

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5592

By Delegates Hanshaw (Mr. Speaker), Riley, Phillips,

Kelly, and Cannon

[Introduced February 12, 2024; Referred to the

Committee on Government Organization]

1 A BILL 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 House of
 7 Delegates; restating authority of auditor to inspect properties, equipment, and records;
 8 providing for distribution of copies of reports of examination and audit; prohibiting auditor
 9 from using external auditing entities to conduct audits except as directed by Senate
 10 President or Speaker; modifying obligations of auditor regarding budgetary matters;
 11 providing that committee has authority to hire employees to assist auditor in performance
 12 of obligations; clarifying hiring authority of committee; providing that auditor's reviews of
 13 departments and agencies are to be conducted at direction of Senate President or
 14 Speaker and that department presentations are to be made at Senate President's or
 15 Speaker's direction; eliminating requirement that agency and regulatory board reviews be
 16 conducted according to certain auditing standards; revising schedule of regulatory board
 17 reviews; and providing that regulatory board reviews may be conducted more frequently
 18 than statutorily scheduled.

Be it enacted by the Legislature of West Virginia:

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

**§4-2-3. Appointment of Legislative Auditor; responsibility to Legislature 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. ~~He~~ The Legislative Auditor shall be solely responsible

3 to the ~~Legislature~~ committee.

§4-2-4. Duties ~~————~~ Powers of Auditor; filing reports.

1 (a) ~~It is the duty of the~~ The Legislative Auditor shall have the following powers, which he or
2 she may exercise as directed by the President of the Senate or the Speaker of the House of
3 Delegates:

4 (1) ~~to~~ To compile fiscal information for the Senate and the House of Delegates;

5 (2) ~~to~~ To make a ~~continuous~~ an audit and analysis of the state budget, revenues, and
6 expenditures during and between sessions of the Legislature;

7 (3) ~~to~~ To make post audits of the revenues and expenditures of the spending units of the
8 state government; ~~at least once every two years, if practicable~~

9 (4) ~~to~~ To report any misapplication of state funds or erroneous ~~extravagant~~ or unlawful
10 expenditures by any spending unit;

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

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

22 (b) (c) ~~The Legislative Auditor may collect, and the department, agency or board~~ spending
23 unit shall pay, any or all of the costs associated with conducting the post audits from the
24 department, agency or board spending unit being audited, when necessary and desirable. The

25 Legislative Auditor shall render to the ~~department, agency or board~~ spending unit liable for the
 26 costs a statement of the costs as soon after the costs were incurred as practicable, and it is the
 27 duty of the ~~department, agency or board~~ spending unit to pay promptly in the manner that other
 28 claims and accounts are paid. All money received by the Legislative Auditor from this source shall
 29 be expended only for the purpose of covering the costs associated with such services, unless
 30 otherwise directed by the Legislature.

31 ~~(c) (d) A copy of each report of audit when completed and certified shall be filed in the office~~
 32 ~~of the department of finance and administration as a public record and a copy shall be filed with the~~
 33 ~~Attorney General for any action he or she may consider necessary~~ Copies of each completed audit
 34 report shall be provided to the committee, the President of the Senate, and the Speaker of the
 35 House of Delegates.

36 (e) The Legislative Auditor shall conduct all examinations and audits and may not use
 37 external auditing firms or entities to conduct them except as otherwise directed by the President of
 38 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 ~~prepare an appropriate budget for each spending unit, for~~
 2 ~~each biennium for which appropriations are sought~~ compile revenue and budgetary reports, in
 3 such form and with such itemization and other information as the committee shall prescribe, at
 4 least 30 days prior to any legislative session, and submit ~~the same~~ them to the committee with the
 5 appropriate recommendations, together with such other findings and reports deemed necessary
 6 or required by the committee. ~~He~~ The Legislative Auditor shall also report to the committee any
 7 misapplication of state funds and any erroneous, ~~extravagant~~ or unlawful expenditures by any
 8 spending unit, together with such other findings and reports as the committee shall require.

§4-2-8. Assistants and employees.

