

# **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]



1 A BILL to amend and reenact §29A-3B-1, §29A-3B-8, § 29A-3B-9, §29A-3B-10, and §29A-3B-11  
2 Code of West Virginia, 1931, as amended, relating to requiring the State Board of  
3 Education to submit newly promulgated rules to the Legislature through the Legislative  
4 Rule-Making Review Committee; allowing the Legislature to approve, amend, or reject, in  
5 whole or in part, these rules in a manner prescribed by general law and pursuant to this  
6 article; adjusting the time frames for the State Board of Education to submit emergency  
7 rules to the Legislative Rule-Making Review Committee; and providing for the expiration  
8 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.**

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  
15 responsibilities as had previously existed for the elected state superintendent under section two,

16 article twelve of the West Virginia Constitution, without adding additional authoritative  
17 responsibility in the amendment;

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

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

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

26 (b) As used in this article,

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

29 ~~(b) "board" means the West Virginia Board of Education.~~

**§29A-3B-8. Adoption of rules.**

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

6 A rule may be amended by the board prior to final adoption without further hearing or  
7 public comment. No such amendment may change the main purpose of the rule. If the fiscal  
8 implications have changed since the rule was proposed, a new fiscal note shall be attached to  
9 the notice of filing. Upon adoption of the rule (including any such amendment), the board shall file  
10 the text of the adopted rule with its notice of adoption in the State Register. ~~and the same shall~~  
11 ~~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.~~**

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

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

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

24 (2) By submitting the proposed rule electronically to the ~~Legislative Oversight Commission~~  
25 ~~on Education Accountability~~ Legislative Rule-Making Review Committee. Proposed rules  
26 submitted electronically shall be transmitted in a timely manner, shall contain all required  
27 information, and shall be compatible with computer applications in use by the ~~Legislative~~  
28 ~~Oversight Commission on Education Accountability~~ Legislative Rule-Making Review Committee.

29 ~~(c)~~ (e) The ~~commission~~ Legislative Rule-Making Review Committee shall review each  
30 proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review  
31 shall include, but not be limited to, a determination of:

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

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

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

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

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

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

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

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

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

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

- 62 (1) Authorize the promulgation of the legislative rule;  
63 (2) Authorize the promulgation of part of the legislative rule;  
64 (3) Authorize the promulgation of the legislative rule with certain amendments;  
65 (4) Recommend that the proposed rule be withdrawn; or  
66 (5) Reject the proposed rule.

67 (g) The Legislative Rule-Making Review Committee's submission of legislative rules  
68 submitted to them by the West Virginia Board of Education, alongside their findings and  
69 recommendations, shall be done in accordance with the procedures, but not the underlying  
70 delegating authority of §29A-3-1 et seq. of this code.

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

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

9 (b) The board shall file ten copies of the rules and of the required statement with the  
10 ~~Legislative Oversight Commission on Education Accountability~~ Legislative Rule-Making Review  
11 Committee. At its discretion, the board may meet the filing requirement contained in this  
12 subsection by submitting the emergency rule electronically to the ~~Legislative Oversight~~  
13 ~~Commission on Education Accountability~~ Legislative Rule-Making Review Committee. Proposed  
14 rules submitted electronically shall be transmitted in a timely manner, shall contain all required  
15 information and shall be compatible with computer applications in use by the ~~Legislative Oversight~~  
16 ~~Commission on Education Accountability~~ Legislative Rule-Making Review Committee.

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

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

22 (2) The board has not previously filed and fails to file the proposed rule with the ~~Legislative~~  
23 ~~Oversight Commission on Education Accountability~~ Legislative Rule-Making Review Committee  
24 within ~~one hundred eighty~~ 30 days of the date the proposed rule was filed as an emergency rule;  
25 in which case the emergency rule expires on the ~~one hundred eighty-first~~ thirty-first day.

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

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

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

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

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

41 (h) ~~The Legislative Oversight Commission on Education Accountability~~ Within 15 months,  
42 the Legislative Rule-Making Review Committee ~~may~~ shall review any emergency rule to  
43 determine: (1) Whether the board has exceeded the scope of its statutory authority in  
44 promulgating the emergency rule; (2) whether there exists an emergency justifying the  
45 promulgation of such rule; and (3) whether the rule was promulgated in compliance with the  
46 requirements and prohibitions contained in this section. The commission may recommend to the  
47 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.**

1 The ~~Legislative Oversight commission on education accountability~~ Legislative Rule-  
2 Making Review Committee may review any procedural rules, interpretive rules, or existing

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- 3 legislative rules and may make recommendations concerning such rules to the Legislature, or to
- 4 the board, or to both the Legislature and the board.