

**As Reported by the House State and Local Government Committee**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**Am. H. B. No. 51**

**Representative Faber**

**Cosponsors: Representatives Becker, Brinkman, Butler, Dean, Dever, DeVitis, Green, Goodman, Hagan, Henne, Keller, Kick, Koehler, Lipps, Merrin, Retherford, Riedel, Roegner, Romanchuk, Scherer, Stein, Thompson, Vitale, Young**

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**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  
the first general assembly to commence after the effective date 25  
of this section, and every third general assembly thereafter. A 26  
department expires at the end of the thirty-first day of 27  
December of the second year of the subsequent general assembly, 28  
unless the department is renewed in accordance with division (F) 29  
of this section: 30

(1) The office of budget and management; 31

(2) The department of administrative services; 32

(3) The department of agriculture; 33

(4) The department of health; 34

(5) The department of public safety; 35

(6) The department of developmental disabilities; 36

(7) The development services agency; 37

(8) The department of rehabilitation and correction; 38

(9) The department of aging; 39

(10) The department of medicaid; 40

(11) The office of the adjutant general; 41

(12) The department of higher education. 42

(C) The following departments shall be reviewed during the 43

second general assembly to commence after the effective date of 44  
this section, and every third general assembly thereafter. A 45  
department expires at the end of the thirty-first day of 46  
December of the second year of the subsequent general assembly, 47  
unless the department is renewed in accordance with division (F) 48  
of this section: 49

(1) The department of commerce; 50

(2) The department of transportation; 51

(3) The department of natural resources; 52

(4) The department of job and family services; 53

(5) The department of mental health and addiction 54  
services; 55

(6) The department of insurance; 56

(7) The department of youth services; 57

(8) The environmental protection agency; 58

(9) The department of veterans services; 59

(10) The office of health transformation; 60

(11) The public utilities commission; 61

(12) The department of taxation. 62

(D) The director of budget and management shall not 63  
authorize the expenditure of any moneys for any department on or 64  
after the date of its expiration. 65

(E) The general assembly may provide by law for the 66  
orderly, efficient, and expeditious conclusion of a department's 67  
business and operation. The rules, orders, licenses, contracts, 68  
and other actions made, taken, granted, or performed by the 69

department shall continue in effect according to their terms 70  
notwithstanding the department's abolition, unless the general 71  
assembly provides otherwise by law. The general assembly may 72  
provide by law for the temporary or permanent transfer of some 73  
or all of a terminated or transferred department's functions and 74  
personnel to a successor department, board, or officer. 75

The abolition, termination, or transfer of a department 76  
shall not cause the termination or dismissal of any claim 77  
pending against the department by any person, or any claim 78  
pending against any person by the department. Unless the general 79  
assembly provides otherwise by law for the substitution of 80  
parties, the attorney general shall succeed the department with 81  
reference to any pending claim. 82

(F) A department may be renewed by passage of a bill that 83  
continues the statutes creating and empowering the department. 84  
The amendment of a statute creating and empowering a department 85  
that is subject to review under division (B) or (C) of this 86  
section that is amended between the time the department was last 87  
reviewed and the time it is next scheduled to be reviewed does 88  
not change the next scheduled review date of the department. The 89  
next scheduled review date of a department changes only if the 90  
amendment expressly so provides. 91

**Sec. 101.881.** (A) Not later than three months after the 92  
commencement of a general assembly during which a department is 93  
scheduled to be reviewed under division (B) or (C) of section 94  
101.88 of the Revised Code, the president of the senate and the 95  
speaker of the house of representatives each shall direct a 96  
standing committee of the senate and of the house of 97  
representatives, respectively, to hold hearings to receive the 98  
testimony of the public and of the chief executive officer of 99

the department and otherwise shall review, consider, and 100  
evaluate the usefulness, performance, and effectiveness of the 101  
department. The president of the senate and the speaker of the 102  
house of representatives may defer the review of a department 103  
until the next general assembly during which the department is 104  
subject to review. The deferral does not prevent the expiration 105  
of a department. A department's renewal in accordance with 106  
division (F) of section 101.88 of the Revised Code is necessary 107  
to continue the statutes creating and empowering the department 108  
regardless of whether the department's review has occurred or 109  
has been deferred. A department whose review has been deferred 110  
shall be reviewed, without the option for deferment, during the 111  
next general assembly during which the department is subject to 112  
review under division (B) or (C) of section 101.88 of the 113  
Revised Code. 114

