WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

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§4-10-4a, §4-10-5a, §4-10-5b, §4-10-6a, §4-10-10a and §4-10-11a of the Code of West Virginia, 1931, as amended, be repealed; and that §4-10-1, §4-10-2, §4-10-3, §4-10-4, §4-10-5, §4-10-6, §4-10-7, §4-10-8, §4-10-9, §4-10-10, §4-10-11, §4-10-12, §4-10-13 and §4-10-14 of said code be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

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

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

(a) The Legislature finds that:

(1) State government has created many state agencies without sufficient legislative oversight, regulatory accountability or an effective system of checks and balances;
(2) State agencies have been created without
demonstrable evidence that their benefits to the public
clearly justify their creation;

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

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

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

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

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

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

§4-10-3. Definitions.

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

(a) "Agency" or "state agency" means a state governmental entity, including 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 in the State of West Virginia.

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

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

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

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

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

(g) "Division" means the Performance Evaluation and Research Division of the Legislative Auditor.
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(h) "Joint standing committee" means the joint standing committee on Government Organization.

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

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

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

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

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

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

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

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

(3) Five citizen members from this state who are not legislators, public officials or public employees, to be appointed by the Speaker of the House and the
President of the Senate, with no more than three being from the same political party and at least one of whom shall reside in each congressional district of this state.

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

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

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

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

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

(b) When furnishing information, agencies shall provide the information in the format in which it is requested, if the request is specific as to a preferred format.
(c) The committee or the joint standing committee may hold public hearings in furtherance of the purposes of this article, at such times and places within the state as desired. A member of the committee or the joint standing committee may administer oaths to persons testifying at such hearings or meetings.

(d) The committee or the joint standing committee may issue a subpoena, with the signature of either cochair of the committee or the joint standing committee and served in the manner provided by law, to 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 or joint standing committee in the performance of its duties.

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

(f) Witnesses subpoenaed to attend hearings or meetings pursuant to the provisions of this article, except officers or employees of the state, shall be allowed the same mileage and per diem as is allowed
witnesses before any petit jury.

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

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

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

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

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

1. A departmental chart designating each agency under the purview of the department;
2. An analysis of the department's internal performance measures and self-assessment systems; and
(3) For each agency under the purview of the department, the following:

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

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

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

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

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

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

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

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

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

(J) The extent to which statutory, regulatory,
budgeting or other changes are necessary to enable the agency to better serve the interests of the public and to comply with the factors enumerated in this subsection; and

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

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

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

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

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

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

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

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

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

(8) December, two thousand seven, Department of
Military Affairs and Public Safety; and

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

§ 4-10-7. Agency review.

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

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

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

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

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

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

(5) Whether the activities of the agency duplicate or overlap with those of other agencies and, if so, how 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.

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

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

(e) A cost-benefit analysis authorized by this section 50 may include:
(1) The tangible benefits of privatizing the service;

(2) Any legal impediments that may limit or prevent privatization of the service;

(3) The availability of multiple qualified and competitive private vendors; and

(4) A cost comparison, including total fixed and variable, direct and indirect, costs of the current governmental operation and the private vendor contract.

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

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

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

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

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

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

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

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

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

§4-10-9. Regulatory board review.

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

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

(c) When a new regulatory board is created, a date for a regulatory board review shall be included in the act that creates the board, within twelve years of the effective date of the act.
The regulatory board review may include:

1. Whether the board complies with the policies and provisions of chapter thirty of this code and other applicable laws and rules;

2. Whether the board follows a disciplinary procedure which observes due process rights and protects the public interest;

3. Whether the basis or facts that necessitated the initial licensing or regulation of a profession or occupation have changed, or other conditions have arisen that would warrant increased, decreased or the same degree of regulation;

4. Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates;

5. Whether statutory changes are necessary to improve board operations to enhance the public interest;

6. An analysis of any other issues the committee or the joint standing committee may direct; and

7. A recommendation as to whether the regulatory board under review should be continued, consolidated or terminated.

The committee or the joint standing committee may vote on the recommendation as to whether the regulatory board under review should be continued,

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

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

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

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

1. Two thousand eight: Board of Acupuncture; Board of Barbers and Cosmetologists; and Board of Examiners in Counseling.

2. Two thousand nine: Board of Hearing Aid Dealers; Board of Licensed Dietitians; and Nursing Home Administrators Board.

3. Two thousand ten: Board of Dental Examiners; Board of Medicine; and Board of Pharmacy.

4. Two thousand eleven: Board of Chiropractic Examiners; Board of Osteopathy; and Board of Physical Therapy.

5. Two thousand twelve: Board of Occupational Therapy; Board of Examiners for Speech-Language Pathology and Audiology; and Medical Imaging and Radiation Therapy Board of Examiners.

6. Two thousand thirteen: Board of Professional
Surveyors; Board of Registration for Foresters; and Board of Registration for Professional Engineers.

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

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

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

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

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

§4-10-11. Compliance review.

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

(b) If the committee or the joint standing committee requests a compliance review for an agency or a regulatory board, then it must state, in writing, the specific reasons for the compliance review and its
§4-10-12. Termination of an agency or regulatory board; reestablishment of terminated agency or regulatory board.

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

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

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

(d) If a regulatory board is reestablished by the Legislature during the wind-up year with substantially the same powers, duties or functions, then the regulatory board is considered continued. If a regulatory board is not reestablished by the Legislature during the wind-up year, then the regulatory board is considered terminated and the profession or occupation must apply for regulation through the sunrise process, under the provisions of this code, to be reestablished.
§4-10-13. Disposition of agency or regulatory board assets, equipment and records after termination.

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

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

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

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

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

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

No agency or regulatory board terminates pursuant to references to this article.
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 3rd Day of April, 2007.

Governor