# WEST VIRGINIA CODE CHAPTER 29a ARTICLE 3A

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## §29A-3A-1. Definitions

As used in this article:

(a) "Commission" means the Legislative Oversight Commission on Education Accountability;

(b) "Agency", for purposes of this article, means the Higher Education Policy Commission created by §18B-1B-1 *et seq*. of this code, the Council for Community and Technical College Education established pursuant to §18B-2B-3 of this code, the School Building Authority established pursuant to §18-9D-1 *et seq*. of this code, or any successor board, commission, agency, or officer.

(c) "Agency" also means any other entity directed by this code to promulgate a rule or rules in accordance with this article, but this definition shall apply solely for the purpose of promulgating the rule or rules required to be promulgated in accordance with this article.

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**§29A-3A-2. 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, every rule and regulation (including any amendment of or rule to repeal any other rule) shall be promulgated by the 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-3A-2a. Filing proposed amendments to an existing rule; and repealing an existing rule.**

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

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**§29A-3A-3. 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 the agency or a particular grant of the rule-making power from the provisions of this article, every grant of rule-making authority to the 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) The agency shall not be deemed to have the 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 the power and authority expressly exempts its exercise from legislative rule-making review prior to promulgation or (2) the grant of the power and authority is exempted from the application of this chapter by the express provisions of this chapter. To the extent any grant of power and authority not so exempt is deemed to exceed the limits and provisions of this article, the power and authority to promulgate legislative rules is hereby revoked.

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**§29A-3A-4. Rules of procedure required.**

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

(a) The 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 in accordance with §29A-1-2 of this code.

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

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## §29A-3A-5. Filing of proposed legislative exempt rules, procedural rules, and interpretive rules.

(a) When the agency proposes a legislative exempt, procedural, or 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-3A-6. Notice of proposed rulemaking.**

(a) When the 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 the 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 §29A-3A-5 of this code. If the agency is considering alternative draft proposals, it may also file with the Secretary of State the full text of the draft proposals.

(b) 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 or documents, or both.

(c) If findings and determinations are a condition precedent to the promulgation of the rule, then an opportunity for general public comment on the merits of the rule shall be afforded after the findings and determinations are made. In that 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.

(d) 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 Oversight Commission on Education Accountability pursuant to the provisions of §29A-3A-12 of this code.

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

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

(g) 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 rulemaking 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-3A-7. 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 those findings and determinations in the State Register. If the agency amends the proposed rule because of the evidence or comment presented pursuant to §29A-3A-5 of this code, the 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-3A-8. Notice of hearings.**

Notices of hearings required by §29A-3A-6 and §29A-3A-7 of this code shall be filed in the State Register not less than 30 nor more than 60 days before the date of the 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 the continuance shall be promptly filed thereafter in the State Register.

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## §29A-3A-9. Adoption of legislative exempt rules, procedural rules, and interpretive rules.

(a) The 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. The agency's failure to file the notice constitutes withdrawal, and the Secretary of State shall note that 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 filing, whichever is later, or as specified in this code.

(c) The 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-3A-10. Proposal of legislative rules.

(a) When the 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 the rule as approved by the agency for submission to the Legislature or as amended and authorized by the Legislature by law.

(b) The agency proposing a legislative rule, other than an emergency rule, after filing the notice of proposed rulemaking required by §29A-3A-5 of this code, shall then proceed as in the case of a legislative exempt, 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 the notice of approval in the State Register and with the Legislative Oversight Commission on Education Accountability within 90 days after the public hearing was held or within 90 days after the end of the public comment period required under §29A-3A-6 of this code: *Provided*, That upon receipt of a written request from the agency setting forth valid reasons why the agency is unable to file the agency-approved rule within the 90 day time period, the Legislative Oversight Commission on Education Accountability may grant the agency an extension of time to file the agency-approved rule.

(c) The final agency approval of the rule under this section is deemed to be approved 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 §29A-3A-14 of this code.

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## §29A-3A-11. Creation of a legislative oversight commission on education accountability.

(a) There is hereby created a joint commission of the Legislature known as the Legislative Oversight Commission on Education Accountability to review all legislative rules of the agency and other rules as the commission deems appropriate. The commission shall be composed of an equal number of senator and delegates, as appointed by the President of the Senate and the Speaker of the House of Delegates. Members of the commission shall receive compensation and expenses as provided in §4-2A-1 *et seq*. of this code, subject to approval of the Joint Committee on Government and Finance.

The commission may adopt rules of procedure as it considers necessary for the submission, presentation, and consideration of rules.

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**§29A-3A-11a. Additional powers and duties; subpoena powers.**

(a) In addition to the powers and duties conferred upon the commission pursuant to the provisions of this article, the commission shall make a continuing investigation, study, and review of the practices, policies, and procedures of the agency and of the State Board of Education and of any and all matters related to education in the state and shall make annual reports to the Legislature of the results of those investigations, studies, and reviews.

(b) These reports shall describe and evaluate in a concise manner:

(1) The major activities of the agency and the State Board of Education for the fiscal year immediately past, including important policy decisions reached on initiatives undertaken during that year, especially as those activities, decisions, and initiatives relate to the implementation of: (A) The constitutional requirement of providing a thorough and efficient education to the children of this state; and (B) the objective of improving the quality of education at all levels in this state.

