

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2755

BY DELEGATES HORNBY, ELLINGTON, HOLSTEIN, AKERS,
MAYNOR, WILLIS, KYLE, RILEY, STREET, CHIARELLI, AND

PHILLIPS

[Passed April 12, 2025; in effect 90 days from
passage (July 11, 2025)]

1 AN ACT to amend and reenact §29A-3B-8, §29A-3B-9, §29A-3B-10, and §29A-3B-11 Code of
2 West Virginia, 1931, as amended, relating to requiring the State Board of Education to
3 submit newly promulgated rules to the Legislature through the Legislative Oversight
4 Commission on Education Accountability; allowing the Legislature to approve, amend, or
5 reject, in whole or in part, these rules in a manner prescribed by general law and pursuant
6 to this article; adjusting the time frames for the State Board of Education to submit
7 emergency rules to the Legislative Oversight Commission on Education Accountability;
8 and providing for the expiration of those emergency rules if notice is not timely filed with
9 the committee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3B. STATE BOARD OF EDUCATION RULEMAKING.

§29A-3B-1. Findings; definitions.

1 (a) The Legislature finds:

2 (1) That section one, article twelve of the West Virginia Constitution, titled “Education”,
3 states in relevant part “The Legislature shall provide”, which language gives the Legislature
4 primacy of authority over education in the State;

5 (2) That section one, article twelve of the West Virginia Constitution remains identical
6 today as it was when the constitution was adopted in 1872, where the Legislature exercising its
7 authority under section one, article twelve of “Education”, created the four-member West Virginia
8 Board of Examiners in 1905. This was followed by the West Virginia Board of Education in 1908,
9 and then the Legislature abolished that board and created a new State Board of Education in
10 1919;

11 (3) That the constitutional amendment of 1958 transferred the already established
12 authority from the elected state superintendent to the West Virginia Board of Education with the
13 same responsibilities for “general supervision” of free schools, and “performing such duties as
14 may be prescribed by law”. The amendment kept the same authoritative language of

responsibilities as had previously existed for the elected state superintendent under section two, article twelve of the West Virginia Constitution, without adding additional authoritative responsibility in the amendment;

(4) That section one, article twelve of the West Virginia Constitution does not entail the exclusive delegation of rule-making functions to the Legislature, but it does establish the Legislature as the ultimate authority to approve, amend, or reject rules promulgated by the West Virginia Board of Education under section two, article twelve of the West Virginia Constitution;

(5) That pursuant to section one, article five of the West Virginia Constitution, there are only three branches of government; and

(6) That the Legislature exercises authority over the West Virginia Board of Education pursuant to §18-2-5 of this code.

(b) As used in this article,

"board" means the West Virginia Board of Education.

§29A-3B-8. Adoption of rules.

A rule shall be considered by the board for adoption not later than six months after the close of public comment and a notice of withdrawal or adoption shall be filed in the State Register within that period. Failure to file such notice shall constitute withdrawal and the Secretary of State shall note such failure in the State Register immediately upon the expiration of the six-month period.

A rule may be amended by the board prior to final adoption without further hearing or public comment. No such amendment may change the main purpose of the rule. If the fiscal implications have changed since the rule was proposed, a new fiscal note shall be attached to the notice of filing. Upon adoption of the rule (including any such amendment), the board shall file the text of the adopted rule with its notice of adoption in the State Register..

§29A-3B-9. State Board of Education to promulgate rules; submission of legislative rules to the Legislative Oversight Commission on Education Accountability; submission of legislative rules, findings, and recommendations to the Legislature.

1 (a) Under its supervisory duties, the West Virginia Board of Education may promulgate
2 rules or policies, and any new rule so promulgated shall be submitted to the Legislature for its
3 review and approval, amendment, or rejection, in whole or in part, in the manner prescribed by
4 general law, and pursuant to this section.

5 (b) If, within 15 months, the Legislature does not review and approve, or reject, in whole
6 or in part, the rule as promulgated or amended in the manner prescribed by general law, and
7 pursuant to this section, the rule shall become effective as initially promulgated by the West
8 Virginia Board of Education.

9 (c) When the board proposes a legislative rule it has adopted, the board shall submit the
10 following to the Legislative Oversight Commission on Education Accountability: (1) The full text of
11 the legislative rule as proposed by the board and filed with the office of the Secretary of State,
12 with new language underlined and with language to be deleted from any existing rule stricken
13 through but clearly legible; (2) a brief summary of the content of the legislative rule and a
14 description and a copy of any existing rule which the agency proposes to amend or repeal; (3) a
15 statement of the circumstances which require the rule; (4) a fiscal note containing all information
16 included in a fiscal note for either chamber of the Legislature and a statement of the economic
17 impact of the rule on the state or its residents; and (5) any other information which the commission
18 may request or which may be required by law.

