Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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Sunset Review Committee

Ohio Law requires that a Sunset Review Committee be convened during each General Assembly to hold hearings and receive testimony in the review of certain boards and commissions. Boards and commissions subject to this review generally expire four years after being established, or after having last been continued. Continuing an entity requires an act of law. If the General Assembly does not continue the entity within the established time frame, the entity expires, and the Office of Budget and Management may not authorize the expenditure of any money for its operation.

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Background

In the normal course of business, the General Assembly creates various boards, commissions, study committees, task forces, and other entities, which are designed to assist or oversee some function of government. The lifespan of these entities can vary significantly. Some might be created to complete a specific task, such as a report, and exist only temporarily, while others are established with a more permanent existence in mind. The Sunset Review Law[1] provides a process and a schedule for the General Assembly to consider and evaluate the usefulness, performance, and effectiveness of these entities, and to determine which entities will be continued and which will be eliminated.

SECTION 10. It is the intent of the General Assembly, through the amendment and repeal in this act of statutes that create and empower the agency, to abolish the following agencies upon the effective date of this section:

	1	2
A	Agriculture Commodity Marketing Programs, Coordinating Committee	R.C. 924.14
B	Alzheimer's Disease and Related Dementias Task Force	Sections 1, 2, 3, and 4 of S.B. 24 of the 133rd G.A.
C	Child Care Advisory Council	R.C. 5104.08

Example: Section of an act abolishing agencies after a sunset review process; Section 10 of H.B. 238 of the 135th G.A.

Sunset Review Committee

Formation and membership

A new Sunset Review Committee is created to operate during each General Assembly. Ohio law requires that Committee appointments be made within 45 days after the commencement of the first regular session of a general assembly (typically the first Monday of January in each odd-numbered year). The Committee consists of nine members: three Senate members (appointed by the President); three House of Representatives members (appointed by the Speaker); and three individuals appointed by the Governor with the advice and consent of the Senate. Each appointing authority is prohibited from appointing more than two persons who are members of the same political party.

The Committee must meet not later than 90 days after the first day of the first year of the general assembly to choose a chairperson from among its members and to establish a schedule for agency review, or perform other Committee duties.

In the first year of the general assembly, the chairperson must be a House member and the vice-chairperson must be a Senate member. In the second year, the chairperson must be a Senate member and the vice-chairperson must be a House member. A Sunset Review Committee ceases to exist on December 31 of each even-numbered year and the subsequent general assembly establishes a new Sunset Review Committee.[2]

[1] R.C. 101.82 through 101.87.

[2] R.C. 101.84.

Which entities fall under the purview of Sunset Review Law?

Not all entities of state government are subject to expiration under Sunset Review Law. Rather, the Sunset Review Law applies only to those that fall under a unique definition for "agency." For purposes of Sunset Review Law, "agency" generally means any board, commission, committee, or council, or any other similar state public body required to be established under state statutes for the exercise of any function of state government, and to which members are appointed or elected. This is not to be confused with agencies or departments of state government, which do not fall under the purview of Sunset Review Law. Since "agency" is the term used in Sunset Review Law, the remainder of this brief uses "agency" to refer to the entities that are subject to the Law.

There are a variety of statutory provisions that exempt specific agencies or certain types of agencies from being subject to Sunset Review Law. For example, the Ohio Ethics Commission is exempt.[3] Also, the following five agencies are deemed to have a purpose related to federal law, and exempt from review:

- The Early Childhood Advisory Council;
- The Emergency Response Commission;
- The Public Defender Commission;
- The Homeland Security Advisory Council; and
- The Unemployment Compensation Review Commission.[4]

Notably, any state board or commission that has the authority to issue any final adjudicatory order that may be appealed to the court of common pleas under the Administrative Procedure Act is not subject to Sunset Review Law. Occupational licensing boards issue such orders and are therefore exempted by this provision. Although occupational licensing boards are not subject to review under Sunset Review Law,[5] they are instead evaluated by standing committees of the General Assembly in accordance with Occupational Licensing Board Review Law.[6]

[3] R.C. 101.82(A)(21).

[4] R.C. 101.82(A)(27).

[5] Under R.C. 101.82(A)(9).

[6] R.C. 101.62 through 101.65.

