



Sub. H.B. 13

123rd General Assembly
(As Passed by the General Assembly)

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Sens. Watts, Latta, Horn, Wachtmann, Prentiss, Spada, Oelslager

Effective date: Emergency, December 16, 1999

ACT SUMMARY

- Creates a one-year pilot program under which the Legislative Budget Office must provide, as part of its fiscal notes for certain bills or resolutions, information regarding their potential significant economic impact on Ohio businesses.
- Creates a one-year pilot program under which the Ohio Environmental Protection Agency and the Department of Development must analyze, as part of their rule summaries and fiscal analyses, the potential economic impact of proposed rules on Ohio businesses.
- Authorizes the Director of the Legislative Service Commission to employ a professional staff member to conduct ongoing research and gather information pertaining to technological advancements and issues.
- Exempts for this biennium the Wright Technology Network from the matching contribution requirement under the Thomas Alva Edison Grant Program.

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CONTENT AND OPERATION

Legislative Budget Office business economic impact pilot program

Fiscal note codified law

Codified law provides that, if a bill or resolution introduced in the General Assembly appears to affect the revenues or expenditures of the state or political subdivisions, the Legislative Budget Office (LBO) must prepare a fiscal analysis (known as a "fiscal note") of the bill or resolution (1) before the bill or resolution is recommended for passage by a committee of the General Assembly and (2) before the bill or resolution is taken up for final consideration by either house of the General Assembly. The fiscal note must include an estimate, in dollars, of the amount by which the legislation would increase or decrease revenues or expenditures and must include any other information that LBO considers necessary to explain its fiscal effect. (Sec. 103.14(A).)¹

LBO must distribute copies of its fiscal notes as follows: (1) for consideration by the Senate or House rules committee or standing committee considering the legislation, two copies to the chairperson together with a copy for each member of the committee, (2) for final consideration, a copy to each member of the house that is considering the legislation, and (3) if the member who introduced the bill or resolution is not a member of the house or committee considering it, a copy to that member (sec. 103.14(B)).²

¹ See similar provisions in Section 1.01 in the act.

² See similar provisions in Section 1.02 in the act.



Any failure of LBO to prepare a fiscal analysis before a bill or resolution is taken up for consideration by a committee or by either house for final consideration, does not impair its validity (sec. 103.14(D)).³

Statutory "suspension"

The act *suspends* the operation of the *codified* LBO fiscal note provisions described above for a one-year period but continues to require LBO to perform the same fiscal note functions in *uncodified* law during that period. In addition, during this one-year period, the act requires LBO to include as part of the fiscal note for certain bills and resolutions, an economic analysis of the effects of the bill or resolution on Ohio businesses.

Business economic analysis pilot program

Committee designation. The act requires the Speaker of the House and the President of the Senate to designate for their respective houses three standing committees to conduct the one-year pilot program (Section 1.04(B)).

Making a request. If the chairperson of a designated pilot project committee believes that a bill or resolution referred to the committee may have a *significant* economic impact on Ohio businesses, the chairperson, after consulting with the ranking minority member, may request LBO to prepare an economic impact analysis of the legislation.⁴ A chairperson may submit this type of request *up to three times* during the one-year pilot program. (Section 1.04(C).)

LBO preliminary action. Upon receipt of a request for an economic impact analysis, LBO must conduct, *within one week after receiving* the request, preliminary research and deliver to the chairperson a written determination of whether the legislation is likely to have a significant economic impact on Ohio businesses. (Section 1.04(C) and (D).)

Determination of "no likelihood." If LBO determines there is *not* a likelihood that the legislation may have a significant economic impact on Ohio businesses, LBO is *not required* to prepare the requested economic impact analysis of the bill or resolution (Section 1.04(E)).

³ See similar provisions in Section 1.05 in the act.

⁴ The act defines an "Ohio business" as a sole proprietorship or business organization doing business in Ohio, regardless of whether it is domiciled in Ohio (Section 1.04(A)(1) and Section 3(A)).



