WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

HOUSE BILL No. H857

(By Delegate S. J. Martin, Warner, Love, Nesbitt, Stelnaker, Osborne and Harrison)

Passed March 9, 1996

In Effect July 1, 1996
AN ACT to amend and reenact sections two, five and nine, article two, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three-c, article three of said chapter; and to amend and reenact article ten of said chapter, all relating to the West Virginia sunset law; providing employees conducting full performance evaluations and preliminary performance reviews the same work space allocations as other employees of the office of the legislative auditor; revising terms agency, full performance evaluation and preliminary performance review; deleting references to financial audits; changing termination dates for agencies scheduled for full performance evaluations and preliminary performance reviews; modifying composition of joint committee on government operations; requiring information to be furnished in requested format; deleting prohibition of legislation affecting more than one agency; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That sections two, five and nine, article two, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three-c, article three of said chapter be amended and reenacted; and that article ten of said chapter be amended and reenacted, all to read as follows:
ARTICLE 2. LEGISLATIVE AUDITOR; POWERS; FUNCTIONS; DUTIES; COMPENSATION.

§4-2-2. Definitions.

For the purposes of this article: "Committee" means the joint committee on government and finance of the Senate and House of Delegates.

"Full performance evaluation" means to determine for an agency whether or not the agency is operating in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency, pursuant to the provisions of section ten, article ten of this chapter.

"Post audit" is the audit or review of governmental finances after they have been completed. The scope of a post audit includes audit or review of transactions pertaining to the financial operations of the various agencies of government on the state level, with verification of state revenues at the source and audit of expenditures all the way through the work to the recipient or beneficiary of the service.

"Preliminary performance review" means to determine for an agency whether or not the agency is performing in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency pursuant to the provisions of section eleven, article ten of this chapter.

"Spending unit" means any department, agency, board, commission, officer, authority, subdivision or institution of the state government for or to which an appropriation has been made, or is to be made by the Legislature.

§4-2-5. Powers of auditor.

The legislative auditor shall have the power and authority to examine the revenues, expenditures and performance of every spending unit of the state government and
for these purposes shall have the authority, by such means
as are necessary, to require any person holding office in
the state government or employed by the state, to allow
him to inspect the properties, equipment, facilities and
records of the various agencies, departments, subdivisions
or institutions of the state government for which appropri-
ations are to be made or have been made, either before or
after estimates therefor are submitted, and before, during
and after the sessions of the Legislature. Refusal of any
person to allow such inspection shall be reported by the
legislative auditor to the committee.

§4-2-9. Offices; working space.

The office of the legislative auditor shall be located at
the state capitol and shall be open at all reasonable times
for the transaction of business.

All state departments, institutions or other agencies of
the state government shall provide necessary comfortable
space for the purpose of occupancy by employees of the
office of the legislative auditor conducting post audits, full
performance evaluations or preliminary performance
reviews in the various departments, institutions or other
agencies of the state, located conveniently at the state capi-
tol and at the several institutions or other agencies
throughout the state.

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FI-
NANCE.

§4-3-3c. Reorganization of joint legislative agencies.

(a) The joint committee on government and finance
has the authority over and direction of joint legislative
agencies, personnel and services, including, but not limited
to, the following:

(1) The commission on special investigations provided
for in article five, chapter four of this code;

(2) The court of claims provided for in article two and
8 crime victims compensation provided for in article two-a, chapter fourteen of this code;

10 (3) The legislative auditor provided for in article two, chapter four of this code;

12 (4) The legislative rule-making review committee provided for in article three, chapter twenty-nine-a of this code;

15 (5) The legislative reference library provided for in section three of this article;

17 (6) The legislative automated systems division;

18 (7) Legislative services;

19 (8) Public information; and

20 (9) Joint services provided by one or more of the joint agencies set forth in this subsection. The following joint services are included:

23 (A) Bill drafting;

24 (B) Budget analysis;

25 (C) Duplicating;

26 (D) Financial, payroll, personnel and purchasing for joint agencies and personnel;

28 (E) Fiscal analysis;

29 (F) Post audits, full performance evaluations and preliminary performance reviews;

31 (G) Research; and

32 (H) Joint services to other joint legislative committees created and authorized by this code, to joint standing committees of the Senate and House of Delegates, to standing committees of the Senate and House of Delegates and to legislative interim committees.
(b) Notwithstanding any other provision of this chapter to the contrary, the joint committee on government and finance has the authority to reorganize and restructure the joint legislative agencies, personnel and services as provided in subsection (a) of this section for the purposes of improving their efficiency and the service they provide to the Legislature and to improve the management thereof by the joint committee. To accomplish these purposes, the joint committee may create divisions as it determines necessary and transfer and assign the joint agencies, personnel and services to the divisions. The divisions, joint agencies, personnel and services shall operate under the direction and policies of the joint committee: Provided, That nothing in this section shall be construed to permit the joint committee to alter or redefine the powers, duties and responsibilities vested in the commission on special investigations pursuant to article five of this chapter.

