

COMMITTEE SUBSTITUTE

FOR

# **H. B. 2171**

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(BY DELEGATE(S) FLEISCHAUER, MILEY, CAPUTO, PINO,  
OVERINGTON AND SOBONYA)

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(Originating in the House Committee on the Judiciary)  
[March 13, 2013]

A BILL to amend and reenact §29A-1-2 and §29A-1-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §29A-3-1a, §29A-3-4, §29A-3-6, §29A-3-8, §29A-3-15, §29A-3-15a and §29A-3-15b of said code; and to amend said code by adding two new sections, designated §29A-3-1c and §29A-3-9a, all relating to review of State Administrative Agency rule-making; defining terms; altering designation of types of rules that have not been approved by the Legislature and that are exempt from legislative

review; establishing deadline for action by agency action for certain proposed rules before the rule is deemed withdrawn; requiring agency response to public comments; requiring all sections of a rule be filed when agency proposing rule amendment; providing for methodology for repeal of rules; establishing new publishing and rule-making requirements for certain Department of Health and Human Services policy manuals; revising emergency rule-making process to allow for public comment, more information, and extended comment period; providing new process for provisional legislative rules; and altering certain agency filing requirements.

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

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

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

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

1 For the purposes of this chapter:

2 (a) “Agency” means any state board, commission,  
3 department, office or officer authorized by law to make rules or  
4 adjudicate contested cases, except those in the legislative or  
5 judicial branches;

6 (b) “Contested case” means a proceeding before an agency  
7 in which the legal rights, duties, interests or privileges of specific  
8 parties are required by law or Constitutional right to be  
9 determined after an agency hearing, but does not include cases  
10 in which an agency issues a license, permit or certificate after an  
11 examination to test the knowledge or ability of the applicant  
12 where the controversy concerns whether the examination was  
13 fair or whether the applicant passed the examination and ~~shall~~  
14 may not include rule making;

15 (c) “Agency-promulgated rule” means any rule an agency is  
16 authorized by the Legislature to promulgate that meets all  
17 requirements of being considered a legislative rule except for the  
18 authority granted by the Legislature to the agency expressly  
19 allows the agency to proceed with final adoption of the rule  
20 without prior specific authorization by Legislature rule  
21 enactment pursuant to section nine, article three of this chapter.

22 An agency-promulgated rule to be lawfully promulgated shall  
23 comport to all other requirements of this article and shall have  
24 the same force and effect as a legislative rule.

25       ~~(e)~~ (d) “Interpretive rule” means every rule, ~~as defined in~~  
26 ~~subsection (f) of this section,~~ adopted by an agency  
27 independently of any delegation of legislative power which is  
28 intended by the agency to provide information or guidance to the  
29 public regarding the agency’s interpretations, policy or opinions  
30 upon the law enforced or administered by it and which is not  
31 intended by the agency to be determinative of any issue affecting  
32 private rights, privileges or interests. An interpretive rule may  
33 not be relied upon to impose a civil or criminal sanction nor to  
34 regulate private conduct or the exercise of private rights or  
35 privileges nor to confer any right or privilege provided by law  
36 and is not admissible in any administrative or judicial  
37 proceeding for such purpose, except where the interpretive rule  
38 established the conditions for the exercise of discretionary power  
39 as herein provided. *However*, an interpretive rule is admissible  
40 for the purpose of showing that the prior conduct of a person was  
41 based on good faith reliance on such rule. The admission of such



42 rule in no way affects any legislative or judicial determination  
43 regarding the prospective effect of such rule. Where any  
44 provision of this code lawfully commits any decision or  
45 determination of fact or judgment to the sole discretion of any  
46 agency or any executive officer or employee, the conditions for  
47 the exercise of that discretion, to the extent that such conditions  
48 are not prescribed by statute or by legislative rule, may be  
49 established by an interpretive rule and such rule is admissible in  
50 any administrative or judicial proceeding to prove such  
51 conditions.

