WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

ENROLLED
SENATE BILL NO. 63

(By Miss Henderson, Mr. Huffman and Geiner)

PASSED December 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 proliferation
4 of rules and regulations and that the whole process
5 developed without sufficient legislative oversight, regulatory
6 accountability or a system of checks and balances;
7 that often governmental entities have been created without
8 a demonstrable need and evidence that the benefits
9 to the public clearly outweighed the burden which regulation
10 would foreseeably impose; that once established,
11 regulatory governmental entities tend to acquire a "permanent" status, often without regard for the condition
12 that originally gave rise to their establishment; that the
13 personnel of such entities are often beyond the effective
14 control of elected officials, and that efforts to force their
15 modernization or even to review their performance and
16 impact have typically proven difficult at best; that too
17 often, regulatory governmental entities acquire a combination of autonomy and authority inconsistent with
18 democratic principles as well as a capacity for self-perpetuation incompatible with principles of accountability;
19 and that by establishing a system for the termination, continuation or reestablishment of such governmental entities, the position of the Legislature to evaluate
20 the need for the continued existence of existing and
21 future regulatory governmental entities will be enhanced.

§4-9-3. Definitions.

1 (1) "Committee" means the joint committee on government operations, hereinafter created, to perform duties
2 under this article.
3 (2) "Governmental entity" means any office, department, board, agency, commission, bureau, authority, division or council of the executive branch of the state of
West Virginia. In addition, the term “governmental entity” wherever used in this article shall be construed to also mean the “powers and jurisdiction” vested in officers mentioned in section four of this article but not the actual officers themselves.

(3) “Program” means a program administered by a governmental entity and supported by appropriations made by the Legislature.

(4) “Person” means any individual, partnership, corporation, labor organization, association, personal representative of a decedent, trustee, trustee in bankruptcy, receiver, guardian, committee for an incompetent or conservator.

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

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

(1) On the first day of July, one thousand nine hundred seventy-nine: department of archives and history; state board of insurance; interstate commission on the Potomac River basin; board of dental examiners; board of pharmacy; board of examiners for registered professional nurses; West Virginia state board of examiners for licensed practical nurses; board of optometry; the West Virginia board of veterinary medicine; West Virginia board of osteopathy; West Virginia board of chiropractic examiners; West Virginia board of physical therapy; West Virginia radiologic technology board of examiners; board of barbers and beauticians; Negro welfare and statistic bureau; Droop Mountain battlefield commission.

(2) On the first day of July, one thousand nine hundred eighty-one: Ohio River basin commission; Ohio River valley water sanitary commission; commission on postmortem examination; state commission on manpower, training and technology; southern regional education board; commission on uniform state laws; judicial council of West Virginia; geological and economic survey commission; interagency council on child development service; board of embalmers and funeral directors; West Virginia board of architects; board of examiners of land surveyors;
West Virginia board of sanitarians; board of examiners of psychologists; West Virginia nursing home administrators licensing board; West Virginia board of hearing-aid dealers; motor vehicle license certificate board; child welfare licensing board.

(3) On the first day of July, one thousand nine hundred eighty-three: bureau of labor and department of weights and measures in the department of labor; the following divisions of the programs of the department of agriculture: soil conservation committee, rural resource division, meat inspection; and the following divisions of programs of the department of natural resources: water resources, U. S. geological survey, rabies control, work incentive program; and the following boards and/or commissions: board of accountancy; West Virginia state board of registration for professional engineers; board of registration for foresters; West Virginia state board of landscape architects; West Virginia alcohol beverage control licensing advisory board; driver's licensing advisory board; and, the oil and gas inspector's examiner's board; and any other board, agency or commission, not listed in this section, but which is heretofore or hereinafter created 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 termination; cessation of all activities; reestablishment of terminated governmental entity or program.

Upon termination, each governmental entity or program shall continue in existence until the first day of July of the next succeeding year for the purpose of winding up its affairs. During such year, termination shall not reduce or otherwise limit the powers or authority of each such governmental entity or program. Upon the expiration of one year after termination, each such governmental entity or program shall cease all activities: Provided, That a governmental entity or program which has been terminated pursuant to the provisions of this article, may 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.

The life of any governmental entity or program scheduled for termination under the provisions of section four of this article may be continued or reestablished by the Legislature for a period of time not to exceed six years. Any newly created governmental entity or program shall have a life not to exceed six years and shall be subject to the provisions of this article respecting termination.

