

HB 2501

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

HOUSE BILL No. 2501

(By Delegate DOUGLAS, ET AL)



Passed MARCH 11, 1995

In Effect 90 days from Passage



ENROLLED

H. B. 2501

(BY DELEGATES DOUGLAS, GALLAGHER, FAIRCLOTH,
COMPTON AND LINCH)

[Passed March 11, 1995; in effect ninety days from passage.]

AN ACT to amend and reenact sections five, nine, eleven and twelve, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rule making; notice of proposed rule making; allowing an agency to hold either a public hearing or a public comment period; proposal of legislative rules; requiring the filing of agency approved rules within a specified time; providing for extending the time period for filing the agency approved rule; submission of legislative rules to the legislative rule-making review committee; requiring the filing of relevant federal statutes and regulations with the committee; submission of legislative rules to the Legislature; and changing deadline by which rules must be filed with the committee for consideration at the legislative session.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. RULE MAKING.

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

1 When an agency proposes to promulgate a rule other
2 than an emergency rule, it shall file with the secretary of
3 state, for publication in the state register, a notice of its
4 action, including therein any request for the submission of
5 evidence to be presented on any factual determinations or
6 inquiries required by law to promulgate such rule. At the
7 time of filing the notice of its action, the agency shall also
8 file with the secretary of state a copy of the full text of the
9 rule proposed, and a fiscal note as defined in subsection
10 (b), section four of this article. If the agency is consider-
11 ing alternative draft proposals, it may also file with the
12 secretary of state the full text of such draft proposals.

13 The notice shall fix a date, time and place for the re-
14 ceipt of public comment in the form of oral statements,
15 written statements and documents bearing upon any find-
16 ings and determinations which are a condition precedent
17 to the final approval by the agency of the proposed rule,
18 and shall contain a general description of the issues to be
19 decided. If no specific findings and determinations are
20 required as a condition precedent to the final approval by
21 the agency of the approved rule, the notice shall fix a date,
22 time and place for the receipt of general public comment
23 on the proposed rule. To comply with the public com-
24 ment provisions of this section, the agency may hold a
25 public hearing or schedule a public comment period for
26 the receipt of written statements and documents, or both.

27 If findings and determinations are a condition prece-
28 dent to the promulgation of such rule, then an opportunity
29 for general public comment on the merits of the rule shall
30 be afforded after such findings and determinations are
31 made. In such event, notice of the hearing or of the peri-
32 od for receiving public comment on the proposed rule
33 shall be attached to and filed as a part of the findings and
34 determinations of the agency when filed in the state regis-
35 ter.

36 In any hearing for public comment on the merits of
37 the rule, the agency may limit presentations to written
38 material. The time, date and place fixed in the notice shall

39 constitute the last opportunity to submit any written mate-
40 rial relevant to any hearing, all of which may be earlier
41 submitted by filing with the agency. After the public
42 hearing or the close of the public comment period, which-
43 ever is later, the agency shall not permit the filing or re-
44 ceipt of, nor shall it consider, any attempted ex parte com-
45 munications directed to it in the form of additional com-
46 ment, prior to the submission of its final agency-approved
47 rule to the legislative rule-making review committee pur-
48 suant to the provisions of section eleven of this article.

49 The agency may also, at its expense, cause to be pub-
50 lished as a Class I legal publication in every county of the
51 state any notice required by this section.

52 Any citizen or other interested party may appear and
53 be heard at such hearings as are required by this section.

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

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

7 An agency proposing a legislative rule, other than an
8 emergency rule, after filing the notice of proposed rule
9 making required by the provisions of section five of this
10 article, shall then proceed as in the case of a procedural
11 and interpretive rule to the point of, but not including,
12 final adoption. In lieu of final adoption, the agency shall
13 finally approve the proposed rule, including any amend-
14 ments, for submission to the Legislature and file such
15 notice of approval in the state register and with the legisla-
16 tive rule-making review committee, within ninety days
17 after the public hearing was held or within ninety days
18 after the end of the public comment period required un-
19 der section five of this article: *Provided*, That upon re-
20 ceipt of a written request from an agency, setting forth
21 valid reasons why the agency is unable to file the agency

22 approved rule within the ninety-day time period, the legis-
23 lative rule-making review committee may grant the agency
24 an extension of time to file the agency approved rule.

