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OFFICE OF THE CLERK OF THE WEST VIRGINIA SENATE  
**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2007**

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COMMITTEE SUBSTITUTE  
FOR  
**ENROLLED**  
**Senate Bill No. 187**

(SENATORS BOWMAN, BAILEY, JENKINS, PLYMALE,  
KESSLER, WHITE AND MINARD, *original sponsors*)

---

[Passed March 7, 2007; in effect from passage.]

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SECRETARY OF STATE

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AN ACT to repeal §4-10-4a, §4-10-5a, §4-10-5b, §4-10-6a, §4-10-10a and §4-10-11a of the Code of West Virginia, 1931, as amended; and to amend and reenact §4-10-1, §4-10-2, §4-10-3, §4-10-4, §4-10-5, §4-10-6, §4-10-7, §4-10-8, §4-10-9, §4-10-10, §4-10-11, §4-10-12, §4-10-13 and §4-10-14 of said code, all relating to the West Virginia Performance Review Act; updating legislative findings and definitions; continuing the Joint Committee on Government

Operations; updating powers and duties of the Joint Committee on Government Operations and the Joint Committee on Government Organization; requiring department presentations; establishing a new agency review procedure and schedule; establishing a new regulatory board review procedure and schedule; authorizing compliance reviews; clarifying termination procedures; and providing that agencies and boards do not terminate pursuant to prior enactments.

*Be it enacted by the Legislature of West Virginia:*

That §4-10-4a, §4-10-5a, §4-10-5b, §4-10-6a, §4-10-10a and §4-10-11a of the Code of West Virginia, 1931, as amended, be repealed; and that §4-10-1, §4-10-2, §4-10-3, §4-10-4, §4-10-5, §4-10-6, §4-10-7, §4-10-8, §4-10-9, §4-10-10, §4-10-11, §4-10-12, §4-10-13 and §4-10-14 of said code be amended and reenacted, all to read as follows:

**ARTICLE 10. PERFORMANCE REVIEW ACT.**

**§4-10-1. Short title.**

- 1 This article shall be known as and may be cited as the
- 2 West Virginia Performance Review Act.

**§4-10-2. Legislative findings; performance review process authorized.**

- 1 (a) The Legislature finds that:
  - 2 (1) State government has created many state agencies
  - 3 without sufficient legislative oversight, regulatory
  - 4 accountability or an effective system of checks and
  - 5 balances;

6 (2) State agencies have been created without  
7 demonstrable evidence that their benefits to the public  
8 clearly justify their creation;

9 (3) Once established, state agencies tend to acquire  
10 permanent status, often without regard for the  
11 condition that gave rise to their establishment;

12 (4) State agencies have been allowed to establish rules  
13 and at times may acquire autonomy and authority  
14 inconsistent with principles of accountability;

15 (5) Employees of state agencies are often beyond the  
16 effective control of elected officials and efforts to  
17 encourage modernization or to review performance  
18 become difficult;

19 (6) Regulatory boards established pursuant to chapter  
20 thirty of this code need periodic review to ascertain the  
21 need for their continuation; and

22 (7) By establishing a process for the objective review  
23 of state agencies and regulatory boards, their programs,  
24 functions and activities, the Legislature may evaluate  
25 the need for their continued existence, consolidation or  
26 termination and improve government efficiency,  
27 effectiveness and accountability.

28 (b) The Legislature hereby authorizes a process to  
29 review the operation and performance of state agencies  
30 and regulatory boards to determine the need for their  
31 continued existence, consolidation or termination.

#### §4-10-3. Definitions.

1 As used in this article, unless the context clearly

2 indicates a different meaning:

3 (a) "Agency" or "state agency" means a state  
4 governmental entity, including any bureau, department,  
5 division, commission, agency, committee, office, board,  
6 authority, subdivision, program, council, advisory body,  
7 cabinet, panel, system, task force, fund, compact,  
8 institution, survey, position, coalition or other entity in  
9 the State of West Virginia.

