



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Final Analysis

Cody Weisbrodt

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

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

**Reps.** Antani, Becker, Blessing, Boose, Brinkman, Buchy, Goodman, Green, McColley, Merrin, Retherford, Roegner, Romanchuk, Schaffer, Terhar, Thompson, Vitale, Young, Zeltwanger

**Effective date:** Vetoed

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## ACT SUMMARY

- Would have established a procedure for the General Assembly to periodically review cabinet departments and would have established a schedule for departments that are not renewed to cease operation.
- Would have authorized the General Assembly to review, consider, and evaluate the usefulness, performance, and effectiveness of other departments.

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## CONTENT AND OPERATION

### Overview

The act would have established a schedule for standing committees of the General Assembly to periodically review state departments that are currently in the Governor's cabinet. It also would have established a schedule for these departments to sunset unless renewed by the General Assembly. Under the act, other departments would not have been subject to sunset, but could have been scheduled for review by a standing committee of the General Assembly in the same manner contemplated for review of the cabinet departments. Under continuing 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.<sup>1</sup>

## **Review of cabinet departments**

Under the act, the departments enumerated below would have been required to periodically be reviewed by the General Assembly and, unless renewed, would have ceased to operate according to the outlined schedule. If the General Assembly did not renew a department that was scheduled to be reviewed and the department was not otherwise renewed before the department's expiration date, the department would have been required to wind up operations<sup>2</sup> during the two-year period before the department's expiration date, and would have been required to suspend all operations at midnight on the day after the expiration date.<sup>3</sup>

The following departments would have been required to be reviewed during each even-numbered general assembly, and would have expired at the end of December 31 of the second year of the subsequent odd-numbered general assembly, unless the department was renewed:<sup>4</sup>

- (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;

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<sup>1</sup> R.C. 101.82(A), not in the act.

<sup>2</sup> R.C. 126.29, not in the act, outlines certain procedures a state agency must follow when terminating operations.

<sup>3</sup> R.C. 101.88(A).

<sup>4</sup> R.C. 101.88(B).



- (10) The Department of Medicaid;
- (11) The Office of the Adjutant General; and
- (12) The Department of Higher Education.

The following departments would have been required to be reviewed during each odd-numbered general assembly, and would have expired at the end of December 31 of the second year of the subsequent even-numbered general assembly, unless the department was renewed:<sup>5</sup>

- (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.

### **Review of other departments**

A department that was not specifically enumerated and scheduled to be reviewed would not have been subject to automatic expiration. But the act would have authorized the President of the Senate and the Speaker of the House of Representatives to direct a standing committee of the Senate and House to hold hearings to receive

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<sup>5</sup> R.C. 101.88(C).



public testimony and testimony of the chief executive officer of the department and otherwise to review, consider, and evaluate the department's usefulness, performance, and effectiveness.<sup>6</sup>

### **Method for renewal**

A department could have been renewed by passage of a bill that continued the statutes creating and empowering the department. The act further clarified that amendment of a statute creating and empowering a department that was subject to review that was amended between the time the department was last reviewed and the time it was next scheduled to be reviewed would not have changed the department's next scheduled review date. A department's next scheduled review date would have changed only if an amendment had expressly so provided.<sup>7</sup>

### **Review procedure**

Under the act, not later than three months after a general assembly started during which a department was scheduled to be reviewed, the Senate President and Speaker of the House each would have been required to direct a standing committee of the Senate and of the House to hold hearings to receive public testimony and testimony of the chief executive officer of the department. The committees also would have been required to review, consider, and evaluate the department's usefulness, performance, and effectiveness. The Senate President and the Speaker of the House could have deferred a department's review until the next general assembly during which the department was subject to review. The deferral would not have prevented the expiration of a department. Under the act, a department's renewal in accordance with the method outlined in law (see "**Method for renewal**," above), would have been necessary to continue the statutes creating and empowering the department regardless of whether the department's review had occurred or had been deferred. A department whose review had been deferred would have been required to be reviewed, without the option for deferment, during the next general assembly during which the department was subject to review.<sup>8</sup>

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<sup>6</sup> R.C. 101.881(B).

<sup>7</sup> R.C. 101.88(F).

<sup>8</sup> R.C. 101.881(A).



