

Vote - Passed

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982



ENROLLED

HOUSE BILL No. 1432

(By Mr. Shingleton + Mr. Green)



Passed February 10, 1982

In Effect Ninety Days From Passage



ENROLLED

H. B. 1432

(By MR. SHINGLETON and MR. GREER)

(Originating in the House Committee on the Judiciary)

[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
2 and the administrative practice and procedure of the various
3 executive and administrative officers, offices and agencies
4 comprises a body of law and policy which is voluminous, often
5 formulated without adequate public participation and col-
6 lected and preserved for public knowledge and use in an
7 unacceptable and essentially inaccessible fashion. The Legisla-
8 ture further finds that the delegation of its legislative powers
9 to other departments and agencies of government requires of
10 the Legislature that the rules and regulations of such other
11 departments and agencies, which have the force and effect
12 of law because of their legislative character, should be care-
13 fully and extensively reviewed by the Legislature in a man-
14 ner properly respectful of the separation of powers but in
15 keeping with the legislative force and effect of such rules and
16 regulations. Accordingly the Legislature has and by this act

17 intends to fix by law uniform and settled administrative
18 practices and procedures, subject only to enumerated excep-
19 tions, for the exercise of executive rule-making authority and
20 for the exercise by executive and administrative officers, offices
21 and agencies of lawfully delegated legislative power, with ap-
22 propriate legislative review of that exercise of such delegated
23 legislative authority and with established procedures for legis-
24 lative oversight of the exercise of executive rule-making author-
25 ity.

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

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

1 For the purposes of this chapter:

2 (a) "Agency" means any state board, commission, depart-
3 ment, office or officer authorized by law to make rules or
4 adjudicate contested cases, except those in the legislative or
5 judicial branches;

6 (b) "Contested case" means a proceeding before an agency
7 in which the legal rights, duties, interests or privileges of
8 specific parties are required by law or constitutional right
9 to be determined after an agency hearing, but does not include
10 cases in which an agency issues a license, permit or certificate
11 after an examination to test the knowledge or ability of the
12 applicant where the controversy concerns whether the examina-
13 tion was fair or whether the applicant passed the examination
14 and does not include rule making;

15 (c) "Interpretive rule" means every rule, as defined in sub-
16 section (i) of this section, adopted by an agency independently
17 of any delegation of legislative power which is intended by the
18 agency to provide information or guidance to the public re-
19 garding the agency's interpretations, policy or opinions upon
20 the law enforced or administered by it and which is not in-

21 tended by the agency to be determinative of any issue affecting
22 private rights, privileges or interests. An interpretive rule may
23 not be relied upon to impose a civil or criminal sanction nor
24 to regulate private conduct or the exercise of private rights or
25 privileges nor to confer any right or privilege provided by law
26 and is not admissible in any administrative or judicial pro-
27 ceeding for such purpose, except where the interpretive rule
28 established the conditions for the exercise of discretionary
29 power as herein provided. However, an interpretive rule is
30 admissible for the purpose of showing that the prior conduct
31 of a person was based on good faith reliance on such rule. The
32 admission of such rule in no way affects any legislative or
33 judicial determination regarding the prospective effect of such
34 rule. Where any provision of this code lawfully commits any
35 decision or determination of fact or judgment to the sole dis-
36 cretion of any agency or any executive officer or employee,
37 the conditions for the exercise of that discretion, to the extent
38 that such conditions are not prescribed by statute or by legis-
39 lative rule, may be established by an interpretive rule and such
40 rule is admissible in any administrative or judicial proceeding
41 to prove such conditions.

42 (d) "Legislative rule" means every rule, as defined in sub-
43 section (i) of this section, proposed or promulgated by an agen-
44 cy pursuant to this chapter. Legislative rule includes every
45 rule which, when promulgated after or pursuant to authoriza-
46 tion of the Legislature, has (1) the force of law, or (2) supplies
47 a basis for the imposition of civil or criminal liability, or (3)
48 grants or denies a specific benefit. Every rule which, when
49 effective, is determinative on any issue affecting private rights,
50 privileges or interests is a legislative rule. Unless lawfully
51 promulgated as an emergency rule, a legislative rule is only a
52 proposal by the agency and has no legal force or effect until
53 promulgated by specific authorization of the Legislature. Ex-
54 cept where otherwise specifically provided in this code, legis-
55 lative rule does not include (A) findings or determinations of
56 fact made or reported by an agency, including any such find-
57 ings and determinations as are required to be made by any
58 agency as a condition precedent to proposal of a rule to the
59 Legislature; (B) declaratory rulings issued by an agency pur-
60 suant to the provisions of section one, article four of this

