

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 619

**FISCAL
NOTE**

BY SENATORS BLAIR, CARMICHAEL, CLINE, GAUNCH,

KARNES, MULLINS AND TRUMP

[Introduced February 17, 2016;

Referred to the Committee on Government Organization.]

1 A BILL to amend and reenact §29A-1-2 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §29A-3-5 and §29A-3-11 of said code; to amend said code by adding thereto
3 a new section, designated §29A-3-19; to amend said code by adding thereto a new
4 section, designated §29A-3A-20; and to amend said code by adding thereto a new article,
5 designated §29A-3C-1, §29A-3C-2, §29A-3C-3, §29A-3C-4, §29A-3C-5 and §29A-3C-6,
6 all relating to creating the Small Business Regulatory Relief Act; requiring sunset
7 provisions in all future rulemaking affecting agencies and higher education; requiring
8 sunset provisions in all future modifications of rules affecting agencies and higher
9 education; providing exceptions; requiring agencies to respond to public comments during
10 the rule-making process; requiring agencies to explain why or why not public comments
11 were incorporated into the rule; providing that failure of an agency to adequately explain
12 why or why not public comments were incorporated into the rule is grounds for rejection
13 of the rule; requiring additional information to be included when an agency submits
14 proposed legislation to the Legislative Rule-Making Review Committee, including an
15 economic impact statement, detailed description of the purpose or objective of the rule,
16 explanation of the statutory authority, public comments and written responses by the
17 agency concerning those comments, requiring the agency's response address each issue
18 and concern expressed by the comments received and whether the rule will be overly
19 burdensome on business and industry by setting forth specific factors that must be
20 addressed; creating the Small Business Regulatory Board; making findings; setting forth
21 membership; establishing its authority to review and analyze existing and proposed rules
22 for their impact on small businesses; requiring each agency to have at least one employee
23 who serves as the small business regulatory coordinator for that agency; establishing their
24 duties; requiring economic impact statements to be filed; providing for injunctive relief;
25 requiring all executive branch agencies to review and evaluate all rules, guidelines,
26 policies and recommendations with those of any federal counterparts and determine if the

27 state's rules, guidelines, policies and recommendations are more stringent than those
 28 counterparts; requiring notice and comment for its own rules, guidelines, policies and
 29 recommendations; requiring the board to submit a report to the Legislature; requiring each
 30 agency to review each of its rules within four years to determine if its rules should be
 31 continued without change, modified or repealed; and defining the term "small business".

Be it enacted by the Legislature of West Virginia:

1 That §29A-1-2 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; that §29A-3-5 and §29A-3-11 of said code be amended and reenacted; that said code
 3 be amended by adding thereto a new section, designated §29A-3-19; that said code be amended
 4 by adding thereto a new section, designated §29A-3A-20; and that said code be amended by
 5 adding thereto a new article, designated §29A-3C-1, §29A-3C-2, §29A-3C-3, §29A-3C-4,
 6 §29A-3C-5 and §29A-3C-6, all to read as follows:

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-2. Definitions of terms used in this chapter.

1 For the purposes of this chapter:

2 (a) "Agency" means any state board, commission, department, office or officer authorized
 3 by law to make rules or adjudicate contested cases, except those in the legislative or judicial
 4 branches.

5 (b) "Contested case" means a proceeding before an agency in which the legal rights,
 6 duties, interests or privileges of specific parties are required by law or constitutional right to be
 7 determined after an agency hearing, but does not include cases in which an agency issues a
 8 license, permit or certificate after an examination to test the knowledge or ability of the applicant
 9 where the controversy concerns whether the examination was fair or whether the applicant
 10 passed the examination and does not include rulemaking.

11 (c) "Interpretive rule" means every rule, as defined in subdivision (j) of this section, adopted
 12 by an agency independently of any delegation of legislative power which is intended by the agency

13 to provide information or guidance to the public regarding the agency's interpretations, policy or
14 opinions upon the law enforced or administered by it and which is not intended by the agency to
15 be determinative of any issue affecting constitutional, statutory or common law rights, privileges
16 or interests. An interpretive rule may not be relied upon to impose a civil or criminal sanction nor
17 to regulate conduct or the exercise of constitutional, statutory or common law rights or privileges
18 nor to confer any right or privilege provided by law and is not admissible in any administrative or
19 judicial proceeding for that purpose, except where the interpretive rule established the conditions
20 for the exercise of discretionary power as provided in this subdivision. However, an interpretive
21 rule is admissible for the purpose of showing that the prior conduct of a person was based on
22 good faith reliance on the rule. The admission of the rule in no way affects any legislative or
23 judicial determination regarding the prospective effect of the rule. Where any provision of this
24 code lawfully commits any decision or determination of fact or judgment to the sole discretion of
25 any agency or any executive officer or employee, the conditions for the exercise of that discretion,
26 to the extent that the conditions are not prescribed by statute or by legislative rule, may be
27 established by an interpretive rule and such rule is admissible in any administrative or judicial
28 proceeding to prove the conditions.

