



Pamela Goshay

*Final Analysis*  
Legislative Service Commission

**Sub. S.B. 124**  
126th General Assembly  
(As Passed by the General Assembly)

**Sens. Spada, Harris**

**Reps. Seitz, Willamowski, Aslanides, Coley, Domenick, Key, McGregor, Miller, Oelslager, Schneider, Seaver, G. Smith, Wagoner**

**Effective date: Emergency, June 27, 2005**

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**ACT SUMMARY**

- Exempts ten state governmental entities from the operation of the Sunset Review Law: the Parole Board, the Board of Tax Appeals, the Controlling Board, the Release Authority of the Department of Youth Services, the Environmental Review Appeals Commission, the Ohio Ethics Commission, the Ohio Public Works Commission, the Self-Insuring Employers Evaluation Board, the State Board of Deposit, and the State Employment Relations Board.
- Expands the membership of the Ohio Subrogation Rights Commission, accelerates its commencement date, and adds open meetings and public records provisions to its governing law.
- Confirms the sunset review and related amendments, enactments, and repeals of Am. Sub. H.B. 516 of the 125th General Assembly that took effect on December 30, 2004.

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**CONTENT AND OPERATION**

**Sunset Review Law**

**Background**

Under continuing law, an "agency" *created after* January 1, 2005, that is created on any date other than December 31 generally must be considered to have been created on the preceding December 31 and expires no later than four years after the date of its considered creation, unless it is renewed in accordance with the

Sunset Review Law's procedures. If an agency is created after January 1, 2005, and is created on December 31 in any year, the rule is different--the agency expires four years from the date of its creation, unless it is renewed in accordance with the Sunset Review Law's procedures. Finally, continuing law provides that an agency *in existence on* January 1, 2005, expires on December 31, 2010, or (assuming its renewal before that date) expires on December 31 of the fourth year after the year in which it was most recently renewed, unless it is renewed in accordance with the Sunset Review Law's procedures. (R.C. 101.83(A).)

**Exemptions from the operation of the Sunset Review Law**

**Continuing law.** The Sunset Review Law generally defines an "agency" as any board, commission, committee, or council, or any other similar state public body required to be established pursuant to state statutes for the exercise of any function of state government and to which members are appointed or elected. But, formerly and continuing under the act an "agency" *does not include* the following: (a) the General Assembly or any commission, committee, or other body composed entirely of General Assembly members, (b) any court, (c) any public body created by or directly pursuant to the Ohio Constitution, (d) the board of trustees of any institution of higher education financially supported in whole or in part by the state, (e) any public body that has the authority to issue bonds or notes or that has issued bonds or notes that have not been fully repaid, (f) the Public Utilities Commission of Ohio, (g) the Consumers' Council Governing Board, (h) the Ohio Board of Regents, (i) any state board or commission that has the authority to issue any final adjudicatory order that may be appealed to a court of common pleas under the Administrative Procedure Act, (j) any board of elections, (k) the Board of Directors of the Ohio Insurance Guaranty Association, (l) the Board of Governors of the Ohio Fair Plan Underwriting Association, (m) the Ohio Public Employees Deferred Compensation Board, (n) the Ohio Retirement Study Council, (o) the Board of Trustees of the Ohio Police and Fire Pension Fund, (p) the Public Employees Retirement Board, (q) the School Employees Retirement Board, (r) the State Highway Patrol Retirement Board, (s) the State Teachers Retirement Board, and (t) the Industrial Commission. Therefore, formerly and continuing under the act, these state public bodies are exempted from the operation of the Sunset Review Law. (R.C. 101.82(A).)

**Changes proposed by the act.** The act adds the following entities to the list of state public bodies that are not included in the definition of an "agency" and, thereby, exempts them from the operation of the Sunset Review Law: the Parole Board, the Board of Tax Appeals, the Controlling Board, the Release Authority of the Department of Youth Services, the Environmental Review Appeals Commission, the Ohio Ethics Commission, the Ohio Public Works Commission, the Self-Insuring Employers Evaluation Board, the State Board of Deposit, and the State Employment Relations Board (R.C. 101.82(A)(16) to (25); related

amendments to Section 4 of Am. Sub. H.B. 516, 125th G.A., in Section 3 of the act).

