WEST VIRGINIA CODE CHAPTER 29a

WV Legislature

§29A-1-1. Legislative findings and statement of purpose.

The Legislature finds and declares that administrative law and the administrative practice and procedure of the various executive and administrative officers, offices and agencies comprises a body of law and policy which is voluminous, often formulated without adequate public participation and collected and preserved for public knowledge and use in an unacceptable and essentially inaccessible fashion. The Legislature further finds that the delegation of its legislative powers to other departments and agencies of government requires of the Legislature that the rules and regulations of such other departments and agencies, which have the force and effect of law because of their legislative character, should be carefully and extensively reviewed by the Legislature in a manner properly respectful of the separation of powers but in keeping with the legislative force and effect of such rules and regulations. Accordingly the Legislature has and by this chapter intends to fix by law uniform and settled administrative practices and procedures, subject only to enumerated exceptions, for the exercise of executive rule- making authority and for the exercise by executive and administrative officers, offices and agencies of lawfully delegated legislative power, with appropriate legislative review of that exercise of such delegated legislative authority and with established procedures for Legislative Oversight of the exercise of executive rule-making authority.

In that light chapter twenty-nine-a of this code establishes, with enumerated exceptions, procedures for rule making, declaratory rulings by agencies and the conduct of contested administrative cases, together with a plan for the systematic preparation, public consideration, orderly promulgation, preservation and public availability of the body of law, policy and administrative decisions within the purview of this chapter.

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§29A-1-2. Definitions of terms used in this chapter.

For the purposes of this chapter:

(a) "Agency" means any state board, commission, department, office or officer authorized by law to make rules or adjudicate contested cases, except those in the legislative or judicial branches.

(b) "Contested case" means a proceeding before an agency in which the legal rights, duties, interests or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing, but does not include cases in which an agency issues a license, permit or certificate after an examination to test the knowledge or ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination and does not include rulemaking.

(c) "Interpretive rule" means every rule, as defined in subdivision (j) of this section, adopted by an agency independently of any delegation of legislative power which is intended by the agency to provide information or guidance to the public regarding the agency's interpretations, policy or opinions upon the law enforced or administered by it and which is not intended by the agency to be determinative of any issue affecting constitutional, statutory or common law rights, privileges or interests. An interpretive rule may not be relied upon to impose a civil or criminal sanction nor to regulate conduct or the exercise of constitutional, statutory or common law rights or privileges nor to confer any right or privilege provided by law and is not admissible in any administrative or judicial proceeding for that purpose, except where the interpretive rule established the conditions for the exercise of discretionary power as provided in this subdivision. However, an interpretive rule is admissible for the purpose of showing that the prior conduct of a person was based on good faith reliance on the rule. The admission of the rule in no way affects any legislative or judicial determination regarding the prospective effect of the rule. Where any provision of this code lawfully commits any decision or determination of fact or judgment to the sole discretion of any agency or any executive officer or employee, the conditions for the exercise of that discretion, to the extent that the conditions are not prescribed by statute or by legislative rule, may be established by an interpretive rule and such rule is admissible in any administrative or judicial proceeding to prove the conditions.

(d) "Legislative exempt rule" means every rule promulgated by an agency or relating to a subject matter that is exempt from the rule-making provisions of article three of this chapter, under section three, article one of this chapter or any other section of this code.

(e) "Legislative rule" means every rule, as defined in subdivision (j) of this section, proposed or promulgated by an agency pursuant to this chapter. Legislative rule includes every rule which, when promulgated after or pursuant to authorization of the Legislature, has: (1) The force of law; or (2) supplies a basis for the imposition of civil or criminal liability; or (3) grants or denies a specific benefit. Every rule which, when effective, is determinative on any issue affecting constitutional, statutory or common law rights, privileges or interests is a

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legislative rule. Unless lawfully promulgated as an emergency rule, a legislative rule is only a proposal by the agency and has no legal force or effect until promulgated by specific authorization of the Legislature. Except where otherwise specifically provided in this code, legislative rule does not include: (A) Findings or determinations of fact made or reported by an agency, including any findings and determinations that are required to be made by any agency as a condition precedent to proposal of a rule to the Legislature; (B) declaratory rulings issued by an agency pursuant to the provisions of section one, article four of this chapter; (C) orders, as defined in subdivision (e) of this section; or (D) executive orders or proclamations by the Governor issued solely in the exercise of executive power, including executive orders issued in the event of a public disaster or emergency.

(f) "Order" means the whole or any part of the final disposition, whether affirmative, negative, injunctive or declaratory in form, by any agency of any matter other than rulemaking.

(g) "Person" includes individuals, partnerships, corporations, associations or public or private organizations of any character.

(h) "Procedural rule" means every rule, as defined in subdivision (j) of this section, which fixes rules of procedure, practice or evidence for dealings with or proceedings before an agency, including forms prescribed by the agency.

(i) "Proposed rule" is a legislative rule, interpretive rule or a procedural rule which has not become effective pursuant to the provisions of this chapter or law authorizing its promulgation.