29 (d) "Legislative exempt rule" means every rule promulgated by an agency or relating to a
30 subject matter that is exempt from the rule-making provisions of article three of this chapter, under
31 section three, article one of this chapter or any other section of this code.

32 (e) "Legislative rule" means every rule, as defined in subdivision (j) of this section,
33 proposed or promulgated by an agency pursuant to this chapter. Legislative rule includes every
34 rule which, when promulgated after or pursuant to authorization of the Legislature, has: (1) The
35 force of law; or (2) supplies a basis for the imposition of civil or criminal liability; or (3) grants or
36 denies a specific benefit. Every rule which, when effective, is determinative on any issue affecting
37 constitutional, statutory or common law rights, privileges or interests is a legislative rule. Unless
38 lawfully promulgated as an emergency rule, a legislative rule is only a proposal by the agency

39 and has no legal force or effect until promulgated by specific authorization of the Legislature.
40 Except where otherwise specifically provided in this code, legislative rule does not include: (A)
41 Findings or determinations of fact made or reported by an agency, including any findings and
42 determinations that are required to be made by any agency as a condition precedent to proposal
43 of a rule to the Legislature; (B) declaratory rulings issued by an agency pursuant to the provisions
44 of section one, article four of this chapter; (C) orders, as defined in subdivision (e) of this section;
45 or (D) executive orders or proclamations by the Governor issued solely in the exercise of
46 executive power, including executive orders issued in the event of a public disaster or emergency.

47 (f) "Order" means the whole or any part of the final disposition, whether affirmative,
48 negative, injunctive or declaratory in form, by any agency of any matter other than rulemaking.

49 (g) "Person" includes individuals, partnerships, corporations, associations or public or
50 private organizations of any character.

51 (h) "Procedural rule" means every rule, as defined in subdivision (j) of this section, which
52 fixes rules of procedure, practice or evidence for dealings with or proceedings before an agency,
53 including forms prescribed by the agency.

54 (i) "Proposed rule" is a legislative rule, interpretive rule or a procedural rule which has not
55 become effective pursuant to the provisions of this chapter or law authorizing its promulgation.

56 (j) "Rule" includes every rule, standard or statement of policy or interpretation of general
57 application and future effect, including the amendment or repeal of the rule, affecting
58 Constitutional, statutory or common law rights, privileges or interests, or the procedures available
59 to the public, adopted by an agency to implement, extend, apply, interpret or make specific the
60 law enforced or administered by it or to govern its organization or procedure, but does not include
61 rules relating solely to the internal management of the agency, nor rules of which notice is
62 customarily given to the public by markers or signs, nor mere instructions. Every rule shall be
63 classified as "legislative rule", "interpretive rule" or "procedural rule", all as defined in this section,
64 and is effective only as provided in this chapter.

65 (k) "Rulemaking" means the process for the formulation, amendment or repeal of a rule
66 as provided in this chapter.

67 (l) "Small Business" means a business entity, including its affiliates: (A) Which is
68 independently owned and operated; and (B) employs fewer than five hundred full time employees
69 or has gross annual sales of less than \$6 million.

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 Prior to the submission of any proposed rule to the Secretary of State, the agency shall
36 respond to public comments made during the rule-making process and explain why comments
37 were incorporated or not incorporated into the rule. Failure to adequately respond to public
38 comments shall be grounds for rejection of the proposed rule.

**§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 copies of~~ the number of copies in electronic or paper

6 form requested by the committee that includes 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~~ 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~~ A statement of the circumstances which require the rule;

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

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

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

27 ~~(5)~~ (7) One copy of any relevant federal statutes or regulations; ~~and~~

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

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

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

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

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

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

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

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

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

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

56 (6) Whether the proposed legislative rule could be made less complex or more readily

57 understandable by the general public; ~~and~~

58 (7) Whether the proposed legislative rule was proposed for promulgation in compliance
59 with the requirements of this article and with any requirements imposed by any other provision of
60 this code;

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

63 (A) Job creation;

64 (B) Economic growth;

65 (C) Investment;

66 (D) Competitiveness;

67 (E) Entrepreneurial activity and;

68 (F) Innovation; and

69 (9) Whether the agency complied with all requirements of:

70 (A) Subsection (a) of this section; and

71 (B) Section five of this article regarding the agency's mandatory response to public
72 comments with an explanation as to the comments were or were not incorporated into the
73 proposed rule.

