

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978



ENROLLED

SENATE BILL NO. 62

(By Miss. HERNDON, Mr. HUTTMAN & Mr. GAINER)



PASSED March 10, 1978

In Effect from Passage



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Senate Bill No. 63

(By MISS HERNDON, MR. HUFFMAN and MR. GAINER)

[Passed March 10, 1978; in effect from passage.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to providing for the periodic and systematic termination of government entities and programs in the executive department of the state of West Virginia and the powers and jurisdiction of various state officials, which regulate or license, or both, certain professions, occupations or activities; providing for the continuation of such governmental entities, programs and powers and jurisdiction for a period of one year following termination and the cessation of existence, unless continued and reestablished; providing for the continuation and reestablishment of governmental entities and programs scheduled for termination for a period of time not to exceed six years; providing that all new governmental entities created shall be limited to a period of six years and shall be subject to the provisions of this article; establishing the joint committee on government operations; the powers and duties of said committee; reports by the committee; relating to preservation of rights and claims of both persons and governmental entities; and relating to the right of members of the Legislature to introduce and the Legislature to consider bills creating new governmental entities or amending laws relating to existing governmental entities.

Be it enacted by the Legislature of West Virginia:

That chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article nine, to read as follows:

ARTICLE 9. THE WEST VIRGINIA SUNSET LAW.

§4-9-1. Short title.

- 1 This article shall be known as and may be cited as the
- 2 "West Virginia Sunset Law."

§4-9-2. Legislative findings.

- 1 The Legislature finds that state governmental actions
- 2 have produced a substantial increase in the number of
- 3 governmental entities, growth of programs and prolifera-
- 4 tion of rules and regulations and that the whole process
- 5 developed without sufficient legislative oversight, regula-
- 6 tory accountability or a system of checks and balances;
- 7 that often governmental entities have been created with-
- 8 out a demonstrable need and evidence that the benefits
- 9 to the public clearly outweighed the burden which regula-
- 10 tion would foreseeably impose; that once established,
- 11 regulatory governmental entities tend to acquire a "per-
- 12 manent" status, often without regard for the condition
- 13 that originally gave rise to their establishment; that the
- 14 personnel of such entities are often beyond the effective
- 15 control of elected officials, and that efforts to force their
- 16 modernization or even to review their performance and
- 17 impact have typically proven difficult at best; that too
- 18 often, regulatory governmental entities acquire a com-
- 19 bination of autonomy and authority inconsistent with
- 20 democratic principles as well as a capacity for self-
- 21 perpetuation incompatible with principles of accounta-
- 22 bility; and that by establishing a system for the termina-
- 23 tion, continuation or reestablishment of such govern-
- 24 mental entities, the position of the Legislature to evaluate
- 25 the need for the continued existence of existing and
- 26 future regulatory governmental entities will be en-
- 27 hanced.

§4-9-3. Definitions.

- 1 (1) "Committee" means the joint committee on govern-
- 2 ment operations, hereinafter created, to perform duties
- 3 under this article.
- 4 (2) "Governmental entity" means any office, depart-
- 5 ment, board, agency, commission, bureau, authority, divi-
- 6 sion or council of the executive branch of the state of

7 West Virginia. In addition, the term "governmental
8 entity" wherever used in this article shall be construed
9 to also mean the "powers and jurisdiction" vested in
10 officers mentioned in section four of this article but not
11 the actual officers themselves.

12 (3) "Program" means a program administered by a
13 governmental entity and supported by appropriations
14 made by the Legislature.

15 (4) "Person" means any individual, partnership, cor-
16 poration, labor organization, association, personal repre-
17 sentative of a decedent, trustee, trustee in bankruptcy,
18 receiver, guardian, committee for an incompetent or
19 conservator.

§4-9-4. Termination of governmental entities or programs.

1 The following governmental entities and programs
2 shall be terminated on the dates indicated:

3 (1) On the first day of July, one thousand nine hundred
4 seventy-nine: department of archives and history; state
5 board of insurance; interstate commission on the Potomac
6 River basin; board of dental examiners; board of phar-
7 macy; board of examiners for registered professional
8 nurses; West Virginia state board of examiners for lic-
9 ensed practical nurses; board of optometry; the West
10 Virginia board of veterinary medicine; West Virginia
11 board of osteopathy; West Virginia board of chiropractic
12 examiners; West Virginia board of physical therapy; West
13 Virginia radiologic technology board of examiners; board
14 of barbers and beauticians; Negro welfare and statistic
15 bureau; Droop Mountain battlefield commission.

