



Ohio Legislative Service Commission

Bill Analysis

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S.B. 329

131st General Assembly
(As Introduced)

Sens. Jordan, Faber

BILL SUMMARY

- Establishes a procedure for the General Assembly to periodically review cabinet departments and establishes a schedule for departments that are not renewed to cease operation.
- Authorizes the General Assembly to review, consider, and evaluate the usefulness, performance, and effectiveness of other departments and boards.
- Abolishes the Sunset Review Committee and revises Sunset Review Law.

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CONTENT AND OPERATION

Overview

The bill abolishes the Sunset Review Committee and revises Sunset Review Law to establish a schedule for standing committees of the General Assembly to periodically review state departments that are currently in the Governor's cabinet. The bill also establishes a schedule for these departments to sunset unless renewed by the General Assembly (see **COMMENT 1**). Under the bill, boards and other departments will not

sunset, but may be scheduled for review by a standing committee of the General Assembly in the same manner contemplated for review of the cabinet departments. Under current Sunset Review Law, boards generally are subject to sunset review and state departments are not.

Review of cabinet departments

Under the bill, the departments enumerated below must periodically be reviewed by the General Assembly and, unless renewed must cease to operate according to the schedule outlined in statute. If the General Assembly does not renew a department that is scheduled to be reviewed and the department is not otherwise renewed before the department's expiration date, the department must wind up operations,¹ during the two-year period before the department's expiration date, and must suspend all operations at midnight on the day after the expiration date.

The following departments must be reviewed during each even-numbered general assembly, and expire at the end of the 31st day of December of the second year of the subsequent odd-numbered general assembly, unless the department is renewed:²

- (1) The Office of Budget and Management;
- (2) The Department of Administrative Services;
- (3) The Department of Agriculture;
- (4) The Department of Health;
- (5) The Department of Public Safety;
- (6) The Department of Developmental Disabilities;
- (7) The Development Services Agency;
- (8) The Department of Rehabilitation and Correction;
- (9) The Department of Aging;
- (10) The Department of Medicaid;
- (11) The Office of the Adjutant General; and

¹ R.C. 126.29 outlines certain procedures a state agency must follow when terminating operations.

² R.C. 101.83(B).



(12) The Department of Higher Education.

The following departments must be reviewed during each odd-numbered general assembly, and expire at the end of the 31st day of December of the second year of the subsequent even-numbered general assembly, unless the department is renewed:³

(1) The Department of Commerce;

(2) The Department of Transportation;

(3) The Department of Natural Resources;

(4) The Department of Job and Family Services;

(5) The Department of Mental Health and Addiction Services;

(6) The Department of Insurance;

(7) The Department of Youth Services;

(8) The Environmental Protection Agency;

(9) The Department of Veterans Services;

(10) The Office of Health Transformation;

(11) The Public Utilities Commission;

(12) The Department of Taxation; and

(13) The Bureau of Workers' Compensation. (See **COMMENT 2**.)

Review of other departments or boards

Under the bill, a department⁴ or board⁵ that is not specifically enumerated and scheduled to be reviewed by the statute is not subject to automatic expiration. But the bill authorizes the President of the Senate and the Speaker of the House of Representatives to direct a standing committee of the Senate and of the House of

³ R.C. 101.83(C).

⁴ Under the bill, "department" means an administrative department enumerated under section 121.02 of the Revised Code, and any agency, division, or office of state government (R.C. 101.82(C)).

⁵ Under the bill, "board" means any board, commission, committee, or council, or any other similar state public body required to be established pursuant to state statutes for the exercise of any function of state government and to which members are appointed or elected (R.C. 101.82(A)).

