

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Committee Substitute

for

Senate Bill 543

BY SENATORS GRADY AND PLYMALE

[Originating in the Committee on Finance; reported
on February 16, 2023]

1 A BILL to amend and reenact §29A-3A-1 and §29A-3A-2 of the Code of West Virginia, 1931, as
2 amended; to amend said code by adding thereto a new section, designated §29A-3A-2a;
3 to amend and reenact §29A-3A-3, §29A-3A-4, §29A-3A-5, §29A-3A-6, §29A-3A-7, §29A-
4 3A-8, §29A-3A-9, §29A-3A-10, §29A-3A-11, §29A-3A-11a, §29A-3A-12, §29A-3A-13,
5 §29A-3A-14, §29A-3A-15, §29A-3A-16, §29A-3A-16a, §29A-3A-17, §29A-3A-18, and
6 §29A-3A-20, all relating to higher education and school building rule-making authority;
7 revising definitions; requiring all sections of rule to be filed when proposing an amendment
8 to an existing rule; requiring rule to be accompanied by not of explanation; requiring
9 agency proposing to repeal a rule to file the rule in its entirety with the provisions of the
10 rule struck through; making provisions applicable to procedural and interpretive rules
11 applicable to legislative exempt rules; allowing an agency to hold a public hearing,
12 schedule a public comment period, or both; requiring agency to respond to public
13 comments and explain the reasoning for comments being incorporated or not incorporated
14 into the rule; reducing time period for filing of notices of hearings for receiving public
15 comment on a proposed rule; allowing repeal of a legislative exempt, procedural, or
16 interpretive rule by filing notice of repeal with the Secretary of State; establishing timelimit
17 for filing of notice of approval with the Secretary of State and the Legislative Oversight
18 Commission on Education Accountability (LOCEA); requiring LOCEA make a continuing
19 investigation, study, and review of the practices, policies, and procedures of the State
20 Board of Education; requiring electronic submission of agency-approved rule to LOCEA;
21 requiring electronic filing of notice of approval in the State Register; adding to information
22 that electronic copies of the proposed legislative rule is to include; modifying topics
23 LOCEA's review of a proposed legislative rule is to include; modifying LOCEA's options in
24 making recommendations to the Legislature after reviewing a legislative rule; requiring bill
25 authorizing legislative rule to incorporate the amendments recommended by LOCEA;
26 modifying date after which proposed legislative rules submitted to LOCEA can be withheld

27 from its report to the clerk of the respective houses; modifying provisions pertaining to bills
28 of authorization; removing provisions pertaining to computation of dates; allowing
29 disapproval of rules not approved or acted upon by the Legislature; requiring Secretary of
30 State to publish an authorized and promulgated legislative rule in the Code of State Rules;
31 adding to information that must be filed with emergency rules in the State Register;
32 providing for effective date for emergency rule and amendment to emergency rule;
33 requiring the agency to file a copy of the emergency rule and the required statement with
34 the Secretary of State and LOCEA; reducing time periods the agency has for filing a notice
35 of public hearing on a proposed emergency rule and for filing the proposed emergency
36 rule with LOCEA; removing provision pertaining to emergency legislative rules currently in
37 effect; making certain provisions pertaining to filing an emergency rule and disapproval of
38 an emergency rule applicable to filing an amendment to an emergency rule and
39 disapproval of an emergency rule; modifying provisions pertaining to LOCEA's review of
40 procedural rules, interpretive rules, or existing legislative rules; providing for prior rules to
41 remain in full force and effect; modifying required sunset date; specifying procedure for
42 renewing legislative rule; and requiring Secretary of State to file a notice of sunset in the
43 State Register within 30 days following expiration of a legislative rule.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3A. HIGHER EDUCATION RULE MAKING

§29A-3A-1. Definitions

1 As used in this article:

2 (a) "Commission" means the Legislative Oversight ~~e~~Commission on ~~e~~Education
3 ~~a~~Accountability;

4 (b) "~~Board~~" "Agency", for purposes of this article, means the Higher Education Policy
5 Commission created by §18B-1B-1 et seq. of this code, the Council for Community and Technical
6 College Education established pursuant to §18B-2B-3 of this code, or the chancellor as defined

7 ~~in of this code, or both~~ the School Building Authority established pursuant to §18-9D-1 et seq. of
8 this code, or any successor board, commission, agency, or officer.

9 (c) "~~Board~~" "Agency" also means any other entity directed by this code to promulgate a
10 rule or rules in accordance with this article, but this definition shall apply solely for the purpose of
11 promulgating the rule or rules required to be promulgated in accordance with this article.

§29A-3A-2. Rules to be promulgated only in accordance with this article.

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

§29A-3A-2a. Filing proposed amendments to an existing rule; and repealing an existing rule.

1 (a) The agency shall file all sections of the proposed rule when proposing an amendment
2 to an existing rule. The proposed rule shall be accompanied by note of explanation as to the effect
3 of the amendment and its relation to the existing rules.

4 (b) The agency proposing to repeal a rule shall file the rule in its entirety with the provisions
5 of the rule struck through. The agency may not repeal a rule by reference in another rule.

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

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

5 (1) If heretofore lawfully exercised in accordance with the prior provisions of this chapter
6 and the resulting rule has not been revoked or invalidated by the provisions hereof or by the ~~board~~
7 agency; or

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

9 (b) The ~~board~~ agency shall not be deemed to have the power and authority to promulgate
10 a legislative rule without compliance with this article unless: (1) The provision of this code,
11 heretofore or hereafter enacted, granting ~~such~~ the power and authority expressly exempts its
12 exercise from legislative rule-making review prior to promulgation or (2) the grant of ~~such~~ the
13 power and authority is exempted from the application of this chapter by the express provisions of
14 this chapter. To the extent any ~~such~~ grant of power and authority not so exempt ~~shall be~~ is deemed
15 to exceed the limits and provisions of this article, ~~such~~ the power and authority to promulgate
16 legislative rules is hereby revoked.

