

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4261**

4 (By Delegates Fleischauer, Miley, Brown, Caputo,
5 Hunt Pino, Overington, Sobonya)
6

7 (Originating in the House Committee on the Judiciary)

8 [February 24, 2012]
9

10 A BILL to amend and reenact §29A-1-2 and §29A-1-3 of the Code of
11 West Virginia, 1931, as amended; to amend and reenact §29A-3-
12 1a, §29A-3-4, §29A-3-6, §29A-3-8, §29A-3-15, §29A-3-15a and
13 §29A-3-15b of said code; and to amend said code by adding
14 three new sections, designated §29A-3-1c, §29A-3-1d and §29A-
15 3-9a, all relating to review of state administrative agency
16 rule-making; defining terms; altering designation of types of
17 rules that have not been approved by the Legislature and that
18 are exempt from legislative review; establishing deadline for
19 action by agency action for certain proposed rules before the
20 rule is deemed withdrawn; requiring agency response to public
21 comments; requiring all sections of a rule be filed when
22 agency proposing rule amendment; providing for methodology for
23 repeal of rules; establishing new publishing and rule-making
24 requirements for certain Department of Health and Human
25 Services policy manuals; providing new process for review and

1 approval of legislative rules incorporating federal mandated
2 requirements; revising emergency rule-making process to allow
3 for public comment, more information, and extended comment
4 period; providing new process for provisional legislative
5 rules; and altering certain agency filing requirements.

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

7 That §29A-1-2 and §29A-1-3 of the Code of West Virginia, 1931,
8 as amended, be amended and reenacted; that §29A-3-1a, §29A-3-4,
9 §29A-3-6, §29A-3-8, §29A-3-15, §29A-3-15a and §29A-3-15b of said
10 code be amended and reenacted; and that said code be amended by
11 adding three new sections, designated §29A-3-1c, §29A-3-1d and
12 §29A-3-9a, all to read as follows:

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

14 **§29A-1-2. Definitions of terms used in this chapter.**

15 For the purposes of this chapter:

16 (a) "Agency" means any state board, commission, department,
17 office or officer authorized by law to make rules or adjudicate
18 contested cases, except those in the legislative or judicial
19 branches;

20 (b) "Contested case" means a proceeding before an agency in
21 which the legal rights, duties, interests or privileges of specific
22 parties are required by law or constitutional right to be
23 determined after an agency hearing, but does not include cases in
24 which an agency issues a license, permit or certificate after an

1 examination to test the knowledge or ability of the applicant where
2 the controversy concerns whether the examination was fair or
3 whether the applicant passed the examination and shall not include
4 rule making;

5 (c) "Agency-promulgated rule" means any rule an agency is
6 authorized by the Legislature to promulgate that meets all
7 requirements of being considered a legislative rule except for the
8 authority granted by the Legislature to the agency expressly allows
9 the agency to proceed with final adoption of the rule without prior
10 specific authorization by Legislature rule enactment pursuant to
11 section nine, article three of this chapter. An agency-promulgated
12 rule to be lawfully promulgated shall comport to all other
13 requirements of this article and shall have the same force and
14 effect as a legislative rule.

15 ~~(e)~~ (d) "Interpretive rule" means every rule, ~~as defined in~~
16 ~~subsection (I) of this section,~~ adopted by an agency independently
17 of any delegation of legislative power which is intended by the
18 agency to provide information or guidance to the public regarding
19 the agency's interpretations, policy or opinions upon the law
20 enforced or administered by it and which is not intended by the
21 agency to be determinative of any issue affecting private rights,
22 privileges or interests. An interpretive rule may not be relied
23 upon to impose a civil or criminal sanction nor to regulate private
24 conduct or the exercise of private rights or privileges nor to

