

RECEIVED

1993 MAY 12 PM 4: 16

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

— ● —

ENROLLED

HOUSE BILL No. 2740

(By Delegates *Martin, Love, Michael, Fragale,
Heck, Higgins and Willison*)

— ● —

Passed April 10, 1993

In Effect July 1, 1993 ~~Passage~~

ENROLLED
H. B. 2740

(By DELEGATES MARTIN, LOVE, MICHAEL, FRAGALE,
HECK, HIGGINS AND WILLISON)

[Passed April 10, 1993; in effect July 1, 1993.]

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

Be it enacted by the Legislature of West Virginia:

That article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

§4-10-1. Short title.

1 This article shall be known as and may be cited as
2 the "West Virginia Sunset Law."

§4-10-2. Legislative findings.

1 The Legislature finds that state governmental actions
2 have produced substantial increases in the number of
3 governmental entities, growth in the number of govern-
4 mental programs, proliferation of rules and regulations,
5 and that the process developed without sufficient
6 legislative oversight, regulatory accountability or an
7 effective system of checks and balances; that govern-
8 mental entities have been created without demonstrable
9 evidence that their benefits to the public clearly justify
10 their creation; that once established, governmental
11 entities tend to acquire permanent status, often without
12 regard for the condition which gave rise to their
13 establishment; that the personnel of such entities are
14 often beyond the effective control of elected officials, and
15 efforts to encourage modernization or even to review
16 performance have typically proven difficult at best; that
17 too often, governmental entities acquire a combination
18 of autonomy and authority inconsistent with democratic
19 principles and acquire a capacity for self-perpetuation
20 incompatible with principles of accountability; and that
21 by establishing a system for the termination, continua-
22 tion or reestablishment of such governmental entities,
23 the position of the Legislature to evaluate the need for
24 the continued existence of existing and future govern-
25 mental entities will be enhanced.

§4-10-3. Definitions.

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

3 (1) "Committee" means the joint committee on govern-
4 ment operations, hereinafter created, to perform duties
5 under this article.

6 (2) "Department" means any office or division, headed
7 by a gubernatorial appointee, within the state of West
8 Virginia.

9 (3) "Agency" means any department, division, fund,
10 office, position, system, survey or other entity of state
11 government, however designated, in the state of West
12 Virginia.

13 (4) "Board" means any board, commission, authority,
14 council, advisory body, or other body, however desig-
15 nated, consisting of two or more members, in the state
16 of West Virginia.

17 (5) "Performance audit" means to determine for a
18 department, agency, or board whether the department,
19 agency or board is acquiring, protecting and using its
20 resources economically and efficiently; the causes of
21 inefficiencies or fiscally unsound practices; and whether
22 the department, agency or board has complied with laws
23 and regulations concerning matters of economy and
24 efficiency. Also, a performance audit may include
25 determining the extent to which the desired results or
26 benefits established by the legislature are being
27 achieved by the department, agency or board; the
28 effectiveness of organizations, programs, activities or
29 functions; and whether the department, agency or board
30 has complied with laws and regulations applicable to the
31 program.

32 (6) "Financial audit" means to determine for a
33 department, agency, board or person whether the
34 financial statements of the audited department, agency
35 or board present fairly the financial position, results of
36 operations and cash flows or changes in financial
37 position in accordance with generally accepted account-
38 ing principles; and whether the department, agency or
39 board has complied with laws and regulations for those
40 transactions and events that may have a material effect
41 on the financial statements.

42 (7) "Preliminary performance review" means to
43 determine the goals and objectives of a department,
44 agency, or board; and to determine the extent to which
45 plan of a department, agency, board has met or is
46 meeting those goals and objectives.

**§4-10-4. Termination of departments, agencies or boards
following performance audits.**

1 The following departments, agencies or boards shall
2 be terminated on the date indicated, but no department,
3 agency or board shall be terminated under this section
4 unless a performance audit has been conducted upon
5 such department, agency or board:

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

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

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

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

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

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

6 (1) On the first day of July, one thousand nine
7 hundred ninety-four: State water resources board; office
8 of water resources of the division of environmental
9 protection; farm management commission; West Virgini-
10 a ethics commission; family law masters system; child
11 advocate office of the department of health and human
12 resources; family protection services board; state
13 structural barriers compliance board; board of archi-
14 tects; state building commission; oil and gas inspectors'
15 examining board; public employees insurance agency;
16 public employees insurance agency finance board; Ohio
17 River valley water sanitation commission; veteran's
18 council; share in your future commission; southern

19 regional education board; and the real estate
20 commission.

