

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

House Bill 4154

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

(BY REQUEST OF THE EXECUTIVE)

[Introduced January 16, 2018; Referred to the
Committee on Government Organization then the
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §5B-8-1, §5B-8-2, §5B-8-3, §5B-8-4, §5B-8-5, §5B-8-6, §5B-8-7, §5B-8-8,
3 §5B-8-9, and §5B-8-10, all relating to establishing the 2018 Regulatory Reform Act;
4 providing legislative findings; defining terms; providing for an application process with the
5 Development Office to request a project be classified as a project of critical economic
6 concern; requiring state agencies to provide for expeditious review of a permit application
7 even absent a designation as a project of critical economic concern; establishing a
8 procedure for the filing of a certificate of critical economic concern with state agencies and
9 the Development Office; providing for agencies to adopt an expedited permit fee; providing
10 for timelines, reports, and written explanations for expedited permit review; clarifying a
11 certificate of critical concern is not a blanket waiver and does not guarantee a permit will
12 be granted; requiring the executive director to report to the Governor and the Joint
13 Committee on Government and Finance on or before November 1, 2019 and on or before
14 every November 1st thereafter regarding the success of this article; and granting the
15 Development Office with procedural rulemaking authority to implement the provisions of
16 this article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. 2018 REGULATORY REFORM ACT.

§5B-8-1. Short title.

1 This article shall be known as the “2018 Regulatory Reform Act”.

§5B-8-2. Legislative findings.

1 (a) It is found and declared that there exists in this state a condition of substantial and
2 persistent unemployment and under employment which:

3 (1) Causes economic hardship to many individuals and families;

4 (2) Wastes vital human resources;

5 (3) Increases the public assistance burdens of the state;

- 6 (4) Impairs the security of family life;
- 7 (5) Prevents many of our youths from continuing their education;
- 8 (6) Impedes the economic and physical development of municipalities; and
- 9 (7) Adversely affects the welfare and prosperity of this state.

10 (b) It is hereby declared to be the policy of this state to:

- 11 (1) Promote a vigorous and growing economy;
- 12 (2) Prevent economic stagnation;
- 13 (3) Encourage the creation of new job opportunities;
- 14 (4) Ameliorate the hazards of unemployment and underemployment;
- 15 (5) Reduce the level of public assistance;
- 16 (6) Increase revenues to the state, its counties, and its municipalities; and
- 17 (7) Achieve a stable diversified economy.

18 (c) The purpose of this article is to provide a mechanism for business and industry to
19 secure any necessary permits, without waiving the lawful conditions of the permits, in an
20 expeditious manner as possible.

§5B-8-3. Definitions.

1 As used in this article, the following words and phrases shall have the meanings given to
2 them in this section unless the context clearly indicates otherwise:

3 “Development Office” is the West Virginia Development Office established pursuant to the
4 provisions of §5B-2-1 *et seq.* of this code.

5 “Executive director” is the Executive Director of the West Virginia Development Office
6 established pursuant to the provisions of §5B-2-2 of this code.

7 “Permit” means, for the purpose of this article only, any contract, license, permit,
8 certificate, or other regulatory authority of any kind to conduct business in this state.

9 “Person” means any natural person, company, corporation, partnership, or any type of
10 business entity.

11 “Project of critical economic concern” means an undertaking designated by the executive
12 director to be significant, in its operational stage, by its ability to enhance, promote, and encourage
13 business, commerce, and industry in West Virginia and to stimulate jobs and relieve
14 underemployment and unemployment in West Virginia.

15 “State agency” means any office, department, board, commission, bureau, division,
16 authority, public corporation, agency, or instrumentality of this state.

§5B-8-4. Request for status as a project of critical economic concern; expeditious review
of other project applications.

1 (a) A person may apply to the Development Office and request that his or her project be
2 classified as a project of critical economic concern through a process to be established by the
3 Development Office via procedural rule.

4 (b) The Development Office shall render a written decision on the request within forty-five
5 days of the filing and receipt of the request. When rendering a decision, the Development Office
6 shall consider the following non-exclusive factors:

7 (1) The potential economic impact of the project in West Virginia;

8 (2) The potential impact of the project on jobs in West Virginia; and

9 (3) The project’s ability to enhance, promote, and encourage business, commerce and
10 industry in West Virginia.

11 (c) If the project is found to be a project of critical economic concern, the Development
12 Office shall issue a certificate of critical economic concern.

