



Sub. H.B. 13

123rd General Assembly

(As Reported by H. Economic Development & Small Business)

Reps. Mottley, Harris, Buchy, Van Vyven, Schuring, Krebs, Hood, Opfer, Terwilleger, Olman, Cates, Calvert, Sullivan, Young, Evans, Hoops, Hartnett, Pringle, Conway Kilbane

BILL SUMMARY

- Creates two one-year pilot programs under which the Legislative Budget Office and certain state rule-making agencies must include, respectively, in fiscal notes of certain bills or resolutions and in rule summaries and fiscal analyses, information with respect to a bill's, resolution's, or rule-making action's potential significant economic impact on Ohio businesses.

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CONTENT AND OPERATION

Legislative Budget Office: fiscal note pilot program

Existing "statutory" law

Existing statutory law provides that, if a bill or resolution introduced in the General Assembly appears to affect the revenues or expenditures of the state or a

county, municipal corporation, township, school district, or other governmental entity of the state, the Legislative Budget Office (LBO) of the Legislative Service Commission (LSC) must prepare a fiscal analysis (hereafter, "fiscal note") of the bill or resolution (1) before the bill or resolution is recommended for passage by the House of Representatives committee or the Senate committee of the General Assembly to which the bill or resolution was referred 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 bill or resolution would increase or decrease revenues or expenditures and must include any other information that LBO considers necessary to explain the fiscal effect of the bill or resolution. (Sec. 103.14(A).)¹

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

In preparing its fiscal notes, LBO may request any department, division, institution, board, commission, authority, bureau, or other instrumentality or officer of the state, or a county, municipal corporation, township, school district, or other governmental entity of the state to provide (1) an estimate, in dollars, of the amount by which the bill or resolution would increase or decrease the revenues or expenditures received or made by the instrumentality, officer, or entity and (2) any other information LBO considers necessary for it to understand or explain the fiscal effect of the bill or resolution. An instrumentality, officer, or entity must comply with a request as soon as reasonably possible after it receives the request, and LBO must specify the manner of compliance in its request and, if necessary, may specify a longer period of time than five days for compliance. LBO then may consider any information so provided to it in preparing a fiscal note. (Sec. 103.14(C).)³

¹ See similar provisions in Section 1.01 in the bill.

² See similar provisions in Section 1.02 in the bill.

³ See similar provisions in Section 1.03 in the bill.

Finally, any failure of LBO to prepare a fiscal analysis before a bill or resolution is taken up for consideration by a committee of the House of Representatives or Senate, or by either or both houses for final consideration, does not impair the validity of any bill or resolution passed by either or both houses of the General Assembly (sec. 103.14(D)).⁴

Statutory "suspension"

The bill *suspends* the operation of the statutory 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. The bill specifically states in this regard that (1) the operation of the statutory provisions is suspended for a one-year period commencing with the bill's effective date and (2) during that one-year period the bill's Sections 1.01 to 1.05 instead will apply to LBO's preparation of fiscal notes of bills or resolutions introduced in the General Assembly (a) that appear to affect the revenues or expenditures of the state or a county, municipal corporation, township, school district, or other governmental entity of the state (this is *similar* to existing law) or (b) that may have a significant economic impact on Ohio businesses (this is a *new concept* tied to the bill's LBO-related pilot program). (Section 1.)

LBO-related pilot program

Committee designation. The bill requires the Speaker of the House of Representatives and the President of the Senate to designate for their respective houses three standing committees for purposes of the conduct of a one-year pilot program involving LBO's inclusion of specified *economic impact analyses* in its fiscal notes of certain bills or resolutions (Section 1.04(B)).

Making a request. If the chairperson of a standing committee that has been so designated and to which a bill or resolution is referred believes that the bill or resolution may have a *significant* economic impact on Ohio businesses, the chairperson, after consulting with the ranking minority member of the standing committee, may submit a request to LBO to prepare, in the form, within the time frame, and under the circumstance described below an economic impact analysis of the specified bill or resolution.⁵ A chairperson of a designated standing

⁴ See similar provisions in Section 1.05 in the bill.

