WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

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ENROLLED
Committee Substitute for
HOUSE BILL No. 825

(By Miss. Human and Mr. Green)

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Passed February 2, 1979
In Effect ninety days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 825

(By Miss Shuman and Mr. Greer)

[Passed February 2, 1979; in effect ninety days 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 ten, relating to providing for the periodic and systematic termination of governmental entities and programs in the state of West Virginia and the powers and jurisdiction of such governmental entities and programs; performance and fiscal audits; 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; establishing the joint committee on government operations; the powers and duties of said committee; subpoenas; enforcement of subpoenas; penalties; 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 ten, to read as follows:

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-1. Short title.

1 This article shall be known as and may be cited as the “West Virginia Sunset Law.”

§4-10-2. Legislative findings.

1 The Legislature finds that state governmental actions have produced a substantial increase in the number of governmental entities, growth of programs and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability or a system of checks and balances; that often governmental entities have been created without a demonstrable need and evidence that the benefits to the public clearly justify their creation; that once established, governmental entities tend to acquire a “permanent” status, often without regard for the condition that originally gave rise to their establishment; that the personnel of such entities are often beyond the effective control of elected officials, and that efforts to force their modernization or even to review their performance and impact have typically proven difficult at best; that too often, governmental entities acquire a combination of autonomy and authority inconsistent with democratic principles as well as a capacity for self-perpetuation incompatible with principles of accountability; and that by establishing a system for the termination, continuation or reestablishment of such governmental entities, the position of the Legislature to evaluate the need for the continued existence of existing and future governmental entities will be enhanced.

§4-10-3. Definitions.

1 As used in this article, unless the context clearly indicates a different meaning:
(1) "Committee" means the joint committee on government operations, hereinafter created, to perform duties under this article.

(2) "Governmental entity" means any office, department, board, agency, commission, bureau, authority, division or council 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.

§4-10-4. Termination of governmental entities or programs.

The following governmental entities and programs shall be terminated on the dates indicated but no governmental entity or program shall be terminated under this article unless a performance and fiscal audit has been conducted of such entity or program, except as authorized under section fourteen of this article:

(1) On the first day of July, one thousand nine hundred eighty-five; division of archives and history; state board of insurance; interstate commission on the Potomac River basin.

(2) On the first day of July, one thousand nine hundred eighty-two; Ohio River basin commission; Ohio River valley water sanitation 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; motor vehicle license certificate appeal board; child welfare licensing board.
(3) On the first day of July, one thousand nine hundred eighty-four, 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; West Virginia alcoholic beverage control licensing advisory board; driver's licensing advisory board; oil and gas inspectors' examining board.

§4-10-5. 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.

§4-10-6. Continuation or reestablishment of governmental entities or programs scheduled for termination.

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.

§4-10-7. 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; 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; and five citizens of this state who are not legislators, public officials or public employees, to be appointed by the governor to serve at his will and pleasure, not more than three of whom shall be appointed from the same political party, and at least one of whom shall reside in each congressional district of this state. All citizen members shall sign a conflict of interest statement. The committee shall be headed by two cochairmen, one to be selected by the president of the Senate from the members appointed from the Senate, and one to be selected by the speaker of the House of Delegates 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. Each citizen member of the committee shall receive thirty-five dollars per diem for each day or substantial portion thereof that he is engaged in the work of the committee, in addition to reimbursement for his necessary expenses incurred in the performance of his duties under this article, such reimbursement to be subject to the same limitations as govern the expenses of the legislative members of the committee. 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.
§4-10-8. 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.

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 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 obedience 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.
§4-10-9. Performance and fiscal audits of governmental entities and programs by the committee; performance audits.

It shall be the duty of the committee to conduct a performance and fiscal audit of every governmental entity or program scheduled for termination to ascertain whether there is a demonstrable need for the continuation of the particular entity or program under consideration, and whether the entity or program should be continued.

Following a performance and fiscal audit, as hereinafter provided, the committee shall cease further inquiry regarding any such governmental entity or program and shall report its findings and recommendations to the Legislature as provided in section ten of this article.

In conducting such performance and fiscal audits, the committee shall consider all relevant factors and, among other things, determine the following:

(1) The nature of the objectives intended for the program or entity and the problem or need which it was intended to address, the extent to which the objectives have been achieved, and any activities of the entity or program in addition to those granted by statute and the authority for these activities;

(2) The extent to which the governmental entity or program has operated in the public interest and the extent 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;

(3) The extent to which the jurisdiction of the entity or program duplicates those of other entities and programs and the extent to which the entity or program or its activities could be consolidated with others;

(4) The efficiency with which the agency operates;

(5) The extent to which the governmental entity or program has recommended statutory changes to the Legislature which would benefit the public;
(6) The extent to which the entity or program issues and enforces rules relating to potential conflicts of interest of its employees;

(7) The extent to which affirmative action requirements of state and federal statutes and constitutions have been complied with by the governmental entity or program;

(8) The extent to which the governmental entity or program has encouraged participation by the public in making its decisions;

(9) The impact in terms of federal intervention or loss of federal funds if the agency is abolished;

(10) The extent to which the governmental entity or program has caused an unnecessary burden on any citizen or other governmental entity or program by its decisions and activities.

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.

§4-10-10. 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 of the scheduled termination for the entity or program. Provided, That any such report required in the year one thousand nine hundred eighty-one 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 the governmental entity or program, the benefits to the public as opposed to the burden on the public and such other matters as are expressly mandated to be considered by the committee as set forth in section nine of this article, together with the recommendations of the committee. The committee shall make one
of three recommendations: (1) The governmental entity or program be terminated as scheduled, (2) the governmental 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 discriminatory practices and procedures, burdensome rules and regulations, lack of protection of the public interest, inefficiency, overlapping of jurisdiction with other governmental 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 governmental 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.

§4-10-11. Bill for continuation and reestablishment of governmental entity.

In the event the committee recommends the continuation and reestablishment of such governmental entity or program, its report shall be accompanied by a bill originating in such standing committee to effectuate its recommendation. No bill shall provide for the continuation and reestablishment of more than one governmental entity or program.

§4-10-12. 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 governmental entity or program within one year after its termination shall be assumed by the attorney general of the state.

§4-10-13. Not to be construed as limiting new legislation.

Nothing in this article shall be construed as limiting or interfering with the right of any member of the Legislature to introduce or the Legislature from considering any bill that would create a new state governmental entity or program or amend the law with respect to an existing one.
§4-10-14. Immediate termination of certain governmental entities.

(a) The Legislature finds that the following governmental entities or programs are inactive and unnecessary and should not be continued:

(1) The commission on energy, economy and environment, created in article seventeen, chapter five of this code;

(2) The bureau of negro welfare and statistics, created in article five, chapter twenty-nine of this code;

(3) The Droop mountain battlefield commission, created in section one, article four, chapter twenty of this code;

(4) The Prickett's Fort state park commission, created in section one, article four, chapter twenty of this code;

(5) The Point Pleasant battle monument commission, created in section one, article four, chapter twenty of this code;

(6) The Philippi battlefield memorial commission, created in section one, article four, chapter twenty of this code; and

(7) The mining council, created in section two, article six-b, chapter twenty of this code.

(b) The governmental entities or programs listed in subsection (a) of this section shall be terminated on the first day of July, one thousand nine hundred seventy-nine.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Chas. A. Christman  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. Catillon, Jr.  
Clerk of the Senate

[Signature]  
Clerk of the House of Delegates

[Signature]  
President of the Senate

[Signature]  
Speaker House of Delegates

The within is approved this the 5th day of February, 1979.

[Signature]  
Governor