



# Ohio Legislative Service Commission

## Final Analysis

Michael Burns

### Am. Sub. S.B. 3 130th General Assembly (As Passed by the General Assembly)

- Sens.** LaRose, Faber, Eklund, Gardner, Obhof, Widener, Uecker, Hite, Balderson, Beagle, Coley, Patton, Jones, Manning, Lehner, Seitz, Bacon, Burke, Oelslager, Peterson
- Reps.** Grossman, Hackett, Brown, Burkley, Amstutz, Blair, Boose, Conditt, Duffey, Green, Hayes, McClain, McGregor, Roegner, Sears, Thompson, Batchelder

**Effective date:** September 17, 2014

---

## TABLE OF CONTENTS

<i>No change rules to be put through business review</i> .....	2
<i>JCARR referral or re-referral of proposed or existing rule to CSIO</i> .....	4
<i>Abbreviated compliance with business review by state elected officers</i> .....	6
<i>Extension or revival of legislative review time for proposed rule if later version rejected</i> .....	6
<i>Applicability of Common Sense Initiative Act clarified</i> .....	7
<i>Noncompliance with Periodic Review of Rules Act</i> .....	7
<i>Periodic review of rules: additional review standard</i> .....	8
<i>Periodic review of rules: extensions of review dates</i> .....	8
<i>Periodic review of rules: repeal of exemption ratification</i> .....	8
<i>Rule Watch System</i> .....	9
<i>Customer service standards</i> .....	10
<i>Publication of customer service standards</i> .....	10
<i>Optional review of customer service standards</i> .....	10
<i>Deadlines for developing initial customer service standards</i> .....	10
<i>Agency consideration of information learned at public hearing on proposed rule</i> .....	11
<i>Operational duration of emergency rules increased</i> .....	12
<i>Legislative review December carry-over clause modified</i> .....	12
<i>Legislative review mandatory</i> .....	13
<i>Return to agency of defective proposed rules: JCARR's jurisdiction expanded</i> .....	13
<i>Legislative invalidation of proposed and existing rules: procedure clarified</i> .....	15
<i>Modification to law providing for Rule Summary and Fiscal Analysis</i> .....	15
<i>Transition rules</i> .....	16
<i>Rule-making by state institutions of higher education</i> .....	16
<i>Additional rule-making requirements</i> .....	17
<i>Transitional requirements</i> .....	17
<i>Review of fines imposed by state agencies</i> .....	18
<i>Transitional duties of Legislative Information Systems</i> .....	18
<i>Recodification of legislative review acts</i> .....	19
<i>References to "119.032 review dates"</i> .....	21
<i>Miscellaneous improvements</i> .....	21

---

## ACT SUMMARY

- Revises rule-making and rule review procedures.
- Makes administrative reforms.

### *No change rules to be put through business review*

- Requires existing rules that, as a result of their review under the Periodic Review of Rules Act, are being filed as "no change" rules, to be put through business review.<sup>1</sup>

Under continuing law enacted by the Common Sense Initiative Act,<sup>2</sup> proposed rules that are being drafted are put through business review before they begin the formal rule-making process. Business review is carried out by an agency in the Governor's Office, the Common Sense Initiative Office (CSIO). Under this act, existing rules that, as a result of periodic review under the Periodic Review of Rules Act, are being filed as "no change rules" are subject to business review, just as draft rules are subject under continuing law.

Under the Periodic Review of Rules Act, an agency is required, approximately every five years, to review its existing rules against several enumerated standards. The agency then must determine whether the rule needs to be amended or rescinded in light of its review. If the agency determines that the rule needs to be amended or rescinded, it proceeds to do so according to the appropriate rule-making procedure. If, however, the agency determines that the rule does not need to be amended or rescinded, it must file the rule, without change, for review under the Periodic Review of Rules Act. Such a rule is referred to as a "no change rule."

An agency that files a no change rule must comply with the following procedural steps:

(1) The agency first must reconsider its review of the no change rule under the review standard of the Periodic Review of Rules Act that required the agency to determine whether the no change rule has an adverse impact on businesses.

(2) If the no change rule does not have an adverse impact on businesses, the agency can proceed with filing the no change rule for legislative review.

---

<sup>1</sup> R.C. 106.03(B)(2) and 106.031.

<sup>2</sup> S.B. 2 of the 129th General Assembly.



(3) If, however, the no change rule has an adverse impact on businesses, the agency must prepare a business impact analysis that describes its review of the no change rule against the standard explained in (1) above and that explains why the regulatory intent of the no change rule justifies its adverse impact on businesses.

(4) The agency must transmit a copy of the full text of the no change rule and the business impact analysis electronically to CSIO. CSIO must make the no change rule and business impact analysis available to the public on its website.

(5) CSIO must evaluate the no change rule and business impact analysis against the Business Impact Analysis Instrument and any other relevant criteria, and is authorized, but not required, to prepare and transmit recommendations to the agency on how the no change rule might be amended or rescinded to eliminate or reduce any adverse impact the no change rule has on businesses.<sup>3</sup>

*Note:* The Business Impact Analysis Instrument is a document prepared by CSIO. The instrument functions as a tool for evaluating rules to determine whether the rules have an adverse impact on businesses.<sup>4</sup>

(6) The agency must consider any recommendations made by CSIO.

