

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2543

By Delegates Leavitt, McGeehan, Phillips, Rohrbach,
Green, Hornby, Gearheart, D. Cannon, Akers, Ferrell,
and Maynor

Introduced February 18, 2025; referred to the
Committee on Government Organization then
Finance

1 A BILL to amend and reenact §29A-1-2, §29A-3-11, and §29A-3-15 of the Code of West Virginia,
2 1931, as amended, relating to the submission of legislative rules; requiring the inclusion of
3 economic impact statements with certain proposed legislative rules; authorizing the
4 request of economic impact statements; and defining "economic impact statement."

Be it enacted by the Legislature of West Virginia:

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) "Economic impact statement" means a detailed written analysis, which measures or
12 estimates the potential costs to the public of implementation of and compliance with a proposed
13 legislative rule, considering;

14 (i) regulatory or transactional costs;

15 (ii) business productivity, innovation, or competitiveness, including the ability of persons
16 doing business in the state to compete with persons doing business in other states or domestic
17 markets;

18 (iii) private-sector job creation or employment;

19 (iv) private-sector investment;

20 (v) economic growth; and

21 (vi) any other relevant factors.

22 ~~(e)~~ (d) "Interpretive rule" means every rule, as defined in subdivision (j) of this section,
23 adopted by an agency independently of any delegation of legislative power which is intended by
24 the agency to provide information or guidance to the public regarding the agency's interpretations,
25 policy or opinions upon the law enforced or administered by it and which is not intended by the
26 agency to be determinative of any issue affecting constitutional, statutory or common law rights,
27 privileges or interests. An interpretive rule may not be relied upon to impose a civil or criminal
28 sanction nor to regulate conduct or the exercise of constitutional, statutory or common law rights or
29 privileges nor to confer any right or privilege provided by law and is not admissible in any
30 administrative or judicial proceeding for that purpose, except where the interpretive rule
31 established the conditions for the exercise of discretionary power as provided in this subdivision.
32 However, an interpretive rule is admissible for the purpose of showing that the prior conduct of a
33 person was based on good faith reliance on the rule. The admission of the rule in no way affects
34 any legislative or judicial determination regarding the prospective effect of the rule. Where any
35 provision of this code lawfully commits any decision or determination of fact or judgment to the
36 sole discretion of any agency or any executive officer or employee, the conditions for the exercise
37 of that discretion, to the extent that the conditions are not prescribed by statute or by legislative
38 rule, may be established by an interpretive rule and such rule is admissible in any administrative or
39 judicial proceeding to prove the conditions.

40 ~~(d)~~ (e) "Legislative exempt rule" means every rule promulgated by an agency or relating to
41 a subject matter that is exempt from the rule-making provisions of §29A-3-1 *et seq.* of this code,
42 under section three, §29A-1 *et seq.* of this code or any other section of this code.

43 ~~(e)~~ (f) "Legislative rule" means every rule, as defined in subdivision (j) of this section,
44 proposed or promulgated by an agency pursuant to this chapter. Legislative rule includes every
45 rule which, when promulgated after or pursuant to authorization of the Legislature, has: (1) The

46 force of law; or (2) supplies a basis for the imposition of civil or criminal liability; or (3) grants or
47 denies a specific benefit. Every rule which, when effective, is determinative on any issue affecting
48 constitutional, statutory or common law rights, privileges or interests is a legislative rule. Unless
49 lawfully promulgated as an emergency rule, a legislative rule is only a proposal by the agency and
50 has no legal force or effect until promulgated by specific authorization of the Legislature. Except
51 where otherwise specifically provided in this code, legislative rule does not include: (A) Findings or
52 determinations of fact made or reported by an agency, including any findings and determinations
53 that are required to be made by any agency as a condition precedent to proposal of a rule to the
54 Legislature; (B) declaratory rulings issued by an agency pursuant to the provisions of §29A-4-1 of
55 this code; (C) orders, as defined in subdivision (e) of this section; or (D) executive orders or
56 proclamations by the Governor issued solely in the exercise of executive power, including
57 executive orders issued in the event of a public disaster or emergency.

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

60 ~~(g)~~ (h) "Person" includes individuals, partnerships, corporations, associations or public or
61 private organizations of any character.

