

1 **Senate Bill No. 517**

2 (By Senators Hall, Barnes, Boley, Sypolt, Nohe and K. Facemyer)

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4 [Introduced February 15, 2011; referred to the Committee on
5 Government Organization; and then to the Committee on Finance.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §29A-3-19, relating
12 to implementing a quality control procedure for agency rules.

13 *Be it enacted by the Legislature of West Virginia:*

14 That the Code of West Virginia, 1931, as amended, be amended
15 by adding thereto a new section, designated §29A-3-19, to read as
16 follows:

17 **ARTICLE 3. RULE MAKING.**

18 **§29A-3-19. Quality control process for agency rules.**

19 (a) This section may be known and cited as the "Quality
20 Control Procedure For Agency Rules Act".

21 (b) The Legislature finds that:

22 (1) West Virginia has consistently been considered one of the
23 more difficult states for businesses to thrive for various reasons;

24 (2) One of the key reasons this state has been consistently

1 rated as a difficult jurisdiction for businesses is because the
2 state's regulatory environment is rated as one of the most
3 burdensome in the country for businesses;

4 (3) This burdensome regulatory environment has had a
5 significantly negative impact on economic development and growth in
6 this state;

7 (4) If meaningful action is not taken to address this
8 regulatory burden it is likely the state's economic development and
9 growth will continue to be impeded;

10 (5) There must be a quality control procedure implemented that
11 will provide for an evaluation of the regulatory burden on business
12 and industry; and

13 (6) These burdensome rules must be repealed or modified in
14 order to improve this state's business climate and economic health.

15 (c) Definitions:

16 (1) "Cost-benefit analysis" means the Joint Committee on
17 Government and Finance's Oversight of West Virginia University's
18 and Marshall University's following evaluation of a rule:

19 (A) Confirm and measure need for rule making;

20 (B) Identify regulatory options and a base to compare
21 alternatives;

22 (C) Select an analytical framework;

23 (D) Identify groups affected by rule change;

24 (E) Identify and quantify the costs and benefits of each

1 identified regulatory option;

2 (F) Monetize costs and benefits of each option;

3 (G) Adjust costs and benefits for inflation;

4 (H) Discount costs and benefits to present value;

5 (I) Calculate net benefits or cost-effectiveness ratios; and

6 (J) Report analysis and findings in impact statements.

7 (2) "Modification" means changes or amendments to an agency
8 rule that alters the function or material purpose of a rule, or
9 creates an additional burden upon business and industry.

10 (3) "Moratorium" means a suspension of promulgating new rules
11 or the modification of existing rules.

12 (4) "Sunset" means the expiration of a rule on a date whereby
13 it is repealed.

14 (d) *Agency Rule and Modification Moratorium* -- There shall be
15 a five-year moratorium on the adoption of new agency rules and
16 modification of existing rules beginning on the effective date of
17 this legislation. However, this subsection shall not apply to new
18 emergency rules or modifications or new rules or modifications
19 required by federal or state law.

20 (e) *Cost-Benefit analysis for existing rules.* -- All existing
21 rules in effect upon the effective date of this legislation shall
22 undergo a cost-benefit analysis within three years beginning on the
23 effective date of this legislation. The cost-benefit analysis shall
24 be conducted by the Joint Committee on Government and Finance

1 through a partnership with West Virginia University and Marshall
2 University. The Joint Committee on Government and Finance shall
3 oversee the universities efforts in conducting this comprehensive
4 cost-benefit analysis of all existing agency rules. The Joint
5 Committee on Government and Finance shall review the universities
6 report detailing its findings for each agency rule. After the
7 Joint Committee reviews the universities report it may make
8 modifications and adopt a final report. A copy of the final report
9 shall be provided to the Legislature and the Board of Regulatory
10 Reform established in subsection (g) within four years of the
11 effective date of this legislation.

12 (f) *Post Moratorium Rules and Modifications.* -- Any state rule
13 promulgated or modified after the moratorium has expired shall
14 contain a seven-year sunset provision. Additionally, these post-
15 moratorium rules or modifications must undergo a cost benefit
16 analysis conducted by the Joint Committee on Government and Finance
17 through a partnership with West Virginia University and Marshall
18 University before they are promulgated or modified to determine if
19 the renewal or modification will burden business and industry. The
20 Joint Committee on Government and Finance shall oversee the
21 universities efforts in conducting this comprehensive cost-benefit
22 analysis of post-moratorium rules or modifications prior to their
23 effective date. The Joint Committee on Government and Finance
24 shall review the universities report detailing its findings for

1 each agency rule or modification. After the Joint Committee on
2 Government and Finance reviews the universities report it may make
3 modifications and adopt a final report. The Joint Committee on
4 Government and Finance shall develop a final report detailing its
5 findings. A copy of the final report shall be provided to the
6 Legislature and the Board of Regulatory Reform established in
7 subsection (g) before the post-moratorium rule or modification
8 becomes effective.

9 (g) Board of Regulatory Reform:

10 (1) The Governor shall establish the Board of Regulatory
11 Reform within the Department of Administration.

12 (2) The Department of Administration shall provide the Board
13 of Regulatory Reform with staff who are presently employed by the
14 agency.

15 (3) The agency shall provide the Board of Regulatory Reform
16 with facilities from their existing operations.

17 (4) The Board of Regulatory Reform shall elect a chairman by
18 a majority vote who will serve a biannual term.

19 (5) The Board of Regulatory Reform shall develop its own
20 internal operating procedures.

21 (6) The Governor shall appoint at least seven persons to serve
22 on the Board of Regulatory Reform who will not be compensated for
23 their services.

24 (7) In selecting persons to serve on the Board of Regulatory

1 Reform, the Governor shall choose one person who is a
2 representative of the West Virginia Chamber of Commerce, one person
3 who represents the West Virginia Manufacturer's Association, one
4 person who represents the West Virginia Business and Industry
5 Council, one person who represents the West Virginia Department of
6 Commerce, one person who represents the West Virginia Business
7 Roundtable, one person who represents West Virginia University and
8 one person who represents Marshall University.

9 (8) The Board of Regulatory Review shall:

10 (A) By a majority vote make recommendations to the Governor
11 regarding the termination or modification of agency rules after
12 reviewing the Joint Committee on Government and Finance's final
13 report regarding the cost-benefit analysis of an agency rule; and

14 (B) By a majority vote, make recommendations to the Governor
15 based upon petitions received from business and industry, with or
16 without a hearing, to terminate or modify rules by businesses or
17 industries aggrieved by agency rules.

18 (h) *Severability*. -- If any provision of this section or
19 application thereof to any person or any circumstance is held
20 invalid, such invalidity shall not affect other provisions or
21 applications of this section which can be given effect without the
22 invalid provision or its application, and to this end the
23 provisions of this section are declared to be severable.

NOTE: The purpose of this bill is to implement quality control procedures for agency rules.

This section is new; therefore, strike-throughs and underscoring have been omitted.