

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Senate Bill 687

By Senators Woodrum and Barrett

[Passed March 7, 2024; in effect 90 days from
passage]

1 AN ACT to amend and reenact §4-2-3, §4-2-4, §4-2-6, and §4-2-8 of the Code of West Virginia,
2 1931, as amended; to repeal §4-2-5 of said code; to amend and reenact §4-3-3c of said
3 code; to amend and reenact §4-10-3, §4-10-6, §4-10-7, §4-10-9, and §4-10-10 of said
4 code; and to repeal §4-10-8 of said code, all relating to the Legislative Auditor; establishing
5 that auditor is responsible to Joint Committee on Government and Finance; clarifying that
6 auditor may exercise powers at direction of Senate President or Speaker of the House of
7 Delegates; restating authority of auditor to inspect properties, equipment, and records;
8 providing for publication of post audit reports; prohibiting auditor from using external
9 auditing entities to conduct audits except as directed by Senate President or Speaker;
10 modifying obligations of auditor regarding budgetary matters; providing that committee has
11 authority to hire employees to assist auditor in performance of obligations; clarifying hiring
12 authority of committee; providing that department presentations are to be made at Senate
13 President's or Speaker's direction; mandating that state agencies be reviewed within
14 certain time period; eliminating requirement that agency and regulatory board reviews be
15 conducted according to certain auditing standards; revising schedule of regulatory board
16 reviews; and providing that agency and regulatory board reviews may be conducted more
17 frequently than mandated.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. LEGISLATIVE AUDITOR; POWERS; FUNCTIONS; COMPENSATION.

**§4-2-3. Appointment of Legislative Auditor; responsibility to Joint Committee on
Government and Finance.**

1 There is hereby created the position of Legislative Auditor who shall be appointed by the
2 committee to serve at its will and pleasure. The Legislative Auditor shall be solely responsible to
3 the committee.

§4-2-4. Powers of Auditor; reports.

5 (a) The Legislative Auditor shall have the following powers, which he or she may exercise

6 as directed by the President of the Senate or the Speaker of the House of Delegates:

7 (1) To compile fiscal information for the Senate and the House of Delegates;

8 (2) To make an audit and analysis of the state budget, revenues, and expenditures during
9 and between sessions of the Legislature;

10 (3) To make post audits of the revenues and expenditures of the spending units of the state
11 government;

12 (4) To report any misapplication of state funds or erroneous, extravagant, or unlawful
13 expenditures by any spending unit; and

14 (5) To ascertain facts and make recommendations to the Legislature concerning post-audit
15 findings, the revenues and expenditures of the state, and of the organization and functions of the
16 state and its spending units.

17 (b) In the exercise of these powers, as directed by the President of the Senate or the
18 Speaker of the House of Delegates, the Legislative Auditor shall have the authority, by such
19 means as are necessary, to require any person holding office in the state government or employed
20 by the state to allow the Legislative Auditor to inspect the properties, equipment, facilities, and
21 records of the various spending units, either before or after estimates are submitted, and before,
22 during, and after sessions of the Legislature. Refusal by any person or the state government entity
23 to allow such inspection shall be reported by the Legislative Auditor to the committee, the
24 President of the Senate, or the Speaker of the House of Delegates.

25 (c) The Legislative Auditor may collect, and the spending unit shall pay, any or all of the
26 costs associated with conducting the post audits from the spending unit being audited, when
27 necessary and desirable. The Legislative Auditor shall render to the spending unit liable for the
28 costs a statement of the costs as soon after the costs were incurred as practicable, and it is the
29 duty of the spending unit to pay promptly in the manner that other claims and accounts are paid. All
30 money received by the Legislative Auditor from this source shall be expended only for the purpose
31 of covering the costs associated with such services, unless otherwise directed by the Legislature.

32 (d) Upon completion of a post audit, the Legislative Auditor shall report his or her findings
33 and recommendations to the Legislature's Post Audit Subcommittee and, after presentation,
34 publish the report on the Post Audit Division website.

35 (e) The Legislative Auditor shall conduct all examinations and audits and may not use
36 external auditing firms or entities to conduct them except as otherwise directed by the President of
37 the Senate or the Speaker of the House of Delegates.

§4-2-5. Powers of Auditor.

1 [Repealed.]