(B) A department that is not scheduled to be reviewed 115  
under division (B) or (C) of section 101.88 of the Revised Code 116  
is not subject to automatic expiration under this chapter. The 117  
president of the senate and the speaker of the house of 118  
representatives may direct a standing committee of the senate 119  
and of the house of representatives, respectively, to hold 120  
hearings to receive the testimony of the public and of the chief 121  
executive officer of the department and otherwise may review, 122  
consider, and evaluate the usefulness, performance, and 123  
effectiveness of the department. 124

(C) Each department that is scheduled for review and each 125  
department that is identified to be reviewed by a standing 126  
committee shall submit to the standing committee a report that 127  
contains all of the following information: 128

(1) The department's primary purpose and its various goals 129

<u>and objectives;</u>	130
<u>(2) The department's past and anticipated workload, the</u>	131
<u>number of staff required to complete that workload, and the</u>	132
<u>department's total number of staff;</u>	133
<u>(3) The department's past and anticipated budgets and its</u>	134
<u>sources of funding.</u>	135
<u>(D) Each department shall have the burden of demonstrating</u>	136
<u>to the standing committee a public need for its continued</u>	137
<u>existence. In determining whether a department has demonstrated</u>	138
<u>that need, the standing committee shall consider, as relevant,</u>	139
<u>all of the following:</u>	140
<u>(1) Whether or not the public could be protected or served</u>	141
<u>in an alternate or less restrictive manner;</u>	142
<u>(2) Whether or not the department serves the public</u>	143
<u>interest rather than a specific interest;</u>	144
<u>(3) Whether or not rules adopted by the department are</u>	145
<u>consistent with the legislative mandate of the department as</u>	146
<u>expressed in the statutes that created and empowered the</u>	147
<u>department;</u>	148
<u>(4) The extent to which the department's jurisdiction and</u>	149
<u>programs overlap or duplicate those of other departments, the</u>	150
<u>extent to which the department coordinates with those other</u>	151
<u>departments, and the extent to which the department's programs</u>	152
<u>could be consolidated with the programs of other state</u>	153
<u>departments;</u>	154
<u>(5) Whether or not continuation of the department is</u>	155
<u>necessary to protect the health, safety, or welfare of the</u>	156
<u>public, and if so, whether or not the department's authority is</u>	157

narrowly tailored to protect against present, recognizable, and 158  
significant harms to the health, safety, or welfare of the 159  
public; 160

(6) The amount of regulation exercised by the department 161  
compared to such regulation, if any, in other states; 162

(7) Whether or not alternative means or methods can be 163  
used to improve efficiency and customer service to assist the 164  
department in the performance of its duties; 165

(8) Whether or not the operation of the department has 166  
inhibited economic growth, reduced efficiency, or increased the 167  
cost of government; 168

(9) An assessment of the authority of the department 169  
regarding fees, inspections, enforcement, and penalties; 170

(10) The extent to which the department has permitted 171  
qualified applicants to serve the public; 172

(11) The cost-effectiveness of the department in terms of 173  
number of employees, services rendered, and administrative costs 174  
incurred, both past and present; 175

(12) Whether or not the department's operation has been 176  
impeded or enhanced by existing statutes and procedures and by 177  
budgetary, resource, and personnel practices; 178