Determination of "likelihood." If LBO determines there *is* a likelihood that the legislation may have a significant economic impact on Ohio businesses, then, within 45 days after the delivery of the written determination, LBO must prepare and distribute an economic impact analysis as part of a fiscal note of the bill or resolution that is prepared in the manner described in existing law. The economic impact analysis must include the following determinations to the extent they are practicable (Section 1.04(F)):

- Whether the legislation may significantly increase or decrease the revenues or expenditures of Ohio businesses *in general*;
- Whether aspects of the legislation may significantly impact Ohio *small businesses* in particular, including whether aspects of the legislation may uniquely increase or decrease the revenues or expenditures of Ohio small businesses or may uniquely impact their access to a workforce;⁵ and
- Whether aspects of the legislation may significantly impact particular *segments* of Ohio business, including whether aspects of the legislation may have *variable geographical impacts* (such as higher or lower electric utility rates for businesses located in certain parts of the state) or unique ramifications for Ohio businesses located in the *counties of this state that border* other states;

The analysis may include any other information that LBO considers necessary to fully explain the economic impact that the legislation may have on Ohio businesses.

Final report. Not later than April 1, 2001, the Legislative Budget Officer must submit a report on the one-year pilot program to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House, the Governor, and LSC's Director. In the report, the Legislative Budget Officer must recommend whether the pilot program should be continued and, if so, make recommendations with respect to the following: (1) whether the program should be continued as a pilot program for a specified period of time or made a permanent LBO function, (2) whether the program should be expanded to include other standing committees of the House and Senate, and whether those committees should continue to be designated by the Speaker of the House and the President of the Senate, (3) whether changes in the operation of the program are advisable to

⁵ *The act defines a "small business" to have the same meaning as in R.C. 121.24(A)(9): an independently owned and operated business having fewer than 400 employees (Section 1.04(A)(2) and Section 3(D)).*



improve the value of the program to the members of the General Assembly in determining whether to vote in favor of or against particular legislation, and (4) any other matters the Legislative Budget Officer considers worthwhile in light of the program's objectives. The act specifically requires the Legislative Budget Officer to explain, and provide reasons for, each of the Legislative Budget Officer's recommendations and to comment whether LBO's fulfillment of its responsibilities in connection with the pilot program (in addition to its other statutory and nonstatutory responsibilities) created staffing, workload, budgetary, or other problems for LBO. (Section 1.04(G).)

Additional duties of the Legislative Budget Officer. The act requires the Legislative Budget Officer, *with the LSC Director's approval*, to employ and fix the compensation of staff members, or to contract for the professional services of economists or other consultants, as necessary to perform LBO's responsibilities under the one-year pilot program. In addition, the Legislative Budget Officer must designate one or more LBO staff members to conduct *ongoing research* and to gather specifically listed and other types of data as needed to carry out those LBO responsibilities. Finally, the Legislative Budget Officer must maintain this data, as well as a *directory* to it, in a manner that will facilitate LBO's carrying out those responsibilities. (Section 2.)

State rule-making agencies: rule summary and fiscal analysis (RSFA) pilot program

The act establishes a state rule-making agency rule summary and fiscal analysis (RSFA) one year pilot program.

Scope of the pilot project

Covered agencies. The act specifies the Ohio Environmental Protection Agency (EPA) and the Ohio Department of Development (DOD) as the participating agencies in the RSFA pilot program. (Section 3(B).)

Covered rules. The act requires the EPA and DOD to analyze the potential economic impact a proposed rule may have on Ohio businesses. A rule, the original proposed version of which a participating agency files in accordance with the Administrative Procedure Act (APA) (Chapter 119.) on or after January 1, 2000, and before January 1, 2001, is subject to the pilot program unless exempt (see below).⁶ (Section 3.01.)

⁶ *The act does not supersede any current statutory provisions requiring agencies to complete fiscal analyses under certain conditions. Instead, it essentially supplements*

By definition, the amendment or rescission of an existing rule is not subject to the pilot program. In addition, only the original and not any revised version of a proposed new rule is included in the pilot program. Finally, the act declares three types of rules to be *generally exempt* from the pilot program: (1) a rule that would be exempt from cyclical review under the APA, (2) a rule that is substantially and procedurally identical to a federal law or rule in order to continue the operation of a federally reimbursed program in this state, so long as the rule contains a statement that it is proposed for the purpose of complying with a federal law or rule and a citation to that federal law or rule, and (3) a rule adopted under the APA's emergency rule-making procedure.⁷ But, an emergency rule, unless otherwise exempt, is subject to the pilot program when it is readopted under the APA's nonemergency rule-making procedure. (Section 3.04(A).)

In addition, a participating agency may submit a written request, with reasons, to JCARR to *exempt* from the pilot program *a rule that otherwise would be subject to it*. Within 30 days after receiving a request for exemption and by vote of a majority of all its members, JCARR may grant the exemption if it finds that the program's objectives will not be adversely affected. If JCARR does not act on the request in writing within that 30-day period, the request is deemed to have been *approved*. (Section 3.04(B).)