25 Such final agency approval of the rule under this
26 section is deemed to be approval for submission to the
27 Legislature only and does not give any force and effect to
28 the proposed rule. The rule shall have full force and ef-
29 fect only when authority for promulgation of the rule is
30 granted by an act of the Legislature and the rule is pro-
31 mulgated pursuant to the provisions of section thirteen of
32 this article.

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

1 (a) When an agency finally approves a proposed legis-
2 lative rule for submission to the Legislature, pursuant to
3 the provisions of section nine of this article, the secretary
4 of the executive department which administers the agency
5 pursuant to the provisions of article two, chapter five-f of
6 this code shall submit to the legislative rule-making review
7 committee at its offices or at a regular meeting of such
8 committee fifteen copies of: (1) The full text of the legis-
9 lative rule as finally approved by the agency, with new
10 language underlined and with language to be deleted from
11 any existing rule stricken through but clearly legible; (2) a
12 brief summary of the content of the legislative rule and a
13 description and a copy of any existing rule which the
14 agency proposes to amend or repeal; (3) a statement of
15 the circumstances which require the rule; (4) a fiscal note
16 containing all information included in a fiscal note for
17 either house of the Legislature and a statement of the
18 economic impact of the rule on the state or its residents;
19 (5) one copy of any relevant federal statutes or regula-
20 tions; and (6) any other information which the committee
21 may request or which may be required by law. If the
22 agency is an agency, board or commission which is not
23 administered by an executive department as provided for
24 in article two, chapter five-f of this code, the agency shall
25 submit the final agency-approved rule as required by this

26 subsection.

27 (b) The committee shall review each proposed legisla-
28 tive rule and, in its discretion, may hold public hearings
29 thereon. Such review shall include, but not be limited to, a
30 determination of:

31 (1) Whether the agency has exceeded the scope of its
32 statutory authority in approving the proposed legislative
33 rule;

34 (2) Whether the proposed legislative rule is in confor-
35 mity with the legislative intent of the statute which the rule
36 is intended to implement, extend, apply, interpret or make
37 specific;

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

41 (4) Whether the proposed legislative rule is necessary
42 to fully accomplish the objectives of the statute under
43 which the rule was proposed for promulgation;

44 (5) Whether the proposed legislative rule is reasonable,
45 especially as it affects the convenience of the general pub-
46 lic or of persons particularly affected by it;

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

50 (7) Whether the proposed legislative rule was proposed
51 for promulgation in compliance with the requirements of
52 this article and with any requirements imposed by any
53 other provision of this code.

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

56 (1) Authorize the promulgation of the legislative rule;
57 or

58 (2) Authorize the promulgation of part of the legisla-

59 tive rule; or

60 (3) Authorize the promulgation of the legislative rule
61 with certain amendments; or

62 (4) Recommend that the proposed rule be withdrawn.

63 The committee shall file notice of its action in the state
64 register and with the agency proposing the rule: *Provid-*
65 *ed*, That when the committee makes the recommendations
66 of subdivision (2), (3) or (4) of this subsection, the notice
67 shall contain a statement of the reasons for such recom-
68 mendation.

69 (d) When the committee recommends that a rule be
70 authorized, in whole or in part, by the Legislature, the
71 committee shall instruct its staff or the office of legislative
72 services to draft a bill authorizing the promulgation of all
73 or part of the legislative rule and incorporating such
74 amendments as the committee desires. If the committee
75 recommends that the rule not be authorized, it shall in-
76 clude in its report a draft of a bill authorizing promulga-
77 tion of the rule together with a recommendation. Any
78 draft bill prepared under this section shall contain a legis-
79 lative finding that the rule is within the legislative intent of
80 the statute which the rule is intended to implement, extend,
81 apply or interpret and shall be available for any member
82 of the Legislature 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 cochairmen of
3 the legislative rule-making review committee shall submit
4 to the clerk of the respective houses of the Legislature
5 copies of all proposed legislative rules which have been
6 submitted to and considered by the committee pursuant to
7 the provisions of section eleven of this article and which
8 have not been previously submitted to the Legislature for
9 study, together with the recommendations of the commit-
10 tee with respect to such rules, a statement of the reasons
11 for any recommendation that a rule be amended or with-

