

Date 2-8-79

Time 1:15 p.m.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979



ENROLLED

Committee Substitute for
HOUSE BILL No. 825

(By *Miss Shuman & Mr. Beer*)



Passed February 2, 1979

In Effect ninety days from Passage



No. 825

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
2 "West Virginia Sunset Law."

§4-10-2. Legislative findings.

1 The Legislature finds that state governmental actions have
2 produced a substantial increase in the number of governmental
3 entities, growth of programs and proliferation of rules and
4 regulations and that the whole process developed without suf-
5 ficient legislative oversight, regulatory accountability or a
6 system of checks and balances; that often governmental en-
7 tities have been created without a demonstrable need and
8 evidence that the benefits to the public clearly justify their
9 creation; that once established, governmental entities tend to
10 acquire a "permanent" status, often without regard for the
11 condition that originally gave rise to their establishment; that
12 the personnel of such entities are often beyond the effective
13 control of elected officials, and that efforts to force their
14 modernization or even to review their performance and impact
15 have typically proven difficult at best; that too often, govern-
16 mental entities acquire a combination of autonomy and au-
17 thority inconsistent with democratic principles as well as
18 a capacity for self-perpetuation incompatible with principles
19 of accountability; and that by establishing a system for the
20 termination, continuation or reestablishment of such govern-
21 mental entities, the position of the Legislature to evaluate
22 the need for the continued existence of existing and future
23 governmental entities will be enhanced.

§4-10-3. Definitions.

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

3 (1) "Committee" means the joint committee on govern-
4 ment operations, hereinafter created, to perform duties under
5 this article.

6 (2) "Governmental entity" means any office, department,
7 board, agency, commission, bureau, authority, division or
8 council of the state of West Virginia. In addition, the term
9 "governmental entity" wherever used in this article shall be
10 construed to also mean the "powers and jurisdiction" vested
11 in officers mentioned in section four of this article but not the
12 actual officers themselves.

13 (3) "Program" means a program administered by a govern-
14 mental entity and supported by appropriations made by the
15 Legislature.

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

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

1 The following governmental entities and programs shall be
2 terminated on the dates indicated but no governmental entity
3 or program shall be terminated under this article unless a per-
4 formance and fiscal audit has been conducted of such entity
5 or program, except as authorized under section fourteen of
6 this article:

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

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10 (2) On the first day of July, one thousand nine hundred
11 eighty-two; Ohio River basin commission; Ohio River valley
12 water sanitation commission; commission on postmortem
13 examination; state commission on manpower, training and
14 technology; southern regional education board; commission on
15 uniform state laws; judicial council of West Virginia; geo-
16 logical and economic survey commission; interagency council
17 on child development service; motor vehicle license certificate
18 appeal board; child welfare licensing board.

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19 (3) On the first day of July, one thousand nine hundred
20 eighty-four; bureau of labor and department of weights and
21 measures in the department of labor; the following divisions
22 of the programs of the department of agriculture: Soil conser-
23 vation committee, rural resource division, meat inspection;
24 and the following divisions of programs of the department of
25 natural resources: Water resources, U. S. geological survey,
26 rabies control, work incentive program; West Virginia alcoholic
27 beverage control licensing advisory board; driver's licensing
28 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.

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

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

1 The life of any governmental entity or program scheduled
2 for termination under the provisions of section four of this
3 article may be continued or reestablished by the Legislature
4 for a period of time not to exceed six years.

§4-10-7. Joint committee on government operations created; compensation and expenses.

1 There is hereby created a statutory body to be known as the
2 joint committee on government operations. Said committee
3 shall be composed of five members of the Senate, to be ap-
4 pointed by the president thereof, no more than three of

5 whom shall be appointed from the same political party; five
6 members of the House of Delegates, to be appointed by the
7 Speaker thereof, no more than three of whom shall be appoint-
8 ed from the same political party; and five citizens of this state
9 who are not legislators, public officials or public employees,
10 to be appointed by the governor to serve at his will and
11 pleasure, not more than three of whom shall be appointed from
12 the same political party, and at least one of whom shall reside
13 in each congressional district of this state. All citizen members
14 shall sign a conflict of interest statement. The committee shall
15 be headed by two cochairmen, one to be selected by the
16 president of the Senate from the members appointed from the
17 Senate, and one to be selected by the speaker of the House of
18 Delegates from the members appointed from the House of
19 Delegates. All members of the committee shall serve until
20 their successors shall have been appointed as heretofore pro-
21 vided. Members of the committee shall receive such compen-
22 sation and reimbursement for expenses in connection with
23 performance of interim duties between regular sessions of the
24 Legislature as may be authorized by the citizens legislative
25 compensation commission established by section thirty-three,
26 article six of the constitution of West Virginia. Each citizen
27 member of the committee shall receive thirty-five dollars
28 per diem for each day or substantial portion thereof that he is
29 engaged in the work of the committee, in addition to reim-
30 bursement for his necessary expenses incurred in the perfor-
31 mance of his duties under this article, such reimbursement to
32 be subject to the same limitations as govern the expenses of
33 the legislative members of the committee. Compensation and
34 expenses shall be paid from an appropriation to be made
35 expressly for the committee, but if no such appropriation be
36 made or the total amount appropriated has been expended,
37 such expenses shall be paid from the appropriation under
38 "Account No. 103 for Joint Expenses," but no expense of any
39 kind whatever payable under said Account No. 103 for joint
40 expenses shall be incurred unless first approved by the joint
41 committee on government and finance. The committee shall
42 meet upon call of the cochairmen or either of them and may
43 meet at any time, both during sessions of the Legislature and
44 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.

