



Ohio Legislative Service Commission

Bill Analysis

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Sens. LaRose, Faber, Eklund, Gardner, Obhof, Widener, Uecker, Hite, Balderson, Beagle, Coley, Patton, Jones, Manning, Lehner, Seitz

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BILL SUMMARY

- Revises rule-making and rule review procedures.

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.¹

¹ R.C. 119.032(D) and 119.033.

Under current law recently enacted by the Common Sense Initiative Act,² beginning on January 1, 2012, 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 the bill, 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 currently are subject.

Under the Periodic Review of Rules Act, an agency is required, approximately every five years, to review its existing rules against several enumerated standards. One of the standards is whether an existing rule has an adverse impact on businesses, and whether any such adverse impact has been eliminated or reduced as required by the Common Sense Initiative Act. If the agency concludes that an existing rule has such an adverse impact on businesses, the bill requires the agency to amend or rescind the existing rule to reduce or eliminate the adverse impact in accordance with its review of the existing rule. If, however, the agency concludes that the existing rule does not have such an adverse impact on businesses, the bill requires the agency to 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."

The bill makes no change rules subject to business review. An agency that files a no change rule must comply with the following procedural steps:

(1) The agency first must reconsider the no change rule against only the standard explained above pertaining to whether it 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.

(3) If, however, the no change rule has an adverse impact on businesses that has not been eliminated or reduced, 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 no change rule is not being amended or rescinded to reduce or eliminate 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 analysis available to the public on its web site.

(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

² S.B. 2 of the 129th General Assembly.



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.³

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.⁴

(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 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 refileing 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.

³ R.C. 107.54(A)(2).

⁴ 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 bill.



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.⁵

If JCARR is reviewing a proposed or existing rule under the Periodic Review of Rules Act and is uncertain whether the rule has an adverse impact on businesses, or if the rule appears to have an adverse impact on businesses that has not been addressed or that has been inadequately addressed, JCARR electronically may refer or re-refer the rule to the CSIO. JCARR also 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. The joint committee 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 the joint committee is required to recommend adoption of a concurrent resolution invalidating the proposed or existing rule. The time resumes running when the proposed or existing rule is returned to the joint committee 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 below, as is appropriate to its determination.

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 must return the proposed or existing rule to the joint committee. CSIO also must transmit a copy of its memorandum to JCARR along with the proposed or existing rule. JCARR may review

⁵ R.C. 119.034.



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.

If, however, CSIO determined that the proposed or existing rule has an adverse impact on businesses, CSIO electronically must transmit the memorandum to the agency, and must also return the proposed or existing rule to the agency. CSIO also must transmit a copy of its memorandum to JCARR along with the proposed or existing rule. After receiving the memorandum and proposed or existing rule from CSIO, the agency must evaluate the impact of the proposed or existing rule on business, complete a business impact analysis, and submit the business impact analysis to CSIO for review.

When CSIO transmits a copy of a proposed rule to JCARR, if 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 a copy of the rule was transmitted to JCARR. The agency, after considering the CSIO's recommendations, may revise the proposed rule. And, if the agency does so, the agency may either incorporate into the revised proposed rule features the recommendations suggest will reduce or eliminate any adverse impact the proposed rule might have on businesses or document in writing reasons why the recommendations are not being incorporated into the revised proposed rule. The agency then must prepare a memorandum of response identifying features suggested by any recommendations that were incorporated into the proposed rule, explaining how those features reduce or eliminate any adverse impact the revised proposed rule might have on businesses, and explaining why features suggested by the recommendations that were not incorporated into the revised proposed rule were not incorporated.

When, on the other hand, CSIO transmits a copy of an existing rule to JCARR, it is the same as if the agency had withdrawn the rule from JCARR's jurisdiction. If the agency determines, after considering CSIO's recommendations, that the existing rule needs to be amended or rescinded, the agency is to commence the process of doing so. If, however, the agency determines, after considering the CSIO's recommendations, that the no change rule does not need to be amended or rescinded, the agency must resume periodic review of the no change 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. The memorandum and no change rule must be filed with JCARR.

Abbreviated compliance with business review by elected state 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 these rules may become subject to review by CSIO under the referral and re-referral provisions of the bill (described above).⁶

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 existing law (proposed rules) and the bill (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 the proposed or existing rule. These rules may become subject to review by CSIO, however, under the referral or re-referral provision described above.

Applicability of Common Sense Initiative Act clarified

- Amends the Common Sense Initiative Act to clarify its applicability under the bill to existing, no change rules.⁷

The Common Sense Initiative Act currently refers specifically to "draft rules."⁸ This usage emphasizes the original intent of the act to put rules that are being drafted through business review before they begin the formal rule-making process. The bill adds references to "existing rules." This clarifies that the bill is expanding the Common Sense Initiative Act to make it apply expressly also to existing, no change rules, which the bill subjects to business review according to the procedure described above.

Fines imposed by state agencies to be deposited into General Revenue Fund

- Specifies, beginning in fiscal year 2016, that if a state agency imposes a fine as punishment, and does so in its sole discretion, or solely by implication from a

⁶ R.C. 106.11 and 121.81(A).