10 (b) "Agency review" means a review performed on  
11 agencies of a department pursuant to the provisions of  
12 this article.

13 (c) "Committee" means the Joint Committee on  
14 Government Operations.

15 (d) "Compliance review" means a review for  
16 compliance with recommendations contained in a  
17 previous agency review or regulatory board review  
18 conducted pursuant to the provisions of this article and  
19 may include further inquiry of other issues as directed  
20 by the President, the Speaker, the Legislative Auditor,  
21 the committee or the joint standing committee.

22 (e) "Department" means the departments created  
23 within the executive branch, headed by a secretary  
24 appointed by the Governor, as authorized by the Code  
25 of West Virginia.

26 (f) "Department presentation" means a presentation  
27 by a department pursuant to the provisions of this  
28 article.

29 (g) "Division" means the Performance Evaluation and  
30 Research Division of the Legislative Auditor.

31 (h) "Joint standing committee" means the joint  
32 standing committee on Government Organization.

33 (i) "Privatize" means a contract to procure the  
34 services of a private vendor to provide a service that is  
35 similar to, and/or in lieu of, a service provided by a state  
36 agency;

37 (j) "Regulatory Board" means a board that regulates  
38 professions and occupations, created under the  
39 provisions of chapter thirty of this code.

40 (k) "Regulatory Board Review" means a review  
41 performed on a regulatory board pursuant to the  
42 provisions of this article.

**§4-10-4. Joint Committee on Government Operations.**

1 (a) The Joint Committee on Government Operations  
2 created by prior enactment of this article is hereby  
3 continued.

4 (b) The committee is composed of fifteen members as  
5 follows:

6 (1) Five members of the Senate, to be appointed by the  
7 President, with no more than three being from the same  
8 political party;

9 (2) Five members of the House of Delegates, to be  
10 appointed by the Speaker, with no more than three  
11 being from the same political party; and

12 (3) Five citizen members from this state who are not  
13 legislators, public officials or public employees, to be  
14 appointed by the Speaker of the House and the

15 President of the Senate, with no more than three being  
16 from the same political party and at least one of whom  
17 shall reside in each congressional district of this state.

18 (c) The committee has two cochairs, one selected by  
19 the President of the Senate from the members appointed  
20 from the Senate and one selected by the Speaker of the  
21 House of Delegates from the members appointed from  
22 the House of Delegates.

23 (d) All members of the committee serve until their  
24 successors have been appointed.

25 (e) All members of the committee are entitled to  
26 compensation and reimbursement for expenses as  
27 authorized for members of the Legislature in  
28 accordance with the performance of their interim  
29 duties.

**§4-10-5. Powers and duties of the committee and joint  
standing committee.**

1 (a) To carry out the duties set forth in this article, the  
2 committee or the joint standing committee, any  
3 authorized employee of the committee, the joint  
4 standing committee, the Legislative Auditor or any  
5 employee of the division working at the direction of the  
6 committee or the joint standing committee, shall have  
7 access, including copying, to all records of every state  
8 agency in West Virginia.

9 (b) When furnishing information, agencies shall  
10 provide the information in the format in which it is  
11 requested, if the request is specific as to a preferred  
12 format.

13 (c) The committee or the joint standing committee may  
14 hold public hearings in furtherance of the purposes of  
15 this article, at such times and places within the state as  
16 desired. A member of the committee or the joint  
17 standing committee may administer oaths to persons  
18 testifying at such hearings or meetings.

19 (d) The committee or the joint standing committee  
20 may issue a subpoena, with the signature of either  
21 cochair of the committee or the joint standing  
22 committee and served in the manner provided by law, to  
23 summon and compel the attendance of witnesses and  
24 their examination under oath and the production of all  
25 books, papers, documents and records necessary or  
26 convenient to be examined and used by the committee  
27 or joint standing committee in the performance of its  
28 duties.