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

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

14 By subpoena, issued over the signature of either cochairman
15 of the committee and served in the manner provided by law,
16 the committee may summon and compel the attendance of
17 witnesses and their examination under oath and the production
18 of all books, papers, documents and records necessary or con-
19 venient to be examined and used by the committee in the per-
20 formance of its duties. If any witness subpoenaed to appear at
21 any hearing or meeting shall refuse or fail to appear or to
22 answer questions put to him, or shall refuse or fail to produce
23 books, papers, documents or records within his control when
24 the same are demanded, the committee, in its discretion, may
25 enforce obedience to its subpoena by attachment, fine or im-
26 prisonment, as provided in section five, article one of this
27 chapter; or it may report the facts to the circuit court of Ka-
28 nawha County or any other court of competent jurisdiction
29 and such court shall compel obedience to the subpoena as
30 though such subpoena had been issued by such court in the
31 first instance.

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

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

1 It shall be the duty of the committee to conduct a perfor-
2 mance and fiscal audit of every governmental entity or program
3 scheduled for termination to ascertain whether there is a de-
4 monstrable need for the continuation of the particular entity or
5 program under consideration, and whether the entity or pro-
6 gram should be continued.

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

12 In conducting such performance and fiscal audits, the com-
13 mittee shall consider all relevant factors and, among other
14 things, determine the following:

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

20 (2) The extent to which the governmental entity or program
21 has operated in the public interest and the extent to which its
22 operation has been impeded or enhanced by existing statutes
23 and any other circumstances bearing upon the governmental
24 entity's or program's capacity or authority to operate in the
25 public interest, including budgetary, resource and personnel
26 matters;

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

31 (4) The efficiency with which the agency operates;

32 (5) The extent to which the governmental entity or program
33 has recommended statutory changes to the Legislature which
34 would benefit the public;

35 (6) The extent to which the entity or program issues and
36 enforces rules relating to potential conflicts of interest of its
37 employees;

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

41 (8) The extent to which the governmental entity or program
42 has encouraged participation by the public in making its de-
43 cisions;

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

46 (10) The extent to which the governmental entity or pro-
47 gram has caused an unnecessary burden on any citizen or
48 other governmental entity or program by its decisions and
49 activities.

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

§4-10-10. Reports by the committee.

1 The committee shall complete its deliberations with respect
2 to any governmental entity or program scheduled to be termi-
3 nated and make a report thereon to the Legislature not later
4 than ten days after the Legislature convenes in regular session
5 in the year of the scheduled termination for the entity or
6 program: *Provided*, That any such report required in the year
7 one thousand nine hundred eighty-one and every fourth year
8 thereafter shall be made not later than ten days after the Legis-
9 lature convenes on the second Wednesday in February. Such
10 report shall consist of a full and complete analysis of the gov-
11 ernmental entity or program including the need for the govern-
12 mental entity or program, the benefits to the public as opposed
13 to the burden on the public and such other matters as are
14 expressly mandated to be considered by the committee as set
15 forth in section nine of this article, together with the recom-
16 mendations of the committee. The committee shall make one

17 of three recommendations: (1) The governmental entity or
18 program be terminated as scheduled, (2) the governmental
19 entity or program be continued and reestablished or (3) the
20 governmental entity or program be continued and reestablished,
21 but the statutes governing the entity should be amended in
22 specific ways to correct discriminatory practices and proce-
23 dures, burdensome rules and regulations, lack of protection of
24 the public interest, inefficiency, overlapping of jurisdiction with
25 other governmental entities, unwarranted exercise of authority
26 either in law or in fact and any other deficiencies.

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27 Copies of such reports shall be made immediately available
28 to all members of the Legislature, to the governmental entity or
29 program which is the subject of the report and the public
30 generally. A copy of each report shall be formally filed by the
31 committee with the clerk of each house.

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

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

5 No bill shall provide for the continuation and reestablish-
6 ment of more than one governmental entity or program.

§4-10-12. 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 govern-
3 mental entity or program or by any governmental entity or
4 program against any person. Responsibility for prosecuting or
5 defending any such rights or claims should the Legislature
6 fail to continue and reestablish a governmental entity or pro-
7 gram within one year after its termination shall be assumed
8 by the attorney general of the state.

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

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

§4-10-14. Immediate termination of certain governmental entities.

1 (a) The Legislature finds that the following govern-
2 mental entities or programs are inactive and unnecessary and
3 should not be continued:

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

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

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

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

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

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

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

20 (b) The governmental entities or programs listed in sub-
21 section (a) of this section shall be terminated on the first
22 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

Rowan M. Christian
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

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

V. Blankenship
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 8
day of February, 1979.

[Signature]
Governor

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