⁷ R.C. 121.81(B) and R.C. 107.52, 107.53, 107.54, 107.55, 107.62, and 107.63.

⁸ R.C. 121.81(B).



constitutional or statutory grant of authority, the fine is to be deposited into the General Revenue Fund.⁹

Under the bill, beginning in fiscal year 2016, if a state agency imposes a fine or other sum of money as punishment for an act or omission, and does so in its sole discretion, or solely by implication from a constitutional or statutory grant of authority, any money recovered from imposition of the fine or other sum of money must be deposited into the state treasury to the credit of the General Revenue Fund. A state agency is not subject to this requirement if it imposes a fine or other sum of money as punishment for an act or omission pursuant to a constitutional or statutory mandate that expressly contemplates such an imposition.

Rule Watch System

- Requires JCARR to establish, maintain, and improve a Rule Watch System that enables persons to register to receive electronic mail alerts when an agency files a rule for review by JCARR.¹⁰

The bill 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.

Deadlines for developing initial customer service standards

- Imposes deadlines by which state agencies must develop initial customer service standards.

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. If a state agency, on the effective date of the bill, has not developed its initial customer service standards, the agency must do so not later than December 31, 2013.¹¹ A state agency that is created after the effective date of the bill must develop its initial

⁹ R.C. 113.091. Fiscal year 2016 begins on July 1, 2015.

¹⁰ R.C. 103.055.

¹¹ Section 4 of the bill.



customer service standards within six months after the effective date of the statute that creates the state agency.¹²

Entrepreneur in Residence Pilot Program

- Requires the Small Business Advisory Council to establish and operate an Entrepreneur in Residence Pilot Program.¹³

The bill requires the Small Business Advisory Council to establish and operate an Entrepreneur in Residence Pilot Program. The mission of the pilot program is to provide for better outreach by state government to small businesses, to strengthen coordination and interaction between state government and small businesses, and to make state government programs and functions simpler, easier to access, more efficient, and more responsive to the needs of small businesses.¹⁴

Participation in the pilot program

Not later than the first day of the seventh month after the effective date of the bill, the council must (1) select not fewer than three nor more than five state agencies that have programs or perform functions affecting small businesses to participate in the pilot program and (2) assign only one entrepreneur in residence to each state agency that is participating in the pilot program. The council must assign entrepreneurs in residence from among individuals who are representatives of small businesses and who are successful in their fields. The assignment of an entrepreneur in residence is for one year after the date on which the entrepreneur in residence was assigned to a state agency.¹⁵

Duties of entrepreneurs in residence

An entrepreneur in residence must do all of the following:

- (1) Facilitate meetings or forums to educate small business owners and operators about the programs or functions of the state agency that affect small businesses;
- (2) Facilitate in-service sessions with employees of the state agency on issues of concern to small business owners and operators;

¹² R.C. 121.91(A) (first paragraph).

¹³ R.C. 107.63 and 107.631.

¹⁴ R.C. 107.631(A).

¹⁵ R.C. 107.631(B) (except for last paragraph).



(3) Advise the state agency on how its programs and functions that affect small business might be improved to further the mission of the pilot program;

(4) Provide technical assistance or mentorships to small businesses in accessing the programs or functions of the state agency that affect small businesses; and

(5) Do any other things that further the mission of the pilot program.¹⁶

While an entrepreneur in residence is to report directly to the director or other head of the state agency,¹⁷ the council is to monitor the work of entrepreneurs in residence during the pilot program. (A state agency is required to cooperate with the council to facilitate this monitoring.)¹⁸

An entrepreneur in residence is not entitled to compensation, but is entitled to reimbursement from the state agency of the actual and necessary expenses the entrepreneur in residence incurs in discharge of the entrepreneur in residence's duties.

Report by entrepreneurs in residence

Not later than the date that is one year after an entrepreneur in residence was assigned to a state agency, the entrepreneur in residence must prepare a report about the state agency. In the report, the entrepreneur in residence must make recommendations to the state agency that furthers the mission of the pilot program. In particular, the entrepreneur in residence must make recommendations to the state agency regarding all of the following:

(1) Elimination of inefficient or duplicative programs or functions of the state agency that affect small businesses;

(2) Methods of improving the efficiency of the programs or functions of the state agency that affect small businesses;

(3) Any new program or function affecting small businesses that should be established and implemented by the state agency; and

(4) Any other matter that will further the mission of the pilot program.

¹⁶ R.C. 107.631(C).

¹⁷ R.C. 107.631(D) (first paragraph).

¹⁸ R.C. 107.631(B) (last paragraph).



