

As Reported by the Senate Government Oversight and Reform Committee

131st General Assembly

Regular Session

2015-2016

Sub. S. B. No. 329

Senators Jordan, Faber

Cosponsor: Senator Coley

A BILL

To enact sections 101.88, 101.881, 101.882, and 1
101.89 of the Revised Code to require standing 2
committees of the General Assembly to establish 3
a schedule for the periodic review and sunset of 4
state departments that are currently in the 5
Governor's cabinet. 6

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

Section 1. That sections 101.88, 101.881, 101.882, and 7
101.89 of the Revised Code be enacted to read as follows: 8

Sec. 101.88. (A) The departments enumerated in divisions 9
(B) and (C) of this section shall periodically be reviewed by 10
the general assembly and unless renewed, shall cease to operate 11
according to the schedule provided in this section. If the 12
general assembly does not renew a department that is scheduled 13
to be reviewed and the department is not otherwise renewed 14
before the department's expiration date, the department shall 15
wind up operations, in accordance with section 126.29 of the 16
Revised Code, during the two-year period before the department's 17
expiration date and shall suspend all operations at midnight on 18

the day after the expiration date. 19

(B) The following departments shall be reviewed during 20
each even-numbered general assembly, and expire at the end of 21
the thirty-first day of December of the second year of the 22
subsequent odd-numbered general assembly, unless the department 23
is renewed in accordance with division (F) of this section: 24

(1) The office of budget and management; 25

(2) The department of administrative services; 26

(3) The department of agriculture; 27

(4) The department of health; 28

(5) The department of public safety; 29

(6) The department of developmental disabilities; 30

(7) The development services agency; 31

(8) The department of rehabilitation and correction; 32

(9) The department of aging; 33

(10) The department of medicaid; 34

(11) The office of the adjutant general; 35

(12) The department of higher education. 36

(C) The following departments shall be reviewed during 37
each odd-numbered general assembly, and expire at the end of the 38
thirty-first day of December of the second year of the 39
subsequent even-numbered general assembly, unless the department 40
is renewed in accordance with division (F) of this section: 41

(1) The department of commerce; 42

(2) The department of transportation; 43

<u>(3) The department of natural resources;</u>	44
<u>(4) The department of job and family services;</u>	45
<u>(5) The department of mental health and addiction services;</u>	46 47
<u>(6) The department of insurance;</u>	48
<u>(7) The department of youth services;</u>	49
<u>(8) The environmental protection agency;</u>	50
<u>(9) The department of veterans services;</u>	51
<u>(10) The office of health transformation;</u>	52
<u>(11) The public utilities commission;</u>	53
<u>(12) The department of taxation;</u>	54
<u>(13) The bureau of workers' compensation.</u>	55
<u>(D) The director of budget and management shall not authorize the expenditure of any moneys for any department on or after the date of its expiration.</u>	56 57 58
<u>(E) The general assembly may provide by law for the orderly, efficient, and expeditious conclusion of a department's business and operation. The rules, orders, licenses, contracts, and other actions made, taken, granted, or performed by the department shall continue in effect according to their terms notwithstanding the department's abolition, unless the general assembly provides otherwise by law. The general assembly may provide by law for the temporary or permanent transfer of some or all of a terminated or transferred department's functions and personnel to a successor department, board, or officer.</u>	59 60 61 62 63 64 65 66 67 68
<u>The abolition, termination, or transfer of a department</u>	69

shall not cause the termination or dismissal of any claim 70
pending against the department by any person, or any claim 71
pending against any person by the department. Unless the general 72
assembly provides otherwise by law for the substitution of 73
parties, the attorney general shall succeed the department with 74
reference to any pending claim. 75

(F) A department may be renewed by passage of a bill that 76
continues the statutes creating and empowering the department. 77
The amendment of a statute creating and empowering a department 78
that is subject to review under division (B) or (C) of this 79
section that is amended between the time the department was last 80
reviewed and the time it is next scheduled to be reviewed does 81
not change the next scheduled review date of the department. The 82
next scheduled review date of a department changes only if the 83
amendment expressly so provides. 84