(2) Other information considered by the commission to be important, including recommendations for statutory, fiscal, or other reform and reasons for those recommendations.

(3) Further, these reports may specify in what manner said practices, policies, and procedures may or should be modified to satisfy said Constitutional requirement and to improve the quality of education at all levels in this state.

(c) The commission may meet as often as may be necessary and employ professional, clerical, and technical personnel as it considers necessary to perform effectively the duties herein prescribed.

(d) The commission shall conduct a study to determine whether the bureaucracies of the State Board of Education and each county board of education are of a size and complexity that they do not best serve the educational needs of the children of the state. The commission may request assistance from the Legislative Auditor to conduct this study.

(e) For purposes of carrying out its duties, the commission is hereby empowered and authorized to examine witnesses and to subpoena persons and books, records, documents, papers, or any other tangible things as it believes should be examined to make a complete investigation. All witnesses appearing before the commission shall testify under oath or affirmation, and any member of the commission may administer oaths or affirmations to the witnesses. To compel the attendance of witnesses at hearings or the production of any books, records, documents, papers, or any other tangible thing, the commission is hereby empowered and authorized to issue subpoenas, signed by one of the co-chairs, in accordance with §4-1-5 of this code. The subpoenas shall be served by any person authorized by law to serve and execute legal process and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed

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witnesses before any petit jury in this state.

If any person subpoenaed to appear at any hearing refuses to appear or to answer inquiries there propounded, or fails or refuses to produce books, records, documents, papers, or any other tangible thing within his or her control when the same are demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and the court may compel obedience to the subpoena as though the subpoena had been issued by the court in the first instance.

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**§29A-3A-12. Submission of legislative rules to the Legislative Oversight Commission on Education Accountability.**

(a) When the agency finally approves a proposed legislative rule for submission to the Legislature pursuant to §29A-3A-10 of this code, the agency shall electronically submit the agency-approved rule to the Legislative Oversight Commission on Education Accountability and electronically file notice of approval in the State Register. Electronic copies of the proposed legislative rule 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, the 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 the provision;

(8) All public comments for each proposed rule. The 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. The agency may consolidate substantially similar responses in the interest of efficiency: *Provided*, That the agency's responses shall address each issue and concern expressed by all comments received; and

(10) Any other information which the commission may request or which may be required by law. The agency shall submit its final agency-approved rule as required by this subsection.

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

(1) Whether the agency has 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, or any federal statutes or regulations;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

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

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

(7) 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; and

(8) Whether federal funding will be impacted by its expiration and explanation as to how.

(c) After reviewing the legislative rule, the commission 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 or modifications;

(4) Require the agency to withdraw the rule; or

(5) Reject the proposed rule.

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

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reasons for the recommendation.

(d) When the commission recommends that a rule be authorized, in whole or in part, by the Legislature, the commission shall instruct its staff or the office of Legislative Services to draft a bill authorizing promulgation of all or part of the legislative rule and incorporating the amendments recommended by the commission. If the commission 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-3A-13. Submission of legislative rules to Legislature.**

(a) No later than 40 days before the 60th day of each regular session of the Legislature, the co-chairs of the Legislative Oversight Commission on Education Accountability 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 commission pursuant to §29A-3A-11 of this code and which have not been previously submitted to the Legislature for study, together with the recommendations of the commission 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 commission or by Legislative Services pursuant to §29A-3A-12 of this code. The co-chairs of the commission may also submit the rules at the direction of the commission at any time before or during a special session in which consideration thereof may be appropriate. The commission may withhold from its report any proposed legislative rule which was submitted to the commission after the last Friday in July of the previous calendar year: *Provided*, That in 2025 and every four years thereafter, the commission may withhold from its report any proposed legislative rule which was submitted to the commission after the last Friday in August of the previous calendar year. The clerk of each house shall submit the report to his or her house at the commencement of the next session.

(b) All bills introduced authorizing the promulgation of a rule may be referred by the Speaker of the House of Delegates and by the President of the Senate 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. 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 by the agency.

(c) If the Legislature during its regular session disapproves all or part of any legislative rule which was submitted to it by the Legislative Oversight Commission on Education Accountability during the session, the agency may not thereafter issue any rule or directive or take other action to implement the rule or part thereof unless and until otherwise authorized to do so, except that the agency may resubmit the same or similar proposed rule to the Legislative Oversight Commission on Education Accountability in accordance with §29A-3A-12 of this code.

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

(e) 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 Oversight Commission on Education Accountability or not, if legislative action on the rule during the session is a lawful order of business.

(f) As a part of any act that amends chapter 18B of this code, chapter 18C of this code, and §18-9D-1 *et seq*. 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-3A-14. Adoption of legislative rules; effective date.**

(a) Except as the Legislature may by law otherwise provide, within 60 days after the effective date of an act authorizing promulgation of a legislative rule, the agency shall promulgate the rule only in conformity with the provisions of law authorizing and directing the promulgation of the rule.

