comment prior to the submission of its final agency-approved rule to the Legislative Rule-Making Review Committee pursuant to the provisions of section eleven of this article.

The agency may also, at its expense, cause to be published as a Class I legal publication in every county of the state any notice required by this section.

Any citizen or other interested party may appear and be heard at such hearings as are required by this section.

Prior to the submission of any agency-approved proposed rule to the Secretary of State, the agency shall respond to public comments received during the rule-making process and

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explain the reasoning for comments being incorporated or not incorporated into the rule. Failure to adequately respond to public comments may be grounds for rejection of the proposed rule.

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§29A-3-6. Filing findings and determinations for rules in state register; evidence deemed public record.

(a) Incident to fixing a date for public comment on a proposed rule, the agency shall promulgate the findings and determinations required as a condition precedent thereto, and state fully and succinctly the reasons therefor and file such findings and determinations in the state register. If the agency amends the proposed rule as a result of the evidence or comment presented pursuant to section five, such amendment shall be filed with a description of any changes and statement listed for the amendment.

(b) The statement of reasons and a transcript of all evidence and public comment received pursuant to notice are public records and shall be carefully preserved by the agency and be open for public inspection and copying for a period of not less than five years from the date of the hearing.

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§29A-3-7. Notice of hearings.

Notices of hearings required by sections five and six of this article shall be filed in the state register not less than thirty nor more than sixty days before the date of such hearing or the last day specified therein for receiving written material. Any hearing may be continued from time to time and place to place by the agency which shall have the effect of extending the last day for receipt of evidence or public comment. Notice of such continuance shall be promptly filed thereafter in the state register.

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§29A-3-8. Adoption of legislative exempt, procedural, and interpretive rules.

(a) An agency shall consider a legislative exempt, procedural, and interpretive rule for adoption not later than six months after the close of public comment and file a notice of withdrawal or adoption in the State Register within that period. An agency's failure to file the notice constitutes withdrawal and the Secretary of State shall note the failure in the State Register immediately upon the expiration of the six-month period.

(b) A legislative exempt, procedural, or interpretive rule may be amended by the agency prior to final adoption without further hearing or public comment. The amendment may not change the main purpose of the rule. If the fiscal implications have changed since the rule was proposed, the agency shall attach a new fiscal note to the notice of filing. Upon adoption of the rule, including any amendment, the agency shall file the text of the adopted legislative exempt, procedural, or interpretive rule with its notice of adoption in the State Register and the rule is effective on the date specified in the rule or 30 days after the filing, whichever is later or as specified in this code.

(c) An agency may repeal a legislative exempt, procedural, or interpretive rule by filing a notice of repeal with the Secretary of State.

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§29A-3-9. Proposal of legislative rules.

When an agency proposes a legislative rule, other than an emergency rule, it shall be deemed to be applying to the Legislature for permission, to be granted by law, to promulgate such rule as approved by the agency for submission to the Legislature or as amended and authorized by the Legislature by law.

An agency proposing a legislative rule, other than an emergency rule, after filing the notice of proposed rulemaking required by the provisions of section five of this article, shall then proceed as in the case of a procedural and interpretive rule to the point of, but not including, final adoption. In lieu of final adoption, the agency shall finally approve the proposed rule, including any amendments, for submission to the Legislature and file such notice of approval in the state register and with the legislative rule-making review committee, within ninety days after the public hearing was held or within ninety days after the end of the public comment period required under section five of this article: Provided, That upon receipt of a written request from an agency, setting forth valid reasons why the agency is unable to file the agency approved rule within the ninety-day time period, the legislative rule-making review committee may grant the agency an extension of time to file the agency approved rule.

Such final agency approval of the rule under this section is deemed to be approval for submission to the Legislature only and does not give any force and effect to the proposed rule. The rule shall have full force and effect only when authority for promulgation of the rule is granted by an act of the Legislature and the rule is promulgated pursuant to the provisions of section thirteen of this article.

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§29A-3-10. Creation of a legislative rule-making review committee.

