
Chapter 10

The Executive Branch



Photographed by Robin Stein, LSC

Governor's Formal Office,
Statehouse

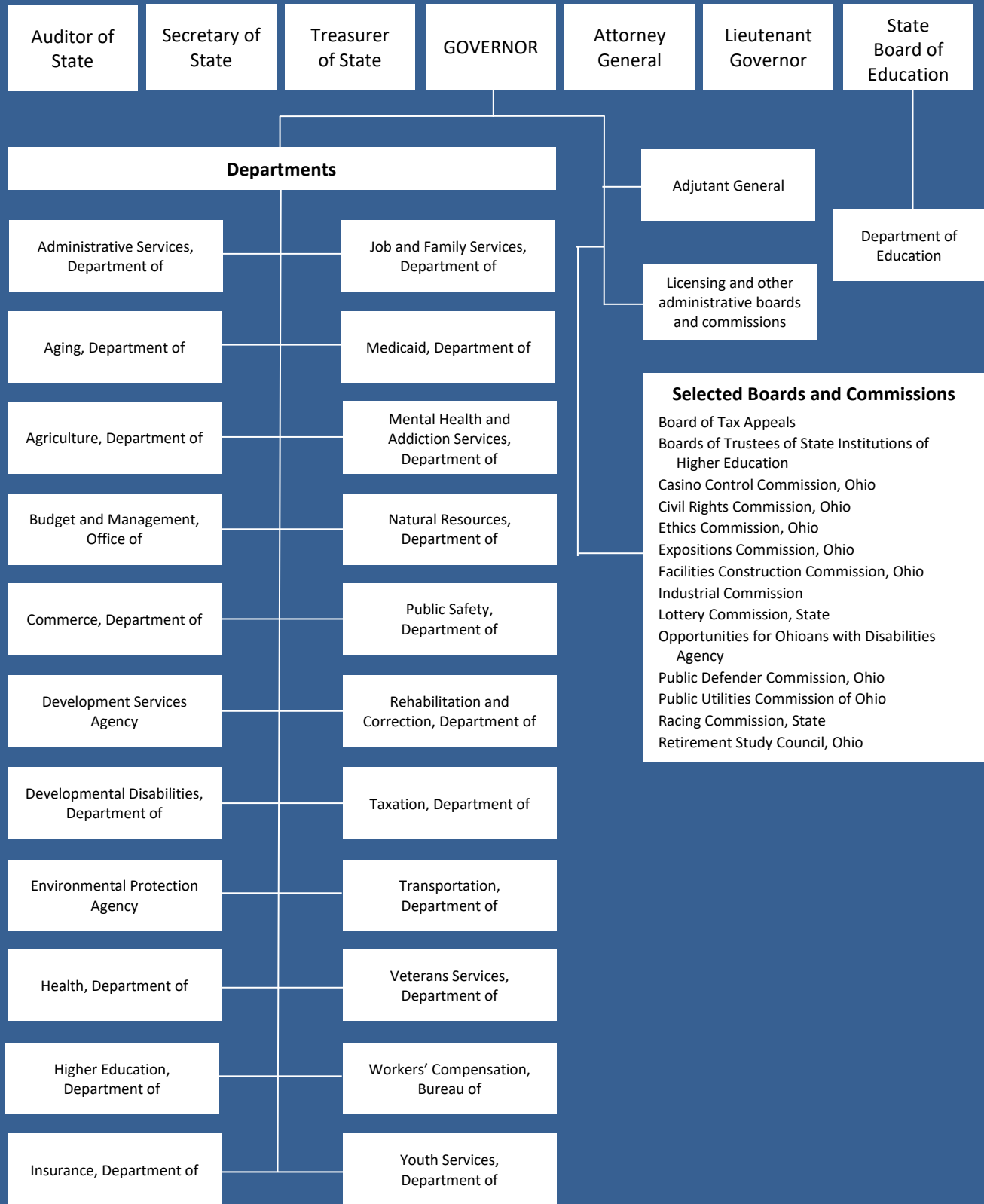
The Organization of the Executive Branch

The executive branch of Ohio's state government includes six elected officials: the Governor and Lieutenant Governor (elected as a team), the Attorney General, the Secretary of State, the Auditor of State, and the Treasurer of State. All are elected in even-numbered, nonpresidential election years to serve four-year terms.