74 (c) After reviewing the legislative rule, the committee shall recommend that the
75 Legislature:

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

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

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

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

80 (5) Reject the proposed rule.

81 The committee shall file notice of its action in the State Register and with the agency
82 proposing the rule: *Provided*, That when the committee makes the recommendations of

83 subdivision (2), (3), ~~or~~ (4) or (5) of this subsection, the notice shall contain a statement of the
84 reasons for such recommendation.

85 (d) When the committee recommends that a rule be authorized, in whole or in part, by the
86 Legislature, the committee shall instruct its staff or the office of Legislative Services to draft a bill
87 authorizing the promulgation of all or part of the legislative rule and incorporating such
88 amendments as the committee desires. If the committee recommends that the rule not be
89 authorized, it shall include in its report a draft of a bill authorizing promulgation of the rule together
90 with a recommendation. Any draft bill prepared under this section shall contain a legislative finding
91 that the rule is within the legislative intent of the statute which the rule is intended to implement,
92 extend, apply or interpret and shall be available for any member of the Legislature to introduce to
93 the Legislature.

§29A-3-19. Sunset provision in rules.

1 (a) Any new legislative rule promulgated pursuant to this article after April 1, 2016, shall
2 include a sunset provision terminating the rule after five years: *Provided*, That the rule may be
3 renewed for additional terms of five years or less by the Legislature pursuant to the rulemaking
4 procedures and authority in this article: *Provided, however*, That if a different sunset or termination
5 provision exists in the statute under which the proposed rule is promulgated, the enabling statute's
6 provision shall control: *Provided further*, That this subsection does not apply to rules promulgated
7 by the Department of Environmental Protection or emergency rules promulgated pursuant to
8 section fifteen of this article.

9 (b) Any legislative rule existing as of April 1, 2016, that is thereafter modified pursuant to
10 this article shall include a sunset provision as part of the modification setting forth a termination
11 date for the rule: *Provided*, That the rule may be renewed for additional terms of years by the
12 Legislature pursuant to the rulemaking procedures and authority in this article: *Provided, however*,
13 That if a different sunset or termination provision exists in the statute under which the proposed
14 rule is promulgated, the enabling statute's provision shall control: *Provided further*, That this

15 subsection does not apply to rules promulgated by the Department of Environmental Protection
16 or emergency rules promulgated pursuant to section fifteen of this article.

17 (c) The existence of a sunset provision terminating a rule does not preclude the repeal of
18 such rule by the Legislature prior to the expiration of the sunset provision.

19 (d) As part of its rule review under this article, the Legislative Rule-making Review
20 Committee is authorized to establish a procedure for timely review of rules prior to the expiration
21 for those agencies that have affirmatively sought renewal prior to expiration. The procedure may
22 include a requirement that the agency show cause as to why the expiring rule is required and
23 necessary to be continued for another term of years.

24 (e) The Secretary of State shall provide notice that the rule will sunset to each agency the
25 year prior to the agency's rule sunset date, and the notice shall direct that the agency provide:
26 whether the rule is needed, whether federal funding will be impacted by its expiration, any adverse
27 effect that will result for expiration of the rule to the agency, and whether health or safety of the
28 residents of the state or any regulated persons will be impacted by the rule. The Secretary of
29 State shall publish agency responses in the State Register. The agency shall include this
30 response with rule documents required for filing for reauthorization of each rule with the legislative
31 rulemaking and review committee pursuant to section eleven of this article.

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.

§29A-3A-20. Sunset provision in rules.

1 (a) Any new legislative rule promulgated pursuant to this article after April 1, 2016, shall
2 include a sunset provision terminating the rule after five years: *Provided*, That the rule may be
3 renewed for additional terms of five years or less by the Legislature pursuant to the rulemaking
4 procedures and authority in this article: *Provided, however*, That if a different sunset or termination
5 provision exists in the statute under which the proposed rule is promulgated, the enabling statute's
6 provision shall control: *Provided further*, That this subsection does not apply to emergency rules
7 promulgated pursuant to section sixteen of this article.