(7) Not earlier than the 16th business day after transmitting the no change rule and business impact analysis to CSIO, the agency must either (a) proceed to file the no change rule with the Joint Committee on Agency Rule Review (JCARR) for review under the Periodic Review of Rules Act as a no change rule, or (b) commence the process of rescinding the no change rule or of amending the no change rule to incorporate into the rule features CSIO's recommendations suggest will eliminate or reduce the adverse impact the rule has on businesses.

(8) If the agency receives recommendations from CSIO, and determines not to amend or rescind the no change rule, the agency must prepare a memorandum of response that explains why the no change rule is not being rescinded or why the recommendations are not being incorporated into the rule.

Subject to the provision described in the following topic, JCARR does not have jurisdiction to review, and must reject, the filing of a no change rule if, at any time while the no change rule is in its possession, it discovers that the no change rule has an

---

<sup>3</sup> R.C. 107.54(A)(2).

<sup>4</sup> See R.C. 107.52 (definition of when a rule has an "adverse impact on businesses") and 107.53 (Business Impact Analysis Instrument). Both of these sections are in the act.

adverse impact on businesses and the agency has not complied with the procedure outlined above. When the filing of a no change rule is rejected, it is as if the filing had not been made. JCARR must electronically return a rule that is rejected to the agency, together with any documents that were part of the filing. The rejection does not preclude the agency from refiling the rule with JCARR after complying with the procedure outlined above. This power to reject the filing of a no change rule is in addition to JCARR's continuing power to recommend invalidation of a no change rule if the rule has not been properly reviewed and amended or rescinded when reviewed against the standards for periodic review, including the standard pertaining to reducing or eliminating adverse impacts on businesses.

When the joint committee recommends that a rule be invalidated, the rule remains operational pending action by the Senate and House of Representatives on the concurrent resolution embodying the recommendation. If the Senate and House of Representatives adopt the concurrent resolution, the rule is invalid. If, however, the Senate and House of Representatives do not adopt the resolution, the rule continues in effect, and is next to be reviewed according to the new periodic review date the agency has assigned to the rule in the course of the Periodic Review of Rules Act process.

### *JCARR referral or re-referral of proposed or existing rule to CSIO*

- Authorizes JCARR to refer or re-refer a proposed or existing rule to CSIO if JCARR is uncertain whether the rule has an adverse impact on businesses or if it appears that such an impact has not been addressed or has been inadequately addressed.<sup>5</sup>

If JCARR is reviewing a proposed or existing rule under the Legislative Review Act or the Periodic Review of Rules Act and is uncertain whether the proposed or existing rule has an adverse impact on businesses, JCARR electronically may refer the rule to CSIO, or if JCARR identifies an adverse impact on businesses in the proposed or existing rule that has not been evaluated or has been inadequately evaluated in a business impact analysis previously reviewed by CSIO, JCARR electronically may re-refer the rule to CSIO. JCARR also electronically may transmit a memorandum to CSIO along with the proposed or existing rule explaining specifically why it is referring or re-referring the rule to CSIO. JCARR electronically must notify the agency if it refers or re-refers the proposed or existing rule to CSIO.

Such a referral or re-referral tolls (stops) the running of the time within which JCARR is required to recommend adoption of a concurrent resolution invalidating the proposed or existing rule. The time resumes running when the proposed or existing

---

<sup>5</sup> R.C. 106.031(C)(2), 106.05, and 121.83(B)(1).



rule is returned to JCARR after the referral or re-referral. The tolling does not affect the continued operation of an existing rule.

CSIO, within 30 days after receiving a proposed or existing rule from JCARR as explained above, must evaluate or re-evaluate the rule to determine whether it has an adverse impact on businesses, and then must proceed as explained in (1) or (2) below, as is appropriate to its determination.

(1) If CSIO determined that the proposed or existing rule does not have an adverse impact on businesses, CSIO must prepare a memorandum stating that finding. CSIO electronically must transmit the memorandum to the agency, and electronically must return the proposed or existing rule to JCARR. CSIO also electronically must transmit a copy of its memorandum to JCARR along with the proposed or existing rule. JCARR may review or reject the proposed or existing rule, the same as if the rule had not been referred or re-referred to CSIO. If, when the proposed or existing rule is returned to JCARR, fewer than 30 days remain in the time by which a concurrent resolution invalidating the rule must be recommended, the time for making such a recommendation is extended until the thirtieth day after the day on which the rule was returned to JCARR.

(2) If, however, CSIO determined that the proposed or existing rule has an adverse impact on businesses, CSIO must prepare a memorandum stating that finding. CSIO electronically must transmit the memorandum to the agency, and also electronically must transmit the memorandum and the proposed or existing rule to JCARR. The memorandum must identify the proposed or existing rule to which it relates.

In the case of a proposed rule, JCARR may review or reject the proposed rule the same as if the proposed rule had been not referred or re-referred to CSIO. If, when the proposed rule is returned to JCARR, fewer than 30 days remain in the time by which a concurrent resolution invalidating the proposed rule must be recommended, the time for making such a recommendation is extended until the thirtieth day after the day on which the proposed rule was transmitted to JCARR. In the case of an existing rule, it is the same as if the agency had withdrawn the rule from JCARR's jurisdiction. The agency, after considering CSIO's memorandum, may revise the proposed rule.

