



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **Am. H.B. 51**

132nd General Assembly

(As Reported by H. State and Local Government)

**Reps.** Faber, Becker, Brinkman, Butler, Dean, Dever, DeVitis, Green, Goodman, Hagan, Henne, Keller, Kick, Koehler, Lipps, Merrin, Retherford, Riedel, Roegner, Romanchuk, Scherer, Stein, Thompson, Vitale, Young

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## **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.
  - Modifies the schedule of performance audits conducted by the Auditor of State to coincide with the periodic review of departments.
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## **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**). 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.<sup>1</sup>

## **Review of cabinet departments**

Under the bill, the General Assembly must periodically review the departments enumerated below and, unless renewed the departments 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<sup>2</sup> 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.<sup>3</sup>

The General Assembly must review the following departments during the 133rd General Assembly,<sup>4</sup> and each third general assembly thereafter; these departments expire December 31 of the second year of the subsequent general assembly, unless renewed:<sup>5</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;

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

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

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

<sup>4</sup> This analysis assumes the bill takes effect before the end of the 132nd General Assembly. If effective later, the first review would occur during the 134th General Assembly, since the bill provides that the first review occurs during the General Assembly that first commences after the bill's effective date.

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



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

The General Assembly must review the following departments during the 134th General Assembly,<sup>6</sup> and each third general assembly thereafter; these departments expire December 31 of the second year of the subsequent general assembly, unless renewed:<sup>7</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; and
- (12) The Department of Taxation.

### **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 Senate President and the Speaker of the House of Representatives to direct a standing

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<sup>6</sup> See Footnote 4, above.

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



committee of each house 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.<sup>8</sup>

## **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 if a statute creating and empowering a department that is subject to review is amended between the time the department was last reviewed and the time it is next scheduled to be reviewed, that amendment does not change the department's next scheduled review date. A department's next scheduled review date changes only if the amendment so expressly provides.<sup>9</sup>

## **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 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 Senate President 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. A deferred department still expires unless it is renewed in accordance with the method described above (see "**Method for renewal**," above). A deferred department must be reviewed, without the option for deferment, the next time the department is subject to review.<sup>10</sup>

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:<sup>11</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;

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

<sup>9</sup> R.C. 101.88(F).

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

<sup>11</sup> 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:<sup>12</sup>

(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 create and empower 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;

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<sup>12</sup> 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's 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 programs 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; and

(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.<sup>13</sup> For those departments, the standing committee must also consider all of the following:<sup>14</sup>

(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.<sup>15</sup>

(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**

Under the bill, the Director of Budget and Management cannot authorize the expenditure of any moneys for any department on or after its expiration.

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<sup>13</sup> 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. 101.881(E).

<sup>14</sup> R.C. 101.881(E).

<sup>15</sup> "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. R.C. 101.881(E).



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, 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 does 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.<sup>16</sup>

### **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 Senate President 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:<sup>17</sup>

(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 exhibit 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 its findings and recommendations regarding multiple

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<sup>16</sup> R.C. 101.88(D) and (E).

<sup>17</sup> R.C. 101.882.





departments in a single report. If the standing committee prepares and publishes a report, the committee must furnish a copy of it to the Clerk of the House of Representatives or the Clerk of the Senate, as applicable. The clerk must furnish a copy of the report to the Senate President, 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.<sup>18</sup>

### **Auditor of State performance audits**

The bill aligns the Auditor of State's schedule for conducting performance audits to the schedule for review of cabinet departments. As under current law for each biennium, the Auditor must conduct at least four performance audits each general assembly under the bill. During each general assembly, at least two of the performance audits must be of departments required to be reviewed by the General Assembly in the following general assembly. In any general assembly, the Auditor may conduct a performance audit of the Department of Education, which is not subject to automatic expiration, instead of an automatically expiring department. The Auditor must conduct the two remaining performance audits of other state agencies.

The bill requires the performance audits to be complete before the end of the general assembly during which they are conducted, and made available to the standing committee directed to review the audited department during the following general assembly.

Under current law, at least two of the four performance audits conducted each biennium must be of the Department of Education or administrative departments,<sup>19</sup> and the other two of other state agencies.<sup>20</sup>

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### **COMMENT**

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.

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<sup>18</sup> R.C. 101.89.

<sup>19</sup> Listed under R.C. 121.02.

<sup>20</sup> R.C. 117.46.



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## HISTORY

### ACTION

### DATE

Introduced  
Reported, H. State & Local Gov't

02-13-17  
05-16-17

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