JOINT COMMITTEE ON AGENCY RULE REVIEW

Restatement of principle of law or policy in rule (VETOED)

- Would have required state agencies with a continuing law duty to review their operations for principles of law or policies that should be restated in administrative rule to complete a review and file a report with the Joint Committee on Agency Rule Review (JCARR) no later than November 30, 2025 (VETOED).
- Would have reduced, from six months to three months, the time in which an agency must begin the rulemaking process when it identifies a principle of law or policy that should be restated as a rule or is informed of such a principle or policy through a recommendation from JCARR (VETOED).
- Would have prohibited an agency in the process of supplanting a principle of law or policy with a rule from relying on the principle or policy during the rulemaking process if the agency failed to file the rule in final form within one year after specified events occur or if the agency notified JCARR of its intention to file a revised proposed rule (VETOED).

Regulatory restrictions in administrative rules (VETOED)

- Would have defined a "regulatory restriction" as "any part of a rule that requires or prohibits an action" for purposes of the law requiring certain state agencies to identify and reduce regulatory restrictions in their administrative rules (VETOED).
- Would have required an agency subject to the reduction requirement that achieved its statutorily required reduction to eliminate one regulatory restriction for each new regulatory restriction the agency adopted (VETOED).
- Would have specified, for an agency that must eliminate two regulatory restrictions for each new regulatory restriction because it failed to meet the reduction deadline, that removing or replacing "shall," "must," "require," or similar words from a rule would not eliminate a regulatory restriction unless the removal eliminated a requirement or prohibition (VETOED).
- Would have allowed JCARR to recommend the General Assembly adopt a concurrent resolution invalidating a rule proposed by a covered agency if the agency proposed removing or replacing "shall," "must," "require," or similar words in the rule without removing a regulatory restriction (VETOED).
- Would have allowed a state agency subject to a statewide cap on regulatory restrictions to appear before JCARR to show cause why it should be permitted to adopt a rule that would cause the number of restrictions to exceed the cap (VETOED).
- Would have eliminated a requirement that a state agency contact JCARR before submitting a proposed rule containing a regulatory restriction for a determination whether adopting the restriction would cause the agency to exceed the statewide limit (VETOED).

Proposed rules and revised proposed rules (VETOED)

- Would have allowed JCARR to request an agency designee to appear and answer questions when a rule summary and fiscal analysis (RSFA) for a rule proposed by the agency indicated the rule would have specified economic effects (VETOED).
- Would have required the JCARR Executive Director to inform members of the General Assembly when the RSFA for a proposed rule filed by an agency indicated the rule would have specified economic effects (VETOED).
- Would have allowed JCARR to take one of several actions, including referring a proposed rule for review by the full General Assembly, after an agency designee appeared (or failed to appear) to answer questions about a proposed rule when the RSFA indicated the rule would have specified economic effects (VETOED).
- Would have required the General Assembly to enact a bill approving the adoption of a rule referred to it by JCARR before the rule could take effect (VETOED).

Rule review and recission (VETOED)

- Would have automatically invalidated a rule, and prohibited enforcement or reliance on it, if the adopting agency failed to review the rule in accordance with continuing law for one year after the rule's assigned review date (VETOED).
- Would have required JCARR to solicit an explanation of a rule's rescission from the agency proposing the recission, including a statement as to whether the agency intended to continue relying on a principle of law or policy stated in the rescinded rule (VETOED).

Restatement of principle of law or policy in rule (VETOED)

(R.C. 101.352, 121.93, and 121.931; Section 701.110)

The Governor vetoed a provision that would have required each state agency with a continuing law duty to review its operations for principles of law and policies that should be restated in an administrative rule to complete a review and file a report with the Joint Committee on Agency Rule Review (JCARR) no later than November 30, 2025. Under continuing law, these agencies must perform similar reviews at least once during a governor's term. The act would have applied the continuing law review requirements to this review. The requirement applies to all state agencies, except legislative agencies, the Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General, state institutions of higher education, and the state retirement systems.[101]

The Governor also vetoed provisions that would have both:

[101] R.C. 121.933, not in the act.