In the case of an existing rule, it is the same as if the agency had withdrawn the existing rule from JCARR's jurisdiction. If the agency determines, after considering CSIO's memorandum, that the existing rule needs to be amended or rescinded, the agency must commence the process of doing so. If, however, the agency determines, after considering CSIO's memorandum, that the existing rule does not need to be amended or rescinded, the agency must resume periodic review of the existing rule by



preparing a memorandum of response explaining why the no change rule is not being rescinded or why CSIO's recommendations are not being amended into the no change rule.

When JCARR gives notice that it is referring or re-referring a proposed or existing rule to CSIO, and when JCARR or CSIO transmits a memorandum to the other or to an agency, JCARR or CSIO electronically also must transmit a copy of the notice or memorandum to the Director of the Legislative Service Commission (LSC). The Director of LSC is required to publish the notice or memorandum in the *Register of Ohio* together with a notation identifying the proposed or existing rule to which the notice or memorandum relates.

### *Abbreviated compliance with business review by state elected officers*

- Specifies that rule-making by the offices of the state elected officers must comply with the business review provisions, but may bypass CSIO and file relevant business review documents directly with JCARR.
- Specifies that this rule-making may become subject to review by CSIO under the referral and re-referral provisions of the act (described above).<sup>6</sup>

The offices of the Governor, Lieutenant Governor, Auditor of State, Secretary of State, Treasurer of State, and Attorney General are required to comply with the business review provisions of continuing law (proposed rules) and the act (existing, no change rules), but are not required to submit any document to CSIO or to prepare any document that would have been prepared in response to recommendations of CSIO, but rather are to prepare all other documents required under the business review provisions and submit the documents directly to JCARR along with a proposed or existing rule.<sup>7</sup> Such a rule may become subject to review by CSIO, however, under the referral or re-referral provision described above.

### *Extension or revival of legislative review time for proposed rule if later version rejected*

- Extends or revives the time for legislative review of a proposed rule if JCARR rejected a later version of the proposed rule for noncompliance with business review procedures.<sup>8</sup>

---

<sup>6</sup> R.C. 121.81(A) and 121.811.

<sup>7</sup> The "all other documents" specification appears to contemplate only a business impact analysis.

<sup>8</sup> R.C. 121.83(B)(2).



Under the Common Sense Initiative Act, JCARR can reject a proposed rule (just as it can a no change rule) if the rule is discovered to have an adverse impact on businesses and the agency has not complied with the business review procedure. The act revives or extends the time for legislative review of a proposed rule when the last previously filed version of the proposed rule, the filing of a later version of which has been rejected by JCARR, remains in JCARR's possession, and the time for legislative review of that previously filed version has expired, or fewer than 30 days remain before the time for legislative review of that previously filed version expires. In such a case, a concurrent resolution to invalidate that previously filed version may be adopted not later than the 65th day after the day on which the filing of the later version was rejected.<sup>9</sup> This deadline can be extended under the legislative review carry-over clause (see below).

### *Applicability of Common Sense Initiative Act clarified*

- Amends the Common Sense Initiative Act to clarify its applicability under the act to existing, no change rules.<sup>10</sup>

The Common Sense Initiative Act (CSIA) referred specifically to "draft rules."<sup>11</sup> This usage emphasized the original intent of the CSIA to put rules that are being drafted through business review before they begin the formal rule-making process. The act adds references to "existing rules." This clarifies that the act is expanding the CSIA to make it apply expressly also to existing, no change rules, which the act subjects to business review according to the procedure described above.

### *Noncompliance with Periodic Review of Rules Act*

- Authorizes JCARR to recommend invalidation of an existing, no change rule if the agency has not complied with the Periodic Review of Rules Act and fails to appear before JCARR to show cause for the noncompliance.<sup>12</sup>

Under continuing law, if an agency fails to comply with the Periodic Review of Rules Act, JCARR must afford the agency an opportunity to appear before JCARR to

---

<sup>9</sup> The act refers to "recommendation of" a concurrent resolution to invalidate the previously filed version being "adopted" not later than 65<sup>th</sup> day after" the later version was rejected. While JCARR would indeed have to recommend such an invalidating concurrent resolution, it is the concurrent resolution itself, and not the recommendation thereof, that has to be adopted by the Senate and House of Representatives not later than the 65<sup>th</sup> day after the later version was rejected.

<sup>10</sup> R.C. 121.81(B) and R.C. 107.52, 107.53, 107.54, 107.55, 107.62, and 107.63.

<sup>11</sup> R.C. 121.81(B) and 121.82.

<sup>12</sup> R.C. 106.031(E) (second to last paragraph).



show cause why the agency has not complied with the act. JCARR is authorized to recommend, by vote of a majority of its members present, invalidation of the existing rule if the agency fails to show cause. The act clarifies that if the agency appears before JCARR at the time scheduled for the agency to show cause, and fails to do so, JCARR, by vote of a majority of its members present, may recommend adoption of a concurrent resolution invalidating the rule for the agency's failure to show cause. The act adds that, if the agency fails to appear before JCARR at the time scheduled for the agency to show cause, JCARR, by vote of a majority of its members present, may recommend adoption of a concurrent resolution invalidating the rule for the agency's default.

### ***Periodic review of rules: additional review standard***

- Requires an agency, in conducting periodic review of its rules, to determine whether a rule contains derogatory or offensive words or phrases.<sup>13</sup>

As discussed earlier, under the Periodic Review of Rules Act, an agency is required, approximately every five years, to review its rules against several enumerated standards. The agency then must determine whether the rule needs to be amended or rescinded in light of its review. The act adds an additional periodic review standard: An agency, in conducting its periodic review of a rule, must determine whether the rule contains words or phrases having meanings that, in contemporary usage, are understood as being derogatory or offensive.