61 chapter; (C) orders, as defined in subdivision (e) of this sec-
62 tion; or (D) executive orders or proclamations by the gover-
63 nor issued solely in the exercise of executive power, including
64 executive orders issued in the event of a public disaster or
65 emergency;

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

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

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

76 (h) "Proposed rule" is a legislative rule, interpretive rule,
77 or a procedural rule which has not become effective pursuant
78 to the provisions of this chapter or law authorizing its promul-
79 gation;

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

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

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

1 (a) The provisions of this chapter do not apply in any
2 respect whatever to executive orders of the governor, which

3 orders to the extent otherwise lawful, shall be effective ac-
4 cording to their terms: *Provided*, That the executive orders
5 shall be admitted to record in the state register when and to
6 the extent the governor deems suitable and shall be included
7 therein by the secretary of state when tendered by the gover-
8 nor.

9 (b) Except as to requirements for filing in the state
10 register, and with the Legislature or its rule-making review
11 committee, provided in this chapter or other law, the pro-
12 visions of this chapter do not apply in any respect whatever to
13 the West Virginia board of probation and parole, the public
14 service commission, the board of public works sitting as such,
15 the West Virginia board of education and the West Virginia
16 board of regents: *Provided*, That rules of such agencies shall
17 be filed in the state register in the form prescribed by this
18 chapter and be effective no sooner than sixty consecutive days
19 after being so filed: *Provided, however*, That such agencies
20 may promulgate emergency rules in conformity with section
21 fifteen, article three of this chapter.

22 (c) The provisions of this chapter do not apply to rules
23 relating to, or contested cases involving, public elections,
24 the conduct of inmates or other persons admitted to public
25 institutions, the conduct of students at public schools or public
26 educational institutions, the open seasons and the bag, creel,
27 size, age, weight and sex limits with respect to the wildlife in
28 this state, the conduct of persons in military service or the
29 receipt of public assistance, but two certified copies of each
30 such rule shall be filed in the state register.

31 (d) Nothing herein shall be construed to affect, limit or
32 expand any express and specific exemption from this chapter
33 contained in any other statute relating to a specific agency,
34 but such exemptions shall be construed and applied in ac-
35 cordance with the provisions of this chapter to effectuate any
36 limitations on such exemptions contained in any such other
37 statute.

ARTICLE 2. STATE REGISTER.

§29A-2-1. Duty of the secretary of state.

1 It is the nondiscretionary, nondelegable duty of the secretary

2 of state to establish and maintain the state register hereby
3 created, and offer copies for subscription and public distribu-
4 tion in accordance with the provisions of this article.

§29A-2-2. State register created.

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

§29A-2-3. Contents of state register.

1 The secretary of state shall receive and file in the state
2 register:

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

6 (b) The text of every proposed rule and subsequent pro-
7 posed amendment thereto and fiscal notes attached thereto.

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

12 (d) Every executive order tendered by the governor.

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

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

22 (g) Notice of and the text of any action by an agency
23 of the Legislature or its committees relative to the process of
24 promulgation of rules tendered to the secretary of state for
25 inclusion in the register.

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

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

1 Every paper filed in the state register shall be a public
2 record provable and admissible as evidence if otherwise rele-
3 vant, of which judicial notice may be taken, either under
4 lawful certification or by reason of duplication and distribution
5 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.

