WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982

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ENROLLED

HOUSE BILL No. 1432

(By Mr. Thurgleton and Mr. Green)

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Passed February 10, 1982

In Effect Ninety Days From Passage
AN ACT to amend and reenact articles one, two and three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article four of said chapter twenty-nine-a, all relating generally to state administrative procedures; making legislative findings; defining certain terms; limiting application of the chapter; requiring the secretary of state to establish and maintain a state register; creating the state register; specifying that the contents of the state register include all materials relating to rule making; providing that the state register is deemed a public record; requiring agencies to file rules in the state register; providing the format and numbering of such rules and specifying the requirements of size and type; providing for publication of and subscription to the state register with monthly supplements and permanent biennial volumes; prohibiting agencies from duplicating rules unless the agency can do so more inexpensively; providing for distribution of one alternative format of the rules by agency; requiring agencies to make orders and records available; requiring that rules be promulgated only in accordance with this chapter; specifying limits on agency rule making; requiring agencies to adopt rules of procedure; requiring agencies to propose procedural and interpretive rules; requiring notice of rule making; providing for public comment on proposed rules; providing that findings and determinations be
filed in the state register; requiring notice of hearings; allowing for adoption of procedural and interpretive rules by agencies; requiring proposal of legislative rules and approval of such rules for submission to the Legislature; creating a legislative rule-making review committee; providing for review of rules submitted to the committee and the scope of that review; providing for a committee recommendation to the Legislature; providing for submission of legislative rules to the Legislature; providing for authorization by the Legislature to promulgate legislative rules; defining the effective date of such rules; providing for withdrawal or modification of rules by agency; providing for emergency rules and review of such rules; providing for legislative review of procedural and interpretive rules; and providing that prior rules are not affected.

Be it enacted by the Legislature of West Virginia:

That articles one, two and three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article four of said chapter twenty-nine-a be amended and reenacted, all to read as follows:

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

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

1 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 act
intends to fix by law uniform and settled administrative
practices and procedures, subject only to enumerated excep-
tions, 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 ap-
propriate legislative review of that exercise of such delegated
legislative authority and with established procedures for legis-
lative oversight of the exercise of executive rule-making author-
ity.

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

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

For the purposes of this chapter:

(a) “Agency” means any state board, commission, depart-
ment, 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 examina-
tion was fair or whether the applicant passed the examination
and does not include rule making;

(c) “Interpretive rule” means every rule, as defined in sub-
section (i) 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 re-
garding the agency’s interpretations, policy or opinions upon
the law enforced or administered by it and which is not in-
tended by the agency to be determinative of any issue affecting private rights, privileges or interests. An interpretive rule may not be relied upon to impose a civil or criminal sanction nor to regulate private conduct or the exercise of private rights or privileges nor to confer any right or privilege provided by law and is not admissible in any administrative or judicial proceeding for such purpose, except where the interpretive rule established the conditions for the exercise of discretionary power as herein provided. 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 such rule. The admission of such rule in no way affects any legislative or judicial determination regarding the prospective effect of such 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 such 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 such conditions.

(d) "Legislative rule" means every rule, as defined in subsection (i) 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 private rights, privileges or interests is a 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 such findings and determinations as 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 sec-
tion; or (D) executive orders or proclamations by the gover-
nor issued solely in the exercise of executive power, including
executive orders issued in the event of a public disaster or
emergency;

(e) "Order" means the whole or any part of the final dis-
position (whether affirmative, negative, injunctive or declara-
tory in form) by any agency of any matter other than rule
making;

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

(g) "Procedural rule" means every rule, as defined in sub-
section (i) of this section, which fixes rules of procedure, prac-
tice or evidence for dealings with or proceedings before an
agency, including forms prescribed by the agency;

(h) "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 promul-
gation;

(i) "Rule" includes every regulation, standard or statement
of policy or interpretation of general application and future
effect, including the amendment or repeal thereof, affecting
private rights, privileges or interests, or the procedures avail-
able to the public, adopted by an agency to implement, extend,
apply, interpret or make specific the law enforced or adminis-
tered by it or to govern its organization or procedure, but does
not include regulations relating solely to the internal manage-
ment of the agency, nor regulations of which notice is cus-
tomarily given to the public by markers or signs, nor mere in-
structions. Every rule shall be classified as "legislative rule,"
"interpretive rule" or "procedural rule," all as defined in this
section, and shall be effective only as provided in this chapter;

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

§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 ac-
cording 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 gover-
nor.

(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 pro-
visions 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,
the West Virginia board of education and the West Virginia
board of regents: 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 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, public elections,
the conduct of inmates or other persons admitted to public
institutions, the conduct of students at public schools or public
educational 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, but two certified copies of each
such rule shall be filed in the state register.

