

Senate Bill No. 348

(By Senator Hall)

[Introduced January 19, 2012; referred to the Committee on
Government Organization; and then to the Committee on the
Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. RULE MAKING.

§29A-3-19. Quality control procedure for agency rules.

(a) This section may be known and cited as the "Quality
Control Procedure For Agency Rules Act of 2012".

(b) Legislature findings and purpose:

(1) West Virginia has consistently been considered one of the

1 more difficult states for businesses to thrive for various reasons;

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

3 rated as a difficult jurisdiction for businesses is because the

4 state's regulatory environment is rated as one of the most

5 burdensome in the country;

6 (3) This burdensome regulatory environment has had a

7 significantly negative impact on economic development and growth in

8 this state;

9 (4) If meaningful action is not taken to address this

10 regulatory burden it is likely the state's economic development and

11 growth will continue to be impeded;

12 (5) There must be a quality control procedure implemented

13 including a cost-benefit analysis that will provide for an

14 evaluation of the regulatory burden on business and industry;

15 (6) These burdensome rules must be repealed or modified in

16 order to improve this state's business climate and economic health;

17 and

18 (7) New and modified rules must contain a sunset provision to

19 provide the Legislature with an opportunity to determine whether

20 these rules or modifications are accomplishing the intended

21 objective without creating a heavy burden on business and industry.

22 (c) Definitions:

23 (1) "Cost-benefit analysis" means the Joint Committee on

24 Government and Finance's oversight of West Virginia University's

1 and Marshall University's evaluation of rules based on whether
2 these rules:

3 (A) Impede private sector job creation;

4 (B) Discourage innovation and entrepreneurial activity;

5 (C) Hurt economic growth and investment;

6 (D) Harm the state's competitiveness;

7 (E) Limit access to credit and capital;

8 (F) Fail to utilize or apply accurate cost-benefit analyses;

9 (G) Create additional economic uncertainty;

10 (H) Are promulgated in such a way as to limit transparency and
11 the opportunity for public comment, particularly by affected
12 parties;

13 (I) Lacks specific statutory authorization;

14 (J) Undermines labor-management relations;

15 (K) Results in large-scale unfunded mandates on employers
16 without due cause; and

17 (L) Imposes undue paperwork and cost burdens on small
18 business.

19 (2) "Modification" means changes or amendments to an agency
20 rule that alters the function or material purpose of a rule.

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

23 (4) "Sunset" means the expiration of a rule or modification
24 on a date whereby it is repealed.

1 (d) Agency Rule and Modification Moratorium -- There shall be
2 a three-year moratorium on the adoption of new agency rules and
3 modification of existing rules beginning on the effective date of
4 this legislation while the cost-benefit analysis for existing rules
5 required under subsection (e) is being conducted. However, this
6 subsection shall not apply to new emergency rules or new rules or
7 modifications required by federal or state law.

8 (e) Cost-Benefit analysis for existing rules. -- All existing
9 rules in effect upon the effective date of this legislation shall
10 undergo a cost-benefit analysis within three years beginning on the
11 effective date of this legislation. The cost-benefit analysis shall
12 be conducted by the Joint Committee on Government and Finance
13 through a partnership between West Virginia University and Marshall
14 University. The Joint Committee on Government and Finance shall
15 oversee the universities efforts in conducting this comprehensive
16 cost-benefit analysis of all existing agency rules. The
17 universities shall prepare and submit a final joint report to the
18 Joint Committee on Government and Finance within four years of the
19 effective date of this legislation that includes its findings and
20 recommendations. The Joint Committee on Government and Finance
21 shall review the universities' final joint report detailing its
22 findings for each agency rule. After the Joint Committee on
23 Government and Finance reviews the universities' final joint report
24 it may make modifications and shall adopt its final report. A copy

1 of the Joint Committee's final report shall be provided to the
2 Speaker of the House of Delegates, the Senate President, the
3 Governor and the Board of Regulatory Reform established in
4 subsection (g) within five years of the effective date of this
5 legislation.

6 (f) *Post Moratorium Rules and Modifications.* -- Any state rule
7 promulgated or modified after the moratorium required by subsection
8 (d) shall contain a seven-year sunset provision. Additionally,
9 these post-moratorium rules or modifications must undergo a cost-
10 benefit analysis defined in subsection (c), subdivision (1),
11 conducted by a partnership between West Virginia University and
12 Marshall University with oversight by the Joint Committee on
13 Government and Finance prior to being promulgated or modified to
14 determine if the renewal or modification will create an undue
15 burden on business and industry. The universities shall prepare
16 and submit a final joint report to the Joint Committee on
17 Government and Finance prior to a modification becoming effective
18 that includes its findings and recommendations. The Joint
19 Committee on Government and Finance shall review the universities
20 final joint report detailing its findings for each agency rule or
21 modification. After the Joint Committee on Government and Finance
22 reviews the universities final joint report it may make
23 modifications and shall adopt a final report. The Joint Committee
24 on Government and Finance shall submit a copy of the final report

1 to the Speaker of the House of Delegates, the Senate President, the
2 Governor and the Board of Regulatory Reform established in
3 subsection (g) prior to the post-moratorium rule or modification
4 becoming effective.

5 (g) Board of Regulatory Reform:

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

8 (2) The Department of Administration shall provide the Board
9 of Regulatory Reform with staff who are presently employed by the
10 agency.

11 (3) The Department of Administration shall provide the Board
12 of Regulatory Reform with facilities from their existing
13 operations.

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

16 (5) The Governor shall appoint at least seven persons to serve
17 on the Board of Regulatory Reform who will not be compensated for
18 their services.

19 (6) In selecting persons to serve on the Board of Regulatory
20 Reform, the Governor shall choose one person who is a
21 representative of the West Virginia Chamber of Commerce, one person
22 who represents the West Virginia Manufacturer's Association, one
23 person who represents the West Virginia Business and Industry
24 Council, one person who represents the West Virginia Department of

1 Commerce, one person who represents the West Virginia Business
2 Roundtable, one person who represents West Virginia University and
3 one person who represents Marshall University.

4 (7) The Board of Regulatory Review shall develop its own
5 internal rules and procedures that shall include the following:

6 (A) Meet on a monthly basis;

7 (B) Require staff to establish and monitor a website that
8 allows individuals associated with business and industry to
9 anonymously comment on existing rules that are negatively impacting
10 their business or industry;

11 (C) By a majority vote, make recommendations to the Governor
12 based upon their own experience, expertise, and communications with
13 other who are affected by overly burdensome business regulations;

14 (D) 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; and

18 (E) By a majority vote, make recommendations to the Governor
19 regarding the termination or modification of agency rules after
20 reviewing the Joint Committee on Government and Finance's final
21 report regarding the cost-benefit analysis of an agency rule and
22 post-moratorium proposed new rules or modifications.

23 (h) Severability. -- If any provision of this section or
24 application thereof to any person or any circumstance is held

1 invalid, such invalidity shall not affect other provisions or
2 applications of this section which can be given effect without the
3 invalid provision or its application, and to this end the
4 provisions of this section are declared to be severable.

NOTE: The purpose of this bill is to establish a quality control procedure for agency rules.

This section is new; therefore, it has been completely underscored.