As Passed by the Senate

132nd General Assembly

Regular Session 2017-2018

Am. S. B. No. 79

Senator Jordan

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

A BILL

То	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

(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	100
sources of funding.	101
(D) Each department shall have the burden of demonstrating	102
to the standing committee a public need for its continued	103
existence. In determining whether a department has demonstrated	104
that need, the standing committee shall consider, as relevant,	105
all of the following:	106
(1) Whether or not the public could be protected or served	107
in an alternate or less restrictive manner;	108
(2) Whether or not the department serves the public	109
<pre>interest rather than a specific interest;</pre>	110
(3) Whether or not rules adopted by the department are	111
consistent with the legislative mandate of the department as	112
expressed in the statutes that created and empowered the	113
<pre>department;</pre>	114
(4) The extent to which the department's jurisdiction and	115
programs overlap or duplicate those of other departments, the	116
extent to which the department coordinates with those other	117
departments, and the extent to which the department's programs	118
could be consolidated with the programs of other state	119
<pre>departments;</pre>	120
(5) Whether or not continuation of the department is	121
necessary to protect the health, safety, or welfare of the	122
public, and if so, whether or not the department's authority is	123
narrowly tailored to protect against present, recognizable, and	124
significant harms to the health, safety, or welfare of the	125
<pre>public;</pre>	126
(6) The amount of regulation exercised by the department	127
compared to such regulation, if any, in other states;	128

(7) Whether or not alternative means or methods can be	129
used to improve efficiency and customer service to assist the	130
department in the performance of its duties;	131
(8) Whether or not the operation of the department has	132
inhibited economic growth, reduced efficiency, or increased the	133
<pre>cost of government;</pre>	134
(9) An assessment of the authority of the department	135
regarding fees, inspections, enforcement, and penalties;	136
(10) The extent to which the department has permitted	137
qualified applicants to serve the public;	138
(11) The cost-effectiveness of the department in terms of	139
number of employees, services rendered, and administrative costs	140
incurred, both past and present;	141
(12) Whether or not the department's operation has been	142
impeded or enhanced by existing statutes and procedures and by	143
budgetary, resource, and personnel practices;	144
(13) Whether the department has recommended statutory	145
changes to the general assembly that would benefit the public as	146
opposed to the persons regulated by the department, if any, and	147
whether its recommendations and other policies have been adopted	148
<pre>and implemented;</pre>	149
(14) Whether the department has required any persons it	150
regulates to report to it the impact of department rules and	151
decisions on the public as they affect service costs and service	152
delivery;	153
(15) Whether persons regulated by the department, if any,	154
have been required to assess problems in their business	155
operations that affect the public:	156

(16) Whether the department has encouraged public	157
participation in its rule-making and decision-making;	158
(17) The efficiency with which formal public complaints	159
filed with the department have been processed to completion;	160
(18) Whether the programs or services of the department	161
duplicate or overlap those of other departments;	162
duplicate of overlap those of other departments,	102
(19) Whether the purpose for which the department was	163
created has been fulfilled, has changed, or no longer exists;	164
(20) Whether federal law requires that the department be	165
renewed in some form;	166
(21) An assessment of the administrative hearing process	167
of a department if the department has an administrative hearing	168
process;	169
(22) Any applicable criteria under division (E) of this	170
<pre>section;</pre>	171
(23) Changes needed in the enabling laws of the department	172
in order for it to comply with the criteria suggested by the	173
considerations listed in divisions (D)(1) to (22) of this	174
section.	175
(E) In the review of a department that issues a license to	176
practice a trade or profession, the standing committee shall	177
<pre>consider all of the following:</pre>	178
(1) Whether the requirement for the license serves a	179
meaningful, defined public interest and provides the least	180
restrictive form of regulation that adequately protects the	181
<pre>public interest;</pre>	182
(2) The extent to which the objective of licensing may be	183

achieved through market forces, private or industry	184
certification and accreditation programs, or enforcement of	185
<pre>other existing laws;</pre>	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
<pre>profession;</pre>	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
<pre>department;</pre>	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 <u>division (B) of section 121.02 101.88</u> 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 may conduct a performance audit of a state institution of higher education as one of the four required performance audits required during a general assembly. The offices of the attorney general, auditor of state, governor, secretary of state, and treasurer of state and agencies of the legislative and judicial branches are not subject to an audit under this section.

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

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

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

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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	