Participating agency responsibilities during rule development

In general. The act requires EPA and DOD, in the course of developing and proposing a rule during the pilot program, to do all of the following (Section 3.02(A) to (G)):

(1) Make a good faith effort to identify Ohio businesses that may be significantly affected economically by the rule were it to be adopted;

(2) Make a good faith effort to identify leading individuals who are involved in the identified Ohio businesses;

existing statutory provisions insofar as the two "participating agencies" are involved in rule-making actions during the one-year pilot program. See COMMENT.

⁷ *The APA's cyclical review provisions are in R.C. 119.032. The only rules that appear to be exempt as a result of the operation of these provisions are those that are "consistent with and equivalent to the form required by a federal law and [that do not] exceed the minimum scope and intent of that federal law." The APA's emergency rule provisions are in R.C. 119.03(F).*



(3) Invite the identified leading individuals to comment on the potential economic impact the rule may have on Ohio businesses in general and on their businesses in particular and include the invitation to comment in the public notice required for all rules under the APA;

(4) Analyze, applying any information submitted in those comments and the participating agency's own expertise and experience, the potential economic impact the rule may have on the identified Ohio businesses. The analysis is required to include the agency's determination of all of the following to the extent it is practicable:

- Whether the rule may significantly increase or decrease the *cost* to Ohio businesses of *regulatory compliance*;
- Whether the rule may significantly increase or decrease the overall *regulatory burden* of Ohio businesses;
- The impact, if any, that the rule may have on the period of time involved in the participating agency's issuance of any license, permit, or other form of authorization; and
- Any other information that the agency considers necessary to fully explain the significant economic impact that the rule may have on Ohio businesses.

(5) Prepare an economic impact statement in textual narrative format that reports the results of the analysis so conducted;⁸

(6) Invite further comment and revise the analysis and economic impact statement whenever the rule is revised in a way that alters the analysis;

(7) Include a current economic impact statement as part of the participating agency's RSFA (see **COMMENT**) prepared for the rule under continuing law if and when the rule is filed in original form with LSC's Director, the Secretary of State, and JCARR.

Small business caveat. If the rule would be subject to small business review under existing statutory procedures (see **COMMENT**), the invitation to

⁸ *If an agency sets forth in writing that it identifies no Ohio businesses that may be significantly affected by the rule were it to be adopted, the agency is not required to prepare an analysis of that rule or an economic impact statement with respect to that rule (Section 3.02, last paragraph).*

comment and the analysis and economic impact statement described above must particularly invite comment on the potential economic impact the rule may have on Ohio small businesses. The EPA or DOD must include the economic impact statement as part of any RSFA it prepares for purposes of the Small Business Review Law. (Section 3.02, third to the last paragraph.)

JCARR-related responsibilities

Review and possible return of economic impact statements. During the pilot program, the act requires JCARR to review economic impact statements for completeness and accuracy in light of the program's objectives. JCARR may *return* an economic impact statement to an agency for revision if JCARR, by vote of two-thirds of all its members, finds that a participating agency has not made a good faith effort to prepare a complete and accurate economic impact statement in light of the program's objectives. JCARR must inform the agency in writing of its findings and reasons for them. When JCARR returns an economic impact statement to an agency, the time within which the Senate and House must adopt a concurrent resolution invalidating the proposed rule to which the statement applies stops running. (Section 3.03.)

Response to a returned economic impact statement. Within 30 days after receiving a returned economic impact statement, the agency must (1) withdraw the proposed rule to which the statement applies, (2) notify JCARR of its intent to file a revised version of the rule in the future, or (3) revise the statement and resubmit it to JCARR. If the agency fails to take one of these actions, the *proposed rule is invalid* the same as if the Senate and House had adopted a concurrent resolution invalidating it. (Section 3.03.)

Resubmissions. The act requires JCARR to review a resubmitted revised economic impact statement. If JCARR, by vote of two-thirds of all its members, finds that the agency, in revising and resubmitting the economic impact statement, has not made a good faith effort to prepare a complete and accurate economic impact statement in light of the pilot program's objectives, JCARR may either (1) return the resubmitted revised statement to the participating agency for revision, resubmission, and review, as in the case of the original statement or (2) recommend that the Senate and House adopt a concurrent resolution invalidating the proposed rule to which the resubmitted revised statement applies. The Senate and House may adopt a concurrent resolution invalidating a proposed rule covered by the pilot program not later than the 30th day after the revised economic impact statement is resubmitted to JCARR. (Section 3.03.)