16 (2) On the first day of July, one thousand nine hundred
17 eighty-one: Ohio River basin commission; Ohio River
18 valley water sanitary commission; commission on post-
19 mortem examination; state commission on manpower,
20 training and technology; southern regional education
21 board; commission on uniform state laws; judicial council
22 of West Virginia; geological and economic survey commis-
23 sion; interagency council on child development service;
24 board of embalmers and funeral directors; West Virginia
25 board of architects; board of examiners of land surveyors;

26 West Virginia board of sanitarians; board of examiners
27 of psychologists; West Virginia nursing home administra-
28 tors licensing board; West Virginia board of hearing-aid
29 dealers; motor vehicle license certificate board; child wel-
30 fare licensing board.

31 (3) On the first day of July, one thousand nine hun-
32 dred eighty-three: bureau of labor and department of
33 weights and measures in the department of labor; the fol-
34 lowing divisions of the programs of the department of
35 agriculture: soil conservation committee, rural resource
36 division, meat inspection; and the following divisions of
37 programs of the department of natural resources: water
38 resources, U. S. geological survey, rabies control, work
39 incentive program; and the following boards and/or com-
40 missions: board of accountancy; West Virginia state
41 board of registration for professional engineers; board of
42 registration for foresters; West Virginia state board of
43 landscape architects; West Virginia alcohol beverage con-
44 trol licensing advisory board; driver's licensing advisory
45 board; and, the oil and gas inspector's examiner's board;
46 and any other board, agency or commission, not listed in
47 this section, but which is heretofore or hereinafter created
48 by this code.

**§4-9-5. Continuance of existence of governmental entity or
program after termination and purpose therefor;
continuance of powers and authority after termina-
tion; cessation of all activities; reestablishment of
terminated governmental entity or program.**

1 Upon termination, each governmental entity or pro-
2 gram shall continue in existence until the first day of
3 July of the next succeeding year for the purpose of wind-
4 ing up its affairs. During such year, termination shall not
5 reduce or otherwise limit the powers or authority of each
6 such governmental entity or program. Upon the expira-
7 tion of one year after termination, each such governmen-
8 tal entity or program shall cease all activities: *Provided*,
9 That a governmental entity or program which has been
10 terminated pursuant to the provisions of this article, may
11 be reestablished by the Legislature.

§4-9-6. Continuation or reestablishment of governmental entities or programs scheduled for termination; life of new governmental entities limited to six years.

1 The life of any governmental entity or program sched-
2 uled for termination under the provisions of section four
3 of this article may be continued or reestablished by the
4 Legislature for a period of time not to exceed six years.
5 Any newly created governmental entity or program
6 shall have a life not to exceed six years and shall be
7 subject to the provisions of this article respecting termi-
8 nation.

§4-9-7. Joint committee on government operations created; compensation and expenses.

1 There is hereby created a statutory body to be known
2 as the joint committe on government operations. Said
3 committee shall be composed of five members of the Sen-
4 ate, to be appointed by the president thereof, no more than
5 three of whom shall be appointed from the same political
6 party, and five members of the House of Delegates, to be
7 appointed by the speaker thereof, no more than three of
8 whom shall be appointed from the same political party.
9 The committee shall be headed by two cochairmen, one
10 to be selected by and from the members appointed from
11 the Senate, and one to be selected by and from the mem-
12 bers appointed from the House of Delegates. All mem-
13 bers of the committee shall serve until their successors
14 shall have been appointed as heretofore provided. Mem-
15 bers of the committee shall receive such compensation
16 and reimbursement for expenses in connection with per-
17 formance of interim duties between regular sessions
18 of the Legislature as may be authorized by the citizens
19 legislative compensation commission established by sec-
20 tion thirty-three, article six of the constitution of West
21 Virginia. Such compensation and expenses shall be paid
22 from an appropriation to be made expressly for the
23 committee, but if no such appropriation be made or the
24 total amount appropriated has been expended, such ex-
25 penses shall be paid from the appropriation under
26 "Account No. 103 for Joint Expenses," but no expense of
27 any kind whatever payable under said Account No. 103

28 for joint expenses shall be incurred unless first approved
29 by the joint committee on government and finance. The
30 committee shall meet upon call of the cochairmen or
31 either of them and may meet at any time, both during
32 sessions of the Legislature and in the interim.

