

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 51**

**Representative Faber**

**Cosponsors: Representatives 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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**A BILL**

To amend section 117.46 and to enact sections 1  
101.88, 101.881, 101.882, and 101.89 of the 2  
Revised Code to require standing committees of 3  
the General Assembly to establish a schedule for 4  
the periodic review and sunset of state 5  
departments that are currently in the Governor's 6  
cabinet, and to require that Auditor of State 7  
performance audits be scheduled to coincide with 8  
the periodic review. 9

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 117.46 be amended and sections 10  
101.88, 101.881, 101.882, and 101.89 of the Revised Code be 11  
enacted to read as follows: 12

**Sec. 101.88.** (A) The departments enumerated in divisions 13  
(B) and (C) of this section shall periodically be reviewed by 14  
the general assembly and unless renewed, shall cease to operate 15  
according to the schedule provided in this section. If the 16  
general assembly does not renew a department that is scheduled 17

to be reviewed and the department is not otherwise renewed 18  
before the department's expiration date, the department shall 19  
wind up operations, in accordance with section 126.29 of the 20  
Revised Code, during the two-year period before the department's 21  
expiration date and shall suspend all operations at midnight on 22  
the day after the expiration date. 23

(B) The following departments shall be reviewed during 24  
each even-numbered general assembly, and expire at the end of 25  
the thirty-first day of December of the second year of the 26  
subsequent odd-numbered general assembly, unless the department 27  
is renewed in accordance with division (F) of this section: 28

(1) The office of budget and management; 29

(2) The department of administrative services; 30

(3) The department of agriculture; 31

(4) The department of health; 32

(5) The department of public safety; 33

(6) The department of developmental disabilities; 34

(7) The development services agency; 35

(8) The department of rehabilitation and correction; 36

(9) The department of aging; 37

(10) The department of medicaid; 38

(11) The office of the adjutant general; 39

(12) The department of higher education. 40

(C) The following departments shall be reviewed during 41  
each odd-numbered general assembly, and expire at the end of the 42  
thirty-first day of December of the second year of the 43

<u>subsequent even-numbered general assembly, unless the department</u>	44
<u>is renewed in accordance with division (F) of this section:</u>	45
<u>(1) The department of commerce;</u>	46
<u>(2) The department of transportation;</u>	47
<u>(3) The department of natural resources;</u>	48
<u>(4) The department of job and family services;</u>	49
<u>(5) The department of mental health and addiction</u> <u>services;</u>	50 51
<u>(6) The department of insurance;</u>	52
<u>(7) The department of youth services;</u>	53
<u>(8) The environmental protection agency;</u>	54
<u>(9) The department of veterans services;</u>	55
<u>(10) The office of health transformation;</u>	56
<u>(11) The public utilities commission;</u>	57
<u>(12) The department of taxation.</u>	58
<u>(D) The director of budget and management shall not</u> <u>authorize the expenditure of any moneys for any department on or</u> <u>after the date of its expiration.</u>	59 60 61
<u>(E) The general assembly may provide by law for the</u> <u>orderly, efficient, and expeditious conclusion of a department's</u> <u>business and operation. The rules, orders, licenses, contracts,</u> <u>and other actions made, taken, granted, or performed by the</u> <u>department shall continue in effect according to their terms</u> <u>notwithstanding the department's abolition, unless the general</u> <u>assembly provides otherwise by law. The general assembly may</u> <u>provide by law for the temporary or permanent transfer of some</u>	62 63 64 65 66 67 68 69

or all of a terminated or transferred department's functions and 70  
personnel to a successor department, board, or officer. 71

The abolition, termination, or transfer of a department 72  
shall not cause the termination or dismissal of any claim 73  
pending against the department by any person, or any claim 74  
pending against any person by the department. Unless the general 75  
assembly provides otherwise by law for the substitution of 76  
parties, the attorney general shall succeed the department with 77  
reference to any pending claim. 78

