



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** [H.B. 94 of the 129th G.A.](#)

**Date:** February 18, 2011

**Status:** As Introduced

**Sponsor:** Rep. Roegner

**Local Impact Statement Procedure Required:** No

**Contents:** Creates the Common Sense Initiative for small business rule review

### State Fiscal Highlights

#### Common Sense Initiative Office

- The bill creates the Common Sense Initiative Office (CSIO) within the Office of the Lieutenant Governor. The CSIO will be staffed by approximately five to six individuals who will assume tasks currently performed by staff in other agencies. Overall, annual operating expenses are expected to be approximately \$500,000, some of which could be offset by expenditure reductions in other agencies.
- The bill creates the Common Sense Initiative Advisory Council to advise the Governor, Lieutenant Governor, and CSIO on the adverse impact of rules on small businesses. The Office of the Governor could incur some administrative costs related to the Council.
- The bill requires the CSIO, in consultation with the Department of Administrative Services, to develop customer service standards for state agencies and employees. The costs of implementing these standards will depend on their scope.

#### Rule-making agencies

- Rule-making agencies, boards, and commissions could incur some additional administrative costs to review rules using the small business impact analysis instrument. These costs will vary by agency and depend on an agency's size, functions, and rule-making workload.

#### Joint Committee on Agency Rule Review (JCARR)

- JCARR may have to expend additional time and effort in its review of rules affecting small businesses, the cost of which would be no more than minimal on its annual GRF budget.

## **Department of Development**

- As a result of the bill, the Entrepreneurship and Small Business Division may be able to reduce certain GRF administrative costs that are currently associated with overseeing the filing of rules affecting small businesses.

## **Local Fiscal Highlights**

- No direct fiscal effect on political subdivisions.

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## Detailed Fiscal Analysis

### **Common Sense Initiative Office**

The bill creates the Common Sense Initiative Office (CSIO) within the Office of the Lieutenant Governor, who is required to set up the office and have it in operation as soon as practicable after the effective date of the bill but not later than August 15, 2011. The bill specifies that the CSIO must develop a small business impact analysis instrument, which will serve as the analytical tool for a new small business rule review process, and report annually on the office's activities. The bill also requires the existing electronic rule-filing system to be modified to connect the CSIO into the system as soon as practicable after the effective date of the bill but not later than August 15, 2011.

According to a representative of the Lieutenant Governor, the CSIO will be staffed with five or six individuals. The total annual cost of the CSIO is expected to be approximately \$500,000. However, part of this amount could be offset by expenditure reductions in various agencies for functions that will be assumed by the CSIO. Some of these functions associated with the rule-making process include tasks currently assigned to ombudspersons, small business advocates, and other similar positions.

### **Common Sense Initiative Advisory Council**

The bill creates the Common Sense Initiative Advisory Council within the Office of the Lieutenant Governor and requires the Council to advise the Governor, Lieutenant Governor, and the CSIO on the adverse impact proposed rules might have on small businesses. The Council is to consist of nine members, all representing small businesses, including five appointed by the Governor, two appointed by the Speaker of the House, and two appointed by the President of the Senate. More specifically, the bill requires the appointing authorities to take into account factors such as the size, type, and location of the businesses the members represent. The bill contains no requirements regarding compensation of the members of the Council or any administrative expenses of the Council. Presumably, any such costs would be borne by the Office of the Governor.

### **Customer service requirements**

The bill requires the CSIO, in consultation with the Department of Administrative Services (DAS), to develop customer service performance standards for state agencies and their officers and employees. The bill requires such standards to specifically address the functions and staff positions of each agency. Currently, there are approximately 2,000 job classifications within state government. Any cost resulting from this requirement would depend on the scope of the standards adopted by the CSIO and DAS and the extent to which customer service standards are already incorporated within job descriptions for various positions in state agencies.

## Agency rule-making costs

Currently, agencies must indicate whether a rule may have an adverse effect on small businesses and file such rules with the Department of Development, which publishes them in the Small Business Register. The bill repeals this requirement and instead requires rule-making agencies to evaluate all proposed rules against the CSIO's small business impact analysis instrument and prepare a small business impact analysis for each proposed rule that may affect small businesses.