### ***Periodic review of rules: extensions of review dates***

- Specifies, when JCARR extends the review date of a rule under the Periodic Review of Rules Act, that not more than two such extensions may be allowed.<sup>14</sup>

Under the Periodic Review of Rules Act, agencies must submit an existing rule to JCARR for periodic review by a date that is referred to as the existing rule's "review date." Continuing law authorizes JCARR to extend an existing rule's review date to a date that is not later than 180 days after the original review date. Further extensions could be made only "if appropriate under the circumstances." The act revises the latter provision to specify that not more than two such extensions may be allowed.

### ***Periodic review of rules: repeal of exemption ratification***

- Removes a requirement under which an agency that claims a rule is exempt from five-year periodic review nevertheless must submit the rule to JCARR, which

---

<sup>13</sup> R.C. 106.03(A)(7).

<sup>14</sup> R.C. 106.03 (last paragraph).

after a hearing and by a two-thirds vote of members present, could declare that the rule is not entitled to the exemption.<sup>15</sup>

Under prior law, if an agency claimed that one of its rules is exempt from five-year periodic review, the agency had to file a copy of the existing rule with JCARR. JCARR, after a hearing on the matter, and by a vote of two-thirds of its members who are present, could determine that the rule is not entitled to the exemption. If this happened, the rule thereafter would be subject to periodic review. The act removes this provision. The act does not, however, otherwise affect the statutorily prescribed exemptions from five-year periodic review.

### *Rule Watch System*

- Requires JCARR to establish, maintain, and improve a Rule Watch System that enables persons to register electronically to receive electronic mail alerts when an agency files a rule for review by JCARR.<sup>16</sup>
- Requires JCARR to integrate the Common Sense Initiative Office into the Rule Watch System in furtherance of the goal of providing one world wide web portal through which information about rules and rule-making can be obtained.

The act requires JCARR to establish, maintain, and improve a Rule Watch System. The system is to be designed so that a person may register electronically to receive an electronic mail alert when an agency files a rule for review by JCARR. Failure of the system to transmit such an electronic mail alert to a person is not grounds for questioning the validity of a rule or the validity of the process by which the rule was adopted.

The goal of the Rule Watch System is to provide one world wide web portal through which a person can obtain information about the rules of, and about rulemaking by, state agencies. In furtherance of this goal, JCARR is to integrate CSIO into the Rule Watch System. JCARR is declared to be the principal member of the Rule Watch System, but is required to work in collaboration with CSIO to achieve the integration.

---

<sup>15</sup> This provision, which appeared in former R.C. 119.032(E)(6), is not carried forward into the sections, R.C. 106.03 and 106.031, that replace R.C. 119.032 in the act. See Section 4 of the act (3rd paragraph).

<sup>16</sup> R.C. 101.351.



### *Customer service standards*

- Requires an agency to post its customer service standards on the Internet.<sup>17</sup>
- Authorizes CSIO, upon agency request, to review and comment on an agency's customer service standards.<sup>18</sup>
- Imposes deadlines by which state agencies must develop initial customer service standards.<sup>19</sup>

Continuing law requires a state agency to develop customer service standards for each employee of the agency whose duties include a significant level of contact with the public.

### *Publication of customer service standards*

The act requires an agency to post its customer service standards, and any revisions therein, on its website or, if the agency does not maintain a website, on the State Public Notice Website.<sup>20</sup>

### *Optional review of customer service standards*

The act also authorizes CSIO, upon an agency's request, to review the agency's customer service standards and transmit any comments it has with regard to the standards to the agency.

### *Deadlines for developing initial customer service standards*

If a state agency, on September 17, 2014, has not developed its initial customer service standards, the agency must do so not later than October 17, 2014. A state agency that is created after September 17, 2014, must develop its initial customer service standards within six months after the effective date of the statute that creates the state agency.

---

<sup>17</sup> R.C. 121.91(A) (3rd paragraph).

<sup>18</sup> R.C. 121.91(A) (last paragraph).

<sup>19</sup> R.C. 121.91(A) (1st paragraph) and Section 6 of the act.

<sup>20</sup> H.B. 483 of the 130th General Assembly amends R.C. 125.182 to rename the State Public Notice Website the Official Public Notice Website. (R.C. 125.182 is not in the act.)



### *Agency consideration of information learned at public hearing on proposed rule*

- Requires a state agency to consider information learned at a public hearing on a proposed rule, and to prepare a hearing summary that analyzes the issues raised at the hearing.
- Requires a state agency to prepare a hearing report describing how information learned at the public hearing has led or not led to modifications in the proposed rule.<sup>21</sup>
- Requires a state agency to file the hearing report with the Secretary of State, the Director of LSC, and JCARR if the hearing report is available when the agency files the proposed rule.
- Requires a state agency to file the hearing report with JCARR if it later becomes available.
- Specifies that a hearing report is to be published in the *Register of Ohio*.<sup>22</sup>

Rules proposed under the Administrative Procedure Act must be subjected to a public hearing at which any person affected by the proposed rule may appear and, among things, present the person's position, arguments, or contentions tending to show that the proposed rule, if adopted or implemented, will be unreasonable or unlawful. The state agency proposing the rule also may permit persons to present their positions, arguments, or contentions not only at the hearing but also before, after, or both before and after the public hearing.<sup>23</sup>

The act requires a state agency first to consider the positions, arguments, or contentions presented at, or before or after, the public hearing on a proposed rule. The state agency next must prepare a hearing summary of the positions, arguments, or contentions, and of the issues raised by the positions, arguments, or contentions. The state agency then must prepare a hearing report explaining, with regard to each issue, how it is reflected in the proposed rule. If an issue is not reflected in the proposed rule, the hearing report must explain why the issue is not so reflected. The state agency must append the hearing summary to the hearing report.