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

There is hereby created a statutory body to be known as the joint committee on government operations. Said committee shall be composed of five members of the Senate, to be appointed by the president thereof, no more than three of whom shall be appointed from the same political party, and five members of the House of Delegates, to be appointed by the speaker thereof, no more than three of whom shall be appointed from the same political party. The committee shall be headed by two cochairmen, one to be selected by and from the members appointed from the Senate, and one to be selected by and from the members appointed from the House of Delegates. All members of the committee shall serve until their successors shall have been appointed as heretofore provided. Members of the committee shall receive such compensation and reimbursement for expenses in connection with performance of interim duties between regular sessions of the Legislature as may be authorized by the citizens legislative compensation commission established by section thirty-three, article six of the constitution of West Virginia. Such compensation and expenses shall be paid from an appropriation to be made expressly for the committee, but if no such appropriation be made or the total amount appropriated has been expended, such expenses shall be paid from the appropriation under “Account No. 103 for Joint Expenses,” but no expense of any kind whatever payable under said Account No. 103
for joint expenses shall be incurred unless first approved by the joint committee on government and finance. The committee shall meet upon call of the cochairmen or either of them and may meet at any time, both during 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.

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

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

By subpoena, issued over the signature of either cochairman of the committee and served in the manner provided by law, the committee may 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. If any witness subpoenaed to appear at any hearing or meeting shall refuse or fail to appear or to answer questions put to him, or shall refuse or fail to produce books, papers, documents, or records within his 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 section five, article one of this chapter; or it may report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court shall compel obe-
diance to the subpoena as though such subpoena had been issued by such court in the first instance.

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

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

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

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

1. Whether the absence of regulation would significantly harm or endanger the public health, safety or welfare;

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

3. Whether a less restrictive method of regulation available could adequately protect the public;

4. Whether, and to what degree, the regulation directly or indirectly increases the costs of any goods or services involved;

5. Whether any increase in cost is more harmful to the public than the harm which would result from the absence of regulation; and

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

Upon a determination by the committee that no demonstrable need exists for the regulation of a particular occupation, profession or activity by the governmental entity or program under consideration or that the benefits
of such regulation to the public do not clearly outweigh
the burden which the regulation imposes, the committee
shall cease further inquiry regarding any such govern-
mental entity or program and shall report its findings to
the Legislature as provided in section ten of this article.

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

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

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

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

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

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

(6) The extent to which persons regulated by the
governmental entity or program have been required to
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(7) The extent to which the governmental entity or program has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates;

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

(9) The extent to which the governmental entity or program has caused an unnecessary burden on any of the persons it regulates by its rules, regulations and procedures with particular attention being given to requirements for formal hearings, publication of legal notices, examinations, production of records, making reports; and delays in action by the entity or program in scheduling consideration and rendering decisions on petitions and applications.

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

§4-9-10. Reports by the committee.

The committee shall complete its deliberations with respect to any governmental entity or program scheduled to be terminated and make a report thereon to the Legislature not later than ten days after the Legislature convenes in regular session in the year prior to the scheduled termination for the entity or program: Provided, That any such report required in the year one thousand nine hundred eighty and every fourth year thereafter shall be made not later than ten days after the Legislature convenes on the second Wednesday in February. Such report shall consist of a full and complete analysis of the governmental entity or program including the need for regulation in the public interest, the benefits to the public as opposed to the burden on the public and the persons regulated and such other matters as are expressly man-
dated to be considered by the committee as set forth in
section nine of this article, together with the recommenda-
tions of the committee. The committee shall make one
of three recommendations: (1) The governmental entity
or program be terminated as scheduled, (2) the govern-
mental entity or program be continued and reestablished
or (3) the governmental entity or program be continued
and reestablished but the statutes governing the entity
should be amended in specific ways to correct discrimina-
tory practices and procedures, burdensome rules and
regulations, lack of protection of the public interest,
inefficiency, overlapping of jurisdiction with other gov-
ernmental entities, unwarranted exercise of authority
either in law or in fact and any other deficiencies.
Copies of such reports shall be made immediately
available to all members of the Legislature, to the gov-
ernmental entity or program which is the subject of the
report and the public generally. A copy of each report
shall be formally filed by the committee with the clerk
of each house.
§4-9-11. Bill for continuation and reestablishment of govern-
mental entity.
In the event the committee recommends the continua-
and reestablishment of such governmental entity or
program, its report shall be accompanied by a bill origi-
nating in such standing committee to effectuate its
recommendation.
No bill shall provide for the continuation and re-
establishment of more than one governmental entity or
program.
§4-9-12. Preservation of rights and claims.
Nothing in this article shall be construed as adversely
affecting any right or claim by any person against a
governmental entity or program or by any governmental
entity or program against any person. Responsibility for
prosecuting or defending any such rights or claims should
the Legislature fail to continue and reestablish a govern-
mental entity or program within one year after its termi-
nation shall be assumed by the attorney general of the
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

Chairman House Committee

Originated in the Senate.

To take effect from passage.

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

Clerk of the House of Delegates

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

Donald L. Ziegler
Speaker House of Delegates

The within [indispatched] this the 24th day of March, 1978.

John J. Begley
Governor