52 ~~(d)~~ (e) “Legislative rule” means every rule, ~~as defined in~~  
53 ~~subsection (f) of this section~~ proposed or promulgated by an  
54 agency pursuant to this chapter. Legislative rule includes every  
55 rule which, when promulgated after or pursuant to authorization  
56 of the Legislature, has: (1) The force of law; (2) supplies a basis  
57 for the imposition of civil or criminal liability; or (3) grants or  
58 denies a specific benefit. Every rule which, when effective, is  
59 determinative on any issue affecting private rights, privileges or  
60 interests is a legislative rule. Unless lawfully promulgated as an  
61 emergency rule, a legislative rule is only a proposal by the

62 agency and has no legal force or effect until promulgated by  
63 specific authorization of the Legislature. Except where otherwise  
64 specifically provided in this code, legislative rule does not  
65 include: (A) Findings or determinations of fact made or reported  
66 by an agency, including any such findings and determinations as  
67 are required to be made by any agency as a condition precedent  
68 to proposal of a rule to the Legislature; (B) declaratory rulings  
69 issued by an agency pursuant to ~~the provisions of~~ section one,  
70 article four of this chapter; (C) orders, as defined in ~~subdivision~~  
71 ~~(e)~~ of this section; or (D) executive orders or proclamations by  
72 the Governor issued solely in the exercise of executive power,  
73 including executive orders issued in the event of a public disaster  
74 or emergency;

75 ~~(e)~~ (f) “Order” means the, whole or any part, of the final  
76 disposition (whether affirmative, negative, injunctive or  
77 declaratory in form) by any agency of any matter other than rule  
78 making;

79 ~~(f)~~ (g) “Person” includes individuals, partnerships,  
80 corporations, associations or public or private organizations of  
81 any character;

82       ~~(g)~~ (h) “Procedural rule” means every rule, ~~as defined in~~  
83 ~~subsection (f) of this section~~, which fixes rules of procedure,  
84 practice or evidence for dealings with or proceedings before an  
85 agency, including forms prescribed by the agency;

86       ~~(h)~~ (I) “Proposed rule” is a legislative rule, interpretive rule,  
87 or a procedural rule which has not become effective pursuant to  
88 ~~the provisions of~~ this chapter or law authorizing its  
89 promulgation;

90       (j) “Provisional legislative rule” means a legislative rule that  
91 the agency has been directed by law to propose, to be effective  
92 for a limited time as a legislative rule prior to legislative  
93 authorization for promulgation as a legislative rule, pursuant to  
94 this chapter.

95       ~~(i)~~ (k) “Rule” includes every regulation, standard or  
96 statement of policy or interpretation of general application and  
97 future effect, including the amendment or repeal thereof,  
98 affecting private rights, privileges or interests, or the procedures  
99 available to the public, adopted by an agency to implement,  
100 extend, apply, interpret or make specific the law enforced or  
101 administered by it or to govern its organization or procedure, but

102 does not include regulations relating solely to the internal  
103 management of the agency, nor regulations of which notice is  
104 customarily given to the public by markers or signs, nor mere  
105 instructions. Every rule shall be classified as “legislative rule,”  
106 “interpretive rule” or “procedural rule,” all as defined in this  
107 section, and shall be effective only as provided in this chapter;  
108       (†)(1) “Rule making” means the process for the formulation,  
109 amendment or repeal of a rule as provided in this chapter.

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

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

9       (b) Except as to requirements for filing in the State Register,  
10 and with the Legislature or its rule-making review committee,  
11 provided in this chapter or other law, ~~the provisions of this~~

12 ~~chapter do~~ this chapter does not apply in any respect ~~whatever~~ to  
13 the West Virginia Board of Probation and Parole, the Public  
14 Service Commission, the Board of Public Works sitting as such  
15 and the Secondary Schools Activities Commission. *Provided,*  
16 ~~That~~ The rules of such these agencies shall be filed in the State  
17 Register in the form prescribed by this chapter and be effective  
18 no sooner than sixty consecutive days after being so filed  
19 *Provided, however,* ~~That~~ The rules promulgated by the state  
20 colleges and universities shall only be filed with the higher  
21 education governing boards. *Provided further,* ~~That Such~~ These  
22 agencies may promulgate emergency rules in conformity with  
23 section fifteen, article three of this chapter. Rules or amendments  
24 thereto authorized by this subsection shall be considered by the  
25 agency for adoption not later than six months after the close of  
26 public comment. A notice of adoption or withdrawal by the  
27 agency shall be filed in the State Register within that period.  
28 Failure to file such notice shall constitute withdrawal. The  
29 Secretary of State shall note such withdrawal in the State  
30 Register immediately upon the expiration of the six-month  
31 period.