⁵ The bill 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 2(A)).

committee may submit this type of request *up to three times* within the one-year period of the 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 general research in order to determine whether there is a likelihood that the bill or resolution in question may have a significant economic impact on Ohio businesses. It then must prepare a brief written document stating the nature of the research so conducted and setting forth the determination whether there is or is not a likelihood that the bill or resolution may have a significant economic impact on Ohio businesses. Finally, LBO must deliver a copy of that document to the chairperson who submitted the request for the economic impact analysis. (Section 1.04(C) and (D).)

Determination of "no likelihood." If the written document LBO prepares sets forth a determination that there is not a likelihood that the bill or resolution in question 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)).

Determination of "likelihood." If the written document that LBO prepares sets forth a determination that there is a likelihood that the bill or resolution in question may have a significant economic impact on Ohio businesses, then, within 45 days after the conduct of the preliminary general research and the delivery of the written document to the chairperson involved, LBO must prepare and distribute an economic impact analysis *as part of a fiscal note of the bill or resolution in question* that is prepared in the manner described in existing law. The economic impact analysis must include all of the following (Section 1.04(F)):

- LBO's determination that there is a likelihood that the bill or resolution may have a significant economic impact on Ohio businesses;
- To the extent it is practicable to so determine, LBO's determination as to whether the bill or resolution may significantly increase or decrease the revenues or expenditures of Ohio businesses *in general*;
- To the extent it is practicable to so determine, LBO's determination as to whether aspects of the bill or resolution may significantly impact Ohio *small businesses* in particular, including, but not limited to, those aspects of the bill or resolution that may uniquely increase or decrease

the revenues or expenditures of Ohio small businesses or that may uniquely impact their access to a workforce;⁶

- To the extent that it is practicable to so determine, LBO's determination as to whether aspects of the bill or resolution may significantly impact particular segments of Ohio industry or other forms of business, including, but not limited to, those aspects of the bill or resolution that may have *variable geographical impacts*, such as higher or lower electric utility rates for industries or other businesses located in certain parts of the state or unique ramifications for Ohio industries or other businesses located in the *counties of this state that border Michigan, Pennsylvania, West Virginia, Kentucky, or Indiana*.
- Any other information that LBO considers necessary to include in order to fully explain the economic impact that the bill or resolution, may have on Ohio businesses.

Final report. Not later than February 1, 2001, the Legislative Budget Officer is required by the bill to 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 of Representatives, 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 (1) whether the program should be continued as a pilot program for a specified period of time or made a permanent LBO function by appropriate *statutory* revisions, (2) whether the program should be expanded to include other standing committees of the House of Representatives and the Senate, and whether those committees should continue to be designated by the Speaker of the House of Representatives and the President of the Senate, (3) whether changes in the operation of the program are advisable to improve the value of the program to the members of the General Assembly in determining whether to vote in favor of or against particular bills or resolutions, and (4) any other matters the Legislative Budget Officer considers worthwhile in light of the program's objectives. The bill specifically requires the Legislative Budget Officer to explain, and provide reasons for, each of the Legislative Budget Officer's recommendations and to comment, in connection with item (1) above, whether LBO's fulfillment of its responsibilities in connection with the pilot program (in addition to its other statutory and nonstatutory

⁶ *The bill 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 2(D)).*

responsibilities) created staffing, workload, budgetary, or other problems for LBO. (Section 1.04(G).)

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

Definitions

In connection with the bill's subsequently described state rule-making agency rule summary and fiscal analysis (RSFA) pilot program, the bill defines the following additional terms (Section 2):

(1) "Participating agency" means the Ohio Environmental Protection Agency (Ohio EPA) and the Ohio Department of Development (DOD).