Each department that was scheduled for review and each other department that was identified to be reviewed would have been required to submit a report to the standing committee that contained all of the following information:<sup>9</sup>

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

Furthermore, the department would have had the burden of demonstrating a public need for its continued existence to the standing committee. In determining whether a department has demonstrated that need, the standing committee would have been required to consider, as relevant, all of the following:<sup>10</sup>

- (1) Whether or not the public could have been protected or served in an alternate or less restrictive manner;
- (2) Whether or not the department served the public interest rather than a specific interest;
- (3) Whether or not rules adopted by the department were 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 overlapped or duplicated those of other departments, the extent to which the department coordinated with those other departments, and the extent to which the department's programs could have been consolidated with the programs of other state departments;
- (5) Whether or not the department's continuation was necessary to protect the health, safety, or welfare of the public, and if so, whether or not the department's authority was 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 other states' regulation;

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<sup>9</sup> R.C. 101.881(C).

<sup>10</sup> R.C. 101.881(D).



(7) Whether or not alternative means or methods could have been 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 had 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 had permitted qualified applicants to serve the public;

(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 had been impeded or enhanced by existing statutes and procedures and by budgetary, resource, and personnel practices;

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

(14) Whether the department had required any persons it regulated to report to it the impact of the department's rules and decisions on the public as they affected service costs and service delivery;

(15) Whether any persons the department regulated had been required to assess problems in their business operations that affect the public;

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

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

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

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



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

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

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

Also, the act would have required additional considerations in the review of a department that issued a license to practice a trade or profession. Under the act, "license" would have meant a license certificate, permit, or other authorization issued or conferred by a department or board under which a person could engage in a profession, occupation, or occupational activity. For those departments, the standing committee would have been required to also consider all of the following:<sup>11</sup>

(1) Whether the requirement for the license served a meaningful, defined public interest and provided the least restrictive form of regulation that adequately protected the public interest. Under the act, a government regulatory requirement would have been in the public interest if it provided protection from present, recognizable, and significant harms to the health, safety, or welfare of the public. And, "least restrictive form of regulation" would have meant 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" would have meant 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 could have been achieved through market forces, private or industry certification and accreditation programs, or enforcement of other existing laws;

(3) The extent to which licensing ensured that practitioners had occupational skill sets or competencies that correlated with a public interest, and the impact that those

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<sup>11</sup> R.C. 101.881(E).



criteria had 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 stimulated or restricted competition, affected consumer choice, and affected the cost of services.

## **Expiration**

The act would have prohibited the Director of Budget and Management from authorizing the expenditure of any moneys for any department on or after its expiration.

The act would have permitted 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, or performed would have been required to continue under their terms notwithstanding the department's abolition, unless the law provided otherwise. The General Assembly could have provided 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 would have been prohibited from causing the termination or dismissal of any claim pending against the department or against any person by the department. Unless the law provided otherwise for the substitution of parties, the Attorney General would have succeeded the department for any pending claim.<sup>12</sup>

## **Common Sense Initiative Office**

The act would have required 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 Senate President and Speaker of the House would have been required to 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 would have been required to at least address all of the following:<sup>13</sup>

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

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<sup>12</sup> R.C. 101.88(D) and (E).

<sup>13</sup> R.C. 101.882.





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

(3) Any other information the Chief believed would have elucidated the department's effectiveness, efficiency, and quality of customer service.

## Report of findings and recommendations

The act would have authorized a standing committee, after the completion of a department's review, to prepare and publish a report of its findings and recommendations. The standing committee could have included in a single report its findings and recommendations regarding more than one department. If the standing committee prepared and published a report, it would have been required to furnish a copy to the House or Senate Clerk. The Clerk would have been required to furnish a copy to the Senate President, the Speaker of the House, the Governor, and each affected department. The Clerk also would have been required to make the report available to the public on the General Assembly's website.<sup>14</sup>

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## HISTORY

ACTION	DATE
Introduced	05-12-16
Reported, S. Gov't Oversight & Reform	09-28-16
Passed Senate (22-8)	09-28-16
Reported, H. Gov't Accountability & Oversight	12-08-16
Passed House (59-33)	12-08-16

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<sup>14</sup> R.C. 101.89.

