

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **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.**

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

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

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

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

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

#### **§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: *Provided*, That the rule may be  
 3 renewed for additional terms of five years or less by the legislature pursuant to the rulemaking  
 4 procedures and authority in this article: *Provided, however*, That if a different sunset or termination  
 5 provision exists in the statute under which the proposed rule is promulgated, the enabling statute's  
 6 provision shall control: *Provided further*, That this subsection shall not apply to emergency rules  
 7 promulgated pursuant to section sixteen of this article.

8           (b) Any legislative rule existing as of April 1, 2016 that is thereafter modified pursuant to  
 9 this article shall include a sunset provision as part of the modification setting forth a termination

10 date for the rule: *Provided*, That the rule may be renewed for additional terms of years by the  
11 legislature pursuant to the rulemaking procedures and authority in this article: *Provided, however*,  
12 That if a different sunset or termination provision exists in the statute under which the proposed  
13 rule is promulgated, the enabling statute's provision shall control: *Provided further*, That this  
14 subsection shall not apply to emergency rules promulgated pursuant to section sixteen of this  
15 article.

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

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

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.