

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

## **House Bill 2366**

BY DELEGATES FOSTER, ESPINOSA, STEELE, GRAVES,

MARTIN AND HARDY

[Passed April 5, 2021; in effect ninety days from passage.]



1 AN ACT to amend and reenact §29A-3-11 of the Code of West Virginia, 1931, as amended,  
2 relating to requiring agencies who have approved a proposed rule that affects fees or other  
3 special revenues to provide to the committee a fiscal note that includes the fund name,  
4 the fund 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, a statement of the economic impact of the rule on the state or its residents, and, if  
16 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.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2021.

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*Governor*