In addition to these officials, the executive branch includes the State Board of Education (comprised of 11 members elected from individual districts and eight members appointed by the Governor with the advice and consent of the Senate), the Chancellor of Higher Education (appointed by the Governor with the advice and consent of the Senate), the Adjutant General (appointed by the Governor as the military chief of staff), and the departments and other agencies responsible for administering laws and implementing state policy. The executive branch also includes many independent boards and commissions established for specific purposes. The Governor supervises these departments and agencies and appoints department directors as well as members of numerous boards and commissions, many also with the advice and consent of the Senate. The Superintendent of Public Instruction, however, is appointed by and is under the policy supervision of the State Board of Education.

Organizational Chart of the Executive Branch

<https://ohio.gov/wps/portal/gov/site/government>
<https://ohio.gov/wps/portal/gov/site/government/state-agencies/state-agencies>



Relationship of Executive Branch to Legislative Branch

The various agencies of Ohio’s state government, including departments, boards, and commissions, as well as offices of the several elected state officials, often participate in the legislative process. They frequently serve as important sources of information. Their reports, research, opinions, and activities can raise issues that require legislative action to resolve. Their testimony receives considerable attention in legislative committee hearings. Most agencies closely follow the progress of legislation affecting their functions.

Frequently, agencies designate a person to function as a liaison to the General Assembly. Legislative liaisons respond to questions about what they perceive to be the effects of a given proposal on their agencies. Legislative liaisons also can assist legislators and their staffs by:

- Providing information about agency operations;
- Researching questions on proposed legislation;
- Facilitating and expediting information requests;
- Assisting in handling constituent problems;
- Directing inquiries to the appropriate people within their agencies; and
- Relaying legislators’ concerns to the agency directors.

The Governor also maintains a staff to follow legislation of special interest to the Governor. Members of the Governor’s staff also assist in the development of the administration’s budget and legislative agenda.

Overview of Administrative Rulemaking Procedure

The General Assembly often enacts laws granting agencies within the executive branch authority to adopt rules to carry out certain policies or to administer programs that have been statutorily assigned to those agencies. A “rule” is a formal, written statement of law that has been established by a state agency under the authority delegated to the agency by statute. Because administrative rules, once adopted, have the force of law, it is important to be familiar with the process by which administrative rules are adopted in Ohio.

Rulemaking Procedure in General

A rule becomes effective only if the agency adopting it has complied with the statutorily prescribed rulemaking process. There are two general statutory processes under which rules may be adopted. One appears in Revised Code Chapter 119 and the other in Revised Code section 111.15. In general, if an agency is not required by statute to follow the rulemaking procedure of Chapter 119, it must follow the rulemaking procedure of section 111.15. Rules subject to adoption under the former are called “119” rules. Rules subject to adoption under the latter are called “111” rules. Rules also are amended or rescinded under whichever of these rulemaking procedures is applicable.

Business Review of 119 and 111 Rules

Whenever an agency is drafting a proposed 119 rule or 111 rule, the agency first must evaluate a draft of the rule against a business impact analysis instrument before it adopts the rule under the 119 or 111 rulemaking process. If, based on that evaluation, the draft rule will not have a statutorily defined “adverse impact on businesses,” the agency may proceed with the rulemaking process. If, however, based on that evaluation, the draft rule will have an adverse impact on businesses, the agency must comply with a business review process, which includes preparing a business impact analysis of the draft rule and electronically transmitting that analysis and the draft rule to the Common Sense Initiative Office (CSI), before proceeding with the rulemaking process. CSI evaluates the analysis and draft rule and may make recommendations to the agency on how the rule may be revised to eliminate or reduce any adverse impact it might have on businesses. Additionally, if the proposed rule requires a person to obtain a financial responsibility instrument as a condition for licensure, an agency must certify to CSI that the agency conducted a search to determine that the required financial responsibility instrument is readily available in the required amount.