21 (2) On the first day of July, one thousand nine
22 hundred ninety-five: Emergency medical services
23 advisory council; commission on charitable organiza-
24 tions; information system advisory commission; West
25 Virginia labor-management council; board of social
26 work examiners; the rural health initiative advisory
27 panel; and the marketing and development divisions of
28 the department of agriculture.

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

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

40 (5) On the first day of July, one thousand nine
41 hundred ninety-eight: State lottery commission; the
42 following divisions or programs of the department of
43 agriculture: Meat inspection program and soil conserva-
44 tion committee; women's commission; state board of risk
45 and insurance management; board of examiners of land
46 surveyors; commission on uniform state laws; council of
47 finance and administration; forest management review
48 commission; West Virginia's membership in the inter-
49 state commission on the Potomac River basin; legislative
50 oversight commission on education accountability; and
51 the board of examiners in counseling; board of examiners
52 in speech pathology and audiology.

53 (6) On the first day of July, one thousand nine
54 hundred ninety-nine: Board of banking and financial
55 institutions; capitol building commission; tree fruit
56 industry self-improvement assessment program; and the
57 public service commission.

§4-10-6. Continuance of department, agency or board after termination and purpose therefor; continuance of powers and authority after termination; cessation of all activities; reestablishment of terminated department, agency or board.

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

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

1 The life of any department, agency, or board sche-
2 duled for termination under this section may be
3 continued or reestablished by the legislature for a period
4 of time not to exceed six years.

5 Any act which creates a new department, agency, or
6 board and which is enacted after the effective date of
7 this article shall provide for termination and review of
8 the newly-created department, agency or board pursu-
9 ant to this article within six years after the effective
10 date of the act which creates the department, agency or
11 board.

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

1 The joint committee on government operations,
2 heretofore created, is hereby continued. The committee
3 shall be composed of five members of the Senate, to be
4 appointed by the president thereof, no more than three
5 of whom shall be appointed from the same political
6 party; five members of the House of Delegates, to be
7 appointed by the speaker thereof, no more than three of
8 whom shall be appointed from the same political party:
9 *Provided*, That in the event the membership of a
10 political party is less than fifteen percent in the House
11 of Delegates or Senate, that the membership of that
12 political party from the legislative house with less than
13 fifteen percent membership may be one from that house;
14 and five citizens of this state who are not legislators,
15 public officials or public employees, to be appointed by
16 the governor to serve at his will and pleasure, not more
17 than three of whom shall be appointed from the same
18 political party, and at least one of whom shall reside in
19 each congressional district of this state. The committee
20 shall be headed by two cochairman, one to be selected
21 by the president of the Senate from the members
22 appointed from the Senate, and one to be selected by the
23 speaker of the House of Delegates from the members
24 appointed from the House of Delegates. All members of
25 the committee shall serve until their successors shall
26 have been appointed as heretofore provided. Members
27 of the committee shall receive such compensation and
28 reimbursement for expenses in connection with perfor-
29 mance of interim duties between regular sessions of the
30 Legislature as may be authorized by the citizens
31 legislative compensation commission established by
32 section thirty-three, article six of the constitution of
33 West Virginia. Each citizen member of the committee
34 shall receive such compensation as the legislative
35 interim members receive, in addition to reimbursement
36 for necessary expenses incurred in the performance of
37 duties under this article, such reimbursement to be
38 subject to the same limitations as govern the expenses
39 of the legislative members of the committee. Compen-
40 sation and expenses shall be paid from an appropriation
41 to be made expressly for the committee, but if no such
42 appropriation be made or the total amount appropriated

43 has been expended, such expenses shall be paid from the
44 appropriation under "Account No. 103 for Joint Ex-
45 penses," but no expense of any kind whatever payable
46 under said Account No. 103 for joint expenses shall be
47 incurred unless first approved by the joint committee on
48 government and finance. The committee shall meet upon
49 call of the cochairmen or either of them and may meet
50 at any time, both during sessions of the Legislature and
51 in the interim.