1 confer any right or privilege provided by law and is not admissible
2 in any administrative or judicial proceeding for such purpose,
3 except where the interpretive rule established the conditions for
4 the exercise of discretionary power as herein provided. However, an
5 interpretive rule is admissible for the purpose of showing that the
6 prior conduct of a person was based on good faith reliance on such
7 rule. The admission of such rule in no way affects any legislative
8 or judicial determination regarding the prospective effect of such
9 rule. Where any provision of this code lawfully commits any
10 decision or determination of fact or judgment to the sole
11 discretion of any agency or any executive officer or employee, the
12 conditions for the exercise of that discretion, to the extent that
13 such conditions are not prescribed by statute or by legislative
14 rule, may be established by an interpretive rule and such rule is
15 admissible in any administrative or judicial proceeding to prove
16 such conditions.

17 ~~(d)~~ (e) "Legislative rule" means every rule, ~~as defined in~~
18 ~~subsection (I) of this section~~ proposed or promulgated by an agency
19 pursuant to this chapter. Legislative rule includes every rule
20 which, when promulgated after or pursuant to authorization of the
21 Legislature, has: (1) The force of law; or (2) supplies a basis for
22 the imposition of civil or criminal liability; or (3) grants or
23 denies a specific benefit. Every rule which, when effective, is
24 determinative on any issue affecting private rights, privileges or

1 interests is a legislative rule. Unless lawfully promulgated as an
2 emergency rule, a legislative rule is only a proposal by the agency
3 and has no legal force or effect until promulgated by specific
4 authorization of the Legislature. Except where otherwise
5 specifically provided in this code, legislative rule does not
6 include: (A) findings or determinations of fact made or reported by
7 an agency, including any such findings and determinations as are
8 required to be made by any agency as a condition precedent to
9 proposal of a rule to the Legislature; (B) declaratory rulings
10 issued by an agency pursuant to the provisions of section one,
11 article four of this chapter; (C) orders, as defined in ~~subdivision~~
12 ~~(e)~~ of this section; or (D) executive orders or proclamations by
13 the Governor issued solely in the exercise of executive power,
14 including executive orders issued in the event of a public disaster
15 or emergency;

16 ~~(e)~~ (f) "Order" means the whole or any part of the final
17 disposition (whether affirmative, negative, injunctive or
18 declaratory in form) by any agency of any matter other than rule
19 making;

20 ~~(f)~~ (g) "Person" includes individuals, partnerships,
21 corporations, associations or public or private organizations of
22 any character;

23 ~~(g)~~ (h) "Procedural rule" means every rule, ~~as defined in~~
24 ~~subsection (i) of this section,~~ which fixes rules of procedure,

1 practice or evidence for dealings with or proceedings before an
2 agency, including forms prescribed by the agency;

3 ~~(h)~~ (I) "Proposed rule" is a legislative rule, interpretive
4 rule, or a procedural rule which has not become effective pursuant
5 to the provisions of this chapter or law authorizing its
6 promulgation;

7 (j) "Provisional legislative rule" means a legislative rule
8 that the agency has been directed by law to propose, to be
9 effective for a limited time as a legislative rule prior to
10 legislative authorization for promulgation as a legislative rule,
11 pursuant to this chapter.

12 ~~(i)~~ (k) "Rule" includes every regulation, standard or
13 statement of policy or interpretation of general application and
14 future effect, including the amendment or repeal thereof, affecting
15 private rights, privileges or interests, or the procedures
16 available to the public, adopted by an agency to implement, extend,
17 apply, interpret or make specific the law enforced or administered
18 by it or to govern its organization or procedure, but does not
19 include regulations relating solely to the internal management of
20 the agency, nor regulations of which notice is customarily given to
21 the public by markers or signs, nor mere instructions. Every rule
22 shall be classified as "legislative rule," "interpretive rule" or
23 "procedural rule," all as defined in this section, and shall be
24 effective only as provided in this chapter;

1 ~~(j)~~ (1) "Rule making" means the process for the formulation,
2 amendment or repeal of a rule as provided in this chapter.

