

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4011**

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[Originating in the Committee on Government

Organization; February 16, 2018.]



1 A BILL to amend and reenact §29A-3-11 of the Code of West Virginia, 1931, relating to requiring  
2 agencies, when submitting a new rule or changes to an existing rule, to also identify two  
3 existing rules that could be repealed.

*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 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 a number of copies in electronic or paper form as requested  
6 by the 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 list of two proposed sections, subsection, or smaller division thereof each of which  
15 contains rules, regulations, or policies that could be removed from the legislative rule or another  
16 legislative rule over which the agency has control and which has been submitted to the Legislature  
17 for each new policy to be added to the rule;

18 (6) A fiscal note containing all information included in a fiscal note for either house of the  
19 Legislature and a statement of the economic impact of the rule on the state or its residents;

20           ~~(6)~~ (7) One copy of any relevant federal statutes or regulations;

21           ~~(7)~~ (8) An explanation of the statutory authority for the rule, including a detailed summary  
22 of the effect of each provision of the rule with citation to the specific statute which empowers the  
23 agency to enact such provision;

24           ~~(8)~~ (9) All public comments for each proposed rule. An agency may consolidate  
25 substantially similar comments in the interest of efficiency;

26           ~~(9)~~ (10) All written responses by the agency to the substance of any public comments  
27 received, including whether the agency chose to modify the proposed rule in response to the  
28 comments or, if no changes were made, the rationale for declining to incorporate or make any  
29 suggested changes responding to the public comments. An agency may consolidate substantially  
30 similar responses in the interest of efficiency: *Provided*, That the agency's response shall address  
31 each issue and concern expressed by all comments received; and

32           ~~(10)~~ (11) Any other information which the committee may request or which may be  
33 required by law. If the agency is an agency, board or commission which is not administered by an  
34 executive department as provided for in article two, chapter five-f of this code, the agency shall  
35 submit the final agency-approved rule as required by this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

61 (5) Reject the proposed rule.

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

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

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

NOTE: The purpose of this bill is to require agencies, when submitting a new rule or changes to an existing rule, to also identify two existing rules that could be repealed.

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