(a) There is hereby created a joint committee of the Legislature, known as the legislative rule-making review committee, to review all legislative rules of the several agencies and such other rules as the committee deems appropriate. The committee shall be composed of six members of the Senate, appointed by the President of the Senate, and six members of the House of Delegates, appointed by the Speaker of the House of Delegates. In addition, the President of the Senate and the Speaker of the House of Delegates shall be ex officio nonvoting members of the committee and shall designate the cochairmen. Not more than four of the voting members of the committee from each house shall be members of the same political party: Provided, That in the event the membership of a political party is less than fifteen percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than fifteen percent membership may be one from that house. The members shall serve until their successors shall have been appointed as heretofore provided. Members of the committee shall receive such compensation and expenses as provided in article two-a, chapter four of this code. Such expenses and all other expenses, including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from an appropriation to be made expressly for the legislative rule-making review committee, but if no such appropriation be made, such expenses shall be paid from the appropriation under "Account No. 103 for Joint Expenses," but no expense of any kind whatever payable under said Account No. 103 for joint expenses shall be incurred unless first approved by the Joint Committee on Government and Finance. The committee shall meet at any time, both during sessions of the Legislature and in the interim.

(b) The committee may adopt such rules of procedure as it considers necessary for the submission, presentation and consideration of rules.

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§29A-3-11. Submission of legislative rules to the Legislative Rule-Making Review Committee.

(a) When an agency finally approves a proposed legislative rule for submission to the Legislature, pursuant to the provisions of section nine of this article, the secretary of the executive department which administers the agency pursuant to the provisions of §5F-2-1 *et seq.*, of this code shall submit to the Legislative Rule-Making Review Committee at its offices or at a regular meeting of such committee a number of copies in electronic or paper form as requested by the committee, which shall include the following information:

(1) The full text of the legislative rule as finally approved by the agency, with new language underlined and with language to be deleted from any existing rule stricken through but clearly legible;

(2) A brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal;

(3) A statement of the circumstances which require the rule;

(4) A detailed description of the rule's purpose and all proposed changes to the rule;

(5) A fiscal note containing all information included in a fiscal note for either house of the Legislature, a statement of the economic impact of the rule on the state or its residents, and, if there are any adjustments to any fees or other special revenue included in the rule, a fiscal note shall include, for any fund affected by adjustments to fees or other special revenue, the fund name, the fund number, and the past five years of actual revenues and expenses of the fund;

(6) One copy of any relevant federal statutes or regulations;

(7) An explanation of the statutory authority for the rule, including a detailed summary of the effect of each provision of the rule with citation to the specific statute which empowers the agency to enact such provision;

(8) All public comments for each proposed rule. An agency may consolidate substantially similar comments in the interest of efficiency;

(9) All written responses by the agency to the substance of any public comments received, including whether the agency chose to modify the proposed rule in response to the comments or, if no changes were made, the rationale for declining to incorporate or make any suggested changes responding to the public comments. An agency may consolidate substantially similar responses in the interest of efficiency: *Provided*, That the agency's response shall address each issue and concern expressed by all comments received; and

(10) Any other information which the committee may request or which may be required by law. If the agency is an agency, board or commission which is not administered by an

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executive department as provided for in §5F-2-1 *et seq.*, of this code, the agency shall submit the final agency-approved rule as required by this subsection.

(b) The committee shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:

(1) Whether the agency has specific statutory authority to propose the rule and has not exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

(3) Whether the proposed legislative rule overlaps, duplicates or conflicts with any other provision of this code, any other rule adopted by the same or a different agency, with federal statutes and rules, or with local laws and rules;

(4) Whether federal funding will be impacted by its expiration and explanation as to such;

(5) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the rule was proposed for promulgation;

(6) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(7) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(8) Whether the proposed legislative rule was proposed for promulgation in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

(c) After reviewing the legislative rule, the committee shall recommend that the Legislature:

(1) Authorize the promulgation of the legislative rule;

(2) Authorize the promulgation of part of the legislative rule;

(3) Authorize the promulgation of the legislative rule with certain amendments;

(4) Recommend that the proposed rule be withdrawn; or

(5) Reject the proposed rule.

The committee shall file notice of its action in the State Register and with the agency proposing the rule: *Provided*, That when the committee makes the recommendations of subdivision (2), (3), (4), or (5) of this subsection, the notice shall contain a statement of the reasons for such recommendation.