3 **§29A-1-3. Application of chapter; limitations.**

4 (a) The provisions of this chapter do not apply in any respect
5 whatever to executive orders of the Governor, which orders to the
6 extent otherwise lawful shall be effective according to their
7 terms: *Provided*, That the executive orders shall be admitted to
8 record in the State Register when and to the extent the Governor
9 ~~deems~~ considers suitable and shall be included therein by the
10 Secretary of State when tendered by the Governor.

11 (b) Except as to requirements for filing in the State
12 Register, and with the Legislature or its rule-making review
13 committee, provided in this chapter or other law, the provisions of
14 this chapter do not apply in any respect ~~whatever~~ to the West
15 Virginia Board of Probation and Parole, the Public Service
16 Commission, the board of Public Works sitting as such and the
17 Secondary Schools Activities Commission. ~~Provided, That~~ The rules
18 of such agencies shall be filed in the State Register in the form
19 prescribed by this chapter and be effective no sooner than sixty
20 consecutive days after being so filed ~~Provided, however, That~~ The
21 rules promulgated by the state colleges and universities shall only
22 be filed with the higher education governing boards. *Provided*
23 ~~further, That~~ Such agencies may promulgate emergency rules in
24 conformity with section fifteen, article three of this chapter.

1 Rules or amendments thereto authorized by this subsection shall be
2 considered by the agency for adoption not later than six months
3 after the close of public comment. A notice of adoption or
4 withdrawal by the agency shall be filed in the State Register
5 within that period. Failure to file such notice shall constitute
6 withdrawal. The Secretary of State shall note such withdrawal in
7 the State Register immediately upon the expiration of the six-
8 month period.

9 (c) The provisions of this chapter do not apply to rules
10 relating to or contested cases involving the conduct of inmates or
11 other persons admitted to public institutions, the open seasons and
12 the bag, creel, size, age, weight and sex limits with respect to
13 the wildlife in this state, or the conduct of persons in military
14 service. or the receipt of public assistance. ~~Such~~ These rules
15 shall be filed in the State Register in the form prescribed by this
16 chapter and be effective upon filing: Provided, That rules relating
17 to the receipt of public assistance shall be subject to the
18 provisions of section one-c, article three of this chapter.

19 (d) Nothing herein shall be construed to affect, limit or
20 expand any express and specific exemption from this chapter
21 contained in any other statute relating to a specific agency, but
22 such exemptions shall be construed and applied in accordance with
23 the provisions of this chapter to effectuate any limitations on
24 such exemptions contained in any such other statute.

1 **ARTICLE 3. RULE MAKING.**

2 **§29A-3-1a. Filing proposed amendments to an existing rule.**

3 ~~(a) Rules promulgated to amend existing rules may be filed on~~
4 ~~a section by section basis without having to refile in the state~~
5 ~~register all of the other sections of an existing series numbered~~
6 ~~rule: *Provided*, That such filing shall list, by proper citation,~~
7 ~~those sections, not amended, which are directly affected by those~~
8 ~~sections amended: *Provided, however*, That amendments so filed When~~
9 ~~amending an existing rule or proposing a new rule, agencies shall~~
10 ~~file all sections of the proposed rule. Each amendment filed to an~~
11 ~~existing rule shall be accompanied by note of explanation as to the~~
12 ~~effect of such amendment and its relation to the existing rules.~~

13 ~~(b) Rules promulgated to amend existing rules and filed as an~~
14 ~~emergency rule may be filed on a section by section basis without~~
15 ~~having to refile in the state register all of the other sections of~~
16 ~~an existing series numbered rule: *Provided*, That such filing shall~~
17 ~~list, by proper citation, those sections not amended, which are~~
18 ~~directly affected by those sections amended.~~

19 ~~(b) Any rule being repealed shall be filed in its entirety~~
20 ~~with the rule series provisions stricken. A rule may not be~~
21 ~~repealed by reference in another rule.~~

22 **§29A-3-1c. Rules of the Department of Health and Human Services.**

23 ~~(a) The Secretary of the Department of Health and Human~~
24 ~~Services as authorized by this section, other statute or~~

1 legislative rule, may publish manuals that provide policy guidance
2 for the implementation and administration of agency programs.
3 Manuals are considered agency-promulgated rules as defined pursuant
4 to this article.