1 (a) Notwithstanding any filing prior to the effective date of
2 this section, each agency shall hereafter file in the state
3 register a certified copy of all of its lawfully adopted rules
4 which are in force on the date of such filing and all of its
5 proposed rules which have not become effective prior to the
6 date of such filing. All such rules and proposed rules shall
7 be arranged, compiled, numbered and indexed in accordance
8 with the provisions of section six of this article, and shall also
9 include a designation of each rule as either legislative rule,
10 interpretive rule or procedural rule. Any agency desiring to
11 pursue promulgation of a rule proposed prior to the ef-
12 fective date of this section but not then yet effective, shall
13 refile such proposed rule, following the procedure set forth
14 in article three: *Provided*, That it shall not be necessary for
15 the agency to again hold a public hearing to determine facts or
16 public comment, but in all other respects the procedures pro-
17 vided for the promulgation of rules under this section shall
18 be complied with. On or before the first day of January, one
19 thousand nine hundred eighty-three, any other agency required
20 by law to file its rules in the state register in order for such
21 rules to be effective shall resubmit and refile such rules in
22 accordance with this section. If any agency fails to file a
23 certified copy of any rule or proposed rule in accordance with
24 this section on or before the first day of January, one thou-
25 sand nine hundred eighty-three, then such rule or proposed
26 rule not so filed shall be thereafter void and unenforceable
27 and shall be of no further force and effect except as to en-
28 forcement of its effective provisions for actions, causes or

29 matters occurring prior to the first day of January, one thousand
30 nine hundred eighty-three.

31 (b) Except for such changes in the designation and num-
32 bering of a rule, including numerical references within a rule,
33 as are required to comply with the provisions of section six
34 of this article, no legislative rule filed under the provisions of
35 this section may be amended in any way prior to such filing
36 unless such amendment is made in compliance with the re-
37 quirements of article three of this chapter.

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

1 (a) Each rule or proposed rule filed by an agency in the
2 state register shall include as its initial provision: (1) A state-
3 ment identifying such rule as a legislative rule, an interpretive
4 rule, or a procedural rule, as the case may be; (2) a statement
5 of each section, article and chapter of this code to which such
6 rule or any part thereof relates; and (3) a statement of the
7 section, article and chapter of this code or any other provision
8 of law which provides authority for the promulgation of such
9 rule. The agency shall be estopped from relying on any author-
10 ity for the promulgation of such rule which is not stated there-
11 in in accordance with the requirements of this subdivision.

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

17 Each rule when filed to be finally effective shall have at-
18 tached thereto an abstract of its promulgation history prepared
19 by the agency showing the date of the filing in the state register
20 of the content of, or notice of any procedure relating to, action
21 necessary under this chapter to cause such rule to be finally
22 effective: *Provided*, That any error or omission in such abstract
23 shall not affect the validity of any rule or action in respect
24 thereto.

25 (c) The secretary of state may prescribe by legislative rule
26 a standard size and format for rules to be filed in the state

27 register and he may prescribe such procedural or interpretive
28 rules as he deems advisable to clarify and interpret the provi-
29 sions of this section. The secretary of state shall refuse to ac-
30 cept for filing any rules which do not comply with the specific
31 provisions of this section, and he may refuse to accept for
32 filing any rules which do not comply with the procedural rules
33 issued by him pursuant to this section until the rules sought to
34 be filed are brought into conformity with the secretary of state's
35 procedural rules.

36 (d) Unless and until the secretary of state prescribes other-
37 wise by rule issued and made effective under the provisions of
38 subsection (c) of this section, each rule filed in the state
39 register shall be on white paper measuring eight and one-half
40 inches by eleven inches, typewritten and single-spaced, with a
41 one inch margin at the top, bottom and each side of each page,
42 and shall be reproduced photographically, or by xerography
43 or other duplication process. The secretary of state may grant
44 specific exceptions to such requirements in the case of maps,
45 diagrams and exhibits, if the same may not be conveniently
46 folded and fastened with the other pages of rules and in the
47 case of rules which incorporate the promulgation of a federal
48 agency or other organization which could not be submitted in
49 the standard size and format except at undue expense. Ma-
50 terials submitted for inclusion in the state register shall be
51 fastened on the left side by two or more fasteners attached
52 through holes suitable for insertion into ring binders.

§29A-2-7. Publication of state register.

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

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

11 (c) On and after the first day of January, one thousand

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

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

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

47 (f) On and after the first day of January, one thousand nine
48 hundred eighty-three, and every two years thereafter the
49 secretary of state shall offer for purchase succeeding biennial
50 permanent state registers which shall consist of all rules

51 effective on the date of publication selected by the secretary
52 of state, which date shall be at least two years from the last
53 such publication date, and materials filed in the state register
54 relating thereto. The cost of the succeeding biennial perma-
55 nent state register and for the portion relating to any agency
56 or any section, article or chapter of the code which may be
57 designated by a person purchasing the same shall be fixed in
58 same manner specified in subsection (e) of this section.