**§4-9-8. Powers of the committee; failure of witnesses to
appear, testify or produce records; public hearings;
allowance of per diem and mileage for witnesses.**

1 In order to carry out the duties set forth in section
2 nine of this article, the committee, or any duly authorized
3 employee of the committee, shall have access to any and
4 all records of every state governmental entity or program
5 scheduled for termination under the provisions of section
6 four of this article and any new governmental entity or
7 program hereafter created.

8 In addition to its regular and special meetings, the
9 committee, or any employee duly authorized by the
10 committee, is empowered to hold public hearings in
11 furtherance of the purposes of this article, at such times
12 and places within the state as may be deemed desirable,
13 and any member of the committee, including the ex
14 officio members, shall have the power to administer oaths
15 to persons testifying at such hearings or meetings.

16 By subpoena, issued over the signature of either
17 cochairman of the committee and served in the manner
18 provided by law, the committee may summon and compel
19 the attendance of witnesses and their examination under
20 oath and the production of all books, papers, documents
21 and records necessary or convenient to be examined and
22 used by the committee in the performance of its duties.
23 If any witness subpoenaed to appear at any hearing or
24 meeting shall refuse or fail to appear or to answer ques-
25 tions put to him, or shall refuse or fail to produce books,
26 papers, documents, or records within his control when
27 the same are demanded, the committee, in its discretion,
28 may enforce obedience to its subpoena by attachment,
29 fine or imprisonment, as provided in section five, article
30 one of this chapter; or it may report the facts to the cir-
31 cuit court of Kanawha County or any other court of
32 competent jurisdiction and such court shall compel obe-

33 diance to the subpoena as though such subpoena had
34 been issued by such court in the first instance.

35 Witnesses subpoenaed to attend such hearings or
36 meetings, except officers or employees of the state, shall
37 be allowed the same mileage and per diem as is allowed
38 witnesses before any petit jury.

§4-9-9. Study and review of governmental entities and programs by the committee; performance audit.

1 (a) It shall be the duty of the committee to conduct a
2 study and review of every governmental entity or pro-
3 gram scheduled for termination to ascertain whether there
4 is a demonstrable need for the regulation of the particular
5 occupation, profession or activity by the governmental
6 entity or program under consideration; and whether the
7 benefits of such regulation to the public clearly outweigh
8 the burden which the regulation imposes.

9 In making such determinations, the committee shall
10 take into consideration among other factors the following:

11 (1) Whether the absence of regulation would signifi-
12 cantly harm or endanger the public health, safety or
13 welfare;

14 (2) Whether a reasonable relationship exists between
15 the exercise of the state's police power and the protection
16 of the public health, safety or welfare;

17 (3) Whether a less restrictive method of regulation
18 available could adequately protect the public;

19 (4) Whether, and to what degree, the regulation direct-
20 ly or indirectly increases the costs of any goods or services
21 involved;

22 (5) Whether any increase in cost is more harmful to the
23 public than the harm which would result from the absence
24 of regulation; and

25 (6) Whether all the facets of the regulatory process
26 are designed for the sole purpose of, and have as their
27 primary effect, the protection of the public.

28 Upon a determination by the committee that no demon-
29 strable need exists for the regulation of a particular
30 occupation, profession or activity by the governmental
31 entity or program under consideration or that the benefits

32 of such regulation to the public do not clearly outweigh
33 the burden which the regulation imposes, the committee
34 shall cease further inquiry regarding any such govern-
35 mental entity or program and shall report its findings to
36 the Legislature as provided in section ten of this article.

37 (b) Upon a determination by the committee that a
38 demonstrable need exists for the regulation of a particular
39 occupation, profession or activity by the governmental
40 entity or program under consideration and that the bene-
41 fits to the public of such regulation clearly outweigh the
42 burden such regulation imposes, it shall conduct a per-
43 formance audit of the governmental entity or program
44 under consideration. In conducting such audit, the com-
45 mittee shall consider all relevant factors and, among other
46 things, determine the following:

47 (1) The extent to which the governmental entity or
48 program has permitted qualified applicants to serve the
49 public;

50 (2) The extent to which affirmative action require-
51 ments of state and federal statutes and constitutions have
52 been complied with by the governmental entity or pro-
53 gram and the persons it regulates;

54 (3) The extent to which the governmental entity or
55 program has operated in the public interest and the ex-
56 tent to which its operation has been impeded or enhanced
57 by existing statutes and any other circumstances bearing
58 upon the governmental entity's or program's capacity or
59 authority to operate in the public interest, including
60 budgetary, resource and personnel matters;