5 (b) Notwithstanding the provisions of section eight, article
6 two of this chapter, the Secretary of the Department of Health and
7 Human Services may make manuals available to the public in an
8 electronic format. Upon the effective date of the manual or any
9 amendment thereto, the secretary shall provide an electronic copy
10 of policy manual to the Secretary of State at no cost. Each
11 manual will be considered addendums to the Code of State Rules, and
12 electronically published as part of the State Register. This
13 manual shall be noticed in the State Register pursuant to article
14 two of this chapter and subject to thirty day public notice and
15 comment period pursuant to section five of this article.

16 (c) The following Department of Health and Human Services
17 manuals are agency-promulgated rules, and subject to the provisions
18 of this section: Bureau for Child Support Enforcement Policy
19 Manual; Income Maintenance Manual; West Virginia Medicaid Provider
20 Manuals; Medicaid State Plan Manual; and the Social Services
21 Manual.

22 **§29A-3-1d. Proposal of federally mandated rules.**

23 (a) Notwithstanding the provisions of section nine of this
24 article, when a legislative rule or amendment to an existing

1 legislative rule is being proposed by an agency to adopt by
2 reference or otherwise comport the rule to a federal counterpart
3 regulation for the purposes of meeting minimum federal requirements
4 for a state administered program in which the state has assumed
5 regulatory responsibility, the agency may promulgate the rule as an
6 agency-promulgated rule without legislative approval upon meeting
7 the requirements of this section.

8 (b) To qualify for agency-promulgated rule status, the rule or
9 amendment to the existing rule shall contain only provisions
10 necessary to fulfill the state's duties associated with
11 administering and complying with the federally delegated program,
12 and may not exceed minimum federal requirements, and to the extent
13 the rule does, it is in violation of this section and shall be
14 severed from the rule and be null and void.

15 (c) The agency shall fulfill all filing, hearing and notice
16 requirements otherwise required pursuant to this article. The
17 agency shall as part of rule filing, provide an explanation of the
18 purpose of the rule and a statement and finding specifically
19 detailing the reasons the rule is eligible for agency-promulgated
20 rule status.

21 (d) The federal regulation or statute shall be electronically
22 attached or otherwise electronically available and be available for
23 inspection at the Secretary of State's office.

24 (e) The rule is effective thirty days following close of

1 public comment period. Rules are to be filed with the Legislative
2 Rule-making and Review Committee as provided in section eleven of
3 this article. The Legislature may disapprove or amend an agency-
4 promulgated rule without limitation.

5 **§29A-3-4. Filing of proposed procedural rules and interpretive**
6 **rules.**

7 (a) When an agency proposes ~~a~~ an agency-promulgated rule,
8 procedural rule or an interpretive rule, the agency shall file in
9 the State Register a notice of its action, including the text of
10 the rule as proposed.

11 (b) All proposed rules filed under subsection (a) of this
12 section shall have a fiscal note attached itemizing the cost of
13 implementing the rules as they relate to this state and to persons
14 affected by the rules. ~~and regulations.~~ Such fiscal note shall
15 include all information included in a fiscal note for either house
16 of the Legislature and a statement of the economic impact of the
17 rule on the state or its residents. The objectives of the rules
18 shall be clearly and separately stated in the fiscal note by the
19 agency issuing the proposed rules. No agency-promulgated rule, -
20 procedural or interpretive rule shall be void or voidable by virtue
21 of noncompliance with this subsection.