The entrepreneur in residence must provide a copy of the report to the Small Business Advisory Council and to the state agency.¹⁹

Working groups of entrepreneurs in residence

During the pilot program, or upon its conclusion, the Small Business Advisory Council may convene an informal working group of entrepreneurs in residence to discuss best practices, experiences, and opportunities for and obstacles to operating small businesses, as well as the recommendations in the reports prepared by the entrepreneurs in residence.²⁰

Report on pilot program by Small Business Advisory Council

Upon conclusion of the pilot program, and after considering the reports of the entrepreneurs in residence and information learned from any informal working group of entrepreneurs in residence, the Small Business Advisory Council must prepare a report on the pilot program. In the report, the council must recommend whether the pilot program should be repeated with or without modifications, made permanent with or without modifications, or abandoned. The council must append the reports of the entrepreneurs in residence to its report. If the pilot program is repeated or made permanent, an individual who previously was assigned as an entrepreneur in residence is not eligible to be reassigned as an entrepreneur in residence.²¹

The council must provide a copy of its report to the Common Sense Initiative Office. The office promptly must transmit a copy of the report to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives.²²

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 to modifications in the proposed rule.

¹⁹ R.C. 107.631(E)(1).

²⁰ R.C. 107.631(E)(2).

²¹ R.C. 107.631(F) (first paragraph).

²² R.C. 107.63 (first paragraph) and 107.631(F)(second paragraph).



- Requires a state agency to file the hearing report with JCARR when it files the proposed rule with JCARR for legislative review.

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.²³

The bill requires a state agency 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 reflected in the proposed rule. The state agency must append the hearing summary to the hearing report.²⁴

When the proposed rule is filed with JCARR for legislative review, the state agency must file a copy of the hearing report along with the proposed rule. If the hearing report is not available when the proposed rule is filed with JCARR, the state agency must file the hearing report 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.²⁵

Legislative invalidation of proposed and existing rules: procedure clarified

- Clarifies the procedure according to which concurrent resolutions invalidating proposed and existing rules are processed.²⁶

Under the Legislative Review of Rules Act and the Periodic Review of Rules Act, the Joint Committee on Agency Rule Review (JCARR) is authorized to recommend that the General Assembly adopt a concurrent resolution invalidating proposed rules or

²³ R.C. 119.03(C) (first paragraph).

²⁴ R.C. 119.03(C) (fourth paragraph).

²⁵ R.C. 119.03(H).

²⁶ R.C. 119.03(I)(1).



existing no change rules (see below) that were reviewed under those laws. The bill 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 the joint committee to make the recommendation. The recommendation also must briefly explain the finding.

The Chairperson of JCARR must request the Legislative Service Commission 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.

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.²⁷

The bill 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.

Extension or revival of 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.²⁸

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 adverse impact on businesses and the agency has not complied with the business review procedure. The bill revives

²⁷ R.C. 111.15(D) and 119.03(D).

²⁸ R.C. 121.83(B)(2).



or extends the time for legislative review of a proposed rule when the last previously filed version of a 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, recommendation of 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. This deadline can be extended under the legislative review December carry-over clause (see above) that applies to proposed rules filed in December and that restarts their legislative review in the following January.

Operational duration of emergency rules increased

- Increases the period of time during which an emergency rule remains operative from 90 to 120 days.²⁹

Under both the Administrative Procedure Act and the abbreviated rule-making procedure,³⁰ an emergency rule remains in operational effect for 90 days. The bill increases this period of time to 120 days. The 120-day period of time allows time for an agency to adopt a rule under the regular, nonemergency rule-making procedure.

Procedural changes for adopting auditing rules

- Eliminates the special exception that authorized the Auditor of State not to prepare a rule summary and fiscal analysis of proposed auditing rules, and thereby brings the procedure for adopting auditing rules into conformity with general rule-making procedures.³¹

²⁹ R.C. 111.15(B)(2) and 119.03(F).

³⁰ R.C. 111.15 (abbreviated rule-making procedure) and 119.03(G) (Administrative Procedure Act). (Both of these sections are in the bill.) 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 agency is not required to do any of these things, which is why the procedure is referred to as being abbreviated.

³¹ R.C. 111.15(D) and (F), 117.20(A)(2), and 127.18(F). The rule summary and fiscal analysis is explained in a note below.



- Authorizes the Auditor of State to send notices of the public hearing on proposed auditing rules and to transmit copies of proposed auditing rules by electronic mail.³²

Electronic mail address to be provided in Rule Summary and Fiscal Analysis

- Requires a rule summary and fiscal analysis of a proposed rule to include the electronic mail address of an individual or office within the agency that is responsible for coordinating and making available information about the proposed rule.³³

Note: A rule summary and fiscal analysis (RSFA) is a form that is completed in the course of preparing a proposed rule. The RSFA is filed along with the proposed rule, and assists the public and JCARR in reviewing the proposed rule.

Miscellaneous improvements

- Repeals obsolete provisions,³⁴ repeals surplus provisions,³⁵ and cures other technical defects³⁶ in rule-making and rule review procedures.

HISTORY

ACTION	DATE
Introduced	02-12-13

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³² R.C. 117.20(A)(1)(a) and (b) and (B).

³³ R.C. 127.18.

³⁴ R.C. 111.15, 119.01, 119.031, 119.04, 4141.14, and 5703.14.

³⁵ R.C. 121.74, 4141.14, and 5703.14.

³⁶ R.C. 103.0511 and 111.15.