§29A-3A-4. Rules of procedure required.

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

2 (a) The ~~board~~ agency shall adopt procedural rules governing the formal and informal
3 procedures prescribed or authorized by this chapter. Procedural rules shall include rules of
4 practice before the ~~board~~ agency, together with forms and instructions in accordance with §29A-
5 1-2 of this code.

6 (b) To assist interested persons dealing with it, the ~~board~~ agency shall, so far as deemed
7 practicable, supplement its rules ~~or regulations~~ with descriptive statements of its procedures.

§29A-3A-5. Filing of proposed legislative exempt rules, procedural rules, and interpretive rules.

1 (a) When the ~~board~~ agency proposes a legislative exempt, procedural, ~~rule~~ or an
2 interpretive rule, the agency shall file in the State Register a notice of its action, including the text
3 of the rule as proposed.

4 (b) All proposed rules filed under subsection (a) of this section shall have a fiscal note
5 attached itemizing the cost of implementing the rules as they relate to this state and to persons
6 affected by the rules, ~~and regulations. Such~~ The fiscal note shall include all information included
7 in a fiscal note for either house of the Legislature and a statement of the economic impact of the

8 rule on the state or its residents. The objectives of the rules shall be clearly and separately stated
9 in the fiscal note by the agency issuing the proposed rules. ~~No procedural or interpretive rule shall~~
10 ~~be~~ A legislative exempt, procedural, or interpretive rule is not void or voidable by virtue of
11 noncompliance with this subsection.

§29A-3A-6. Notice of proposed rulemaking.

1 (a) When the ~~board~~ agency proposes to promulgate a rule other than an emergency rule,
2 it shall file with the Secretary of State, for publication in the State Register, a notice of its action,
3 including therein any request for the submission of evidence to be presented on any factual
4 determinations or inquiries required by law to promulgate ~~such~~ the rule. At the time of filing the
5 notice of its action, the ~~board~~ agency shall also file with the Secretary of State a copy of the full
6 text of the rule proposed and a fiscal note as defined in §29A-3A-5 of this code. If the ~~board~~
7 agency is considering alternative draft proposals, it may also file with the Secretary of State the
8 full text of ~~such~~ the draft proposals.

9 (b) The notice shall fix a date, time, and place for the receipt of public comment in the form
10 of oral statements, written statements, and documents bearing upon any findings and
11 determinations which are a condition precedent to the final approval by the ~~board~~ agency of the
12 proposed rule and shall contain a general description of the issues to be decided. If no specific
13 findings and determinations are required as a condition precedent to the final approval by the
14 ~~board~~ agency of the approved rule, the notice shall fix a date, time, and place for the receipt of
15 general public comment on the proposed rule. To comply with the public comment provisions of
16 this section, the agency may hold a public hearing or schedule a public comment period for the
17 receipt of written statements or documents, or both.

18 (c) If findings and determinations are a condition precedent to the promulgation of ~~such~~
19 the rule, then an opportunity for general public comment on the merits of the rule shall be afforded
20 after ~~such~~ the findings and determinations are made. In ~~such~~ that event, notice of the hearing or

21 of the period for receiving public comment on the proposed rule shall be attached to and filed as
22 a part of the findings and determinations of the ~~board~~ agency when filed in the State Register.

23 (d) In any hearing for public comment on the merits of the rule, the ~~board~~ agency may limit
24 presentations to written material. The time, date, and place fixed in the notice shall constitute the
25 last opportunity to submit any written material relevant to any hearing, all of which may be earlier
26 submitted by filing with the ~~board~~ agency. After the public hearing or the close of the public
27 comment period, whichever is later, the ~~board~~ agency shall not permit the filing or receipt of, nor
28 shall it consider, any attempted ex parte communications directed to it in the form of additional
29 comment prior to the submission of its final ~~board~~ agency-approved rule to the Legislative
30 Oversight Commission on Education Accountability pursuant to the provisions of §29A-3A-12 of
31 this ~~article~~ code.

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

34 (f) Any citizen or other interested party may appear and be heard at ~~such~~ the hearings as
35 are required by this section.

36 (g) Prior to the submission of any agency-approved proposed rule to the Secretary of
37 State, the agency shall respond to public comments received during the rulemaking process and
38 explain the reasoning for comments being incorporated or not incorporated into the rule. Failure
39 to adequately respond to public comments may be grounds for rejection of the proposed rule.

**§29A-3A-7. 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 proposed rule, the ~~board~~ agency shall
2 promulgate the findings and determinations required as a condition precedent thereto and state
3 fully and succinctly the reasons therefor and file ~~such~~ those findings and determinations in the
4 State Register. If the ~~board~~ agency amends the proposed rule ~~as a result of~~ because of the

5 evidence or comment presented pursuant to §29A-3A-5 of this code, ~~such the~~ amendment shall
6 be filed with a description of any changes and statement listed for the amendment.

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

§29A-3A-8. Notice of hearings.

1 Notices of hearings required by §29A-3A-6 and §29A-3A-7 of this ~~article~~ code shall be
2 filed in the State Register not less than ~~thirty~~ 30 nor more than ~~sixty~~ 60 days before the date of
3 ~~such the~~ hearing or the last day specified therein for receiving written material. Any hearing may
4 be continued from time to time and place to place by the ~~board~~ agency, which shall have the effect
5 of extending the last day for receipt of evidence or public comment. Notice of ~~such the~~ continuance
6 shall be promptly filed thereafter in the State Register.