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(d) When the committee recommends that a rule be authorized, in whole or in part, by the Legislature, the committee shall instruct its staff or the office of Legislative Services to draft a bill authorizing the promulgation of all or part of the legislative rule and incorporating such amendments as the committee desires. If the committee recommends that the rule not be authorized, it shall include in its report a draft of a bill authorizing promulgation of the rule together with a recommendation. Any draft bill prepared under this section shall contain a legislative finding that the rule is within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret and shall be available for any member of the Legislature to introduce to the Legislature.

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§29A-3-12. Submission of legislative rules to Legislature.

(a) No later than 40 days before the sixtieth day of each regular session of the Legislature, the cochairmen of the Legislative Rule-Making Review Committee shall submit to the clerk of the respective houses of the Legislature copies of all proposed legislative rules which have been submitted to, and considered by, the committee pursuant to the provisions of §29A-3-11 of this code and which have not been previously submitted to the Legislature for study, together with the recommendations of the committee with respect to the rules, a statement of the reasons for any recommendation that a rule be amended or withdrawn, and a statement that a bill authorizing the legislative rule has been drafted by the staff of the committee or by Legislative Services pursuant to §29A-3-11 of this code. The cochairmen of the committee may also submit the rules at the direction of the committee at any time before or during a special session in which consideration of the rules may be appropriate. Beginning in 2019, the committee may withhold from its report any proposed legislative rule which was submitted to the committee after the last Friday in July and beginning in 2020, and every four years thereafter, by the last Friday in August. The clerk of each house shall submit the report to his or her house at the commencement of the next session.

All bills introduced authorizing the promulgation of a rule may be referred by the President of the Senate and by the Speaker of the House of Delegates to appropriate standing committees of the respective houses for further consideration or the matters may be otherwise dealt with as each house or its rules provide. The Legislature may, by act, authorize the agency to adopt a legislative rule incorporating the entire rule or may authorize the agency to adopt a rule with any amendments adopted by the Legislature. The clerk of the house originating the act shall immediately file a copy of any bill of authorization enacted with the Secretary of State and with the agency proposing the rule and the clerk of each house may prepare and file a synopsis of legislative action during any session on any proposed rule submitted to the house during the session for which authority to promulgate was not by law provided during the session. In acting upon the separate bills authorizing the promulgation of rules, the Legislature may, by amendment or substitution, combine the separate bills of authorization insofar as the various rules authorized in the amendment or substitution are proposed by agencies which are placed under the administration of one of the single, separate executive departments identified under the provisions of §5F-1-2 of this code or the Legislature may combine the separate bills of authorization by agency or agencies within an executive department. In the case of rules proposed for promulgation by an agency which is not administered by an executive department pursuant to the provisions of §5F-1-2 of this code, the separate bills of authorization for the proposed rules of that agency may, by amendment or substitution, be combined. These provisions relating to combining separate bills of authorization according to department or agency are not intended to restrict the permissible breadth of bills of authorization and do not preclude the Legislature from otherwise combining various bills of authorization which have a unity of subject matter. Any number of provisions may be included in a bill of authorization, but the single object of the bill shall be to authorize the promulgation of proposed legislative rules.

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(b) If the Legislature during its regular session disapproves all or part of any legislative rule which was submitted to it by the Legislative Rule-Making Review Committee during the session, an agency may not thereafter issue any rule or directive or take other action to implement the rule or part of the rule unless and until otherwise authorized to do so, except that the agency may resubmit the same or similar proposed rule to the Legislative Rule-Making Review Committee in accordance with the provisions of §29A-3-11 of this code.

(c) Nothing shall be construed to prevent the Legislature by law from authorizing, or authorizing and directing, an agency to promulgate legislative rules not proposed by the agency or upon which some procedure specified in this chapter is not yet complete.

(d) Whenever the Legislature is convened by proclamation of the Governor, upon his or her own initiative or upon application of the members of the Legislature, or whenever a regular session of the Legislature is extended or convened by the vote or petition of its members, the Legislature may by act enacted during the extraordinary or extended session authorize, in whole or in part, any legislative rule, whether submitted to the Legislative Rule-Making Review Committee or not, if legislative action on the rule during the session is a lawful order of business.