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§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 agencies and programs, proliferation of rules and regulations, and that the agencies and programs often have developed without sufficient legislative oversight, regulatory accountability or an effective system of checks and balances; that agencies and programs have been created without demonstrable evidence that their benefits to the public clearly justify their creation; that once established, agencies and programs tend to acquire permanent status, often without regard for the condition that gave rise to their establishment; that the personnel of such agencies and programs often are beyond the effective control of elected officials, and efforts to encourage modernization
or even to review performance typically have proven difficult at best; that too often, agencies and programs 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 agencies and programs following a thorough review of their operation and performance, the position of the Legislature to evaluate the need for the continued existence of agencies and programs will be enhanced.

§4-10-3. Definitions.

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

(1) "Agency" means any bureau, department, division, commission, agency, committee, office, board, authority, subdivision, program, council, advisory body, cabinet, panel, system, task force, fund, compact, institution, survey, position, coalition, or other entity, however designated, in the state of West Virginia.

(2) "Committee" means the joint committee on government operations, hereinafter continued, to perform duties under this article.

(3) "Full performance evaluation" means to determine for an agency whether or not the agency is operating in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency, pursuant to the provisions of section ten of this article. References in this code to performance audit or full performance audit shall be taken as and shall mean full performance evaluation.

(4) "Preliminary performance review" means to determine for an agency whether or not the agency is performing in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency pursuant to the provisions of sec-
§4-10-4. Termination of agencies following full performance evaluations.

The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a full performance evaluation has been conducted upon such agency:

(1) On the first day of July, one thousand nine hundred ninety-seven: Division of personnel; division of environmental protection; division of rehabilitation services; workers' compensation; office of judges of workers' compensation; department of health and human resources; school building authority; tourism functions within the West Virginia development office; purchasing division within the department of administration; West Virginia parkways, economic development and tourism authority; division of culture and history.

(2) On the first day of July, two thousand one: Division of natural resources.

(3) On the first day of July, two thousand: Division of corrections.

(4) On the first day of July, two thousand two: Division of highways; division of labor.

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

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

(1) On the first day of July, one thousand nine hundred ninety-six: Juvenile facilities review panel.

(2) On the first day of July, one thousand nine hundred ninety-seven: Board of investments; state building...
commission; parks section and parks functions of the division of natural resources; emergency medical services advisory council; office of water resources of the division of environmental protection; West Virginia state police; office of environmental advocate of the division of environmental protection; human rights commission; board of examiners in counseling; driver's licensing advisory board; West Virginia health care cost review authority; governor's cabinet on children and families; oil and gas conservation commission; child support enforcement division; West Virginia commission for national and community service; West Virginia contractors' licensing board; cable television advisory board; public employees insurance agency advisory board.

(3) On the first day of July, one thousand nine hundred ninety-eight: Women's commission; state lottery commission; meat inspection program of the department of agriculture; soil conservation committee of the department of agriculture; state board of risk and insurance management; board of examiners of land surveyors; commission on uniform state laws; council of finance and administration; West Virginia's membership in the interstate commission on the Potomac River Basin; legislative oversight commission on education accountability; forest management review commission; family law masters system; board of examiners in speech pathology and audiology; board of social work examiners.

(4) On the first day of July, one thousand nine hundred ninety-nine: Public service commission; tree fruit industry self improvement assessment program; capitol building commission; board of banking and financial institutions.

(5) On the first day of July, two thousand: Family protection services board; environmental quality board; West Virginia's membership in the Ohio river valley water sanitation commission; ethics commission; oil and gas inspector's examining board; veterans' council; West Virginia's membership in the southern regional education
board.

(6) On the first day of July, two thousand one: Real estate commission; marketing and development division of the department of agriculture; board of architects; public employees insurance agency; public employees insurance agency finance board; center for professional development; rural health advisory panel.

(7) On the first day of July, two thousand two: Whitewater commission within the division of natural resources; state geological and economic survey; unemployment compensation.

§4-10-6. Continuation of agency after termination and purpose therefor; continuation of powers and authority after termination; cessation of activities; reestablishment of terminated agency.

Upon termination, each agency 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 may not reduce nor otherwise limit the powers or authority of that terminated agency. Any funds for the agency 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 agency shall cease all activities: Provided, That an agency that 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 agency shall be deemed to have been continued.

§4-10-7. Continuation or reestablishment of agencies scheduled for termination may not exceed six years; acts creating new agencies shall provide termination language.

The life of any agency, 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 that creates a new agency and is enacted after the effective date of this article shall provide for termination and review of the newly-created agency pursuant to this article within six years after the effective date of the act that creates the agency.

§4-10-8. Joint committee on government operations continued; membership; compensation and expenses; meetings.