§29A-3A-9. Adoption of legislative exempt rules, procedural rules, and interpretive rules.

1 (a) A The agency shall consider a legislative exempt, procedural, and interpretive rule
2 ~~shall be considered by the board~~ for adoption not later than six months after the close of public
3 comment and file a notice of withdrawal or adoption ~~shall be filed~~ in the State Register within that
4 period. ~~Failure~~ The agency's failure to file ~~such the~~ notice ~~shall constitute~~ withdrawal, and the
5 Secretary of State shall note ~~such that~~ failure in the State Register immediately upon the
6 expiration of the six-month period.

7 (b) A legislative exempt, procedural, or interpretive rule may be amended by the ~~board~~
8 agency prior to final adoption without further hearing or public comment. ~~No such~~ The amendment
9 may not change the main purpose of the rule. If the fiscal implications have changed since the
10 rule was proposed, the agency shall attach a new fiscal note ~~shall be attached~~ to the notice of
11 filing. Upon adoption of the rule, ~~(including any such amendment),~~ the ~~board~~ agency shall file the
12 text of the adopted legislative exempt, procedural, or interpretive rule with its notice of adoption

13 in the State Register, and the ~~same shall be~~ rule is effective on the date specified in the rule or
14 30 days after ~~such~~ filing, whichever is later, or as specified in this code.

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

§29A-3A-10. Proposal of legislative rules.

1 (a) When the ~~board~~ agency proposes a legislative rule, other than an emergency rule, it
2 shall be deemed to be applying to the Legislature for permission, to be granted by law, to
3 promulgate ~~such~~ the rule as approved by the ~~board~~ agency for submission to the Legislature or
4 as amended and authorized by the Legislature by law.

5 (b) ~~When~~ The agency proposing a legislative rule, other than an emergency rule, ~~and~~ after
6 filing the notice of proposed rulemaking required by §29A-3A-5 of this ~~article~~ code, ~~the board~~ shall
7 then proceed as in the case of a legislative exempt, procedural, and interpretive rule to the point
8 of, but not including, final adoption. In lieu of final adoption, the ~~board~~ agency shall finally approve
9 the proposed rule, including any amendments, for submission to the Legislature and file ~~such~~ the
10 notice of approval in the State Register and with the Legislative Oversight ~~commission on~~
11 ~~education accountability~~ Commission on Education Accountability within 90 days after the public
12 hearing was held or within 90 days after the end of the public comment period required under
13 §29A-3A-6 of this code: *Provided*, That upon receipt of a written request from the agency setting
14 forth valid reasons why the agency is unable to file the agency-approved rule within the 90 day
15 time period, the Legislative Oversight Commission on Education Accountability may grant the
16 agency an extension of time to file the agency-approved rule.

17 (c) ~~Such~~ The final agency approval of the rule under this section is deemed to be ~~approval~~
18 approved for submission to the Legislature only and does not give any force and effect to the
19 proposed rule. The rule shall have full force and effect only when authority for promulgation of the
20 rule is granted by an act of the Legislature and the rule is promulgated pursuant to §29A-3A-14
21 of this ~~article~~ code.

§29A-3A-11. Creation of a legislative oversight commission on education accountability.

1 (a) There is hereby created a joint commission of the Legislature known as the Legislative
2 Oversight Commission on Education Accountability to review all legislative rules of the ~~board~~
3 agency and ~~such~~ other rules as the commission deems appropriate. The commission shall be
4 composed of six members of the Senate appointed by the President of the Senate and six
5 members of the House of Delegates appointed by the Speaker of the House of Delegates. No
6 more than five of the six members appointed by the President of the Senate and the Speaker of
7 the House of Delegates, respectively, may be members of the same political party. In addition,
8 the President of the Senate and the Speaker of the House of Delegates shall be ex officio
9 nonvoting members of the commission and shall designate the ~~co-chairmen~~ co-chairs. At least
10 one of the Senate members and one of the House members shall be members of the committee
11 on education of the Senate and House, respectively, and at least one of the Senate members and
12 at least one of the House members shall be a member of the committee on finance of the Senate
13 and House, respectively. The members shall serve until their successors ~~shall~~ have been
14 appointed as heretofore provided. Members of the commission shall receive ~~such~~ compensation
15 and expenses as provided in §4-2A-1 *et seq.* of this code. ~~Such~~ Those expenses and all other
16 expenses, including those incurred in the employment of legal, technical, investigative, clerical,
17 stenographic, advisory, and other personnel shall be paid from an appropriation to be made
18 expressly for the Legislative Oversight Commission on Education Accountability, but if no such
19 appropriation ~~be~~ is made, ~~such~~ the expenses shall be paid from the appropriation under "Account
20 No. 103 for Joint Expenses", but no expense of any kind whatever payable under ~~said~~ the account
21 for joint expenses shall be incurred unless first approved by the Joint Committee on Government
22 and Finance. The commission shall meet at any time, both during sessions of the Legislature and
23 in the interim.

24 (b) The commission may adopt ~~such~~ rules of procedure as it considers necessary for the
25 submission, presentation, and consideration of rules.

§29A-3A-11a. Additional powers and duties; subpoena powers.

1 (a) In addition to the powers and duties conferred upon the commission pursuant to the
2 provisions of this article, the commission shall make a continuing investigation, study, and review
3 of the practices, policies, and procedures of the ~~board~~ agency and of the State Board of Education
4 and of any and all matters related to education in the state and shall make annual reports to the
5 Legislature of the results of ~~such~~ those investigations, ~~study~~ studies, and reviews.