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

1 In order to carry out the duties set forth in this article,
2 the committee, or any duly authorized employee of the
3 committee, shall have access to any and all records of
4 every department, agency or board scheduled for
5 termination under the provisions of section four of this
6 article.

7 In addition to its regular and special meetings, the
8 committee, or any employee duly authorized by the
9 committee, is empowered to hold public hearings in
10 furtherance of the purposes of this article, at such times
11 and places within the state as may be deemed desirable,
12 and any member of the committee shall have the power
13 to administer oaths to persons testifying at such
14 hearings or meetings.

15 By subpoena, issued over the signature of either
16 cochairman of the committee and served in the manner
17 provided by law, the committee may summon and
18 compel the attendance of witnesses and their examina-
19 tion under oath and the production of all books, papers,
20 documents and records necessary or convenient to be
21 examined and used by the committee in the perfor-
22 mance of its duties. If any witness subpoenaed to appear
23 at any hearing or meeting shall refuse or fail to appear
24 or to answer questions put to him, or shall refuse or fail

25 to produce books, papers, documents, or records within
26 his control when the same are demanded, the committee,
27 in its discretion, may enforce obedience to its subpoena
28 by attachment, fine or imprisonment, as provided in
29 section five, article one of this chapter; or it may report
30 the facts to the circuit court of Kanawha County or any
31 other court of competent jurisdiction and such court
32 shall compel obedience to the subpoena as though such
33 subpoena had been issued by such court in the first
34 instance.

35 Witnesses subpoenaed to attend such hearings or
36 meetings, except officers or employees of the state, shall
37 be allowed the same mileage and per diem as is allowed
38 witnesses before any petit jury.

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

48 The joint committee on government operations may
49 collect, and the department, agency or board shall pay,
50 any or all of the costs associated with conducting the
51 performance audits, financial audits or preliminary
52 performance reviews from the department, agency or
53 board being audited or reviewed, when necessary and
54 desirable. The joint committee on government opera-
55 tions shall render to the department, agency or board
56 liable for such costs a statement thereof as soon after
57 the same were incurred as practicable, and it shall be
58 the duty of such department, agency or board to pay
59 promptly in the manner that other claims and accounts
60 are paid. All money received by the joint committee on
61 government operations from this source shall be
62 expended only for the purpose of covering the costs
63 associated with such services, unless otherwise directed
64 by the Legislature.

§4-10-10. Performance and financial audits of governmental departments and agencies by the committee.

1 It shall be the duty of the committee to conduct a
2 performance audit and a financial audit in accordance
3 with generally accepted government auditing standards
4 as promulgated by the federal general accounting office
5 of every department or agency scheduled for termina-
6 tion under section four of this article to ascertain
7 whether there is a demonstrable need for the continua-
8 tion of the department or agency and whether the
9 department or agency should be continued.

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

12 (1) If the department or agency was created to resolve
13 a problem or provide a service.

14 (2) If the problem has been solved or the service has
15 been provided.

16 (3) The extent to which past department or agency
17 activities and accomplishments, current projects and
18 operations, and planned activities and goals for the
19 future are or have been effective.

20 (4) If the department or agency is operating effi-
21 ciently and effectively in performing its task.

22 (5) The extent to which there would be significant and
23 discernible adverse effects on the public health, safety,
24 or welfare if the department or agency were abolished.

25 (6) If the conditions which led to the creation of the
26 agency have changed.

27 (7) The extent to which the department or agency
28 operates in the public interest.

29 (8) Whether or not the operation of the department or
30 agency is impeded or enhanced by existing statutes,
31 rules, procedures, practices or any other circumstances
32 bearing upon the department or agency's capacity or
33 authority to operate in the public interest, including
34 budgetary, resource and personnel matters.

35 (9) The extent to which administrative and/or statu-
36 tory changes are necessary to improve agency operations
37 or to enhance the public interest.

