

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2366

BY DELEGATES FOSTER, ESPINOSA, STEELE, GRAVES,

MARTIN, AND HARDY

[Introduced February 13, 2021; 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 who have approved a proposed rule that affects fees or other special
3 revenues to provide to the committee a fiscal note that includes the fund name, the fund
4 number, and the past five years of the fund's revenues and expenses.

Be it enacted by the Legislature of West Virginia:

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 §5F-2-1 *et seq.*, of this
4 code shall submit to the Legislative Rule-Making Review Committee at its offices or at a regular
5 meeting of such committee a number of copies in electronic or paper form as requested by the
6 committee, which shall include the following information:

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

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

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

13 (4) A detailed description of the rule's purpose and all proposed changes to the rule;

14 (5) A fiscal note containing all information included in a fiscal note for either house of the
15 Legislature, ~~and~~ a statement of the economic impact of the rule on the state or its residents, and,
16 if there are any adjustments to any fees or other special revenue included in the rule, a fiscal note
17 shall include, for any fund affected by adjustments to fees or other special revenue, the fund
18 name, the fund number, and the past five years of actual revenues and expenses of the fund;

19 (6) One copy of any relevant federal statutes or regulations;

20 (7) An explanation of the statutory authority for the rule, including a detailed summary of
21 the effect of each provision of the rule with citation to the specific statute which empowers the
22 agency to enact such provision;

23 (8) All public comments for each proposed rule. An agency may consolidate substantially
24 similar comments in the interest of efficiency;

25 (9) All written responses by the agency to the substance of any public comments received,
26 including whether the agency chose to modify the proposed rule in response to the comments or,
27 if no changes were made, the rationale for declining to incorporate or make any suggested
28 changes responding to the public comments. An agency may consolidate substantially similar
29 responses in the interest of efficiency: *Provided*, That the agency's response shall address each
30 issue and concern expressed by all comments received; and

31 (10) Any other information which the committee may request or which may be required
32 by law. If the agency is an agency, board or commission which is not administered by an executive
33 department as provided for in §5F-2-1 *et seq.*, of this code, the agency shall submit the final
34 agency-approved rule as required by this subsection.

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

37 (1) Whether the agency has specific statutory authority to propose the rule and has not
38 exceeded the scope of its statutory authority in approving the proposed legislative rule;

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

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

44 (4) Whether federal funding will be impacted by its expiration and explanation as to such;

45 (5) Whether the proposed legislative rule is necessary to fully accomplish the objectives
46 of the statute under which the rule was proposed for promulgation;

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

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

51 (8) Whether the proposed legislative rule was proposed for promulgation in compliance
52 with the requirements of this article and with any requirements imposed by any other provision of
53 this code.

54 (c) After reviewing the legislative rule, the committee shall recommend that the
55 Legislature:

56 (1) Authorize the promulgation of the legislative rule;

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

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

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

60 (5) Reject the proposed rule.

61 The committee shall file notice of its action in the State Register and with the agency
62 proposing the rule: *Provided*, That when the committee makes the recommendations of
63 subdivision (2), (3), (4), or (5) of this subsection, the notice shall contain a statement of the
64 reasons for such recommendation.

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

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

NOTE: The purpose of this bill is to require agencies proposing legislative rules affecting fees or other special revenues to provide to the committee information relating to the fund and the past five years of revenues and expenses.

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