

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2760

BY DELEGATES HOWELL, C. MARTIN, PACK, CADLE,
WORRELL, HOTT, D. JEFFRIES, J. JEFFRIES, BIBBY,
PORTERFIELD AND PHILLIPS

[Introduced January 30, 2019; Referred
to the Committee on Government Organization.]

1 A BILL to amend and reenact §4-10-7 and §4-10-9 of the Code of West Virginia, 1931, as
2 amended, all relating to performance reviews of state agencies and regulatory boards;
3 authorizing the Joint Committee on Government Operations and the Joint Standing
4 Committee on Government Organizations to include analysis of the rules of agencies and
5 regulatory boards and to make recommendations to the Legislative Rule-Making Review
6 Committee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. PERFORMANCE REVIEW ACT.

§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 10 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) An analysis of the rules and procedures of the agency and of the fees set by rule to
24 determine whether the agency is exercising improper powers, exceeding its statutory authority,
25 operating under improper procedures, or charging inappropriate fees and, in such case, a
26 recommendation to the Legislative Rule-Making Review Committee to review a rule of the agency
27 pursuant to §29A-3-16 of this code; and

28 ~~(10)~~ (11) A recommendation as to whether the agency under review should be continued,
29 consolidated or terminated.

30 (c) The committee or the joint standing committee may vote on the recommendation as to
31 whether the agency under review should be continued, consolidated or terminated.
32 Recommendations of the committee or the joint standing committee shall be given considerable
33 weight in determining if an agency should be continued, consolidated or terminated.

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

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

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

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

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

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

§4-10-9. Regulatory board review.

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

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

10 (c) When a new regulatory board is created, a date for a regulatory board review shall be
11 included in the act that creates the board, within 12 years of the effective date of the act.

12 (d) The regulatory board review may include:

13 (1) Whether the board complies with the policies and provisions of Chapter 30 of this code
14 and other applicable laws and rules;

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

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

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

23 (5) Whether statutory changes are necessary to improve board operations to enhance the
24 public interest;

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

27 (7) An analysis of the rules and procedures of the board and of the fees set by rule to
28 determine whether the regulatory board is exercising improper powers, exceeding its statutory
29 authority, operating under improper procedures, or charging inappropriate fees and, in such case,
30 a recommendation to the Legislative Rule-Making Review Committee to review a rule of the
31 regulatory board pursuant to §29A-3-16 of this code; and

32 ~~(7)~~ (8) A recommendation as to whether the regulatory board under review should be
33 continued, consolidated or terminated.

34 (e) The committee or the joint standing committee may vote on the recommendation as to
35 whether the regulatory board under review should be continued, consolidated or terminated.
36 Recommendations of the committee or the joint standing committee shall be given considerable
37 weight in determining if ~~an~~ a regulatory board should be continued, consolidated or terminated.

NOTE: The purpose of this bill is to include a review of the administrative rules of an agency or regulatory board when the Legislature conducts performance reviews of agencies and boards.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.