(e) As a part of any act that amends chapter 64 of this code, authorizing the promulgation of a proposed legislative rule or rules, the Legislature may also provide, by general language or with specificity, for the disapproval of rules not approved or acted upon by the Legislature.

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§29A-3-13. Adoption of legislative rules; effective date.

(a) Except as the Legislature may by law otherwise provide, within sixty days after the effective date of an act authorizing promulgation of a legislative rule, the agency shall promulgate the rule in conformity with the provisions of law authorizing and directing the promulgation of the rule. In the case of a rule proposed by an agency which is administered by an executive department pursuant to the provisions of article two, chapter five-f of this code, the secretary of the department shall promulgate the rule as authorized by the Legislature. In the case of an agency which is not subject to administration by the secretary of an executive department, the agency which proposed the rule for promulgation shall promulgate the rule as authorized by the Legislature.

(b) A legislative rule authorized by the Legislature is effective upon filing in the State Register, or on the effective date fixed by the authorizing act or, if none is fixed by law, a later date not to exceed ninety days, as fixed by the agency.

(c) The Secretary of State shall note in the State Register the effective date of an authorized and promulgated legislative rule and shall promptly publish the duly promulgated rule in the Code of State Rules maintained by his or her office.

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§29A-3-14. Withdrawal or modification of proposed rules.

(a) Any legislative rule proposed by an agency may be withdrawn by the agency any time before passage of a law authorizing or authorizing and directing its promulgation, but no such action shall be construed to affect the validity, force or effect of a law enacted authorizing or authorizing and directing the promulgation of an authorized legislative rule or exercising compliance with such law. The agency shall file a notice of any such action in the state register.

(b) At any time before a proposed legislative rule has been submitted by the legislative rule-making review committee to the Legislature pursuant to the provisions of section twelve of this article, the agency may modify the proposed rule to meet the objections of the committee. The agency shall file in the state register a notice of its modifying action including a copy of the modified rule, but shall not be required to comply with any provisions of this article requiring opportunity for public comment or taking of evidence with respect to such modification. If a legislative rule has been withdrawn, modified and then resubmitted to such committee, the rule shall be considered to have been submitted to such committee on the date of such resubmission.

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§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

(a) Any agency with authority to propose legislative rules may, without hearing, find that an emergency exists requiring that an emergency rule be promulgated and promulgate the emergency rule in accordance with this section. The agency shall file the emergency rule, together with a statement of the facts and circumstances constituting the emergency and a listing of state agencies, professions, businesses and other identifiable interest groups affected by the proposed emergency rule, with the Secretary of State, who shall publish a notice of the filing in the State Register. However, an agency's good faith failure to list all known state agencies, professions, businesses and other identifiable interest groups is not a basis for disapproval of the emergency rule or does not subject the emergency rule to judicial review. The emergency rule becomes effective upon the approval of the Secretary of State in accordance with section fifteen-a of this article or upon the approval of the Attorney General in accordance with section fifteen-b of this article or upon the forty-second day following the filing, whichever occurs first. The emergency rule may adopt, amend or repeal any legislative rule, but the agency shall state, with particularity, the circumstances constituting the emergency requiring the adoption, amendment or repeal, and the emergency rule is subject to de novo review by any court having original jurisdiction of an action challenging its validity. An agency shall immediately file a copy of the emergency rule and the required statement with the Secretary of State and one copy with the Legislative Rule-Making Review Committee.

An emergency rule is effective for not more than fifteen months and expires earlier if any of the following occurs:

