

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 522

SENATOR MAYNARD, *original sponsor*

[Passed March 6, 2018; in effect 90 days from passage]

1 AN ACT to amend and reenact §29A-1-3b of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §29A-3-8, §29A-3-12, and §29A-3-19 of said code, all relating
3 generally to the Administrative Procedures Act; providing that rules become void if
4 statutory authority is repealed; providing that legislative exempt, procedural, or interpretive
5 rules may be repealed by an agency upon notification to Secretary of State; relating to the
6 deadline for filing agency-approved rules; providing a procedure for the agencies to
7 affirmatively seek renewal of a legislative rule; providing that legislative rules up for
8 termination are not subject to a public comment period; and providing for review by the
9 Legislative Rule-Making Review Committee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-3b. Void rules.

1 (a) If an agency ceases to exist, through the operation of law or by statute, any rules
2 adopted or promulgated by the agency are void on the date the agency ceases to exist, unless
3 the agency's rule-making power and its rules have been transferred to another agency.
4 (b) Upon repeal or elimination of a statute that provides rule-making authority, any rule
5 adopted or promulgated by the agency pursuant to that statute is void.

ARTICLE 3. RULEMAKING.

§29A-3-8. Adoption of legislative exempt, procedural, and interpretive rules.

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

7 prior to final adoption without further hearing or public comment. The amendment may not change
8 the main purpose of the rule. If the fiscal implications have changed since the rule was proposed,
9 the agency shall attach a new fiscal note to the notice of filing. Upon adoption of the rule, including
10 any amendment, the agency shall file the text of the adopted legislative exempt, procedural, or
11 interpretive rule with its notice of adoption in the State Register and the rule is effective on the
12 date specified in the rule or 30 days after the filing, whichever is later or as specified in this code.

13 (c) An agency may repeal a legislative exempt, procedural, or interpretive rule by filing a
14 notice of repeal with the Secretary of State.

§29A-3-12. Submission of legislative rules to Legislature.

1 (a) No later than 40 days before the sixtieth day of each regular session of the Legislature,
2 the cochairmen of the Legislative Rule-Making Review Committee shall submit to the clerk of the
3 respective houses of the Legislature copies of all proposed legislative rules which have been
4 submitted to, and considered by, the committee pursuant to the provisions of §29A-3-11 of this
5 code and which have not been previously submitted to the Legislature for study, together with the
6 recommendations of the committee with respect to the rules, a statement of the reasons for any
7 recommendation that a rule be amended or withdrawn, and a statement that a bill authorizing the
8 legislative rule has been drafted by the staff of the committee or by Legislative Services pursuant
9 to §29A-3-11 of this code. The cochairmen of the committee may also submit the rules at the
10 direction of the committee at any time before or during a special session in which consideration
11 of the rules may be appropriate. Beginning in 2019, the committee may withhold from its report
12 any proposed legislative rule which was submitted to the committee after the last Friday in July
13 and beginning in 2020, and every four years thereafter, by the last Friday in August. The clerk of
14 each house shall submit the report to his or her house at the commencement of the next session.

15 All bills introduced authorizing the promulgation of a rule may be referred by the President
16 of the Senate and by the Speaker of the House of Delegates to appropriate standing committees
17 of the respective houses for further consideration or the matters may be otherwise dealt with as