(j) "Rule" includes every rule, standard or statement of policy or interpretation of general application and future effect, including the amendment or repeal of the rule, affecting constitutional, statutory or common law rights, privileges or interests, or the procedures available to the public, adopted by an agency to implement, extend, apply, interpret or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include rules relating solely to the internal management of the agency, nor rules of which notice is customarily given to the public by markers or signs, nor mere instructions. Every rule shall be classified as "legislative rule", "interpretive rule" or "procedural rule", all as defined in this section, and is effective only as provided in this chapter.

(k) "Rulemaking" means the process for the formulation, amendment or repeal of a rule as provided in this chapter.

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§29A-1-3. Application of chapter; limitations.

(a) The provisions of this chapter do not apply in any respect whatever to executive orders of the Governor, which orders to the extent otherwise lawful shall be effective according to their terms: Provided, That the executive orders shall be admitted to record in the state register when and to the extent the Governor deems suitable and shall be included therein by the Secretary of State when tendered by the Governor.

(b) Except as to requirements for filing in the state register, and with the Legislature or its rule-making review committee, provided in this chapter or other law, the provisions of this chapter do not apply in any respect whatever to the West Virginia board of probation and parole, the Public Service Commission, the board of public works sitting as such and the secondary schools activities commission: Provided, That rules of such agencies shall be filed in the state register in the form prescribed by this chapter and be effective no sooner than sixty consecutive days after being so filed: Provided, however, That the rules promulgated by the state colleges and universities shall only be filed with the higher education governing boards: Provided further, That such agencies may promulgate emergency rules in conformity with section fifteen, article three of this chapter.

(c) The provisions of this chapter do not apply to rules relating to or contested cases involving the conduct of inmates or other persons admitted to public institutions, the open seasons and the bag, creel, size, age, weight and sex limits with respect to the wildlife in this state, the conduct of persons in military service or the receipt of public assistance. Such rules shall be filed in the state register in the form prescribed by this chapter and be effective upon filing.

(d) Nothing herein shall be construed to affect, limit or expand any express and specific exemption from this chapter contained in any other statute relating to a specific agency, but such exemptions shall be construed and applied in accordance with the provisions of this chapter to effectuate any limitations on such exemptions contained in any such other statute.

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§29A-1-3a. Technical amendments to a current rule.

The provisions of this chapter do not apply to purely technical amendments to a current rule, including correcting addresses, phone numbers, punctuation, spelling, code citations or internal citations, numbering, grammatical errors or changes to language to standardize rules generally without affecting the content of any rule. An agency may make these amendments by filing the corrected rule with the Secretary of State's office.

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§29A-1-3b. Void rules.

(a) If an agency ceases to exist, through the operation of law or by statute, any rules adopted or promulgated by the agency are void on the date the agency ceases to exist, unless the agency's rule-making power and its rules have been transferred to another agency.

(b) Upon repeal or elimination of a statute that provides rule-making authority, any rule adopted or promulgated by the agency pursuant to that statute is void.

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§29A-1-4. Application of open governmental proceedings law.

(a) All meetings of an agency, board or commission of the executive branch of government or of the legislative rule-making review committee which may only be convened upon the presence of a required quorum, and which are convened for the purpose of making a decision or deliberating toward a decision as to the form and substance of a rule, as defined in subsection (i), section two of this article, are subject to the open governmental proceedings law as set forth in article nine-a, chapter six of this code, except as may otherwise be provided for in this section.

(b) When an agency, board or commission is considering the form and substance of a rule or proposed rule, the informal occurrence of (1) consultations between the governing members of the agency, board or commission and its staff members, (2) deliberations by the governing members, or (3) the engagement of a governing member or members in the process of making a decision, does not constitute a meeting within the meaning of article nine-a, chapter six of this code when, during such stages, neither a quorum nor the convening of the governing members of the agency, board or commission is required.

(c) When the legislative rule-making review committee is considering the form and substance of a rule or proposed rule, the informal occurrence of (1) consultations between the members of the committee and its staff members, (2) deliberations by the governing members, or (3) the engagement of a governing member or members in the process of making a decision, does not constitute a meeting within the meaning of article nine-a, chapter six of this code when, during such stages, neither a quorum nor the convening of the members of the committee is required.

(d) After public hearing or the close of the public comment period, during which hearing or period an agency, board or commission has received statements concerning the form and substance of a rule or proposed rule, the agency, board or commission 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, article three of this chapter. Nothing contained herein shall prohibit the agency, board or commission from soliciting or receiving information relating to the rule or proposed rule from the federal government, from the Legislature or its members, or from another agency, board or commission of the executive branch of the government of this state.

(e) After a proposed rule is approved for submission and is submitted to the legislative rule-making review committee pursuant to the provisions of section eleven, article three of this chapter, the right of the people to assemble, to petition government, to consult for the common good, to instruct their representatives, and to apply for redress of grievances, in accordance with the provisions of section sixteen, article III of the Constitution, shall reserve to a person the right to freely communicate, ex parte or otherwise, with the agency, board or commission or the legislative rule-making review committee in attempts to influence deliberations or decision-making regarding the form and substance of the proposed rule

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prior to authorization being granted for promulgation of the rule.