(1) The Secretary of State, acting under the authority provided in section fifteen-a of this article, or the Attorney General, acting under the authority provided in section fifteen-b of this article, disapproves the emergency rule because: (A) The emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation of the rule; (B) an emergency does not exist justifying the promulgation of the emergency rule; or (C) the emergency rule was not promulgated in compliance with the provisions of this section. An emergency rule may not be disapproved pursuant to the authority granted by clauses (A) or (B) of this subdivision on the basis that the Secretary of State or the Attorney General disagrees with the underlying public policy established by the Legislature in enacting the authorizing legislation. An emergency rule which would otherwise be approved as being necessary to comply with a time limitation established by this code or by a federal statute or regulation may not be disapproved pursuant to the authority granted by paragraphs (A) or (B) of this subdivision on the basis that the agency has failed to file the emergency rule prior to the date fixed by the time limitation. When the authorizing statute specifically directs an agency to promulgate an emergency rule, or specifically finds that an emergency exists and directs the promulgation of an emergency rule, the emergency rule may not be disapproved pursuant to the authority granted by paragraph (B) of this subdivision. An emergency rule may not be disapproved on the basis that the Legislature has not specifically directed an agency to promulgate the emergency rule, or has not specifically found that an emergency exists and directed the promulgation of

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an emergency rule;

(2) The agency has not previously filed and fails to file a notice of public hearing on the proposed rule within thirty days of the date the proposed rule was filed as an emergency rule, in which case the emergency rule expires on the thirty-first day;

(3) The agency has not previously filed and fails to file the proposed rule as approved by the agency following the close of the public comment period with the Legislative Rule-Making Review Committee within ninety days of the date the proposed rule was filed as an emergency rule, in which case the emergency rule expires on the ninety-first day;

(4) The Legislature has authorized or directed promulgation of an authorized legislative rule dealing with substantially the same subject matter since the emergency rule was first promulgated, in which case the emergency rule expires on the date the authorized rule is made effective; or

(5) The Legislature has, by law, disapproved the emergency rule, in which case the emergency rule expires on the date the law becomes effective.

(b) Any amendment to an emergency rule made by the agency shall be filed in the State Register and does not constitute a new emergency rule for the purpose of acquiring additional time or avoiding the expiration dates in subdivision (2), (3), (4) or (5), subsection (a) of this section: Provided, That the emergency amendment becomes effective upon the approval of the Secretary of State in accordance with section fifteen-a of this article or upon approval of the Attorney General in accordance with section fifteen-b of this article or upon the forty-second day following the filing, whichever occurs first.

(c) Once an emergency rule expires due to the conclusion of fifteen months or due to the effect of subdivision (2), (3), (4) or (5), subsection (a) of this section, the agency may not refile the same or similar rule as an emergency rule.

(d) An agency may not use the provisions of this section to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review and approval of proposed rules. Any emergency rule promulgated for that purpose may be contested in a judicial proceeding before a court of competent jurisdiction.

(e) The Legislative Rule-Making Review Committee may review any emergency rule to determine: (1) Whether the emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing its promulgation; (2) whether there exists an emergency justifying the promulgation of the emergency rule; and (3) whether the emergency rule was promulgated in compliance with the requirements and prohibitions contained in this section. The committee may recommend to the agency, the Legislature or the Secretary of State any action it determines appropriate.

(f) For the purposes of this section, an emergency exists when the promulgation of an

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emergency rule is necessary: (1) For the immediate preservation of the public peace, health, safety or welfare; (2) to comply with a time limitation established by this code or by a federal statute or regulation; or (3) to prevent substantial harm to the public interest.

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§29A-3-15a. Disapproval of emergency rules and amendments to emergency rules by the Secretary of State; judicial review.

(a) Upon the filing of an emergency rule or filing of an amendment to an emergency rule by an agency, under the provisions of section fifteen of this article, by any agency, except for the Secretary of State, the Secretary of State shall review such rule or such amendment and, within forty-two days of such filing, shall issue a decision as to whether or not such emergency rule or such amendment to an emergency rule should be disapproved. An emergency rule filed by the Secretary of State shall be reviewed by the Attorney General as provided for in section fifteen-b of this article.

(b) The Secretary of State shall disapprove an emergency rule or an amendment to an emergency rule if he determines:

(1) That the emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation thereof; or

(2) That an emergency does not exist justifying the promulgation of the emergency rule or the filing of an amendment to the emergency rule; or

(3) That the emergency rule or an amendment to the emergency rule was not promulgated in compliance with the provisions of section fifteen of this article.