- Made changes to the timing and processes a state agency uses when it determines a principle of law or policy must be restated in a rule; and
- Prescribed additional reasons for which an agency must stop relying on a principle or policy after beginning the rulemaking process, including a time limit.

A detailed description of the vetoed provisions related to reviewing principles of law or policies and restating them in rules is available on pages 376-377 of LSC's analysis of H.B. 96, As Passed by the Senate (PDF), which is available on the General Assembly's website at legislature.ohio.gov.

Regulatory restrictions in administrative rules (VETOED)

(R.C. 106.021, 121.95, 121.951, and 121.931)

The Governor vetoed several provisions related to the law requiring cabinet-level state agencies and certain other state agencies to identify and reduce regulatory restrictions in their administrative rules. But for the Governor's veto, the act would have done the following with respect to the requirement:

- Defined "regulatory restriction" as "any part of a rule that requires or prohibits an action" and eliminated a specification that any rule including the words "shall," "must," "require," "shall not," "may not," or "prohibit" is considered to contain a regulatory restriction.
- Prohibited an agency required to remove two or more existing regulatory restrictions for each new regulatory restriction adopted because it failed to reach a 30% reduction by June 30, 2025, from removing or replacing "shall," "must," "require," "shall not," "may not," "prohibit," or similar words in a portion of a rule and claiming the removal or replacement as a reduction.
- Prohibited an agency that did achieve the required reduction by that date from adopting a new regulatory restriction unless it simultaneously removed at least one existing regulatory restriction.
- For any rule proposed for adoption on or after the act's effective date, allowed JCARR to recommend the General Assembly adopt a concurrent resolution invalidating the proposed rule, or a part thereof, if the rule removed or replaced "shall," "must," "require," "shall not," "may not," "prohibit," or similar words but did not remove a regulatory restriction as defined under the act.
- Allowed a state agency to appear before JCARR to show cause why the agency should be permitted to adopt a rule that would cause the number of regulatory restrictions to exceed a statewide limit on regulatory restrictions in continuing law.
- Required JCARR to prepare and transmit to the Speaker of the House and Senate President a report summarizing all the rules it authorized a state agency to adopt above the statewide limit.

A detailed description of the vetoed provisions is available on pages 377-379 of LSC's analysis of H.B. 96, As Passed by the Senate (PDF), which is available on the General Assembly's website at legislature.ohio.gov.

The Governor also vetoed a provision that would have eliminated a requirement that an agency subject to the statewide limit on regulatory restriction in administrative rules contact JCARR before submitting a proposed rule containing a regulatory restriction for a determination whether adopting the restriction would cause the agency to exceed the limit.

Proposed rules and revised proposed rules (VETOED)

(R.C. 106.02, 106.021, 106.025, 106.26, 106.023, 111.15, and 119.03)

The Governor vetoed several provisions that would have added optional, additional levels of legislative oversight to an administrative rule proposed by a state agency under the agency's general rulemaking authority if the rule summary and fiscal analysis (RSFA) for the rule prepared by the agency indicated any of the following:

- The proposed rule would increase the agency's expenditures during the current biennium by $100,000 or more;
- The cost to comply with the proposed rule for a directly affected person would be $100,000 or more; or
- The rule would impose an annual effect on Ohio's economy of $1 million or more.

With some exceptions, continuing law requires legislative oversight where an agency proposes adopting, amending, or rescinding an administrative rule. Generally, the agency proposing the rule must (among other actions) submit the rule to JCARR for legislative review at least 65 days before adopting it.

During the 65-day period, JCARR may, for reasons specified in continuing law, recommend the General Assembly adopt a concurrent resolution invalidating the proposed rule. Each chamber has until the later of 65 days after the agency filed the proposed rule with JCARR, or the fifth voting session occurring after the date JCARR recommends invalidation, to adopt the resolution. If both chambers adopt the resolution, the agency proposing the rule must cease all rulemaking activity related to it for the remaining General Assembly term. If one or both chambers fails to adopt the resolution, the agency may adopt the proposed rule.