(F) A department may be renewed by passage of a bill that 79  
continues the statutes creating and empowering the department. 80  
The amendment of a statute creating and empowering a department 81  
that is subject to review under division (B) or (C) of this 82  
section that is amended between the time the department was last 83  
reviewed and the time it is next scheduled to be reviewed does 84  
not change the next scheduled review date of the department. The 85  
next scheduled review date of a department changes only if the 86  
amendment expressly so provides. 87

**Sec. 101.881.** (A) Not later than three months after the 88  
commencement of a general assembly during which a department is 89  
scheduled to be reviewed under division (B) or (C) of section 90  
101.88 of the Revised Code, the president of the senate and the 91  
speaker of the house of representatives each shall direct a 92  
standing committee of the senate and of the house of 93  
representatives, respectively, to hold hearings to receive the 94  
testimony of the public and of the chief executive officer of 95  
the department and otherwise shall review, consider, and 96  
evaluate the usefulness, performance, and effectiveness of the 97  
department. The president of the senate and the speaker of the 98  
house of representatives may defer the review of a department 99

until the next general assembly during which the department is 100  
subject to review. The deferral does not prevent the expiration 101  
of a department. A department's renewal in accordance with 102  
division (F) of section 101.88 of the Revised Code is necessary 103  
to continue the statutes creating and empowering the department 104  
regardless of whether the department's review has occurred or 105  
has been deferred. A department whose review has been deferred 106  
shall be reviewed, without the option for deferment, during the 107  
next general assembly during which the department is subject to 108  
review under division (B) or (C) of section 101.88 of the 109  
Revised Code. 110

(B) A department that is not scheduled to be reviewed 111  
under division (B) or (C) of section 101.88 of the Revised Code 112  
is not subject to automatic expiration under this chapter. The 113  
president of the senate and the speaker of the house of 114  
representatives may direct a standing committee of the senate 115  
and of the house of representatives, respectively, to hold 116  
hearings to receive the testimony of the public and of the chief 117  
executive officer of the department and otherwise may review, 118  
consider, and evaluate the usefulness, performance, and 119  
effectiveness of the department. 120

(C) Each department that is scheduled for review and each 121  
department that is identified to be reviewed by a standing 122  
committee shall submit to the standing committee a report that 123  
contains all of the following information: 124

(1) The department's primary purpose and its various goals 125  
and objectives; 126

(2) The department's past and anticipated workload, the 127  
number of staff required to complete that workload, and the 128  
department's total number of staff; 129

<u>(3) The department's past and anticipated budgets and its</u>	130
<u>sources of funding.</u>	131
<u>(D) Each department shall have the burden of demonstrating</u>	132
<u>to the standing committee a public need for its continued</u>	133
<u>existence. In determining whether a department has demonstrated</u>	134
<u>that need, the standing committee shall consider, as relevant,</u>	135
<u>all of the following:</u>	136
<u>(1) Whether or not the public could be protected or served</u>	137
<u>in an alternate or less restrictive manner;</u>	138
<u>(2) Whether or not the department serves the public</u>	139
<u>interest rather than a specific interest;</u>	140
<u>(3) Whether or not rules adopted by the department are</u>	141
<u>consistent with the legislative mandate of the department as</u>	142
<u>expressed in the statutes that created and empowered the</u>	143
<u>department;</u>	144
<u>(4) The extent to which the department's jurisdiction and</u>	145
<u>programs overlap or duplicate those of other departments, the</u>	146
<u>extent to which the department coordinates with those other</u>	147
<u>departments, and the extent to which the department's programs</u>	148
<u>could be consolidated with the programs of other state</u>	149
<u>departments;</u>	150
<u>(5) Whether or not continuation of the department is</u>	151
<u>necessary to protect the health, safety, or welfare of the</u>	152
<u>public, and if so, whether or not the department's authority is</u>	153
<u>narrowly tailored to protect against present, recognizable, and</u>	154
<u>significant harms to the health, safety, or welfare of the</u>	155
<u>public;</u>	156
<u>(6) The amount of regulation exercised by the department</u>	157
<u>compared to such regulation, if any, in other states;</u>	158