### **Ohio Subrogation Rights Commission**

#### **Former law**

**Membership.** Under former law, the Ohio Subrogation Rights Commission consisted of six voting members and seven nonvoting members. Only General Assembly members on the Commission could be voting members. The following *six General Assembly members* had to serve on the Commission as voting members: the chairpersons of both the Senate and House of Representatives committees to which insurance bills are referred, the chairpersons of both the Senate and House of Representatives committees to which civil justice bills are referred, and the ranking minority members of both the Senate and House of Representatives committees to which civil justice bills are referred. The House Speaker and the Senate President jointly had to appoint *six of the Commission's nonvoting members*, one each to represent a health insuring company doing business in Ohio, a public employees union in Ohio, the Ohio Academy of Trial Lawyers, the Ohio State Bar Association, a property and casualty insurance company doing business in Ohio, and a sickness and accident insurer doing business in Ohio and all of whom had to have expertise in insurance law, including subrogation rights. The seventh nonvoting member of the Commission was a member of the Ohio Judicial Conference who is an elected or appointed judge. (R.C. 2323.44(A).)

**Delayed operation.** Am. Sub. S.B. 80 of the 125th General Assembly created the Commission in R.C. 2323.44, but delayed the statute's operation in uncodified law (Section 8) until January 1, 2006. Certain provisions of the Commission's former statutory law conflicted, however, with that date of operation. For example, the Commission was charged in former R.C. 2323.44 with investigating the problems posed by, and the issues surrounding, the subrogation-related decision of the Ohio Supreme Court in *N. Buckeye Educ. Council Group Health Benefits Plan v. Lawson* (2004), 103 Ohio St. 188, to prepare a report of recommended legislative solutions to *Lawson*, and to submit a report of its findings to the General Assembly not later than *September 1, 2005*. Moreover, under former R.C. 2323.44, the chairpersons of the House and Senate committees to which insurance bills are referred jointly were to call the Commission's first meeting not later than *May 1, 2005*. (R.C. 2323.44(B) and (D).)

#### **Changes made by the act**

**Expanded membership.** The act expands the Commission from 13 to 16 members--six voting members (all General Assembly members--continuing law)



and *ten* nonvoting members, with the Senate President and the House Speaker jointly appointing *nine* of the nonvoting members. Of the three additional Commission members to be so jointly appointed, one must represent plaintiffs in tort actions who suffered damages as a result of the injury, death, or loss to person or property upon which the tort actions were based, and two must represent employers whose primary place of business is located in Ohio, one of which must represent a small employer. (R.C. 2323.44(A)(1).) For purposes of this provision, the act defines the following terms (R.C. 2323.44(A)(2)):

(1) "Small employer" means an employer who employs not more than 100 persons on a full-time permanent basis, or, if the employer is classified as being in the manufacturing sector by the North American Industrial Classification System, an employer who employs not more than 500 persons on a full-time permanent basis.

(2) "Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a product liability claim, as defined in R.C. 2307.71, but does not include a civil action for damages for a breach of contract or another agreement between persons.

**Date of operation.** The act repeals the delayed effective date provision of Section 8 of Am. Sub. S.B. 80 of the 125th General Assembly (Section 5 of the act) and, thus, allows the Commission to immediately function under R.C. 2323.44 upon the act's effective date (the act is an emergency measure--Section 7 of the act). And, the act correspondingly modifies R.C. 2323.44's 2005 dates mentioned above. Specifically, it provides that the chairpersons of the House and Senate committees to which insurance bills are referred must jointly call the Commission's first meeting not later than *30 days after the act's effective date* (instead of May 1, 2005), and the Commission must submit a report of its findings not later than *December 31, 2005* (instead of by September 1, 2005) (R.C. 2323.44(B)(3) and (D)).

**Open meetings and public records provisions.** The act specifies that all Commission meetings are public meetings and must be open to the public at all times. A Commission member must be present in person at a meeting that is open to the public in order to be considered present or to vote at the meeting and for the purposes of determining whether a quorum is present.

The Commission must promptly prepare and maintain the minutes of its meetings, and the minutes are public records subject to inspection and copying under the Public Records Law.

The Commission must give reasonable notice of its meetings so that any person may determine the time and place of all scheduled meetings. And, it cannot hold a meeting unless it gives at least 24-hours advance notice to the news

media organizations that have requested notification of its meetings. (R.C. 2323.44(F).)

**Sunset review and related amendments, enactments, and repeals of Am. Sub. H.B. 516 of the 125th General Assembly**

With the exception of the act's provisions (1) expanding the exemptions from the Sunset Review Law and (2) modifying the law governing the Ohio Subrogation Rights Commission previously discussed in this analysis, the act's amendments to codified sections of law (none of which make substantive changes in the law) as well as most of its uncodified law provisions are intended to confirm amendments, enactments, and repeals made by certain provisions of Am. Sub. H.B. 516 of the 125th General Assembly. Those amendments, enactments, and repeals were made in that act as a result of an amendment on the Senate floor on December 8, 2004 (Senate Journal, Wednesday, December 8, 2004, page 2465) that incorporated provisions of Sub. H.B. 568 of the 125th General Assembly (As Passed by the Senate) with specified deletions, and, among their other aspects, they implemented the report of the Sunset Review Committee by abolishing, retaining, and changing the names of various agencies and reestablishing the Sunset Review Committee but postponing its operation until the 128th General Assembly (2009-2010).

