



Adam McKenzie, Research Analyst
Kelly Phillips, Chief of Staff
Ohio Civil Service Employees Association

The Honorable Representative Louis W. Blessing III, Chair
House Government Accountability and Oversight Committee

Chairman Blessing, Vice-Chair Rezabek, Ranking Member Clyde, and honorable members of the committee, thank you for the opportunity to speak before you today. My name is Adam McKenzie and I am a research analyst representing the Ohio Civil Service Employees Association, the largest state employees union in Ohio. I am before you today to offer testimony in opposition to the provisions in Senate Bill 329. We are concerned about the consequences of creating a frequent automatic termination process for entire state cabinet agencies, and the effects it will have on our members and their ability to carry out services to the people of Ohio. Based on evidence from academic reviews, and surveys of sunset laws in other states, we believe that Ohio is already reaping the benefits from its comprehensive sunset review process, and that the provisions of Senate Bill 329 offer no additional advantages, only consequences that other states have come to regret and, in some cases, repeal.

First, it is worth noting that Ohio has a sunset review process in place for committees and ad hoc bodies. The provisions of Senate Bill 329 would expand the sunset process to executive, cabinet-level agencies. According to our reading of the language every two years a cohort of state agencies will expire without affirmative action of both chambers of the legislature, and the governor. This trigger mechanism is an unnecessary and cumbersome process given that the legislature already has the authority to terminate, consolidate, or transfer functions from state agencies through legislation or through the budget process; and it often does so. Additionally, while the sunset review process may work for boards and commissions charged with limited tasks, existing legislative processes are more appropriate for the complex state agencies at the cabinet level that administer large amounts of GRF and federal funds with specific federal requirements, build and maintain Ohio's infrastructure, and maintain larger workforces. The current legislative process has the discretion and pace to ensure a productive outcome.

Under Senate Bill 329 the legislative sub-committees tasked with reviewing sunset agencies are required to hold hearings, take testimony from agency directors and the public, and produce a report on their findings; nothing more. So, every two years, preventing half of the state's agencies from going under will require a committee process and floor votes in both chambers, as well as approval from the governor.

When I first read Senate Bill 329 I was alarmed at its scope and frequency, and the lack of resources and process-planning dedicated to a statute set to – absent a lengthy legislative process - terminate executive agencies, many of which handle billions of dollars in general revenue funds and federal dollars, and serve millions of Ohioans. However, I took a step back and tried to look at other states' review processes to get a sense of how it may work in Ohio. And while there has been some good study and documentation, from the sunset review process in other states, I struggled to find states that have gone as far as Senate Bill 329; in fact, I was unable to find a true comparator state. While plenty of other states employ a sunset process for boards, commissions, legislation – and a handful even review cabinet-level agencies – Senate Bill 329 would put Ohio in uncharted waters in terms of the frequency of reviews, the lack of a dedicated review apparatus, the complexity of the renewal process, and lack of executive representation in the process. Still, the information gleaned from national studies, fiscal analyses, and experiences in the states can give us insight into where Ohio falls on the sunset review spectrum currently, and the issues we may face under a Senate Bill 329-like scenario.

The best national review is a study conducted by the Mercatus Center of George Mason University just last year. The Mercatus Center is a free-market, small -government oriented think tank. They produced an excellent overview of state-level sunset provisions from 11 states and I have included a chart from their report. Mercatus found that, of the 11 states studied (“which represent the main approaches to sunset reviews”), Ohio reviewed by far the most boards/laws, and eliminated the most boards through the review process. The authors state, “This state government reviews a significantly higher number of smaller boards and ad hoc committees than any other state government does.” And, in fact, when the authors compare the statistics on number of reviews, number of governmental bodies eliminated, and so forth, they have to exclude Ohio because the state skews the averages so much. As you can see under the review period, Ohio conducted 274 reviews, which account for more than half of the 505 combined reviews for all eleven states. Further, Ohio eliminated 79 boards and/or laws out of the combined 104, which gives us a 28% termination rate, compared to 11% on average for the next ten states. (Side note: “Years reviewed” appear inconsistent possibly because some states conduct reviews on a rolling basis, while others conduct them in bulk at specified or discretionary times.)

