



Ohio Legislative Service Commission

Bill Analysis

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Am. Sub. S.B. 329 131st General Assembly (As Passed by the Senate)

Sens. Jordan and Faber, Coley, Bacon, Burke, Eklund, Hackett, Hite, Obhof, Peterson, Uecker

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.

CONTENT AND OPERATION

Overview

The bill establishes 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, 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, agencies generally are subject to sunset review, but state departments are not. Under that continuing law, "agency" means any board, commission, committee, or council, or any other similar state public body, required to be established under state statutes for the exercise of any function of state government and to which members are appointed or elected. But certain agencies are specifically exempt from sunset review.¹

¹ R.C. 101.82(A), not in the bill.

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 outlined schedule. 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,² 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.³

The following departments must be reviewed during each even-numbered general assembly, and expire at the end of December 31 of the second year of the subsequent odd-numbered general assembly, unless the department is renewed:⁴

- (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
- (12) The Department of Higher Education.

² R.C. 126.29, not in the bill, outlines certain procedures a state agency must follow when terminating operations.

³ R.C. 101.88(A).

⁴ R.C. 101.88(B).



The following departments must be reviewed during each odd-numbered general assembly, and expire at the end of December 31 of the second year of the subsequent even-numbered general assembly, unless the department is renewed:⁵

- (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

Under the bill, a department that is not specifically enumerated and scheduled to be reviewed 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 Representatives, respectively, to hold hearings to receive the testimony of the public and of the chief executive officer of the department and otherwise to review, consider, and evaluate the usefulness, performance, and effectiveness of the department.⁶

⁵ R.C. 101.88(C).

⁶ R.C. 101.881(B).



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 department's next scheduled review date. A department's next scheduled review date changes only if the amendment expressly so provides.⁷

Review procedure

The bill requires that, not later than three months after a general assembly starts 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, respectively, to hold hearings to receive testimony of the public and of the chief executive officer of the department. The committees also must review, consider, and evaluate the usefulness, performance, and effectiveness of the department. The President of the Senate and the Speaker of the House may defer a department's review 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 other department that is identified to be reviewed must submit to the standing committee a report that contains all of the following information:⁹

- (1) The department's primary purpose and its various goals and objectives;
- (2) The department's past and anticipated workload, the number of staff required to complete that workload, and the department's total number of staff;

⁷ R.C. 101.88(F).

⁸ R.C. 101.881(A).

⁹ R.C. 101.881(C).



(3) The department's past and anticipated budgets and its sources of funding.

Furthermore, the bill sets forth that the department has the burden of demonstrating to the standing committee a public need for its continued existence. In determining whether a department has demonstrated that need, the standing committee must consider, as relevant, all of the following:¹⁰

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

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

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

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

(5) Whether or not the department's continuation is necessary to protect the health, safety, or welfare of the public, and if so, whether or not the department'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 compared to such regulation, if any, in other states;

(7) Whether or not alternative means or methods can be used to improve efficiency and customer service to assist the department in the performance of its duties;

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

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

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

¹⁰ R.C. 101.881(D).



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

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

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

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

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

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

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

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

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

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

(21) An assessment of the department's administrative hearing process if the department has an administrative hearing process;

(22) Changes needed in the department's enabling laws for it to comply with the criteria suggested by the considerations listed.

Furthermore, the bill requires additional considerations in the review of a department that issues a license to practice a trade or profession. 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. For those departments, the standing committee must also consider all of the following:¹¹

(1) Whether the requirement for the license serves a meaningful, defined public interest and provides the least restrictive form of regulation that adequately protects the public interest. 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. And, "least restrictive form of regulation" means the public policy of relying on one of the following, listed from the least to the most restrictive, as a means of consumer protection: market competition; third-party or consumer-created ratings and reviews; private certification; specific private civil cause of action to remedy consumer harm; actions under the Ohio Consumer Sales Practices Act; regulation of the process of providing the specific goods or services to consumers; inspection; bonding or insurance; registration; government certification; specialty occupational license for medical reimbursement; and occupational license. "Specialty occupational license for medical reimbursement" means a nontransferable authorization in law for an individual to provide identified medical services and qualify for payment or reimbursement from a government agency based on meeting personal qualifications established in law.

(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.

Expiration

The bill prohibits the Director of Budget and Management from authorizing the expenditure of any moneys for any department on or after its expiration.

The bill permits the General Assembly to provide by law for the orderly, efficient, and expeditious conclusion of a department's business and operation. The department's rules, orders, licenses, contracts, and other actions made, taken, granted,

¹¹ R.C. 101.881(E).

or performed must continue under their terms notwithstanding the department's abolition, unless the law provides otherwise. The General Assembly may provide by law for the temporary or permanent transfer of some or all of a terminated or transferred department's functions and personnel to a successor department, board, or officer.

A department's abolition, termination, or transfer must not cause the termination or dismissal of any claim pending against the department by any person, or any claim pending against any person by the department. Unless the law provides otherwise for the substitution of parties, the Attorney General succeeds the department for any pending claim.¹²

Common Sense Initiative Office

The bill requires the Chief of the Common Sense Initiative Office (CSIO), or the Chief's designee, to appear and testify before the appropriate standing committee with respect to a department being reviewed by the committee. The President of the Senate and the Speaker of the House must notify the Chief when a department 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:¹³

(1) Whether or not the CSIO has, within the previous five years, received commentary related to the department through the CSIO's comment system;

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

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

Report of findings and recommendations

The bill authorizes a standing committee, after the completion of the review of a department, 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. If the standing committee prepares and publishes a report, the committee must furnish a copy of the report to the Clerk of the House of Representatives or the Clerk of the Senate, as the case may be. The clerk must furnish a

¹² R.C. 101.88(D) and (E).

¹³ R.C. 101.882.



copy of the report to the President of the Senate, the Speaker of the House, the Governor, and each affected department. The Clerk must make any published report available to the public on the General Assembly's website.¹⁴

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 distribute such fund, and (4) determine all rights of claimants to the fund. The Constitution also sets forth additional duties for that board.¹⁵

HISTORY

ACTION	DATE
Introduced	05-12-16
Reported, S. Gov't Oversight & Reform	09-28-16
Passed Senate (22-8)	09-28-16

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¹⁴ R.C. 101.89.

¹⁵ Ohio Const., art. II, sec. 35.

