

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 269**

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on Government

Organization; Reported on February 23, 2018]

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 creating short title; providing purpose; defining terms; permitting persons to petition for  
5 projects to be classified as projects of critical economic concern by Development Office;  
6 setting timeline for Development Office to render written decision; identifying nonexclusive  
7 factors for Development Office to consider when rendering decision; providing for  
8 issuance of certificate of critical economic concern; providing for expiration of certificate;  
9 permitting extension of time for expiration; directing person to file the certificate with  
10 appropriate state agency with licensing or permitting authority at the time application is  
11 filed; permitting person to file certificate with any political subdivision with licensing or  
12 permitting authority at the time application is filed; requiring state agency give priority to  
13 applications accompanied by certificate of critical economic concern; providing for written  
14 reports; providing a schedule for those reports; providing for contents of written reports;  
15 providing for recipients of written reports; clarifying that certificates of critical economic  
16 concern are not waiver of any element, rule, regulation, or statute upon which license or  
17 permit is issued or granted; clarifying that certificates of critical economic concern do not  
18 guarantee that license or permit will be issued by state agency; authorizing agencies to  
19 adopt expedited permit fee; requiring state agency establish schedule by which review of  
20 expedited permit shall be completed; requiring schedule and fee to be set in legislative  
21 rules; requiring refund of expedited fee if decision not made within timeframe for expedited  
22 review; directing state agencies to complete review of all permit applications in as  
23 expeditious a manner as possible; establishing reporting by executive director of  
24 Development Office to report to the Governor and the Joint Committee on Government  
25 and Finance regarding the effects of the article; and granting the Development Office  
26 procedural rule-making authority to implement the provisions of 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, and may be cited, as the "2018 Regulatory Reform Act".

**§5B-8-2. Purpose.**

1           The purpose of this article is to provide a mechanism for business and industry to secure  
2 any necessary licenses or permits, without waiving the lawful conditions of the license or permits,  
3 in an 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" means the West Virginia Development Office established pursuant  
4 to the provisions of §5B-2-1 et seq. of this code.

5           "Executive director" means 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 purposes 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. Classification as project of critical economic concern.**

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.

4           (b) The Development Office shall render a written decision on the request within 45 days  
5 of the filing and receipt of the request. When rendering a decision, the Development Office shall  
6 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 the creation of 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 but may be extended for an additional period of two years at the discretion of the executive  
15 director.

**§5B-8-5. Filing of certificate for a project of critical economic concern.**

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 at the time the necessary license  
3 or permit application required for the project is filed.

4           (b) A person may file the certificate of critical economic concern with any political  
5 subdivision that has licensing or permitting authority over the project at the time the necessary  
6 license or permit application required for the project is filed.

**§5B-8-6. Permit action by state agencies for projects of critical of 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) Upon receipt of an application accompanied by a certificate of critical economic

4 concern, the state agency shall give priority to that project in the handling and processing of permit  
5 applications.

6 (c) Within 30 days of the submission of a complete license or permit application, the state  
7 agency shall render a written report on the status of the complete license or permit application.  
8 The report shall contain information that will enable the person to make a sound business decision  
9 as to whether to continue to pursue the license or permit. The report shall be sent to the license  
10 or permit applicant and the executive director.

11 (d) If a decision has not been made regarding the permit application within three months  
12 of submission of the application, the state agency shall render a written report on the status of the  
13 permit application. Such written report shall be provided each month thereafter to the to the  
14 license or permit applicant, the appropriate cabinet secretary, executive director: *Provided*, That  
15 beginning six months after the submission of the application, the written report shall also be  
16 provided to the Governor.

**§5B-8-7. Certificates of critical economic concern not a waiver or guarantee.**

1 (a) The issuance and filing of a certificate of critical economic concern does not operate  
2 to waive any element, rule, regulation, or statute upon which the license or permit is issued or  
3 granted.

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

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

1 (a) For those projects not designated a project of critical economic concern, a state agency  
2 may establish an expedited permit fee to cover the costs of expeditious review of a permit  
3 application and a schedule by which the review of the expedited permit shall be completed.

4 (1) Any state agency establishing an expedited permit fee shall propose rules for  
5 legislative approval in accordance with §29A-3-1 *et seq.* of this code to establish the amount of  
6 the fee and the schedule by which the review of the expedited permit shall be completed.

7           (2) If, at the end of the timeframe established by the state agency, a decision has not been  
8 made on issuance of the permit, the state agency shall refund, in full, to the applicant any  
9 expedited permit fee collected at the time of the filing of the completed permit application.

10           (b) Notwithstanding the issuance of a certificate of critical economic concern from the  
11 Development Office or the payment of an expedited permit fee, a state agency shall complete a  
12 review of a permit application in as expeditious a manner as possible without compromising the  
13 integrity of the state agency's analysis of the application.

**§5B-8-9. Reporting requirements.**

14           The executive director shall prepare and submit a report to the Governor and the Joint  
15 Committee on Government and Finance on or before November 1, 2019, and November 1 each  
16 year thereafter, on the provisions of this article and shall specifically outline whether, in his or her  
17 professional opinion, the goals and duties required by this article are being accomplished.

**§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.

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