§4-2-6. Preparation of budgets and reports.

1 The Legislative Auditor shall compile revenue and budgetary reports, in such form and with
2 such itemization and other information as the committee shall prescribe, at least 30 days prior to
3 any legislative session, and submit them to the committee with appropriate recommendations,
4 together with such other findings and reports deemed necessary or required by the committee.
5 The Legislative Auditor shall also report to the committee any misapplication of state funds and
6 any erroneous, extravagant, or unlawful expenditures by any spending unit, together with such
7 other findings and reports as the committee shall require.

§4-2-8. Assistants and employees.

1 The Legislative Auditor may recommend that the committee employ such assistants or
2 employees as the Legislative Auditor believes to be necessary for the efficient discharge of his or
3 her tasks. The committee may, in its discretion, employ assistants and employees to aid the
4 Legislative Auditor and fix their number and compensation.

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-3c. Reorganization of joint legislative agencies.

1 (a) The Joint Committee on Government and Finance has the authority over and direction
2 of joint legislative agencies, personnel, and services, including, but not limited to, the following:

- 3 (1) The Commission on Special Investigations provided for in §4-5-1 *et seq.* of this code;
- 4 (2) The West Virginia Legislative Claims Commission provided for in §14-2-1 *et seq.* and
5 crime victims compensation provided for in §14-2A-1 *et seq.* of this code;
- 6 (3) The Legislative Auditor provided for in §4-2-1 *et seq.* of this code;
- 7 (4) The Legislative Rule-Making Review Committee provided for in §29A-3-1 *et seq.* of this
8 code;
- 9 (5) The Legislative Reference Library provided for in §4-3-3 of this code;
- 10 (6) The Legislative Automated Systems Division;
- 11 (7) Legislative Services;
- 12 (8) Public information; and
- 13 (9) Joint services provided by one or more of the joint agencies set forth in this subsection.

14 The following joint services are included:

- 15 (A) Bill drafting;
- 16 (B) Budget analysis;
- 17 (C) Duplicating;
- 18 (D) Financial, payroll, personnel, and purchasing for joint agencies and personnel;
- 19 (E) Fiscal analysis;
- 20 (F) Post audits, full performance evaluations, and preliminary performance reviews;
- 21 (G) Research; and
- 22 (H) Joint services to other joint legislative committees created and authorized by this code,
23 to joint standing committees of the Senate and House of Delegates, to standing committees of the
24 Senate and House of Delegates and to legislative interim committees.

25 (b) Notwithstanding any other provision of this chapter to the contrary, the Joint Committee
26 on Government and Finance has the authority to reorganize and restructure the joint legislative
27 agencies, personnel, and services as provided in subsection (a) of this section for the purposes of

28 improving their efficiency and the service they provide to the Legislature and to improve the
29 management thereof by the joint committee. To accomplish these purposes, the joint committee
30 may employ and terminate personnel; create divisions as it determines necessary; and transfer
31 and assign the joint agencies, personnel, and services to the divisions. The divisions, joint
32 agencies, personnel, and services shall operate under the direction and policies of the joint
33 committee: *Provided*, That nothing in this section shall be construed to permit the joint committee
34 to alter or redefine the powers, duties, and responsibilities vested in the Commission on Special
35 Investigations pursuant to §4-5-1 et seq. of this code.

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 an agency at the direction of the
7 President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint
8 standing committee pursuant to the provisions of this article.

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

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

15 (e) "Department" means the departments created within the executive branch, headed by

16 a secretary appointed by the Governor, as authorized by the Code of West Virginia.

17 (f) "Department presentation" means a presentation by a department pursuant to the
18 provisions of this article made at the direction of the President of the Senate or the Speaker of the
19 House of Delegates.

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

22 (h) "Joint standing committee" means the Joint Standing Committee on Government
23 Organization.

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

26 (j) "Regulatory Board" means a board that regulates professions and occupations, created
27 under the provisions of chapter 30 of this code.

