

As Introduced

132nd General Assembly

Regular Session

2017-2018

S. B. No. 79

Senator Jordan

Cosponsors: Senators Obhof, Hite, Huffman, Terhar

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
subsequent even-numbered general assembly, unless the department 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> <u>or all of a terminated or transferred department's functions and</u>	62 63 64 65 66 67 68 69 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