Sec. 101.881. (A) Not later than three months after the 85
commencement of a general assembly during which a department is 86
scheduled to be reviewed under division (B) or (C) of section 87
101.88 of the Revised Code, the president of the senate and the 88
speaker of the house of representatives each shall direct a 89
standing committee of the senate and of the house of 90
representatives, respectively, to hold hearings to receive the 91
testimony of the public and of the chief executive officer of 92
the department and otherwise shall review, consider, and 93
evaluate the usefulness, performance, and effectiveness of the 94
department. The president of the senate and the speaker of the 95
house of representatives may defer the review of a department 96
until the next general assembly during which the department is 97
subject to review. The deferral does not prevent the expiration 98
of a department. A department's renewal in accordance with 99
division (F) of section 101.88 of the Revised Code is necessary 100

to continue the statutes creating and empowering the department 101
regardless of whether the department's review has occurred or 102
has been deferred. A department whose review has been deferred 103
shall be reviewed, without the option for deferment, during the 104
next general assembly during which the department is subject to 105
review under division (B) or (C) of section 101.88 of the 106
Revised Code. 107

(B) A department that is not scheduled to be reviewed 108
under division (B) or (C) of section 101.88 of the Revised Code 109
is not subject to automatic expiration under this chapter. The 110
president of the senate and the speaker of the house of 111
representatives may direct a standing committee of the senate 112
and of the house of representatives, respectively, to hold 113
hearings to receive the testimony of the public and of the chief 114
executive officer of the department and otherwise may review, 115
consider, and evaluate the usefulness, performance, and 116
effectiveness of the department. 117

(C) Each department that is scheduled for review and each 118
department that is identified to be reviewed by a standing 119
committee shall submit to the standing committee a report that 120
contains all of the following information: 121

(1) The department's primary purpose and its various goals 122
and objectives; 123

(2) The department's past and anticipated workload, the 124
number of staff required to complete that workload, and the 125
department's total number of staff; 126

(3) The department's past and anticipated budgets and its 127
sources of funding. 128

(D) Each department shall have the burden of demonstrating 129

to the standing committee a public need for its continued 130
existence. In determining whether a department has demonstrated 131
that need, the standing committee shall consider, as relevant, 132
all of the following: 133

(1) Whether or not the public could be protected or served 134
in an alternate or less restrictive manner; 135

(2) Whether or not the department serves the public 136
interest rather than a specific interest; 137

(3) Whether or not rules adopted by the department are 138
consistent with the legislative mandate of the department as 139
expressed in the statutes that created and empowered the 140
department; 141

(4) The extent to which the department's jurisdiction and 142
programs overlap or duplicate those of other departments, the 143
extent to which the department coordinates with those other 144
departments, and the extent to which the department's programs 145
could be consolidated with the programs of other state 146
departments; 147

(5) Whether or not continuation of the department is 148
necessary to protect the health, safety, or welfare of the 149
public, and if so, whether or not the department's authority is 150
narrowly tailored to protect against present, recognizable, and 151
significant harms to the health, safety, or welfare of the 152
public; 153

(6) The amount of regulation exercised by the department 154
compared to such regulation, if any, in other states; 155

(7) Whether or not private contractors could be used, in 156
an effective and efficient manner, either to assist the 157
department in the performance of its duties or to perform these 158

<u>duties instead of the department;</u>	159
<u>(8) Whether or not the operation of the department has</u>	160
<u>inhibited economic growth, reduced efficiency, or increased the</u>	161
<u>cost of government;</u>	162
<u>(9) An assessment of the authority of the department</u>	163
<u>regarding fees, inspections, enforcement, and penalties;</u>	164
<u>(10) The extent to which the department has permitted</u>	165
<u>qualified applicants to serve the public;</u>	166
<u>(11) The cost-effectiveness of the department in terms of</u>	167
<u>number of employees, services rendered, and administrative costs</u>	168
<u>incurred, both past and present;</u>	169
<u>(12) Whether or not the department's operation has been</u>	170
<u>impeded or enhanced by existing statutes and procedures and by</u>	171
<u>budgetary, resource, and personnel practices;</u>	172
<u>(13) Whether the department has recommended statutory</u>	173
<u>changes to the general assembly that would benefit the public as</u>	174
<u>opposed to the persons regulated by the department, if any, and</u>	175
<u>whether its recommendations and other policies have been adopted</u>	176
<u>and implemented;</u>	177
<u>(14) Whether the department has required any persons it</u>	178
<u>regulates to report to it the impact of department rules and</u>	179
<u>decisions on the public as they affect service costs and service</u>	180
<u>delivery;</u>	181
<u>(15) Whether persons regulated by the department, if any,</u>	182
<u>have been required to assess problems in their business</u>	183
<u>operations that affect the public;</u>	184
<u>(16) Whether the department has encouraged public</u>	185
<u>participation in its rule-making and decision-making;</u>	186

