

As Passed by the Senate

132nd General Assembly

Regular Session

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Am. S. B. No. 79

Senator Jordan

**Cosponsors: Senators Obhof, Hite, Huffman, Terhar, LaRose, Coley, Uecker,
Hoagland**

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 of state departments that 5
are currently in the Governor's cabinet, and to 6
require that Auditor of State performance audits 7
be scheduled to coincide with the periodic 8
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. 15

(B) The following departments shall be reviewed during 16
each even-numbered general assembly: 17

<u>(1) The office of budget and management;</u>	18
<u>(2) The department of administrative services;</u>	19
<u>(3) The department of agriculture;</u>	20
<u>(4) The department of health;</u>	21
<u>(5) The department of public safety;</u>	22
<u>(6) The department of developmental disabilities;</u>	23
<u>(7) The development services agency;</u>	24
<u>(8) The department of rehabilitation and correction;</u>	25
<u>(9) The department of aging;</u>	26
<u>(10) The department of medicaid;</u>	27
<u>(11) The office of the adjutant general;</u>	28
<u>(12) The department of higher education.</u>	29
<u>(C) The following departments shall be reviewed during</u>	30
<u>each odd-numbered general assembly:</u>	31
<u>(1) The department of commerce;</u>	32
<u>(2) The department of transportation;</u>	33
<u>(3) The department of natural resources;</u>	34
<u>(4) The department of job and family services;</u>	35
<u>(5) The department of mental health and addiction</u>	36
<u>services;</u>	37
<u>(6) The department of insurance;</u>	38
<u>(7) The department of youth services;</u>	39
<u>(8) The environmental protection agency;</u>	40

(9) The department of veterans services; 41

(10) The office of health transformation; 42

(11) The public utilities commission; 43

(12) The department of taxation. 44

(D) The general assembly may abolish, terminate, or 45
transfer a department by no other means except by enactment of a 46
law, and may provide by law for the orderly, efficient, and 47
expeditious conclusion of a department's business and operation. 48
The rules, orders, licenses, contracts, and other actions made, 49
taken, granted, or performed by the department shall continue in 50
effect according to their terms notwithstanding the department's 51
abolition, unless the general assembly provides otherwise by 52
law. The general assembly may provide by law for the temporary 53
or permanent transfer of some or all of a terminated or 54
transferred department's functions and personnel to a successor 55
department, board, or officer. 56

The abolition, termination, or transfer of a department 57
shall not cause the termination or dismissal of any claim 58
pending against the department by any person, or any claim 59
pending against any person by the department. Unless the general 60
assembly provides otherwise by law for the substitution of 61
parties, the attorney general shall succeed the department with 62
reference to any pending claim. 63

Sec. 101.881. (A) Not later than three months after the 64
commencement of a general assembly during which a department is 65
scheduled to be reviewed under division (B) or (C) of section 66
101.88 of the Revised Code, the president of the senate and the 67
speaker of the house of representatives each shall direct a 68
standing committee of the senate and of the house of 69

representatives, respectively, to hold hearings to receive the 70
testimony of the public and of the chief executive officer of 71
the department and otherwise shall review, consider, and 72
evaluate the usefulness, performance, and effectiveness of the 73
department. The president of the senate and the speaker of the 74
house of representatives may defer the review of a department 75
until the next general assembly during which the department is 76
subject to review. A department whose review has been deferred 77
shall be reviewed, without the option for deferment, during the 78
next general assembly during which the department is subject to 79
review under division (B) or (C) of section 101.88 of the 80
Revised Code. 81

(B) The president of the senate and the speaker of the 82
house of representatives may direct a standing committee of the 83
senate and of the house of representatives, respectively, to 84
hold hearings to receive the testimony of the public and of the 85
chief executive officer of a department that is not scheduled to 86
be reviewed under division (B) or (C) of section 101.88 of the 87
Revised Code, and otherwise may review, consider, and evaluate 88
the usefulness, performance, and effectiveness of the 89
department. 90

(C) Each department that is scheduled for review and each 91
department that is identified to be reviewed by a standing 92
committee shall submit to the standing committee a report that 93
contains all of the following information: 94

(1) The department's primary purpose and its various goals 95
and objectives; 96

(2) The department's past and anticipated workload, the 97
number of staff required to complete that workload, and the 98
department's total number of staff; 99

