WEST VIRGINIA CODE CHAPTER 4 ARTICLE 10

WV Legislature

§4-10-1. Short title.

This article shall be known as and may be cited as the West Virginia Performance Review Act.

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§4-10-2. Legislative findings; performance review process authorized.

(a) The Legislature finds that:

(1) State government has created many state agencies without sufficient Legislative Oversight, regulatory accountability or an effective system of checks and balances;

(2) State agencies have been created without demonstrable evidence that their benefits to the public clearly justify their creation;

(3) Once established, state agencies tend to acquire permanent status, often without regard for the condition that gave rise to their establishment;

(4) State agencies have been allowed to establish rules and at times may acquire autonomy and authority inconsistent with principles of accountability;

(5) Employees of state agencies are often beyond the effective control of elected officials and efforts to encourage modernization or to review performance become difficult;

(6) Regulatory boards established pursuant to chapter thirty of this code need periodic review to ascertain the need for their continuation; and

(7) By establishing a process for the objective review of state agencies and regulatory boards, their programs, functions and activities, the Legislature may evaluate the need for their continued existence, consolidation or termination and improve government efficiency, effectiveness and accountability.

(b) The Legislature hereby authorizes a process to review the operation and performance of state agencies and regulatory boards to determine the need for their continued existence, consolidation or termination.

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§4-10-3. Definitions.

As used in this article, unless the context clearly indicates a different meaning:

"Agency" or "state agency" means a state governmental entity, including any bureau, department, division, commission, agency, committee, office, board, authority, subdivision, program, council, advisory body, cabinet, panel, system, task force, fund, compact, institution, survey, position, coalition or other entity in the state of West Virginia.

"Agency review" means a review performed on an agency at the direction of the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee pursuant to the provisions of this article.

"Committee" means the Joint Standing Committee on Government Organization.

"Compliance review" means a review for compliance with recommendations contained in a previous agency review or regulatory board review conducted pursuant to the provisions of this article and may include further inquiry of other issues as directed by the President, the Speaker, the committee, or the Joint Committee on Government and Finance.

"Department" means the departments created within the executive branch, headed by a secretary appointed by the Governor, as authorized by the Code of West Virginia.

"Department presentation" means a presentation by a department pursuant to the provisions of this article made at the direction of the President of the Senate or the Speaker of the House of Delegates.

"Division" means the Performance Evaluation and Research Division, the Post Audit Division, or any division of the Legislative Auditor's Office.

"Privatize" means a contract to procure the services of a private vendor to provide a service that is similar to, or in lieu of, a service provided by a state agency.

"Regulatory Board" means a board that regulates professions and occupations, created under the provisions of chapter 30 of this code.

"Regulatory Board Review" means a review performed on a regulatory board pursuant to the provisions of this article.

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§4-10-4. Joint Committee on Government Operations.

[Repealed.]

WV Legislature

§4-10-4a.

Repealed.

Acts, 2007 Reg. Sess., Ch. 200.

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§4-10-5. Powers and duties of the committee.

(a) To carry out the duties set forth in this article, the committee, any authorized employee of the committee, the Legislative Auditor or any employee of the division working at the direction of the committee, shall have access, including copying, to all records of every state agency in West Virginia.

(b) When furnishing information, agencies shall provide the information in the format in which it is requested, if the request is specific as to a preferred format.

(c) The committee may hold public hearings in furtherance of the purposes of this article, at such times and places within the state as desired. A member of the committee may administer oaths to persons testifying at such hearings or meetings.

(d) The committee may issue a subpoena, with the signature of either cochair of the committee and served in the manner provided by law, to summon and compel the attendance of witnesses and their examination under oath and the production of all books, papers, documents and records necessary or convenient to be examined and used by the committee in the performance of its duties.

(e) If any witness subpoenaed to appear at any hearing or meeting refuses or fails to appear or to answer questions put to him or her, or refuses or fails to produce books, papers, documents or records within his or her control when the same are demanded, the committee, in its discretion, may enforce obedience to its subpoena by attachment, fine or imprisonment, as provided in article one of this chapter, or may report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and the court shall compel obedience to the subpoena as though it had been issued by the court.

(f) Witnesses subpoenaed to attend hearings or meetings pursuant to the provisions of this article, except officers or employees of the state, shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury.

(g) The committee, subject to the approval of the Joint Committee on Government and Finance, may employ such persons as it considers necessary to carry out the duties and responsibilities under this article and may contract for outside expertise in conducting reviews.

