WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1993

ENROLLED

HOUSE BILL No. 2740

(By Delegates Martin, Love, Michael, Fragle, Beck, Higgins and Williams)

Passed ........................................ April 19, 1993

In Effect ..................................... July 1, 1993
AN ACT to amend and reenact article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia sunset law; outlining need for legislative oversight of state government; establishing termination schedule for departments, agencies or boards following performance audits, financial audits, and preliminary performance reviews; outlining powers of departments, agencies or boards following termination; requiring acts which create new departments, agencies or boards to include termination provisions; outlining membership, compensation, powers and duties of joint committee on government operations; permitting joint committee on government operations to collect auditing or reviewing costs from departments, agencies or boards; establishing criteria for performance audits, financial audits and preliminary performance reviews; permitting joint committee on government operations to alter termination schedule; requiring reports by the committee; and establishing criteria for bills continuing or reestablishing departments, agencies or boards.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
§4-10-1. Short title.

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

§4-10-2. Legislative findings.

The Legislature finds that state governmental actions have produced substantial increases in the number of governmental entities, growth in the number of governmental programs, proliferation of rules and regulations, and that the process developed without sufficient legislative oversight, regulatory accountability or an effective system of checks and balances; that governmental entities have been created without demonstrable evidence that their benefits to the public clearly justify their creation; that once established, governmental entities tend to acquire permanent status, often without regard for the condition which gave rise to their establishment; that the personnel of such entities are often beyond the effective control of elected officials, and efforts to encourage modernization or even to review performance have typically proven difficult at best; that too often, governmental entities acquire a combination of autonomy and authority inconsistent with democratic principles and acquire 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.

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) “Department” means any office or division, headed by a gubernatorial appointee, within the state of West Virginia.
§4-10-4. Termination of departments, agencies or boards following performance audits.
The following departments, agencies or boards shall be terminated on the date indicated, but no department, agency or board shall be terminated under this section unless a performance audit has been conducted upon such department, agency or board:

(1) On the first day of July, one thousand nine hundred ninety-four: Division of labor; division of tourism and parks; division of corrections; division of natural resources; and division of highways.

(2) On the first day of July, one thousand nine hundred ninety-five: Division of environmental protection.

(3) On the first day of July, one thousand nine hundred ninety-six: Division of culture and history; division of personnel.

(4) On the first day of July, one thousand nine hundred ninety-seven: Department of health and human resources.

§4-10-5. Termination of agencies or boards following preliminary performance reviews.

The following agencies or boards shall be terminated on the date indicated, but no agency or board shall be terminated under this section unless a preliminary performance review has been conducted upon such agency or board:

(1) On the first day of July, one thousand nine hundred ninety-four: State water resources board; office of water resources of the division of environmental protection; farm management commission; West Virginia ethics commission; family law masters system; child advocate office of the department of health and human resources; family protection services board; state structural barriers compliance board; board of architects; state building commission; oil and gas inspectors' examining board; public employees insurance agency; public employees insurance agency finance board; Ohio River valley water sanitation commission; veteran's council; share in your future commission; southern
(2) On the first day of July, one thousand nine hundred ninety-five: Emergency medical services advisory council; commission on charitable organizations; information system advisory commission; West Virginia labor-management council; board of social work examiners; the rural health initiative advisory panel; and the marketing and development divisions of the department of agriculture.

(3) On the first day of July, one thousand nine hundred ninety-six: U.S. geological survey program and whitewater commission within the division of natural resources; state geological and economic survey; and the board of investments.

(4) On the first day of July, one thousand nine hundred ninety-seven: The driver's licensing advisory board; West Virginia health care cost review authority; governor's cabinet on children and families; oil and gas conservation commission; and the West Virginia contractors' licensing board.

(5) On the first day of July, one thousand nine hundred ninety-eight: State lottery commission; the following divisions or programs of the department of agriculture: Meat inspection program and soil conservation committee; women's commission; state board of risk and insurance management; board of examiners of land surveyors; commission on uniform state laws; council of finance and administration; forest management review commission; West Virginia's membership in the interstate commission on the Potomac River basin; legislative oversight commission on education accountability; and the board of examiners in counseling; board of examiners in speech pathology and audiology.