When the proposed rule is filed with the Secretary of State, the Director of LSC, and JCARR, the state agency must file a copy of the hearing report electronically along

---

<sup>21</sup> R.C. 119.03(D) (4th paragraph).

<sup>22</sup> R.C. 119.03(B)(6th and 7th paragraphs), (C)(4th paragraph), and (D)(last paragraph).

<sup>23</sup> R.C. 119.03(D) (1st paragraph).



with the proposed rule if the hearing report is available when the proposed rule is filed. The Director must publish the full text of the hearing report in the *Register of Ohio*.

If the hearing report is not available when the proposed rule is filed with JCARR, the state agency must file the hearing report electronically with JCARR when it becomes available. (This can happen, for example, if the state agency has not held its public hearing when the proposed rule is filed with JCARR.) The later filing of a hearing report does not constitute a revision of the proposed rule to which the report relates.

JCARR must transmit a copy of a later filed hearing report electronically to the Director of LSC. The Director must publish the later filed hearing report in the *Register of Ohio*.

### ***Operational duration of emergency rules increased***

- Increases the period of time during which an emergency rule remains operative from 90 to 120 days.<sup>24</sup>

Under prior law in both the Administrative Procedure Act and the abbreviated rule-making procedure,<sup>25</sup> an emergency rule remained in operational effect for 90 days. The act increases this period of time to 120 days. The 120-day period of time allows time for an agency to readopt the rule under the regular, nonemergency rule-making procedure, which enables the rule to remain in effect after its emergency version expires.

### ***Legislative review December carry-over clause modified***

- Specifies that if the original version of a proposed rule has been pending before JCARR for more than 35 days, and a revised version of the proposed rule is filed with JCARR in December or in the following January before the first day of the legislative session, then the proposed rule is to be reviewed legislatively not later than the 30th day after the first day of the legislative session in the following January.<sup>26</sup>

Under the Legislative Review of Rules Act, when the original or a revised version of a proposed rule is filed with JCARR in December, the proposed rule is carried over for review in the following January and then reviewed as if it were the

---

<sup>24</sup> R.C. 111.15(B)(2)(2nd paragraph) and 119.03(G)(2nd paragraph).

<sup>25</sup> The difference between the Administrative Procedure Act and the abbreviated rule-making procedure is explained in a *Note* under "*Recodification of Legislative Review Acts*," below.

<sup>26</sup> R.C. 106.02 (2nd paragraph).



original version of the proposed rule and had been filed on the first day of the legislative session in that January. The effect was to allow 65 days for legislative review of proposed rule that has been carried over, regardless of the pre-carry-over status of the proposed rule as original or revised. The act rather distinguishes original and revised versions of proposed rules for purposes of the carry-over clause. Under the act, if the original version of a proposed rule is filed with JCARR in December or in the following January before the first day of the legislative session, it will continue to be reviewed legislatively as described above. If, however, the original version of a proposed rule has been pending before JCARR for more than 35 days, and a revised version of the proposed rule is filed with JCARR in December or in the following January before the first day of the legislative session, it is to be reviewed legislatively not later than the 30th day after the first day of the legislative session in the following January.

### ***Legislative review mandatory***

- Clarifies that a proposed rule that is subject to legislative review cannot be adopted until the time for legislative review has expired without recommendation of a concurrent resolution to invalidate the proposed rule.<sup>27</sup>

The act clarifies that a proposed rule that is subject to legislative review cannot be adopted and filed in final form unless the proposed rule has been filed with JCARR and the time for JCARR to review the proposed rule has expired without recommendation of a concurrent resolution to invalidate the proposed rule.

### ***Return to agency of defective proposed rules: JCARR's jurisdiction expanded***

- Authorizes JCARR, as an alternative to recommending invalidation of a proposed rule, to return the proposed rule to the agency for revision, for *any* of the reasons for which JCARR may recommend invalidation of a proposed rule.<sup>28</sup>

Under prior law, as an alternative to recommending invalidation of a proposed rule because an agency had failed to prepare a complete and accurate rule summary and fiscal analysis (RSFA) insofar as the RSFA explains the proposed rule's fiscal effect on local governments, JCARR could return the proposed rule to the agency and order the agency to revise the RSFA and refile the proposed rule and RSFA. If the RSFA then was still incomplete and inaccurate, JCARR could recommend invalidation of the proposed rule.

---

<sup>27</sup> R.C. 106.023(1st paragraph), 111.15(D)(2nd paragraph), and 119.03(C)(5th paragraph) and (E).

<sup>28</sup> R.C. 106.022.



The act retains the concept of this law, but transforms and expands its scope to enable JCARR, as an alternative to recommending invalidation of a proposed rule, to return the proposed rule to the agency for revision, for *any* of the reasons for which JCARR can recommend invalidation of a rule,<sup>29</sup> not just because the proposed rule's RSFA fails completely and accurately to explain the proposed rule's fiscal effect on local governments.