But for the Governor's veto, if the RSFA for a proposed rule indicated the rule would have any of the economic effects listed above, the JCARR Executive Director would have been required to notify members of the General Assembly of the rule filing and provide all documentation submitted to JCARR related to the rule. The JCARR chairperson would have been authorized to request a designee of the proposing agency to appear before JCARR to answer questions about the rule's fiscal effects. The request would have been transmitted to the agency electronically and specified the time and place for the appearance. On receiving the request, the agency would have been required to designate a suitable agency officer or employee to appear on behalf of the agency. The agency would have been required to electronically provide JCARR with the designee's name, title, telephone number, and email address.

After the designee appeared and answered questions, or if the designee failed to appear, JCARR would have been permitted to do any of the following:

- Allow the time for legislative review to expire (thereby permitting the agency to adopt the rule);
- Recommend the adoption of a concurrent resolution invalidating the proposed rule; or
- By a majority vote, refer the rule for consideration by the full General Assembly.

The additional oversight by JCARR would not have been allowed if the proposed rule was based on specific statutory language authorizing or requiring an agency to adopt the rule.

If JCARR voted to refer a proposed rule to the full General Assembly, but for the Governor's veto, the JCARR chairperson would have been required to immediately transmit the proposed rule and RSFA to the House and Senate Clerks. After the transmittal, all the following would have applied:

- JCARR would have been prohibited from taking further action with respect to the proposed rule until after it was adopted or refiled as described below;
- The agency would have been prohibited from filing a revised version of the proposed rule as permitted under continuing law for proposed rules that would not have been subject to review by the full General Assembly; and
- The agency would have been prohibited from adopting the proposed rule unless adoption was authorized by a subsequently enacted law.

As soon as practicable after receiving a proposed rule transmitted in accordance with the vetoed provisions, the House and Senate clerks would have been required to make the proposed rule and RSFA available to all members of the clerks' respective chambers.

Any member of the General Assembly would have been permitted to introduce legislation authorizing the agency to adopt the rule. If a law authorizing the proposed rule were enacted before the General Assembly adjourned sine die, any review by JCARR would have ended and the agency would have been permitted, on or after the law's effective date, to adopt the rule in compliance with continuing law. If a law authorizing the rule were not enacted before the General Assembly adjourned sine die, the proposed rule would have been invalidated. The agency would have been permitted to refile the rule and RSFA with JCARR.

The vetoed provisions specified that a law enacted by the General Assembly authorizing an agency to adopt a proposed rule would not:

- Grant the proposing agency additional rulemaking authority or modify its existing rulemaking authority; or
- Extinguish or modify any claim against an agency arising from the rule.

In addition, a law authorizing an agency to adopt a proposed rule could not be used as evidence in any proceeding concerning the rule except for the purpose of determining whether the rule was in effect.

Rule review and recission (VETOED)

The Governor also vetoed several provisions related to rule review and recissions. Under continuing law, every state agency must review each rule it adopts no less than once every five years. During the review, the agency must evaluate whether the rule should be amended or rescinded for reasons specified in statute. If the agency determines the rule needs to be amended or rescinded, it must start the amendment or rescission process using the same procedure it used to adopt the rule. If the agency determines the rule does not need to be amended or rescinded (referred to as a "no change rule"), the agency must submit its determination to JCARR. After the agency files a no change rule, JCARR has a statutorily established amount of time to review the rule and recommend that the General Assembly adopt an invalidating resolution. If the General Assembly does not adopt an invalidating resolution, the agency may renew the rule for up to an additional five years.

Under the vetoed provisions, if an agency failed to perform a required review of a rule for one year after the rule's assigned review date, the rule would have been automatically invalidated. The agency that adopted the rule would have been prohibited from enforcing the rule or relying on a principle of law or policy stated in the rule.

The vetoed provisions also would have required JCARR, in the RSFA form it designs, to solicit from an agency proposing to rescind a rule an explanation of the rescission. The agency would have been required to include in the explanation a statement as to whether it intended to continue relying on a principle of law or policy stated in the rescinded rule.