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

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

77 (i) The secretary of state may propose changes to the
78 procedures outlined in the section above by proposing a legis-
79 lative rule under the provisions of section nine, article three,
80 but may promulgate no rules containing such changes unless
81 authorized by the Legislature pursuant to article three.

§29A-2-8. Publication of rules by agencies.

1 (a) No agency may duplicate copies of its rules for general
2 distribution except in accordance with this section. However,
3 a duly certified copy may be provided by the agency, at the cost
4 of reproduction, if requested and if not presently available from
5 the secretary of state. Whenever an agency desires multiple
6 copies of all or parts of its rules or other materials filed in the

7 state register, it shall purchase the same from the office of the
8 secretary of state: *Provided*, That when reproduction of the
9 number of copies desired by the agency can be accomplished at
10 a lower cost by the agency, it shall notify the secretary of
11 state in writing of such lower cost and, unless the secretary of
12 state shall within ten days agree to furnish such copies for an
13 equal and lower cost and do so within twenty days thereafter,
14 may proceed at its cost to acquire such copies elsewhere if
15 otherwise authorized to do so by law.

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

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

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

45 the governor, the agency may proceed in accord with its
46 original notice of intent.

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

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

ARTICLE 3. RULE MAKING.

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

1 In addition to other rule-making requirements imposed by
2 law and except to the extent specifically exempted by the
3 provisions of this chapter or other applicable law, every rule
4 and regulation (including any amendment of or rule to repeal
5 any other rule) shall be promulgated by an agency only in
6 accordance with this article and shall be and remain effective
7 only to the extent that it has been or is promulgated in ac-
8 cordance with this article.

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

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

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

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

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

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

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

3 (a) Each agency shall adopt procedural rules governing
4 the formal and informal procedures prescribed or authorized
5 by this chapter. Procedural rules shall include rules of prac-
6 tice before the agency, together with forms and instructions.

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

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

1 (a) When an agency proposes a procedural rule or an inter-
2 pretive rule, the agency shall file in the state register a notice
3 of its action, including the text of the rule as proposed.

4 (b) All proposed rules filed under subsection (a) of this
5 section shall have a fiscal note attached itemizing the cost of
6 implementing the rules as they relate to this state and to per-
7 sons affected by the rules and regulations. Such fiscal note
8 shall include all information included in a fiscal note for
9 either house of the Legislature and a statement of the economic
10 impact of the rule on the state or its residents. The objectives
11 of the rules shall be clearly and separately stated in the fiscal
12 note by the agency issuing the proposed rules. No procedural

13 or interpretive rule shall be void or voidable by virtue of
14 noncompliance with this subsection.

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

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

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

17 If findings and determinations are a condition precedent to
18 the promulgation of such rule, then an opportunity for public
19 comment on the merits of the rule shall be afforded after such
20 findings and determinations are made. In such event, notice
21 of the hearing, or of the period for receiving public comment
22 on the proposed rule shall be attached to and filed as a part
23 of the findings and determinations of the agency when filed in
24 the state register.

25 In any hearing for public comment on the merits of the rule,
26 the agency may limit presentations to written material. The
27 time, date and place fixed in the notice shall constitute the last
28 opportunity to submit any written material relevant to any
29 hearing, all of which may be earlier submitted by filing with
30 the agency.

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

34 Any citizen or other interested party may appear and be
35 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.

1 (a) Incident to fixing a date for public comment on a
2 proposed rule, the agency shall promulgate the findings and
3 determinations required as a condition precedent thereto, and
4 state fully and succinctly the reasons therefor and file such
5 findings and determinations in the state register. If the agency
6 amends the proposed rule as a result of the evidence or com-
7 ment presented pursuant to section five, such amendment shall
8 be filed with a description of any changes and a statement
9 listing the reasons for the amendment.

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

§29A-3-7. Notice of hearings.