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

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

45 (12) Whether or not the department or agency causes
46 an unnecessary burden on any citizen or other depart-
47 ment or agency by its decisions and activities.

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

51 The committee may direct that the performance audit
52 focus on a specific area of operation within the depart-
53 ment or agency, and may direct further inquiry, when
54 necessary and desirable, into other areas of concern,
55 including but not limited to:

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

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

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

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

69 (5) Whether or not the department or agency encour-
70 ages participation by the public in the decision making
71 process.

72 Financial audits may include audits of the following
73 items:

74 (1) Segments of financial statements.

75 (2) Financial information.

76 (3) Reports and schedules on financial matters, such
77 as expenditures for specific programs or services,
78 budget requests, and variances between estimated and
79 actual financial performance.

80 (4) Contracts.

81 (5) Grants.

82 (6) Internal control systems and structure over
83 accounting, financial reporting, and transaction
84 processing.

85 (7) Computer-based systems.

86 (8) Financial systems.

87 (9) Evidence of fraud.

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

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

6 (1) If the board or agency was created to solve a
7 problem or provide a service.

8 (2) If the problem has been solved or the service has
9 been provided.

10 (3) The extent to which past board or agency activities
11 and accomplishments, current projects and operations,
12 and planned activities and goals for the future are or
13 have been effective.

14 (4) The extent to which there would be significant and
15 discernible adverse effects on the public health, safety,
16 or welfare if the board or agency were abolished.

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

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

§4-10-12. Reports by the committee.

1 The committee shall complete its deliberations with
2 respect to any department, agency or board scheduled
3 for termination and make a report thereon to the
4 Legislature not later than ten days after the Legislature
5 convenes in regular session in the year of the scheduled
6 termination for the department, agency or board:
7 *Provided*, That any such report required in the year one
8 thousand nine hundred eighty-one, and every fourth
9 year thereafter shall be made not later than ten days
10 after the Legislature convenes on the second Wednesday
11 in February. Such report shall consist of an analysis of
12 the department, agency or board including such matters
13 as are expressly mandated to be considered by the
14 committee as set forth in this article, together with the
15 recommendations of the committee. The committee shall
16 make one of five recommendations: (1) The department,
17 agency or board be terminated as scheduled; (2) the
18 department, agency or board be continued and reestab-
19 lished; (3) the department, agency or board be continued
20 and reestablished, but the statutes governing it be
21 amended in specific ways to correct ineffective or
22 discriminatory practices and procedures, burdensome
23 rules and regulations, lack of protection of the public
24 interest, overlapping of jurisdiction with other govern-
25 mental entities, unwarranted exercise of authority
26 either in law or in fact or any other deficiencies; (4) a
27 performance audit be performed on a department,
28 agency or board on which a preliminary review has been
29 completed; or (5) the department, agency or board be
30 continued for a period of time not to exceed one year
31 for the purpose of completing a full performance audit.

32 Copies of such reports shall be made immediately
33 available to all members of the Legislature, to the

34 department, agency or board which is the subject of the
35 report and the public generally. A copy of each report
36 shall be formally filed by the committee with the clerk
37 of each house.

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

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

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

§4-10-14. Preservation of rights and claims.

1 Nothing in this article shall be construed as adversely
2 affecting any right or claim by any person against a
3 governmental department, agency or board or by any
4 governmental department, agency or board against any
5 person. Responsibility for prosecuting or defending any
6 such rights or claims should the Legislature fail to
7 continue and reestablish a department, agency or board
8 within one year after its termination shall be assumed
9 by the attorney general of the state.

**§4-10-15. Article not to be construed as limiting new
legislation.**

1 Nothing in this article shall be construed as limiting
2 or interfering with the right of any member of the
3 Legislature to introduce or of the Legislature to consider
4 any bill that would create a new state governmental
5 department, agency or board or amend the law with
6 respect to an existing one.

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

[Handwritten Signature]
.....
Chairman Senate Committee

Ernest C Moore
.....
Chairman House Committee

Originating in the House.

Takes effect July 1, 1993.

[Handwritten Signature]
.....
Clerk of the Senate

Donald R. Hoff
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker of the House of Delegates

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

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/93

Time 3:33 pm