Under the act, as an alternative to recommending adoption of a concurrent resolution to invalidate a proposed rule, JCARR may authorize the agency to revise and refile the proposed rule and RSFA. JCARR must issue the authorization in writing. In the authorization, JCARR must explain the finding that, but for the authorization, would have resulted in a recommendation of invalidation. JCARR must transmit the authorization electronically to the agency, the Secretary of State, the Director of LSC, and, if the proposed rule is to replace an emergency rule, the Governor. JCARR may issue only one authorization with regard to the same proposed rule.

Upon receiving the authorization, the agency may revise the proposed rule and RSFA, and then refile the revised proposed rule and RSFA electronically with JCARR.

If JCARR makes any of the findings for which it may recommend invalidation of a proposed rule with regard to the revised proposed rule and RSFA, JCARR may recommend adoption of a concurrent resolution to invalidate the proposed rule under the Legislative Review Act.

If the proposed rule that is the subject of an authorization is to replace an emergency rule, the Governor may issue an order extending the emergency rule for an additional 65 days after the day on which the emergency rule otherwise would become invalid.<sup>30</sup> The Governor must transmit the order electronically to the agency, JCARR, and the Director of LSC.

---

<sup>29</sup> JCARR can recommend invalidation of a proposed rule if it finds any of the following with regard to the proposed rule: the proposed rule exceeds the scope of its statutory authority; the proposed rule conflicts with the legislative intent of the statute under which the rule was proposed; the proposed rule conflicts with another proposed or existing rule; the proposed rule incorporates a text or other material and the incorporation by reference does not comply with the posting and citation standards of the Incorporation by Reference into Rules Act (R.C. 121.71 to 121.76); the agency has failed to prepare a complete and accurate RSFA of the proposed rule; or the agency has failed to demonstrate, through the business impact analysis, recommendations from CSIO, and the memorandum of response, that the regulatory intent of the proposed rule justifies its adverse impact on businesses. See R.C. 106.021.

<sup>30</sup> The act, as explained above, extends the life of an emergency rule from 90 to 120 days. This provision authorizes an extension of the life of an emergency rule for "an additional 65 days." The additional 65-day period corresponds to the time for legislative review and invalidation. Because, however, an emergency



### *Legislative invalidation of proposed and existing rules: procedure clarified*

- Clarifies the procedure according to which concurrent resolutions invalidating proposed and existing rules are processed.<sup>31</sup>

Under the Legislative Review of Rules Act and the Periodic Review of Rules Act, JCARR is authorized to recommend that the General Assembly adopt a concurrent resolution invalidating proposed rules or existing no change rules that were reviewed under those laws. The act clarifies the procedure for processing these concurrent resolutions.

To recommend adoption of such a concurrent resolution, the Chairperson of JCARR, or another member of JCARR designated by the Chairperson, must prepare the recommendation of invalidation in writing. The recommendation must identify the proposed or existing rule, the agency that proposed or submitted the proposed or existing rule, and the finding that caused JCARR to make the recommendation. The recommendation also must briefly explain the finding.

The Chairperson of JCARR must request LSC to prepare a concurrent resolution to invalidate the proposed or existing rule according to the recommendation. The concurrent resolution must state the finding that caused JCARR to recommend invalidation of the rule.

The Chairperson of JCARR, or another member of JCARR designated by the Chairperson, must submit the concurrent resolution to the clerk of either house of the General Assembly. The recommendation of invalidation and a copy of the proposed or existing rule also must be submitted to the clerk along with the concurrent resolution.

### *Modification to law providing for Rule Summary and Fiscal Analysis*

- Clarifies that JCARR is responsible for designing the form on which agencies are required to prepare an RSFA of their proposed rules.
- Specifies that the statutory list of information to be included in an RSFA is only suggestive of what might be included, and states that JCARR may solicit information instead of or in addition to what is in the list.
- Includes, among the suggested information, a suggestion that an agency provide the electronic mail address, in addition to the name and telephone number, of the

---

rule is contemplated by this provision, perhaps the additional period should correspond, not to the legislative review period, but rather to the life of the emergency rule.

<sup>31</sup> R.C. 106.04 and 106.041.



individual or office in the agency who has been designated to provide information about the proposed rule described in the RSFA.<sup>32</sup>

The act modifies the law providing for the RSFA to clarify that JCARR is responsible for designing the RSFA form. The act also specifies that the list of information to be included in an RSFA, as presented in continuing law, is suggestive only of what might be included in the RSFA as designed by JCARR. Specifically, the act states that the RSFA form designed by JCARR, instead of or in addition to what is spelled out in the statutory list of information, may solicit any other information JCARR considers necessary to make the proposed rule or its fiscal effect fully understandable.

The act amends the list of suggested information to suggest that an agency provide the electronic mail address, in addition to the name and telephone number, of an individual or office in the agency who or that has been designated to coordinate and make available information regarding the proposed rule that is described in the RSFA.

### ***Transition rules***

- Specifies that rules pending before JCARR on the effective date of the act are not subject to its revised and clarified legislative review procedures.<sup>33</sup>

The act specifies that its revised and clarified legislative review procedures do not apply to rules that are pending before JCARR on its effective date. The former law will continue to apply to these rules. The revised and clarified legislative review procedures of the act therefore will apply to rules that are first filed with JCARR on or after September 17, 2014.

