WEST virginia legislature

2025 regular session

Committee Substitute

for

Senate Bill 705

By Senators Willis, Thorne, Hart, Taylor, and Rose

[Reported March 24, 2025, from the Committee on the Judiciary]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 3B. STATE BOARD OF EDUCATION RULEMAKING.

**§29A-3B-1. Findings; definitions.**

(a) The Legislature finds:

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

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

(3) That the constitutional amendment of 1958 transferred the already established authority from the elected state superintendent to the West Virginia Board of Education with the same responsibilities for “general supervision” of free schools, and “performing such duties as 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,

~~(a) "Commission" means the Legislative Oversight commission on education accountability created in section eleven, article three-a of this chapter.~~

~~(b)~~ "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. ~~and the same shall be effective on the date specified in the rule or thirty days after such filing, whichever is later.~~

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

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

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

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

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

(1) By submitting ~~twenty~~ 20 copies of the proposed rule to the ~~Legislative Oversight Commission on Education Accountability~~ Legislative Rule-Making Review Committee at its offices or at a regular meeting of the ~~commission~~ committee; or

(2) By submitting the proposed rule electronically to the ~~Legislative Oversight Commission on Education Accountability~~ Legislative Rule-Making Review Committee. 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~~ Legislative Rule-Making Review Committee.

~~(c)~~ (e) The ~~commission~~ Legislative Rule-Making Review Committee 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.

~~(d) After reviewing the legislative rule, the commission may recommend to the board any changes needed to comply with the legislative intent of the statute upon which the rule is based or otherwise to modify the activity subject to the rule, or may make any other recommendations to the board as it considers appropriate.~~

~~(e) When the board finally adopts a legislative rule, the board shall submit to the Legislative Oversight Commission on Education Accountability at its offices or at a regular meeting of the commission six copies of the rule as adopted by the board. The board, at its discretion, may meet the filing requirement contained in this subsection by submitting the legislative rule in electronic format to the Legislative Oversight Commission on Education Accountability. Rules submitted electronically shall be transmitted in a timely manner and shall be compatible with computer applications in use by the Legislative Oversight Commission on Education Accountability.~~

(f) After reviewing the legislative rule, the ~~commission~~ Legislative Rule-Making Review Committee ~~may~~ shall recommend ~~to~~ that the Legislature: ~~any statutory changes needed to clarify the legislative intent of the statute upon which the rule is based or may make any other recommendations to the Legislature as it considers appropriate.~~

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 Rule-Making Review Committee’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 ~~board~~ 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~~ Legislative Rule-Making Review Committee. 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~~ Legislative Rule-Making Review Committee. 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~~ Legislative Rule-Making Review Committee.

(c) An emergency rule shall be effective for not more than ~~fifteen~~ 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 ~~sixty~~ 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~~ Legislative Rule-Making Review Committee within ~~one hundred eighty~~ 30 days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the ~~one hundred eighty-first~~ 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) ~~The Legislative Oversight Commission on Education Accountability~~ Within 15 months, the Legislative Rule-Making Review Committee ~~may~~ shall review any emergency rule to determine: (1) Whether the board has exceeded the scope of its statutory authority in promulgating the emergency rule; (2) whether there exists an emergency justifying the promulgation of such rule; and (3) whether the rule was promulgated in compliance with the requirements and prohibitions contained in this section. The commission may recommend to the board, the Legislature, or the Secretary of State such action as it may deem proper.

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

The ~~Legislative Oversight commission on education accountability~~ Legislative Rule-Making Review Committee may review any procedural rules, interpretive rules, or existing legislative rules and may make recommendations concerning such rules to the Legislature, or to the board, or to both the Legislature and the board.