19 (d) At its discretion, the board may meet the filing requirement of subsection (c) of this
20 section using either of the following methods:

21 (1) By submitting 20 copies of the proposed rule to the Legislative Oversight Commission
22 on Education Accountability at its offices or at a regular meeting of the commission; or

(2) By submitting the proposed rule electronically to Legislative Oversight Commission on Education Accountability. Proposed rules submitted electronically shall be transmitted in a timely manner, shall contain all required information, and shall be compatible with computer applications in use by the Legislative Oversight Commission on Education Accountability.

(e) The Legislative Oversight Commission on Education Accountability shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:

(1) Whether the board has exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret, or make specific;

(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(7) Whether the proposed legislative rule was promulgated in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

(f) After reviewing the legislative rule, the Legislative Oversight Commission on Education Accountability shall recommend that the Legislature:

(1) Authorize the promulgation of the legislative rule;

(2) Authorize the promulgation of part of the legislative rule;

(3) Authorize the promulgation of the legislative rule with certain amendments;

(4) Recommend that the proposed rule be withdrawn; or

(5) Reject the proposed rule.

(g) The Legislative Oversight Commission on Education Accountability's submission of legislative rules submitted to them by the West Virginia Board of Education, alongside their findings and recommendations, shall be done in accordance with the procedures, but not the underlying delegating authority of §29A-3-1 *et seq.* of this code.

§29A-3B-10. Emergency legislative rules; procedure for promulgation; definition.

(a) The West Virginia Board of Education may, without hearing, find that an emergency exists requiring that emergency rules be promulgated and promulgate the same in accordance with this section. Such emergency rules, together with a statement of the facts and circumstances constituting the emergency, shall be filed in the State Register and shall become effective immediately upon such filing. Such emergency rules may adopt, amend, or repeal any legislative rule, but the circumstances constituting the emergency requiring such adoption, amendment, or repeal shall be stated with particularity and be subject to de novo review by any court having original jurisdiction of an action challenging their validity.

(b) The board shall file ten copies of the rules and of the required statement with the Legislative Oversight Commission on Education Accountability. At its discretion, the board may meet the filing requirement contained in this subsection by submitting the emergency rule electronically to the Legislative Oversight Commission on Education Accountability. Proposed rules submitted electronically shall be transmitted in a timely manner, shall contain all required information and shall be compatible with computer applications in use by the Legislative Oversight Commission on Education Accountability.

(c) An emergency rule shall be effective for not more than 15 months and shall expire earlier if any of the following occurs:

(1) The board has not previously filed and fails to file a notice of public hearing on the proposed rule within 60 days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the sixty-first day.

(2) The board has not previously filed and fails to file the proposed rule with the Legislative Oversight Commission on Education Accountability within 30 days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the thirty-first day.

(3) The board adopts a legislative rule dealing with substantially the same subject matter since such emergency rule was first promulgated and in which case the emergency rule expires on the date the authorized rule is made effective.

(d) Any amendment to an emergency rule made by the board shall be filed in the State Register and does not constitute a new emergency rule for the purpose of acquiring additional time or avoiding the expiration dates in subdivision (1), (2), or (3), subsection (c) of this section.

(e) Once an emergency rule expires due to the conclusion of 15 months or due to the effect of subdivision (1), (2), or (3), subsection (c) of this section, the board may not refile the same or similar rule as an emergency rule.

(f) Emergency legislative rules currently in effect under the prior provisions of this section may be refiled under the provisions of this section.

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

(h) Within 15 months, the Legislative Oversight Commission on Education Accountability shall review any emergency rule to determine: (1) Whether the board has exceeded the scope of

41 its statutory authority in promulgating the emergency rule; (2) whether there exists an emergency
42 justifying the promulgation of such rule; and (3) whether the rule was promulgated in compliance
43 with the requirements and prohibitions contained in this section. The commission may
44 recommend to the board, the Legislature, or the Secretary of State such action as it may deem
45 proper.

**§29A-3B-11. Legislative review of procedural rules, interpretive rules, and existing
legislative rules.**

1 The Legislative Oversight Commission on Education Accountability may review any
2 procedural rules, interpretive rules, or existing legislative rules and may make recommendations
3 concerning such rules to the Legislature, or to the board, or to both the Legislature and the board

The Clerk of the House of Delegates and the Clerk of the Senate hereby
certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect 90 days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2025.

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Governor