

# WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2839

BY DELEGATES HOWELL, FRICH, DEAN, HILL, G. FOSTER,

MARTIN, HAMRICK, ARVON, LEWIS, SYPOLT AND

ROHRBACH

[Passed April 7, 2017; in effect ninety days from passage.]

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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FILED

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[Passed April 7, 2017; in effect ninety days from passage.]

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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FILED

1 AN ACT to amend and reenact §4-10-3, §4-10-6, §4-10-7, §4-10-8, §4-10-10 and §4-10-14 of the  
2 Code of West Virginia, 1931, as amended, all relating to generally the West Virginia  
3 Performance Review Act; modifying the definition of the term "division"; modifying the  
4 timing and scope of department presentations; updating the schedules of department  
5 presentations, agency reviews and regulatory board reviews; eliminating the requirement  
6 that an agency review include an analysis of agency websites; and authorizing the joint  
7 standing committee on Government Organization to request a review of any agency or  
8 program and to recommend or propose the consolidation, termination or reassignment of  
9 the agencies or programs reviewed.

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

1 That §4-10-3, §4-10-6, §4-10-7, §4-10-8, §4-10-10 and §4-10-14 of the Code of West  
2 Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 10. PERFORMANCE REVIEW ACT.**

**§4-10-3. Definitions.**

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

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

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

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

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

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

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

17 (g) "Division" means the Performance Evaluation and Research Division, the Post Audit  
18 Division, or any division of the Legislative Auditor's Office.

19 (h) "Joint standing committee" means the joint standing committee on Government  
20 Organization.

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

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

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

**§4-10-6. Department presentation; timing and scope.**

1 (a) During the calendar year in which a department is scheduled for an agency review  
2 pursuant to section eight of this article, and upon notification from the joint standing committee or  
3 the division, the department shall prepare and present a department presentation to the joint  
4 standing committee and the committee. The purpose of the presentation is to inform the  
5 Legislature as to the programs, activities and financial situation of the department and to update  
6 and amend any information previously presented to the joint standing committee or committee  
7 pursuant to this section. The presentation shall include:

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

- 12 (A) The mission, goals and functions of the agency;
- 13 (B) The statutory or other legal authority under which the agency operates;
- 14 (C) The number of employees of the agency for the immediate past ten years;
- 15 (D) The budget for the agency for the immediate past ten years;
- 16 (E) Any potential or actual loss of revenue due to operations, changes in law or any other  
17 reason;
- 18 (F) The extent to which the agency has operated in the public interest;
- 19 (G) The extent to which the agency has complied with state personnel practices, including  
20 affirmative action requirements;
- 21 (H) The extent to which the agency has encouraged public participation in the making of  
22 its rules and decisions and has encouraged interested persons to report to it on the impact of its  
23 rules and decisions on the effectiveness, economy and availability of services that it has provided;
- 24 (I) The efficiency with which public inquiries or complaints regarding the activities of the  
25 agency have been processed and resolved;
- 26 (J) The extent to which statutory, regulatory, budgeting or other changes are necessary to  
27 enable the agency to better serve the interests of the public and to comply with the factors  
28 enumerated in this subsection; and
- 29 (K) A recommendation as to whether the agency should be continued, consolidated or  
30 terminated.

**§4-10-7. Agency review.**

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

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

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

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

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

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

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

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

17 (7) An assessment of the utilization of information technology systems within the agency,  
18 including interagency and intra-agency communications;

19 (8) An analysis of any issues raised by the presentation made by the department pursuant  
20 to the provisions of this article;

21 (9) An analysis of any other issues as the committee or the joint standing committee may  
22 direct; and

23 (10) A recommendation as to whether the agency under review should be continued,  
24 consolidated or terminated.

25 (c) The committee or the joint standing committee may vote on the recommendation as to  
26 whether the agency under review should be continued, consolidated or terminated.

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

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

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

32 (1) The tangible benefits of privatizing the service;

- 33 (2) Any legal impediments that may limit or prevent privatization of the service;
- 34 (3) The availability of multiple qualified and competitive private vendors; and
- 35 (4) A cost comparison, including total fixed and variable, direct and indirect, costs of the
- 36 current governmental operation and the private vendor contract.