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

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

1 A procedural and interpretive rule, other than an emergency
2 rule, shall be considered by the agency for adoption not
3 later than six months after the close of public comment and a
4 notice of withdrawal or adoption shall be filed in the state
5 register within that period. Failure to file such notice shall
6 constitute withdrawal and the secretary of state shall note such
7 failure in the state register immediately upon the expiration
8 of the six-month period.

9 A procedural or interpretive rule may be amended by the
10 agency prior to final adoption without further hearing or pub-
11 lic comment. No such amendment may change the main pur-
12 pose of the rule. If the fiscal implications have changed since
13 the rule was proposed, a new fiscal note shall be attached to
14 the notice of filing. Upon adoption of the rule (including any
15 such amendment) the agency shall file the text of the adopted
16 procedural or interpretive rule with its notice of adoption in
17 the state register and the same shall be effective on the date
18 specified in the rule or thirty days after such filing, whichever
19 is later.

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

1 When an agency proposes a legislative rule, other than an
2 emergency rule, it shall be deemed to be applying to the Legis-
3 lature for permission, to be granted by law, to promulgate such
4 rule as approved by the agency for submission to the Legisla-
5 ture or as amended and authorized by the Legislature by law.

6 An agency proposing a legislative rule, other than an emer-
7 gency rule, shall first file in the state register a notice of its
8 proposal, including the text of the legislative rule and including
9 all materials required in the case of a procedural or interpretive
10 rule. The agency shall then proceed as in the case of a pro-
11 cedural and interpretive rule to the point of, but not including
12 final adoption. In lieu of final adoption, the agency shall ap-
13 prove the rule, including any amendments, for submission to
14 the Legislature and file such notice of approval in the state
15 register and with the legislative rule-making review committee.

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

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

1 (a) There is hereby created a joint committee of the
2 Legislature, known as the legislative rule-making review com-
3 mittee, to review all legislative rules of the several agencies
4 and such other rules as the committee deems appropriate.
5 The committee shall be composed of six members of the

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

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

**§29A-3-11. Submission of legislative rules to the legislative rule-
making review committee.**

1 (a) When an agency finally approves a proposed legislative
2 rule for submission to the Legislature, pursuant to the provi-
3 sions of section nine of this article, the agency shall submit to
4 the legislative rule-making review committee at a regular
5 meeting of such committee fifteen copies of (1) the full text of
6 the legislative rule as finally approved by the agency, with new
7 language underlined and with language to be deleted from any
8 existing rule stricken-through but clearly legible; (2) a brief
9 summary of the content of the legislative rule and description
10 of any rule which the agency proposes to amend or repeal;
11 (3) a statement of the circumstances which require the rule;

12 (4) a fiscal note containing all information included in a fiscal
13 note for either house of the Legislature and a statement of the
14 economic impact of the rule on the state or its residents; and
15 (5) any other information which the committee may request or
16 which may be required by law.

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

21 (1) Whether the agency has exceeded the scope of its
22 statutory authority in approving the proposed legislative rule;

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

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

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

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

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

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

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

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

45 (2) Authorize the agency to promulgate part of the legisla-
46 tive rule, or

47 (3) Authorize the agency to promulgate the legislative rule
48 with certain amendments, or

49 (4) Recommend that the rule be withdrawn.

50 The committee shall file notice of its action in the state re-
51 gister and with the agency proposing the rule: *Provided*, That
52 when the committee makes the recommendations of subdi-
53 vision (2), (3) or (4) of this subsection, the notice shall con-
54 tain a statement of the reasons for such recommendation.

55 (d) When the committee recommends that a rule be autho-
56 rized, in whole or in part, by the Legislature, the committee
57 shall instruct the office of legislative services to draft a bill
58 authorizing the agency to promulgate all or part of the legis-
59 lative rule, and incorporating such amendments as the com-
60 mittee desires. If the committee recommends that the rule not
61 be authorized, it shall include in its report a draft of a bill
62 authorizing promulgation of the rule together with a recom-
63 mendation. Any draft bill prepared under this section shall
64 contain a legislative finding that the rule is within the legisla-
65 tive intent of the statute which the rule is intended to imple-
66 ment, extend, apply, or interpret and shall be available for any
67 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
2 each regular session of the Legislature, the cochairman of the
3 legislative rule-making review committee shall submit to the
4 clerk of the respective houses of the Legislature copies of all
5 proposed legislative rules which have been submitted to the
6 committee pursuant to the provisions of section eleven of this
7 article and which have not been previously submitted to the
8 Legislature for study, together with the recommendations of
9 the committee with respect to such rules, a statement of the
10 reasons for any recommendation that a rule or any part of a
11 rule be amended, and a statement that a bill authorizing the
12 legislative rule has been drafted by legislative services pursuant
13 to section eleven of this article. The cochairman of
14 the committee may also submit such rules at the di-
15 rection of the committee at any time before or during
16 a special session in which consideration thereof may be ap-