(2) "Rule" means a proposed rule adopted under the Administrative Procedure Act (APA) that is codified in Chapter 119. of the Revised Code. "Rule" does not include (a) the amendment of an existing rule or (b) the rescission of an existing rule. "Rule" means only the original and not any revised version of a proposed new rule.

Overview of pilot program: covered agencies and rules

Covered agencies. As previously noted, the Ohio EPA and the DOD are, by definition, the participating agencies in the bill's state rule-making agency RSFA pilot program. (Section 2(B).)

Covered rules. The bill requires the participating agencies to conduct a pilot program under which, during the course of a participating agency's development and proposal of a rule, the participating agency analyzes the potential economic impact the rule may have on Ohio businesses. A rule, the original proposed version of which a participating agency files with LSC's Director, the Secretary of State, and the Joint Committee on Agency Rule Review (JCARR) in accordance with the APA on or after November 1, 1999, and before November 1, 2000, is subject to the pilot program unless exempt (see below).⁷

⁷ *In connection with its state rule-making agency RSFA pilot program, the bill does not supersede any statutory provisions. Instead, it essentially supplements existing statutory provisions, including those recently amended or enacted by the General Assembly in Am. Sub. S.B. 11 of the 123rd General Assembly, insofar as the two "participating agencies" are involved in rule-making actions during the one-year period of the pilot program. R.C. 119.03(B) and (H) require the described filings of proposed rules with the LSC Director, the Secretary of State, and JCARR. See COMMENT with respect to RSFA's.*

The bill 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 adopted under the APA's emergency rule-making procedure, and (3) a rule that must be adopted verbatim by a participating agency pursuant 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 the federal law or rule that requires verbatim compliance.⁸ 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 2.04(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 the rule is not included in it. JCARR must notify the participating agency in writing of its action on the request. If JCARR does not act on the request within that 30-day period, the request is deemed to have been *approved*. (Section 2.04(B).)

Participating agency responsibilities during rule development

In general. The bill requires the participating agencies, in the course of developing and proposing a rule during the pilot program, to do all of the following (Section 2.02(A) to (G)):

(1) Make a good faith effort to identify Ohio businesses that may be significantly affected 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;

(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;

(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 all of the following:

⁸ *The APA's cyclical review provisions are in R.C. 119.032 (recently changed by Am. Sub. S.B. 11), and the APA's emergency rule provisions are in R.C. 119.03(F).*

- To the extent it is practicable to so determine, the participating agency's determination as to whether the rule may significantly increase or decrease the *cost* to Ohio businesses of *regulatory compliance*;
- To the extent it is practicable to so determine, the participating agency's determination as to 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;
- To the extent it is practicable to so determine, the participating agency's determination as to whether the rule may significantly increase or decrease the revenues or expenditures of Ohio businesses or may significantly affect other factors related to Ohio businesses, such as the mobility of capital, the availability of a suitable workforce, access to customers, and the ability of businesses to locate, expand, and remain in the state.

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

(6) Invite further comment and revise the analysis and economic impact statement as the rule is revised during the course of its development and proposal;

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

A participating agency must include the invitation to comment mentioned in item (3) above in a *public notice* prepared with respect to a rule under the APA and must send a copy of the amplified public notice to each leading individual identified under item (2) above (Section 2.02, last paragraph).

Small business caveat. If the rule involved would be subject to small business review under existing statutory procedures, the invitation to comment, and the analysis and economic impact statement, described above must invite comment on, and give particular attention to, the potential economic impact the rule have on Ohio small businesses. A participating agency must include the

economic impact statement as part of any RSFA it prepares for purposes of the Small Business Review Law. (Section 2.02, next to the last paragraph.)⁹

JCARR-related responsibilities

Review and possible return of economic impact statements. During the pilot program, the bill 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 a participating 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 is required to inform the participating agency in writing of its findings and of the reasons for them. When JCARR returns an economic impact statement to a participating agency, the time within which the Senate and House of Representatives must adopt a concurrent resolution invalidating the proposed rule to which the statement applies stops running. (Section 2.03.)

