



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Abby McMahon

### **Sub. S.B. 255**

132nd General Assembly

(As Re-Referred by H. Rules and Reference)

**Sens.** McColley, Wilson, Jordan, Huffman, Terhar, LaRose, Coley, Hoagland, Lehner, Eklund, Beagle, Balderson, Hackett, Obhof, O'Brien, Peterson, Uecker

**Reps.** Roegner, Becker, Merrin, Retherford, Young, Zeltwanger

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## **BILL SUMMARY**

### **Expiration of occupational licensing boards**

- Requires all occupational licensing boards to be renewed at least once every six years by the General Assembly.
- States that a board that is not renewed within six years of its last renewal or creation is triggered to expire.
- Requires all boards to be reviewed and renewed by December 31, 2024, unless created within six years of that date.
- Allows for the concluding of business and operation of an expired board and allows any person to engage in an occupation if the board that licensed that occupation has expired.

### **General Assembly to review occupational licensing boards**

- Creates a timeline for the House of Representatives and Senate to review occupational licensing boards scheduled to expire during a biennium.
- Requires the President of the Senate and the Speaker of the House of Representatives to create standing committees in each chamber to review occupational licensing boards scheduled to expire during a biennium.
- Requires the standing committees to review approximately 33% of the boards each biennium, and to review all boards at least once every six years.

- Requires a board before a standing committee to submit a report containing information about the board's purpose, workload, budget, and staffing.
- States that the board has the burden of proving the need for its continued existence and lists factors for a House or Senate standing committee to consider when making a determination about a board.
- Requires the Senate President and the Speaker of the House to notify the Chief of the Common Sense Initiative Office (CSIO) when a board is to be reviewed, and requires the Chief or the Chief's designee to testify before the standing committee about any information the CSIO has received regarding the board.
- Requires a standing committee to publish a report of the committee's findings and recommendations and suggests information that the report should include.
- Requires the Legislative Service Commission (LSC) to provide staff services to a standing committee performing a review of an occupational licensing board.

### **LSC Director to issue reports of bills**

- Requires the LSC Director to issue reports of all bills introduced in a General Assembly that propose to substantially change or enact occupational regulations.
- States that the Director's report must compare the bill's regulatory scheme with the state's policy on occupational licensing and regulation, and the bill's potential impact on employment, consumer choice, market competition, and cost to government.
- Requires the report also to compare the bill's regulatory scheme with those of other states and with any state policy set forth in the sections of the Revised Code governing the occupation that is the subject of the bill.
- Allows the sponsor of a bill that the Director issues a report on to submit information to the Director to aid in the report.

### **LSC Director to issue reports of occupations**

- Requires the LSC Director to issue a report of 33% of the occupations regulated by the state each biennium beginning in 2019, requires the report to be issued of all occupations at least once before 2024, and on a six-year rolling basis after 2024.
- Permits the Director to align the reports with a standing committee's review of occupational licensing boards.



- Requires the report to compare the current regulatory scheme for an occupation with the state's policy on occupational licensing and regulation.
- Allows the Director to require a department or board that regulates an occupation for which the Director is preparing a report to submit relevant information to the Director.

### **Official state policy on occupational licensing and regulation**

- Establishes a state policy on occupational licensing and regulation of individuals to be used when a body is reviewing an occupational licensing board or the actions of a board.
- Requires the state to use the least restrictive regulation where the state finds it necessary to displace competition, and states that the least restrictive regulation is that which relies on market competition and private remedy to protect consumers.
- Lists appropriate state actions to be taken to protect against specific harms to consumers.
- Preempts local law or regulation inconsistent with the state's policy on occupational licensing and regulation to the extent that a political subdivision regulates an occupation that the state also regulates.

