

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4002

(BY DELEGATES HOWELL, ANDERSON,
MR. SPEAKER (MR. ARMSTEAD), FAIRCLOTH, FRICH,
HANSHAW, MCCUSKEY, ROHRBACH,
SUMMERS, SHOTT AND WALTERS)

[Originating in the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §29A-3-19; and to amend said code by adding thereto a new section,
3 designated §29A-3A-20, all relating to rule making under the state Administrative
4 Procedures Act; providing for a sunset of rules promulgated after April 1, 2016; requiring
5 a sunset provision for existing rules as they are modified; requiring Higher Education
6 Policy Commission rules promulgated or modified after April 1, 2016 to include a sunset
7 provision; clarifying that statutory sunset provisions take precedence over rule sunset
8 provisions; expressly exempting out emergency rules from the sunset requirement;
9 authorizing the Legislative Rule-making Review Committee to establish a procedure for
10 timely review of rules prior to the expiration of the sunset provision; and authorizing the
11 legislative oversight commission on education accountability to establish a procedure for
12 timely review of rules prior to the expiration of the sunset provision.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §29A-3-19; and that said code be amended by adding thereto a new section,
3 designated §29A-3A-20, all to read as follows:

ARTICLE 3. RULE MAKING.

§29A-3-19. Sunset provision in rules.

4 (a) Any new legislative rule promulgated pursuant to this article after April 1, 2016 shall
5 include a sunset provision terminating the rule after five years: *Provided*, That the rule may be
6 renewed for additional terms of five years or less by the legislature pursuant to the rulemaking
7 procedures and authority in this article: *Provided, however*, That if a different sunset or termination
8 provision exists in the statute under which the proposed rule is promulgated, the enabling statute's
9 provision shall control: *Provided further*, That this subsection shall not apply to emergency rules
10 promulgated pursuant to section fifteen of this article.

11 (b) Any legislative rule existing as of April 1, 2016 that is thereafter modified pursuant to
12 this article shall include a sunset provision as part of the modification setting forth a termination
13 date for the rule: *Provided*, That the rule may be renewed for additional terms of years by the
14 legislature pursuant to the rulemaking procedures and authority in this article: *Provided, however*,
15 That if a different sunset or termination provision exists in the statute under which the proposed
16 rule is promulgated, the enabling statute's provision shall control: *Provided further*, That this
17 subsection shall not apply to emergency rules promulgated pursuant to section fifteen of this
18 article.

19 (c) The existence of a sunset provision terminating a rule shall not preclude the repeal of
20 such rule by the legislature prior to the expiration of the sunset provision.

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

26 (e) The Secretary of State shall provide notice that the rule will sunset to each agency the
27 year prior to the agency's rule sunset date, and the notice shall direct that the agency provide:
28 whether the rule is needed, whether federal funding will be impacted by its expiration, any adverse
29 effect that will result for expiration of the rule to the agency, and whether health or safety of the
30 residents of the state or any regulated persons will be impacted by the rule. The Secretary of
31 State shall publish agency responses in the state register. The agency shall include this response
32 with rule documents required for filing for reauthorization of each rule with the legislative
33 rulemaking and review committee pursuant to section eleven of this article.

34 **ARTICLE 3A. HIGHER EDUCATION RULE MAKING.**

35 **§29A-3A-20. Sunset provision in rules.**

36 (a) Any new legislative rule promulgated pursuant to this article after April 1, 2016 shall
37 include a sunset provision terminating the rule after five years: *Provided*, That the rule may be

38 renewed for additional terms of five years or less by the legislature pursuant to the rulemaking
39 procedures and authority in this article: *Provided, however,* That if a different sunset or termination
40 provision exists in the statute under which the proposed rule is promulgated, the enabling statute's
41 provision shall control: *Provided further,* That this subsection shall not apply to emergency rules
42 promulgated pursuant to section sixteen of this article.

43 (b) Any legislative rule existing as of April 1, 2016 that is thereafter modified pursuant to
44 this article shall include a sunset provision as part of the modification setting forth a termination
45 date for the rule: *Provided,* That the rule may be renewed for additional terms of years by the
46 legislature pursuant to the rulemaking procedures and authority in this article: *Provided, however,*
47 That if a different sunset or termination provision exists in the statute under which the proposed
48 rule is promulgated, the enabling statute's provision shall control: *Provided further,* That this
49 subsection shall not apply to emergency rules promulgated pursuant to section sixteen of this
50 article.

51 (c) The existence of a sunset provision terminating a rule shall not preclude the repeal of
52 such rule by the legislature prior to the expiration of the sunset provision.

53 (d) As part of its rule review under this article, the legislative oversight commission on
54 education accountability is authorized to establish a procedure for timely review of a rule prior to
55 its expiration if the board has affirmatively sought renewal prior to expiration. The procedure may
56 include a requirement that the board show cause as to why the expiring rule is required and
57 necessary to be continued for another term of years.

58 (e) The Secretary of State shall provide notice that the rule will sunset to the board the
59 year prior to the board's rule sunset date, and the notice shall direct that the board provide:
60 whether the rule is needed, whether federal funding will be impacted by its expiration, any adverse
61 effect that will result by expiration of the rule to the board, and whether the health or safety of the
62 residents of the state or any persons regulated will be impacted by the rule. The Secretary of
63 State shall publish the board's responses in the state register. The board shall include this

- 64 response with rule documents required for filing for reauthorization of each rule with the
65 commission pursuant to section ten of this article.

NOTE: The purpose of this bill is to establish a five year sunset provision for legislative rules promulgated after April 1, 2016. The bill additionally requires existing bills modified after April 1, 2016 to include a sunset provision. The bill also authorizes the Legislative Rule-making Review Committee and the legislative oversight commission on education accountability to establish a procedure for timely review of rules prior to the expiration of the sunset provision.

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