

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1976



ENROLLED

Committee Substitute for

HOUSE BILL No. 1257

(By Mr. Albright & Mr. Farley)



PASSED March 9, 1976

In Effect ninety days from Passage



FILED IN THE OFFICE
JAMES R. McCARTNEY,
SECRETARY OF STATE

THIS DATE 5/24/76

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1257

(By MR. ALBRIGHT and MR. FARLEY)

(Originating in the House Committee on the Judiciary)

[Passed March 9, 1976; in effect ninety days from passage.]

AN ACT to amend and reenact article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state administrative procedures and rule making; defining rule or regulation; providing for rules of procedure; relating to validity of rules or regulations; providing for the establishment and maintenance by the secretary of state of a state register; providing for notice of hearing and taking of evidence; providing for filing findings and determinations for administrative regulations in state register and for evidence to be deemed public record; providing for filing of proposed rules and regulations in the state register and with the governor and Legislature; relating to notification of opportunity to submit data, etc., to proposed rules or regulations; providing for opportunity to submit such data, etc., providing that prior rules or regulations are to remain in effect; providing for the creation of a state legislative rule-making review committee and effective date for rules or regulations; providing for submission of all approved or disapproved rules or regulations to the Legislature and their approval or disapproval by the Legislature; relating to the withdrawal of proposed rules or regulations; and providing for temporary rules or regulations and the procedure for promulgation thereof.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. RULE MAKING.

§29A-3-1. Definition of rule or regulation.

- 1 As used in this article, "rule or regulation" means a rule
- 2 as defined in section one, article one of this chapter.

§29A-3-2. Rules of procedure required.

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

- 3 (a) Each agency shall adopt rules or regulations governing
- 4 the formal and informal procedures prescribed or authorized by
- 5 this chapter. Such rules or regulations shall include rules of
- 6 practice before the agency, together with forms and instruc-
- 7 tions.

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

§29A-3-3. Validity of rules or regulations.

- 1 Any rules or regulations promulgated after the effective
- 2 date of this section and any amendment promulgated hereafter
- 3 to any rule or regulation heretofore promulgated under the
- 4 delegation of the power of the Legislature or otherwise shall
- 5 only be effective if promulgated in accordance with the provi-
- 6 sions of this article.

§29A-3-4. Establishment and maintenance of a state register by secretary of state.

- 1 For the purpose of providing a compilation of the rules and
- 2 regulations of the various agencies, and for providing notice
- 3 of proposed rules or regulations or the taking of evidence
- 4 with respect thereto, the secretary of state shall establish
- 5 and maintain a state register. Every proposed rule or regula-
- 6 tion, every finding and determination for a rule or regula-

7 tion and every rule or regulation filed with the secretary
8 of state shall be admitted to record in the state register.

9 Within ninety days after the effective date of this section,
10 the secretary of state shall arrange all rules or regulations
11 heretofore filed with him in a volume or record and shall add
12 thereto such proposed rules or regulations, notices, amend-
13 ments, whether by the agency or the Legislature, and all resolu-
14 tions disapproving or amending rules or regulations, in whole or
15 in part, in such form and fashion as may in his discretion be
16 suitable. This state register and supplements thereto shall
17 be duplicated and furnished on a subscription basis to any per-
18 son who shall apply therefor. The cost of subscription shall be
19 determined from time to time by the secretary of state who shall
20 fix the price therefor at a level he considers sufficient to
21 defray the cost of preparing and distributing the register and
22 supplements thereto on a weekly basis. The register shall be
23 divided into proposed and final effective rules or regulations
24 and notices or other materials considered by the secretary of
25 state to be suitable. From time to time but at least biennially,
26 the secretary of state shall publish permanent volumes of the
27 rules or regulations promulgated and made effective since the
28 last such publication.

§29A-3-5. Notice of hearing and taking of evidence.

1 Except for a rule or regulation of the type described in
2 subsection (a), section seven of this article, if a statute
3 requires that an agency make certain findings and determina-
4 tions as a condition precedent to promulgation of a rule or
5 regulation, the agency shall cause to be filed in the state register
6 a notice of hearing for the taking of evidence upon the issues
7 to be found, which notice shall state the time and place of the
8 hearing and generally describe the issues to be decided. In
9 addition, the agency may cause to be published in every county
10 of the state as a Class I legal publication a notice of such
11 hearing which notice shall state the time and place of the
12 hearing and describe generally the issues to be decided. The
13 agency may limit the presentations at such hearing to written
14 matter or may permit oral presentations. Every citizen or other
15 interested party may appear and be heard at such hearing. If
16 only written statements are received, the date of hearing shall

17 be the last day upon which statements may be filed with the
18 agency.

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

1 Before any rules or regulations mentioned in section five
2 shall be effective, the agency shall promulgate the findings
3 and determinations required and state fully and succinctly
4 the reasons therefor and file such findings and determina-
5 tions in the state register. The statement of reasons and
6 a transcript of all evidence received pursuant to notice
7 shall be public records and shall be carefully preserved by
8 the agency and be open for public inspection and copying
9 for a period and term of not less than five years from the
10 date of the hearing.