During FY 2010, 97 state agencies, boards, and commissions filed 9,550 rules. Of these, 41 agencies, boards, and commissions filed 4,834 rules with the Small Business Register, accounting for about half (50.6%) of all rules filed. Of the 4,834 rules filed with the Small Business Register, 2,745 (56.8%) were filed by five agencies. These are the Bureau of Workers' Compensation (BWC), Department of Job and Family Services (JFS), Department of Health (DOH), Department of Agriculture (AGR), and the Environmental Protection Agency (EPA). The table below lists the number of rules filed with the Small Business Register by each of these five agencies.

<b>Agencies Filing the Most Rules with the Small Business Register, FY 2010</b>	
<b>Agency</b>	<b>Rules Filed</b>
Bureau of Workers' Compensation	694
Department of Job and Family Services	681
Department of Health	498
Department of Agriculture	482
Environmental Protection Agency	390

In addition, several boards and commissions filed significant quantities of rules with the Small Business Register. These include the Counselor, Social Worker, and Marriage and Family Therapist Board (CSW) with 153 rules, the Racing Commission (RAC) with 152 rules, and the Respiratory Care Board (RCB) with 121 rules.

The fiscal effects of the bill on rule-making agencies will depend largely on the size of the agency and scope of its rule-making work, including the number of employees who perform these responsibilities. In general, it may be that larger agencies with many employees working on administrative rules will more easily be able to adapt to the bill's requirements than will small boards and commissions, which only have a few, or possibly only one, full-time employee to handle a number of administrative tasks. For example, DOH currently has 123 people on its staff who devote at least part of their time to developing and filing administrative rules. These include administrative assistants, health planning administrators, sanitarian program specialists, physician administrators, and attorneys. According to DOH, the new

requirements for rule evaluations and small business impact analyses would likely add to the rule-making duties of current staff and result in less time spent on other work, but the Department does not anticipate requiring any additional staff to comply with the bill. Another large agency, BWC, also indicated that no additional staff would be necessary, and also anticipates no additional nonpersonnel administrative costs. On the other hand, CSW has only one full-time employee who works on rule-making duties, the Executive Director. The amount of additional work required, and any additional administrative costs associated with that work, will depend on the final form of the small business impact analysis instrument developed by CSIO.

Overall, the costs to agencies attributable to compliance with the bill will depend on the factors discussed above, and could vary widely depending on the functions of each agency. These costs could include additional payroll for new employees, overtime worked by existing staff, or information technology improvements, among others. The funds from which these costs would be paid would also vary by agency.

### **Joint Committee on Agency Rule Review (JCARR)**

Replacing the existing small business review process with the process described in the bill may require JCARR to expend additional time and effort in its legislative oversight of proposed new, amended, and rescinded rules submitted by certain state agencies, boards, and commissions. This is because the bill's replacement review process could increase both the number of rules required to include a small business impact analysis and the complexity of the fiscal analysis. As mentioned above, in FY 2010, JCARR reviewed 9,550 rules, more than 50% of which included an analysis of their impact on small businesses. Overall, the annual cost of any additional time and effort on the part of JCARR is likely to be no more than minimal, including the possibility that the increased workload may necessitate the hiring of an additional staff person. JCARR currently has four full-time staff (an interim director, an administrative assistant, and two rules analysts) and is funded exclusively through GRF appropriation item 029321, Operating Expenses. Its FY 2011 appropriation totals \$435,168.

### **Recording rules with the Department of Development**

Under current law, rules affecting small businesses must be filed with the Department of Development's office of small business, which is currently constituted as the Entrepreneurship and Small Business Division. Existing statutes require the Division to maintain the Small Business Register, which is a compilation of all rules that have been filed with the Division. The bill eliminates the requirement that rules affecting small businesses be filed with the Division and instead requires such rules to be filed with the CSIO and recorded by the Division in the Small Business Register. Practically speaking, the Division's functions relating to rules affecting small businesses, including publication of the Small Business Register, would not change substantially under the bill. However, the change from the current requirement that rules be *filed with* the Division to the bill's requirement that rules be *recorded by* the Division could

result in some administrative savings if it is construed to mean that the Division no longer has to maintain a system for filing administrative rules. Currently, most administrative costs related to rulemaking and the Small Business Register are borne by GRF appropriation item 195404, Small Business Development. The appropriation for this line item is approximately \$1.6 million in FY 2011.

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