(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 ac-
cordance with the provisions of this chapter to effectuate any
limitations on such exemptions contained in any such other
statute.

ARTICLE 2. STATE REGISTER.

§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.

§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.


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.


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.

§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 the first day of January, one thousand nine hundred eighty-three, 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 the first day of January, one thousand nine hundred eighty-three, 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 the first day of January, one thousand
nine hundred eighty-three.

(b) Except for such changes in the designation and num-
bering 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 re-
quirements of article three of this chapter.

§29A-2-6. Format and numbering of agency rules filed in state
register.

(a) Each rule or proposed rule filed by an agency in the
state register shall include as its initial provision: (1) A state-
ment identifying such rule as a legislative rule, an interpretive
rule, or a procedural rule, as the case may be; (2) a statement
of each 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 author-
ity for the promulgation of such rule which is not stated there-
in in accordance with the requirements of this subdivision.

(b) An agency which files the rule is required, to the extent
practicable, to compile, number and index such rule in se-
quence according to the number of the section, article and
chapter of this code to which such rule or any part thereof
relates.

Each rule when filed to be finally effective shall have at-
ached 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 rule 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 may prescribe by legislative rule
a standard size and format for rules to be filed in the state
register and he may prescribe such procedural or interpretive
rules as he deems advisable to clarify and interpret the provi-
sions of this section. The secretary of state shall refuse to ac-
cept for filing any rules which do not comply with the specific
provisions of this section, and he may refuse to accept for
filing any rules which do not comply with the procedural rules
issued by him pursuant to this section until the rules sought to
be filed are brought into conformity with the secretary of state's
procedural rules.

(d) Unless and until the secretary of state prescribes other-
wise by rule issued and made effective under the provisions of
subsection (c) of this section, each rule filed 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 the promulgation of a federal
agency or other organization which could not be submitted in
the standard size and format except at undue expense. Ma-
terials 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.


(a) The Legislature intends that the secretary of state
offer to the public convenient and efficient access to copies
of the state register or parts thereof desired by the citizens.
The provisions of this section are enacted in order to provide
a means of doing so pending any other means provided by
law or legislative rule.

(b) Until the first day of January, one thousand nine
hundred eighty-three, the secretary of state may use any
procedure he adopts to fulfill the objects of this section in-
cluding any of the procedures provided in this section.

(c) On and after the first day of January, one thousand
nine hundred eighty-three, and the refiling of all rules effective
on the effective date of this section the body of the rules thus
refiled together with (1) those rules made effective from and
after the effective date of this section (2) all proposed rules not
yet effective on and before the first day of January, one
thousand nine hundred eighty-three (3) all notices and other
materials related to such proposed rules and (4) the chrono-
logical index hereinafter provided shall constitute the first
biennial permanent state register and have a publication date
of the first day of January, one thousand nine hundred
eighty-three.

(d) All materials filed in the state register after the effec-
tive date of this section shall be indexed daily in chronological
order of filing with a brief description of the item filed and
a columnar cross index to (1) agency and (2) section, article
and chapter of the code to which it relates and by which it
is filed in the state register and (3) such other information
in the description or cross index as the secretary of state
believes will aid a citizen in using the chronological index.

(e) The secretary of state shall cause to be duplicated in
such number as shall be required, on white paper with two
punches suitable for fastening in two-ring binders, the perma-
nent biennial state register, the chronological index and other
materials filed in the register, or any part by agency or sec-
tion, article or chapter for subscription at a cost including
labor, paper and postage, sufficient in his judgment to defray
the expense of such duplication. The secretary of state shall
also offer, at least at monthly intervals, supplements to the
published materials listed above. Any subscription for monthly
supplements shall be offered annually and shall include the
chronological index and materials related to such agency
or agencies, or section, article or chapter of the code as a
person may designate. A person may limit the request to
notices only, to notices and rules, or to notices and proposed
rules, or any combination thereof.

(f) On and after the first day of January, one thousand nine
hundred eighty-three, and every two years thereafter the
secretary of state shall offer for purchase succeeding biennial
permanent state registers which shall consist of all rules
effective on the date of publication selected by the secretary
of state, which date shall be at least two years from the last
such publication date, and materials filed in the state register
relating thereto. The cost of the succeeding biennial perma-

nent state register and for the portion relating to any agency
or any section, article or chapter of the code which may be
designated by a person purchasing the same shall be fixed in
same manner specified in subsection (e) of this section.