6 (b) These reports shall describe and evaluate in a concise manner:

7 (1) The major activities of the ~~board~~ agency and the State Board of Education for the fiscal
8 year immediately past, including important policy decisions reached on initiatives undertaken
9 during that year, especially as ~~such~~ those activities, decisions, and initiatives relate to the
10 implementation of: (1) The constitutional requirement of providing a thorough and efficient
11 education to the children of this state and (2) the objective of improving the quality of education
12 at all levels in this state.

13 (2) Other information considered by the commission to be important, including
14 recommendations for statutory, fiscal, or other reform and reasons for ~~such~~ those
15 recommendations.

16 (3) Further, these reports may specify in what manner said practices, policies, and
17 procedures may or should be modified to satisfy said Constitutional requirement and to improve
18 the quality of education at all levels in this ~~State~~ state.

19 (c) The commission may meet as often as may be necessary and employ ~~such~~
20 professional, clerical, and technical personnel as it considers necessary to perform effectively the
21 duties herein prescribed.

22 (e) (d) The commission shall conduct a study to determine whether the bureaucracies of
23 the State Board of Education and each county board of education are of ~~such~~ a size and
24 complexity that they do not best serve the educational needs of the children of the state. The
25 commission may request assistance from the Legislative Auditor to conduct this study.

26 ~~(d)~~ (e) For purposes of carrying out its duties, the commission is hereby empowered and
27 authorized to examine witnesses and to subpoena ~~such~~ persons and books, records, documents,
28 papers, or any other tangible things as it believes should be examined to make a complete
29 investigation. All witnesses appearing before the commission shall testify under oath or
30 affirmation, and any member of the commission may administer oaths or affirmations to ~~such~~ the
31 witnesses. To compel the attendance of witnesses at ~~such~~ hearings or the production of any
32 books, records, documents, papers, or any other tangible thing, the commission is hereby
33 empowered and authorized to issue subpoenas, signed by one of the ~~co-chairmen~~ co-chairs, in
34 accordance with §4-1-5 of this code. ~~Such~~ The subpoenas shall be served by any person
35 authorized by law to serve and execute legal process and service shall be made without charge.
36 Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is
37 allowed witnesses before any petit jury in this state.

38 If any person subpoenaed to appear at any hearing ~~shall refuse~~ to appear or to answer
39 inquiries there propounded, or ~~shall fail~~ or ~~refuses~~ to produce books, records, documents,
40 papers, or any other tangible thing within his or her control when the same are demanded, the
41 commission shall report the facts to the circuit court of Kanawha County or any other court of
42 competent jurisdiction and ~~such~~ the court may compel obedience to the subpoena as though ~~such~~
43 the subpoena had been issued by ~~such~~ the court in the first instance.

**§29A-3A-12. Submission of legislative rules to the Legislative Oversight Commission on
Education Accountability.**

1 (a) When the ~~board~~ agency finally approves a proposed legislative rule for submission to
2 the Legislature pursuant to §29A-3A-10 of this ~~article~~ code, the ~~board~~ agency shall electronically
3 submit the agency-approved rule to the Legislative Oversight Commission on Education
4 Accountability ~~at its offices or at a regular meeting of such commission fifteen copies of the~~
5 following and electronically file notice of approval in the State Register. Electronic copies of the
6 proposed legislative rule shall include the following information:

7 (1) The full text of the legislative rule as finally approved by the ~~board~~ agency, with new
8 language underlined and with language to be deleted from any existing rule stricken through but
9 clearly legible;

10 (2) A brief summary of the content of the legislative rule and a description and a copy of
11 any existing rule which the agency proposes to amend or repeal;

12 (3) A statement of the circumstances which require the rule;

13 (4) A detailed description of the rule's purpose and all proposed changes to the rule;

14 ~~(4)~~ (5) A fiscal note containing all information included in a fiscal note for either house of
15 the Legislature, and a statement of the economic impact of the rule on the state or its residents,
16 and, if there are any adjustments to any fees or other special revenue included in the rule, the
17 fiscal note shall include, for any fund affected by adjustments to fees or other special revenue,
18 the fund name, the fund number, and the past five years of actual revenues and expenses of the
19 fund;

20 ~~(5) Any other information which the commission may request, or which may be required~~
21 ~~by law~~

22 (6) One copy of any relevant federal statutes or regulations;

23 (7) An explanation of the statutory authority for the rule, including a detailed summary of
24 the effect of each provision of the rule with citation to the specific statute which empowers the
25 agency to enact the provision;

26 (8) All public comments for each proposed rule. The agency may consolidate substantially
27 similar comments in the interest of efficiency;

28 (9) All written responses by the agency to the substance of any public comments received,
29 including whether the agency chose to modify the proposed rule in response to the comments or,
30 if no changes were made, the rationale for declining to incorporate or make any suggested
31 changes responding to the public comments. The agency may consolidate substantially similar

32 responses in the interest of efficiency: *Provided*, That the agency's responses shall address each
33 issue and concern expressed by all comments received; and

34 (10) Any other information which the commission may request or which may be required
35 by law. The agency shall submit its final agency-approved rule as required by this subsection.