(6) On the first day of July, one thousand nine hundred ninety-nine: Board of banking and financial institutions; capitol building commission; tree fruit industry self-improvement assessment program; and the public service commission.
§4-10-6. Continuance of department, agency or board after termination and purpose thereof; continuance of powers and authority after termination; cessation of all activities; reestablishment of terminated department, agency or board.

Upon termination, each department, agency or board shall continue in existence until the first day of July of the next succeeding year for the purpose of winding up its affairs. During that year, the impending termination shall not reduce or otherwise limit the powers or authority of that terminated department, agency or board. Any funds for such department, agency or board shall revert to the fund from which they were appropriated or, if that fund is abolished, to the General Revenue Fund. Upon the expiration of one year after termination, the department, agency or board shall cease all activities: Provided, That a department, agency or board which has been terminated pursuant to the provisions of this article, may be reestablished by the Legislature, and if reestablished by the legislature during the winding-up period with substantially the same powers, duties, or functions, the department, agency or board shall be deemed to have been continued.

§4-10-7. Continuation or reestablishment of departments, agencies, or boards scheduled for termination.

The life of any department, agency, or board scheduled for termination under this section may be continued or reestablished by the legislature for a period of time not to exceed six years.

Any act which creates a new department, agency, or board and which is enacted after the effective date of this article shall provide for termination and review of the newly-created department, agency or board pursuant to this article within six years after the effective date of the act which creates the department, agency or board.

§4-10-8. Joint committee on government operations continued; membership; compensation and expenses; meetings.
The joint committee on government operations, heretofore created, is hereby continued. The 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:

Provided, That in the event the membership of a political party is less than fifteen percent in the House of Delegates or Senate, that the membership of that political party from the legislative house with less than fifteen percent membership may be one from that house; 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. The committee shall be headed by two cochairman, 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 such compensation as the legislative interim members receive, in addition to reimbursement for necessary expenses incurred in the performance of 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.

§4-10-9. Powers of the committee; failure of witnesses to appear, testify or produce records; public hearings; allowance of per diem and mileage for witnesses; hiring of necessary employees; permitting committee to collect costs associated with audits or reviews.

In order to carry out the duties set forth in this article, the committee, or any duly authorized employee of the committee, shall have access to any and all records of every department, agency or board 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.

The joint committee on government operations,
subject to the approval of the joint committee on
government and finance, may employ such persons,
skilled in the field of performance audit, financial audit
or preliminary performance review as it may deem
necessary to carry out its duties and responsibilities
under this article, and may contract for outside
expertise in conducting technical or specialized perfor-
mance audits.

The joint committee on government operations may
collect, and the department, agency or board shall pay,
any or all of the costs associated with conducting the
performance audits, financial audits or preliminary
performance reviews from the department, agency or
board being audited or reviewed, when necessary and
desirable. The joint committee on government opera-
tions shall render to the department, agency or board
liable for such costs a statement thereof as soon after
the same were incurred as practicable, and it shall be
the duty of such department, agency or board to pay
promptly in the manner that other claims and accounts
are paid. All money received by the joint committee on
government operations from this source shall be
expended only for the purpose of covering the costs
associated with such services, unless otherwise directed
by the Legislature.
§4-10-10. Performance and financial audits of governmental departments and agencies by the committee.

It shall be the duty of the committee to conduct a performance audit and a financial audit in accordance with generally accepted government auditing standards as promulgated by the federal general accounting office of every department or agency scheduled for termination under section four of this article to ascertain whether there is a demonstrable need for the continuation of the department or agency and whether the department or agency should be continued.

In conducting performance audits, the committee may determine the following:

1. If the department or agency was created to resolve a problem or provide a service.
2. If the problem has been solved or the service has been provided.
3. The extent to which past department or agency activities and accomplishments, current projects and operations, and planned activities and goals for the future are or have been effective.
4. If the department or agency is operating efficiently and effectively in performing its task.
5. The extent to which there would be significant and discernible adverse effects on the public health, safety, or welfare if the department or agency were abolished.
6. If the conditions which led to the creation of the agency have changed.
7. The extent to which the department or agency operates in the public interest.
8. Whether or not the operation of the department or agency is impeded or enhanced by existing statutes, rules, procedures, practices or any other circumstances bearing upon the department or agency's capacity or authority to operate in the public interest, including budgetary, resource and personnel matters.
(9) The extent to which administrative and/or statutory changes are necessary to improve agency operations or to enhance the public interest.