32       (c) ~~The provisions of this chapter do~~ This chapter does not  
33 apply to rules relating to or contested cases involving the  
34 conduct of inmates or other persons admitted to public  
35 institutions, the open seasons and the bag, creel, size, age, weight  
36 and sex limits with respect to the wildlife in this state, or the  
37 conduct of persons in military service, or the receipt of public  
38 assistance. ~~Such~~ These rules shall be filed in the State Register  
39 in the form prescribed by this chapter and be effective upon  
40 filing: Provided, That rules relating to the receipt of public  
41 assistance shall be subject to section one-c, article three of this  
42 chapter.

43       (d) Nothing herein shall be construed to affect, limit or  
44 expand any express and specific exemption from this chapter  
45 contained in any other statute relating to a specific agency, but  
46 such exemptions shall be construed and applied in accordance  
47 with ~~the provisions of~~ this chapter to effectuate any limitations  
48 on such exemptions contained in any such other statute.

**ARTICLE 3. RULE MAKING.**

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

1       (a) ~~Rules promulgated to amend existing rules may be filed~~  
2 ~~on a section by section basis without having to refile in the state~~

3 ~~register all of the other sections of an existing series numbered~~  
4 ~~rule: *Provided*, That such filing shall list, by proper citation,~~  
5 ~~those sections, not amended, which are directly affected by those~~  
6 ~~sections amended: *Provided, however*, That amendments so filed~~  
7 When amending an existing rule or proposing a new rule,  
8 agencies shall file all sections of the proposed rule. Each  
9 amendment filed to an existing rule shall be accompanied by  
10 note of explanation as to the effect of such amendment and its  
11 relation to the existing rules.

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

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

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

1 (a) The Secretary of the Department of Health and Human  
2 Services as authorized by this section, other statute or legislative

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

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

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



**§29A-3-4. Filing of proposed agency-promulgated rules, procedural rules and interpretive rules.**

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

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

**§29A-3-6. 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  
2 proposed rule, the agency shall promulgate the findings and

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

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

**§29A-3-8. Adoption of agency-promulgated rules, procedural and interpretive rules.**

1 ~~A~~ An agency-promulgated, procedural and interpretive rule,  
2 shall be considered by the agency for adoption not later than six  
3 months after the close of public comment and a notice of  
4 withdrawal or adoption shall be filed in the State Register within

5 that period. Failure to file such notice shall constitute withdrawal  
6 and the Secretary of State shall note such failure in the State  
7 Register immediately upon the expiration of the six-month  
8 period.

9 ~~☆~~ An agency-promulgated, procedural or interpretive rule  
10 may be amended by the agency prior to final adoption without  
11 further hearing or public comment. No such amendment may  
12 change the main purpose of the rule. If the fiscal implications  
13 have changed since the rule was proposed, a new fiscal note shall  
14 be attached to the notice of filing. Upon adoption of the rule,  
15 (including any such amendment,) the agency shall file the text of  
16 the adopted agency-promulgated, procedural or interpretive rule  
17 with its notice of adoption in the State Register and the same  
18 shall be effective on the date specified in the rule or thirty days  
19 after such filing, whichever is later.