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## CONTENT AND OPERATION

### Expiration of occupational licensing boards

The bill requires all occupational licensing boards to be renewed at least once over a total of six years by the General Assembly. Under the bill, an "occupational licensing board" means any board, commission, committee, or council, or any other similar state public body, and any administrative department (see R.C. 121.02), and any agency, division, or office of state government, that issues an occupational license.<sup>1</sup> (See definition of "occupational license" under "**Official state policy on occupational licensing and regulation**," below.) If a board is not renewed within six years of its last renewal or creation, the board is triggered to expire at the end of the 31st day of December of the sixth year after that renewal or creation, and expires at the end of the 30th day of June the following year.<sup>2</sup> Any board that is not renewed before December 31, 2024, except for boards created within six years from that date, will be triggered to expire on that date. A board is renewed when the General Assembly enacts a law that expressly continues statutes creating, empowering, governing, or regulating the board. The review date for a board does not change under the bill when a statute creating, empowering, governing, or regulating a board is amended. Rather, the review date is only changed if the amendment expressly alters the review date.<sup>3</sup>

The bill allows a board to operate after it has been triggered to expire for the purpose of winding up its affairs before the board expires. Under the bill, if an occupational licensing board expires, any person may engage in the profession or activity that was formerly licensed by the board without a license, notwithstanding any other state law to the contrary. Additionally, the Director of Budget and Management cannot authorize the expenditure of money for a board on or after the board's expiration date.<sup>4</sup>

Under the bill, unless the General Assembly enacts contrary laws, the orders, licenses, contracts, and other actions taken by the board remain in effect according to their terms. Similarly, any claims pending against the expired board are not terminated, but the Attorney General succeeds the board in any pending claim. The General Assembly also may transfer functions of some or all of an expired board to a successor agency, board, or officer. Additionally, a board that performs functions other than

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<sup>1</sup> R.C. 4798.01.

<sup>2</sup> R.C. 101.62(B).

<sup>3</sup> R.C. 101.62(E).

<sup>4</sup> R.C. 101.62(B), (C), and (D).



licensing or regulating an occupational license will not expire under the bill. The board continues to the extent it is performing other functions.<sup>5</sup>

### **General Assembly to review occupational licensing boards**

The bill requires the Speaker of the House of Representatives, before March 1 in an odd-numbered year of a biennium, to establish a standing committee to review those occupational licensing boards that are scheduled to expire at the end of that biennium. The standing committee must prepare and publish a report of its findings by November 1 of that same year. The House must consider any bill offered by the committee regarding the renewal of any boards by December 31 of that same year.

The bill then requires the President of the Senate, before March 1 in the even-numbered year of a biennium, to establish a standing committee to review those occupational licensing boards reviewed by the House in the previous odd-numbered year. The standing committee must prepare and publish a report of its findings by November 1 in that same year. The Senate must consider any bill offered by the committee regarding the renewal of any boards by December 31 of that same year.

The President and the Speaker also may direct those standing committees to review a board that is not triggered to expire during that biennium but for which the Director of the Legislative Service Commission (LSC) has performed a review (see "**LSC Director to issue a report of occupations**," below). The standing committees must review 33% of the occupational licensing boards in each biennium, and all boards must be reviewed at least once every six years. Additionally, LSC must provide staff services to a standing committee that reviews an occupational licensing board under the bill.<sup>6</sup>

### **Report submitted by occupational licensing board to committee**

Under the bill, each occupational licensing board that appears before a standing review committee must submit a report that contains all of the following information:

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

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<sup>5</sup> R.C. 101.62(D) and (F).

<sup>6</sup> R.C. 101.63(A) and (D).



- The number of members of its governing board or other governing entity and their compensation, if any.<sup>7</sup>

### **Evidence submitted by occupational licensing board to committee**

The bill requires each occupational licensing board to demonstrate to the standing committee a public need for its continued existence. In determining whether a board has demonstrated that need, the standing committee must consider, as relevant, all of the following:

- Whether continuing the board is necessary to protect the public's health, safety, or welfare, and if so, whether the board's authority is narrowly tailored to protect against present, recognizable, and significant harms to the public's health, safety, or welfare;
- Whether the public could be protected or served in an alternate or less restrictive manner;
- Whether the board serves a specific private interest;
- Whether the board's rules are consistent with the legislative mandate expressed in the statutes that created and empowered the board;
- The extent to which:
  - The board's jurisdiction and programs overlap or duplicate those of other boards;
  - The board coordinates with those other boards;
  - The board's programs could be consolidated with the programs of other state departments or boards.
- How many other states regulate the occupation, whether a license is required to engage in the occupation in other states, whether the initial licensing and license renewal requirements for the occupation are substantially equivalent in every state, and the amount of regulation the board exercises compared to other states;
- The extent to which significant changes in the board's rules could prevent an individual licensed in Ohio from practicing, or allow an individual licensed in Ohio to practice, the same occupation in another jurisdiction

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<sup>7</sup> R.C. 101.63(B).



without obtaining an occupational license for that occupation in that other jurisdiction;

- Whether the board recognizes national uniform licensure requirements for the occupation;
- Whether private contractors could be used, in an effective and efficient manner, either to assist the board in the performance of its duties or to perform those duties instead of the board;
- Whether the operation of the board has inhibited economic growth, reduced efficiency, or increased the cost of government;
- An assessment of the board's authority regarding fees, inspections, enforcement, and penalties;
- The extent to which the board has permitted qualified applicants to serve the public;
- The extent to which the board has permitted individuals to practice elements of the occupation without a license;
- The cost-effectiveness of the board in terms of number of employees, services rendered, and administrative costs incurred, both past and present;
- Whether the board's continued operation has been impeded or enhanced by existing statutes and procedures and by budgetary, resource, and personnel practices;
- Whether the board has recommended statutory changes to the General Assembly that would benefit the public as opposed to the persons the board regulates, if any, and whether its recommendations and other policies have been adopted and implemented;
- Whether the board has required any persons it regulates to report to it the impact of board rules and decisions on the public as they affect service costs and service delivery;
- Whether persons the board regulates, if any, have been required to assess problems in their business operations that affect the public;
- Whether the board has encouraged public participation in its rule-making and decision-making;



- The efficiency with which formal public complaints filed with the board have been processed to completion;
- Whether the purpose for which the board was created has been fulfilled, has changed, or no longer exists;
- Whether federal law requires that the board be renewed in some form;
- An assessment of the board's administrative hearing process, if the board has one, and whether that hearing process is consistent with due process rights;
- Whether the requirement for occupational licensure is consistent with the official state policy on occupational licensing (see "**Official state policy on occupational licensing and regulation**," below), serves a meaningful, defined public interest, and provides the least restrictive form of regulation that adequately protects the public interest;
- The extent to which licensing ensures that practitioners have occupational skill sets or competencies that are substantially related to protecting consumers from present, significant, and substantiated harms that threaten public health, safety, or welfare, and the impact that those criteria have on applicants, particularly those with moderate or low incomes, seeking to enter the occupation or profession;
- The extent to which the requirement for the occupational license stimulates or restricts competition, affects consumer choice, and affects the cost of services; and
- An assessment of whether changes are needed in the board's enabling laws for it to comply with the criteria suggested by the considerations listed above.<sup>8</sup>

The bill establishes that, for the purposes of reviewing a board, a government regulatory requirement protects or serves the public interest if it provides protection from present, significant, and substantiated harms to the health, safety, or welfare of the public.

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<sup>8</sup> R.C. 101.63(C)(1) through (27).



## **Common Sense Initiative Office Chief to appear before standing committee**

The bill requires the Senate President and the Speaker of the House to notify the Chief of the Common Sense Initiative Office (CSIO) when an occupational licensing board is identified to be reviewed by a standing committee to determine whether the board should be renewed.<sup>9</sup> The Chief, or the Chief's designee, must appear before the committee and testify, with respect to the board, about at least all of the following:

- Whether CSIO has, within the past six years, received commentary related to the board under CSIO's process for adverse impact review;
- Whether CSIO has, within the past six years, received advice from the Small Business Advisory Council related to the board; and
- Any other information the Chief believes will address the board's effectiveness and efficiency, and in particular, the quality of customer service the board provides.<sup>10</sup>