12 drawn and a statement that a bill authorizing the legislative
13 rule has been drafted by the staff of the committee or by
14 legislative services pursuant to section eleven of this arti-
15 cle. The cochairman of the committee may also submit
16 such rules at the direction of the committee at any time
17 before or during a special session in which consideration
18 thereof may be appropriate. The committee may withhold
19 from its report any proposed legislative rule which was
20 submitted to the committee fewer than two hundred
21 twenty-five days before the end of the regular session.
22 The clerk of each house shall submit the report to his or
23 her house at the commencement of the next session.

24 All bills introduced authorizing the promulgation of a
25 rule may be referred by the speaker of the House of Dele-
26 gates and by the president of the Senate to appropriate
27 standing committees of the respective houses for further
28 consideration or the matters may be otherwise dealt with as
29 each house or its rules provide. The Legislature may by
30 act authorize the agency to adopt a legislative rule incor-
31 porating the entire rule or may authorize the agency to
32 adopt a rule with any amendments which the Legislature
33 shall designate. The clerk of the house originating such
34 act shall forthwith file a copy of any bill of authorization
35 enacted with the secretary of state and with the agency
36 proposing such rule and the clerk of each house may
37 prepare and file a synopsis of legislative action during any
38 session on any proposed rule submitted to the house dur-
39 ing such session for which authority to promulgate was
40 not by law provided during such session. In acting upon
41 the separate bills authorizing the promulgation of rules,
42 the Legislature may, by amendment or substitution, com-
43 bine the separate bills of authorization insofar as the vari-
44 ous rules authorized therein are proposed by agencies
45 which are placed under the administration of one of the
46 single separate executive departments identified under the
47 provisions of section two, article one, chapter five-f of this
48 code or the Legislature may combine the separate bills of
49 authorization by agency or agencies within an executive
50 department. In the case of rules proposed for promulga-

51 tion by an agency which is not administered by an execu-
52 tive department pursuant to the provisions of article two of
53 said chapter, the separate bills of authorization for the
54 proposed rules of that agency may, by amendment or
55 substitution, be combined. The foregoing provisions
56 relating to combining separate bills of authorization ac-
57 cording to department or agency are not intended to re-
58 strict the permissible breadth of bills of authorization and
59 do not preclude the Legislature from otherwise combining
60 various bills of authorization which have a unity of subject
61 matter. Any number of provisions may be included in a
62 bill of authorization, but the single object of the bill shall
63 be to authorize the promulgation of proposed legislative
64 rules.

65 (b) If the Legislature fails during its regular session to
66 act upon all or part of any legislative rule which was sub-
67 mitted to it by the legislative rule-making review commit-
68 tee during such session, no agency may thereafter issue
69 any rule or directive or take other action to implement
70 such rule or part thereof unless and until otherwise autho-
71 rized to do so.

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

77 (d) Whenever the Legislature is convened by procla-
78 mation of the governor, upon his or her own initiative or
79 upon application of the members of the Legislature, or
80 whenever a regular session of the Legislature is extended
81 or convened by the vote or petition of its members, the
82 Legislature may by act enacted during such extraordinary
83 or extended session authorize, in whole or in part, any
84 legislative rule whether submitted to the legislative
85 rule-making review committee, or not, if legislative action
86 on such rule during such session is a lawful order of busi-
87 ness.

88 (e) Whenever a date is required by this section to be
89 computed in relation to the end of a regular session of the
90 Legislature, such date shall be computed without regard to
91 any extensions of such session occasioned solely by the
92 proclamation of the governor.

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



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

Randy Schoonover
Chairman Senate Committee

Ernest C Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harrell Adams
Clerk of the Senate

Donald L. Hopp
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

Paul E. Ehrman
Speaker of the House of Delegates

The within _____ this the _____
day of _____, 1995.

Governor



PRESENTED TO THE

GOVERNOR

Date 3/21/55

Time 2:35 pm