61 (4) The extent to which the governmental entity or
62 program has recommended statutory changes to the Legis-
63 lature which would benefit the public as opposed to the
64 persons it regulates;

65 (5) The extent to which the governmental entity or
66 program has required the persons it regulates to report to
67 it concerning the impact of rules and decisions of the
68 entity or program on the public with respect to improve-
69 ment, economy and availability of service;

70 (6) The extent to which persons regulated by the
71 governmental entity or program have been required to

72 assess problems of their occupation, profession or activity
73 which affect the public;

74 (7) The extent to which the governmental entity or
75 program has encouraged participation by the public in
76 making its rules and decisions as opposed to participation
77 solely by the persons its regulates;

78 (8) The efficiency with which formal complaints filed
79 with the governmental entity or program concerning
80 persons subject to regulation have been processed to
81 completion;

82 (9) The extent to which the governmental entity or
83 program has caused an unnecessary burden on any of the
84 persons it regulates by its rules, regulations and proce-
85 dures with particular attention being given to require-
86 ments for formal hearings, publication of legal notices,
87 examinations, production of records, making reports; and
88 delays in action by the entity or program in scheduling
89 consideration and rendering decisions on petitions and
90 applications.

91 (c) The joint committee on government operations
92 may employ such persons, skilled in the field of perfor-
93 mance audit, as it may deem necessary to carry out its
94 duties and responsibilities under this section.

§4-9-10. Reports by the committee.

1 The committee shall complete its deliberations with
2 respect to any governmental entity or program scheduled
3 to be terminated and make a report thereon to the Legis-
4 lature not later than ten days after the Legislature con-
5 venes in regular session in the year prior to the scheduled
6 termination for the entity or program: *Provided*, That
7 any such report required in the year one thousand nine
8 hundred eighty and every fourth year thereafter shall
9 be made not later than ten days after the Legislature
10 convenes on the second Wednesday in February. Such
11 report shall consist of a full and complete analysis of the
12 governmental entity or program including the need for
13 regulation in the public interest, the benefits to the public
14 as opposed to the burden on the public and the persons
15 regulated and such other matters as are expressly man-

16 dated to be considered by the committee as set forth in
17 section nine of this article, together with the recommenda-
18 tions of the committee. The committee shall make one
19 of three recommendations: (1) The governmental entity
20 or program be terminated as scheduled, (2) the govern-
21 mental entity or program be continued and reestablished
22 or (3) the governmental entity or program be continued
23 and reestablished but the statutes governing the entity
24 should be amended in specific ways to correct discrimina-
25 tory practices and procedures, burdensome rules and
26 regulations, lack of protection of the public interest,
27 inefficiency, overlapping of jurisdiction with other gov-
28 ernmental entities, unwarranted exercise of authority
29 either in law or in fact and any other deficiencies.

30 Copies of such reports shall be made immediately
31 available to all members of the Legislature, to the gov-
32 ernmental entity or program which is the subject of the
33 report and the public generally. A copy of each report
34 shall be formally filed by the committee with the clerk
35 of each house.

**§4-9-11. Bill for continuation and reestablishment of govern-
mental entity.**

1 In the event the committee recommends the continua-
2 tion and reestablishment of such governmental entity or
3 program, its report shall be accompanied by a bill origi-
4 nating in such standing committee to effectuate its
5 recommendation.

6 No bill shall provide for the continuation and re-
7 establishment of more than one governmental entity or
8 program.

§4-9-12. Preservation of rights and claims.

1 Nothing in this article shall be construed as adversely
2 affecting any right or claim by any person against a
3 governmental entity or program or by any governmental
4 entity or program against any person. Responsibility for
5 prosecuting or defending any such rights or claims should
6 the Legislature fail to continue and reestablish a govern-
7 mental entity or program within one year after its termi-
8 nation shall be assumed by the attorney general of the
9 state.

§4-9-13. Not to be construed as limiting new legislation.

1 Nothing in this article shall be construed as limiting
2 or interfering with the right of any member of the
3 Legislature to introduce or the Legislature from con-
4 sidering any bill that would create a new state govern-
5 mental entity or program or amend the law with respect to
6 an existing one.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence L. Chubb
Chairman House Committee

Originated in the Senate.

To take effect from passage.

J. C. Dillon, Jr.
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. T. Brathwaite, Jr.
President of the Senate

Donald L. Lopp
Speaker House of Delegates

The within is disapproved this the 24
day of March, 1978.

John J. Rorhiller
Governor



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SECY. OF STATE