The agency considers any recommendations made by CSI and either incorporates into the draft rule features the recommendations suggest will eliminate or reduce any adverse impact the rule might have on businesses, or documents in writing the reasons why the recommended features are not being incorporated into the rule. The agency also prepares a memorandum of response that identifies recommended features that were and were not incorporated into the draft rule, explains how the incorporated features eliminate or reduce any adverse impact the draft rule might have on businesses, and explains why features were not incorporated into the draft rule. The agency cannot begin the 119 or 111 rulemaking process earlier than the 16th business day after it transmitted the draft rule and business impact analysis electronically to CSI.

A “rule” is a written statement of law established by a state agency under statutory authority delegated to the agency. Most rules are adopted according to one of two statutorily prescribed rulemaking procedures as outlined in R.C. Chapter 119 and R.C. section 111.15. The main difference between these two procedures is that an agency adopting a 119 rule must give public notice of and hold public hearings on a rule; an agency adopting a 111 rule does not do either. Every administrative rule is either published or referenced in the Ohio Administrative Code.

Rules Adopted under Revised Code Chapter 119

An agency that intends to adopt a 119 rule must give public notice of its intention in the *Register of Ohio* at least 30 days before the date set for a hearing on the rule. In addition, at least 65 days before adopting the rule, the agency must electronically file the proposed rule with the Secretary of State, the Director of the Legislative Service Commission (LSC), and the Joint Committee on Agency Rule Review (JCARR). Further, if the proposed rule has an adverse impact on businesses, the filing also must include the business impact analysis, any recommendations the agency received from CSI, and the agency’s memorandum of response. (JCARR is the permanent legislative committee established to review administrative rules and, in some cases,

recommend that the General Assembly invalidate them. See [Chapter 7](#) for a discussion of JCARR’s legislative oversight role.) The agency must hold a public hearing on the proposed rule not earlier than the 31st day nor later than the 40th day after this filing.

The Governor may suspend the normal 119 rulemaking procedure for a particular 119 rule if the Governor determines that an emergency exists. The agency then may adopt the rule immediately without complying with the notice, hearing, and other requirements that normally apply when adopting 119 rules. An emergency 119 rule takes effect immediately upon being filed but expires on the 121st day after its effective date – unless, in the meantime, the agency has readopted the rule according to the normal 119 procedure.

Rules Adopted under Revised Code Section 111.15

An agency that intends to adopt a 111 rule must electronically file the proposed rule with the Secretary of State, the Director of LSC, and JCARR at least 65 days before adopting the rule. If the proposed rule has an adverse impact on businesses, the agency also must file the business impact analysis, any recommendations the agency received from CSI, and the agency’s memorandum of response. Agencies do not give public notice of proposed 111 rules, nor are these rules subject to a public hearing.

Register of Ohio

The *Register of Ohio* is an electronic publication to which members of the public may refer for notice of and information about rulemaking processes. The *Register* publishes all rulemaking documents filed with LSC. The *Register* is located at www.registerofohio.state.oh.us.

An agency may adopt an emergency 111 rule immediately without complying with the proposal requirements that normally apply to 111 rules. (The Governor’s authorization is not required.) An emergency 111 rule takes effect immediately upon being filed or on a later date and time specified by the adopting agency, but expires on the 121st day after adoption – unless, in the meantime, the agency has readopted the rule according to the normal 111 procedure.

Periodic Review of Rules

Every state agency must assign a date for review by the agency of each of its rules. JCARR can order an agency to review a rule earlier than that date if the rule is having an unintended or unexpected effect on business.

The review is to determine whether (1) the rule should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted, (2) the rule needs amendment or rescission to give more flexibility at the local level, (3) the rule needs amendment or rescission to eliminate unnecessary paperwork, (4) the rule improperly incorporates material by reference, (5) the rule duplicates, overlaps with, or conflicts with other rules, (6) the rule has an adverse impact on businesses, (7) the rule contains words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive, and (8) the rule requires liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure. In making its review, the agency must consider the continued need for the rule, any complaints or comments received concerning the rule, and any relevant factors that have changed in the subject area affected by the rule.