(c) If the Secretary of State determines, based upon the contents of the rule or the supporting information filed by the agency, that the emergency rule should be disapproved, he may disapprove such rule without further investigation, notice or hearing. If, however, the Secretary of State concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the emergency rule should be disapproved, he may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(d) If the Secretary of State determines, based upon the contents of the amendment to an emergency rule or the supporting information filed by the agency, that the amendment to the emergency rule should be disapproved, he may disapprove such amendment without further investigation, notice or hearing. If, however, the Secretary of State concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the amendment should be disapproved, he may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(e) The determination of the Secretary of State shall be reviewable by the Supreme Court of

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Appeals under its original jurisdiction, based upon a petition for a writ of mandamus, prohibition or certiorari, as appropriate. Such proceeding may be instituted by:

(1) The agency which promulgated the emergency rule;

(2) A member of the Legislature; or

(3) Any person whose personal property interests will be significantly affected by the approval or disapproval of the emergency rule by the Secretary of State.

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§29A-3-15b. Disapproval of emergency rules and amendments to emergency rules by the Attorney General; judicial review.

(a) Upon the filing of an emergency rule or filing of an amendment to an emergency rule by the Secretary of State under the provisions of section fifteen of this article, the Attorney General shall review such rule or such amendment and, within forty-two days of such filing, shall issue a decision as to whether or not such emergency rule or such amendment to an emergency rule should be disapproved.

(b) The Attorney General shall disapprove an emergency rule or an amendment to an emergency rule if he determines:

(1) That the emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation thereof; or

(2) That an emergency does not exist justifying the promulgation of the emergency rule or the filing of an amendment to the emergency rule; or

(3) That the emergency rule or an amendment to the emergency rule was not promulgated in compliance with the provisions of section fifteen of this article.

(c) If the Attorney General determines, based upon the contents of the rule or the supporting information filed by the Secretary of State, that the emergency rule should be disapproved, he may disapprove such rule without further investigation, notice or hearing. If, however, the Attorney General concludes that the information submitted by the Secretary of State is insufficient to allow a proper determination to be made as to whether the emergency rule should be disapproved, he may make further investigation, including, but not limited to, requiring the Secretary of State or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(d) If the Attorney General determines, based upon the contents of the amendment to an emergency rule or the supporting information filed by the agency, that the amendment to the emergency rule should be disapproved, he may disapprove such amendment without further investigation, notice or hearing. If, however, the Attorney General concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the amendment should be disapproved, he may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(e) The determination of the Attorney General shall be reviewable by the Supreme Court of Appeals under its original jurisdiction, based upon a petition for a writ of mandamus, prohibition or certiorari, as appropriate. Such proceeding may be instituted by:

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(1) The Secretary of State;

(2) A member of the Legislature; or

(3) Any person whose personal property interests will be significantly affected by the approval or disapproval of the emergency rule by the Attorney General.

WV Legislature

§29A-3-16. Legislative review of procedural rules, interpretive legislative rules.

(a) The Legislative Rule-Making Review Committee may, with the assistance of the Legislative Auditor's Office, review any procedural rule, interpretive rule or existing legislative rule to determine if the rule is achieving its purpose, and based on its determination, if the rule should be continued, amended or repealed.

(b) Following the review, the Legislative Rule-Making Committee shall make recommendations to the agency or board, which promulgated the rule, and to the Joint Committee on Government and Finance.

WV Legislature

§29A-3-17. Prior rules.

Any rule lawfully promulgated prior to the effective date of this chapter shall remain in full force and effect until:

(1) Such rule is expressly made ineffective by the provisions of this chapter, or

(2) Such rule should expire by reason of failure to refile the same as provided in section five of article two, or expires pursuant to its own terms and provisions lawfully made before the effective date of this section, or

(3) Such rule is repealed by the lawful act of the agency, in conformity with this chapter, or

(4) Such rule is invalidated by an act of the Legislature or the force and effect of another law.

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§29A-3-18. Severability of legislative rules.