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§29A-2-1. Duty of the Secretary of State.

It is the nondiscretionary, nondelegable duty of the Secretary of State to establish and maintain the state register hereby created, and offer copies for subscription and public distribution in accordance with the provisions of this article.

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§29A-2-2. State register created.

There is hereby created in the office of the Secretary of State, a public record to be known and denominated as the state register, to be established, compiled, indexed and copied, and such copies offered for subscription and distribution, in accordance with the provisions of this article.

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§29A-2-3. Contents of state register.

The Secretary of State shall receive and file in the state register:

(a) Every notice of a proposed rule or a public hearing for the finding of facts or public comment on a proposed rule.

(b) The text of every proposed rule and subsequent proposed amendment thereto and fiscal notes attached thereto.

(c) Every determination of fact or judgment tendered by an agency for inclusion therein and every notice of submission to the Legislature or its rule-making review committee made in conformity with this chapter.

(d) Every executive order tendered by the Governor.

(e) Every notice of and the text of any report or finding of the legislative rule-making review committee and such other material as may be tendered by the clerk or presiding officer of either house of the Legislature for filing in the state register.

(f) Such other material related to administrative procedures and actions as an agency may desire to make a public record or the Secretary of State may deem appropriate, or where required by law.

(g) Notice of and the text of any action by an agency of the Legislature or its committees relative to the process of promulgation of rules tendered to the Secretary of State for inclusion in the register.

(h) Every other paper required by law to be filed in such register or which may be filed therein in order to comply with any other provision of law.

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§29A-2-4. Contents of state register deemed a public record.

Every paper filed in the state register shall be a public record provable and admissible as evidence if otherwise relevant, of which judicial notice may be taken, either under lawful certification or by reason of duplication and distribution as a copy of the state register in accordance with this article.

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§29A-2-5. Agency rules to be filed in state register; failure to file.

(a) Notwithstanding any filing prior to the effective date of this section, each agency shall hereafter file in the state register a certified copy of all of its lawfully adopted rules which are in force on the date of such filing and all of its proposed rules which have not become effective prior to the date of such filing. All such rules and proposed rules shall be arranged, compiled, numbered and indexed in accordance with the provisions of section six of this article, and shall also include a designation of each rule as either legislative rule, interpretive rule or procedural rule. Any agency desiring to pursue promulgation of a rule proposed prior to the effective date of this section but not then yet effective, shall refile such proposed rule, following the procedure set forth in article three: Provided, That it shall not be necessary for the agency to again hold a public hearing to determine facts or public comment, but in all other respects the procedures provided for the promulgation of rules under this section shall be complied with. On or before January 1, 1983, any other agency required by law to file its rules in the state register in order for such rules to be effective shall resubmit and refile such rules in accordance with this section. If any agency fails to file a certified copy of any rule or proposed rule in accordance with this section on or before January 1, 1983, then such rule or proposed rule not so filed shall be thereafter void and unenforceable and shall be of no further force and effect except as to enforcement of its effective provisions for actions, causes or matters occurring prior to January 1, 1983.

(b) Except for such changes in the designation and numbering of a rule, including numerical references within a rule, as are required to comply with the provisions of section six of this article, no legislative rule filed under the provisions of this section may be amended in any way prior to such filing unless such amendment is made in compliance with the requirements of article three of this chapter.

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§29A-2-6. Format and numbering of agency rules filed in State Register; electronic filing required beginning July 1, 2011; pilot project.

(a) Each proposed rule filed by an agency requiring a notice to be published in the state Register in accordance with the provisions of section five, article three of this chapter shall include as its initial provisions: (1) A statement identifying such rule as a legislative rule, an interpretive rule or a procedural rule, as the case may be; (2) a statement of such section, article and chapter of this code to which such rule or any part thereof relates; and (3) a statement of the section, article and chapter of this code or any other provision of law which provides authority for the promulgation of such rule. The agency shall be estopped from relying on any authority for the promulgation of such rule which is not stated therein in accordance with the requirements of this subdivision.

(b) Each rule when filed, to be finally effective, shall have attached thereto an abstract of its promulgation history prepared by the agency showing the date of the filing in the state Register of the content of, or notice of any procedure relating to, action necessary under this chapter to cause such rules to be finally effective: Provided, That any error or omission in such abstract shall not affect the validity of any rule or action in respect thereto.

(c) The Secretary of State shall prescribe by legislative rule a standard size, format, numbering and indexing for rules to be filed in the state Register, and may prescribe procedural or interpretive rules to clarify and interpret the provisions in this section. The Secretary of State shall refuse to accept for filing any rules which do not comply with the specific provisions of this section. The Secretary of State may also refuse to accept any rules which do not comply with the rules issued pursuant to this section.