<u>(17) The efficiency with which formal public complaints</u>	187
<u>filed with the department have been processed to completion;</u>	188
<u>(18) Whether the programs or services of the department</u>	189
<u>duplicate or overlap those of other departments;</u>	190
<u>(19) Whether the purpose for which the department was</u>	191
<u>created has been fulfilled, has changed, or no longer exists;</u>	192
<u>(20) Whether federal law requires that the department be</u>	193
<u>renewed in some form;</u>	194
<u>(21) An assessment of the administrative hearing process</u>	195
<u>of a department if the department has an administrative hearing</u>	196
<u>process;</u>	197
<u>(22) Any applicable criteria under division (E) of this</u>	198
<u>section;</u>	199
<u>(23) Changes needed in the enabling laws of the department</u>	200
<u>in order for it to comply with the criteria suggested by the</u>	201
<u>considerations listed in divisions (D)(1) to (22) of this</u>	202
<u>section.</u>	203
<u>(E) In the review of a department that issues a license to</u>	204
<u>practice a trade or profession, the standing committee shall</u>	205
<u>consider all of the following:</u>	206
<u>(1) Whether the requirement for the license serves a</u>	207
<u>meaningful, defined public interest and provides the least</u>	208
<u>restrictive form of regulation that adequately protects the</u>	209
<u>public interest;</u>	210
<u>(2) The extent to which the objective of licensing may be</u>	211
<u>achieved through market forces, private or industry</u>	212
<u>certification and accreditation programs, or enforcement of</u>	213
<u>other existing laws;</u>	214

(3) The extent to which licensing ensures that 215
practitioners have occupational skill sets or competencies that 216
correlate with a public interest, and the impact that those 217
criteria have on applicants for a license, particularly those 218
with moderate or low incomes, seeking to enter the occupation or 219
profession; 220

(4) The extent to which the requirement for the license 221
stimulates or restricts competition, affects consumer choice, 222
and affects the cost of services. 223

As used in division (E) of this section: 224

"Least restrictive form of regulation" means the public 225
policy of relying on one of the following, listed from the least 226
to the most restrictive, as a means of consumer protection: 227
market competition; third-party or consumer-created ratings and 228
reviews; private certification; specific private civil cause of 229
action to remedy consumer harm; actions under Chapter 1345. of 230
the Revised Code; regulation of the process of providing the 231
specific goods or services to consumers; inspection; bonding or 232
insurance; registration; government certification; specialty 233
occupational license for medical reimbursement; and occupational 234
license. "Specialty occupational license for medical 235
reimbursement" means a nontransferable authorization in law for 236
an individual to provide identified medical services and qualify 237
for payment or reimbursement from a government agency based on 238
meeting personal qualifications established in law. 239

"License" means a license, certificate, permit, or other 240
authorization issued or conferred by a department or board under 241
which a person may engage in a profession, occupation, or 242
occupational activity. 243

For purposes of division (E) of this section, a government regulatory requirement is in the public interest if it provides protection from present, recognizable, and significant harms to the health, safety, or welfare of the public. 244
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Sec. 101.882. The president of the senate and the speaker of the house of representatives shall notify the chief of the common sense initiative office, established under section 107.61 of the Revised Code, when a department is identified under division (A) or (B) of section 101.881 of the Revised Code to be reviewed by a standing committee. The chief or the chief's designee shall appear and testify before the standing committee, with respect to the department, and shall testify on at least all of the following: 248
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(A) Whether or not the common sense initiative office has, within the previous five years, received commentary related to the department through the comment system established under section 107.62 of the Revised Code; 257
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(B) Whether or not the common sense initiative office has, within the previous five years, received advice from the small business advisory council with respect to rules of the department; 261
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(C) Any other information the chief believes will elucidate the effectiveness and efficiency of the department and in particular the quality of customer service provided by the department. 265
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Sec. 101.89. After the completion of the evaluation review of a department under section 101.881 of the Revised Code, the standing committee that conducted the review may prepare and publish a report of its findings and recommendations. A standing 269
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committee may include in a single report its findings and 273
recommendations regarding more than one department. If the 274
standing committee prepares and publishes a report, the 275
committee shall furnish a copy of the report to the clerk of the 276
house of representatives or the clerk of the senate, as the case 277
may be. The clerk shall furnish a copy of the report to the 278
president of the senate, the speaker of the house of 279
representatives, the governor, and each affected department. The 280
clerk shall make any published report available to the public on 281
the internet web site of the general assembly. 282