(g) The secretary of state may omit from any duplication
made pursuant to subsections (c) and (f) of this section any
rules the duplication of which would be unduly cumbersome,
expensive or otherwise inexpedient, if a copy of such rules
is made available from the original filing of such rule, at a
price not exceeding the cost of duplication, and if the volume
from which such rule is omitted includes a notice in that
portion of the publication in which the rule would have been
located, stating (1) the general subject matter of the omitted
rule, (2) each section, article and chapter of this code to
which the omitted rule relates, and (3) the means by which
a copy of the omitted rule may be obtained.

(h) All fees and other moneys collected by the secretary
of state pursuant to the provisions of this section shall be
deposited by him in a separate fund in the state treasury
and shall be expended solely for the purposes of this section,
unless otherwise provided by appropriation or other action
of the Legislature.

(i) The secretary of state may propose changes to the
procedures outlined in the section above by proposing a legis-

lative rule under the provisions of section nine, article three,
but may promulgate no rules containing such changes unless
authorized by the Legislature pursuant to article three.


(a) No agency may duplicate copies of its rules for general
distribution except in accordance with this section. However,
a duly certified copy may be provided by the agency, at the cost
of reproduction, if requested and if not presently available from
the secretary of state. Whenever an agency desires multiple
copies of all or parts of its rules or other materials filed in the
state register, it shall purchase the same from the office of the
secretary of state: Provided, That when reproduction of the
number of copies desired by the agency can be accomplished at
a lower cost by the agency, it shall notify the secretary of
state in writing of such lower cost and, unless the secretary of
state shall within ten days agree to furnish such copies for an
equal and lower cost and do so within twenty days thereafter,
may proceed at its cost to acquire such copies elsewhere if
otherwise authorized to do so by law.

(b) Any published rules may be distributed only to those
persons who specifically request a copy of the rules and may
not be distributed in any manner to persons who have not
requested a copy. The agency may print or otherwise acquire
only the number of copies of any rule that it may reasonably
anticipate will be requested by members of the general public.

(c) Except as provided in this section, no agency may ex-
pend funds to alter the format or presentation of such rules
from that provided in the state register (except to adequately
fasten and bind the pages) or expend funds to compensate the
office of secretary of state to do so.

(d) Whenever for public convenience an agency deems it
appropriate to reproduce one or more rules for general public
distribution in some printed form, such as a booklet or other
format not provided by copying the state register, the agency
shall give written notice to the secretary of state and the
legislative auditor of its intention to do so, including therein
the anticipated cost and the source or account of appropriations
therefor. Such notice shall be recorded in the state register
as other notices. After twenty days shall have elapsed, the
agency may proceed unless the secretary of state shall have
made a finding that such additional publication is unnecessary
or unduly expensive. Any such finding shall be served on the
agency and the governor and filed in the state register. The
governor may, within ten days after receiving such finding,
order such publication canceled or order such amendment
thereof as is appropriate in his judgment. Any such order of
the governor shall be effective until and unless the Legislature
shall otherwise provide. In the absence of such an order by
the governor, the agency may proceed in accord with its original notice of intent.


Every agency shall file in the state register or, pursuant to rules adopted in accordance with the provisions of this chapter, make available to public inspection 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.

ARTICLE 3. RULE MAKING.

§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, 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.

§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.

§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 considered practicable, supplement its rules with descriptive statements of its procedures.

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

(a) When an agency proposes a 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 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.

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

When an agency 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 agency 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 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.

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.

§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 a statement listing the reasons 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.

§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.

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

A procedural and interpretive rule, other than an emergency rule, shall be considered by the agency 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 procedural or interpretive rule may be amended by the agency 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 agency shall file the text of the adopted procedural or interpretive rule with its notice of adoption in the state register and the same shall be effective on the date specified in the rule or thirty days after such filing, whichever is later.


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, shall first file in the state register a notice of its proposal, including the text of the legislative rule and including all materials required in the case of a procedural or interpretive rule. The agency 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 approve the 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.

Such approval of the agency for submission to the Legislature shall be deemed to be approval for submission to the Legislature only and not deemed to give full force and effect until authority to do so is granted by law.

§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. 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.

§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 agency shall submit to the legislative rule-making review committee at a regular meeting of such committee fifteen copies of (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 description of any 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 house 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 committee may request or which may be required by law.

(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 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 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.

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

(1) Authorize the agency to promulgate the legislative rule, or

(2) Authorize the agency to promulgate part of the legislative rule, or
(3) Authorize the agency to promulgate the legislative rule with certain amendments, or

(4) Recommend that the rule be withdrawn.

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) or (4) of this subsection, the notice shall contain a statement of the reasons for such recommendation.

(d) When the committee recommends that a rule be authorized, in whole or in part, by the Legislature, the committee shall instruct the office of legislative services to draft a bill authorizing the agency to promulgate 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 to introduce to the Legislature.

