

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

House Bill 4031

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MCCUSKEY, SHOTT, OVERINGTON, MR. SPEAKER, MR.
ARMSTEAD, ROWE AND FLEISCHAUER

[Introduced January 15, 2016; referred to the
Committee on Government Organization.]

1 A BILL to amend and reenact §29A-3-5 of the Code of West Virginia, 1931, as amended, relating
2 to requiring agencies to respond to public comments received during the rule-making
3 process.

Be it enacted by the Legislature of West Virginia:

1 That §29A-3-5 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 3. RULE MAKING.

§29A-3-5. Notice of proposed rulemaking.

1 When an agency proposes to promulgate a rule other than an emergency rule, it shall file
2 with the Secretary of State, for publication in the State Register, a notice of its action, including
3 therein any request for the submission of evidence to be presented on any factual determinations
4 or inquiries required by law to promulgate such rule. At the time of filing the notice of its action,
5 the agency shall also file with the Secretary of State a copy of the full text of the rule proposed,
6 and a fiscal note as defined in subsection (b), section four of this article. If the agency is
7 considering alternative draft proposals, it may also file with the Secretary of State the full text of
8 such draft proposals.

9 The notice shall fix a date, time and place for the receipt of public comment in the form of
10 oral statements, written statements and documents bearing upon any findings and determinations
11 which are a condition precedent to the final approval by the agency of the proposed rule, and
12 shall contain a general description of the issues to be decided. If no specific findings and
13 determinations are required as a condition precedent to the final approval by the agency of the
14 approved rule, the notice shall fix a date, time and place for the receipt of general public comment
15 on the proposed rule. To comply with the public comment provisions of this section, the agency
16 may hold a public hearing or schedule a public comment period for the receipt of written
17 statements and documents, or both.

18 If findings and determinations are a condition precedent to the promulgation of such rule,

19 then an opportunity for general public comment on the merits of the rule shall be afforded after
20 such findings and determinations are made. In such event, notice of the hearing or of the period
21 for receiving public comment on the proposed rule shall be attached to and filed as a part of the
22 findings and determinations of the agency when filed in the State Register.

23 In any hearing for public comment on the merits of the rule, the agency may limit
24 presentations to written material. The time, date and place fixed in the notice shall constitute the
25 last opportunity to submit any written material relevant to any hearing, all of which may be earlier
26 submitted by filing with the agency. After the public hearing or the close of the public comment
27 period, whichever is later, the agency shall not permit the filing or receipt of, nor shall it consider,
28 any attempted ex parte communications directed to it in the form of additional comment, prior to
29 the submission of its final agency-approved rule to the Legislative Rule-Making Review
30 Committee pursuant to the provisions of section eleven of this article.

31 The agency may also, at its expense, cause to be published as a Class I legal publication
32 in every county of the state any notice required by this section.

33 Any citizen or other interested party may appear and be heard at such hearings as are
34 required by this section.

35 The agency shall respond to public comments made during the rule-making process and
36 explain why comments were incorporated or not incorporated into the rule. The response may be
37 a general one.

NOTE: The purpose of this bill is to require agencies to respond to public comments received during the rule-making process.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.