

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2851

BY DELEGATES FOSTER AND STEELE

[Introduced March 02, 2021; Referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §29A-3-19 of the Code of West Virginia, 1931, as amended, relating
 2 to sunset provisions of legislative rules; removing the five year sunset requirement for new
 3 legislative rules after initial five year sunset provision; requiring all legislative rules to
 4 sunset on July 1 of the applicable year effective July 1, 2021; authorizing the Secretary of
 5 State to modify all active legislative rules with sunset provisions in accordance with this
 6 requirement; and requiring the Secretary of State to file a notice of sunset in the State
 7 Register upon the expiration of a legislative rule.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. RULE MAKING.

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

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

16 Department of Environmental Protection or emergency rules promulgated pursuant to §29A-3-15
17 of this code.

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

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

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

34 (f) Effective July 1, 2021, each legislative rule subject to the provisions of this section shall
35 have a termination date of July 1 of the applicable year. The Secretary of State shall modify each
36 active legislative rule with a sunset provision and conform each rule to the provisions of this
37 subsection.

38 (g) The Secretary of State shall file a notice of sunset in the State Register within 30 days
39 following the expiration of a legislative rule.

NOTE: The purpose of this bill is to eliminate the requirement for all new legislative rules

to have a five year sunset date after the initial five year sunset date, to allow the Secretary of State to conform all active legislative rules with a sunset provision to the requirements of this section, and requires the Secretary of State to file a notice of sunset in the State Register upon the expiration of a legislative rule within thirty days of its expiration. Finally, the bill requires that effective July 1, 2021, all legislative rules subject to the sunset provisions of this section shall have a termination date of July 1 of the applicable year.

This bill was recommended for passage during the 2021 legislative session by the Legislative Rule-Making Committee.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.