

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2839**

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[Originating in the Committee on Government

Organization; March 13, 2017]



1 A BILL 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 generally to updating the procedures  
3 for legislative review of departments and licensing boards; amending definitions; defining  
4 the timing and scope of department presentations; eliminating analysis of websites as a  
5 review component; updating regular schedules for agency and regulatory board reviews;  
6 and authorizing reviews and reorganizations outside of the regular review schedules.

*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, of and the office of the Legislative Auditor.

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; and ~~schedule~~ timing and scope.**

1 ~~(a) During the 2007 legislative interim period, each department shall make a presentation~~  
2 ~~pursuant to the provisions of this section to the joint standing committee and the committee.~~

3 ~~(b) The department shall provide to the joint standing committee and the committee a~~  
4 ~~written copy of the presentation. After the start of the calendar year in which a department is~~  
5 ~~scheduled for review pursuant to sections seven and eight of this article and upon notification~~  
6 ~~from the committee or the division, the department shall prepare a presentation for the committee~~  
7 ~~and the Joint Standing Committee. The purpose of the presentation is to inform the Legislature~~  
8 ~~as to the programs, activities and financial situation of the department and to update and amend~~  
9 ~~any information previously presented to the committee or the Legislature under the provisions of~~  
10 ~~this section or any prior version of it.~~ The presentation shall include:

- 11 (1) A departmental chart designating each agency under the purview of the department;  
12 (2) An analysis of the department's internal performance measures and self-assessment  
13 systems; and

- 14 (3) For each agency under the purview of the department, the following:
- 15 (A) The mission, goals and functions of the agency;
- 16 (B) The statutory or other legal authority under which the agency operates;
- 17 (C) The number of employees of the agency for the immediate past ten years;
- 18 (D) The budget for the agency for the immediate past ten years;
- 19 (E) Any potential or actual loss of revenue due to operations, changes in law or any other
- 20 reason;
- 21 (F) The extent to which the agency has operated in the public interest;
- 22 (G) The extent to which the agency has complied with state personnel practices, including
- 23 affirmative action requirements;
- 24 (H) The extent to which the agency has encouraged public participation in the making of
- 25 its rules and decisions and has encouraged interested persons to report to it on the impact of its
- 26 rules and decisions on the effectiveness, economy and availability of services that it has provided;
- 27 (I) The efficiency with which public inquiries or complaints regarding the activities of the
- 28 agency have been processed and resolved;
- 29 (J) The extent to which statutory, regulatory, budgeting or other changes are necessary to
- 30 enable the agency to better serve the interests of the public and to comply with the factors
- 31 enumerated in this subsection; and
- 32 (K) A recommendation as to whether the agency should be continued, consolidated or
- 33 terminated.
- 34 ~~(c) The schedule for the presentations by the departments shall be as follows:~~
- 35 ~~(1) May, 2007, Department of Administration;~~
- 36 ~~(2) June, 2007, Department of Education and the Arts;~~
- 37 ~~(3) July, 2007, Department of Education, including the Higher Education Policy~~
- 38 ~~Commission and the West Virginia Council for Community and Technical College Education;~~
- 39 ~~(4) August, 2007, Department of Revenue;~~

- 40 ~~(5) September, 2007, Department of Environmental Protection;~~
- 41 ~~(6) October, 2007, Department of Health and Human Resources, including the Bureau of~~
- 42 ~~Senior Services;~~
- 43 ~~(7) November, 2007, Department of Commerce;~~
- 44 ~~(8) December, 2007, Department of Military Affairs and Public Safety; and~~
- 45 ~~(9) January, 2008, Department of Transportation~~

**§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 analysis of the extent to which agency websites are accurate, updated and user~~  
18 ~~friendly;~~

19           ~~(8)~~ (7) An assessment of the utilization of information technology systems within the  
20 agency, including interagency and intra-agency communications;

21           ~~(9)~~ (8) An analysis of any issues raised by the presentation made by the department  
22 pursuant to the provisions of this article;

23           ~~(10)~~ (9) An analysis of any other issues as the committee or the Joint Standing Committee  
24 may direct; and

25           ~~(11)~~ (10) A recommendation as to whether the agency under review should be continued,  
26 consolidated or terminated.

27           (c) The committee or the Joint Standing Committee may vote on the recommendation as  
28 to whether the agency under review should be continued, consolidated or terminated.  
29 Recommendations of the committee or the Joint Standing Committee shall be given considerable  
30 weight in determining if an agency should be continued, consolidated or terminated.