18 each house or its rules provide. The Legislature may, by act, authorize the agency to adopt a
19 legislative rule incorporating the entire rule or may authorize the agency to adopt a rule with any
20 amendments adopted by the Legislature. The clerk of the house originating the act shall
21 immediately file a copy of any bill of authorization enacted with the Secretary of State and with
22 the agency proposing the rule and the clerk of each house may prepare and file a synopsis of
23 legislative action during any session on any proposed rule submitted to the house during the
24 session for which authority to promulgate was not by law provided during the session. In acting
25 upon the separate bills authorizing the promulgation of rules, the Legislature may, by amendment
26 or substitution, combine the separate bills of authorization insofar as the various rules authorized
27 in the amendment or substitution are proposed by agencies which are placed under the
28 administration of one of the single, separate executive departments identified under the provisions
29 of §5F-1-2 of this code or the Legislature may combine the separate bills of authorization by
30 agency or agencies within an executive department. In the case of rules proposed for
31 promulgation by an agency which is not administered by an executive department pursuant to the
32 provisions of §5F-1-2 of this code, the separate bills of authorization for the proposed rules of that
33 agency may, by amendment or substitution, be combined. These provisions relating to combining
34 separate bills of authorization according to department or agency are not intended to restrict the
35 permissible breadth of bills of authorization and do not preclude the Legislature from otherwise
36 combining various bills of authorization which have a unity of subject matter. Any number of
37 provisions may be included in a bill of authorization, but the single object of the bill shall be to
38 authorize the promulgation of proposed legislative rules.

39 (b) If the Legislature during its regular session disapproves all or part of any legislative
40 rule which was submitted to it by the Legislative Rule-Making Review Committee during the
41 session, an agency may not thereafter issue any rule or directive or take other action to implement
42 the rule or part of the rule unless and until otherwise authorized to do so, except that the agency
43 may resubmit the same or similar proposed rule to the Legislative Rule-Making Review

44 Committee in accordance with the provisions of §29A-3-11 of this code.

45 (c) Nothing shall be construed to prevent the Legislature by law from authorizing, or
46 authorizing and directing, an agency to promulgate legislative rules not proposed by the agency
47 or upon which some procedure specified in this chapter is not yet complete.

48 (d) Whenever the Legislature is convened by proclamation of the Governor, upon his or
49 her own initiative or upon application of the members of the Legislature, or whenever a regular
50 session of the Legislature is extended or convened by the vote or petition of its members, the
51 Legislature may by act enacted during the extraordinary or extended session authorize, in whole
52 or in part, any legislative rule, whether submitted to the Legislative Rule-Making Review
53 Committee or not, if legislative action on the rule during the session is a lawful order of business.

54 (e) As a part of any act that amends chapter 64 of this code, authorizing the promulgation
55 of a proposed legislative rule or rules, the Legislature may also provide, by general language or
56 with specificity, for the disapproval of rules not approved or acted upon by the Legislature.

§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 rule-making
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 rules promulgated
7 by the Department of Environmental Protection or emergency rules promulgated pursuant to
8 §29A-3-15 of this code.

9 (b) Any legislative rule existing as of April 1, 2016, that is thereafter modified pursuant to
10 this article, shall include a sunset provision as part of the modification setting forth a termination
11 date for the rule: *Provided*, That the rule may be renewed for additional terms of years by the
12 Legislature pursuant to the rule-making procedures and authority in this article: *Provided*,

13 however, That if a different sunset or termination provision exists in the statute under which the
14 legislative rule is promulgated, the enabling statute's provision controls: *Provided further*, That
15 this subsection shall not apply to legislative rules promulgated by the Department of
16 Environmental Protection or emergency rules promulgated pursuant to §29A-3-15 of this code.

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

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

24 (e) The Secretary of State shall provide notice to the promulgating agency and the
25 Legislative Rule-Making Review Committee at least 18 months prior to every legislative rule's
26 termination date. The promulgating agency has 60 days from receipt of the notice to file the
27 legislative rule with the Secretary of State and the Legislative Rule-Making Review Committee
28 affirmatively seeking renewal of the legislative rule: *Provided*, That the legislative rule that is
29 scheduled to sunset may not be amended or changed except for a new sunset date and is not
30 subject to the public comment period requirements contained in §29A-3-5 of this code. The
31 Legislative Rule-Making Review Committee, as part of its rule review under this article, may begin
32 reviewing a legislative rule upon its filing.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2018.

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Governor