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

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

67 ~~(j)~~ (k) "Rule" includes every rule, standard or statement of policy or interpretation of general
68 application and future effect, including the amendment or repeal of the rule, affecting
69 constitutional, statutory or common law rights, privileges or interests, or the procedures available
70 to the public, adopted by an agency to implement, extend, apply, interpret or make specific the law
71 enforced or administered by it or to govern its organization or procedure, but does not include rules

relating solely to the internal management of the agency, nor rules of which notice is customarily given to the public by markers or signs, nor mere instructions. Every rule shall be classified as "legislative rule", "interpretive rule" or "procedural rule", all as defined in this section, and is effective only as provided in this chapter.

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

ARTICLE 3. RULE MAKING.

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

(a) When an agency finally approves a proposed legislative rule for submission to the Legislature, pursuant to the provisions of section nine of this article, the secretary of the executive department which administers the agency pursuant to the provisions of §5F-2-1 *et seq.*, of this code shall submit to the Legislative Rule-Making Review Committee at its offices or at a regular meeting of such committee a number of copies in electronic or paper form as requested by the committee, which shall include the following information:

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

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

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

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

(5) A fiscal note containing all information included in a fiscal note for either house of the Legislature, ~~a statement of the economic impact of the rule on the state or its residents~~, and, if there are any adjustments to any fees or other special revenue included in the rule, a fiscal note shall include, for any fund affected by adjustments to fees or other special revenue, the fund name,

the fund number, and the past five years of actual revenues and expenses of the fund;

(6) A statement of the economic impact of the rule on the state and its residents, including those doing business in the state, or an economic impact statement if the legislative rule could have an economic impact of more than \$200,000 in any one year or \$1,000,000 over five years on:

(i) regulatory or transactional costs;

(ii) business productivity, innovation, or competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets;

(iii) private-sector job creation or employment

(iv) private-sector investment; and

(v) economic growth.

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

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

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

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

~~(10)~~ (11) Any other information which the committee may request or which may be required by law. If the agency is an agency, board or commission which is not administered by an executive department as provided for in §5F-2-1 *et seq.*, of this code, the agency shall submit the final

44 agency-approved rule as required by this subsection.

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

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

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

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

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

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

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

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

61 (8) Whether the proposed legislative rule was proposed for promulgation in compliance
62 with the requirements of this article and with any requirements imposed by any other provision of
63 this code; and

64 (9) Whether the proposed legislative rule would have an economic impact on the state or
65 its residents.

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

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

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

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

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

71 (5) Reject the proposed rule.

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), (4), or (5) of this subsection, the notice shall contain a statement of the
75 reasons for such recommendation, and that the notice shall identify whether the agency's
76 proposed legislative rule followed the established requirements stated in §29A-3-11(a)(1)-(11) of
77 this code.

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

§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

1 (a) Any agency with authority to propose legislative rules may, without hearing, find that an
2 emergency exists requiring that an emergency rule be promulgated and promulgate the
3 emergency rule in accordance with this section. The agency shall file the emergency rule, together
4 with a statement of the facts and circumstances constituting the emergency and a listing of state
5 agencies, professions, businesses and other identifiable interest groups affected by the proposed
6 emergency rule, with the Secretary of State, who shall publish a notice of the filing in the State
7 Register. However, an agency's good faith failure to list all known state agencies, professions,
8 businesses and other identifiable interest groups is not a basis for disapproval of the emergency

rule or does not subject the emergency rule to judicial review. The emergency rule becomes effective upon the approval of the Secretary of State in accordance with section fifteen-a of this article or upon the approval of the Attorney General in accordance with section fifteen-b of this article or upon the forty-second day following the filing, whichever occurs first. The emergency rule may adopt, amend or repeal any legislative rule, but the agency shall state, with particularity, the circumstances constituting the emergency requiring the adoption, amendment or repeal, and the emergency rule is subject to de novo review by any court having original jurisdiction of an action challenging its validity. An agency shall immediately file a copy of the emergency rule and the required statement with the Secretary of State and one copy with the Legislative Rule-Making Review Committee.