(10) Whether or not the benefits derived from the activities of the department or agency outweigh the costs.

(11) If the activities of this department or agency duplicate or overlap with those of other departments or agencies, and if so, how these activities could be consolidated.

(12) Whether or not the department or agency causes an unnecessary burden on any citizen or other department or agency by its decisions and activities.

(13) What the impact will be in terms of federal intervention or loss of federal funds if the agency is abolished.

The committee may direct that the performance audit focus on a specific area of operation within the department or agency, and may direct further inquiry, when necessary and desirable, into other areas of concern, including but not limited to:

(1) The economic impact which results from the functions of the department or agency.

(2) The extent to which complaint, investigation, and/or disciplinary procedures of the department or agency adequately protect the public, and whether or not final dispositions of complaints serve the public interest.

(3) The extent to which the department or agency issues and enforces rules relating to the potential conflicts of interest of its employees.

(4) Whether or not the department or agency is in compliance with federal and state affirmative action requirements.

(5) Whether or not the department or agency encourages participation by the public in the decision making process.
Financial audits may include audits of the following items:

1. Segments of financial statements.
2. Financial information.
3. Reports and schedules on financial matters, such as expenditures for specific programs or services, budget requests, and variances between estimated and actual financial performance.
5. Grants.
6. Internal control systems and structure over accounting, financial reporting, and transaction processing.
7. Computer-based systems.
8. Financial systems.

§4-10-11. Preliminary performance reviews of governmental boards and agencies by the committee.

It shall be the duty of the committee to conduct a preliminary performance review of every board or agency scheduled under section five of this article. In conducting such preliminary performance reviews, the committee shall determine the following:

1. If the board or agency was created to solve a problem or provide a service.
2. If the problem has been solved or the service has been provided.
3. The extent to which past board or agency activities and accomplishments, current projects and operations, and planned activities and goals for the future are or have been effective.
4. The extent to which there would be significant and discernible adverse effects on the public health, safety, or welfare if the board or agency were abolished.
(5) Whether or not the board or agency operates in a sound fiscal manner.

The joint committee may direct that the focus of the preliminary performance review be on a specific area of operation and may direct further inquiry, when necessary and desirable.

§4-10-12. Reports by the committee.

The committee shall complete its deliberations with respect to any department, agency or board scheduled for termination 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 department, agency or board:

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 an analysis of the department, agency or board including such matters as are expressly mandated to be considered by the committee as set forth in this article, together with the recommendations of the committee. The committee shall make one of five recommendations: (1) The department, agency or board be terminated as scheduled; (2) the department, agency or board be continued and reestablished; (3) the department, agency or board be continued and reestablished, but the statutes governing it be amended in specific ways to correct ineffective or discriminatory practices and procedures, burdensome rules and regulations, lack of protection of the public interest, overlapping of jurisdiction with other governmental entities, unwarranted exercise of authority either in law or in fact or any other deficiencies; (4) a performance audit be performed on a department, agency or board on which a preliminary review has been completed; or (5) the department, agency or board be continued for a period of time not to exceed one year for the purpose of completing a full performance audit.

Copies of such reports shall be made immediately available to all members of the Legislature, to the
34 department, agency or board which is the subject of the
35 report and the public generally. A copy of each report
36 shall be formally filed by the committee with the clerk
37 of each house.

§4-10-13. Bill for continuation and reestablishment of
affected department, agency or board.

1 In the event the committee recommends the continua-
2 tion and reestablishment of a department, agency or
3 board pursuant to this article, its report shall be
4 accompanied by a bill to effectuate its recommendation.

5 Pursuant to the processes of this article, no more than
6 one such department, agency or board shall be con-
7 tinued or reestablished in a bill, and such department,
8 agency or board shall be mentioned in the bill's title.

§4-10-14. 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 department, agency or board or by any
4 governmental department, agency or board against any
5 person. Responsibility for prosecuting or defending any
6 such rights or claims should the Legislature fail to
7 continue and reestablish a department, agency or board
8 within one year after its termination shall be assumed
9 by the attorney general of the state.

§4-10-15. Article 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 of the Legislature to consider
4 any bill that would create a new state governmental
5 department, agency or board or amend the law with
6 respect to an existing one.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1993.

Speaker of the Senate

President of the Senate

Speaker of the House of Delegates

The within is approved this the 12th day of May, 1993.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/30/93
Time 3:33 pm