Enrolled

Committee Substitute

for

Senate Bill 522

SENATOR MAYNARD, original sponsor

[Passed March 6, 2018; in effect 90 days from passage]
WEST VIRGINIA LEGISLATURE
2018 REGULAR SESSION

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AN ACT to amend and reenact §29A-1-3b of the Code of West Virginia, 1931, as amended; and to amend and reenact §29A-3-8, §29A-3-12, and §29A-3-19 of said code, all relating generally to the Administrative Procedures Act; providing that rules become void if statutory authority is repealed; providing that legislative exempt, procedural, or interpretive rules may be repealed by an agency upon notification to Secretary of State; relating to the deadline for filing agency-approved rules; providing a procedure for the agencies to affirmatively seek renewal of a legislative rule; providing that legislative rules up for termination are not subject to a public comment period; and providing for review by the Legislative Rule-Making Review Committee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.


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

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

ARTICLE 3. RULEMAKING.

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

(a) An agency shall consider a legislative exempt, procedural, and interpretive rule for adoption not later than six months after the close of public comment and file a notice of withdrawal or adoption in the State Register within that period. An agency’s failure to file the notice constitutes withdrawal and the Secretary of State shall note the failure in the State Register immediately upon the expiration of the six-month period.

(b) A legislative exempt, procedural, or interpretive rule may be amended by the agency
prior to final adoption without further hearing or public comment. The amendment may not change
the main purpose of the rule. If the fiscal implications have changed since the rule was proposed,
the agency shall attach a new fiscal note to the notice of filing. Upon adoption of the rule, including
any amendment, the agency shall file the text of the adopted legislative exempt, procedural, or
interpretive rule with its notice of adoption in the State Register and the rule is effective on the
date specified in the rule or 30 days after the filing, whichever is later or as specified in this code.

(c) An agency may repeal a legislative exempt, procedural, or interpretive rule by filing a
notice of repeal with the Secretary of State.

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

(a) No later than 40 days before the sixtieth day of each regular session of the Legislature,
the cochairmen of the Legislative Rule-Making Review Committee shall submit to the clerk of the
respective houses of the Legislature copies of all proposed legislative rules which have been
submitted to, and considered by, the committee pursuant to the provisions of §29A-3-11 of this
code and which have not been previously submitted to the Legislature for study, together with the
recommendations of the committee with respect to the rules, a statement of the reasons for any
recommendation that a rule be amended or withdrawn, and a statement that a bill authorizing the
legislative rule has been drafted by the staff of the committee or by Legislative Services pursuant
to §29A-3-11 of this code. The cochairmen of the committee may also submit the rules at the
direction of the committee at any time before or during a special session in which consideration
of the rules may be appropriate. Beginning in 2019, the committee may withhold from its report
any proposed legislative rule which was submitted to the committee after the last Friday in July
and beginning in 2020, and every four years thereafter, by the last Friday in August. The clerk of
each house shall submit the report to his or her house at the commencement of the next session.

All bills introduced authorizing the promulgation of a rule may be referred by the President
of the Senate and by the Speaker of the House of Delegates to appropriate standing committees
of the respective houses for further consideration or the matters may be otherwise dealt with as
each house or its rules provide. The Legislature may, by act, authorize the agency to adopt a legislative rule incorporating the entire rule or may authorize the agency to adopt a rule with any amendments adopted by the Legislature. The clerk of the house originating the act shall immediately file a copy of any bill of authorization enacted with the Secretary of State and with the agency proposing the rule and the clerk of each house may prepare and file a synopsis of legislative action during any session on any proposed rule submitted to the house during the session for which authority to promulgate was not by law provided during the session. In acting upon the separate bills authorizing the promulgation of rules, the Legislature may, by amendment or substitution, combine the separate bills of authorization insofar as the various rules authorized in the amendment or substitution are proposed by agencies which are placed under the administration of one of the single, separate executive departments identified under the provisions of §5F-1-2 of this code or the Legislature may combine the separate bills of authorization by agency or agencies within an executive department. In the case of rules proposed for promulgation by an agency which is not administered by an executive department pursuant to the provisions of §5F-1-2 of this code, the separate bills of authorization for the proposed rules of that agency may, by amendment or substitution, be combined. These provisions relating to combining separate bills of authorization according to department or agency are not intended to restrict the permissible breadth of bills of authorization and do not preclude the Legislature from otherwise combining various bills of authorization which have a unity of subject matter. Any number of provisions may be included in a bill of authorization, but the single object of the bill shall be to authorize the promulgation of proposed legislative rules.

(b) If the Legislature during its regular session disapproves all or part of any legislative rule which was submitted to it by the Legislative Rule-Making Review Committee during the session, an agency may not thereafter issue any rule or directive or take other action to implement the rule or part of the rule unless and until otherwise authorized to do so, except that the agency may resubmit the same or similar proposed rule to the Legislative Rule-Making Review
Committee in accordance with the provisions of §29A-3-11 of this code.

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

(d) Whenever the Legislature is convened by proclamation of the Governor, upon his or her own initiative or upon application of the members of the Legislature, or whenever a regular session of the Legislature is extended or convened by the vote or petition of its members, the Legislature may by act enacted during the extraordinary or extended session authorize, in whole or in part, any legislative rule, whether submitted to the Legislative Rule-Making Review Committee or not, if legislative action on the rule during the session is a lawful order of business.

(e) As a part of any act that amends chapter 64 of this code, authorizing the promulgation of a proposed legislative rule or rules, the Legislature may also provide, by general language or with specificity, for the disapproval of rules not approved or acted upon by the Legislature.


(a) Any new legislative rule promulgated pursuant to this article after April 1, 2016, shall include a sunset provision terminating the rule after five years: Provided, That the rule may be renewed for additional terms of five years or less by the Legislature pursuant to the rule-making procedures and authority in this article: Provided, however, That if a different sunset or termination provision exists in the statute under which the proposed rule is promulgated, the enabling statute's provision shall control: Provided further, That this subsection shall not apply to rules promulgated by the Department of Environmental Protection or emergency rules promulgated pursuant to §29A-3-15 of this code.

(b) Any legislative rule existing as of April 1, 2016, that is thereafter modified pursuant to this article, shall include a sunset provision as part of the modification setting forth a termination date for the rule: Provided, That the rule may be renewed for additional terms of years by the Legislature pursuant to the rule-making procedures and authority in this article: Provided,
(c) The existence of a sunset provision terminating a legislative rule shall not preclude the
repeal of the legislative rule by the Legislature prior to its termination.

(d) As part of its rule review under this article, the Legislative Rule-Making Review
Committee may establish a procedure for timely review of a legislative rule prior to its termination
for those agencies that have affirmatively sought renewal prior to expiration. The procedure may
include a requirement that the agency show cause as to why the terminating legislative rule is
required and necessary to be continued for another term of years.

(e) The Secretary of State shall provide notice to the promulgating agency and the
Legislative Rule-Making Review Committee at least 18 months prior to every legislative rule's
termination date. The promulgating agency has 60 days from receipt of the notice to file the
legislative rule with the Secretary of State and the Legislative Rule-Making Review Committee
affirmatively seeking renewal of the legislative rule: Provided, That the legislative rule that is
scheduled to sunset may not be amended or changed except for a new sunset date and is not
subject to the public comment period requirements contained in §29A-3-5 of this code. The
Legislative Rule-Making Review Committee, as part of its rule review under this article, may begin
reviewing a legislative rule upon its filing.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Originated in the Senate.
In effect 90 days from passage.

[Signatures]

The within is approved this the 20th Day of March, 2018.

[Signature]