29 (e) If any witness subpoenaed to appear at any hearing  
30 or meeting refuses or fails to appear or to answer  
31 questions put to him or her, or refuses or fails to  
32 produce books, papers, documents or records within his  
33 or her control when the same are demanded, the  
34 committee or the joint standing committee, in its  
35 discretion, may enforce obedience to its subpoena by  
36 attachment, fine or imprisonment, as provided in article  
37 one of this chapter, or may report the facts to the circuit  
38 court of Kanawha County or any other court of  
39 competent jurisdiction and the court shall compel  
40 obedience to the subpoena as though it had been issued  
41 by the court.

42 (f) Witnesses subpoenaed to attend hearings or  
43 meetings pursuant to the provisions of this article,  
44 except officers or employees of the state, shall be  
45 allowed the same mileage and per diem as is allowed



46 witnesses before any petit jury.

47 (g) The committee or the joint standing committee,  
48 subject to the approval of the Joint Committee on  
49 Government and Finance, may employ such persons as  
50 it considers necessary to carry out the duties and  
51 responsibilities under this article and may contract for  
52 outside expertise in conducting reviews.

53 (h) The committee or the joint standing committee  
54 may collect, and the agency or regulatory board shall  
55 promptly pay, the costs associated with conducting the  
56 reviews performed under this article, upon presentation  
57 of a statement for the costs incurred. All money  
58 received by the committee or the joint standing  
59 committee from this source shall be expended only for  
60 the purpose of covering the costs associated with such  
61 services, unless otherwise directed by the Legislature.

**§4-10-6. Department presentation and schedule.**

1 (a) During the two thousand seven legislative interim  
2 period, each department shall make a presentation  
3 pursuant to the provisions of this section to the joint  
4 standing committee and the committee.

5 (b) The department shall provide to the joint standing  
6 committee and the committee a written copy of the  
7 presentation. The presentation shall include:

8 (1) A departmental chart designating each agency  
9 under the purview of the department;

10 (2) An analysis of the department's internal  
11 performance measures and self-assessment systems; and

12 (3) For each agency under the purview of the  
13 department, the following:

14 (A) The mission, goals and functions of the agency;

15 (B) The statutory or other legal authority under which  
16 the agency operates;

17 (C) The number of employees of the agency for the  
18 immediate past ten years;

19 (D) The budget for the agency for the immediate past  
20 ten years;

21 (E) Any potential or actual loss of revenue due to  
22 operations, changes in law or any other reason;

23 (F) The extent to which the agency has operated in the  
24 public interest;

25 (G) The extent to which the agency has complied with  
26 state personnel practices, including affirmative action  
27 requirements;

28 (H) The extent to which the agency has encouraged  
29 public participation in the making of its rules and  
30 decisions and has encouraged interested persons to  
31 report to it on the impact of its rules and decisions on  
32 the effectiveness, economy and availability of services  
33 that it has provided;

34 (I) The efficiency with which public inquiries or  
35 complaints regarding the activities of the agency have  
36 been processed and resolved;

37 (J) The extent to which statutory, regulatory,

38 budgeting or other changes are necessary to enable the  
39 agency to better serve the interests of the public and to  
40 comply with the factors enumerated in this subsection;  
41 and

42 (K) A recommendation as to whether the agency  
43 should be continued, consolidated or terminated.

44 (c) The schedule for the presentations by the  
45 departments shall be as follows:

46 (1) May, two thousand seven, Department of  
47 Administration;

48 (2) June, two thousand seven, Department of  
49 Education and the Arts;

50 (3) July, two thousand seven, Department of  
51 Education, including the Higher Education Policy  
52 Commission and the West Virginia Council for  
53 Community and Technical College Education;

54 (4) August, two thousand seven, Department of  
55 Revenue;

56 (5) September, two thousand seven, Department of  
57 Environmental Protection;

58 (6) October, two thousand seven, Department of  
59 Health and Human Resources, including the Bureau of  
60 Senior Services;

61 (7) November, two thousand seven, Department of  
62 Commerce;

63 (8) December, two thousand seven, Department of

64 Military Affairs and Public Safety; and

65 (9) January, two thousand eight, Department of  
66 Transportation.