22 **§29A-3-6. Filing findings and determinations for rules in state**
23 **register; evidence deemed public record.**

24 (a) Incident to fixing a date for public comment on a proposed

1 rule, the agency shall promulgate the findings and determinations
2 required as a condition precedent thereto, and state fully and
3 succinctly the reasons therefor and file such findings and
4 determinations in the State Register. If the agency amends the
5 proposed rule as a result of the evidence or comment presented
6 pursuant to section five, such amendment shall be filed with a
7 description of any changes and a statement listing the reasons for
8 the amendment. The agency shall also provide an analysis of the
9 comments received and the reasons for adoption or rejection of any
10 suggested revisions submitted as comments to the proposed rule.

11 (b) The statement of reasons and a transcript of all evidence
12 and public comment received pursuant to notice are public records
13 and shall be carefully preserved by the agency and be open for
14 public inspection and copying for a period of not less than five
15 years from the date of the hearing.

16 **§29A-3-8. Adoption of procedural and interpretive rules.**

17 ~~A~~ An agency-promulgated, procedural and interpretive rule,
18 shall be considered by the agency for adoption not later than six
19 months after the close of public comment and a notice of withdrawal
20 or adoption shall be filed in the State Register within that
21 period. Failure to file such notice shall constitute withdrawal
22 and the Secretary of State shall note such failure in the State
23 Register immediately upon the expiration of the six- month period.

24 ~~A~~ An agency-promulgated, procedural or interpretive rule may

1 be amended by the agency prior to final adoption without further
2 hearing or public comment. No such amendment may change the main
3 purpose of the rule. If the fiscal implications have changed
4 since the rule was proposed, a new fiscal note shall be attached to
5 the notice of filing. Upon adoption of the rule, (including any
6 such amendment,) the agency shall file the text of the adopted
7 agency-promulgated, procedural or interpretive rule with its notice
8 of adoption in the State Register and the same shall be effective
9 on the date specified in the rule or thirty days after such filing,
10 whichever is later.

11 **§29A-3-9a. Proposal and promulgation of provisional legislative**
12 **rules.**

13 (a) Unless otherwise specified in the implementing statute,
14 whenever the Legislature enacts a law mandating an agency to
15 propose a legislative rule, and further directs the agency to
16 promulgate a provisional legislative rule, the agency shall within
17 sixty days of the effective date of the statute, file the rule for
18 public notice as provided in section five of this article and also
19 submit the rule as a legislative rule as provided pursuant to the
20 requirements of this article. The provisional legislative rule
21 shall be filed by the agency as provided in section six of this
22 article no later than thirty days following the close of public
23 comment. The rule is effective upon final filing by the agency.
24 The provisional legislative rule shall remain effective for fifteen

1 months or until the legislative rule is acted upon by enactment of
2 the Legislature pursuant to section thirteen of this article,
3 whichever occurs first. Any amendment by the agency to the
4 provisional legislative rule is subject to the same notice and
5 effective date requirements. Amendments to the provisional
6 legislative rule do not alter the initial fifteen month effective
7 period for the provisional legislative rule. If the provisional
8 legislative rule expires due to the failure of legislative
9 authorization pursuant to section thirteen of this article, the
10 agency may not refile the same or similar rule as an emergency rule
11 or a provisional legislative rule.

12 (b) A provisional legislative rule may be disapproved by the
13 Secretary of State, acting under the authority provided in section
14 fifteen-a of this article, or the Attorney General, acting under
15 the authority provided in section fifteen-b of this article.