36 (b) The commission shall review each proposed legislative rule and, in its discretion, may
37 hold public hearings thereon. ~~Such~~ The review shall include, but not be limited to, a determination
38 of:

39 (1) Whether the ~~board~~ agency has exceeded the scope of its statutory authority in
40 approving the proposed legislative rule;

41 (2) Whether the proposed legislative rule is in conformity with the legislative intent of the
42 statute which the rule is intended to implement, extend, apply, interpret, or make specific;

43 (3) Whether the proposed legislative rule overlaps, duplicates, or conflicts with any other
44 provision of this code, ~~or with~~ any other rule adopted by the same or a different agency, or any
45 federal statutes or regulations;

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

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

50 (6) Whether the proposed legislative rule could be made less complex or more readily
51 understandable by the general public; ~~and~~

52 (7) Whether the proposed legislative rule was ~~promulgated~~ proposed for promulgation in
53 compliance with the requirements of this article and with any requirements imposed by any other
54 provision of this code; and

55 (8) Whether federal funding will be impacted by its expiration and explanation as to ~~such~~
56 how.

57 (c) After reviewing the legislative rule, the commission shall recommend that the
58 Legislature:

59 (1) Authorize the ~~board to promulgate~~ promulgation of the legislative rule; ~~or~~

60 (2) Authorize the ~~board to promulgate~~ promulgation of part of the legislative rule; ~~or~~

61 (3) Authorize the ~~board to promulgate~~ promulgation of the legislative rule with certain
62 amendments or modifications;

63 (4) ~~Recommend that the rule be withdrawn~~ Require the agency to withdraw the rule; or

64 (5) Reject the proposed rule.

65 The commission shall file notice of its action in the State Register and with the ~~board~~
66 agency proposing the rule: *Provided*, That when the commission makes the recommendations of
67 subdivision (2), (3), ~~or (4)~~, or (5) of this subsection, the notice shall contain a statement of the
68 reasons for ~~such~~ the recommendation.

69 (d) When the commission recommends that a rule be authorized, in whole or in part, by
70 the Legislature, the commission shall instruct its staff or the office of Legislative Services to draft
71 a bill authorizing the ~~board to promulgate~~ promulgation of all or part of the legislative rule and
72 incorporating the amendments recommended by the commission. If the commission recommends
73 that the rule not be authorized, it shall include in its report a draft of a bill authorizing promulgation
74 of the rule together with a recommendation. Any draft bill prepared under this section shall contain
75 a legislative finding that the rule is within the legislative intent of the statute which the rule is
76 intended to implement, extend, apply, or interpret and shall be available for any member of the
77 Legislature to introduce to the Legislature.

§29A-3A-13. Submission of legislative rules to Legislature.

1 (a) No later than 40 days before the 60th day of each regular session of the Legislature,
2 the ~~co-chairmen~~ co-chairs of the Legislative Oversight Commission on Education Accountability
3 shall submit to the clerk of the respective houses of the Legislature copies of all proposed
4 legislative rules which have been submitted to and considered by the commission pursuant to

5 §29A-3A-11 of this ~~article~~ code and which have not been previously submitted to the Legislature
6 for study, together with the recommendations of the commission with respect to ~~such~~ the rules, a
7 statement of the reasons for any recommendation that a rule be amended or withdrawn, and a
8 statement that a bill authorizing the legislative rule has been drafted by the staff of the commission
9 or by Legislative Services pursuant to §29A-3A-12 of this ~~article~~ code. The ~~co~~chairman co-chairs
10 of the commission may also submit ~~such~~ the rules at the direction of the commission at any time
11 before or during a special session in which consideration thereof may be appropriate. The
12 commission may withhold from its report any proposed legislative rule which was submitted to the
13 commission ~~fewer than two hundred ten days before the end of the regular session~~ after the last
14 Friday in July of the previous calendar year: *Provided*, That in 2025 and every four years
15 thereafter, the commission may withhold from its report any proposed legislative rule which was
16 submitted to the commission after the last Friday in August of the previous calendar year. The
17 clerk of each house shall submit the report to his or her house at the commencement of the next
18 session.

19 (b) All bills introduced authorizing the promulgation of a rule may be referred by the
20 Speaker of the House of Delegates and by the President of the Senate to appropriate standing
21 committees of the respective houses for further consideration or the matters may be otherwise
22 dealt with as each house or its rules provide. The Legislature may by act authorize the ~~board~~
23 agency to adopt a legislative rule incorporating the entire rule. or may authorize the agency to
24 adopt a rule with any amendments adopted by the Legislature. The clerk of the house originating
25 ~~such~~ the act shall ~~forthwith~~ immediately file a copy of any bill ~~enacted in contemplation of this~~
26 ~~section in the State Register~~ of authorization enacted with the Secretary of State and with the
27 ~~board~~ agency proposing the rule, and the clerk of each house may prepare and file a synopsis of
28 legislative action during any session on any proposed rule submitted to the house during ~~such~~
29 the session for which authority to promulgate was not by law provided during ~~such~~ the session.

30 Any number of provisions may be included in a bill of authorization, but the single object of the
31 bill shall be to authorize the promulgation of proposed legislative rules by the agency.

32 ~~(b)(c)~~ If the Legislature ~~fails during its regular session to act upon~~ during its regular session
33 disapproves all or part of any legislative rule which was submitted to it by the Legislative Oversight
34 Commission on Education Accountability during ~~such~~ the session, the ~~board~~ agency may not
35 thereafter issue any rule or directive or take other action to implement ~~such~~ the rule or part thereof
36 unless and until otherwise authorized to do so, except that the agency may resubmit the same or
37 similar proposed rule to the Legislative Oversight Commission on Education Accountability in
38 accordance with §29A-3A-12 of this code.

39 ~~(e)(d)~~ Nothing herein shall be construed to prevent the Legislature by law from authorizing,
40 or authorizing and directing, the ~~board~~ agency to promulgate legislative rules not proposed by the
41 ~~board~~ agency or upon which some procedure specified in this chapter is not yet complete.