**§4-10-7. Agency review.**

1 (a) The committee and the joint standing committee  
2 shall conduct agency reviews, or authorize the division  
3 to conduct agency reviews as one of its duties in  
4 addition to its other duties prescribed by law, in  
5 accordance with generally accepted government  
6 auditing standards (GAGAS) as promulgated by the U.  
7 S. Government Accountability Office, on one or more of  
8 the agencies under the purview of a department, during  
9 the year in which the department is scheduled for  
10 review under the provisions of this article.

11 (b) The agency review may include, but is not limited  
12 to:

13 (1) An identification and description of the agency  
14 under review;

15 (2) The number of employees of the agency for the  
16 immediate past ten years;

17 (3) The budget for the agency for the immediate past  
18 ten years;

19 (4) Whether the agency is effectively and efficiently  
20 carrying out its statutory duties or legal authority;

21 (5) Whether the activities of the agency duplicate or  
22 overlap with those of other agencies and, if so, how  
23 these activities could be consolidated;

24 (6) A cost-benefit analysis, as described in subsection  
25 (e) of this section, on state services that are privatized or  
26 contemplated to be privatized;

27 (7) An analysis of the extent to which agency websites  
28 are accurate, updated and user friendly;

29 (8) An assessment of the utilization of information  
30 technology systems within the agency, including  
31 interagency and intra-agency communications;

32 (9) An analysis of any issues raised by the presentation  
33 made by the department pursuant to the provisions of  
34 this article;

35 (10) An analysis of any other issues as the committee  
36 or the joint standing committee may direct; and

37 (11) A recommendation as to whether the agency  
38 under review should be continued, consolidated or  
39 terminated.

40 (c) The committee or the joint standing committee may  
41 vote on the recommendation as to whether the agency  
42 under review should be continued, consolidated or  
43 terminated. Recommendations of the committee or the  
44 joint standing committee shall be given considerable  
45 weight in determining if an agency should be continued,  
46 consolidated or terminated.

47 (d) An agency may be subject to a compliance review  
48 pursuant to the provisions of this article.

49 (e) A cost-benefit analysis authorized by this section  
50 may include:

- 51 (1) The tangible benefits of privatizing the service;
- 52 (2) Any legal impediments that may limit or prevent  
53 privatization of the service;
- 54 (3) The availability of multiple qualified and  
55 competitive private vendors; and
- 56 (4) A cost comparison, including total fixed and  
57 variable, direct and indirect, costs of the current  
58 governmental operation and the private vendor  
59 contract.

**§4-10-8. Schedule of departments for agency review.**

1 (a) Each department shall make a presentation  
2 pursuant to the provisions of this article, to the joint  
3 standing committee and the committee during the first  
4 interim meeting after the regular session of the year in  
5 which the department is to be reviewed pursuant to the  
6 schedule set forth in subsection (b) of this section.

7 (b) An agency review shall be performed on one or  
8 more agencies under the purview of each department at  
9 least once every six years, commencing as follows:

10 (1) Two thousand eight, the Department of  
11 Administration;

12 (2) Two thousand nine, the Department of Education  
13 and the Arts, and the Department of Education,  
14 including the Higher Education Policy Commission and  
15 the West Virginia Council for Community and Technical  
16 College Education;

17 (3) Two thousand ten, the Department of Revenue and

18 the Department of Commerce;

19 (4) Two thousand eleven, the Department of  
20 Environmental Protection and the Department of  
21 Military Affairs and Public Safety;

22 (5) Two thousand twelve, the Department of Health  
23 and Human Resources, including the Bureau of Senior  
24 Services; and

25 (6) Two thousand thirteen, the Department of  
26 Transportation.

**§4-10-9. Regulatory board review.**

1 (a) The committee and the joint standing committee  
2 shall conduct regulatory board reviews, or authorize the  
3 division to conduct regulatory board reviews as one of  
4 its duties in addition to its other duties prescribed by  
5 law, in accordance with generally accepted government  
6 auditing standards (GAGAS) as promulgated by the U.  
7 S. Government Accountability Office, on each  
8 regulatory board to ascertain if there is a need for the  
9 continuation, consolidation or termination of the  
10 regulatory board.