## **Requirements for report published by standing committee**

Under the bill, a standing committee of the Senate or the House that has reviewed an occupational licensing board must publish a report of its findings and recommendations. The report may include information for more than one board the committee reviewed. The committee must send a copy of the report to the Senate President, the Speaker of the House, the Governor, and each affected board. The published report also must be made available to the public on the committee's website and in the offices of the Senate President and the Speaker of the House of Representatives during reasonable hours. As part of a report, a committee may present its recommendations to the General Assembly in bill form.<sup>11</sup>

If the committee makes recommendations about a board in its report, the recommendations should indicate how the implementation of the recommendations will accomplish each of the following:

- Improving efficiency in the management of state government;
- Improving services rendered to Ohio citizens;

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<sup>9</sup> R.C. 101.64.

<sup>10</sup> R.C. 101.64(A) through (C).

<sup>11</sup> R.C. 101.65(A).



- Simplifying and improving preparation of the state budget;
- Conserving Ohio natural resources;
- Promoting the orderly growth of Ohio and its government;
- Promoting the idea that occupational regulations must be construed and applied to increase economic opportunities, promote competition, and encourage innovation;
- Providing for the least restrictive regulation by repealing the current regulation and replacing it with a less restrictive regulation that is consistent with the state's policies on occupational licensing (see "**Official state policy on occupational licensing and regulation**," below);
- Improving the effectiveness of the services performed by the service departments of the state;
- Avoiding duplication of effort by state agencies or boards; and
- Improving the organization and coordination of the state government in one or more of the ways listed above.<sup>12</sup>

### **LSC Director to issue a report of bills**

The bill requires the Director of LSC to issue a report of all bills introduced in the General Assembly that propose to substantially change or enact occupational regulations. An occupational regulation means a regulation or rule that controls an individual's (that is, a natural person's) practice of a trade or profession. The report must compare the regulatory scheme proposed in the legislation with the state's policies on occupational licensing (see "**Official state policy on occupational licensing and regulation**," below) with respect to proposing the least restrictive regulation to protect consumers from present, significant, and substantiated harms that threaten public health, safety, or welfare.

Under the bill, the Director of LSC must report on consequences of the legislation with respect to the following:

- Opportunities for employment within the occupation;
- Consumer choices and costs;

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<sup>12</sup> R.C. 101.65(B).

- Market competition; and
- Cost to government.<sup>13</sup>

The report also must include all of the following:

- A comparison of the regulatory scheme the bill proposes with the current regulatory scheme in other similar states for the same occupation and a consideration of the extent to which significant changes in the board's rules could prevent an individual licensed in Ohio from practicing, or allow an individual licensed in Ohio to practice, the same occupation in another jurisdiction without obtaining an occupational license for that occupation in that other jurisdiction;
- A comparison of the regulatory scheme the bill proposes with the policy of Ohio as set forth in the sections of the Revised Code governing the occupation that is the subject of the bill, if those sections include such a policy.

Additionally, the bill allows the sponsor of a bill substantially changing or enacting occupational regulation to submit relevant information to the Director of LSC to aid in the Director's report of the bill. The information submitted by the sponsor may include all of the following:

- Evidence of present, significant, and substantiated harms to consumers in Ohio;
- An explanation of why existing civil or criminal laws or procedures are inadequate to prevent or remedy any harm to the public;
- An explanation of why a less restrictive regulation consistent with the state's policies on occupational regulation is not proposed;
- The names of associations, organizations, or other groups representing the occupation seeking regulation and the approximate number of members in each in Ohio;
- The functions typically performed by members of this occupation and whether they are identical or similar to those performed by another occupation;

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<sup>13</sup> R.C. 103.26(A) and (B)(1) through (4).



