



Ohio Legislative Service Commission

Bill Analysis

Lynda J. Jacobsen

S.B. 2

129th General Assembly
(As Introduced)

Sen. Hughes

BILL SUMMARY

Establishment of new small business rule review process

Overview

- Eliminates the existing small business rule review process and establishes a new small business rule review process to determine whether administrative rules proposed by state agencies have an adverse impact on small businesses and, if so, to reduce or eliminate that adverse impact (R.C. 121.24--*repealed by the bill*; Section 3 of the bill).
- Defines a "small business" as an independently owned and operated business entity, including affiliates, that has fewer than 500 full-time employees or gross annual sales of less than \$6 million, the principal location of which is located in Ohio (R.C. 108.11 and 121.81(C)).
- Defines "adverse impact on small businesses," the analytical standard of the new small business rule review process, as a provision of a proposed rule that has any of the following effects:
 - Requires a license, permit, or any other prior authorization to engage in or operate a line of business;
 - Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action, for failure to comply with its terms;
 - Requires the report of information as a condition of compliance; or
 - Requires a small business otherwise to spend time or make expenditures that are not directly related to its business operations. (R.C. 108.12.)

- Defines a "proposed rule" as a proposed amendment, adoption, or rescission of a rule, and includes a proposed amendment, adoption, or rescission of a rule in both its original and any revised form.
- Specifies that "proposed rule" does not include an emergency rule, but specifies that "proposed rule" does include a nonemergency rule that is proposed to replace an expiring or expired emergency rule. (R.C. 108.11 and 121.81(B).)
- Defines an "agency" as a state agency that is required to file proposed rules for legislative review (R.C. 121.81(A)).

Common Sense Initiative Office

- Creates the Common Sense Initiative Office (CSIO) within the Office of the Lieutenant Governor.
- Requires the Lieutenant Governor to organize, and as it becomes necessary or advisable to reorganize, the office. The Lieutenant Governor 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 electronic rule-filing system also is 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.
- Requires the Lieutenant Governor to appoint professional, technical, and clerical personnel who are necessary for the work of the office to be carried out efficiently and successfully.
- Specifies that the employees serve at the pleasure of the Lieutenant Governor, and are in the unclassified service.
- Requires the Lieutenant Governor to provide the office with office space, and with furnishings, equipment, and resources, as are necessary for its work to be carried out efficiently and successfully.
- Requires the office to develop performance measures according to which its discharge of its duties can be evaluated for efficiency and effectiveness.
- Requires the office to evaluate its work against the performance measures on a continuing basis, and to prepare an annual summary of the work of the office evaluated against the performance measures. (R.C. 108.21; Sections 7 and 8 of the bill).

Establishment of Small Business Impact Analysis Instrument

- Requires the CSIO to develop, and as it becomes necessary or desirable to improve, a "Small Business Impact Analysis Instrument," the analytical tool of the new small business rule review process, that includes:
 - Standards encouraging agencies to draft proposed rules in such a manner that the rules will be as easy to understand as their subject matter permits;
 - Performance measures that can be applied to evaluate the likely efficiency and effectiveness of a proposed rule in achieving its regulatory objectives;
 - Standards for evaluating alternative means of regulation that might reduce or eliminate the adverse impact a proposed rule might have on small businesses (see below);
 - Standards that will promote transparency, predictability, consistency, and flexibility in the implementation and operation of a proposed rule;
 - Standards that will promote an overall favorable balance in a proposed rule between its regulatory objectives and the costs of compliance it imposes on regulated persons;
 - Standards that require an agency to encourage small businesses that might be adversely impacted by a proposed rule to participate in the rule-making process;
 - Standards that will encourage small businesses that are or may be adversely impacted by a proposed rule to offer advice and assistance to the agency when the proposed rule has been adopted and is being implemented and administered; and
 - Any other standards or measures, or any other criteria, that will reduce or eliminate adverse impacts on small businesses and foster improved regulation and economic development in the state.
- Specifies that alternative means of regulation include, and are not limited to, less stringent compliance or reporting requirements, less stringent schedules or deadlines, consolidation or simplification of requirements, establishment of performance standards to replace operational standards, and exemption of small businesses.
- Specifies that the instrument does not need to be adopted as a rule.

- Requires the current instrument to be published in the *Register of Ohio*. The first edition of the instrument is to be so published as soon as possible after the effective date of the bill but not later than October 3, 2011. (R.C. 108.13; Section 6 of the bill.)