Response to a returned economic impact statement. Within 30 days after receiving a returned economic impact statement, the participating agency (1) must withdraw the proposed rule to which the statement applies, (2) must withdraw the proposed rule to which the statement applies and notify JCARR of its intent to file a revised version of the rule in the future, or (3) must revise the statement and resubmit it to JCARR. If the participating agency fails to withdraw the proposed rule, to withdraw the proposed rule and notify JCARR of its intent to file a revised version of the rule in the future, or to resubmit a revised statement within the 30-day period, the *proposed rule is invalid* the same as if the Senate and House of Representatives had adopted a concurrent resolution invalidating the proposed rule. (Section 2.03.)

Resubmissions. The bill requires JCARR to review a resubmitted revised economic impact statement. If JCARR, by vote of two-thirds of all its members, finds that the participating 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

⁹ Under R.C. 121.24(B), as part of a specified statutory procedure, an agency must complete a complete and accurate RSFA of the "original version" of a proposed rule that the agency intends to adopt and reasonably believes that, if adopted, will be likely to affect individuals, small businesses, or small organizations.

statement or (2) recommend that the Senate and House of Representatives adopt a concurrent resolution invalidating the proposed rule to which the resubmitted revised statement applies. The Senate and House of Representatives 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 applying to the proposed rule is resubmitted to JCARR. (Section 2.03.)

Final report

The bill requires the participating agencies and JCARR, not later than February 1, 2001, to separately submit a report on the pilot program to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, the Governor, and the LSC Director. In their reports, the participating agencies and JCARR must recommend whether the pilot program should be continued and, if so, also shall recommend (1) whether the program should be continued as a pilot program for a specified period of time or made a permanent program by appropriate revisions to the Revised Code, (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 a participating agency or JCARR considers worthwhile in light of the program's objectives. In their reports, a participating agency and JCARR must explain, and provide reasons for, each of its recommendations. (Section 2.05.)

COMMENT

1. R.C. 127.18(B) requires specified rule-making agencies to prepare, in the form prescribed by JCARR, a complete and accurate 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:

...

(3) A brief summary of, and the legal basis for, the proposed rule, including citations identifying the statute that prescribes the procedure in accordance with which the rule-making agency is required to adopt the proposed rule, the statute that authorizes the agency to adopt the proposed rule, and the statute that the agency intends to amplify or implement by adopting the proposed rule;

(4) An estimate, in dollars, of the amount by which the proposed rule would increase or decrease revenues or expenditures during the current biennium;

(5) A citation identifying the appropriation that authorizes each expenditure that would be necessitated by the proposed rule;

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

(7) The reasons why the rule is being proposed;

...

(11) 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 the LSC 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 copy of its RSFA, completely and accurately prepared, 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. R.C. 121.24(B) provides that, if an agency intends to adopt a rule and reasonably believes that the proposed rule, if adopted, will be likely to affect individuals, small businesses, or small organizations, the agency must comply with the following procedure in adopting the rule in addition to any other procedure required by specified statutes, including R.C. 127.18:

(a) The agency must prepare a complete and accurate RSFA of the original version of the proposed rule.

(b) After complying with that requirement 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 full text of the original version of the proposed rule and one copy of its RSFA.

(c) During a period commencing on the date the original version of the proposed rule is so filed and ending 40 days thereafter: (i) the chairperson of the standing committee of the Senate or House of Representatives having jurisdiction

over individuals, small businesses, or small organizations, or any other person having an interest in the proposed rule, may submit written comments to the agency, to JCARR, or to both, concerning the expected effect of the proposed rule, if adopted, 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 receipt of a request from the chairperson, the agency must designate an officer or employee of the agency to appear before the committee.

(d) The agency must not proceed to file the proposed rule in final form until it has considered any written comments timely submitted to it under item (c)(i) above, 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 revisions in the proposed rule as it considers advisable in light of its assessment.

HISTORY

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