The joint committee on government operations, here-tofore 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 and to serve at the will and pleasure of the governor, 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: Provided, That on the thirty-first day of March, one thousand nine hundred ninety-seven, the terms of the five current citizen members of the committee appointed under prior enactment of this section shall terminate, but all of those members shall be eligible for reappointment. On the first day of April, one thousand nine hundred ninety-seven, the governor shall make five new appointments. Of the five members appointed following enactment of this section, four shall be citizens of this state who are not legislators nor public officials and one shall be an
elected representative of a political subdivision. Not more than three of those five members may be from the same political party, and at least one shall reside in each congressional district of this state. The committee shall be headed by two cochairpersons, 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 member of the committee who is not a legislative member 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 cochairpersons 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; access to records; information to be furnished in requested format; failure of witnesses to appear, testify or produce records; public hearings; allowance of per diem and mile-
age for witnesses; hiring of necessary employees; allowing committee to collect costs associated with evaluations or reviews.

To carry out the duties set forth in this article, the committee, any duly authorized employee of the committee, or any employee of the office of the legislative auditor working at the direction of the committee, shall have access to any and all records of every agency in West Virginia. When furnishing information, agencies shall provide information in the format in which it is requested, if the request is specific as to a preferred format.

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 cochairpersons 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 her, or shall refuse or fail to produce books, papers, documents, or records within his or her 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 full performance evaluation, 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 performance evaluations.

The joint committee on government operations may collect, and the agency shall pay, any or all of the costs associated with conducting the full performance evaluations or preliminary performance reviews from the agency being audited or reviewed, when necessary and desirable. The joint committee on government operations shall render to the agency liable for the costs a statement thereof as soon after the same were incurred as practicable, and it shall be the duty of such agency 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. Full performance evaluations of agencies by the committee.

It shall be the duty of the committee to conduct a full performance evaluation in accordance with generally accepted government auditing standards as promulgated by the federal general accounting office of every agency scheduled for termination following full performance evaluations under this article to ascertain if there is a demonstrable need for the continuation of the agency and if the agency should be continued.
In conducting full performance evaluations, the committee may determine the following:

1. If the 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 agency activities and accomplishments, current projects and operations, and planned activities and goals for the future are or have been effective.

4. If the 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 agency were abolished.

6. If the conditions that led to the creation of the agency have changed.

7. The extent to which the agency operates in the public interest.

8. Whether or not the operation of the agency is impeded or enhanced by existing statutes, rules, procedures, practices or any other circumstances bearing upon the 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 agency outweigh the costs.

11. Whether or not the activities of the agency duplicate or overlap with those of other agencies, and if so, how
these activities could be consolidated.

(12) Whether or not the agency causes an unnecessary burden on any citizen or other 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 full performance evaluation focus on a specific area of operation within the agency, and may direct further inquiry, when necessary and desirable, into other areas of concern, including, but not limited to:

(1) The economic impact resulting from the functions of the agency.

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

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

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

(5) Whether or not the agency encourages participation by the public in the decision making process.

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

It shall be the duty of the committee to conduct a preliminary performance review of every agency scheduled for termination following preliminary performance reviews under this article. In conducting such preliminary performance reviews, the committee shall determine the following:
(1) If the 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 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 agency were abolished.

(5) Whether or not the agency operates in a sound fiscal manner.

(6) Whether or not the conducting of a full performance evaluation on the agency is in the public interest.

The 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. Annual report by the committee.

The committee shall complete its deliberations with respect to agencies scheduled for termination and make an annual 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 agency: Provided, That any such annual report required in the year one thousand nine hundred ninety-seven, and every fourth year thereafter shall be made not later than ten days after the Legislature convenes on the second Wednesday in February. The annual report shall consist of an analysis of the agency including 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 recommenda-
tions: (1) The agency be terminated as scheduled; (2) the agency be continued and reestablished; (3) the agency 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 agencies, unwarranted exercise of authority either in law or in fact or any other deficiencies; (4) a full performance evaluation be performed on an agency on which a preliminary review has been completed; or (5) the agency be continued for a period of time not to exceed one year for the purpose of completing a full performance evaluation, preliminary performance review, or for monitoring the agency's compliance with recommendations contained in the completed full performance evaluation or preliminary performance review.

In the event the committee makes recommendations concerning the continuation or reestablishment of agencies pursuant to this article, the annual report shall include draft bills effectuating the recommendations.

Copies of the annual reports shall be made available to all members of the Legislature, to the agency that is the subject of the report and to the public generally. A copy of the annual report shall be formally filed immediately by the committee with the clerk of each house.

§4-10-13. Preservation of rights and claims.

Nothing in this article may be construed as adversely affecting any right or claim by any person against an agency or by any agency against any person. Responsibility for prosecuting or defending any such rights or claims should the Legislature fail to continue and reestablish an agency within one year after its termination shall be assumed by the attorney general of the state.

§4-10-14. Article not to be construed as limiting new legislation.
Nothing in this article may be construed as limiting or interfering with the right of any member of the Legislature to introduce or of the Legislature to consider any bill that would create a new agency or to amend the law with 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, 1996.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 1st
day of April, 1996.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/28/64
Time 10:15 Am