(d) Unless and until the Secretary of State prescribes otherwise by rule issued and made effective under the provisions of subsection (c) of this section, each rule filed in paper form in the state Register shall be on white paper measuring eight and one-half inches by eleven inches, typewritten and single-spaced, with a one inch margin at the top, bottom and each side of each page, and shall be reproduced photographically, or by xerography or other duplication process. The Secretary of State may grant specific exceptions to such requirements in the case of maps, diagrams and exhibits, if the same may not be conveniently folded and fastened with the other pages of rules and in the case of rules which incorporate a rule or regulation of a federal agency or other organization which could not be submitted in the standard size and format except at undue expense. Materials submitted for inclusion in the state Register shall be fastened on the left side by two or more fasteners attached through holes suitable for insertion into ring binders.

(e)(1) Beginning July 1, 2011, unless otherwise authorized by the Secretary of State, all agencies, boards and commissions having rulemaking authority, shall file the provisions of and attachments to all proposed rules required to be filed with the Secretary of State, and any associated documents that are required to be published in the state Register, exclusively in a electronic format. The Secretary of State may exempt an agency, board or commission from this requirement upon the Secretary of State's determination that the filer is without

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the means to electronically file the documents and to require electronic filing would place an unreasonable burden on the agency, board or commission.

(2) On or before July 1, 2010, the Secretary of State shall propose for promulgation legislative rules to establish a uniform system for the electronic filing required by the provisions of this section and to otherwise implement those provisions.

(3) During the calendar year 2010, through procedural rules, the Secretary of State may institute a limited pilot project through which proposed new rules or amendments to existing rules may be filed electronically by any agency, board or commission under agreement with the Secretary of State. Participation by any agency, board or commission in the pilot project is voluntary.

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§29A-2-7. Publication of State Register.

(a) The Legislature intends that the Secretary of State offer to the public access to the State Register and Code of State Rules. The State Register, the Code of State Rules and other documents produced by the Secretary of State's office shall be available in electronic format on the Secretary of State's website.

(b) All materials filed in the State Register shall be indexed as quickly as possible in chronological order of filing with a brief description of the item filed and a columnar cross index to:

(1) Agency;

(2) Code citation to which it relates and by which it is filed in the State Register; and

(3) Other information in the description or cross index as the Secretary of State believes will aid a person in using the index.

(c) The Secretary of State shall post on the website with each update of the Code of State Rules, a copy of the rule monitor and its cross index which shows the rules that have become effective, and a table showing rules which are out for public comment, and agency-approved, modified and emergency rules.

(d) The Secretary of State may propose rules for legislative approval, in accordance with the provisions of article three of this chapter, to change the procedures outlined in this section.

(e) One half of all the fees and amounts collected for the sale of the State Register, the Code of State Rules and other copies or data provided by the Secretary of State shall be deposited in the State General Revenue Fund and one half of the fees in the service fees and collections account established in accordance with subsection (f), section two, article one, chapter fifty-nine of this code for the operations of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

(f) A person who is unable to access electronic versions of documents may review the documents at the office of the Secretary of State, or may request a printed copy at a cost which is sufficient, in the judgment of the Secretary of State, to defray the expenses of publication, including labor, paper and postage: Provided, That the Secretary of State may waive the fee.

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§29A-2-8.

Repealed.

Acts, 2015 Reg. Sess., Ch. 9.

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§29A-2-9. Making orders and records available.

Every agency shall file in the state register all final orders, decisions and opinions in the adjudication of contested cases except those required for good cause to be held confidential and not cited as precedent. Except as otherwise required by statute, matters of official record shall be made available for public inspection pursuant to rules adopted in accordance with the provisions of this chapter.

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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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

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

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

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(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.

WV Legislature

§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.

WV Legislature

§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.

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§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

§29A-3B-1. Findings; definitions.

(a) The Legislature finds:

(1) That section one, article twelve of the West Virginia Constitution, titled “Education”, states in relevant part “The Legislature shall provide”, which language gives the Legislature primacy of authority over education in the State;

(2) That section one, article twelve of the West Virginia Constitution remains identical today as it was when the constitution was adopted in 1872, where the Legislature exercising its authority under section one, article twelve of “Education”, created the four-member West Virginia Board of Examiners in 1905. This was followed by the West Virginia Board of Education in 1908, and then the Legislature abolished that board and created a new State Board of Education in 1919;

(3) That the constitutional amendment of 1958 transferred the already established authority from the elected state superintendent to the West Virginia Board of Education with the same responsibilities for “general supervision” of free schools, and “performing such duties as may be prescribed by law”. The amendment kept the same authoritative language of responsibilities as had previously existed for the elected state superintendent under section two, article twelve of the West Virginia Constitution, without adding additional authoritative responsibility in the amendment;

(4) That section one, article twelve of the West Virginia Constitution does not entail the exclusive delegation of rule-making functions to the Legislature, but it does establish the Legislature as the ultimate authority to approve, amend, or reject rules promulgated by the West Virginia Board of Education under section two, article twelve of the West Virginia Constitution;

(5) That pursuant to section one, article five of the West Virginia Constitution, there are only three branches of government; and

(6) That the Legislature exercises authority over the West Virginia Board of Education pursuant to §18-2-5 of this code.

(b) As used in this article,

"board" means the West Virginia Board of Education.