16 **§29A-3-15. Emergency legislative rules; procedure for**
17 **promulgation; definition.**

18 (a) Any agency with authority to propose legislative rules
19 may, ~~without hearing,~~ find that an emergency exists requiring that
20 emergency rules be promulgated and promulgate the same in
21 accordance with this section. Such emergency rules, together with
22 a statement of the facts and circumstances constituting the
23 emergency, and a listing of state agencies, professions, businesses
24 and other identifiable interest groups affected by the proposed

1 emergency rule shall be filed with the Secretary of State, and a
2 notice of such filing shall be published in the State Register:
3 Provided, That failure to list all known state agencies,
4 professions, businesses and other identifiable interest groups may
5 not be the basis for disapproval of the rule or subject the rule to
6 judicial review. The agency shall have a thirty day public
7 comment period for a proposed emergency rule, beginning the day of
8 filing. Upon closure of the public hearing, the ~~Such~~ emergency
9 ~~rules~~ rule shall become effective upon the approval of the
10 Secretary of State in accordance with section fifteen-a of this
11 article or upon the approval of the Attorney General in accordance
12 with section fifteen-b or upon the ~~forty-second~~ forty-fifth day
13 following such filing, whichever occurs first: Provided, that upon
14 a finding that the emergent circumstances existing pursuant to
15 subsection (f) of this section require immediate authorization of
16 the emergency rule, the Secretary of State, acting under the
17 authority provided in section fifteen-a of this article, or the
18 Attorney General, acting under the authority provided in section
19 fifteen-b of this article, may immediately approve the emergency
20 rule for the remainder of the forty-five day comment and review
21 period, at which time that approval of the emergency rule will
22 expire. Any time following the close of public hearing, the final
23 determination on the existence of an emergency may be made by the
24 Secretary of State, acting under the authority provided in section

1 fifteen-a of this article, or the Attorney General, acting under
2 the authority provided in section fifteen-b of this article. Such
3 Emergency rules may adopt, amend or repeal any legislative rule,
4 but the circumstances constituting the emergency requiring such
5 adoption, amendment or repeal shall be stated with particularity
6 and be subject to de novo review by any court having original
7 jurisdiction of an action challenging their validity. ~~Fourteen~~ Two
8 paper copies and an electronic version of the rules and of the
9 required statement shall be filed immediately with the Secretary of
10 State and one paper copy and an electronic copy shall be filed
11 immediately with the Legislative Rule-Making Review Committee.

12 An emergency rule shall be effective for not more than fifteen
13 months and shall expire earlier if any of the following occurs:

14 (1) The Secretary of State, acting under the authority
15 provided for in section fifteen-a of this article, or the Attorney
16 General, acting under the authority provided in section fifteen-b
17 of this article, disapproves the emergency rule because: (A) The
18 emergency rule or an amendment to the emergency rule exceeds the
19 scope of the law authorizing or directing the promulgation thereof;
20 (B) an emergency does not exist justifying the promulgation of the
21 emergency rule; or © the emergency rule was not promulgated in
22 compliance with the provisions of this section. An emergency rule
23 may not be disapproved pursuant to the authority granted by
24 paragraphs (A) or (B) of this subdivision on the basis that the

1 Secretary of State or the Attorney General disagrees with the
2 underlying public policy established by the Legislature in enacting
3 the supporting legislation. An emergency rule which would
4 otherwise be approved as being necessary to comply with a time
5 limitation established by this code or by a federal statute or
6 regulation may not be disapproved pursuant to the authority granted
7 by paragraphs (A) or (B) of this subdivision on the basis that the
8 agency has failed to file the emergency rule prior to the date
9 fixed by such time limitation. ~~When the supporting statute~~
10 ~~specifically directs an agency to promulgate an emergency rule, or~~
11 ~~specifically finds that an emergency exists and directs the~~
12 ~~promulgation of an emergency rule, the emergency rule may not be~~
13 ~~disapproved pursuant to the authority granted by paragraph (B) of~~
14 ~~this subdivision.~~ An emergency rule may not be disapproved on the
15 basis that the Legislature has not specifically directed an agency
16 to promulgate the emergency rule, or has not specifically found
17 that an emergency exists and directed the promulgation of an
18 emergency rule.

19 (2) The agency has not previously filed and fails to file a
20 notice of public hearing on the proposed rule within thirty days of
21 the date the proposed rule was filed as an emergency rule; in which
22 case the emergency rule expires on the thirty-first day.