TABLE 3. RESULTS OF THE SUNSET REVIEW PROCESS IN SELECTED STATES

State	Type of review	Years reviewed	Number of reviews*	Number of boards or laws eliminated	Number renewed
MD	regulatory	2007-2012	47	3**	45**
TX	selective	2006-2013	79	14	65
OH	comprehensive	2005-2010	274	79	195
WA	discretionary	2007-2014	6	2	4
NV	comprehensive	2012	29	3	26
OK	discretionary	2012	21	2	19
AK	comprehensive	2012-2014	17	0	17
CT	selective	2013-2014	12	0	12
DE	comprehensive	2014	10	0	9***
AZ	comprehensive	2007-2013	9	0	9
HI	regulatory	2010-2014	1	1	0
1	TOTALS		505	104	401

The Mercatus study also examined the fiscal impact of states that carried out sunset reviews. They cite a paper out of Clemson University that conducted a simple quantitative test that compared per capita government spending among states with sunset review processes and those without. What the paper found was that “this simple look at the data suggests that sunset laws do not have an impact on state expenditures.” When the study’s author looked at differences between different types of sunset review processes, again he found no statistically significant correlation with savings.

Finally, the Mercatus survey examined the process by which states conducted sunset reviews; they found it was the state auditing authority, or the legislative services agency tasked with these reviews in most states.

Two states, Florida and Texas, come closest to the sunset review provisions of Senate Bill 329.

Florida is relatively new to the sunset review process, having passed the Florida Government Accountability Act establishing sunset reviews and expiration dates for cabinet-level agencies in 2006. They reviewed approximately four to five agencies per year from 2008 through 2015. But the Florida law didn’t go as far as SB 329: it reviewed cabinet-agencies only once over a seven year period. It also created a dedicated staff to conduct the comprehensive reviews and report to the legislature and, while they had an expiration date, state agencies could not cease to function without ensuring that their services and responsibilities pursuant to law had been transferred or repealed. Even so, in 2011 the process in Florida was repealed. This is consistent with statements from the National Conference of State Legislatures indicating that many states experimented with sunset committees in decades past,

¹ <https://www.mercatus.org/system/files/Baugus-Sunset-Legislation.pdf>

but often found the schedules difficult to maintain, given staff limitations, and “modified the sunset review period, and extended it, or removed it.”²

In Texas, the sunset review of state agencies has persisted since the commission was created in 1977. Though, again, the agencies there are reviewed only once every twelve years, by a commission staff of policy analysts and attorneys who conduct the reviews and deliver comprehensive reports and suggested legislation to the state legislature. The Texas Sunset Commission maintains 28 staff and has an annual budget of \$41.8 million. Additionally, the governor’s office has representation during the review process.

Even though the Texas sunset review process is a much less extreme version of SB 329, the process there has become an unworkable quagmire that is regularly hijacked or held hostage. For example, The Texas Tribune reported earlier this year that, “When the Texas Department of Transportation was up for its periodic legislative review in 2009, the must-pass bill became a magnet for every legislative idea that had not already passed on its own.”³ Texas House Speaker Joe Straus, commenting on the 222 amendments that became attached to the bill said “It makes a mockery of the whole Sunset process, and it makes me question whether or not it still serves a useful purpose.” That bill failed, forcing the legislature to pass a safety net extension that has become a regular practice in the Texas sunset review process. When agencies come up for review in Texas, the legislators describe the process as a swarm, with special interest groups with good ideas, bad ideas, and carve-outs descending on the review commission and the legislature. One legislator described it as an industry built up just around sunset bills.⁴ Even the Speaker of the House, who appoints half the members to the sunset review commission, described it as a hijacking of the political process, and creating a political football.

Remember, both Florida and Texas under the periods that we are discussing were under one-party control in both legislative chambers and the governorship. It is easy to imagine a scenario in the future in which a committee or even a chamber charged with renewal of a state agency just refuses to budge, not on the merits of the particular agency, but because they have a disagreement with the governor or with the other chamber; or because they want a demand met and decide to use the expiration as leverage. Then we start to regularly create an opportunity for scenarios like the shutdowns we’ve seen at the federal level, which polls show are very unpopular with citizens; which harm the workers providing public services through no fault of their own; and which defy principles of good governance that we believe the spirit of the sunset review process promotes.

In summation, we believe based on empirical data that Ohio’s sunset review process has been effective and that the provisions of Senate Bill 329 related to automatic expiration of cabinet-level agencies will create a process that lends itself to abuse, inefficiency, and gridlock. The data do not bear-out cost savings, the legislature has the authority to make statutory changes to state agencies, and it can do so without putting federal monies into question or disrupting the lives of millions of Ohioans who go to

² <http://www.politifact.com/oregon/statements/2012/feb/22/bruce-starr/do-other-states-federal-government-have-legislativ/>

³ <https://www.texastribune.org/2016/04/25/analysis-texas-legislative-review-process-needs-re/>

⁴ <https://www.texastribune.org/2016/04/27/analysis-texas-lawmaker-suggests-giving-sunset-rid/>

school, need their highways plowed, rely on nursing care, or depend on our state prisons to keep inmates locked up. We urge a no vote on Senate Bill 329. Mr. Chairman, thank you for the opportunity to discuss these issues and I am happy to take any questions.