(h) The committee may collect, and the agency or regulatory board shall promptly pay, the costs associated with conducting the reviews performed under this article, upon presentation of a statement for the costs incurred. All money received by the committee from this source shall be expended only for the purpose of covering the costs associated with such services, unless otherwise directed by the Legislature.

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§4-10-5a.

Repealed.

Acts, 2007 Reg. Sess., Ch. 200.

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§4-10-5b.

Repealed.

Acts, 2007 Reg. Sess., Ch. 200.

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§4-10-6. Department presentation; timing and scope.

(a) At the direction of the President of the Senate or the Speaker of the House of Delegates, and upon notification from the division, a department shall prepare and make a presentation to the committee. The purpose of the presentation is to inform the Legislature as to the programs, activities, and financial situation of the department and to update and amend any information previously presented to the committee pursuant to this section. The presentation shall include:

(1) A departmental chart designating each agency under the purview of the department;

(2) An analysis of the department's internal performance measures and self-assessment systems; and

(3) For each agency under the purview of the department, the following:

(A) The mission, goals, and functions of the agency;

(B) The statutory or other legal authority under which the agency operates;

(C) The number of employees of the agency for the immediate past 10 years;

(D) The budget for the agency for the immediate past 10 years;

(E) Any potential or actual loss of revenue due to operations, changes in law, or any other reason;

(F) The extent to which the agency has operated in the public interest;

(G) The extent to which the agency has complied with state personnel practices, including affirmative action requirements;

(H) The extent to which the agency has encouraged public participation in the making of its rules and decisions and has encouraged interested persons to report to it on the impact of its rules and decisions on the effectiveness, economy, and availability of services that it has provided;

(I) The efficiency with which public inquiries or complaints regarding the activities of the agency have been processed and resolved;

(J) The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency to better serve the interests of the public and to comply with the factors enumerated in this subsection; and

(K) A recommendation as to whether the agency should be continued, consolidated, or terminated.

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§4-10-6a.

Repealed.

Acts, 2007 Reg. Sess., Ch. 200.

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§4-10-7. Agency review.

(a) The division shall conduct agency reviews of one or more state agencies each year. An agency review shall be conducted of each state agency at least once every 15 years. An agency review may be conducted more frequently than once in 15 years and may be conducted in the discretion, and at the direction, of the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee.

(b) The agency review may include, but is not limited to:

(1) An identification and description of the agency under review;

(2) The number of employees of the agency for the immediate past 10 years;

(3) The budget for the agency for the immediate past 10 years;

(4) Whether the agency is effectively and efficiently carrying out its statutory duties or exercising its legal authority;

(5) Whether the activities of the agency duplicate or overlap with those of other agencies and, if so, how these activities could be consolidated;

(6) A cost-benefit analysis, as described in subsection (d) of this section, on state services that are privatized or contemplated to be privatized;

(7) An assessment of the utilization of information technology systems within the agency, including interagency and intra-agency communications;

(8) An analysis of any issues raised by any presentation by the department under whose purview the agency falls made pursuant to the provisions of this article;

(9) An analysis of any other issues as the committee, the President of the Senate, or the Speaker of the House of Delegates may direct; and

(10) A recommendation as to whether the agency under review should be continued, consolidated, or terminated.

(c) An agency may be subject to a compliance review pursuant to the provisions of this article.

(d) A cost-benefit analysis authorized by this section may include:

(1) The tangible benefits of privatizing the service;

(2) Any legal impediments that may limit or prevent privatization of the service;

(3) The availability of multiple qualified and competitive private vendors; and

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(4) A cost comparison, including total fixed and variable, direct and indirect, costs of the current governmental operation and the private vendor contract.

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§4-10-8. Schedule of departments for agency review.

[Repealed.]

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§4-10-9. Regulatory board review.

(a) The division shall conduct regulatory board reviews on each regulatory board to ascertain if there is a need for the continuation, consolidation, or termination of the regulatory board as one of its duties.

(b) A regulatory board review shall be performed on each regulatory board at least once every 12 years. A regulatory board may be subject to a compliance review pursuant to the provisions of this article.

(c) When a new regulatory board is created, a date for a regulatory board review shall be included in the act that creates the board, within 12 years of the effective date of the act.

