WEST VIRGINIA CODE: §29a-3A-6

§29A-3A-6. Notice of proposed rulemaking.

(a) When the agency proposes to promulgate a rule other than an emergency rule, it shall file with the Secretary of State, for publication in the State Register, a notice of its action, including therein any request for the submission of evidence to be presented on any factual determinations or inquiries required by law to promulgate the rule. At the time of filing the notice of its action, the agency shall also file with the Secretary of State a copy of the full text of the rule proposed and a fiscal note as defined in §29A-3A-5 of this code. If the agency is considering alternative draft proposals, it may also file with the Secretary of State the full text of the draft proposals.

(b) The notice shall fix a date, time, and place for the receipt of public comment in the form of oral statements, written statements, and documents bearing upon any findings and determinations which are a condition precedent to the final approval by the agency of the proposed rule and shall contain a general description of the issues to be decided. If no specific findings and determinations are required as a condition precedent to the final approval by the agency of the approved rule, the notice shall fix a date, time, and place for the receipt of general public comment on the proposed rule. To comply with the public comment provisions of this section, the agency may hold a public hearing or schedule a public comment period for the receipt of written statements or documents, or both.

(c) If findings and determinations are a condition precedent to the promulgation of the rule, then an opportunity for general public comment on the merits of the rule shall be afforded after the findings and determinations are made. In that event, notice of the hearing or of the period for receiving public comment on the proposed rule shall be attached to and filed as a part of the findings and determinations of the agency when filed in the State Register.

(d) In any hearing for public comment on the merits of the rule, the agency may limit presentations to written material. The time, date, and place fixed in the notice shall constitute the last opportunity to submit any written material relevant to any hearing, all of which may be earlier submitted by filing with the agency. After the public hearing or the close of the public comment period, whichever is later, the agency shall not permit the filing or receipt of, nor shall it consider, any attempted ex parte communications directed to it in the form of additional comment prior to the submission of its final agency-approved rule to the Legislative Oversight Commission on Education Accountability pursuant to the provisions of §29A-3A-12 of this code.

(e) The agency may also, at its expense, cause to be published as a Class I legal advertisement in every county of the state any notice required by this section.

(f) Any citizen or other interested party may appear and be heard at the hearings as are required by this section.

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(g) Prior to the submission of any agency-approved proposed rule to the Secretary of State, the agency shall respond to public comments received during the rulemaking process and explain the reasoning for comments being incorporated or not incorporated into the rule. Failure to adequately respond to public comments may be grounds for rejection of the proposed rule.

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