Representatives, respectively, to hold hearings to receive the testimony of the public and of the chief executive officer of the department or board and otherwise to review, consider, and evaluate the usefulness, performance, and effectiveness of the department or board.⁶

Method for renewal

Under the bill, a department may be renewed by passage of a bill that continues the statutes creating and empowering the department. The bill further clarifies that amendment of a statute creating and empowering a department that is subject to review that is amended between the time the department was last reviewed and the time it is next scheduled to be reviewed does not change the next scheduled review date of the department. The next scheduled review date of a department changes only if the amendment expressly so provides.⁷

Review procedure

The bill requires that, not later than three months after the commencement of a General Assembly during which a department is scheduled to be reviewed, the President of the Senate and the Speaker of the House of Representatives each must direct a standing committee of the Senate and of the House of Representatives, respectively, to hold hearings to receive the testimony of the public and of the chief executive officer of the department and otherwise shall review, consider, and evaluate the usefulness, performance, and effectiveness of the department. The President of the Senate and the Speaker of the House of Representatives may defer the review of a department until the next general assembly during which the department is subject to review. The deferral does not prevent the expiration of a department. Under the bill, a department's renewal in accordance with the method outlined in law, (see "**Method for renewal**" above), is necessary to continue the statutes creating and empowering the department regardless of whether the department's review has occurred or has been deferred. A department whose review has been deferred must be reviewed, without the option for deferment, during the next general assembly during which the department is subject to review.⁸

Each department that is scheduled for review and each department or board that is identified to be reviewed by a standing committee must submit to the standing committee a report that contains all of the following information:

⁶ R.C. 101.84(B).

⁷ R.C. 101.83(F).

⁸ R.C. 101.84(A).



(1) The department's or board's primary purpose and its various goals and objectives;

(2) The department's or board's past and anticipated workload, the number of staff required to complete that workload, and the agency's total number of staff;

(3) The department's or board's past and anticipated budgets and its sources of funding;

(4) The number of members of its governing board or other governing entity and their compensation, if any.

Furthermore, the bill sets forth that the department or board has the burden of demonstrating to the standing committee a public need for its continued existence. In determining whether a department or board has demonstrated that need, the standing committee must consider, as relevant, all of the following:

(1) Whether or not the public could be protected or served in an alternate or less restrictive manner;

(2) Whether or not the department or board serves the public interest rather than a specific interest;

(3) Whether or not rules adopted by the department or board are consistent with the legislative mandate of the department or board as expressed in the statutes that created and empowered the department or board;

(4) The extent to which the department's or board's jurisdiction and programs overlap or duplicate those of other departments or boards, the extent to which the department or board coordinates with those other departments or boards, and the extent to which the department's or board's programs could be consolidated with the programs of other state departments or boards;

(5) Whether or not continuation of the department or board is necessary to protect the health, safety, or welfare of the public, and if so, whether or not the department's or board's authority is narrowly tailored to protect against present, recognizable, and significant harms to the health, safety, or welfare of the public;

(6) The amount of regulation exercised by the department or board compared to such regulation, if any, in other states;

(7) Whether or not private contractors could be used, in an effective and efficient manner, either to assist the department or board in the performance of its duties or to perform these duties instead of the department or board;



(8) Whether or not the operation of the department or board has inhibited economic growth, reduced efficiency, or increased the cost of government;

(9) An assessment of the authority of the department or board regarding fees, inspections, enforcement, and penalties;

(10) The extent to which the department or board has permitted qualified applicants to serve the public;

(11) The cost-effectiveness of the department or board in terms of number of employees, services rendered, and administrative costs incurred, both past and present;

(12) Whether or not the department's or board's operation has been impeded or enhanced by existing statutes and procedures and by budgetary, resource, and personnel practices;

(13) Whether the department or board has recommended statutory changes to the General Assembly that would benefit the public as opposed to the persons regulated by the department or board, if any, and whether its recommendations and other policies have been adopted and implemented;

(14) Whether the department or board has required any persons it regulates to report to it the impact of the department or board rules and decisions on the public as they affect service costs and service delivery;

(15) Whether persons regulated by the department or board, if any, have been required to assess problems in their business operations that affect the public;

(16) Whether the department or board has encouraged public participation in its rule-making and decision-making;

(17) The efficiency with which formal public complaints filed with the department or board have been processed to completion;

(18) Whether the programs or services of the department or board duplicate or overlap those of other departments or boards;

(19) Whether the purpose for which the department or board was created has been fulfilled, has changed, or no longer exists;

(20) Whether federal law requires that the department or board be renewed in some form;



(21) An assessment of the administrative hearing process of a department or board if the department or board has an administrative hearing process;

(22) Changes needed in the enabling laws of the department or board in order for it to comply with the criteria suggested by the considerations listed.