17 appropriate. The committee may withhold from its report any
18 proposed legislative rule which was submitted to the com-
19 mittee fewer than two hundred ten days before the end of
20 a regular session. The clerk of each house shall submit
21 the report to his house at the commencement of the next
22 session.

23 All bills introduced authorizing the promulgation of a rule
24 may be referred by the speaker of the House of Delegates and
25 by the president of the Senate to appropriate standing com-
26 mittees of the respective houses for further consideration or
27 the matters may be otherwise dealt with as each house or
28 its rules provide. The Legislature may by act authorize the
29 agency to adopt a legislative rule incorporating the entire
30 rule, or may authorize the agency to adopt a rule with any
31 amendments which the Legislature shall designate. The clerk
32 of the house originating such act shall forthwith file a copy
33 of any bill enacted in contemplation of this section in the
34 state register and with the agency proposing such rule and
35 the clerk of each house may prepare and file a synopsis of
36 legislative action during any session on any proposed rule
37 submitted to the house during such session for which authority
38 to promulgate was not by law provided during such session.

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

45 (c) Nothing herein shall be construed to prevent the
46 Legislature by law from authorizing or authorizing and direct-
47 ing an agency to promulgate legislative rules not proposed by
48 the agency or upon which some procedure specified in this
49 act is not yet complete.

50 (d) Whenever the Legislature is convened by proclamation
51 of the governor, upon his own initiative or upon application
52 of the members of the Legislature, or whenever a regular ses-
53 sion of the Legislature is extended or convened by the vote or
54 petition of its members, the Legislature may by act enacted

55 during such extraordinary or extended session authorize, in
56 whole or in part, any legislative rule whether submitted to the
57 legislative rule-making review committee, or not, if legislative
58 action on such rule during such session is a lawful order of
59 business.

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

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

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

1 (a) Except as the Legislature may by law otherwise pro-
2 vide, within sixty days after the effective date of an act
3 authorizing promulgation of a legislative rule, the agency shall
4 promulgate the rule only in conformity with the provisions
5 of law authorizing and directing the promulgation of such
6 rule.

7 (b) A legislative rule authorized by the Legislature shall
8 become effective thirty days after such filing in the state
9 register, or on the effective date fixed by the authorizing act or
10 if none is fixed by law, such later date not to exceed ninety
11 days, as is fixed by the agency.

12 (c) The secretary of state shall note in the state register
13 the effective date of an authorized and promulgated legisla-
14 tive rule, and shall file such legislative rule in the state register
15 in lieu of the proposed legislative rule previously filed pursuant
16 to section six, article three.

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

1 (a) Any legislative rule proposed by an agency may be
2 withdrawn by the agency any time before passage of a law
3 authorizing or authorizing and directing its promulgation, but

4 no such action shall be construed to affect the validity, force
5 or effect of a law enacted authorizing or authorizing and di-
6 recting the promulgation of an authorized legislative rule or
7 exercising compliance with such law. The agency shall file a
8 notice of any such action in the state register.

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

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

1 (a) Any agency with authority to promulgate procedural or
2 interpretive rules or propose legislative rules may, without
3 hearing, find that an emergency exists requiring that emergency
4 rules be promulgated and promulgate the same in accordance
5 with this section. Such emergency rules, together with a
6 statement of the facts and circumstances constituting the
7 emergency, shall be filed in the state register and shall become
8 effective immediately upon such filing. Such emergency rules
9 may amend or repeal any legislative rule which by law has
10 been specifically authorized by the Legislature but the cir-
11 cumstances constituting the emergency requiring such amend-
12 ment or repeal shall be stated with particularity and be sub-
13 ject to de novo review by any court having original jurisdiction
14 of an action challenging their validity. Fifteen copies of the
15 rules and of the required statement shall be filed forthwith
16 with the legislative rule-making review committee.