The act contains several legislative intent statements in this regard. One statement is that the General Assembly intends in amending R.C. 101.23, 101.83, 101.84, 101.85, 101.86, 122.011, 122.40, 123.151, 149.56, 307.674, 340.02, 1501.04, 1502.04, 1502.05, 1502.11, 1502.12, 1506.30, 1506.34, 1506.35, 1517.02, 1517.23, 1518.01, 1518.03, 1551.35, 3358.10, 3375.61, 3375.62, 3383.01, 3383.02, 3383.03, 3383.04, 3383.05, 3383.06, 3383.07, 3383.08, 3383.09, 3746.09, 3746.35, 3747.02, 3748.01, 3748.02, 3748.04, 3748.05, 3748.16, 3929.482, 3929.85, 3931.01, 3955.05, 3960.06, 4117.01, 4121.442, 4167.09, 4167.25, 4167.27, 4731.143, 4741.03, 4755.481, 4981.03, 5123.35, and 5123.352 in the act to confirm the amendments to those sections and the resulting versions of those sections that took effect on December 30, 2004, in accordance with Section 10 of Am. Sub. H.B. 516. Another statement is that it is the intent of the General Assembly, in part, in amending Section 4 of Am. Sub. H.B. 516 in the act (the lengthy list of governmental entities renewed until December 31, 2010) to confirm the text of that uncodified section of law as it took effect on December 30, 2004. (Section 6 of the act.)

The act also states that it does not affect, and cannot be construed as affecting, the other amendments, enactments, or repeals of codified or uncodified law made by Am. Sub. H.B. 516 that took effect on December 30, 2004, all of

which it is the intent of the General Assembly to confirm in the act.<sup>1</sup> Finally, the General Assembly declares that the act's Section 6 and the related provisions in its Sections 1 and 3 are *remedial legislation* solely intended to confirm the operation on and after December 30, 2004, of the amendments, enactments, and repeals of codified and uncodified law made by Am. Sub. H.B. 516. (Section 6 of the act.)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-13-05	p. 397
Reported, S. State & Local Gov't & Veterans Affairs	04-26-05	p. 439
Passed Senate (29-3)	04-26-05	pp. 441-442
Reported, H. Civil & Commercial Law	06-02-05	p. 899
Passed House (94-1)	06-14-05	pp. 953-954
Senate concurred in House amendments (32-0)	06-15-05	pp. 853-854

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<sup>1</sup> *These other provisions include, but are not limited to, the following amendments, enactments, or repeals pertaining to the implementation of the report of the Sunset Review Committee and related purposes set forth in Am. Sub. H.B. 516's title: the amendments to R.C. 122.133, 164.07, 1517.05, 2505.02, 3746.04, 3929.682, and 4582.12, the repeals of R.C. 122.09, 125.24, 149.32, 149.321, 149.322, 1502.10, 1506.37, 1517.03, 1517.04, 3354.161, 3355.121, 3357.161, 3375.47, 3746.08, 3747.04, 3747.05, 3747.06, 3747.061, 3747.07, 3747.08, 3747.09, 3747.10, 3747.11, 3747.12, 3747.13, 3747.14, 3747.15, 3747.16, 3747.17, 3747.18, 3747.19, 3747.20, 3747.21, 3747.22, 3748.09, 3929.71, 3929.72, 3929.721, 3929.73, 3929.75, 3929.76, 3929.77, 3929.78, 3929.79, 3929.80, 3929.81, 3929.82, 3929.83, 3929.84, 4121.443, 4167.26, 5101.93, 5119.81, 5119.82, and 5123.353, the enactments of uncodified law in its Sections 3, 6, 9, 10, 11, and 12, and the repeals of Section 6 of Am. Sub. S.B. 163 of the 124th General Assembly, Section 6 of Sub. S.B. 27 of the 124th General Assembly, Section 10 of Sub. H.B. 548 of the 123rd General Assembly, Section 3 of Am. H.B. 280 of the 121st General Assembly, Section 27 of Sub. H.B. 670 of the 121st General Assembly, Section 3 of Am. S.B. 208 of the 120th General Assembly, and Section 3 of Sub. H.B. 508 of the 119th General Assembly (Section 6 of the act).*