1 The Legislative Auditor may ~~appoint or~~ recommend that the committee employ such
2 assistants or employees as ~~may~~ the Legislative Auditor believes to be necessary for the efficient
3 discharge of his or her ~~duties~~ tasks. ~~Appointees and employees shall serve during his will and~~
4 ~~pleasure. The number and compensation of such assistants or employees shall be fixed by the~~
5 ~~committee~~ The committee may, in its discretion, employ assistants and employees to aid the
6 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 ~~Court of Claims~~ West Virginia Legislative Claims Commission provided for in §14-
5 2-1 *et seq.* and 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~~ Commission on Special 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 ~~agencies of a department~~ an agency at
7 the direction of the President of the Senate or the Speaker of the House of Delegates pursuant to
8 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 Legislative Auditor~~, the committee, ~~or the joint standing committee~~, or the Joint
14 Committee on Government and 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~~ Joint Standing
23 Committee on Government Organization.

24 (i) "Privatize" means a contract to procure the services of a private vendor to provide a
25 service that is similar to, ~~and/or~~ 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) ~~During the calendar year in which a department is scheduled for an agency review~~

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

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

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

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

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

14 (B) The statutory or other legal authority under which the agency operates;

15 (C) The number of employees of the agency for the immediate past 10 years;

16 (D) The budget for the agency for the immediate past 10 years;

17 (E) Any potential or actual loss of revenue due to operations, changes in law, or any other
18 reason;

19 (F) The extent to which the agency has operated in the public interest;

20 (G) The extent to which the agency has complied with state personnel practices, including
21 affirmative action requirements;

22 (H) The extent to which the agency has encouraged public participation in the making of its
23 rules and decisions and has encouraged interested persons to report to it on the impact of its rules
24 and decisions on the effectiveness, economy, and availability of services that it has provided;

25 (I) The efficiency with which public inquiries or complaints regarding the activities of the
26 agency have been processed and resolved;

27 (J) The extent to which statutory, regulatory, budgeting, or other changes are necessary to

28 enable the agency to better serve the interests of the public and to comply with the factors
29 enumerated in this subsection; and

30 (K) A recommendation as to whether the agency should be continued, consolidated, or
31 terminated.

§4-10-7. Agency review.

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

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

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

10 (2) The number of employees of the agency for the immediate past 10 years;

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

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

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

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

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

20 (8) An analysis of any issues raised by ~~the~~ any presentation made by the department under
21 whose purview the agency falls made pursuant to the provisions of this article;

22 (9) An analysis of any other issues as the committee, ~~or the joint standing committee,~~ the
23 President of the Senate, or the Speaker of the House of Delegates may direct; and

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

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

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

32 ~~(e) (d)~~ A cost-benefit analysis authorized by this section may include:

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

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

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

36 (4) A cost comparison, including total fixed and variable, direct and indirect, costs of the
37 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 committee and the joint standing committee shall conduct regulatory board~~
2 ~~reviews, or authorize the~~ The division to shall conduct regulatory board reviews as ~~one of its duties~~
3 ~~in 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 as one of its duties.

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 or 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 by
22 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,~~ the
26 President of the Senate, or the Speaker of the House of Delegates may direct; and

27 (7) A recommendation as to whether the regulatory board under review should be
28 continued, consolidated, or terminated.

29 ~~(e) The committee or the joint standing committee may vote on the recommendation as to~~
30 ~~whether the regulatory board under review should be continued, consolidated or terminated.~~
31 ~~Recommendations of the committee or the joint standing committee shall be given considerable~~
32 ~~weight in determining if an regulatory board should be 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. ~~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; Contractor~~
18 ~~Licensing Board; and Board 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.~~

25 (c) A regulatory board review may be conducted more frequently than once in 12 years and
26 may be conducted in the discretion, and at the direction, of the President of the Senate or the

27 Speaker of the House of Delegates.

NOTE: The purpose of this bill relates to the Legislative Auditor; establishing that auditor is responsible to Joint Committee on Government and Finance; clarifying that auditor may exercise powers at direction of Senate President or Speaker of House of Delegates; restating authority of auditor to inspect properties, equipment, and records; providing for distribution of copies of reports of examination and audit; prohibiting auditor from using external auditing entities to conduct audits except as directed by Senate President or Speaker; modifying obligations of auditor regarding budgetary matters; providing that committee has authority to hire employees to assist auditor in performance of obligations; clarifying hiring authority of committee; providing that auditor's reviews of departments and agencies are to be conducted at direction of Senate President or Speaker and that department presentations are to be made at Senate President's or Speaker's direction; eliminating requirement that agency and regulatory board reviews be conducted according to certain auditing standards; revising schedule of regulatory board reviews; and providing that regulatory board reviews may be conducted more frequently than statutorily scheduled.

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