### ***Rule-making by state institutions of higher education***

- Requires a state institution of higher education to cause publication of its rules in the *Register of Ohio* and in any electronic publication of the Administrative Code.
- Requires JCARR to accommodate a rule adopted by a state institution of higher education to the Rule Watch System.
- Requires a state institution of higher education to post its rules on its website, and periodically to verify its posting.

---

<sup>32</sup> R.C. 127.18(B).

<sup>33</sup> Section 10 of the act. See also the general savings clause, R.C. 1.58(A)(4), which declares that amendments do not affect pending proceedings. A pending proceeding is to be carried through to completion under the former law, as if the amendment had not been made. (R.C. 1.58 is not in the act.)

- Specifies that a state institution of higher education is not entitled to rely on a rule that is not currently posted on its website.<sup>34</sup>

### *Additional rule-making requirements*

Under the act, when a state institution of higher education<sup>35</sup> adopts a rule, the institution must post the rule on its website, and the Director of LSC must publish or cause publication of the rule in the *Register of Ohio* and in any electronic Administrative Code published by or under contract with the Director.<sup>36</sup> The institution also electronically must file a copy of the rule with JCARR. The rule is not subject to review by JCARR. But JCARR must accommodate the rule to the Rule Watch System (explained above).

These requirements are in addition to any other rule-making requirements that apply to state institutions of higher education.

A state institution of higher education must maintain the posting of its rules on its website, and periodically must verify the posting.

A state institution of higher education is not entitled to rely on a rule that is not currently posted on its website. This rule does not apply until the institution has posted all its currently effective rules on its website, or March 18, 2015, whichever occurs first.

### *Transitional requirements*

As soon as possible, but not later than March 17, 2015, a state institution of higher education must post each of its currently existing rules on its website, and must refile its currently existing rules with the Director of LSC and JCARR. The refile of an institution's existing rules is not subject to review by JCARR or by the Director of LSC. The Director of LSC must publish the refiled rules in the *Register of Ohio* and in any electronic Administrative Code published by or under contract with the Director.

---

<sup>34</sup> R.C. 3345.033 and Section 5 of the act.

<sup>35</sup> As used in this phase of the act, a "state institution of higher education" means the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University; the Northeast Ohio Medical University; and a community college, state community college, or technical college. See R.C. 3345.011 and 3345.033(A)(2nd paragraph). The former section is not in the act; the latter section is enacted by the act.

<sup>36</sup> State institutions of higher education are required under continuing law (R.C. 111.15(A)(2)) to file their rules with the Director of LSC.



If the institution previously has posted its currently existing rules on its website, the institution, as soon as possible, but not later than March 17, 2015, must verify the posting.

Existing rules previously filed with the Director of LSC are insufficient to comply with the foregoing transitional requirements. Rather, the refiling of all currently existing rules is required to achieve compliance with the transitional requirements. A state institution of higher education is not entitled to rely on a rule that is required to be refiled under the transitional requirements and that has not been so refiled.

### ***Review of fines imposed by state agencies***

- Requires the Director of Budget and Management to conduct a review of all fines imposed by state agencies.
- Requires the Director to make a report of the findings of the review and to make recommendations not later than February 1, 2015.<sup>37</sup>

The act requires the Director of Budget and Management to conduct a review of all fines imposed or levied by state agencies for the purpose of administering or enforcing statutes. (A "fine" is a fine, penalty, or other pecuniary punishment.) The review must address the following topics: authority to impose or levy the fine, the disposition of revenue generated from imposition or levy of the fine, accounting practices employed in the receipt and disposition of revenue generated from imposition or levy of the fine, and the purposes for which revenue generated from imposition or levy of the fine is used.

Not later than February 1, 2015, the Director must report the findings of the review and make recommendations in writing to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

### ***Transitional duties of Legislative Information Systems***

- Requires Legislative Information Systems to program or reprogram the electronic rule filing system as necessary to enable electronic filing and other processing of rules as is required by the act not later than June 17, 2015.<sup>38</sup>

The act requires Legislative Information Systems, in consultation with the Director of LSC, the Executive Director of JCARR, CSIO, and any other person or agency involved in the electronic rule filing system, to program or reprogram the

---

<sup>37</sup> Section 7 of the act.

<sup>38</sup> Section 9 of the act.



electronic rule filing system as necessary to enable electronic filing and other electronic processing of rules and rule-making documents as is required by the act. Legislative Information Systems is to complete the programming or reprogramming as soon as reasonably possible after September 17, 2014, but not later than June 17, 2015. If, at the time a provision of the act that contemplates electronic filing or other electronic processing of rules or rule-making documents takes effect, electronic filing or other electronic processing is not available, the provision is to be complied with manually until electronic filing or other electronic processing is available.

*Note:* The electronic rule filing system is an electronic system that enables rules and rule-making and rule-related documents to be filed, and official responses to these filings to be made, exclusively by electronic means. The electronic rule filing system is operated and maintained by Legislative Information Systems.

### *Recodification of legislative review acts*

- Relocates and otherwise reorganizes the Legislative Review of Rules Act and the Periodic Review of Rules Act to cure their inaccurate locations in the Revised Code.<sup>39</sup>

The Legislative Review of Rules Act and the Periodic Review of Rules Act formerly were inaccurately located as part of the Administrative Procedure Act (APA).<sup>40</sup> This location was inaccurate because the two acts apply also to rules that are subject to the so-called abbreviated rule-making procedure.<sup>41</sup> But rules subject to the abbreviated rule-making procedure are not subject to the APA, and vice versa.