Evaluation of proposed rules for adverse impacts on small businesses

- Requires an agency, in the course of developing a proposed rule that it intends to file for legislative review, to do all of the following before so filing the proposed rule:

--(1) Evaluate the proposed rule against the Small Business Impact Analysis Instrument and incorporate features into the proposed rule that will eliminate or adequately reduce any adverse impact the proposed rule might have on small businesses;

--(2) Prepare a "Small Business Impact Analysis" that describes the evaluation, identifies any features that were incorporated into the proposed rule as a result of the evaluation, and explains how those features (if any) eliminate or adequately reduce any adverse impact on small businesses the proposed rule might have. (R.C. 121.82(A) and (B).)

- Requires an agency, when it files a proposed rule for legislative review, also to file a copy of the Small Business Impact Analysis (R.C. 111.15(D), 119.03(H), and 121.83(A)).
- Requires the Joint Committee on Agency Rule Review (JCARR) to reject a proposed rule if it is not accompanied by a Small Business Impact Analysis or is accompanied by an inadequately prepared Small Business Impact Analysis (R.C. 121.83(B)).
- Specifies that JCARR's rejection of a rule does not preclude the agency from refiling the rule after complying with the new small business rule review process.
- Authorizes JCARR to recommend legislative invalidation of a proposed rule if the agency has not demonstrated that the regulatory intent of the proposed rule outweighs its adverse impact on small businesses (R.C. 119.03(I)(1)(f)).

Public comment on rules

- Requires the CSIO to create a system through which any person can comment to the CSIO about (1) the adverse impact on small businesses a proposed rule might have, (2) the adverse impact on small businesses a rule currently in effect is having, or (3) the adverse impact on small businesses the implementation or administration of a rule currently in effect is having.

- Requires the CSIO to prepare a plan for the comment system, and to revise or replace the plan to improve the comment system in light of learning, experience, or technological development.
- Requires the plan, at a minimum, to provide for accepting comments that are delivered to the CSIO, and to provide for establishing telephonic and electronic means whereby comments can be made.
- Requires the CSIO to forward comments to the state agency having jurisdiction over the rule, and specifies that the CSIO has no other duty with regard to the comments. (R.C. 108.22.)

Transition to new small business rule review process

- Provides for transition to the new small business rule review process (Sections 5, 6, and 7 of the bill).
- Specifies that the existing small business rule review process is superseded by the new small business rule review process on January 1, 2012.
- Specifies that the new small business rule review process applies to the original and any revised version of a proposed rule that is filed on or after January 1, 2012.
- Specifies that the existing small business rule review process applies to the original version of a proposed rule that is filed before January 1, 2012, and that the new small business rule review process applies to any revised version of the proposed rule that is filed on or after that date.
- Makes conforming amendments to adjust or remove statutory language that is affected by the repeal of the existing small business rule review process (R.C. 103.0511, 111.15(D), (E), and (F), 117.20(A)(2), 119.03(B), (H), and (I)(1)(d), 121.39(D)(4), 122.08, 122.081, 122.94(B), and 1710.02(B); Section 4 of the bill).

Customer service performance standards for state agencies

- Requires the CSIO, in consultation with the Director of Administrative Services, to develop customer service performance standards for state agencies and their officers and employees (R.C. 108.23).
- Requires the standards to be addressed to the several state agencies as they function as part of state government, and to the several positions held by a state agency's officers and employees.

- Specifies that the standards pertaining to an agency's officers and employees must be based on the job descriptions of the positions they hold in the agency.
- Specifies that the standards do not need to be adopted by rule. But requires the standards to be reduced to writing, and requires the standards that pertain to an agency to be transmitted to the director or other head of the agency.
- Requires a state agency, and its officers and employees, to comply with the customer service performance standards.
- Provides for evaluation of a state agency's compliance with the standards by the Director of Budget and Management and the committees of the Senate and House of Representatives having jurisdiction over the state operating budget, as part of the consideration of the state agency's biennial budget.
- Specifies that if the evaluation is of the Office of Budget and Management, evaluation by the legislative committees is sufficient.
- Requires an officer's or employee's compliance with the standards to be evaluated as part of the officer's or employee's periodic performance reviews.
- Adds that a state agency's and its officers' and employees' compliance with the standards may be evaluated as part of any performance audit of the state agency. (R.C. 121.91.)

HISTORY

ACTION	DATE
Introduced	02-01-11

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