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

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

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

- 7 (1) 2017: The Department of Revenue and the Department of Commerce;
- 8 (2) 2018: The Department of Environmental Protection and the Department of Military  
9 Affairs and Public Safety;
- 10 (3) 2019: The Department of Health and Human Resources, including the Bureau of  
11 Senior Services;
- 12 (4) 2020: The Department of Transportation;
- 13 (5) 2021: The Department of Administration;
- 14 (6) 2022: The Department of Education, the Higher Education Policy Commission and the  
15 West Virginia Council for Community and Technical College Education; and
- 16 (7) 2023: The Department of Veterans' Assistance and the Department of Education and  
17 the Arts.

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

- 1 (a) A regulatory board review is required for all regulatory boards.
- 2 (b) A regulatory board review shall be performed on each regulatory board at least once
- 3 every twelve years, commencing as follows:

4 (1) 2017: Board of Accountancy; Board of Respiratory Care Practitioners; and Board of  
5 Social Work Examiners.

6 (2) 2018: Board of Examiners of Psychologists; Board of Optometry; and Board of  
7 Veterinary Medicine.

8 (3) 2019: Board of Acupuncture; Board of Barbers and Cosmetologists; and Board of  
9 Examiners in Counseling.

10 (4) 2020: Board of Hearing Aid Dealers; Board of Licensed Dietitians; and Nursing Home  
11 Administrators Board.

12 (5) 2021: Board of Dental Examiners; Board of Medicine; and Board of Pharmacy.

13 (6) 2022: Board of Chiropractic Examiners; Board of Osteopathy; and Board of Physical  
14 Therapy.

15 (7) 2023: Board of Occupational Therapy; Board of Examiners for Speech-Language  
16 Pathology and Audiology; and Medical Imaging and Radiation Therapy Board of Examiners.

17 (8) 2024: Board of Professional Surveyors; Board of Registration for Foresters; and Board  
18 of Registration for Professional Engineers.

19 (9) 2025: Board of Examiners for Licensed Practical Nurses; Board of Examiners for  
20 Registered Professional Nurses; and Massage Therapy Licensure Board.

21 (10) 2026: Board of Architects; Board of Embalmers and Funeral Directors; and Board of  
22 Landscape Architects; and

23 (11) 2027: Board of Registration for Sanitarians; Real Estate Appraiser Licensure and  
24 Certification Board; and Real Estate Commission.

**§4-10-14. Provision for other reviews; consolidation, termination and reorganization of agencies or programs.**

1 (a) The specifications of schedules for, and the scope of, agency and regulatory board  
2 reviews in this article shall not preclude a legislative review or reevaluation of any agency or  
3 program at other times. The joint standing committee may request a review of the performance,



4 purpose, efficiency and effectiveness of any agency or program any time that circumstances may  
5 require, including, but not limited to, the following:

6 (1) Expressed or implied statutory expiration of an agency or program;

7 (2) Creation of new, or the amendment of existing, federal law affecting the agency or  
8 program;

9 (3) Redundant purposes or functions in more than one agency or program or within an  
10 agency;

11 (4) Completion or satisfaction of agency or program objectives;

12 (5) Persistent inefficiencies in the delivery of services or in the accomplishment, or lack  
13 thereof, of statutory objectives;

14 (6) Fiscal constraints requiring changes in staffing, resources or goals; and

15 (7) Changes in legislative policy or direction.

16 (b) Following the completion of a review by the division and the joint standing committee,  
17 with responses and comment from the subject agency or regulatory board, the joint standing  
18 committee may recommend or propose the consolidation, termination or reassignment of the  
19 agency, program or regulatory board reviewed.

20 (c) Nothing in this article shall be construed as limiting or interfering with the right of any  
21 member of the Legislature to introduce, or of the Legislature to enact, any bill that would terminate,  
22 consolidate or reorganize one or more state agencies or programs without a review conducted  
23 under the terms of this article.

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

*Debra Fowler*  
.....  
Chairman, House Committee

*Ed Leach*  
.....  
Member Chairman, Senate Committee

**FILED**  
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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Originating in the House.

In effect ninety days from passage.

*Steph J. Rocco*  
.....  
Clerk of the House of Delegates

*Clark A. Barnes*  
.....  
Clerk of the Senate

*Ch. Holt*  
.....  
Speaker of the House of Delegates

*Matthew B. Corman*  
.....  
President of the Senate

The within *is approved* this the *25th*  
*April*  
day of ..... 2017.

*Jim Justice*  
.....  
Governor

PRESENTED TO THE GOVERNOR

APR 21 2017

Time 3:57 pm