Agency expiration schedule

Agencies expire, by operation of Sunset Review Law,[7] four years more or less after the effective date of the act that established the agency. The actual expiration date for all agences is conveniently established as December 31 of the second year of a general assembly. So, a Sunset Review Committee that is convened during a specific general assembly is tasked with evaluating boards that will expire at the end of that general assembly, unless action is taken to renew them. An agency may be renewed before expiration by passage of a bill that continues the statutes creating and empowering the agency, that amends or repeals those statutes, or that enacts new statutes.[8]

SECTION 5. The following agencies are retained under division (E) of section 101.83 of the Revised Code and expire at the end of December 31, 2024:

	1	2
A	Advisory Committee on Advance Practice Registered Nursing	R.C. 4723.493
B	African-American Males, Commission on	R.C. 4112.12
C	Aging, Ohio Advisory Council for the	R.C. 173.03

Example: Section of an act continuing agencies following a sunset review process. Section 5 of S.B. 331 of the 133rd G.A.

Agency review process

Schedule

Each Sunset Review Committee, not later than 60 days after its first meeting, must schedule for review each agency in existence on the first day of the general assembly, and that also is scheduled to expire at the end of December 31 in the second year of that general assembly. The Legislative Service Commission (LSC) is required to assist the Committee with this task by providing a list of agencies that are due to be reviewed and are subject to expiration.

The chairperson is required to send a copy of the schedule for review of agencies to each of the agencies scheduled for review and to the LSC Director. The LSC Director must publish a copy of the schedule in the Register of Ohio.[9]

Hearings

The Sunset Review Committee must hold hearings to receive the testimony of the public and of the chief executive officer of each agency scheduled for review, and otherwise must consider and evaluate the usefulness, performance, and effectiveness of the agency.

Each agency that is scheduled for review is required to submit to the Committee a report that contains all of the following information:

- The agency's primary purpose and its various goals and objectives;
- The agency's past and anticipated workload, the number of staff required to complete that workload, and the agency's total number of staff;
- The agency's past and anticipated budgets and its sources of funding;

[7] R.C. 101.82 through 101.87.

[8] R.C. 101.83(E).

[9] R.C. 101.85.

- The number of members of its governing board or other governing entity and their compensation, if any.

An agency has the burden of demonstrating to the Committee a public need for its continued existence. In determining whether an agency has demonstrated that need, the Committee must consider all of the following:

1. The extent to which the agency has permitted qualified applicants to serve the public;
2. The cost-effectiveness of the agency in terms of number of employees, services rendered, and administrative costs incurred, both past and present;
3. The extent to which the agency has operated in the public interest, and whether its operation has been impeded or enhanced by existing statutes and procedures and by budgetary, resource, and personnel practices;
4. Whether the agency has recommended statutory changes to the general assembly that would benefit the public as opposed to the persons regulated by the agency, if any, and whether its recommendations and other policies have been adopted and implemented;
5. Whether the agency has required any persons it regulates to report to it the impact of agency rules and decisions on the public as they affect service costs and service delivery;
6. Whether persons regulated by the agency, if any, have been required to assess problems in their business operations that affect the public;
7. Whether the agency has encouraged public participation in its rule-making and decision-making;
8. The efficiency with which formal public complaints filed with the agency have been processed to completion;
9. Whether the programs or services of the agency duplicate or overlap those of other agencies;
10. Whether the purpose for which the agency was created has been fulfilled, has changed, or no longer exists;
11. Whether federal law requires that the agency be renewed in some form;
12. Changes needed in the enabling laws of the agency in order for it to comply with the criteria suggested by the considerations listed in (1) to (11) above.[10]

Findings, recommendations, and report

After evaluating all agencies, the Sunset Review Committee must prepare and publish a report of its findings and recommendations. The Committee must furnish a copy of the report to the Senate President , the Speaker of the House, the Governor, and each affected agency. The report must be made available to the public in the offices of the House and Senate Clerks during

[10] R.C. 101.86.

reasonable hours. As part of the report, the Committee must recommend to the General Assembly, in bill form, one or more of the following:

- Amendment or repeal of the statutes that created and empowered an agency, to abolish or terminate the agency;
- Amendment or repeal of the statutes that created and empowered an agency, or enactment of new statutes, to terminate the agency, to transfer the agency, or to improve the agency's usefulness, performance, or effectiveness;
- Amendment or repeal of the statutes that created and empowered two or more agencies, or enactment of new statutes, to reorganize or transfer them and thereby improve agency usefulness, performance, or effectiveness;
- Amendment or continuation of the statutes that created and empowered an agency, or enactment of new statutes, to renew the agency.[11]

In practice, a Sunset Review Committee, at its final meeting, typically votes on a simple document that lists agencies to be retained, agencies to be eliminated, and agencies to be retained with changes in their empowering laws. The Legislative Service Commission then drafts a bill to implement the recommendations, and the Committee Chairperson introduces the bill for consideration by the General Assembly as a whole. The recommendations are not implemented unless the General Assembly enacts a law to that purpose.

[11] R.C. 101.87.