23 (3) The agency has not previously filed and fails to file the
24 proposed rule with the Legislative Rule-Making Review Committee

1 within ninety days of the date the proposed rule was filed as an
2 emergency rule; in which case the emergency rule expires on the
3 ninety-first day.

4 (4) The Legislature has authorized or directed promulgation of
5 an authorized legislative rule dealing with substantially the same
6 subject matter since such emergency rule was first promulgated, and
7 in which case the emergency rule expires on the date the authorized
8 rule is made effective.

9 (5) The Legislature has, by law, disapproved of such emergency
10 rule; in which case the emergency rule expires on the date the law
11 becomes effective.

12 (b) Any amendment to an emergency rule made by the agency
13 shall be filed in the State Register and does not constitute a new
14 emergency rule for the purpose of acquiring additional time or
15 avoiding the expiration dates in subdivision (2), (3), (4) or (5),
16 subsection (a) of this section: *Provided*, That such emergency
17 amendment shall become effective upon the approval of the Secretary
18 of State in accordance with section fifteen-a of this article or
19 upon approval of the Attorney General in accordance with section
20 fifteen-b of this article or upon the ~~forty-second~~ forty-fifth day
21 following such filing, whichever occurs first.

22 (c) Once an emergency rule expires due to the conclusion of
23 fifteen months or due to the effect of subdivision (2), (3), (4) or
24 (5), subsection (a) of this section, the agency may not refile the

1 same or similar rule as an emergency rule.

2 (d) The provision of this section shall not be used to avoid
3 or evade any provision of this article or any other provisions of
4 this code, including any provisions for legislative review and
5 approval of proposed rules. Any emergency rule promulgated for any
6 such purpose may be contested in a judicial proceeding before a
7 court of competent jurisdiction.

8 (e) The Legislative Rule-Making Review Committee may review
9 any emergency rule to determine: (1) Whether the emergency rule or
10 an amendment to the emergency rule exceeds the scope of the law
11 authorizing or directing the promulgation thereof; (2) whether
12 there exists an emergency justifying the promulgation of such
13 emergency rule; and (3) whether the emergency rule was promulgated
14 in compliance with the requirements and prohibitions contained in
15 this section. The committee may recommend to the agency, the
16 Legislature, or the Secretary of State such action as it may ~~deem~~
17 consider proper.

18 (f) For the purposes of this section, an emergency exists when
19 the promulgation of an emergency rule is necessary: (1) For the
20 immediate preservation of the public peace, health, safety or
21 welfare; (2) to comply with a time limitation established by this
22 code or by a federal statute or regulation; or (3) to prevent
23 substantial harm to the public interest.

24 **§29A-3-15a. Disapproval of emergency and provisional legislative**

1 **rules by the Secretary of State; judicial review.**

2 (a) Upon the filing of an emergency rule or filing of an
3 amendment to an emergency rule by an agency, under the provisions
4 of section fifteen of this article, by any agency, except for the
5 Secretary of State, the Secretary of State shall review such rule
6 or such amendment and, within ~~forty-two~~ forty-five days of such
7 filing, shall issue a decision as to whether or not such emergency
8 rule or such amendment to an emergency rule should be disapproved.
9 An emergency rule filed by the Secretary of State shall be reviewed
10 by the Attorney General as provided in section fifteen-b of this
11 article.

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

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

17 (2) That an emergency does not exist justifying the
18 promulgation of the emergency rule or the filing of an amendment to
19 the emergency rule; or

20 (3) That the emergency rule or an amendment to the emergency
21 rule was not promulgated in compliance with the provisions of
22 section fifteen of this article.