Furthermore, in the review of a department or board that issues a license⁹ to practice a trade or profession, the standing committee must consider all of the following:

(1) Whether the requirement for the license serves a meaningful, defined public interest¹⁰ and provides the least restrictive form of regulation that adequately protects the public interest;

(2) The extent to which the objective of licensing may be achieved through market forces, private or industry certification and accreditation programs, or enforcement of other existing laws;

(3) The extent to which licensing ensures that practitioners have occupational skill sets or competencies that correlate with a public interest, and the impact that those criteria have on applicants for a license, particularly those with moderate or low incomes, seeking to enter the occupation or profession; and

(4) The extent to which the requirement for the license stimulates or restricts competition, affects consumer choice, and affects the cost of services.

Common Sense Initiative Office

The bill requires that the Chief of the Common Sense Initiative Office, or the Chief's designee, must appear and testify before the appropriate standing committee with respect to a department or board being reviewed by the committee. The President of the Senate and the Speaker of the House of Representatives must notify the Chief when a department or board is identified to be reviewed by a standing committee. The testimony of the Chief or of the Chief's designee must at least address all of the following:

⁹ Under the bill, "license" means a license certificate, permit, or other authorization issued or conferred by a department or board under which a person may engage in a profession, occupation, or occupational activity (R.C. 101.84(E)).

¹⁰ Under the bill, a government regulatory requirement is in the public interest if it provides protection from present, recognizable, and significant harms to the health, safety, or welfare of the public (R.C. 101.84(E)).



(1) Whether or not the Common Sense Initiative Office has, within the previous five years, received commentary related to the department or board through the comment system established under law by the Office;

(2) Whether or not the Common Sense Initiative Office has, within the previous five years, received advice from the Small Business Advisory Council with respect to rules of the department or board; and

(3) Any other information the Chief believes will elucidate the effectiveness and efficiency of the department or board and in particular the quality of customer service provided by the department or board.

Report of findings and recommendations

The bill authorizes a standing committee, after the completion of the review of a department or board, to prepare and publish a report of its findings and recommendations. The standing committee may include in a single report its findings and recommendations regarding more than one department or board. If the standing committee prepares and publishes a report, the committee must furnish a copy of the report to the President of the Senate, the Speaker of the House of Representatives, the Governor, and each affected department or board. Any published report must be made available to the public in the offices of the house and senate clerks during reasonable hours. As part of the report, the standing committee may recommend to the General Assembly, in bill form, one or more of the following:

(1) Amendment or repeal of the statutes that created and empowered a department or board, to abolish or terminate the department or board;

(2) Amendment or repeal of the statutes that created and empowered a department or board, or enactment of new statutes, to terminate the department or board, to transfer the department or board, or to improve the department's or board's usefulness, performance, or effectiveness;

(3) Amendment or repeal of the statutes that created and empowered two or more departments or boards, or enactment of new statutes, to reorganize or transfer them and thereby improve agency department or board usefulness, performance, or effectiveness;

(4) Amendment or continuation of the statutes that created and empowered a department or board, or enactment of new statutes, to renew the department or board.

Recommendations made by the standing committee must indicate how or whether their implementation will do each of the following:



- (1) Promote economy in the operation of state government;
- (2) Improve efficiency in the management of state government;
- (3) Improve services rendered to citizens of the state;
- (4) Simplify and improve preparation of the state budget;
- (5) Conserve the natural resources of the state;
- (6) Promote the orderly growth of the state and its government;
- (7) Improve the effectiveness of the services performed by the service departments of the state;
- (8) Avoid duplication of effort by state agencies departments or boards; and
- (9) Improve the organization and coordination of the state government.