(3) The department's past and anticipated budgets and its sources of funding. 100
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(D) Each department shall have 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 shall consider, as relevant, all of the following: 102
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(1) Whether or not the public could be protected or served in an alternate or less restrictive manner; 107
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(2) Whether or not the department serves the public interest rather than a specific interest; 109
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(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; 111
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(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; 115
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(5) Whether or not continuation of the department 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; 121
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(6) The amount of regulation exercised by the department compared to such regulation, if any, in other states; 127
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<u>(7) Whether or not alternative means or methods can be</u>	129
<u>used to improve efficiency and customer service to assist the</u>	130
<u>department in the performance of its duties;</u>	131
<u>(8) Whether or not the operation of the department has</u>	132
<u>inhibited economic growth, reduced efficiency, or increased the</u>	133
<u>cost of government;</u>	134
<u>(9) An assessment of the authority of the department</u>	135
<u>regarding fees, inspections, enforcement, and penalties;</u>	136
<u>(10) The extent to which the department has permitted</u>	137
<u>qualified applicants to serve the public;</u>	138
<u>(11) The cost-effectiveness of the department in terms of</u>	139
<u>number of employees, services rendered, and administrative costs</u>	140
<u>incurred, both past and present;</u>	141
<u>(12) Whether or not the department's operation has been</u>	142
<u>impeded or enhanced by existing statutes and procedures and by</u>	143
<u>budgetary, resource, and personnel practices;</u>	144
<u>(13) Whether the department has recommended statutory</u>	145
<u>changes to the general assembly that would benefit the public as</u>	146
<u>opposed to the persons regulated by the department, if any, and</u>	147
<u>whether its recommendations and other policies have been adopted</u>	148
<u>and implemented;</u>	149
<u>(14) Whether the department has required any persons it</u>	150
<u>regulates to report to it the impact of department rules and</u>	151
<u>decisions on the public as they affect service costs and service</u>	152
<u>delivery;</u>	153
<u>(15) Whether persons regulated by the department, if any,</u>	154
<u>have been required to assess problems in their business</u>	155
<u>operations that affect the public;</u>	156

<u>(16) Whether the department has encouraged public participation in its rule-making and decision-making;</u>	157 158
<u>(17) The efficiency with which formal public complaints filed with the department have been processed to completion;</u>	159 160
<u>(18) Whether the programs or services of the department duplicate or overlap those of other departments;</u>	161 162
<u>(19) Whether the purpose for which the department was created has been fulfilled, has changed, or no longer exists;</u>	163 164
<u>(20) Whether federal law requires that the department be renewed in some form;</u>	165 166
<u>(21) An assessment of the administrative hearing process of a department if the department has an administrative hearing process;</u>	167 168 169
<u>(22) Any applicable criteria under division (E) of this section;</u>	170 171
<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>	172 173 174 175
<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>	176 177 178
<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>	179 180 181 182
<u>(2) The extent to which the objective of licensing may be</u>	183

achieved through market forces, private or industry 184
certification and accreditation programs, or enforcement of 185
other existing laws; 186

(3) The extent to which licensing ensures that 187
practitioners have occupational skill sets or competencies that 188
correlate with a public interest, and the impact that those 189
criteria have on applicants for a license, particularly those 190
with moderate or low incomes, seeking to enter the occupation or 191
profession; 192

(4) The extent to which the requirement for the license 193
stimulates or restricts competition, affects consumer choice, 194
and affects the cost of services. 195

As used in division (E) of this section: 196

"Least restrictive form of regulation" means the public 197
policy of relying on one of the following, listed from the least 198
to the most restrictive, as a means of consumer protection: 199
market competition; third-party or consumer-created ratings and 200
reviews; private certification; specific private civil cause of 201
action to remedy consumer harm; actions under Chapter 1345. of 202
the Revised Code; regulation of the process of providing the 203
specific goods or services to consumers; inspection; bonding or 204
insurance; registration; government certification; specialty 205
occupational license for medical reimbursement; and occupational 206
license. "Specialty occupational license for medical 207
reimbursement" means a nontransferable authorization in law for 208
an individual to provide identified medical services and qualify 209
for payment or reimbursement from a government agency based on 210
meeting personal qualifications established in law. 211

"License" means a license, certificate, permit, or other 212

authorization issued or conferred by a department or board under 213
which a person may engage in a profession, occupation, or 214
occupational activity. 215

For purposes of division (E) of this section, a government 216
regulatory requirement is in the public interest if it provides 217
protection from present, recognizable, and significant harms to 218
the health, safety, or welfare of the public. 219