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

1 (a) Unless otherwise specified in the implementing statute,  
2 whenever the Legislature enacts a law mandating an agency to  
3 propose a legislative rule, and further directs the agency to  
4 promulgate a provisional legislative rule, the agency shall within

5 sixty days of the effective date of the statute, file the rule for  
6 public notice as provided in section five of this article and also  
7 submit the rule as a legislative rule as provided pursuant to the  
8 requirements of this article. The provisional legislative rule shall  
9 be filed by the agency as provided in section six of this article no  
10 later than thirty days following the close of public comment. The  
11 rule is effective upon final filing by the agency. The provisional  
12 legislative rule shall remain effective for fifteen months or until  
13 the legislative rule is acted upon by enactment of the Legislature  
14 pursuant to section thirteen of this article, whichever occurs first.  
15 Any amendment by the agency to the provisional legislative rule  
16 is subject to the same notice and effective date requirements.  
17 Amendments to the provisional legislative rule do not alter the  
18 initial fifteen month effective period for the provisional  
19 legislative rule. If the provisional legislative rule expires due to  
20 the failure of legislative authorization pursuant to section  
21 thirteen of this article, the agency may not refile the same or  
22 similar rule as an emergency rule or a provisional legislative  
23 rule.

24 (b) A provisional legislative rule may be disapproved by the  
25 Secretary of State, acting under the authority provided in section

26 fifteen-a of this article, or the Attorney General, acting under the  
27 authority provided in section fifteen-b of this article.

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

1 (a) Any agency with authority to propose legislative rules  
2 may, ~~without hearing,~~ find that an emergency exists requiring  
3 that emergency rules be promulgated and promulgate the same  
4 in accordance with this section. Such emergency rules, together  
5 with a statement of the facts and circumstances constituting the  
6 emergency, and a listing of state agencies, professions,  
7 businesses and other identifiable interest groups affected by the  
8 proposed emergency rule shall be filed with the Secretary of  
9 State, and a notice of such filing shall be published in the State  
10 Register: Provided, That failure to list all known state agencies,  
11 professions, businesses and other identifiable interest groups  
12 may not be the basis for disapproval of the rule or subject the  
13 rule to judicial review. The agency shall have a thirty day public  
14 comment period for a proposed emergency rule, beginning the  
15 day of filing. Upon closure of the public hearing, the ~~Such~~  
16 emergency rules rule shall become effective upon the approval  
17 of the Secretary of State in accordance with section fifteen-a of

18 this article or upon the approval of the Attorney General in  
19 accordance with section fifteen-b or upon the ~~forty-second~~ forty-  
20 fifth day following such filing, whichever occurs first: Provided,  
21 however, That at upon a finding that the emergent circumstances  
22 existing pursuant to subsection (f) of this section require  
23 immediate authorization of the emergency rule, the Secretary of  
24 State, acting under the authority provided in section fifteen-a of  
25 this article, or the Attorney General, acting under the authority  
26 provided in section fifteen-b of this article, may immediately  
27 approve the emergency rule for the remainder of the forty-five  
28 day comment and review period, at which time that approval of  
29 the emergency rule will expire. Any time following the close of  
30 public hearing, the final determination on the existence of an  
31 emergency may be made by the Secretary of State, acting under  
32 the authority provided in section fifteen-a of this article, or the  
33 Attorney General, acting under the authority provided in section  
34 fifteen-b of this article. ~~Such~~ Emergency rules may adopt, amend  
35 or repeal any legislative rule, but the circumstances constituting  
36 the emergency requiring such adoption, amendment or repeal  
37 shall be stated with particularity and be subject to de novo

38 review by any court having original jurisdiction of an action  
39 challenging their validity. ~~Fourteen~~ Two paper copies and an  
40 electronic version of the rules and of the required statement shall  
41 be filed immediately with the Secretary of State and one paper  
42 copy and an electronic copy shall be filed immediately with the  
43 Legislative Rule-Making Review Committee.

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

47 (1) The Secretary of State, acting under the authority  
48 provided for in section fifteen-a of this article, or the Attorney  
49 General, acting under the authority provided in section fifteen-b  
50 of this article, disapproves the emergency rule because: (A) The  
51 emergency rule or an amendment to the emergency rule exceeds  
52 the scope of the law authorizing or directing the promulgation  
53 thereof; (B) an emergency does not exist justifying the  
54 promulgation of the emergency rule; or (C) the emergency rule  
55 was not promulgated in compliance with ~~the provisions of~~ this  
56 section. An emergency rule may not be disapproved pursuant to  
57 the authority granted by paragraphs (A) or (B) of this