§29A-3-7. Filing of proposed rules and regulations in state register and Legislature.

1 (a) If a proposed rule or regulation fixes rules of pro-
2 cedure, practice or evidence for dealings with or proceed-
3 ings before the agency a copy thereof shall be filed in the
4 state register.

5 (b) All other rules or regulations shall be filed in the
6 state register, with the governor, and with the legislative rule-
7 making committee in accordance with section eleven of this
8 article.

§29A-3-8. Notification of opportunity to submit data, amendments, etc., to proposed rule or regulation.

1 When a proposed rule or regulation is filed in the state
2 register there shall be attached thereto a notice of the time,
3 date and place at which interested parties may submit data,
4 objections, suggested amendments, views, evidence and argu-
5 ments orally or in writing concerning the proposed rule or
6 regulation, which notice must be given not less than thirty
7 nor more than sixty days prior to the date fixed. An agency
8 may, in its discretion, also publish the required notice, at the
9 expense of the agency. If an agency determines to give notice
10 also by publication, the notice shall be published as a Class I

11 legal advertisement in compliance with the provisions of article
12 three, chapter fifty-nine of this code, and the publication
13 area for such publication shall be determined by the agency.
14 No rule or regulation hereafter adopted is valid unless
15 adopted in substantial compliance with the provisions of this
16 section.

**§29A-3-9. Opportunity for interested persons to submit data, etc.,
concerning proposed rule or regulation.**

1 On the date and at the time and place specified in the
2 notice required by section eight of this article an opportunity
3 shall be afforded all interested persons to submit data, objec-
4 tions, suggested amendments, views, evidence and arguments
5 orally or in writing concerning the proposed rule or regulation.

§29A-3-10. Final adoption of proposed rules and regulations.

1 After the hearing provided in section nine, the agency
2 shall either finally adopt the rule or regulation as proposed,
3 amend and finally adopt the proposed rule and regulation, as
4 amended, or withdraw the proposed rule or regulation. No
5 amendment may change the main purpose of the proposed rule
6 or regulation.

7 The agency shall file in the state register a notice of
8 its action, including the text of the rule or regulation as
9 finally adopted, and a proposed effective date. Except in the
10 case of a rule or regulation issued pursuant to section fourteen
11 of this article such proposed effective date shall not be less
12 than thirty days after the date of filing of such notice. In
13 cases of rules or regulations required to be filed with the
14 legislative rule-making review committee such notice shall also
15 contain a certificate showing the date of presentation of the
16 proposed rule or regulation to such committee.

**§29A-3-11. Legislative rule-making review committee; when rule
or regulation becomes effective.**

1 (a) There is hereby created a statutory body to be known
2 as the legislative rule-making review committee, to review all
3 rules or regulations of the several agencies following the
4 proposal thereof, except those rules or regulations described
5 in subsection (a), section seven of this article. The com-

6 mittee shall be composed of six members of the Senate, ap-
7 pointed by the president of the Senate, and six members of the
8 House of Delegates, appointed by the speaker of the House of
9 Delegates. In addition, the president of the Senate and the
10 speaker of the House of Delegates shall be ex officio nonvoting
11 members of the committee and shall designate the cochairmen.
12 Not more than four of the voting members of the committee
13 from each house shall be members of the same political party.
14 The members shall serve until their successors shall have been
15 appointed as heretofore provided. Members of the committee
16 shall receive such compensation and expenses as provided in
17 article two-a of chapter four of this code. Such expenses and
18 all other expenses, including those incurred in the employment
19 of legal, technical, investigative, clerical, stenographic, advisory
20 and other personnel shall be paid from an appropriation to be
21 made expressly for the legislative rule-making review commit-
22 tee, but if no such appropriation be made, such expenses shall
23 be paid from the appropriation under "Account No. 103 for
24 Joint Expenses," but no expense of any kind whatever payable
25 under said Account No. 103 for joint expenses shall be incurred
26 unless first approved by the joint committee on government and
27 finance. The committee shall meet upon call of the cochairmen
28 and may meet at any time, both during sessions of the Legisla-
29 ture and in the interim.

30 (b) No adoption, amendment or repeal of any rule or regu-
31 lation, except a rule or regulation described in subsection (a),
32 section seven of this article or a rule or regulation issued
33 pursuant to section fourteen thereof, shall be effective until
34 seventeen copies thereof have been presented to the legislative
35 rule-making review committee by the agency proposing such
36 rule or regulation at a regular meeting of said committee, and
37 approved by the committee. The form of proposed rules or
38 regulations which are presented to the committee shall be as
39 follows: New language shall be underlined and language to be
40 deleted shall be stricken-through but clearly legible. The com-
41 mittee shall study all proposed rules or regulations and, in its
42 discretion, may hold public hearings thereon.