(d) The regulatory board review may include:

(1) Whether the board complies with the policies and provisions of chapter 30 of this code and other applicable laws and rules;

(2) Whether the board follows a disciplinary procedure which observes due process rights and protects the public interest;

(3) Whether the basis or facts that necessitated the initial licensing or regulation of a profession or occupation have changed, or other conditions have arisen that would warrant increased or decreased regulation;

(4) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates;

(5) Whether statutory changes are necessary to improve board operations to enhance the public interest;

(6) An analysis of any other issues the committee, the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee.

(7) A recommendation as to whether the regulatory board under review should be continued, consolidated, or terminated.

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§4-10-10. Regulatory board review schedule.

(a) A regulatory board review is required for all regulatory boards.

(b) A regulatory board review shall be performed on each regulatory board at least once every 12 years.

(c) A regulatory board review may be conducted more frequently than once in 12 years and may be conducted in the discretion, and at the direction, of the President of the Senate or the Speaker of the House of Delegates.

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§4-10-10a.

Repealed.

Acts, 2007 Reg. Sess., Ch. 200.

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§4-10-11. Compliance review.

(a) After an agency review or a regulatory board review, if the committee finds that an agency or a regulatory board needs further review, then the committee may request a compliance review.

(b) If the committee requests a compliance review for an agency or a regulatory board, then it must state, in writing, the specific reasons for the compliance review and its expected completion date.

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§4-10-11a.

Repealed.

Acts, 2007 Reg. Sess., Ch. 200.

WV Legislature

§4-10-12. Termination of an agency or regulatory board; reestablishment of terminated agency or regulatory board.

(a) If the Legislature terminates an agency or regulatory board, then the agency or regulatory board shall continue in existence until July 1, of the next succeeding year for the purpose of winding up its affairs. Upon the expiration of one year after termination, the agency or regulatory board shall cease all activities.

(b) During the wind-up year, the impending termination may not reduce nor otherwise limit the powers or authority of that terminated agency or regulatory board.

(c) An agency that has been terminated pursuant to the provisions of this article may be reestablished by the Legislature. If the agency is reestablished by the Legislature during the wind-up year with substantially the same powers, duties or functions, then the agency is considered continued.

(d) If a regulatory board is reestablished by the Legislature during the wind-up year with substantially the same powers, duties or functions, then the regulatory board is considered continued. If a regulatory board is not reestablished by the Legislature during the wind-up year, then the regulatory board is considered terminated and the profession or occupation must apply for regulation through the sunrise process, under the provisions of this code, to be reestablished.

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§4-10-13. Disposition of agency or regulatory board assets, equipment and records after termination.

(a) On or before June 30 of the wind-up year, the terminated agency or regulatory board shall file a written statement with the Secretary of the Department of Administration and the division describing the disposition of its funds, assets, equipment and records.

(b) The division shall review the statement of the terminated agency or regulatory board and report the results of its review to the committee.

(c) Any unexpended funds of the terminated agency or regulatory board shall revert to the fund from which they were appropriated or, if that fund is abolished, to the General Revenue Fund.

(d) All remaining assets and equipment of a terminated agency or regulatory board shall be transferred to the secretary of the department of which it was a part or to the state agency for surplus property in the Department of Administration.

(e) The records of a terminated agency or regulatory board shall be deposited with the Department of Administration.

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§4-10-14. Provision for other reviews; consolidation, termination and reorganization of agencies or programs.

(a) The specifications of schedules for, and the scope of, agency and regulatory board reviews in this article shall not preclude a legislative review or reevaluation of any agency or program at other times. The joint standing committee may request a review of the performance, purpose, efficiency and effectiveness of any agency or program any time that circumstances may require, including, but not limited to, the following:

(1) Expressed or implied statutory expiration of an agency or program;

(2) Creation of new, or the amendment of existing, federal law affecting the agency or program;

(3) Redundant purposes or functions in more than one agency or program or within an agency;

(4) Completion or satisfaction of agency or program objectives;

(5) Persistent inefficiencies in the delivery of services or in the accomplishment, or lack thereof, of statutory objectives;

(6) Fiscal constraints requiring changes in staffing, resources or goals; and

(7) Changes in legislative policy or direction.

(b) Following the completion of a review by the division and the joint standing committee, with responses and comment from the subject agency or regulatory board, the joint standing committee may recommend or propose the consolidation, termination or reassignment of the agency, program or regulatory board reviewed.

(c) Nothing in this article shall be construed as limiting or interfering with the right of any member of the Legislature to introduce, or of the Legislature to enact, any bill that would terminate, consolidate or reorganize one or more state agencies or programs without a review conducted under the terms of this article.

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