

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 543**

BY SENATORS MAYNARD, CARMICHAEL, BLAIR, BOSO,

FERNS, GAUNCH, LEONHARDT, MULLINS, PALUMBO,

TRUMP AND PLYMALE

[Introduced February 6, 2016;

Referred to the Committee on Government

Organization.]

1 A BILL to amend and reenact §29A-3-11 of the Code of West Virginia, 1931, as amended, relating  
2 to requiring agencies to submit additional information when it submits a proposed  
3 legislative rule to the Legislature for approval; requiring an economic impact statement to  
4 be submitted; requiring the economic impact statement include the names of those  
5 persons who participated in the drafting of the statement, including the time spent  
6 preparing the statement; requiring the agency to make available a lead author of the  
7 statement or other qualified representative of the agency to discuss the statement;  
8 requiring the objective of the rule be submitted; requiring statutory authority for the rule be  
9 submitted; requiring public comments be submitted; requiring written responses to public  
10 comments be submitted and whether the agency modified the proposed rule in response  
11 to the comments and, if not, the reasons why; requiring the Legislative Rule-Making  
12 Review Committee to review this code, federal statutes and rules and local rules to  
13 determine if the proposed rule overlaps or is duplicative of those statutes or rules; requiring  
14 the Legislative Rule-Making Review Committee to consider whether the proposed rule  
15 would be overly burdensome on business and industry; and setting forth some of the  
16 criteria the Legislative Rule-Making Review Committee is to consider when reviewing the  
17 proposed rule.

*Be it enacted by the Legislature of West Virginia:*

1 That §29A-3-11 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

**ARTICLE 3. RULE MAKING.**

**§29A-3-11. Submission of legislative rules to the Legislative Rule-Making Review  
Committee.**

1 (a) When an agency finally approves a proposed legislative rule for submission to the  
2 Legislature, pursuant to the provisions of section nine of this article, the secretary of the executive  
3 department which administers the agency pursuant to the provisions of article two, chapter five-f

4 of this code shall submit to the Legislative Rule-Making Review Committee at its offices or at a  
5 regular meeting of such committee ~~fifteen~~ two copies of:

6 (1) The full text of the legislative rule as finally approved by the agency, with new language  
7 underlined and with language to be deleted from any existing rule stricken through but clearly  
8 legible;

9 (2) A brief summary of the content of the legislative rule and a description and a copy of  
10 any existing rule which the agency proposes to amend or repeal;

11 (3) A statement of the circumstances which require the rule;

12 (4) A detailed description of the objective or purpose of the rule and the proposed changes  
13 to the rule;

14 ~~(4)~~ (5) A fiscal note containing all information included in a fiscal note for either house of  
15 the Legislature; and ~~a statement of the economic impact of the rule on the state or its residents;~~

16 (6) An Economic Impact Statement that addresses the probable effect of the proposed  
17 rule on the economy on the State of West Virginia including, but not limited to, the effect of the  
18 regulation on employment, job creation or reduction and compensation. The statement shall  
19 include the names of those persons who participated in the drafting of the statement, including  
20 the time spent preparing the statement. The agency shall also make available a lead author of  
21 the statement or other qualified representative of the agency to discuss the statement with the  
22 Joint Rule-Making Review Committee and any committee of the House or Senate to which the  
23 rule is referred;

24 ~~(5)~~ (7) One copy of any relevant federal statutes or regulations; ~~and~~

25 (8) An explanation of the statutory authority for the rule including a detailed summary of  
26 the effect of each rule provision with citation to the specific statute which empowers the agency  
27 to enact such provision;

28 (9) All public comments for each proposed rule. An agency may consolidate substantially  
29 similar comments in the interest of efficiency.

30 (10) All written responses by the agency to the substance of any public comments  
31 received, including whether the agency chose to modify the proposed rule in response to the  
32 comments or, if no change were made, the rationale for declining to incorporate or make any  
33 suggested changes responding to the public comments. An agency may consolidate substantially  
34 similar responses in the interest of efficiency: *Provided, That the agency's response addresses*  
35 each issue and concern expressed by all comments received; and

36 ~~(6)~~ (11) Any other information which the committee may request or which may be required  
37 by law. If the agency is an agency, board or commission which is not administered by an executive  
38 department as provided for in article two, chapter five-f of this code, the agency shall submit the  
39 final agency-approved rule as required by this subsection.

40 (b) The committee shall review each proposed legislative rule and, in its discretion, may  
41 hold public hearings thereon. Such review shall include, but not be limited to, a determination of:

42 (1) Whether the agency has specific statutory authority to propose the rule and has  
43 exceeded the scope of its statutory authority in approving the proposed legislative rule;

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

46 (3) Whether the proposed legislative rule overlaps, duplicates or conflicts with any other  
47 provision of this code or with any other rule adopted by the same or a different agency or with  
48 federal statutes or rules or with local laws or rules;

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

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

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

55 (7) Whether the proposed legislative rule was proposed for promulgation in compliance

56 with the requirements of this article and with any requirements imposed by any other provision of  
 57 this code; and

58 (8) Whether the proposed legislative rule will be overly burdensome on business and  
 59 industry by considering criteria that includes but is not limited to the potential impact on:

60 (A) Job creation;

61 (B) Economic growth;

62 (C) Investment;

63 (D) Competitiveness;

64 (E) Entrepreneurial activity; and

65 (F) Innovation.

66 (c) After reviewing the legislative rule, the committee shall recommend that the  
 67 Legislature:

68 (1) Authorize the promulgation of the legislative rule; ~~or~~

69 (2) Authorize the promulgation of part of the legislative rule; ~~or~~

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

71 (4) Recommend that the proposed rule be withdrawn.

72 The committee shall file notice of its action in the State Register and with the agency  
 73 proposing the rule: *Provided*, That when the committee makes the recommendations of  
 74 subdivision (2), (3) or (4) of this subsection, the notice shall contain a statement of the reasons  
 75 for such recommendation.

76 (d) When the committee recommends that a rule be authorized, in whole or in part, by the  
 77 Legislature, the committee shall instruct its staff or the office of Legislative Services to draft a bill  
 78 authorizing the promulgation of all or part of the legislative rule and incorporating such  
 79 amendments as the committee desires. If the committee recommends that the rule not be  
 80 authorized, it shall include in its report a draft of a bill authorizing promulgation of the rule together  
 81 with a recommendation. Any draft bill prepared under this section shall contain a legislative finding

82 that the rule is within the legislative intent of the statute which the rule is intended to implement,  
83 extend, apply or interpret and shall be available for any member of the Legislature to introduce to  
84 the Legislature.

NOTE: The purpose of this bill is to require agencies to submit additional information when it submits a proposed legislative rule to the Legislature for approval. The bill requires an economic impact statement to be submitted. The bill requires the economic impact statement include the names of those persons who participated in the drafting of the statement, including the time spent preparing the statement. The bill requires the agency to make available a lead author of the statement or other qualified representative of the agency to discuss the statement. The bill requires the objective of the rule be submitted. The bill requires statutory authority for the rule be submitted. The bill requires public comments be submitted. The bill requires written responses to public comments be submitted and whether the agency modified the proposed rule in response to the comments and, if not, the reasons why. The bill requires the Legislative Rule-Making Review Committee to review this code, federal statutes and rules and local rules to determine if the proposed rule overlaps or is duplicative of those statutes or rules. The bill requires the Legislative Rule-Making Review Committee to consider whether the proposed rule would be overly burdensome on business and industry. The bill sets forth some of the criteria the Legislative Rule-Making Review Committee is to consider when reviewing the proposed rule.

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