



*Eric Vendel*

## ***Bill Analysis***

*Legislative Service Commission*

### **S.B. 263**

123rd General Assembly  
(As Introduced)

**Sen. White**

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#### **BILL SUMMARY**

- Authorizes the Director of Environmental Protection to adopt specified types of hazardous and solid waste rules by direct final rule making under certain circumstances rather than in accordance with the Administrative Procedure Act.

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#### **CONTENT AND OPERATION**

The bill authorizes the Director of Environmental Protection, notwithstanding any provisions in current law concerning hazardous and solid waste rules that require the Director to adopt those rules in accordance with the Administrative Procedure Act, to use direct final rule making to adopt the following types of hazardous and solid waste rules:

- (1) Minor, nonsubstantive amendments to rules (sec. 3734.126(A)(1));
- (2) Rules that are substantially identical in scope and content to federal regulations concerning the same subject matter as the proposed direct final rules (sec. 3734.126(A)(2));
- (3) Extensions of compliance dates (sec. 3734.126(A)(3)); and
- (4) Other noncontroversial rules when the Director determines that use of direct final rule making is in the public interest and that the rules are unlikely to result in adverse comment (sec. 3734.126(A)(4)).

"Direct final rule making" is defined to mean the procedure for adopting rules established under the bill that may be used to adopt the types of rules specified in the bill in lieu of the procedures established in the Administrative Procedure Act (sec. 3734.125(C)). "Direct final rule" includes the adoption of a new rule and the amendment or rescission of an existing rule (sec. 3734.125(B)). "Rule" means a rule that is required or authorized to be adopted under the Solid

and Hazardous Waste Law in accordance with the federal Resource Conservation and Recovery Act (sec. 3734.125(D)). Finally, the bill defines "adverse comment" as a written comment that explains why a direct final rule would be inappropriate, including a challenge to the direct final rule's underlying premise or approach, or why a direct final rule would be unreasonable or unlawful (sec. 3734.125(A)).

The bill requires the Director, when adopting a rule by direct final rule making, to publish reasonable public notice of the proposed direct final rule. The notice must specify the proposed effective date of the rule. The Director also must mail notice to each person on the mailing list maintained under current law for those persons who annually subscribe for notification of all actions by the Director (secs. 3734.127(A) and 3745.07, the latter section not in the bill). The Director must file one copy of the full text of the proposed direct final rule and one copy of the public notice with the Secretary of State. In addition, the Director must file two copies of the full text of the proposed direct final rule and two copies of the public notice with the Director of the Legislative Service Commission. (Sec. 3734.127(A).)

For 30 days after publication of the notice of the proposed direct final rule, members of the public may submit written comments to the Director on the proposed direct final rule (sec. 3734.127(B)). If an adverse comment is received by the Director during the 30-day comment period, the Director must withdraw the direct final rule or withdraw the rule and proceed to adopt it in accordance with the rule-making procedure that otherwise would apply. The Director must publish reasonable public notice of that action and file a copy of the public notice with the Secretary of State and the Director of the Legislative Service Commission. (Sec. 3734.127(C)(1).) If the 30-day comment period expires and no adverse comments have been submitted, the Director must file the direct final rule in compliance with the filing standards and procedures under the Administrative Procedure Act. The direct final rule as filed with the Secretary of State and the Director of the Legislative Service Commission takes effect on the effective date specified in the rule. (Sec. 3734.127(C)(2).)

Finally, the bill provides that specified provisions related to rule making under the Administrative Procedure Act; specified provisions related to rule making that impacts individuals, small businesses, or organizations; provisions applicable to proposed rules concerning environmental protection; and provisions related to proposed rules primarily affecting persons 60 years of age and older (see **COMMENT**) do not apply to direct final rules adopted under direct final rule making (sec. 3734.126(B)).

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## **COMMENT**

The reference in the bill is to section 170.01 of the Revised Code. That section does not exist. The Legislative Service Commission believes that the reference should be to section 173.01. The analysis discusses that section.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>	<b>JOURNAL ENTRY</b>
Introduced	03-09-00	p. 1444

S0263-I.123/jc