23 (c) If the Secretary of State determines, based upon the
24 contents of the rule or the supporting information filed by the

1 agency, that the emergency rule should be disapproved, he or she
2 may disapprove such rule without further investigation, notice or
3 hearing. If, however, the Secretary of State concludes that the
4 information submitted by the agency is insufficient to allow a
5 proper determination to be made as to whether the emergency rule
6 should be disapproved, he or she may make further investigation,
7 including, but not limited to, requiring the agency or other
8 interested parties to submit additional information or comment or
9 fixing a date, time and place for the taking of evidence on the
10 issues involved in making a determination under the provisions of
11 this section.

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

1 section.

2 (e) The Secretary of State shall disapprove a provisional
3 legislative rule upon a finding that the rule was unlawfully
4 promulgated or that the provisional legislative rule or an
5 amendment thereto exceeds the scope of the law authorizing the
6 rule's promulgation.

7 ~~(e)~~ (f) The determination of the Secretary of State shall be
8 reviewable by the Supreme Court of Appeals under its original
9 jurisdiction, based upon a petition for a writ of mandamus,
10 prohibition or certiorari, as appropriate. Such proceeding may be
11 instituted by:

12 (1) The agency which promulgated the emergency rule;

13 (2) A member of the Legislature; or

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

17 **§29A-3-15b. Disapproval of emergency rules and provisional**
18 **legislative rules by the Attorney General;**
19 **judicial review.**

20 (a) Upon the filing of an emergency rule or filing of an
21 amendment to an emergency rule by the Secretary of State under the
22 provisions of section fifteen of this article, the Attorney General
23 shall review such rule or such amendment and, within ~~forty-two~~
24 forty-five days of such filing, shall issue a decision as to

1 whether or not such emergency rule or such amendment to an
2 emergency rule should be disapproved.

3 (b) The Attorney General shall disapprove an emergency rule or
4 an amendment to an emergency rule if he or she determines:

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

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

11 (3) That the emergency rule or an amendment to the emergency
12 rule was not promulgated in compliance with the provisions of
13 section fifteen of this article.

14 (c) If the Attorney General determines, based upon the
15 contents of the rule or the supporting information filed by the
16 Secretary of State, that the emergency rule should be disapproved,
17 he or she may disapprove such rule without further investigation,
18 notice or hearing. If, however, the Attorney General concludes
19 that the information submitted by the Secretary of State is
20 insufficient to allow a proper determination to be made as to
21 whether the emergency rule should be disapproved, he or she may
22 make further investigation, including, but not limited to,
23 requiring the Secretary of State or other interested parties to
24 submit additional information or comment or fixing a date, time and

1 place for the taking of evidence on the issues involved in making
2 a determination under the provisions of this section.

3 (d) If the Attorney General determines, based upon the
4 contents of the amendment to an emergency rule or the supporting
5 information filed by the agency, that the amendment to the
6 emergency rule should be disapproved, he or she may disapprove such
7 amendment without further investigation, notice or hearing. If,
8 however, the Attorney General concludes that the information
9 submitted by the agency is insufficient to allow a proper
10 determination to be made as to whether the amendment should be
11 disapproved, he or she may make further investigation, including,
12 but not limited to, requiring the agency or other interested
13 parties to submit additional information or comment or fixing a
14 date, time and place for the taking of evidence on the issues
15 involved in making a determination under the provisions of this
16 section.

17 (e) The Attorney General shall disapprove a provisional
18 legislative rule upon a finding that the rule was unlawfully
19 promulgated or that the provisional legislative rule or an
20 amendment thereto exceeds the scope of the law authorizing the
21 rule's promulgation.

22 ~~(e)~~ (f) The determination of the Attorney General shall be
23 reviewable by the Supreme Court of Appeals under its original
24 jurisdiction, based upon a petition for a writ of mandamus,

1 prohibition or certiorari, as appropriate. Such proceeding may be
2 instituted by:

3 (1) The Secretary of State;

4 (2) A member of the Legislature; or

5 (3) Any person whose personal property interests will be
6 significantly affected by the approval or disapproval of the
7 emergency rule by the Attorney General.