58 subdivision on the basis that the Secretary of State or the  
59 Attorney General disagrees with the underlying public policy  
60 established by the Legislature in enacting the supporting  
61 legislation. An emergency rule which would otherwise be  
62 approved as being necessary to comply with a time limitation  
63 established by this code or by a federal statute or regulation may  
64 not be disapproved pursuant to the authority granted by  
65 paragraphs (A) or (B) of this subdivision on the basis that the  
66 agency has failed to file the emergency rule prior to the date  
67 fixed by such time limitation. ~~When the supporting statute~~  
68 ~~specifically directs an agency to promulgate an emergency rule,~~  
69 ~~or specifically finds that an emergency exists and directs the~~  
70 ~~promulgation of an emergency rule, the emergency rule may not~~  
71 ~~be disapproved pursuant to the authority granted by paragraph~~  
72 ~~(B) of this subdivision.~~ An emergency rule may not be  
73 disapproved on the basis that the Legislature has not specifically  
74 directed an agency to promulgate the emergency rule, or has not  
75 specifically found that an emergency exists and directed the  
76 promulgation of an emergency rule.

77 (2) The agency has not previously filed and fails to file a  
78 notice of public hearing on the proposed rule within thirty days



79 of the date the proposed rule was filed as an emergency rule; in  
80 which case the emergency rule expires on the thirty-first day.

81 (3) The agency has not previously filed and fails to file the  
82 proposed rule with the Legislative Rule-Making Review  
83 Committee within ninety days of the date the proposed rule was  
84 filed as an emergency rule; in which case the emergency rule  
85 expires on the ninety-first day.

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

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

94 (b) Any amendment to an emergency rule made by the  
95 agency shall be filed in the State Register and does not constitute  
96 a new emergency rule for the purpose of acquiring additional  
97 time or avoiding the expiration dates in subdivision (2), (3), (4)  
98 or (5), subsection (a) of this section: *Provided*, That such

99 emergency amendment shall become effective upon the approval  
100 of the Secretary of State in accordance with section fifteen-a of  
101 this article or upon approval of the Attorney General in  
102 accordance with section fifteen-b of this article or upon the  
103 ~~forty-second~~ forty-fifth day following such filing, whichever  
104 occurs first.

105 (c) Once an emergency rule expires due to the conclusion of  
106 fifteen months or due to the effect of subdivision (2), (3), (4) or  
107 (5), subsection (a) of this section, the agency may not refile the  
108 same or similar rule as an emergency rule.

109 (d) ~~The provision of this section shall~~ This section may not  
110 be used to avoid or evade any provision of this article or any  
111 other provisions of this code, including any provisions for  
112 legislative review and approval of proposed rules. Any  
113 emergency rule promulgated for any such purpose may be  
114 contested in a judicial proceeding before a court of competent  
115 jurisdiction.

116 (e) The Legislative Rule-Making Review Committee may  
117 review any emergency rule to determine: (1) Whether the  
118 emergency rule or an amendment to the emergency rule exceeds

119 the scope of the law authorizing or directing the promulgation  
120 thereof; (2) whether there exists an emergency justifying the  
121 promulgation of such emergency rule; and (3) whether the  
122 emergency rule was promulgated in compliance with the  
123 requirements and prohibitions contained in this section. The  
124 committee may recommend to the agency, the Legislature, or the  
125 Secretary of State such action as it may ~~deem~~ consider proper.

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

**§29A-3-15a. Disapproval of emergency and provisional legislative rules by the Secretary of State; judicial review.**

1 (a) Upon the filing of an emergency rule or filing of an  
2 amendment to an emergency rule by an agency, under ~~the~~  
3 ~~provisions of~~ section fifteen of this article, by any agency, except  
4 for the Secretary of State, the Secretary of State shall review  
5 such rule or such amendment and, within ~~forty-two~~ forty-five  
6 days of such filing, shall issue a decision as to whether or not

7 such emergency rule or such amendment to an emergency rule  
8 should be disapproved. An emergency rule filed by the Secretary  
9 of State shall be reviewed by the Attorney General as provided  
10 in section fifteen-b of this article.