- (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; 159  
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- (8) Whether or not the operation of the department has inhibited economic growth, reduced efficiency, or increased the cost of government; 162  
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- (9) An assessment of the authority of the department regarding fees, inspections, enforcement, and penalties; 165  
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- (10) The extent to which the department has permitted qualified applicants to serve the public; 167  
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- (11) The cost-effectiveness of the department in terms of number of employees, services rendered, and administrative costs incurred, both past and present; 169  
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- (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; 172  
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- (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; 175  
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- (14) Whether the department has required any persons it regulates to report to it the impact of department rules and decisions on the public as they affect service costs and service delivery; 180  
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- (15) Whether persons regulated by the department, if any, have been required to assess problems in their business operations that affect the public; 184  
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<u>(16) Whether the department has encouraged public participation in its rule-making and decision-making;</u>	187 188
<u>(17) The efficiency with which formal public complaints filed with the department have been processed to completion;</u>	189 190
<u>(18) Whether the programs or services of the department duplicate or overlap those of other departments;</u>	191 192
<u>(19) Whether the purpose for which the department was created has been fulfilled, has changed, or no longer exists;</u>	193 194
<u>(20) Whether federal law requires that the department be renewed in some form;</u>	195 196
<u>(21) An assessment of the administrative hearing process of a department if the department has an administrative hearing process;</u>	197 198 199
<u>(22) Any applicable criteria under division (E) of this section;</u>	200 201
<u>(23) Changes needed in the enabling laws of the department in order for it to comply with the criteria suggested by the considerations listed in divisions (D) (1) to (22) of this section.</u>	202 203 204 205
<u>(E) In the review of a department that issues a license to practice a trade or profession, the standing committee shall consider all of the following:</u>	206 207 208
<u>(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;</u>	209 210 211 212
<u>(2) The extent to which the objective of licensing may be</u>	213

achieved through market forces, private or industry 214  
certification and accreditation programs, or enforcement of 215  
other existing laws; 216

(3) The extent to which licensing ensures that 217  
practitioners have occupational skill sets or competencies that 218  
correlate with a public interest, and the impact that those 219  
criteria have on applicants for a license, particularly those 220  
with moderate or low incomes, seeking to enter the occupation or 221  
profession; 222

(4) The extent to which the requirement for the license 223  
stimulates or restricts competition, affects consumer choice, 224  
and affects the cost of services. 225

As used in division (E) of this section: 226

"Least restrictive form of regulation" means the public 227  
policy of relying on one of the following, listed from the least 228  
to the most restrictive, as a means of consumer protection: 229  
market competition; third-party or consumer-created ratings and 230  
reviews; private certification; specific private civil cause of 231  
action to remedy consumer harm; actions under Chapter 1345. of 232  
the Revised Code; regulation of the process of providing the 233  
specific goods or services to consumers; inspection; bonding or 234  
insurance; registration; government certification; specialty 235  
occupational license for medical reimbursement; and occupational 236  
license. "Specialty occupational license for medical 237  
reimbursement" means a nontransferable authorization in law for 238  
an individual to provide identified medical services and qualify 239  
for payment or reimbursement from a government agency based on 240  
meeting personal qualifications established in law. 241

"License" means a license, certificate, permit, or other 242

authorization issued or conferred by a department or board under 243  
which a person may engage in a profession, occupation, or 244  
occupational activity. 245

For purposes of division (E) of this section, a government 246  
regulatory requirement is in the public interest if it provides 247  
protection from present, recognizable, and significant harms to 248  
the health, safety, or welfare of the public. 249

**Sec. 101.882.** The president of the senate and the speaker 250  
of the house of representatives shall notify the chief of the 251  
common sense initiative office, established under section 107.61 252  
of the Revised Code, when a department is identified under 253  
division (A) or (B) of section 101.881 of the Revised Code to be 254  
reviewed by a standing committee. The chief or the chief's 255  
designee shall appear and testify before the standing committee, 256  
with respect to the department, and shall testify on at least 257  
all of the following: 258

(A) Whether or not the common sense initiative office has, 259  
within the previous five years, received commentary related to 260  
the department through the comment system established under 261  
section 107.62 of the Revised Code; 262