- Whether specialized training, education, or experience is required to engage in the occupation and, if so, how current practitioners acquired that training, education, or experience;
- Whether the proposed regulation would change the way practitioners of the occupation acquire any necessary specialized training, education, or experience, and if so, why;
- Whether any current practitioners of the occupation in Ohio lack whatever specialized training, education, or experience and how the proposed regulation would address that deficiency;
- Whether new entrants into the occupation would be required to provide evidence of any necessary training, education, or experience, or to pass an examination, or both;
- Whether current practitioners would be required to provide evidence of any necessary training, education, or experience, or to pass an examination, and, if not, why not;
- The expected impact of the proposed regulation on the supply of practitioners of the occupation and on the cost of services or goods provided by the occupation; and
- Information from others knowledgeable about the occupation, and the related economic factors.<sup>14</sup>

The bill requires the Director of LSC to provide the report in a timely manner. Any bill that proposes to substantially change or enact an occupational regulation cannot be reported out of committee until after the committee has received and considered the report, unless two-thirds of the committee members vote to favorably report the bill without the report.<sup>15</sup>

### **LSC Director to issue a report of occupations**

The bill requires the LSC Director to issue a report of 33% of the occupations regulated by the state each biennium, beginning in 2019. All occupations must be reported on at least once before 2024, and at least once every six years after 2024. The Director may report on occupations on a schedule that coordinates with a standing

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<sup>14</sup> R.C. 103.26(C) and (D)(1) through (12).

<sup>15</sup> R.C. 103.26(B) and (E).



committee's review of an occupational licensing board (see "**General Assembly to review occupational licensing boards**," above). The report must compare the current regulatory scheme with the state's policies on occupational regulation (see "**Official state policy on occupational licensing and regulation**," below). The Director must issue a report by December 1 of each even-numbered year during a biennium, and must send the report to the General Assembly and the Attorney General. The Director may require a department or board that regulates an occupation being reported on to submit relevant information to the Director.<sup>16</sup>

Additionally, the bill specifies its intention that for the first biennium, starting in 2019, LSC's review of 33% of the occupations regulated by the state will not consist of the same occupations reviewed by the standing committees of the General Assembly. The intent is that the General Assembly will review the same occupations previously reviewed by LSC in the biennium starting in 2021, and every biennium thereafter.<sup>17</sup>

### **Official state policy on occupational licensing and regulation**

The bill establishes a state policy on occupational licensing and regulation of individuals (meaning natural persons), to be used when the General Assembly or other body is reviewing an occupational licensing board or the actions of a board. The policy states that occupational regulations must be construed and applied to increase economic opportunities, promote competition, and encourage innovation.

The bill defines an "occupational license" as a nontransferable authorization in law that an individual must possess in order to perform a lawful occupation for compensation based on meeting personal qualifications established by statute, or by a rule authorized by statute. An occupational license does not include a commercial or other driver's license issued under the Revised Code.

The bill defines an "occupational regulation" as a statute, policy, rule, adjudication order, practice, or other state law requiring an individual to possess certain personal qualifications to use an occupational title or work in a lawful occupation, and includes registration, certification, and occupational license. An occupational regulation does not include a business license, facility license, building permit or zoning and land use regulation, except to the extent those laws regulate an individual's personal qualifications to perform a lawful occupation. Additionally, the definition does not include Revised Code sections related to commercial or other driver's licenses.<sup>18</sup>

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<sup>16</sup> R.C. 103.27.

<sup>17</sup> Section 3 of the bill.

<sup>18</sup> R.C. 4798.01(A) and 4798.02(A).



Where the state finds it necessary to displace competition, the bill requires the state to use the least restrictive regulation to protect consumers. The bill presumes that the least restrictive regulation is that which relies on market competition and private remedy to protect consumers.<sup>19</sup>

The bill also lists the appropriate state action to be taken to protect consumers from specific harms as follows:

- For regulations intended to protect consumers against fraud, the appropriate state action is to strengthen powers under the Deceptive Trade Practices Acts.<sup>20</sup>
- For regulations intended to protect consumers against unsanitary facilities and general health, safety, or welfare concerns, the appropriate state action is to require periodic inspections.
- For regulations intended to protect consumers against potential damages to third parties who are not party to a contract between the seller and the buyer, and other externalities, the appropriate state action is to require bonding or insurance.
- For regulations intended to protect consumers against potential damages by transient providers, the appropriate state action is to require registration with the Secretary of State.
- For regulations intended to protect consumers against asymmetrical information between the seller and buyer, the appropriate state action is to offer voluntary certification, unless suitable, privately offered voluntary certification for the relevant occupation is available.
- For regulations intended to facilitate governmental reimbursement for providing medical services for an emerging medical specialty, the appropriate state action is to require a specialty occupational license for medical reimbursement.
- For regulations required to perform services regulated by both federal and Ohio laws, that require Ohio to recognize an individual's occupational license from another state or territory to allow that individual to practice in Ohio, and that are based on uniform national laws, practices, and

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<sup>19</sup> R.C. 4798.02(B).