(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 90 days, as is 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-3A-15. Withdrawal or modification of proposed rules.

(a) Any legislative rule proposed by the 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 the law. The agency shall file a notice of the action to withdraw the rule in the State Register.

(b) At any time before a proposed legislative rule has been submitted by the Legislative Oversight Commission on Education Accountability to the Legislature pursuant to §29A-3A-13 of this code, the agency may modify the proposed rule to meet the objections of the commission. 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 the modification. If a legislative rule has been withdrawn, modified, and then resubmitted to the commission, the rule shall be considered to have been submitted to the commission on the date of the resubmission.

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**§29A-3A-16. Emergency legislative rules; procedure for promulgation; definition.**

(a) The agency 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 institutions of higher education, agencies, professions, businesses, and other identifiable interest groups affected by the proposed emergency rule, in the State Register. The agency's good faith failure to list all known state institutions of higher education, agencies, professions, businesses, and other identifiable interest groups is not a basis for disapproval of the emergency rule, nor does it subject the emergency rule to judicial review. The emergency rule becomes effective upon the approval of the Secretary of State in accordance with §29A-3A-16a of this code or upon the 42nd 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. The agency shall immediately file a copy of the emergency rule and the required statement with the Secretary of State and the Legislative Oversight Commission on Education Accountability.

(b) An emergency rule is effective for not more than 15 months and expires earlier if any of the following occurs:

(1) The Secretary of State, acting under the authority provided for in §29A-3A-16a of this code, 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 paragraphs (A) or (B) of this subdivision on the basis that the Secretary of State 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 the 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 the agency to promulgate the emergency rule or has not specifically found that an emergency exists and directed the promulgation of an emergency rule;

(2) The agency has not previously filed and fails to file a notice of public hearing on the proposed rule within 30 days of the date the proposed rule was filed as an emergency rule,



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in which case the emergency rule expires on the 31st 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 Oversight Commission on Education Accountability within 90 days of the date the proposed rule was filed as an emergency rule, in which case the emergency rule expires on the 91st 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 become effective.

(c) 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 (b) of this section: *Provided*, That the emergency amendment becomes effective upon the approval of the Secretary of State in accordance with section §29A-3-16a of this code or upon the 42nd day following the filing, whichever occurs first.

(d) Once an emergency rule expires due to the conclusion of 15 months or because of subdivision (2), (3), (4) or (5), subsection (b) of this section, the agency may not refile the same or similar rule as an emergency rule.

(e) The 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.

(f) The Legislative Oversight Commission on Education Accountability may review any emergency rule to determine: (1) Whether the agency has exceeded the scope of its statutory authority in promulgating the emergency rule; (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 commission may recommend to the agency, the Legislature, or the Secretary of State any action it determines appropriate.

(g) For the purposes of this section, an emergency exists when the promulgation of an 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-3A-16a. Disapproval of 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 the agency, under the provisions of §29A-3A-16 of this code, the Secretary of State shall review the emergency rule or the amendment to the emergency rule and, within 42 days of the agency's filing, shall issue a decision as to whether the emergency rule or the amendment to an emergency rule should be disapproved.

(b) The Secretary of State shall disapprove an emergency rule or an amendment to an emergency rule if he or she 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 §29A-3A-16 of this code.

(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 or she may disapprove the 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 or she 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 or she may disapprove the 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 or she 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 is 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. The proceeding may be instituted by:

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(1) The agency that 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-3A-17. Legislative review of procedural rules, interpretive rules, and existing legislative rules.

(a) The Legislative Oversight Commission on Education Accountability may review any procedural rules, interpretive rules, or existing legislative rules of the agency to determine if the rules are achieving their purpose and based on its determination if the rule should be continued, amended, or repealed.

(b) Following the review, the Legislative Oversight Commission on Education Accountability shall make recommendations regarding the rules to the agency and to the Joint Committee on Government and Finance.

WV Legislature

## §29A-3A-18. Prior rules.

Any rule lawfully promulgated prior to the effective date of the amendments made to this chapter during the regular session of the Legislature, 2023, shall remain in full force and effect until:

(1) The rule is expressly made ineffective by the provisions of this chapter; or

(2) The rule expires by reason of failure to refile it as provided in §29A-2-5 of this code, or expires pursuant to its own terms and provisions lawfully made before the effective date of this section; or

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

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

WV Legislature

## §29A-3A-19. 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.

WV Legislature

**§29A-3A-20. 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 rulemaking 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 emergency rules promulgated pursuant to §29A-3A-16 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 emergency rules promulgated pursuant to §29A-3A-16 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 Oversight Commission on Education Accountability may establish a procedure for timely review of a legislative rule prior to its termination if the agency has 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 agency and the Legislative Oversight Commission on Education Accountability at least 18 months prior to every legislative rule's termination date. The agency has 60 days from receipt of the notice to file the legislative rule with the Secretary of State and the Legislative Oversight Commission on Education Accountability 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-3A-6 of this code. The Legislative Oversight Commission on Education Accountability, as part of its rule review under this article, may begin reviewing a legislative rule upon its filing.

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

WV Legislature

(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.

WV Legislature