(13) Whether the department has recommended statutory 179  
changes to the general assembly that would benefit the public as 180  
opposed to the persons regulated by the department, if any, and 181  
whether its recommendations and other policies have been adopted 182  
and implemented; 183

(14) Whether the department has required any persons it 184  
regulates to report to it the impact of department rules and 185

<u>decisions on the public as they affect service costs and service</u>	186
<u>delivery;</u>	187
<u>(15) Whether persons regulated by the department, if any,</u>	188
<u>have been required to assess problems in their business</u>	189
<u>operations that affect the public;</u>	190
<u>(16) Whether the department has encouraged public</u>	191
<u>participation in its rule-making and decision-making;</u>	192
<u>(17) The efficiency with which formal public complaints</u>	193
<u>filed with the department have been processed to completion;</u>	194
<u>(18) Whether the programs or services of the department</u>	195
<u>duplicate or overlap those of other departments;</u>	196
<u>(19) Whether the purpose for which the department was</u>	197
<u>created has been fulfilled, has changed, or no longer exists;</u>	198
<u>(20) Whether federal law requires that the department be</u>	199
<u>renewed in some form;</u>	200
<u>(21) An assessment of the administrative hearing process</u>	201
<u>of a department if the department has an administrative hearing</u>	202
<u>process;</u>	203
<u>(22) Any applicable criteria under division (E) of this</u>	204
<u>section;</u>	205
<u>(23) Changes needed in the enabling laws of the department</u>	206
<u>in order for it to comply with the criteria suggested by the</u>	207
<u>considerations listed in divisions (D) (1) to (22) of this</u>	208
<u>section.</u>	209
<u>(E) In the review of a department that issues a license to</u>	210
<u>practice a trade or profession, the standing committee shall</u>	211
<u>consider all of the following:</u>	212



(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; 213  
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(2) The extent to which the objective of licensing may be achieved through market forces, private or industry certification and accreditation programs, or enforcement of other existing laws; 217  
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(3) The extent to which licensing ensures that practitioners have occupational skill sets or competencies that correlate with a public interest, and the impact that those criteria have on applicants for a license, particularly those with moderate or low incomes, seeking to enter the occupation or profession; 221  
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(4) The extent to which the requirement for the license stimulates or restricts competition, affects consumer choice, and affects the cost of services. 227  
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As used in division (E) of this section: 230

"Least restrictive form of regulation" means the public policy of relying on one of the following, listed from the least to the most restrictive, as a means of consumer protection: 231  
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market competition; third-party or consumer-created ratings and reviews; private certification; specific private civil cause of action to remedy consumer harm; actions under Chapter 1345. of the Revised Code; regulation of the process of providing the specific goods or services to consumers; inspection; bonding or insurance; registration; government certification; specialty occupational license for medical reimbursement; and occupational license. "Specialty occupational license for medical 234  
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reimbursement" means a nontransferable authorization in law for 242  
an individual to provide identified medical services and qualify 243  
for payment or reimbursement from a government agency based on 244  
meeting personal qualifications established in law. 245

"License" means a license, certificate, permit, or other 246  
authorization issued or conferred by a department or board under 247  
which a person may engage in a profession, occupation, or 248  
occupational activity. 249

For purposes of division (E) of this section, a government 250  
regulatory requirement is in the public interest if it provides 251  
protection from present, recognizable, and significant harms to 252  
the health, safety, or welfare of the public. 253

**Sec. 101.882.** The president of the senate and the speaker 254  
of the house of representatives shall notify the chief of the 255  
common sense initiative office, established under section 107.61 256  
of the Revised Code, when a department is identified under 257  
division (A) or (B) of section 101.881 of the Revised Code to be 258  
reviewed by a standing committee. The chief or the chief's 259  
designee shall appear and testify before the standing committee, 260  
with respect to the department, and shall testify on at least 261  
all of the following: 262