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

1 (a) No later than forty days before the sixtieth day of each regular session of the Legislature, the cochairman 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 the committee pursuant to the provisions of section eleven of this article and which have not been previously submitted to the Legislature for study, together with the recommendations of the committee with respect to such rules, a statement of the reasons for any recommendation that a rule or any part of a rule be amended, and a statement that a bill authorizing the legislative rule has been drafted by legislative services pursuant to section eleven of this article. The cochairman of the committee may also submit such rules at the direction of the committee at any time before or during a special session in which consideration thereof may be ap-
proper. The committee may withhold from its report any proposed legislative rule which was submitted to the committee fewer than two hundred ten days before the end of a regular session. The clerk of each house shall submit the report to his house at the commencement of the next session.

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 which the Legislature shall designate. The clerk of the house originating such act shall forthwith file a copy of any bill enacted in contemplation of this section in the state register and with the agency proposing such 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 such session for which authority to promulgate was not by law provided during such session.

(b) If the Legislature fails during its regular session to act upon all or part of any legislative rule which was submitted to it by the legislative rule-making review committee during such session, no agency may thereafter issue any rule or directive or take other action to implement such rule or part thereof unless and until otherwise authorized to do so.

(c) Nothing herein 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 act is not yet complete.

(d) Whenever the Legislature is convened by proclamation of the governor, upon his 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 such 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 such rule during such session is a lawful order of
business.

(e) Whenever a date is required by this section to be
computed in relation to the end of a regular session of the
Legislature, such date shall be computed without regard to
any extensions of such session occasioned solely by the pro-
clamation of the governor.

(f) Whenever a date is required to be computed from or is
fixed by the first day of a regular session of the Legislature,
it shall be computed or fixed in the year one thousand nine
hundred eighty-four, and each fourth year thereafter without
regard to the second Wednesday of January of such years.

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

(a) Except as the Legislature may by law otherwise pro-
vide, within sixty 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 such
rule.

(b) A legislative rule authorized by the Legislature shall
become effective thirty days after such filing in the state
register, or on the effective date fixed by the authorizing act or
if none is fixed by law, such later date not to exceed ninety
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 legisla-
tive rule, and shall file such legislative rule in the state register
in lieu of the proposed legislative rule previously filed pursuant
to section six, article three.

§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 di-
recting 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 com-
ply 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.

§29A-3-15. Emergency legislative rules; procedures for promulga-
tion; definition.

(a) Any agency with authority to promulgate procedural or
interpretive rules or propose legislative rules 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 amend or repeal any legislative rule which by law has
been specifically authorized by the Legislature but the cir-
cumstances constituting the emergency requiring such amend-
ment or repeal shall be stated with particularity and be sub-
ject to de novo review by any court having original jurisdiction
of an action challenging their validity. Fifteen copies of the
rules and of the required statement shall be filed forthwith
with the legislative rule-making review committee.

Except as provided in subsections (b) and (e) of this section,
an emergency rule which is a legislative rule shall be effective
until the earlier of (1) the expiration date specified by the agency in a notice filed in the state register or (2) the expiration of one hundred eighty days following the filing of the rule in the state register.

(b) An agency may extend the effective period of any emergency rule which is a legislative rule for an additional period not to exceed one hundred eighty days by filing notice of such extension in the state register if:

(1) Such notice of extension is filed not more than ten days prior to the date on which such emergency rule is otherwise scheduled to expire;

(2) The agency has, within ninety days following the filing of the emergency rule in the state register, initiated rule-making procedures for permission to promulgate a regular legislative rule to replace such emergency rule;

(3) The Legislature has not authorized or directed promulgation of an authorized legislative rule dealing with substantially the same subject matter since such emergency rule was first promulgated; and

(4) The Legislature has not, by law, disapproved of such emergency rule.

(c) The provisions 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 and approval of proposed rules. Any emergency rule promulgated for any such purpose may be contested in a judicial proceeding before a court of competent jurisdiction.

(d) The legislative rule-making review committee 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 such rule; and (3) whether the rule was promulgated in compliance with the requirements and prohibitions contained in this section. The committee may recommend to the agency or the Legislature such action as it may deem proper.
(e) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

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

The legislative rule-making review committee may review any procedural rules, interpretive rules or existing legislative rules and may make recommendations concerning such rules to the Legislature, or to the agency, or to both the Legislature and the agency.

§29A-3-17. Prior rules.

Any rule lawfully promulgated prior to the effective date of this act 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.

ARTICLE 4. DECLARATORY RULINGS AND DECLARATORY JUDGMENTS.

§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 an emergency rule adopted pursuant to section fifteen, article three of this chapter, action under said section fifteen 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is disapproved this the 29th day of February, 1982.

Governor