Assistance by state agencies

The bill requires that the Office of Budget and Management, the Department of Administrative Services, the Auditor of State, the Legislative Service Commission, and any other state agency, supply, upon the standing committee's request, the standing committee with material, information, and reports needed for the preparation of the report and its recommendations.¹¹

Exemptions

Under current Sunset Review Law, an entity that falls under the definition of "agency" in the law generally is subject to the process for review and the schedule for sunset that is outlined in law. Furthermore, the current law definition of "agency" specifically exempts numerous agencies (boards and commissions) from the purview of the law. Since the bill eliminates the automatic sunset of agencies, and instead authorizes the President of the Senate and the Speaker of the House of Representatives to direct a standing committee only to review a board, those exemptions within the definition of agency have been repealed.¹² However, under law continued by the bill, certain boards are exempt from sunset review by a clause within the statutes that created and empowered the particular board. The bill retains these laws, which exempts

¹¹ R.C. 101.87(C).

¹² R.C. 101.82, see pages 2 through 4 of the bill.



those specific boards from the review process.¹³ This does not prevent the General Assembly from enacting a law to repeal the board or to amend the authorization of the board. But presumably the General Assembly could not compel an exempted board from complying with the specific review procedures outlined in the bill.

COMMENT

1. The General Assembly may amend, enact, or repeal laws relating to certain powers of state departments, including the outright repeal of a major cabinet department, such as the Department of Administrative Services. But, the Governor's duty to execute the laws of the state would still remain. It is unclear whether the Governor could establish departments necessary for the operation of the government if the General Assembly has not enumerated in law a department to perform a necessary function.

2. Ohio's Workers' Compensation Law stems from Ohio's Constitution. Currently, Ohio has an "exclusive" state fund into which employers must pay premiums for their workers' compensation coverage unless they have been granted the privilege of self-insurance. It is not clear whether the Bureau of Workers' Compensation may be eliminated without amending the Ohio Constitution. The Constitution specifically permits the General Assembly to pass laws to establish a board that may be empowered to (1) classify all occupations, according to their degree of hazard, (2) fix rates of contribution to such fund according to such classification, (3) collect, administer, and

¹³ Under the bill, the following boards are exempt from the review process: Statewide Emergency Services Internet Protocol Network Steering Committee; Ohio Venture Capital Authority; Ethanol Incentive Board; Second Chance Trust Fund Advisory Committee; Residential Construction Advisory Committee; Public Benefits Advisory Board; Ohio Council for Interstate Adult Offender Supervision; Government Contracting Advisory Council; Clean Ohio Council; Ohio Facilities Construction Commission; Ohio African-American Hall of Fame Governing Board; War of 1812 Bicentennial Commission; Natural Resources Assistance Councils; Southern Ohio Agricultural and Community Development Foundation, Third Frontier Commission, Third Frontier Advisory Board; Concentrated Animal Feeding Facility Advisory Committee; Task Force on Family Law and Children; State Council on Educational Opportunity for Military Children; Ohio School Facilities Commission; Scholarship Rules Advisory Committee; Co-op/Internship Program Advisory Committee; Ohio Cancer Incidence Surveillance System Advisory Board; Ohio Public Health Advisory Board; Newborn Screening Advisory Council; Commission on Infant Mortality; Patient Centered Medical Home Education Advisory Group; Retail Food Safety Advisory Council; Sewage Treatment System Technical Advisory Committee; Advisory Council to the Child Lead Poisoning Prevention Program; Advisory Group on Dialysis; Firefighter and Fire Safety Inspector Training Committee; Trauma Committee; Medical Transportation Committee; Critical Care Subcommittee of the Medical Transportation Committee; Ohio Commission on Fatherhood; Ohio Child Welfare Training Program Steering Committee; Ohio Veterans Hall of Fame Executive Committee; State Board for the Workforce Investment Act of 1998.

distribute such fund, and (4) determine all rights of claimants to the fund. The Constitution also sets forth additional duties for that board.¹⁴

HISTORY

ACTION	DATE
Introduced	05-12-16

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¹⁴ Ohio Const., art. II, sec. 35.