(A) Whether or not the common sense initiative office has, 263  
within the previous five years, received commentary related to 264  
the department through the comment system established under 265  
section 107.62 of the Revised Code; 266

(B) Whether or not the common sense initiative office has, 267  
within the previous five years, received advice from the small 268  
business advisory council with respect to rules of the 269  
department; 270

(C) Any other information the chief believes will 271  
elucidate the effectiveness and efficiency of the department and 272  
in particular the quality of customer service provided by the 273  
department. 274

**Sec. 101.89.** After the completion of the evaluation review 275  
of a department under section 101.881 of the Revised Code, the 276  
standing committee that conducted the review may prepare and 277  
publish a report of its findings and recommendations. A standing 278  
committee may include in a single report its findings and 279  
recommendations regarding more than one department. If the 280  
standing committee prepares and publishes a report, the 281  
committee shall furnish a copy of the report to the clerk of the 282  
house of representatives or the clerk of the senate, as the case 283  
may be. The clerk shall furnish a copy of the report to the 284  
president of the senate, the speaker of the house of 285  
representatives, the governor, and each affected department. The 286  
clerk shall make any published report available to the public on 287  
the internet web site of the general assembly. 288

**Sec. 117.46.** Each ~~biennium~~ general assembly the auditor of 289  
state shall conduct a minimum of four performance audits under 290  
this section. Except as otherwise provided in this section, the 291  
auditor of state shall conduct the audits as follows: In the 292  
general assembly preceding the general assembly during which 293  
departments are scheduled to be reviewed under division (B) or 294  
(C) of section 101.88 of the Revised Code, at least two of the 295  
audits shall be of ~~state agencies selected from a list comprised~~ 296  
~~of the administrative departments listed in section 121.02 of~~ 297  
~~the Revised Code~~ scheduled to be reviewed during the subsequent 298  
general assembly and the department of education, and at least 299  
two of the audits shall be of other state agencies. ~~At~~ The 300  
audits of departments scheduled to be reviewed during the 301

subsequent general assembly shall be completed before the end of 302  
the general assembly and shall be made available to the standing 303  
committee directed to conduct the review under section 101.88 of 304  
the Revised Code during the subsequent general assembly. 305

At the auditor of state's discretion, the auditor of state 306  
may conduct a performance audit of a state institution of higher 307  
education as one of the four ~~required~~ performance audits 308  
required during a general assembly. The offices of the attorney 309  
general, auditor of state, governor, secretary of state, and 310  
treasurer of state and agencies of the legislative and judicial 311  
branches are not subject to an audit under this section. 312

The auditor shall select each agency or institution to be 313  
audited and shall determine whether to audit the entire agency 314  
or institution or a portion of the agency or institution by 315  
auditing one or more programs, offices, boards, councils, or 316  
other entities within that agency or institution. The auditor 317  
shall make the selection and determination in consultation with 318  
the governor and the speaker and minority leader of the house of 319  
representatives and president and minority leader of the senate. 320

An audit of a portion of an agency or institution shall be 321  
considered an audit of one agency or institution. The authority 322  
to audit a portion of an agency or institution in no way limits 323  
the auditor's ability to audit an entire agency or institution 324  
if it is in the best interest of the state. 325

The performance audits under this section shall be 326  
conducted pursuant to sections 117.01 and 117.13 of the Revised 327  
Code. In conducting a performance audit, the auditor of state 328  
shall determine the scope of the audit, but shall consider, if 329  
appropriate, supervisory and subordinate level operations in the 330  
agency or institution. A performance audit under this section 331

shall not include review or evaluation of an institution's 332  
academic performance. 333

As used in this section and in sections 117.461, 117.462, 334  
117.463, 117.47, 117.471, and 147.472 of the Revised Code, 335  
"state institution of higher education" has the meaning defined 336  
in section 3345.011 of the Revised Code. 337

**Section 2.** That existing section 117.46 of the Revised 338  
Code is hereby repealed. 339