11 (b) A regulatory board review shall be performed on  
12 each regulatory board at least once every twelve years.  
13 A regulatory board may be subject to a compliance  
14 review pursuant to the provisions of this article.

15 (c) When a new regulatory board is created, a date for  
16 a regulatory board review shall be included in the act  
17 that creates the board, within twelve years of the  
18 effective date of the act.

19 (d) The regulatory board review may include:

20 (1) Whether the board complies with the policies and  
21 provisions of chapter thirty of this code and other  
22 applicable laws and rules;

23 (2) Whether the board follows a disciplinary  
24 procedure which observes due process rights and  
25 protects the public interest;

26 (3) Whether the basis or facts that necessitated the  
27 initial licensing or regulation of a profession or  
28 occupation have changed, or other conditions have  
29 arisen that would warrant increased, decreased or the  
30 same degree of regulation;

31 (4) Whether the composition of the board adequately  
32 represents the public interest and whether the board  
33 encourages public participation in its decisions rather  
34 than participation only by the industry and individuals  
35 it regulates;

36 (5) Whether statutory changes are necessary to  
37 improve board operations to enhance the public  
38 interest;

39 (6) An analysis of any other issues the committee or  
40 the joint standing committee may direct; and

41 (7) A recommendation as to whether the regulatory  
42 board under review should be continued, consolidated  
43 or terminated.

44 (e) The committee or the joint standing committee may  
45 vote on the recommendation as to whether the  
46 regulatory board under review should be continued,



47 consolidated or terminated. Recommendations of the  
48 committee or the joint standing committee shall be  
49 given considerable weight in determining if an  
50 regulatory board should be continued, consolidated or  
51 terminated.

**§4-10-10. Regulatory board review schedule.**

1 (a) A regulatory board review is required for all  
2 regulatory boards.

3 (b) A regulatory board review shall be performed on  
4 each regulatory board at least once every twelve years,  
5 commencing as follows:

6 (1) Two thousand eight: Board of Acupuncture; Board  
7 of Barbers and Cosmetologists; and Board of Examiners  
8 in Counseling.

9 (2) Two thousand nine: Board of Hearing Aid Dealers;  
10 Board of Licensed Dietitians; and Nursing Home  
11 Administrators Board.

12 (3) Two thousand ten: Board of Dental Examiners;  
13 Board of Medicine; and Board of Pharmacy.

14 (4) Two thousand eleven: Board of Chiropractic  
15 Examiners; Board of Osteopathy; and Board of Physical  
16 Therapy.

17 (5) Two thousand twelve: Board of Occupational  
18 Therapy; Board of Examiners for Speech-Language  
19 Pathology and Audiology; and Medical Imaging and  
20 Radiation Therapy Board of Examiners.

21 (6) Two thousand thirteen: Board of Professional

22 Surveyors; Board of Registration for Foresters; and  
23 Board of Registration for Professional Engineers.

24 (7) Two thousand fourteen: Board of Examiners for  
25 Licensed Practical Nurses; Board of Examiners for  
26 Registered Professional Nurses; and Massage Therapy  
27 Licensure Board.

28 (8) Two thousand fifteen: Board of Architects; Board  
29 of Embalmers and Funeral Directors; and Board of  
30 Landscape Architects.

31 (9) Two thousand sixteen: Board of Registration for  
32 Sanitarians; Real Estate Appraiser Licensure and  
33 Certification Board; and Real Estate Commission.

34 (10) Two thousand seventeen: Board of Accountancy;  
35 Board of Respiratory Care Practitioners; and Board of  
36 Social Work Examiners.

37 (11) Two thousand eighteen: Board of Examiners of  
38 Psychologists; Board of Optometry; and Board of  
39 Veterinary Medicine.

