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The Honorable Representative Marlene Anielski, Chair
State and Local Government Committee

Chairwoman Anielski, Vice-Chair Hambley, Ranking Member Bishoff, and honorable members of the committee, thank you for the opportunity to provide testimony on House Bill 51. The Ohio Civil Service Employees Association is the largest state employees union in Ohio. We offer testimony today in opposition to the provisions in House Bill 51. 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 House Bill 51 offer no additional advantages, only consequences that other states have come to regret and, in some cases, repeal. We recognize the need for review processes in state government, and OCSEA has participated for many years in efficiency and quality processes with the state. But the experiences of other states demonstrate through their own, less severe, sunset processes that House Bill 51 will have the opposite effect on Ohio by creating powerful incentives for political gridlock and outside abuse that will harm state workers and Ohio citizens.

First, it is worth noting that Ohio has a sunset review process in place for committees and ad hoc bodies. The provisions of House Bill 51 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 House Bill 51 the legislative sub-committees tasked with reviewing sunsetting 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.

House Bill 51 is alarming in 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. Further, reviews of states' sunset processes shows that House Bill 51 would take Ohio into uncharted waters. While plenty of other states employ a sunset process for boards, commissions, legislation – and a handful even review cabinet-level agencies – House Bill 51 would put Ohio far afield 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 House Bill 51-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 |
| TOTALS | | | 505 | 104 | 401 |

[1]

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 House Bill 51.

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 House Bill 51: 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

[1] https://www.mercatus.org/system/files/Baugus-Sunset-Legislation.pdf

with statements from the National Conference of State Legislatures indicating that many states experimented with sunset committees in decades past, but often found the schedules difficult to maintain, given staff limitations, and "modified the sunset review period, and extended it, or removed it."[2]

Texas is the example given by House Bill 51's sponsor as the closest model for this legislation in Ohio, but the Texas sunset process is very different and yet is still fraught with problems. In Texas, the sunset review of state agencies has persisted since the commission was created in 1977. 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 House Bill 51, 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.

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. This creates a biennial opportunity for scenarios like the

[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/

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 House Bill 51 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 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 House Bill 51. Thank you for the opportunity to submit testimony on this issue.