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

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

1 (a) At the direction of the President of the Senate or the Speaker of the House of
2 Delegates, and upon notification from the division, a department shall prepare and make a
3 presentation to the joint standing committee and the committee. The purpose of the presentation is
4 to inform the Legislature as to the programs, activities, and financial situation of the department
5 and to update and amend any information previously presented to the joint standing committee or
6 committee pursuant to this section. The presentation shall include:

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

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

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

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

- 12 (B) The statutory or other legal authority under which the agency operates;
- 13 (C) The number of employees of the agency for the immediate past 10 years;
- 14 (D) The budget for the agency for the immediate past 10 years;
- 15 (E) Any potential or actual loss of revenue due to operations, changes in law, or any other
- 16 reason;
- 17 (F) The extent to which the agency has operated in the public interest;
- 18 (G) The extent to which the agency has complied with state personnel practices, including
- 19 affirmative action requirements;
- 20 (H) The extent to which the agency has encouraged public participation in the making of its
- 21 rules and decisions and has encouraged interested persons to report to it on the impact of its rules
- 22 and decisions on the effectiveness, economy, and availability of services that it has provided;
- 23 (I) The efficiency with which public inquiries or complaints regarding the activities of the
- 24 agency have been processed and resolved;
- 25 (J) The extent to which statutory, regulatory, budgeting, or other changes are necessary to
- 26 enable the agency to better serve the interests of the public and to comply with the factors
- 27 enumerated in this subsection; and
- 28 (K) A recommendation as to whether the agency should be continued, consolidated, or
- 29 terminated.

§4-10-7. Agency review.

- 1 (a) The division shall conduct agency reviews of one or more state agencies each year. An
- 2 agency review shall be conducted of each state agency at least once every 15 years. An agency
- 3 review may be conducted more frequently than once in 15 years and may be conducted in the
- 4 discretion, and at the direction, of the President of the Senate, the Speaker of the House of
- 5 Delegates, or by recommendation of the joint standing committee.
- 6 (b) The agency review may include, but is not limited to:
- 7 (1) An identification and description of the agency under review;

- 8 (2) The number of employees of the agency for the immediate past 10 years;
- 9 (3) The budget for the agency for the immediate past 10 years;
- 10 (4) Whether the agency is effectively and efficiently carrying out its statutory duties or
- 11 exercising its legal authority;
- 12 (5) Whether the activities of the agency duplicate or overlap with those of other agencies
- 13 and, if so, how these activities could be consolidated;
- 14 (6) A cost-benefit analysis, as described in subsection (d) of this section, on state services
- 15 that are privatized or contemplated to be privatized;
- 16 (7) An assessment of the utilization of information technology systems within the agency,
- 17 including interagency and intra-agency communications;
- 18 (8) An analysis of any issues raised by any presentation by the department under whose
- 19 purview the agency falls made pursuant to the provisions of this article;
- 20 (9) An analysis of any other issues as the committee, the joint standing committee, the
- 21 President of the Senate, or the Speaker of the House of Delegates may direct; and
- 22 (10) A recommendation as to whether the agency under review should be continued,
- 23 consolidated, or terminated.
- 24 (c) An agency may be subject to a compliance review pursuant to the provisions of this
- 25 article.
- 26 (d) A cost-benefit analysis authorized by this section may include:
- 27 (1) The tangible benefits of privatizing the service;
- 28 (2) Any legal impediments that may limit or prevent privatization of the service;
- 29 (3) The availability of multiple qualified and competitive private vendors; and
- 30 (4) A cost comparison, including total fixed and variable, direct and indirect, costs of the
- 31 current governmental operation and the private vendor contract.

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

1 [Repealed.]

§4-10-9. Regulatory board review.

1 (a) The division shall conduct regulatory board reviews on each regulatory board to
2 ascertain if there is a need for the continuation, consolidation, or termination of the regulatory
3 board as one of its duties.

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

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

9 (d) The regulatory board review may include:

10 (1) Whether the board complies with the policies and provisions of chapter 30 of this code
11 and other applicable laws and rules;

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

14 (3) Whether the basis or facts that necessitated the initial licensing or regulation of a
15 profession or occupation have changed, or other conditions have arisen that would warrant
16 increased or decreased regulation;

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

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

22 (6) An analysis of any other issues the committee, the joint standing committee, the
23 President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint
24 standing committee.

25 (7) A recommendation as to whether the regulatory board under review should be

26 continued, consolidated, or terminated.

§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 12 years.

4 (c) A regulatory board review may be conducted more frequently than once in 12 years and
5 may be conducted in the discretion, and at the direction, of the President of the Senate or the
6 Speaker of the House of Delegates.