**§4-10-11. Compliance review.**

1 (a) After an agency review or a regulatory board  
2 review, if the committee or the joint standing committee  
3 finds that an agency or a regulatory board needs further  
4 review, then the committee or the joint standing  
5 committee may request a compliance review.

6 (b) If the committee or the joint standing committee  
7 requests a compliance review for an agency or a  
8 regulatory board, then it must state, in writing, the  
9 specific reasons for the compliance review and its

10 expected completion date.

**§4-10-12. Termination of an agency or regulatory board;  
reestablishment of terminated agency or  
regulatory board.**

1 (a) If the Legislature terminates an agency or  
2 regulatory board, then the agency or regulatory board  
3 shall continue in existence until the first day of July of  
4 the next succeeding year for the purpose of winding up  
5 its affairs. Upon the expiration of one year after  
6 termination, the agency or regulatory board shall cease  
7 all activities.

8 (b) During the wind-up year, the impending  
9 termination may not reduce nor otherwise limit the  
10 powers or authority of that terminated agency or  
11 regulatory board.

12 (c) An agency that has been terminated pursuant to  
13 the provisions of this article may be reestablished by the  
14 Legislature. If the agency is reestablished by the  
15 Legislature during the wind-up year with substantially  
16 the same powers, duties or functions, then the agency is  
17 considered continued.

18 (d) If a regulatory board is reestablished by the  
19 Legislature during the wind-up year with substantially  
20 the same powers, duties or functions, then the  
21 regulatory board is considered continued. If a  
22 regulatory board is not reestablished by the Legislature  
23 during the wind-up year, then the regulatory board is  
24 considered terminated and the profession or occupation  
25 must apply for regulation through the sunrise process,  
26 under the provisions of this code, to be reestablished.

**§4-10-13. Disposition of agency or regulatory board assets,  
equipment and records after termination.**

1 (a) On or before the thirtieth day of June of the wind-  
2 up year, the terminated agency or regulatory board  
3 shall file a written statement with the Secretary of the  
4 Department of Administration and the division  
5 describing the disposition of its funds, assets,  
6 equipment and records.

7 (b) The division shall review the statement of the  
8 terminated agency or regulatory board and report the  
9 results of its review to the committee and the joint  
10 standing committee.

11 (c) Any unexpended funds of the terminated agency or  
12 regulatory board shall revert to the fund from which  
13 they were appropriated or, if that fund is abolished, to  
14 the General Revenue Fund.

15 (d) All remaining assets and equipment of a  
16 terminated agency or regulatory board shall be  
17 transferred to the secretary of the department of which  
18 it was a part or to the state agency for surplus property  
19 in the Department of Administration.

20 (e) The records of a terminated agency or regulatory  
21 board shall be deposited with the Department of  
22 Administration.

**§4-10-14. Nullifying agency and regulatory board termination  
under prior law.**

1 No agency or regulatory board terminates pursuant to  
2 references to this article.

Enr. Com. Sub. for S. B. No. 187] 20

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

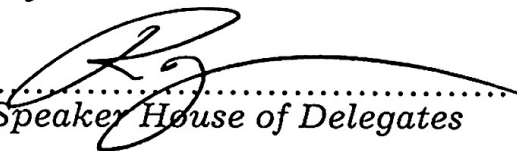
Originated in the Senate.

In effect from passage.

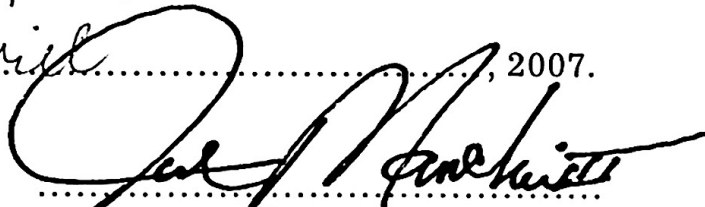
  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within ..... is approved ..... this  
the 3<sup>rd</sup> Day of April ..... , 2007.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 20 2007

Time 3:50 pm