13 (d) A certificate of critical economic concern expires two years from the date of issuance.

14 (e) A certificate of critical economic concern may be extended for an additional period of
15 two years at the discretion of the executive director.

§5B-8-5. Filing of certificate for a project of critical economic concern; expedited permit
fee.

1 (a) A person shall file the certificate of critical economic concern with the appropriate state
2 agency that has licensing or permitting authority over the project.

3 (b) A person shall file the certificate of critical economic concern at the time of filing the
4 completed permit application for the project with the state agency.

5 (c) The state agency shall give priority to the project of critical economic concern in the
6 handling and processing of permit applications.

§5B-8-6. Permit action by the state agency for projects of critical economic concern.

1 (a) This section shall only apply to projects that have been issued a certificate of critical
2 economic concern from the Development Office.

3 (b) Within 60 days of the submission of a complete permit application, the state agency to
4 which the complete permit application was submitted shall render a written report on the status of
5 the permit application. The report shall contain information that will enable the person to make a
6 sound business decision as to whether to continue to pursue the permit. The report shall be sent
7 to the permit applicant and the executive director.

8 (c) If a decision has not been made regarding the permit application, then the state agency
9 shall on the fourth, fifth, and sixth month anniversary of the submission of the permit application,
10 render a written report on the status of the permit application. The report shall be sent to the
11 permit applicant and the executive director.

12 (d) If at the end of the sixth month, a decision has not been made on the complete permit
13 application, then the state agency shall issue a written report on the status of a permit application
14 that includes an explanation for why a decision has not yet been made regarding the permit. The
15 report shall be sent to the permit applicant, the executive director, and the Governor.

§5B-8-7. Licensing and permitting requirements.

1 (a) The issuance and the filing of a certificate of critical economic concern is not a waiver
2 of any element, rule, regulation, or statute upon which the permit is granted.

3 (b) The issuance and the filing of a certificate of critical economic concern does not
4 guarantee that a permit will be granted by the state agency.

§5B-8-8. Expedited completed permit application review.

1 (a) For those projects that are not designated as a project of critical concern by the
2 executive director:

3 (1) A state agency shall complete a review of a permit application in as expeditious a
4 manner as possible without compromising the integrity of the state agency's analysis of the
5 application.

6 (2) A state agency may, by legislative rule, provide the option of an expedited permit fee
7 to cover the costs of expeditious review of a permit application and a schedule by which the review
8 of the expedited permit shall be completed.

9 (b) For those projects designated a project of critical economic concern, a state agency
10 may, by legislative rule, provide the option of an expedited permit fee to cover the costs of
11 expeditious review of a permit application and a schedule by which the review of the expedited
12 permit shall be completed.

13 (c) For a permit application where an expedited review fee has been paid by the applicant,
14 if at the end of the time established by the state agency via legislative rule, a decision has not
15 been made on issuance of the permit, the state agency shall refund, in full, to the applicant any
16 expedited permit fee collected at the time of the filing of the completed permit application.

§5B-8-9. Reporting requirements.

1 (a) The executive director shall prepare and submit a report to the Governor and the Joint
2 Committee on Government and Finance on or before November 1, 2019, and on or before
3 November 1 each year thereafter, regarding the provisions of this article and shall specifically
4 outline whether the purpose and policies of this article are being accomplished.

5 (b) The annual report prepared by the executive director will include, at minimum, the
6 following:

7 (1) The number of applications received requesting a project be designated as a project
8 of critical economic concern;

9 (2) The number of projects that were designated as a project of critical economic concern;

10 (3) The number of actual and anticipated jobs that will be created in West Virginia by the
11 projects designated as projects of critical economic concern;

12 (4) The monetary amount of actual and anticipated investment in West Virginia by the
13 projects designated as projects of critical economic concern;

14 (5) The new and existing industries involved in the projects designated as projects of
15 critical economic concern;

16 (6) A statement and explanation of whether the purpose and policies of this article are
17 being accomplished; and

18 (7) The names and addresses of the entities that have received a designation as a project
19 of critical economic concern and submitted a certificate of critical economic concern to the
20 appropriate state agency, and a description of the project and its location, and the same
21 information for those entities which were denied the designation.

§5B-8-10. Rulemaking authority.

1 The Development Office shall promulgate procedural rules in accordance with §29A-3-1
2 et seq. of this code to implement the provisions of this article.

NOTE: The purpose of this bill is to create the 2018 Regulatory Reform Act.

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