42 ~~(d)(e)~~ Whenever the Legislature is convened by proclamation of the Governor, upon his
43 or her own initiative or upon application of the members of the Legislature, or whenever a regular
44 session of the Legislature is extended or convened by the vote or petition of its members, the
45 Legislature may, by act enacted during ~~such~~ the extraordinary or extended session, authorize, in
46 whole or in part, any legislative rule whether submitted to the Legislative Oversight Commission
47 on Education Accountability or not, if legislative action on ~~such~~ the rule during ~~such~~ the session
48 is a lawful order of business.

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

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

56 (f) As a part of any act that amends chapter 18B of this code, chapter 18C of this code,
57 and §18-9D-1 et seq. of this code, authorizing the promulgation of a proposed legislative rule or
58 rules, the Legislature may also provide, by general language or with specificity, for the disapproval
59 of rules not approved or acted upon by the Legislature.

§29A-3A-14. Adoption of legislative rules; effective date.

1 (a) Except as the Legislature may by law otherwise provide, within 60 days after the
2 effective date of an act authorizing promulgation of a legislative rule, the ~~board~~ agency shall
3 promulgate the rule only in conformity with the provisions of law authorizing and directing the
4 promulgation of ~~such~~ the rule.

5 (b) A legislative rule authorized by the Legislature ~~shall become~~ is effective ~~thirty days~~
6 ~~after such~~ upon filing in the State Register, or on the effective date fixed by the authorizing act, or
7 if none is fixed by law, ~~such a~~ a later date not to exceed 90 days, as is fixed by the ~~board~~ agency.

8 (c) The Secretary of State shall note in the State Register the effective date of an
9 authorized and promulgated legislative rule, and shall ~~file such legislative rule in the State~~
10 ~~Register in lieu of the proposed legislative rule previously filed pursuant to section seven of this~~
11 ~~article~~ promptly publish the duly promulgated rule in the Code of State Rules maintained by his
12 or her office.

§29A-3A-15. Withdrawal or modification of proposed rules.

1 (a) Any legislative rule proposed by the ~~board~~ agency may be withdrawn by the agency
2 any time before passage of a law authorizing or authorizing and directing its promulgation, but no
3 such action shall be construed to affect the validity, force, or effect of a law enacted authorizing
4 or authorizing and directing the promulgation of an authorized legislative rule or exercising
5 compliance with ~~such~~ the law. The ~~board~~ agency shall file a notice of ~~any such~~ the action to
6 withdraw the rule in the State Register.

7 (b) At any time before a proposed legislative rule has been submitted by the Legislative
8 Oversight Commission on Education Accountability to the Legislature pursuant to §29A-3A-13 of

9 this ~~article code~~, the ~~board~~ agency may modify the proposed rule to meet the objections of the
10 commission. The ~~board~~ agency shall file in the State Register a notice of its modifying action,
11 including a copy of the modified rule, but shall not be required to comply with any provisions of
12 this article requiring opportunity for public comment or taking of evidence with respect to ~~such~~ the
13 modification. If a legislative rule has been withdrawn, modified, and then resubmitted to ~~such~~ the
14 commission, the rule shall be considered to have been submitted to ~~such~~ the commission on the
15 date of ~~such~~ the resubmission.

§29A-3A-16. Emergency legislative rules; procedure for promulgation; definition.

1 (a) The ~~board~~ agency may, without hearing, find that an emergency exists requiring that
2 an emergency rule be promulgated and promulgate the ~~same~~ emergency rule in accordance with
3 this section. ~~Such~~ The agency shall file the emergency rules, together with a statement of the
4 facts and circumstances constituting the emergency and a listing of state institutions of higher
5 education, agencies, professions, businesses, and other identifiable interest groups affected by
6 the proposed emergency rule, ~~shall be filed in the State Register. and shall become effective~~
7 ~~immediately upon such filing~~ The agency's good faith failure to list all known state institutions of
8 higher education, agencies, professions, businesses, and other identifiable interest groups is not
9 a basis for disapproval of the emergency rule, nor does it subject the emergency rule to judicial
10 review. The emergency rule becomes effective upon the approval of the Secretary of State in
11 accordance with §29A-3A-16a of this code or upon the 42nd day following the filing, whichever
12 occurs first. ~~Such~~ The emergency rules may adopt, amend, or repeal any legislative rule, but the
13 agency shall state with particularity the circumstances constituting the emergency requiring ~~such~~
14 the adoption, amendment, or repeal, ~~shall be stated with particularity and be~~ the emergency rule
15 is subject to de novo review by any court having original jurisdiction of an action challenging ~~their~~
16 its validity. ~~Fifteen copies of the rules and of the required statement shall be filed forthwith with~~
17 ~~the Legislative Oversight commission on education accountability~~ The agency shall immediately

18 file a copy of the emergency rule and the required statement with the Secretary of State and the
19 Legislative Oversight Commission on Education Accountability.