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

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

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

20 (3) That the emergency rule or an amendment to the  
21 emergency rule was not promulgated in compliance with ~~the~~  
22 ~~provisions of~~ 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  
25 agency, that the emergency rule should be disapproved, he or she  
26 may disapprove such rule without further investigation, notice or

27 hearing. If, however, the Secretary of State concludes that the  
28 information submitted by the agency is insufficient to allow a  
29 proper determination to be made as to whether the emergency  
30 rule should be disapproved, he or she may make further  
31 investigation, including, but not limited to, requiring the agency  
32 or other interested parties to submit additional information or  
33 comment or fixing a date, time and place for the taking of  
34 evidence on the issues involved in making a determination under  
35 ~~the provisions of this section.~~

36 (d) If the Secretary of State determines, based upon the  
37 contents of the amendment to an emergency rule or the  
38 supporting information filed by the agency, that the amendment  
39 to the emergency rule should be disapproved, he or she may  
40 disapprove such amendment without further investigation, notice  
41 or hearing. If, however, the Secretary of State concludes that the  
42 information submitted by the agency is insufficient to allow a  
43 proper determination to be made as to whether the amendment  
44 should be disapproved, he or she may make further investigation,  
45 including, but not limited to, requiring the agency or other  
46 interested parties to submit additional information or comment  
47 or fixing a date, time and place for the taking of evidence on the

48 issues involved in making a determination under the ~~provisions~~  
49 of this section.

50 (e) The Secretary of State shall disapprove a provisional  
51 legislative rule upon a finding that the rule was unlawfully  
52 promulgated or that the provisional legislative rule or an  
53 amendment thereto exceeds the scope of the law authorizing the  
54 rule's promulgation.

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

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

61 (2) A member of the Legislature; or

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

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

1 (a) Upon the filing of an emergency rule or filing of an  
2 amendment to an emergency rule by the Secretary of State under

3 ~~the provisions of~~ section fifteen of this article, the Attorney  
4 General shall review such rule or such amendment and, within  
5 ~~forty-two~~ forty-five days of such filing, shall issue a decision as  
6 to whether or not such emergency rule or such amendment to an  
7 emergency rule should be disapproved.

8 (b) The Attorney General shall disapprove an emergency  
9 rule or an amendment to an emergency rule if he or she  
10 determines:

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

14 (2) That an emergency does not exist justifying the  
15 promulgation of the emergency rule or the filing of an  
16 amendment to the emergency rule; or

17 (3) That the emergency rule or an amendment to the  
18 emergency rule was not promulgated in compliance with ~~the~~  
19 ~~provisions of~~ section fifteen of this article.

20 (c) If the Attorney General determines, based upon the  
21 contents of the rule or the supporting information filed by the  
22 Secretary of State, that the emergency rule should be

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

34 (d) If the Attorney General determines, based upon the  
35 contents of the amendment to an emergency rule or the  
36 supporting information filed by the agency, that the amendment  
37 to the emergency rule should be disapproved, he or she may  
38 disapprove such amendment without further investigation, notice  
39 or hearing. If, however, the Attorney General concludes that the  
40 information submitted by the agency is insufficient to allow a  
41 proper determination to be made as to whether the amendment  
42 should be disapproved, he or she may make further investigation,



43 including, but not limited to, requiring the agency or other  
44 interested parties to submit additional information or comment  
45 or fixing a date, time and place for the taking of evidence on the  
46 issues involved in making a determination under ~~the provisions~~  
47 ~~of~~ this section.

48 (e) The Attorney General shall disapprove a provisional  
49 legislative rule upon a finding that the rule was unlawfully  
50 promulgated or that the provisional legislative rule or an  
51 amendment thereto exceeds the scope of the law authorizing the  
52 rule's promulgation.

53 ~~(e)~~ (f) The determination of the Attorney General shall be  
54 reviewable by the Supreme Court of Appeals under its original  
55 jurisdiction, based upon a petition for a writ of mandamus,  
56 prohibition or certiorari, as appropriate. Such proceeding may be  
57 instituted by:

58 (1) The Secretary of State;

59 (2) A member of the Legislature; or

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