WV Legislature

§29A-3B-2. Rules to be promulgated 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 board 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.

WV Legislature

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

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

(a) The board 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 board, together with forms and instructions.

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

WV Legislature

§29A-3B-4. Filing of proposed rules.

(a) When the board proposes a procedural, interpretive or legislative 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 and regulations. Such 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 rules shall be clearly and separately stated in the fiscal note by the agency issuing the proposed rules. No procedural or interpretive rule shall be void or voidable by virtue of noncompliance with this subsection.

WV Legislature

§29A-3B-5. Notice of proposed rule making.

When the board proposes to promulgate a rule other than an emergency rule, it shall file in the state register a notice of its action, including a text of the rule proposed, a fiscal note as defined in subsection (b) of section four, and any request for the submission of evidence to be presented on any factual determinations or inquiries required by law to promulgate such rule. If the board is considering alternative draft proposals, it may include the text thereof.

The notice shall fix a date, time and place for the taking of evidence for any findings and determinations which are a condition precedent to promulgation of the proposed rule and contain a general description of the issues to be decided. If no findings and determinations are required as a condition precedent to promulgation, the notice shall fix a date, time and place for receipt of public comment on such proposed rule.

If findings and determinations are a condition precedent to the promulgation of such rule, then an opportunity for 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 board when filed in the state register.

In any hearing for public comment on the merits of the rule, the board 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 board.

The board 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.

WV Legislature

§29A-3B-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 board 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 board 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 board and be open for public inspection and copying for a period of not less than five years from the date of the hearing.

WV Legislature

§29A-3B-7. Notice of hearings.

Notices of hearings required by section five 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 board 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.

WV Legislature

§29A-3B-8. Adoption of rules.

A rule shall be considered by the board for adoption not later than six months after the close of public comment and a notice of withdrawal or adoption shall be filed in the State Register within that period. Failure to file such notice shall constitute withdrawal and the Secretary of State shall note such failure in the State Register immediately upon the expiration of the six-month period.

A rule may be amended by the board prior to final adoption without further hearing or public comment. No such amendment may change the main purpose of the rule. If the fiscal implications have changed since the rule was proposed, a new fiscal note shall be attached to the notice of filing. Upon adoption of the rule (including any such amendment), the board shall file the text of the adopted rule with its notice of adoption in the State Register..

WV Legislature

§29A-3B-9. State Board of Education to promulgate rules; submission of legislative rules to the Legislative Oversight Commission on Education Accountabillity; submission of legislative rules, findings, and recommendations to the Legislature.

(a) Under its supervisory duties, the West Virginia Board of Education may promulgate rules or policies, and any new rule so promulgated shall be submitted to the Legislature for its review and approval, amendment, or rejection, in whole or in part, in the manner prescribed by general law, and pursuant to this section.

(b) If, within 15 months, the Legislature does not review and approve, or reject, in whole or in part, the rule as promulgated or amended in the manner prescribed by general law, and pursuant to this section, the rule shall become effective as initially promulgated by the West Virginia Board of Education.

(c) When the board proposes a legislative rule it has adopted, the board shall submit the following to the Legislative Oversight Commission on Education Accountability: (1) The full text of the legislative rule as proposed by the board and filed with the office of the Secretary of State, 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 fiscal note containing all information included in a fiscal note for either chamber of the Legislature and a statement of the economic impact of the rule on the state or its residents; and (5) any other information which the commission may request or which may be required by law.

(d) At its discretion, the board may meet the filing requirement of subsection (c) of this section using either of the following methods:

(1) By submitting 20 copies of the proposed rule to the Legislative Oversight Commission on Education Accountability at its offices or at a regular meeting of the commission; or

(2) By submitting the proposed rule electronically to Legislative Oversight Commission on Education Accountability. Proposed rules submitted electronically shall be transmitted in a timely manner, shall contain all required information, and shall be compatible with computer applications in use by the Legislative Oversight Commission on Education Accountability.

(e) The Legislative Oversight Commission on Education Accountability 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 board 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;

WV Legislature

(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(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; and

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

(f) After reviewing the legislative rule, the Legislative Oversight Commission on Education Accountability shall recommend that the Legislature:

Authorize the promulgation of the legislative rule;

Authorize the promulgation of part of the legislative rule;

Authorize the promulgation of the legislative rule with certain amendments;

Recommend that the proposed rule be withdrawn; or

Reject the proposed rule.

(g) The Legislative Oversight Commission on Education Accountability's submission of legislative rules submitted to them by the West Virginia Board of Education, alongside their findings and recommendations, shall be done in accordance with the procedures, but not the underlying delegating authority of §29A-3-1 *et seq*. of this code.

WV Legislature

§29A-3B-10. Emergency legislative rules; procedure for promulgation; definition.

(a) The West Virginia Board of Education may, without hearing, find that an emergency exists requiring that emergency rules be promulgated and promulgate the same in accordance with this section. Such emergency rules, together with a statement of the facts and circumstances constituting the emergency, shall be filed in the State Register and shall become effective immediately upon such filing. Such emergency rules may adopt, amend, or repeal any legislative rule, but the circumstances constituting the emergency requiring such adoption, amendment, or repeal shall be stated with particularity and be subject to de novo review by any court having original jurisdiction of an action challenging their validity.