8 (b) Any legislative rule existing as of April 1, 2016, that is thereafter modified pursuant to
9 this article shall include a sunset provision as part of the modification setting forth a termination
10 date for the rule: *Provided*, That the rule may be renewed for additional terms of years by the
11 Legislature pursuant to the rulemaking procedures and authority in this article: *Provided, however*,
12 That if a different sunset or termination provision exists in the statute under which the proposed
13 rule is promulgated, the enabling statute's provision shall control: *Provided further*, That this
14 subsection does not apply to emergency rules promulgated pursuant to section sixteen of this
15 article.

16 (c) The existence of a sunset provision terminating a rule does not preclude the repeal of
17 such rule by the Legislature prior to the expiration of the sunset provision.

18 (d) As part of its rule review under this article, the Legislative Oversight Commission on
19 Education Accountability is authorized to establish a procedure for timely review of a rule prior to
20 its expiration if the board has affirmatively sought renewal prior to expiration. The procedure may
21 include a requirement that the board show cause as to why the expiring rule is required and
22 necessary to be continued for another term of years.

23 (e) The Secretary of State shall provide notice that the rule will sunset to the board the
24 year prior to the board's rule sunset date, and the notice shall direct that the board provide:
25 whether the rule is needed, whether federal funding will be impacted by its expiration, any adverse
26 effect that will result by expiration of the rule to the board, and whether the health or safety of the
27 residents of the state or any persons regulated will be impacted by the rule. The Secretary of
28 State shall publish the board's responses in the State Register. The board shall include this
29 response with rule documents required for filing for reauthorization of each rule with the
30 commission pursuant to section ten of this article.

ARTICLE 3C. SMALL BUSINESS REGULATORY RELIEF ACT.

§29A-3C-1. Findings.

1 The Legislature makes the following findings:

2 (1) That a vibrant and growing small business sector is critical to creating jobs in a dynamic
3 economy;

4 (2) That small businesses sustain a heavy financial burden due to high fixed costs of
5 complying with uniform rules that pertain to businesses of all sizes;

6 (3) That it is important that the state seek to achieve statutory goals as effectively and
7 efficiently as possible without imposing unnecessary burdens on small businesses;

8 (4) That failing to recognize differences in the scale and resources of regulated businesses
9 can adversely affect competition in the marketplace, discourage innovation, and restrict
10 improvements in productivity;

11 (5) That unnecessary rules create entry barriers in many industries and discourage
12 potential entrepreneurs from introducing beneficial products and processes;

13 (6) That the practice of treating all regulated businesses as equivalent may lead to
14 inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to
15 actions inconsistent with the legislative intent of health, safety, environmental, and economic
16 welfare legislation;

17 (7) That alternative regulatory approaches which do not conflict with the stated objective
18 of applicable statutes may be available to minimize the significant economic impact of rules on
19 small businesses; and

20 (8) That when developing and reforming their rules, it is important that state entities solicit
21 the ideas and comments of small businesses, examine the impact of proposed and existing rules
22 on the businesses, and review the continued need for existing rules.

§29A-3C-2. Small Business Regulatory Review Board.

1 There is created a Small Business Regulatory Review Board. The board shall consist of
2 nine members. The board shall consist of one representative of the West Virginia Manufacturers
3 Association, one representative from the West Virginia Business and Industry Council, one
4 representative from the West Virginia Chamber of Commerce, one representative from the West

5 Virginia University Bureau of Business and Economic Research, one representative from the
6 Center for Business and Economic Research at Marshall University, two West Virginia small
7 business owners, one Senate and one House of Delegates committee chairperson concerned
8 with small businesses shall serve as cochairs of the board. All members of the board shall be
9 appointed for three-year terms by the Governor.

10 At the joint call of the cochairs, the board shall convene its first meeting. Subsequent
11 meetings shall be at the call of the cochairs. The agendas of the meetings shall be set by the
12 cochairs.

13 The board has the authority to review and analyze all existing and proposed rules to
14 determine their impact on small businesses. The board may make recommendations regarding
15 statutory changes and the modification or repeal of rules to the Governor's office, the agency with
16 jurisdiction over the existing or proposed rule and the Legislative Rule-Making Review Committee.

17 The board members do not receive compensation or reimbursement for their service on
18 the board.

§29A-3C-3. Agency small business regulatory cooperation.

1 (a) Each agency shall designate at least one employee to serve as the small business
2 regulatory coordinator for the agency, and shall publicize that employee's electronic mail address
3 and telephone number. The small business regulatory coordinator shall act as a contact person
4 for small business regulatory issues for the agency.

5 (b) Each small business regulatory coordinator is meant to provide small businesses with
6 additional flexibility in creating new jobs, creating new businesses and to grow the state's
7 economy without imposing undue regulatory burdens that would impede those goals.