Sec. 101.882. The president of the senate and the speaker 220
of the house of representatives shall notify the chief of the 221
common sense initiative office, established under section 107.61 222
of the Revised Code, when a department is identified under 223
division (A) or (B) of section 101.881 of the Revised Code to be 224
reviewed by a standing committee. The chief or the chief's 225
designee shall appear and testify before the standing committee, 226
with respect to the department, and shall testify on at least 227
all of the following: 228

(A) Whether or not the common sense initiative office has, 229
within the previous five years, received commentary related to 230
the department through the comment system established under 231
section 107.62 of the Revised Code; 232

(B) Whether or not the common sense initiative office has, 233
within the previous five years, received advice from the small 234
business advisory council with respect to rules of the 235
department; 236

(C) Any other information the chief believes will 237
elucidate the effectiveness and efficiency of the department and 238
in particular the quality of customer service provided by the 239
department. 240

Sec. 101.89. After the completion of the evaluation review 241

of a department under section 101.881 of the Revised Code, the 242
standing committee that conducted the review may prepare and 243
publish a report of its findings and recommendations. A standing 244
committee may include in a single report its findings and 245
recommendations regarding more than one department. If the 246
standing committee prepares and publishes a report, the 247
committee shall furnish a copy of the report to the clerk of the 248
house of representatives or the clerk of the senate, as the case 249
may be. The clerk shall furnish a copy of the report to the 250
president of the senate, the speaker of the house of 251
representatives, the governor, and each affected department. The 252
clerk shall make any published report available to the public on 253
the internet web site of the general assembly. 254

Sec. 117.46. Each ~~biennium~~ odd-numbered general assembly 255
the auditor of state shall conduct a minimum of four performance 256
audits under this section. Except as otherwise provided in this 257
section, at least two of the audits shall be of state agencies 258
selected from a ~~list comprised of the administrative~~ departments 259
listed in ~~division (B) of section 121.02~~ 101.88 of the Revised 260
Code and the department of education and at least two of the 261
audits shall be of other state agencies. ~~At~~ These performance 262
audits shall be completed before the end of the general assembly 263
and shall be made available to the standing committee directed 264
to conduct the review under section 101.88 of the Revised Code 265
during the subsequent general assembly. 266

Each even-numbered general assembly the auditor of state 267
shall conduct a minimum of four performance audits under this 268
section. Except as otherwise provided in this section, at least 269
two of the audits shall be of state agencies selected from the 270
departments listed in division (C) of section 101.88 of the 271
Revised Code and the department of education and at least two of 272

the audits shall be of other state agencies. These performance 273
audits shall be completed before the end of the general assembly 274
and shall be made available to the standing committee directed 275
to conduct the review under section 101.88 of the Revised Code 276
during the subsequent general assembly. 277

At the auditor of state's discretion, the auditor of state 278
may conduct a performance audit of a state institution of higher 279
education as one of the four ~~required~~ performance audits 280
required during a general assembly. The offices of the attorney 281
general, auditor of state, governor, secretary of state, and 282
treasurer of state and agencies of the legislative and judicial 283
branches are not subject to an audit under this section. 284

The auditor shall select each agency or institution to be 285
audited and shall determine whether to audit the entire agency 286
or institution or a portion of the agency or institution by 287
auditing one or more programs, offices, boards, councils, or 288
other entities within that agency or institution. The auditor 289
shall make the selection and determination in consultation with 290
the governor and the speaker and minority leader of the house of 291
representatives and president and minority leader of the senate. 292

An audit of a portion of an agency or institution shall be 293
considered an audit of one agency or institution. The authority 294
to audit a portion of an agency or institution in no way limits 295
the auditor's ability to audit an entire agency or institution 296
if it is in the best interest of the state. 297

The performance audits under this section shall be 298
conducted pursuant to sections 117.01 and 117.13 of the Revised 299
Code. In conducting a performance audit, the auditor of state 300
shall determine the scope of the audit, but shall consider, if 301
appropriate, supervisory and subordinate level operations in the 302

agency or institution. A performance audit under this section 303
shall not include review or evaluation of an institution's 304
academic performance. 305

As used in this section and in sections 117.461, 117.462, 306
117.463, 117.47, 117.471, and 147.472 of the Revised Code, 307
"state institution of higher education" has the meaning defined 308
in section 3345.011 of the Revised Code. 309

Section 2. That existing section 117.46 of the Revised 310
Code is hereby repealed. 311