(b) The board shall file ten copies of the rules and of the required statement with the Legislative Oversight Commission on Education Accountability. At its discretion, the board may meet the filing requirement contained in this subsection by submitting the emergency rule electronically to the Legislative Oversight Commission on Education Accountability. Proposed rules submitted electronically shall be transmitted in a timely manner, shall contain all required information and shall be compatible with computer applications in use by the Legislative Oversight Commission on Education Accountability.

(c) An emergency rule shall be effective for not more than 15 months and shall expire earlier if any of the following occurs:

(1) The board has not previously filed and fails to file a notice of public hearing on the proposed rule within 60 days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the sixty-first day.

(2) The board has not previously filed and fails to file the proposed rule with the Legislative Oversight Commission on Education Accountability within 30 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 board adopts a legislative rule dealing with substantially the same subject matter since such emergency rule was first promulgated and in which case the emergency rule expires on the date the authorized rule is made effective.

(d) Any amendment to an emergency rule made by the board 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 (1), (2), or (3), subsection (c) of this section.

(e) Once an emergency rule expires due to the conclusion of 15 months or due to the effect of subdivision (1), (2), or (3), subsection (c) of this section, the board may not refile the same or similar rule as an emergency rule.

(f) Emergency legislative rules currently in effect under the prior provisions of this section

WV Legislature

may be refiled under the provisions of this section.

(g) The provision of this section shall not be used to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review of proposed rules. Any emergency rule promulgated for any such purpose may be contested in a judicial proceeding before a court of competent jurisdiction.

(h) Within 15 months, the Legislative Oversight Commission on Education Accountability shall review any emergency rule to determine: (1) Whether the board has exceeded the scope of its statutory authority in promulgating the emergency rule; (2) whether there exists an emergency justifying the promulgation of such rule; and (3) whether the rule was promulgated in compliance with the requirements and prohibitions contained in this section. The commission may recommend to the board, the Legislature, or the Secretary of State such action as it may deem proper.

WV Legislature

§29A-3B-11. Legislative review of procedural rules, interpretive rules, and existing legislative rules.

The Legislative Oversight Commission on Education Accountability may review any procedural rules, interpretive rules, or existing legislative rules and may make recommendations concerning such rules to the Legislature, or to the board, or to both the Legislature and the board.

WV Legislature

§29A-3B-12. 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 board, 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.

WV Legislature

§29A-4-1. Declaratory rulings by agencies.

On petition of any interested person, an agency may issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by it. A declaratory ruling, if issued after argument and stated to be binding, is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court, but it shall not be binding on any other person. Such ruling is subject to review before the court and in the manner hereinafter provided for the review of orders or decisions in contested cases. Each agency may prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition.

WV Legislature

§29A-4-2. Declaratory judgment on validity of rule.

(a) Any person, except the agency promulgating the rule, may have the validity of any rule determined by instituting an action for a declaratory judgment in the circuit court of Kanawha county, West Virginia, when it appears that the rule, or its threatened application, interferes with or impairs or threatens to interfere with or impair, the legal rights or privileges of the plaintiff or plaintiffs. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the plaintiff or plaintiffs has or have first requested the agency to pass upon the validity of the rule in question.

(b) The court shall declare the rule invalid if it finds that the rule violates Constitutional provisions or exceeds the statutory authority or jurisdiction of the agency or was adopted without compliance with statutory rule-making procedures or is arbitrary or capricious, or that, in the case of a rule adopted pursuant to section five, article three of this chapter, action under said section five was not justified.

(c) When the invalidity of a rule has been so declared, the agency shall, within thirty days after such declaratory judgment has been entered, acquiesce therein and modify or rescind such invalidated rule in accord with the requirement of such declaratory judgment unless the agency promptly, and in any event within such thirty-day period, notifies the plaintiff or plaintiffs of its intention to apply for an appeal to the Supreme Court of Appeals from such declaratory judgment pursuant to section one, article six of this chapter. In the event such agency shall thereafter make timely application for such appeal, the acquiescence of the agency in the invalidity of such rule shall not be required until thirty days after timely applications for such appeal have been refused or within thirty days after the appeal has been dismissed or otherwise disposed of in the Supreme Court of Appeals by an affirmance of the judgment invalidating said rule.

WV Legislature

§29A-5-1. Notice required; hearing; subpoenas; witness fees, etc.; depositions; records.

(a) In any contested case all parties shall be afforded an opportunity for hearing after at least ten days' written notice. The notice shall contain the date, time and place of the hearing and a short and plain statement of the matters asserted. If the agency is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application a more definite and detailed statement shall be furnished. An opportunity shall be afforded all parties to present evidence and argument with respect to the matters and issues involved. The required notice must be given as specified in section two, article seven of this chapter. All of the testimony and evidence at any such hearing shall be reported by stenographic notes and characters or by mechanical means. All rulings on the admissibility of testimony and evidence shall also be reported. The agency shall prepare an official record, which shall include reported testimony and exhibits in each contested case, and all agency staff memoranda and data used in consideration of the case, but it shall not be necessary to transcribe the reported testimony unless required for purposes of rehearing or judicial review. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order or default. Each agency shall adopt appropriate rules of procedure for hearing in contested cases.