17 Except as provided in subsections (b) and (e) of this section,
18 an emergency rule which is a legislative rule shall be effective

19 until the earlier of (1) the expiration date specified by the
20 agency in a notice filed in the state register or (2) the expira-
21 tion of one hundred eighty days following the filing of the
22 rule in the state register.

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

27 (1) Such notice of extension is filed not more than ten
28 days prior to the date on which such emergency rule is other-
29 wise scheduled to expire;

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

34 (3) The Legislature has not authorized or directed promul-
35 gation of an authorized legislative rule dealing with sub-
36 stantially the same subject matter since such emergency rule
37 was first promulgated; and

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

40 (c) The provisions of this section shall not be used to
41 avoid or evade any provision of this article or any other pro-
42 visions of this code, including any provisions for legislative
43 review and approval of proposed rules. Any emergency rule
44 promulgated for any such purpose may be contested in a
45 judicial proceeding before a court of competent jurisdiction.

46 (d) The legislative rule-making review committee may re-
47 view any emergency rule to determine (1) whether the agency
48 has exceeded the scope of its statutory authority in promulgat-
49 ing the emergency rule; (2) whether there exists an emergency
50 justifying the promulgation of such rule; and (3) whether the
51 rule was promulgated in compliance with the requirements
52 and prohibitions contained in this section. The committee
53 may recommend to the agency or the Legislature such action
54 as it may deem proper.

55 (e) For the purposes of this section, an emergency exists
56 when the promulgation of a rule is necessary for the immediate
57 preservation of the public peace, health, safety or welfare or
58 is necessary to comply with a time limitation established by
59 this code or by a federal statute or regulation or to prevent
60 substantial harm to the public interest.

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

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

§29A-3-17. Prior rules.

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

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

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

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

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

ARTICLE 4. DECLARATORY RULINGS AND DECLARATORY JUDGMENTS.

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

1 (a) Any person, except the agency promulgating the rule,
2 may have the validity of any rule determined by instituting an
3 action for a declaratory judgment in the circuit court of Ka-
4 nawha County, West Virginia, when it appears that the rule,
5 or its threatened application, interferes with or impairs or
6 threatens to interfere with or impair, the legal rights or privi-
7 leges of the plaintiff or plaintiffs. The agency shall be made a

8 party to the proceeding. The declaratory judgment may be
9 rendered whether or not the plaintiff or plaintiffs has or have
10 first requested the agency to pass upon the validity of the rule
11 in question.

12 (b) The court shall declare the rule invalid if it finds that
13 the rule violates constitutional provisions or exceeds the statu-
14 tory authority or jurisdiction of the agency or was adopted
15 without compliance with statutory rule-making procedures or
16 is arbitrary or capricious, or that, in the case of an emergency
17 rule adopted pursuant to section fifteen, article three of this
18 chapter, action under said section fifteen was not justified.

19 (c) When the invalidity of a rule has been so declared, the
20 agency shall, within thirty days after such declaratory judg-
21 ment has been entered, acquiesce therein and modify or re-
22 scind such invalidated rule in accord with the requirement of
23 such declaratory judgment unless the agency promptly, and in
24 any event within such thirty-day period, notifies the plaintiff or
25 plaintiffs of its intention to apply for an appeal to the supreme
26 court of appeals from such declaratory judgment pursuant to
27 section one, article six of this chapter. In the event such agency
28 shall thereafter make timely application for such appeal, the
29 acquiescence of the agency in the invalidity of such rule shall
30 not be required until thirty days after timely applications for
31 such appeal have been refused or within thirty days after the
32 appeal has been dismissed or otherwise disposed of in the
33 supreme court of appeals by an affirmance of the judgment
34 invalidating said rule. .

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

R. P. Bayler
Chairman Senate Committee

Tommy E. Whitlow
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Joel C. Wulfs
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

Walter P. McCreaw
President of the Senate

Hynd M. See, Jr.
Speaker House of Delegates

The within is disapproved this the 24
day of February, 1982.

John R. Raley
Governor

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SECY. OF STATE