(B) Whether or not the common sense initiative office has, 263  
within the previous five years, received advice from the small 264  
business advisory council with respect to rules of the 265  
department; 266

(C) Any other information the chief believes will 267  
elucidate the effectiveness and efficiency of the department and 268  
in particular the quality of customer service provided by the 269  
department. 270

**Sec. 101.89.** After the completion of the evaluation review 271

of a department under section 101.881 of the Revised Code, the 272  
standing committee that conducted the review may prepare and 273  
publish a report of its findings and recommendations. A standing 274  
committee may include in a single report its findings and 275  
recommendations regarding more than one department. If the 276  
standing committee prepares and publishes a report, the 277  
committee shall furnish a copy of the report to the clerk of the 278  
house of representatives or the clerk of the senate, as the case 279  
may be. The clerk shall furnish a copy of the report to the 280  
president of the senate, the speaker of the house of 281  
representatives, the governor, and each affected department. The 282  
clerk shall make any published report available to the public on 283  
the internet web site of the general assembly. 284

**Sec. 117.46.** Each ~~biennium~~ odd-numbered general assembly 285  
the auditor of state shall conduct a minimum of four performance 286  
audits under this section. Except as otherwise provided in this 287  
section, at least two of the audits shall be of state agencies 288  
selected from a ~~list comprised of the administrative~~ departments 289  
listed in ~~division (B) of section 121.02~~ 101.88 of the Revised 290  
Code and the department of education and at least two of the 291  
audits shall be of other state agencies. ~~At~~ These performance 292  
audits shall be completed before the end of the general assembly 293  
and shall be made available to the standing committee directed 294  
to conduct the review under section 101.88 of the Revised Code 295  
during the subsequent general assembly. 296

Each even-numbered general assembly the auditor of state 297  
shall conduct a minimum of four performance audits under this 298  
section. Except as otherwise provided in this section, at least 299  
two of the audits shall be of state agencies selected from the 300  
departments listed in division (C) of section 101.88 of the 301  
Revised Code and the department of education and at least two of 302

the audits shall be of other state agencies. These performance 303  
audits shall be completed before the end of the general assembly 304  
and shall be made available to the standing committee directed 305  
to conduct the review under section 101.88 of the Revised Code 306  
during the subsequent general assembly. 307

At the auditor of state's discretion, the auditor of state 308  
may conduct a performance audit of a state institution of higher 309  
education as one of the four ~~required~~ performance audits 310  
required during a general assembly. The offices of the attorney 311  
general, auditor of state, governor, secretary of state, and 312  
treasurer of state and agencies of the legislative and judicial 313  
branches are not subject to an audit under this section. 314

The auditor shall select each agency or institution to be 315  
audited and shall determine whether to audit the entire agency 316  
or institution or a portion of the agency or institution by 317  
auditing one or more programs, offices, boards, councils, or 318  
other entities within that agency or institution. The auditor 319  
shall make the selection and determination in consultation with 320  
the governor and the speaker and minority leader of the house of 321  
representatives and president and minority leader of the senate. 322

An audit of a portion of an agency or institution shall be 323  
considered an audit of one agency or institution. The authority 324  
to audit a portion of an agency or institution in no way limits 325  
the auditor's ability to audit an entire agency or institution 326  
if it is in the best interest of the state. 327

The performance audits under this section shall be 328  
conducted pursuant to sections 117.01 and 117.13 of the Revised 329  
Code. In conducting a performance audit, the auditor of state 330  
shall determine the scope of the audit, but shall consider, if 331  
appropriate, supervisory and subordinate level operations in the 332

agency or institution. A performance audit under this section 333  
shall not include review or evaluation of an institution's 334  
academic performance. 335

As used in this section and in sections 117.461, 117.462, 336  
117.463, 117.47, 117.471, and 147.472 of the Revised Code, 337  
"state institution of higher education" has the meaning defined 338  
in section 3345.011 of the Revised Code. 339

**Section 2.** That existing section 117.46 of the Revised 340  
Code is hereby repealed. 341