20 (b) An emergency rule ~~shall be~~ is effective for not more than 15 months and ~~shall expires~~
21 earlier if any of the following occurs:

22 (1) The Secretary of State, acting under the authority provided for in §29A-3A-16a of this
23 ~~article~~ code, disapproves the emergency rule because: (A) The emergency rule or an amendment
24 to the emergency rule exceeds the scope of the law authorizing or directing the promulgation
25 ~~thereof~~ of the rule; (B) an emergency does not exist justifying the promulgation of the emergency
26 rule; or (C) the emergency rule was not promulgated in compliance with the provisions of this
27 section. An emergency rule may not be disapproved pursuant to the authority granted by
28 paragraphs (A) or (B) of this subdivision on the basis that the Secretary of State disagrees with
29 the underlying public policy established by the Legislature in enacting the ~~supporting~~ authorizing
30 legislation. An emergency rule which would otherwise be approved as being necessary to comply
31 with a time limitation established by this code or by a federal statute or regulation may not be
32 disapproved pursuant to the authority granted by paragraphs (A) or (B) of this subdivision on the
33 basis that the ~~board~~ agency has failed to file the emergency rule prior to the date fixed by ~~such~~
34 the time limitation. When the ~~supporting~~ authorizing statute specifically directs the ~~board~~ agency
35 to promulgate an emergency rule, or specifically finds that an emergency exists and directs the
36 promulgation of an emergency rule, the emergency rule may not be disapproved pursuant to the
37 authority granted by paragraph (B) of this subdivision. An emergency rule may not be disapproved
38 on the basis that the Legislature has not specifically directed the ~~board~~ agency to promulgate the
39 emergency rule or has not specifically found that an emergency exists and directed the
40 promulgation of an emergency rule.

41 (2) The ~~board~~ agency has not previously filed and fails to file a notice of public hearing on
42 the proposed rule within ~~sixty~~ 30 days of the date the proposed rule was filed as an emergency
43 rule, in which case the emergency rule expires on the ~~sixty-first~~ 31st day.

44 (3) The ~~board~~ agency has not previously filed and fails to file the proposed rule as
45 approved by the agency following the close of the public comment period with the Legislative
46 Oversight Commission on Education Accountability within ~~one hundred eighty~~ 90 days of the date
47 the proposed rule was filed as an emergency rule, in which case the emergency rule expires on
48 the ~~one hundred eighty-first~~ 91st day.

49 (4) The Legislature has authorized or directed promulgation of an authorized legislative
50 rule dealing with substantially the same subject matter since ~~such~~ the emergency rule was first
51 promulgated, ~~and~~ in which case the emergency rule expires on the date the authorized rule is
52 made effective; or

53 (5) The Legislature has, by law, disapproved ~~of such~~ the emergency rule, in which case
54 the emergency rule expires on the date the law become effective.

55 ~~(b)~~(c) Any amendment to an emergency rule made by the ~~board~~ agency shall be filed in
56 the State Register and does not constitute a new emergency rule for the purpose of acquiring
57 additional time or avoiding the expiration dates in subdivision (2), (3), (4) or (5), subsection (b) of
58 this section: Provided, That the emergency amendment becomes effective upon the approval of
59 the Secretary of State in accordance with section §29A-3-16a of this code or upon the 42nd day
60 following the filing, whichever occurs first.

61 ~~(e)~~(d) Once an emergency rule expires due to the conclusion of 15 months or ~~due to the~~
62 ~~effect~~ because of subdivision (2), (3), (4) or (5), subsection (b) of this section, the ~~board~~ agency
63 may not refile the same or similar rule as an emergency rule.

64 ~~(d) Emergency legislative rules currently in effect under the prior provisions of this section~~
65 ~~may be refiled under the provisions of this section~~

66 (e) The ~~provision~~ agency may not use the provisions of this section ~~shall not be used~~ to
67 avoid or evade any provision of this article or any other provisions of this code, including any
68 provisions for legislative review and approval of proposed rules. Any emergency rule promulgated

69 for ~~any such~~ that purpose may be contested in a judicial proceeding before a court of competent
70 jurisdiction.

71 (f) The Legislative Oversight ~~e~~Commission on ~~e~~Education ~~a~~Accountability may review
72 any emergency rule to determine: (1) Whether the ~~board~~ agency has exceeded the scope of its
73 statutory authority in promulgating the emergency rule; (2) whether there exists an emergency
74 justifying the promulgation of ~~such~~ the emergency rule; and (3) whether the emergency rule was
75 promulgated in compliance with the requirements and prohibitions contained in this section. The
76 commission may recommend to the ~~board~~ agency, the Legislature, or the Secretary of State
77 ~~such any action as it may deem proper~~ determines appropriate.

78 (g) For the purposes of this section, an emergency exists when the promulgation of a an
79 emergency rule is necessary: (1) For the immediate preservation of the public peace, health,
80 safety or welfare; ~~or is necessary~~ (2) to comply with a time limitation established by this code or
81 by a federal statute or regulation; or (3) to prevent substantial harm to the public interest.

§29A-3A-16a. Disapproval of emergency rules by the Secretary of State; judicial review.

1 (a) Upon the filing of an emergency rule or filing of an amendment to an emergency rule
2 by the ~~board~~ agency, under the provisions of §29A-3A-16 of this ~~article~~ code, the Secretary of
3 State shall review ~~such~~ the emergency rule or the amendment to the emergency rule and, within
4 42 days of ~~such~~ the agency's filing, shall issue a decision as to whether ~~or not~~ such the emergency
5 rule or the amendment to an emergency rule should be disapproved.

6 (b) The Secretary of State shall disapprove an emergency rule or an amendment to an
7 emergency rule if he or she determines:

8 (1) That the emergency rule or an amendment to the emergency rule exceeds the scope
9 of the law authorizing or directing the promulgation thereof; or

10 (2) That an emergency does not exist justifying the promulgation of the emergency rule or
11 the filing of an amendment to the emergency rule; or

12 (3) That the emergency rule or an amendment to the emergency rule was not promulgated
13 in compliance with §29A-3A-16 of this ~~article~~ code.