Final report

The act requires the EPA, DOD, and JCARR, by April 1, 2001, separately to submit a report on the pilot program to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House, the Governor, and LSC's Director. In their reports, the participating agencies and JCARR must recommend whether the pilot program should be continued and, if so, also must recommend (1) whether the program should be continued as a pilot program for a specified period of time or made a permanent program, (2) whether the program should be expanded to include other rule-making agencies, (3) whether different or additional exemptions to the program are advisable, (4) whether changes in the operation of the program are advisable to improve its efficiency or to make it more likely that its objectives will be achieved, and (5) any other matters that EPA, DOD, or JCARR considers worthwhile in light of the program's objectives. In their reports, EPA, DOD, and JCARR must explain, and provide reasons for, each of its recommendations. (Section 3.05.)

Legislative Service Commission staff

The act authorizes LSC's Director to employ and fix the compensation of a professional staff member to conduct ongoing research and to gather necessary data and other information pertaining to technological advancements and issues that may be relevant in preparing legislation or research memoranda for legislators. (Section 4.)

Thomas Alva Edison grant program

The DOD is authorized to administer a program known as the Thomas Alva Edison grant program. Under that program, the Director of Development makes grants "to foster research, development, or technology transfer efforts involving enterprises and educational institutions that will lead to the creation of jobs" in the state. These grants may be made to any nonprofit organization or to a public or private "educational institution" or any faculty member, administrative subdivision or "related entity of an educational institution." The program also requires that "a contribution" be made to the project by a "cooperating enterprise" that maintains or proposes to maintain a relevant research, development, or manufacturing facility in the state. If this contribution (or match) is made by an educational institution, it may not be made with state GRF moneys. (Sec. 122.33, not in the act.)



The act exempts the Wright Technology Network from the matching contribution requirement for participation in the program for the 1999-2001 biennium (Section 5).⁹

COMMENT

1. Pre-existing R.C. 127.18(B) requires specified rule-making agencies, including EPA and DOD, to prepare an RSFA of each proposed rule that it files with JCARR under the APA or R.C. 111.15(D). That RSFA is required to include, among other information, the following:

--A summary of the estimated cost of compliance with *the rule to all directly affected persons*;

--The reasons why the rule is being proposed;

...

--Any other information JCARR considers necessary to make the proposed rule or the fiscal effect of the proposed rule fully understandable.

A rule-making agency must attach one copy of its RSFA to each copy of a proposed rule that it files with LSC's Director, the Secretary of State, and JCARR under the APA or R.C. 111.15. JCARR is prohibited from accepting any proposed rule for filing unless a complete and accurate RSFA is attached. JCARR must review the fiscal effect of each proposed rule that is filed with it. (R.C. 127.18(C) and (D).)

2. Pre-existing R.C. 121.24(B) provides that, if an agency intends to adopt a rule and reasonably believes that the proposed rule would be likely to affect individuals, *small businesses*, or small organizations, the agency must comply with the following additional procedure in adopting the rule:

--After preparing the required RSFA (see above **COMMENT 1**) and at least 60 days before the agency files the proposed rule in final form, the agency must file with the Office of Small Business in the Department of Development one copy of the original version of the proposed rule and one copy of its RSFA.

⁹ *The general operating budget for the 1999-2001 biennium appropriates \$1.1 million for each fiscal year of the biennium for an Edison grant to the Wright Technology Network (Section 37.01 of Am. Sub. H.B. 283 of the 123rd General Assembly).*

--During a 40-day period: (i) the chairperson of an applicable standing legislative committee or any other person having an interest in the proposed rule, may submit written comments to the agency or JCARR concerning the expected effect of the proposed rule upon individuals, small businesses, and small organizations, (ii) the standing committee chairperson may request the agency to appear before the committee for specified informational purposes, and (iii) upon request from the chairperson, the agency must designate an officer or employee of the agency to appear before the committee.

--The agency must not proceed to file the proposed rule in final form until it has considered any written comments timely submitted to it, has identified the issues raised by the comments, has assessed the proposed rule in light of the issues raised by the comments, and has made any revisions in the proposed rule it considers advisable.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 86
Reported, H. Economic Development & Small Business	06-23-99	pp. 917-918
Passed House (97-0)	06-29-99	pp. 1104-1106
Reported, S. Economic Development, Technology, & Aerospace	11-10-99	p. 1163
Passed Senate (33-0)	11-10-99	pp. 1166-1168
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