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

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

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

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

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

37           (4) A cost comparison, including total fixed and variable, direct and indirect, costs of the  
38 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  
3 regular session of the year in which the department is to be reviewed pursuant to the schedule  
4 set forth 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) 2013, the Department of Transportation;~~

8 ~~(2) 2014, the Department of Administration;~~

9 ~~(3) 2015, the Department of Education, including the Higher Education Policy Commission  
10 and the West Virginia Council for Community and Technical College Education;~~

11 ~~(4) 2016, the Department of Veterans' Assistance and the Department of Education and  
12 the Arts;~~

13 ~~(5) (1) 2017, the Department of Revenue and the Department of Commerce;~~

14 ~~(6) (2) 2018, the Department of Environmental Protection and the Department of Military  
15 Affairs and Public Safety;~~

16 ~~(7) (3) 2019, the Department of Health and Human Resources, including the Bureau of  
17 Senior Services; and~~

18 ~~(8) (4) 2020, the Department of Transportation;~~

19 ~~(5) 2021, the Department of Administration;~~

20 ~~(6) 2022, the Department of Education, including the Higher Education Policy Commission  
21 and the West Virginia Council for Community and Technical College Education; and~~

22 ~~(7) 2023, the Department of Veterans' Assistance and the Department of Education and  
23 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) Two thousand eight: Board of Acupuncture; Board of Barbers and Cosmetologists; and  
5 Board of Examiners in Counseling.~~



6 ~~(2) Two thousand nine: Board of Hearing Aid Dealers; Board of Licensed Dietitians; and~~  
7 ~~Nursing Home Administrators Board.~~

8 ~~(3) Two thousand ten: Board of Dental Examiners; Board of Medicine; and Board of~~  
9 ~~Pharmacy.~~

10 ~~(4) Two thousand eleven: Board of Chiropractic Examiners; Board of Osteopathy; and~~  
11 ~~Board of Physical Therapy.~~

12 ~~(5) Two thousand twelve: Board of Occupational Therapy; Board of Examiners for Speech-~~  
13 ~~Language Pathology and Audiology; and Medical Imaging and Radiation Therapy Board of~~  
14 ~~Examiners.~~

15 ~~(6) Two thousand thirteen: Board of Professional Surveyors; Board of Registration for~~  
16 ~~Foresters; and Board of Registration for Professional Engineers.~~

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

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

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

23 ~~(10) (1) Two thousand seventeen 2017, Board of Accountancy; Board of Respiratory Care~~  
24 ~~Practitioners; and Board of Social Work Examiners.~~

25 ~~(11) (2) Two thousand eighteen 2018, Board of Examiners of Psychologists; Board of~~  
26 ~~Optometry; and Board of Veterinary Medicine.~~

27 ~~(3) 2019, Board of Acupuncture; Board of Barbers and Cosmetologists; and Board of~~  
28 ~~Examiners in Counseling.~~

29 ~~(4) 2020, Board of Hearing Aid Dealers; Board of Licensed Dietitians; and Nursing Home~~  
30 ~~Administrators Board.~~

31 ~~(5) 2021, Board of Dental Examiners; Board of Medicine; and Board of Pharmacy.~~

32 (6) 2022, Board of Chiropractic Examiners; Board of Osteopathy; and Board of Physical  
33 Therapy.

34 (7) 2023, Board of Occupational Therapy; Board of Examiners for Speech-Language  
35 Pathology and Audiology; and Medical Imaging and Radiation Therapy Board of Examiners.

36 (8) 2024, Board of Professional Surveyors; Board of Registration for Foresters; and Board  
37 of Registration for Professional Engineers.

38 (9) 2025, Board of Examiners for Licensed Practical Nurses; Board of Examiners for  
39 Registered Professional Nurses; and Massage Therapy Licensure Board.

40 (10) 2026, Board of Architects; Board of Embalmers and Funeral Directors; and Board of  
41 Landscape Architects; and

42 (11) 2027, Board of Registration for Sanitarians; Real Estate Appraiser Licensure and  
43 Certification Board; and Real Estate Commission.

**§4-10-14. Nullifying agency and regulatory board termination under prior law. Provision for  
other reviews; consolidation, termination and reorganization of agencies or  
programs.**

1 ~~No agency or regulatory board terminates pursuant to references to this article.~~

2 (a) The specification of schedules for, and scope of, department and regulatory board  
3 review in this article shall not preclude a legislative review or reevaluation of any agency or  
4 program at other times. The Joint Standing Committee may request a review of the performance,  
5 purpose, efficiency and effectiveness of any agency or program any time that circumstances may  
6 require including, but not limited to, the following conditions:

7 (1) Express or implied statutory expiration of an agency or program;

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

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

- 12           (4) Completion or satisfaction of program or agency objectives;  
13           (5) Persistent inefficiencies in the delivery of services or in the accomplishment, or lack  
14 thereof, of statutory objectives;  
15           (6) Fiscal constraints requiring changes in staffing, resources or goals; and  
16           (7) Changes in legislative policy or direction.  
17           (b) Following the completion of a review by the division and the Joint Standing Committee,  
18 with responses and comment from the subject agencies or regulatory boards, the Joint Standing  
19 Committee may recommend or propose the consolidation, termination or reassignment of the  
20 agencies or programs reviewed.  
21           (c) Nothing in this article shall be construed as limiting or interfering with the right of any  
22 member of the Legislature to introduce, or of the Legislature to consider, any bill that would  
23 terminate, consolidate or reorganize one or more state agencies or programs without a review  
24 conducted under the terms of this article.

NOTE: The purpose of this bill is to update the schedules for legislative review of state departments and regulatory boards, and to outline the procedures and scope of reviews of departments, regulatory boards, agencies and programs.

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