14 (c) If the Secretary of State determines, based upon the contents of the rule or the
15 supporting information filed by the ~~board~~ agency, that the emergency rule should be disapproved,
16 he or she may disapprove ~~such~~ the rule without further investigation, notice, or hearing. If,
17 however, the Secretary of State concludes that the information submitted by the ~~board~~ agency is
18 insufficient to allow a proper determination to be made as to whether the emergency rule should
19 be disapproved, he or she may make further investigation, including, but not limited to, requiring
20 the ~~board~~ agency or other interested parties to submit additional information or comment or fixing
21 a date, time, and place for the taking of evidence on the issues involved in making a determination
22 under the provisions of this section.

23 (d) If the Secretary of State determines, based upon the contents of the amendment to an
24 emergency rule or the supporting information filed by the agency, that the amendment to the
25 emergency rule should be disapproved, he or she may disapprove the amendment without further
26 investigation, notice, or hearing. If, however, the Secretary of State concludes that the information
27 submitted by the agency is insufficient to allow a proper determination to be made as to whether
28 the amendment should be disapproved, he or she may make further investigation, including, but
29 not limited to, requiring the agency or other interested parties to submit additional information or
30 comment or fixing a date, time, and place for the taking of evidence on the issues involved in
31 making a determination under the provisions of this section.

32 ~~(d)~~ (e) The determination of the Secretary of State ~~shall be~~ is reviewable by the Supreme
33 Court of Appeals under its original jurisdiction, based upon a petition for a writ of mandamus,
34 prohibition, ~~of~~ or certiorari, as appropriate. ~~Such~~ The proceeding may be instituted by:

35 (1) The ~~board~~ agency that promulgated the emergency rule;

36 (2) A member of the Legislature; or

37 (3) Any person whose personal property interests will be significantly affected by the
38 approval or disapproval of the emergency rule by the Secretary of State.

§29A-3A-17. Legislative review of procedural rules, interpretive rules, and existing legislative rules.

1 (a) The Legislative Oversight Commission on Education Accountability may review any
2 procedural rules, interpretive rules, or existing legislative rules of the agency to determine if the
3 rules are achieving their purpose and based on its determination ~~may make recommendations~~
4 ~~concerning such rules to the Legislature or to the board or to both the Legislature and the board~~
5 if the rule should be continued, amended, or repealed.

6 (b) Following the review, the Legislative Oversight Commission on Education
7 Accountability shall make recommendations regarding the rules to the agency and to the Joint
8 Committee on Government and Finance.

§29A-3A-18. Prior rules.

1 Any rule lawfully promulgated prior to the effective date of ~~this chapter~~ the amendments
2 made to this chapter during the regular session of the Legislature, 2023, shall remain in full force
3 and effect until:

4 (1) ~~Such~~ The rule is expressly made ineffective by the provisions of this chapter; or

5 (2) ~~Such~~ The rule ~~should~~ expires by reason of failure to refile ~~the same~~ it as provided in
6 §29A-2-5 of this code, or expires pursuant to its own terms and provisions lawfully made before
7 the effective date of this section; or

8 (3) ~~Such~~ The rule is repealed by the lawful act of the ~~board~~ agency in conformity with this
9 chapter; or

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

§29A-3A-20. 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:~~ on August 1 of the fifth year
3 following its promulgation: *Provided*, That the rule may be renewed ~~for additional terms of five~~
4 ~~years or less~~ by the Legislature pursuant to the rulemaking procedures and authority in this article:
5 *Provided, however*, That if a different sunset or termination provision exists in the statute under
6 which the proposed rule is promulgated, the enabling statute's provision shall control: *Provided*
7 *further*, That this subsection shall not apply to emergency rules promulgated pursuant to §29A-
8 3A-16 of this article 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 setting forth a~~
11 ~~termination date for the rule:~~ terminating the rule on August 1 of the applicable year as part of
12 the amendment: *Provided*, That the rule may be renewed ~~for additional terms of years~~ by the
13 Legislature pursuant to the rule-making procedures and authority in this article: *Provided*,
14 *however*, That if a different sunset or termination provision exists in the statute under which the
15 ~~proposed~~ legislative rule is promulgated, the enabling statute's provision ~~shall control~~ controls:
16 *Provided further*, That this subsection shall not apply to emergency rules promulgated pursuant
17 to §29A-3A-16 of this article code.

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

21 (d) As part of its rule review under this article, the Legislative Oversight Commission on
22 Education Accountability ~~is authorized to~~ may establish a procedure for timely review of a
23 legislative rule prior to its ~~expiration~~ termination if the ~~board~~ agency has affirmatively sought
24 renewal prior to expiration. The procedure may include a requirement that the ~~board~~ agency show

25 cause as to why the ~~expiring~~ terminating legislative rule is required and necessary to be continued
26 for another term of years.

27 (e) The Secretary of State shall provide notice to the ~~board~~ agency and the Legislative
28 Oversight Commission on Education Accountability at least 18 months prior to every legislative
29 rule's sunset termination date. The agency has 60 days from receipt of the notice to file the
30 legislative rule with the Secretary of State and the Legislative Oversight Commission on Education
31 Accountability affirmatively seeking renewal of the legislative rule: *Provided, That, if the legislative*
32 rule that is scheduled to sunset is not being amended or changed, except for a new sunset date,
33 the rule is not subject to the public comment period requirements contained in §29A-3A-6 of this
34 code. The Legislative Oversight Commission on Education Accountability, as part of its rule
35 review under this article, may begin reviewing a legislative rule upon its filing.

36 (f) If the agency has promulgated a legislative rule with a sunset date prior to May 1 of
37 the applicable year, the agency may file a technical amendment with the Secretary of State for
38 the purpose of establishing a sunset date of August 1 of the applicable year.

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