*Note:* When an agency's rule-making is subject to the Administrative Procedure Act, the agency is required, among other things, to give notice of its intention to adopt a rule, to hold a public hearing on the proposed rule, and to make an effort to inform persons subject to the rule of its adoption. When, however, an agency's rule-making is subject to the abbreviated rule-making procedure, the

---

<sup>39</sup> Section 4 of the act.

<sup>40</sup> R.C. Chapter 119.

<sup>41</sup> R.C. 111.15.



agency is not required to do any of these things, which is why the procedure is referred to as being abbreviated.<sup>42</sup>

The act relocates the Legislative Review of Rules Act and the Periodic Review of Rules Act to cure their inaccurate locations. The following tables outline the relocations.

In the first table, the left-hand column indicates the topic of the law that is being relocated, the middle column indicates the former location of the law, and the right-hand column indicates the new location of the law.

<b>Topic</b>	<b>Former Location</b>	<b>New Location</b>
Procedure for legislative review of proposed rules	R.C. 119.01 and 119.03(I)	R.C. 106.02, 106.021, 106.022, and 106.023
Filing proposed rules that are being adopted under the Administrative Procedure Act for legislative review	R.C. 119.03(H)	R.C. 119.03(C)
Procedure for periodic review, at five-year intervals, of existing rules	R.C. 119.032	R.C. 106.03 and 106.031

The following table presents the same information as the previous table, but the middle column indicates the new location of the law that was relocated from the former location indicated in the right-hand column.

<b>Topic</b>	<b>New Location</b>	<b>Former Location</b>
Procedure for legislative review of proposed rules	R.C. 106.02, 106.021, 106.022, and 106.023	R.C. 119.01 and 119.03(I)
Filing proposed rules that are being adopted under the Administrative Procedure Act for legislative review	R.C. 119.03(C)	R.C. 119.03(H)
Procedure for periodic review, at five-year intervals, of existing rules	R.C. 106.03 and 106.031	R.C. 119.032

Except as explained in this analysis, law that is relocated is continued at the new location with only stylistic and organizational improvement.

---

<sup>42</sup> Compare R.C. 111.15(A)(1) and (B) with R.C. 119.01(A)(1) and 119.03(A), (D), and (F). Both of these sections are in the act. Generally, the APA applies to agencies that are named in its definition of "agency," to rules performing a licensing function, and to rule-making that is specifically made subject to the APA. The abbreviated rule-making procedure is a default procedure that applies to all other rule-making.



- Adjusts cross-references to make them reflect the relocated provisions they are referring to.<sup>43</sup>

### *References to "119.032 review dates"*

- Specifies that references to the "119.032 review date" of a rule are to be read as if they referred to the sections providing for periodic review under the act.<sup>44</sup>

The date by which the periodic review of an existing rule is to be completed has been referred to as its "119.032 review date." That number is the number of the Revised Code section under which periodic review of existing rules was carried out before the substance of the section was relocated by the act (see above). Because of that relocation, periodic review of existing rules will be carried out, not under R.C. 119.032, but under R.C. 106.03 and 106.031. The act therefore specifies that a reference to the "119.032 review date" of an existing rule is to be read as if it referred to periodic review of the rule under R.C. 106.03 and 106.031.

The act recommends that the date by which the periodic review of an existing rule is to be completed be referred to as its "periodic review date."

### *Miscellaneous improvements*

- Repeals obsolete provisions,<sup>45</sup> repeals surplus provisions,<sup>46</sup> and cures other technical defects<sup>47</sup> in rule-making and rule review procedures.

---

<sup>43</sup> R.C. 101.35, 103.0511, 111.15, 119.03, 119.04, 121.39, 121.73, 121.81, 121.82, 127.18, 1531.08, 3319.22, 3319.221, 3333.021, 3333.048, 3701.34, 3737.88, 3746.04, 4117.02, 5103.0325, 5117.02, 6111.31, and 6111.51.

<sup>44</sup> Section 8 of the act.

<sup>45</sup> R.C. 111.15, 119.01, and 119.04.

<sup>46</sup> R.C. 121.74, 4141.14, and 5703.14. The Department of Job and Family Services adopts unemployment compensation rules under the Administrative Procedure Act (APA) by virtue of R.C. 5101.09(A)(1)(a). The Department of Taxation adopts tax rules under the APA by virtue of R.C. 119.01(A)(1). These rules are exempt under certain conditions from *only* the hearing requirement of the APA by virtue of R.C. 119.03(H), but are subject to all *other* provisions of the APA, including the filing requirements of R.C. 119.04. All of the sections referred to in this note, except R.C. 5101.09, are in the act.

<sup>47</sup> R.C. 103.0511(C). Rules that primarily affect individuals who are 60 years of age or older are subject to review by the Department of Aging under R.C. 173.01(C). The latter section is not in the act.

---

## HISTORY

ACTION	DATE
Introduced	02-12-13
Reported, S. State Gov't Oversight & Reform	06-19-13
Passed Senate (32-0)	06-26-13
Reported, H. State & Local Gov't	05-21-14
Passed House (95-0)	06-03-14
Senate concurred in House amendments (32-0)	06-04-14

14-SB3-130.docx/rs