8 (c) All small business regulatory coordinators are required to review this article to ensure
9 they will be ready to assist small business owners.

10 (d) All small business regulatory coordinators are required to communicate and cooperate
11 with small business owners, their representatives and the Small Business Regulatory Review

12 Board to identify existing rules hindering job creation and small business growth.

13 (e) All small business regulatory coordinators are required to recommend changes to
14 existing rules that will both reduce their burden on job creation while continuing to comply with
15 the intent of the statutes that created them.

§29A-3C-4. Economic impact statements.

1 Prior to the adoption of any proposed regulation that may have an adverse impact on small
2 businesses on or after January 1, 2017, each agency shall prepare and deliver to the Executive
3 Director of the West Virginia Development Office and the Small Business Regulatory Review
4 Board, an economic impact statement that includes the information required to be submitted by
5 agencies to the Legislative Rule-Making Review Committee under section eleven, article three of
6 this chapter.

§29A-3C-5. Injunctive relief.

1 (a) A small business may commence an action against an agency for injunctive relief to
2 prevent the imposition of a penalty if the small business is subject to the penalty as the result of
3 the following:

4 (1) The small business acted or failed to act due to the failure by the agency's employee,
5 officer, or agent with regulatory responsibility for that legal requirement to respond to a specific
6 question in a reasonable time; or

7 (2) The small business acted or failed to act in response to inaccurate advice given to the
8 small business by the agency's employee, officer, or agent with regulatory responsibility for that
9 legal requirement.

10 (b) The small business may commence the action in the circuit court for the county where
11 the property affected is located or, if no property is affected, in the circuit court for the county
12 where the dispute arose.

13 (c) The circuit court may issue an order enjoining the imposition of a penalty or penalties.

§29A-3C-6. Executive review of agency rules, guidelines, policies and recommendations.

- 1 (a) All executive branch agencies shall:
- 2 (1) Review and evaluate all state rules, guidelines, policies and recommendations under
3 their jurisdiction which have federal counterparts;
- 4 (2) Determine whether the state rules, guidelines, policies and recommendations are more
5 stringent than their federal counterparts;
- 6 (3) Provide a notice and comment period for all rules, guidelines, policies and
7 recommendations; and
- 8 (4) Submit a report to the Joint Committee on Government and Finance on or prior to
9 November 1, 2017, that shall include:
- 10 (A) A description of the state rules, guidelines, policies and recommendations that are
11 more stringent than their federal counterparts; and
- 12 (B) Comments received from the notice and comment period provided in subdivision (3)
13 of this subsection.
- 14 (b) Within four years of the enactment of this law, each agency shall review all agency
15 rules to determine whether the rules should be continued without change, modified or repealed
16 to minimize the economic impact of the rules on small businesses in a manner consistent with the
17 stated objective of applicable statutes.

NOTE: The purpose of this bill is to create the Small Business Regulatory Relief Act. The bill requires sunset provisions in all future rule-making affecting agencies and higher education. The bill requires sunset provisions in all future modifications of rules affecting agencies and higher education. The bill provides exceptions. The bill requires agencies to respond to public comments during the rule-making process. The bill requires agencies to explain why or why not public comments were incorporated into the rule. The bill provides that failure of an agency to adequately explain why or why not public comments were incorporated into the rule is grounds for rejection of the rule. The bill requires additional information to be included when an agency submits proposed legislation to the Legislative Rule-Making Review Committee, including an economic impact statement, detailed description of the purpose or objective of the rule, explanation of the statutory authority, public comments and written responses by the agency concerning those comments, requiring the agency's response address each issue and concern expressed by the comments received and whether the rule will be overly burdensome on business and industry by setting forth specific factors that must be addressed. The bill creates the Small Business Regulatory Board. The bill makes findings. The bill sets forth membership. The

bill establishes its authority to review and analyze existing and proposed rules for their impact on small businesses. The bill requires each agency to have at least one employee who serves as the small business regulatory coordinator for that agency. The bill establishes their duties. The bill requires economic impact statements to be filed. The bill provides for injunctive relief. The bill requires all executive branch agencies to review and evaluate all rules, guidelines, policies and recommendations with those of any federal counterparts and determine if the state's rules, guidelines, policies and recommendations are more stringent than those counterparts. The bill requires notice and comment for its own rules, guidelines, policies and recommendations. The bill requires the board to submit a report to the Legislature. The bill requires each agency to review each of its rules within four years to determine if its rules should be continued without change, modified or repealed. The bill defines the term "small business."

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