Unless there is a provision in a legislative rule specifying that the provisions thereof shall not be severable, the provisions of every legislative rule, whether enacted before or subsequent to the effective date of this section, shall be severable so that if any provision of any rule section or amendment thereto is held to be unconstitutional or void, the remaining provisions of the rule shall remain valid, unless the court finds the valid provisions are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that the court cannot presume the Legislature would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent: Provided, That if any legislative rule has its own severability clause, then that severability clause shall govern and control with respect to that section, in lieu of the provisions of this section. The provisions of this section shall be fully applicable to all future amendments to legislative rules, with like effect as if the provisions of this section were set forth in extenso and every such amendment were reenacted as a part thereof, unless such amendment to the legislative rule contains its own severability clause.

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§29A-3-19. Sunset provision in rules.

(a) Any new legislative rule promulgated pursuant to this article after April 1, 2016, shall include a sunset provision terminating the rule on August 1 of the fifth year following its promulgation: *Provided*, That the rule may be renewed by the Legislature pursuant to the rule-making procedures and authority in this article: Provided, however, That if a different sunset or termination provision exists in the statute under which the proposed rule is promulgated, the enabling statute's provision shall control: *Provided further*, That this subsection shall not apply to rules promulgated by the Department of Environmental Protection or emergency rules promulgated pursuant to §29A-3-15 of this code.

(b) Any legislative rule existing as of April 1, 2016, that is thereafter amended pursuant to this article, shall include a sunset provision terminating the rule on August 1 of the applicable year as part of the amendment: *Provided*, That the rule may be renewed by the Legislature pursuant to the rule-making procedures and authority in this article: *Provided, however*, That if a different sunset or termination provision exists in the statute under which the legislative rule is promulgated, the enabling statute's provision controls: *Provided further*, That this subsection shall not apply to legislative rules promulgated by the Department of Environmental Protection or emergency rules promulgated pursuant to §29A-3-15 of this code.

(c) The existence of a sunset provision terminating a legislative rule shall not preclude the repeal of the legislative rule by the Legislature prior to its termination.

(d) As part of its rule review under this article, the Legislative Rule-Making Review Committee may establish a procedure for timely review of a legislative rule prior to its termination for those agencies that have affirmatively sought renewal prior to expiration. The procedure may include a requirement that the agency show cause as to why the terminating legislative rule is required and necessary to be continued for another term of years.

(e) The Secretary of State shall provide notice to the promulgating agency and the Legislative Rule-Making Review Committee at least 18 months prior to every legislative rule's termination date. The promulgating agency has 60 days from receipt of the notice to file the legislative rule with the Secretary of State and the Legislative Rule-Making Review Committee affirmatively seeking renewal of the legislative rule: *Provided*, That, if the legislative rule that is scheduled to sunset is not being amended or changed, except for a new sunset date, the rule is not subject to the public comment period requirements contained in §29A-3-5 of this code. The Legislative Rule-Making Review Committee, as part of its rule review under this article, may begin reviewing a legislative rule upon its filing.

(f) Any agency that has promulgated a legislative rule with a sunset date prior to May 1 of the applicable year, may file a technical amendment with the Secretary of State for the purposes of establishing a sunset date of August 1 of the applicable year.

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(g) The Secretary of State shall file a notice of sunset in the State Register within 30 days following the expiration of a legislative rule.

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§29A-3-20. Executive review of agency rules, guidelines, policies and recommendations.

(a) All executive agencies with rule-making authority shall:

(1) Review and evaluate all state rules, guidelines, policies and recommendations under their jurisdiction that have similar federal rules, guidelines, policies and recommendations;

(2) Determine whether the state rules, guidelines, policies and recommendations are more stringent than federal counterparts;

(3) Provide for a comment period for all rules, guidelines, policies and recommendations; and

(4) Submit a report to the Joint Committee on Government and Finance and the Legislative Rule-Making Review Committee on or before November 1, 2017, which shall include:

(A) A description of the state rules, guidelines, policies and recommendations that are more stringent than federal counterparts; and

(B) Comments received from the comment period provided for in subdivision (3) of this subsection.

(b) Within four years of the enactment of this law, each executive agency with rule-making authority shall review all of its rules and determine whether the rules should be continued without change, modified or repealed. On or before July 1, 2020, each agency shall submit a report to the Legislative Rule-Making Review Committee which includes the following information for each rule under the agency's jurisdiction:

(1) A description of the rule;

(2) A determination of whether the rule should continue without change, be modified or repealed; and

(3) The reasoning for said determination.

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