Before a rule’s review date, the agency must determine whether or not the rule should be amended or rescinded. If the agency decides that a rule should be amended or rescinded, it must follow the same procedure it used in adopting the rule. If the agency has determined that the rule does not need to be amended or rescinded, the agency must comply with a business review process similar to the process discussed previously and electronically file a copy of the rule, a complete and accurate rule summary and fiscal analysis, and, if applicable, a business impact analysis of the rule, any recommendations received from CSI, and any memorandum of response, with the Secretary of State, the Director of LSC, and JCARR.

If the agency notifies JCARR that a rule should continue as is, JCARR must give public notice of the agency’s determination in the *Register of Ohio* for four consecutive weeks. During the 90-day period following receipt of an agency’s notice and after the four-week public notice period has ended, JCARR may recommend invalidation of a rule if any of the following applies: (1) the agency, in reviewing the rule and in recommending its continuance without amendment or rescission, improperly applied the review criteria specified in the Revised Code; (2) the rule has an adverse impact on business and the agency has failed to demonstrate that the regulatory intent of the rule justifies its adverse impact; or (3) the agency improperly incorporated material by reference into the rule. The General Assembly may adopt a concurrent resolution invalidating a rule following a recommendation from JCARR to do so. If JCARR does not make a recommendation for invalidation during the 90-day period following an agency’s filing notice with JCARR, the rule continues in effect without amendment until its next review date.

Quasi-Judicial and Other Authority of Agencies

The General Assembly may delegate to administrative agencies quasi-judicial authority in addition to quasi-legislative (rulemaking) authority. Quasi-judicial authority is the power to adjudicate (decide) specific cases. Adjudication is much like a lawsuit in a court; however, adjudications result in an administrative agency’s, and not a court’s, application of the law to decide a specific case. An example of an adjudication is an administrative agency’s decision whether a particular individual meets the eligibility criteria specified in one of the agency’s rules for participation in a governmental program.

Although quasi-legislative and quasi-judicial powers are perhaps most commonly thought of when the General Assembly delegates authority to administrative agencies, the General Assembly may delegate other types of authority as well, such as the power to issue, deny, suspend, or revoke licenses, the power to set fees, and the power to inspect.

Reduction in Regulatory Restrictions

The 2019 operating budget act (H.B. 166 of the 133rd General Assembly) enacted a stipulation that, through June 30, 2023, “a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions.” Importantly, this reduction requirement does not apply to rules, but rather to regulatory restrictions contained in rules. A “regulatory restriction” is a provision of a rule that requires or prohibits an action. This requirement applies to agencies and departments within the Governor’s cabinet and the Department of Education, the State Lottery Commission, the Ohio Casino Control Commission, the State Racing Commission, and the Public Utilities Commission.

Incorporations by Reference into Rules

An agency incorporates text or other material into a rule by reference when it refers in the rule to the text or other material as if it were spelled out or otherwise reproduced in the rule. When an agency incorporates material into a rule by reference, the agency must provide a citation in the rule that provides information that enables a reasonable person to find and inspect the incorporated material without charge. The citation must specify the date/edition/version of the incorporated material, and may link to a website where the material is located or that has information about where to locate the material. JCARR reviews incorporations by reference and can recommend invalidation of a rule if the incorporated material is not made accessible to JCARR or if the incorporation by reference fails to meet the standards for incorporation by reference as described above. LSC maintains a file of the incorporated materials.

Principles of Law or Policy

An agency periodically must review its operations to determine if the agency utilizes a principle of law or policy that ought to be stated in a rule. If so, the agency must state the principle or policy in a rule or discontinue its reliance on the principle or policy. JCARR or a person who was impacted by a principle or policy may initiate a process to require an agency to state the principle or policy in rule.

Publication of Rules in the Ohio Administrative Code

The Ohio Administrative Code is the principal means of communicating the law embodied in rules. The Code contains the full text of, or a reference to, every rule that has been adopted by state administrative agencies. The great majority of rules are published in full. The only exceptions are “internal management rules,” which are published by reference, and “school rules,” which are published in full in electronic versions of the Administrative Code but by reference in print versions. “Internal management rules” are rules that govern an agency’s day-to-day staff procedures and operations and that do not affect the rights of private individuals. “School rules” are rules adopted by state institutions of higher education. Copies of rules that have been published by reference are available from LSC or the adopting agency.