An emergency rule is effective for not more than fifteen months and expires earlier if any of the following occurs:

(1) The Secretary of State, acting under the authority provided in section fifteen-a of this article, or the Attorney General, acting under the authority provided in section fifteen-a of this article, disapproves the emergency rule because: (A) The emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation of the rule; (B) an emergency does not exist justifying the promulgation of the emergency rule; or (C) the emergency rule was not promulgated in compliance with the provisions of this section. An emergency rule may not be disapproved pursuant to the authority granted by clauses (A) or (B) of this subdivision on the basis that the Secretary of State or the Attorney General disagrees with the underlying public policy established by the Legislature in enacting the authorizing legislation. An emergency rule which would otherwise be approved as being necessary to comply with a time limitation established by this code or by a federal statute or regulation may not be disapproved pursuant to the authority granted by paragraphs (A) or (B) of this subdivision on the basis that the agency has failed to file the emergency rule prior to the date fixed by the time limitation. When the authorizing statute specifically directs an agency to promulgate an emergency rule, or specifically

finds that an emergency exists and directs the promulgation of an emergency rule, the emergency rule may not be disapproved pursuant to the authority granted by paragraph (B) of this subdivision. An emergency rule may not be disapproved on the basis that the Legislature has not specifically directed an agency to promulgate the emergency rule, or has not specifically found that an emergency exists and directed the promulgation of an emergency rule;

(2) The agency has not previously filed and fails to file a notice of public hearing on the proposed rule within thirty days of the date the proposed rule was filed as an emergency rule, in which case the emergency rule expires on the thirty-first day;

(3) The agency has not previously filed and fails to file the proposed rule as approved by the agency following the close of the public comment period with the Legislative Rule-Making Review Committee within ninety days of the date the proposed rule was filed as an emergency rule, in which case the emergency rule expires on the ninety-first day;

(4) The Legislature has authorized or directed promulgation of an authorized legislative rule dealing with substantially the same subject matter since the emergency rule was first promulgated, in which case the emergency rule expires on the date the authorized rule is made effective; or

(5) The Legislature has, by law, disapproved the emergency rule, in which case the emergency rule expires on the date the law becomes effective.

(b) Any amendment to an emergency rule made by the agency shall be filed in the State Register and does not constitute a new emergency rule for the purpose of acquiring additional time or avoiding the expiration dates in subdivision (2), (3), (4) or (5), subsection (a) of this section: Provided, That the emergency amendment becomes effective upon the approval of the Secretary of State in accordance with section fifteen-a of this article or upon approval of the Attorney General in accordance with section fifteen-b of this article or upon the forty-second day following the filing, whichever occurs first.

(c) Once an emergency rule expires due to the conclusion of fifteen months or due to the

61 effect of subdivision (2), (3), (4) or (5), subsection (a) of this section, the agency may not refile the
62 same or similar rule as an emergency rule.

63 (d) An agency may not use the provisions of this section to avoid or evade any provision of
64 this article or any other provisions of this code, including any provisions for legislative review and
65 approval of proposed rules. Any emergency rule promulgated for that purpose may be contested
66 in a judicial proceeding before a court of competent jurisdiction.

67 (e) The Legislative Rule-Making Review Committee may review any emergency rule to
68 determine: (1) Whether the emergency rule or an amendment to the emergency rule exceeds the
69 scope of the law authorizing or directing its promulgation; (2) whether there exists an emergency
70 justifying the promulgation of the emergency rule; and (3) whether the emergency rule was
71 promulgated in compliance with the requirements and prohibitions contained in this section. The
72 committee may recommend to the agency, the Legislature or the Secretary of State any action it
73 determines appropriate.

74 (f) For the purposes of this section, an emergency exists when the promulgation of an
75 emergency rule is necessary: (1) For the immediate preservation of the public peace, health,
76 safety or welfare; (2) to comply with a time limitation established by this code or by a federal statute
77 or regulation; or (3) to prevent substantial harm to the public interest.

78 (g) The members of the Legislative Rule-Making Review Committee may request an
79 economic impact statement from an agency on rules proposed pursuant to this section, in
80 accordance with §29A-3-11(a)(6) of this code, regardless of the estimated economic impact.

NOTE: The purpose of this bill is to provide for the inclusion of economic impact statements with any agency proposed legislative rule that has a potential impact to the state economy of more than \$200,000 in a given year or \$1,000,000 over a five-year period.

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