

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 522**

BY SENATOR MAYNARD

[Originating in the Committee on the Judiciary;

Reported on February 19, 2018]



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4 statutory authority is repealed; providing that legislative exempt, procedural, or interpretive  
5 rules may be repealed by an agency upon notification to Secretary of State; relating to the  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

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.**

### **§29A-1-3b. Void rules.**

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

4 (b) Upon repeal or elimination of a statute that provides rule-making authority, any rule  
5 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.**

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

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

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

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

1           (a) No later than 40 days before the sixtieth day of each regular session of the Legislature,  
2 the cochairmen of the legislative Rule-Making Review Committee shall submit to the clerk of the  
3 respective houses of the Legislature copies of all proposed legislative rules which have been  
4 submitted to, and considered by, the committee pursuant to the provisions of §29A-3-11 of this  
5 code and which have not been previously submitted to the Legislature for study, together with the  
6 recommendations of the committee with respect to ~~such~~ the rules, a statement of the reasons for  
7 any recommendation that a rule be amended or withdrawn, and a statement that a bill authorizing  
8 the legislative rule has been drafted by the staff of the committee or by Legislative Services  
9 pursuant to §29A-3-11 of this code. The cochairmen of the committee may also submit ~~such~~ the  
10 rules at the direction of the committee at any time before or during a special session in which  
11 consideration ~~thereof~~ of the rules may be appropriate. Beginning in 2019, the committee may  
12 withhold from its report any proposed legislative rule which was submitted to the committee ~~fewer~~  
13 ~~than 225 days before the end of the regular session~~ after the last Friday in July and beginning in  
14 2020, and every four years thereafter, by the last Friday in August. The clerk of each house shall  
15 submit the report to his or her house at the commencement of the next session.

16 All bills introduced authorizing the promulgation of a rule may be referred by the President  
17 of the Senate and by the Speaker of the House of Delegates to appropriate standing committees  
18 of the respective houses for further consideration or the matters may be otherwise dealt with as  
19 each house or its rules provide. The Legislature may, by act, authorize the agency to adopt a  
20 legislative rule incorporating the entire rule or may authorize the agency to adopt a rule with any  
21 amendments ~~which the Legislature shall designate~~ adopted by the Legislature. The clerk of the  
22 house originating ~~such the~~ act shall ~~forthwith~~ immediately file a copy of any bill of authorization  
23 enacted with the Secretary of State and with the agency proposing ~~such the~~ rule and the clerk of  
24 each house may prepare and file a synopsis of legislative action during any session on any  
25 proposed rule submitted to the house during ~~such the~~ session for which authority to promulgate  
26 was not by law provided during ~~such the~~ session. In acting upon the separate bills authorizing the  
27 promulgation of rules, the Legislature may, by amendment or substitution, combine the separate  
28 bills of authorization insofar as the various rules authorized ~~therein~~ in the amendment or  
29 substitution are proposed by agencies which are placed under the administration of one of the  
30 single, separate executive departments identified under the provisions of §5F-1-2 of this code or  
31 the Legislature may combine the separate bills of authorization by agency or agencies within an  
32 executive department. In the case of rules proposed for promulgation by an agency which is not  
33 administered by an executive department pursuant to the provisions of ~~article two of said chapter~~  
34 §5F-1-2 of this code, the separate bills of authorization for the proposed rules of that agency may,  
35 by amendment or substitution, be combined. ~~The foregoing~~ These provisions relating to  
36 combining separate bills of authorization according to department or agency are not intended to  
37 restrict the permissible breadth of bills of authorization and do not preclude the Legislature from  
38 otherwise combining various bills of authorization which have a unity of subject matter. Any  
39 number of provisions may be included in a bill of authorization, but the single object of the bill  
40 shall be to authorize the promulgation of proposed legislative rules.

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

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

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

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

60 ~~(f) Whenever a date is required by this section to be computed in relation to the end of a~~  
61 ~~regular session of the Legislature, such date shall be computed without regard to any extensions~~  
62 ~~of such session occasioned solely by the proclamation of the Governor.~~

63 ~~(g) Whenever a date is required to be computed from or is fixed by the first day of a regular~~  
64 ~~session of the Legislature, it shall be computed or fixed in 1984, and each fourth year thereafter~~  
65 ~~without regard to the second Wednesday of January of such years.~~

**§29A-3-19. Sunset provision in rules.**

1 (a) Any new legislative rule promulgated pursuant to this article after April 1, 2016, shall  
2 include a sunset provision terminating the rule after five years: *Provided*, That the rule may be  
3 renewed for additional terms of five years or less by the Legislature pursuant to the rule-making  
4 procedures and authority in this article: *Provided, however*, That if a different sunset or termination  
5 provision exists in the statute under which the proposed rule is promulgated, the enabling statute's  
6 provision shall control: *Provided further*, That this subsection shall not apply to rules promulgated  
7 by the Department of Environmental Protection or emergency rules promulgated pursuant to  
8 §29A-3-15 of this code.

9 (b) Any legislative rule existing as of April 1, 2016, that is thereafter modified pursuant to  
10 this article, shall include a sunset provision as part of the modification setting forth a termination  
11 date for the rule: *Provided*, That the rule may be renewed for additional terms of years by the  
12 Legislature pursuant to the rule-making procedures and authority in this article: *Provided*,  
13 *however*, That if a different sunset or termination provision exists in the statute under which the  
14 ~~proposed~~ legislative rule is promulgated, the enabling statute's provision ~~shall~~ controls: *Provided*  
15 *further*, That this subsection shall not apply to legislative rules promulgated by the Department of  
16 Environmental Protection or emergency rules promulgated pursuant to §29A-3-15 of this code.

17 (c) The existence of a sunset provision terminating a legislative rule shall not preclude the  
18 repeal of ~~such the~~ legislative rule by the Legislature prior to ~~the expiration of the sunset provision~~  
19 its termination.

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

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