(b) For the purpose of conducting a hearing in any contested case, any agency which now has or may be hereafter expressly granted by statute the power to issue subpoenas or subpoenas duces tecum or any member of the body which comprises such agency may exercise such power in the name of the agency. Any such agency or any member of the body which comprises any such agency may exercise such power in the name of the agency for any party upon request. Under no circumstances shall this chapter be construed as granting the power to issue subpoenas or subpoenas duces tecum to any agency or to any member of the body of any agency which does not now by statute expressly have such power. When such power exists, the provisions of this section shall apply. Every such subpoena and subpoena duces tecum shall be served at least five days before the return date thereof, either by personal service made by any person over eighteen years of age or by registered or certified mail, but a return acknowledgment signed by the person to whom the subpoena or subpoena duces tecum is directed shall be required to prove service by registered or certified mail. All subpoenas and subpoenas duces tecum shall be issued in the name of the agency, as aforesaid, but any party requesting their issuance must see that they are properly served. Service of subpoenas and subpoenas duces tecum issued at the instance of the agency shall be the responsibility of the agency. Any person who serves any such subpoena or subpoena duces tecum shall be entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state; and fees for the attendance and travel of witnesses shall be the same as for witnesses before the circuit courts of this state. All such fees shall be paid by the agency if the subpoena or subpoena duces tecum were issued, without the request of an interested party, at the instance of the agency. All such fees related to any subpoena or subpoena duces tecum issued at the instance of an interested party shall be paid by the party who asks that such subpoena or subpoena duces tecum be

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issued. All requests by interested parties for subpoenas and subpoenas duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees. Any such agency may compel the attendance of witnesses and the production of books, records or papers in response to such subpoenas and subpoenas duces tecum. Upon motion made promptly and in any event before the time specified in a subpoena duces tecum for compliance therewith, the circuit court of the county in which the hearing is to be held, or the circuit court in which the subpoena duces tecum was served, or the judge of either such court in vacation, may grant any relief with respect to such subpoena duces tecum which either such court, under the West Virginia Rules of Civil Procedure for Trial Courts of Record, could grant, and for any of the same reasons, with respect to a subpoena duces tecum issued from either such court. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, upon application by such agency or any member of the body which comprises such agency, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein. Witnesses at such hearings shall testify under oath or affirmation.

(c) Evidentiary depositions may be taken and read as in civil actions in the circuit courts of this state.

(d) All hearings shall be conducted in an impartial manner. The agency, any member of the body which comprises the agency, or any hearing examiner or other person permitted by statute to hold any such hearing for such agency, and duly authorized by such agency so to do, shall have the power to: (1) Administer oaths and affirmations, (2) rule upon offers of proof and receive relevant evidence, (3) regulate the course of the hearing, (4) hold conferences for the settlement or simplification of the issues by consent of the parties, (5) dispose of procedural requests or similar matters, and (6) take any other action authorized by a rule adopted by the agency in accordance with the provisions of article three of this chapter.

(e) Except where otherwise provided by statute, the hearing in any contested case shall be held in the county selected by the agency.

(f) Notwithstanding the provisions of subparagraph (a) of this section, upon request to the agency from any party to the hearing all reported testimony and evidence at such hearing shall be transcribed, and a copy thereof furnished to such party at his expense. The agency shall have the responsibility for making arrangements for the transcription of the reported testimony and evidence, and such transcription shall be accomplished with all dispatch.

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§29A-5-2. Rules of evidence; taking notice of facts; correction of transcript.

(a) In contested cases irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the circuit courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall be bound by the rules of privilege recognized by law. Objections to evidentiary offers shall be noted in the record. Any party to any such hearing may vouch the record as to any excluded testimony or other evidence.

(b) All evidence, including papers, records, agency staff memoranda and documents in the possession of the agency, of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

(c) Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

(d) Agencies may take notice of judicially cognizable facts. All parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(e) Upon motion in writing served by any party as notice may be served pursuant to section two, article seven of this chapter and therein assigning error or omission in any part of any transcript of the proceedings had and testimony taken at any such hearing, the agency shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and revised in the respects designated by the agency, so as to make it conform to the whole truth.

WV Legislature

§29A-5-3. Orders or decisions.

Every final order or decision rendered by any agency in a contested case shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. Prior to the rendering of any final order or decision, any party may propose findings of fact and conclusions of law. If proposed, all other parties shall be given an opportunity to except to such proposed findings and conclusions, and the final order or decision shall include a ruling on each proposed finding. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A copy of the order or decision and accompanying findings and conclusions shall be served upon each party and his attorney of record, if any, in person or by registered or certified mail.

WV Legislature

§29A-5-4. Judicial review of contested cases.