43 Within six months after the proposed rule or regulation is
44 presented to the committee, the committee shall either approve,
45 approve in part and disapprove in part, or disapprove the

46 proposed rule or regulation and file notice of its action in
47 the state register and with the agency. In the event no notice
48 of approval or disapproval is filed by the committee in the
49 state register within one hundred eighty days after the
50 presentation of the proposed rule or regulation to the commit-
51 tee, the committee shall be deemed to have approved all of the
52 proposed rule or regulation for the purposes of this section. To
53 the extent that a proposed rule or regulation is approved by the
54 committee it shall be effective thirty days after the filing of
55 notice of approval or on the effective date proposed by the
56 agency, whichever is later, or if no notice is filed, thirty
57 days after approval is deemed to have occurred for the purposes
58 of this section. The secretary of state shall note every such
59 effective date in the state register. To the extent that the
60 committee disapproves a proposed rule or regulation no agency
61 shall thereafter issue any regulation or directive or take
62 other action to implement such disapproved rule or regulation
63 except that the Legislature may reverse such disapproval under
64 the provisions of section twelve of this article. If the com-
65 mittee disapproves any rule or regulation proposed for the
66 purpose of implementing a federally subsidized or assisted
67 program the Legislature shall either sustain or reverse every
68 such disapproval.

69 (c) Any rule or regulation described in subsection (a),
70 section seven of this article shall be effective thirty days
71 after filing in the state register.

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

1 No later than thirty days before the end of each regular
2 session of the Legislature, the cochairmen of the legislative
3 rule-making review committee shall submit to their respective
4 houses of the Legislature for study, copies of all proposed
5 rules or regulations which have been considered by the com-
6 mittee under section eleven of this article which have not been
7 previously submitted to the Legislature for study. Such rules
8 or regulations shall be referred by the speaker of the House of
9 Delegates and by the president of the Senate to an appropriate
10 standing committee of the respective houses for consideration.
11 Such committee, or a subcommittee thereof, shall schedule
12 hearings on any proposed rule or regulation which has been

13 disapproved, in whole or in part, by the legislative rule-making
14 review committee. The Legislature may by concurrent resolu-
15 tion either sustain or reverse, in whole or in part, the action of
16 the legislative rule-making review committee under the pro-
17 visions of section eleven, except that if the Legislature fails
18 during its regular session to sustain by resolution the disap-
19 proval of a rule or regulation proposed for the purpose of im-
20 plementing a federally subsidized or assisted program, such
21 disapproval shall be deemed reversed for purposes of this sec-
22 tion and the proposed rule or regulation shall become effective
23 thirty days after the adjournment sine die of such regular ses-
24 sion or on the effective date proposed by the agency, whichever
25 is later. Any action of the Legislature under the provisions of
26 this section shall be effective as of the date on which the
27 concurrent resolution has been adopted by both houses of the
28 Legislature: *Provided*, That the clerk of the house originating
29 such resolution shall forthwith file a copy thereof in the
30 state register and with the agency; and any rule or regulation or
31 part thereof made effective by such resolution shall only be
32 effective thirty days after such concurrent resolution is filed in
33 the state register or upon the effective date proposed by the
34 agency, whichever is later: *Provided, however*, That if such
35 concurrent resolution disapproves any rule or regulation or part
36 thereof no agency shall thereafter issue any regulation or direc-
37 tive or take other action to implement such disapproved rule or
38 regulation or part thereof.

§29A-3-13. Withdrawal of proposed rules or regulations.

1 Any proposed rule or regulation may be withdrawn by the
2 agency at any time before the effective date thereof or thirty
3 days before the expiration of the session of the Legislature
4 at which such rules or regulations may be reviewed, whichever
5 date is sooner.

§29A-3-14. Temporary rules or regulations; procedure for promulgation;

1 Any agency may, without hearing, find that an emergency
2 exists requiring that temporary rules or regulations be promul-
3 gated. Such temporary rules or regulations, together with a
4 statement of the facts and circumstances constituting the
5 emergency, shall be filed in the state register and such tem-

de smk

6 porary rules or regulations shall be effective immediately,
7 except that no such rule or regulation shall remain in effect
8 longer than ninety days unless there is compliance with all the
9 provisions of sections five through nine and section eleven of
10 this article.

§29A-3-15. Prior rules or regulations remain in effect.

1 Every rule or regulation heretofore lawfully promulgated
2 pursuant to the prior provisions of this article shall remain in
3 full force and effect, except as the same shall be amended
4 pursuant to this article, until revoked by appropriate action
5 of the agency or operation of law.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence C. Christman
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Jessielon Jr.
Clerk of the Senate

W.A. Blankenship
Clerk of the House of Delegates

H. J. Balthasar
President of the Senate

Lewis D. McManus
Speaker House of Delegates

The within *disappeared* this the *25th*
day of *March*, 1976.

Arthur Hanes Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/19/76

Time 4:40 p.m.