<sup>20</sup> Chapters 1345. and 4165. of the Revised Code, not in the bill.



examinations that have been adopted by at least 50 other states and territories, the appropriate state action is to require an occupational license.<sup>21</sup>

The bill limits enforcement of an occupational regulation to the extent that an individual sells goods or services that are included explicitly in the statute that defines the occupation's scope of practice. The bill also states that nothing in the bill is intended to restrict an occupational licensing board from requiring, as a condition of licensure or renewal of licensure, that an individual's personal qualifications include obtaining or maintaining a certification from a private organization that credentials individuals in the relevant occupation. Additionally, the bill states that the state policy contained in the bill preempts local law or regulation that is inconsistent with these provisions, to the extent that a political subdivision regulates an occupation that is also regulated by the state.<sup>22</sup>

### **Least restrictive regulation**

The bill defines "least restrictive regulation" as the public policy of relying on one of the following, listed from the least to the most restrictive, as a means of consumer protection:

- Market competition;
- Third-party or consumer-created ratings and reviews;
- Private certification;
- Specific private civil cause of action to remedy consumer harm;
- Actions under the Consumer Sales Practices Law;<sup>23</sup>
- Regulation of the process of providing the specific goods or services to consumers;
- Inspection;
- Bonding or insurance;
- Registration;

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<sup>21</sup> R.C. 4798.02(B)(1) through (6).

<sup>22</sup> R.C. 4798.02(C) and (D) and 4798.03.

<sup>23</sup> Chapter 1345. of the Revised Code, not in the bill.



- Government certification;
- Specialty occupational license for medical reimbursement; or
- Occupational license.<sup>24</sup>

The bill declares that the state must use the least restrictive regulation under this policy that will protect consumers from significant and present harms.

### **Criminal conviction disqualifications**

The bill allows an individual who has been convicted of a criminal offense to request that a licensing authority determine whether that conviction disqualifies the individual from obtaining a license issued or conferred by the licensing authority. A request must include the details of an individual's criminal conviction and any fee required by the licensing authority, not to exceed \$25 per request. The licensing authority must inform the individual of its determination within 30 days from receiving the request. However, the licensing authority is not bound by its determination if, upon further investigation, it finds out that the criminal convictions of the individual differ from what was included in the request.

Under the bill, a licensing authority is a board, commission, or other entity that issues licenses under Title 47 or any other Revised Code provision to practice an occupation or profession or is a political subdivision that issues a license or that charges a fee for an individual to practice an occupation or profession in that political subdivision.

Additionally, the bill requires a licensing authority to make available on its public website a list of all criminal offenses of which conviction of that offense would disqualify an individual from obtaining a license issued or conferred by the licensing authority.<sup>25</sup>

### **Rules prescribed by the Ohio Supreme Court**

The bill specifies that it does not apply to any rules prescribed by the Ohio Supreme Court. Under the Ohio Constitution, the Ohio Supreme Court is authorized with prescribing rules governing the practice and procedure in all courts of state,

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<sup>24</sup> R.C. 4798.01.

<sup>25</sup> R.C. 9.78.





including rules to require uniform record keeping and rules governing the admission to the practice of law and discipline of persons admitted to practice law.<sup>26</sup>

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## HISTORY

ACTION	DATE
Introduced	02-12-18
Reported, S. Gov't Oversight & Reform	06-27-18
Passed Senate (24-8)	06-27-18
Reported, H. Federalism & Interstate Relations	12-05-18
Re-referred, H. Rules & Reference	12-11-18

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<sup>26</sup> Section 2 of the bill. See Ohio Const., art. IV, sec. 5.