(a) Any party adversely affected by a final order or decision in a contested case is entitled to judicial review thereof under this chapter, but nothing in this chapter shall be deemed to prevent other means of review, redress, or relief provided by law.

(b) Proceedings for review of any final order or decision issued on or before June 30, 2022, shall be instituted by filing a petition, at the election of the petitioner, in either the Circuit Court of Kanawha County, West Virginia, or in the circuit court of the county in which the petitioner or any one of the petitioners resides or does business, or with the judge thereof in vacation, within 30 days after the date upon which such party received notice of the final order or decision of the agency. Notwithstanding any provision of this code to the contrary, proceedings for judicial review of any final order or decision issued after June 30, 2022, must be instituted by filing an appeal to the Intermediate Court of Appeals as provided in §51-11-1 *et seq*. of this code. A copy of the petition shall be served upon the agency and all other parties of record by registered or certified mail. The petition shall state whether the appeal is taken on questions of law or questions of fact, or both. No appeal bond shall be required to affect any such appeal.

(c) The filing of the petition shall not stay enforcement of the agency order or decision or act as a supersedeas thereto, but the agency may stay such enforcement, and the appellant, at any time after the filing of his or her petition, may apply to such court for a stay of or supersedeas to such final order or decision. Pending the appeal, the court may grant a stay or supersedeas upon such terms as it deems proper.

(d) Within 15 days after receipt of a copy of the petition by the agency, or within such further time as the court may allow, the agency shall transmit to such court the original or a certified copy of the entire record of the proceeding under review, including a transcript of all testimony and all papers, motions, documents, evidence, and records as were before the agency, all agency staff memoranda submitted in connection with the case, and a statement of matters officially noted; but, by stipulation of all parties to the review proceeding, the record may be shortened. The expense of preparing such record shall be taxed as a part of the costs of the appeal. The appellant shall provide security for costs satisfactory to the court. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs involved. Upon demand by any party to the appeal, the agency shall furnish, at the cost of the party requesting same, a copy of such record. In the event the complete record is not filed with the court within the time provided for in this section, the appellant may apply to the court to have the case docketed, and the court shall order such record filed.

(e) Appeals taken on questions of law, fact, or both, shall be heard upon assignments of error filed in the cause or set out in the briefs of the appellant. Errors not argued by brief may be disregarded, but the court may consider and decide errors which are not assigned or argued. The court or judge shall fix a date and time for the hearing on the petition, but such hearing, unless by agreement of the parties, shall not be held sooner than 10 days after the filing of

the petition, and notice of such date and time shall be forthwith given to the agency.

(f) The review shall be conducted by the court without a jury and shall be upon the record made before the agency, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken before the court. The court may hear oral arguments and require written briefs.

(g) The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision, or order are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority or jurisdiction of the agency;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

(5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(h) The judgment of the circuit court or the Intermediate Court of Appeals, whichever is applicable, shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals of this state in accordance with the provisions of §29A-6-1 of this code.

WV Legislature

§29A-5-5. Exceptions.

The provisions of this article shall not apply to the workers' compensation fund, the Bureau of Employment Programs, the State Tax Commissioner, the state road commissioner, the state road commission, and the teachers' retirement board.

WV Legislature

§29A-6-1. Supreme Court of Appeals.

(a) Any party adversely affected by the final judgment of the circuit court under this chapter may seek review thereof by appeal to the Supreme Court of Appeals of this state, and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided by law for civil appeals generally: *Provided*, That a circuit court has no jurisdiction to review a final order or decision in a contested case issued after June 30, 2022.

(b) Any party adversely affected by the final order, decision, or judgment of the Intermediate Court of Appeals under this chapter may seek review thereof by petition to the Supreme Court of Appeals, pursuant to the requirements of §51-11-1 *et seq*. of this code.

WV Legislature

§29A-7-1. Limitations on certain administrative powers.

No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law.

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§29A-7-2. Notice generally.

Whenever an agency or person is authorized or required to give any notice under this chapter, unless a different method of giving such notice is otherwise expressly permitted or prescribed, such notice shall be given either by personal delivery thereof to the agency or person to be so notified, or by depositing such notice in the United States mail, postage prepaid, in an envelope addressed to such agency or person at the last-known address of such agency or person. Proof of the giving of notice in either such manner may be made by the affidavit of any officer or assistant or employee of the agency, or by affidavit of any person over eighteen years of age, naming the agency or person to which or to whom such notice was given and specifying the time, place and manner of the giving thereof.

WV Legislature

§29A-7-3. Repeals; subsequent legislation.

All acts or parts of acts which are inconsistent with the provisions of this chapter are hereby repealed to the extent of such inconsistency, but such repeal shall not affect pending proceedings. No subsequent legislation shall be held to supersede or modify the provisions of this chapter except to the extent that such legislation shall do so specifically and expressly.

WV Legislature

§29A-7-4. Construction and effect; severability of provisions.

Nothing in this chapter shall be held to limit or repeal additional requirements imposed by statute or otherwise recognized by law. No procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of this chapter. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or its application, and to this end the provisions of this chapter are declared to be severable.

WV Legislature