



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. S.B. 2\*

129th General Assembly

(As Reported by S. Government Oversight & Reform)

Sen. Hughes

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## BILL SUMMARY

### Establishment of new business rule review process

#### Overview

- Eliminates the existing small business rule review process and establishes a new business rule review process to determine whether administrative rules proposed by state agencies have an adverse impact on businesses and, if so, to reduce or eliminate that adverse impact (R.C. 121.24--*repealed by the bill*; Section 3 of the bill).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 "adverse impact on businesses," the analytical standard of the new business rule review process, as a provision of a draft 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; or
  - Requires the report of information as a condition of compliance. (R.C. 107.52.)
- Defines a "draft rule" as any newly proposed rule and any proposed amendment, adoption, or rescission of a rule that has not yet been filed for legislative review, and

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\* This analysis was prepared before the report of the Senate Government Oversight and Reform Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

includes a proposed amendment, adoption, or rescission of a rule in both its original and any revised form.

- Specifies that "draft rule" does not include an emergency rule, but specifies that "draft rule" does include a nonemergency rule that is proposed to replace an expiring or expired emergency rule. (R.C. 107.51 and 121.81(B).)
- Defines an "agency" as a state agency that is required to file draft rules for legislative review, and specifies that "agency" does not include the offices of Governor, Lieutenant Governor, Auditor, Secretary of State, Treasurer, or Attorney General (R.C. 121.81(A)).

### **Common Sense Initiative Office**

- Creates the Common Sense Initiative Office (CSIO) within the Office of the Governor.
- Requires the Governor to organize, and as it becomes necessary or advisable to reorganize, the office. The 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 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 Governor, and are in the unclassified service.
- Requires the 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.
- Authorizes the Governor to delegate any or all of the Governor's responsibilities regarding the CSIO, as the Governor deems appropriate.
- 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. 107.55 and 107.61; Sections 7 and 8 of the bill.)

## Business Impact Analysis Instrument

- Requires the CSIO to develop, and as it becomes necessary or desirable to improve, a "Business Impact Analysis Instrument," the analytical tool of the new business rule review process, that includes:
  - Standards encouraging agencies to propose draft 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 draft rule in achieving its regulatory objectives;
  - Standards for evaluating alternative means of regulation that might reduce or eliminate the adverse impact a draft rule might have on businesses (see below);
  - Standards that will promote transparency, predictability, consistency, and flexibility in the implementation and operation of a draft rule;
  - Standards that will promote an overall favorable balance in a draft rule between its regulatory objectives and the costs of compliance it imposes on regulated persons;
  - Standards that require an agency to encourage businesses that might be adversely impacted by a draft rule to participate in the rule-making process;
  - Standards that will encourage businesses that are or may be adversely impacted by a draft rule to offer advice and assistance to the agency when the draft 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 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 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. 107.53; Section 6 of the bill.)

## Evaluation of draft rules for adverse impacts on businesses

- Requires, in the course of developing a draft rule that an agency intends to file for legislative review, all of the following steps to be completed before the draft rule is so filed:
  - (1) The agency is to evaluate the draft rule against the Business Impact Analysis Instrument. If, based on that evaluation, the draft rule will not have an adverse impact on businesses, the agency may proceed with the rule-filing process.
  - (2) If the evaluation determines that the draft rule will have an adverse impact on businesses, the agency must incorporate features into the draft rule that will eliminate or adequately reduce any adverse impact the draft rule might have on businesses.
  - (3) The agency is to prepare a "Business Impact Analysis" that describes the evaluation, identifies any features that were incorporated into the draft rule as a result of the evaluation, and explains how those features (if any) eliminate or adequately reduce any adverse impact on businesses the draft rule might have.
  - (4) The agency is to transmit a copy of the draft rule and the Business Impact Analysis electronically to the CSIO, which information must be made available on the CSIO's web site.
  - (5) Requires the CSIO, when it receives a draft rule and Business Impact Analysis from an agency, to evaluate the draft rule and analysis against the Business Impact Analysis Instrument and any other relevant criteria.
  - (6) Permits the CSIO to prepare and transmit recommendations to the agency on how the draft rule might be revised to eliminate or reduce any adverse impact on businesses and requires any such recommendations to be transmitted electronically to the agency. (R.C. 107.54.)
  - (7) The agency is to consider any recommendations made by the CSIO with regard to the draft rule, and either incorporate features the recommendations suggest will eliminate or reduce the adverse impact on businesses or document, in writing, the reasons those recommendations are not being incorporated.
  - (8) The agency is to prepare a memorandum of response identifying features suggested by the CSIO recommendations that were or were not incorporated in the draft rule and explaining why the features that were not incorporated into the draft were not so incorporated. (R.C. 121.82.)

- Prohibits an agency from filing a proposed rule for legislative review earlier than the 16th business day after transmitting the proposed rule and Business Impact Analysis to the CSIO (R.C. 121.82).
- Requires an agency, when it files a proposed rule for legislative review, also to file a copy of the Business Impact Analysis, any recommendations received from the CSIO, and the agency's memorandum of response, if any (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 Business Impact Analysis or is accompanied by an inadequately prepared 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 business rule review process.
- Authorizes JCARR to recommend legislative invalidation of a proposed rule if the agency has not demonstrated, through the Business Impact Analysis, CSIO recommendations, and Memorandum of Response, that the regulatory intent of the proposed rule justifies its adverse impact on businesses (R.C. 119.03(I)(1)(f)).
- Requires rules subject to existing law's five-year rule review process to be evaluated for their adverse impact on businesses, and authorizes JCARR to invalidate those rules if the adverse impact is not reduced or eliminated, in the same manner as for new rules (R.C. 119.032).

### **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 businesses a draft rule might have, (2) the adverse impact on businesses a rule currently in effect is having, or (3) the adverse impact on 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 Internet-based means whereby comments can be made, and also requires the CSIO's web site also to provide notification to the public of any draft rule that may have an adverse

impact on businesses and to include copies of the rule and the Business Impact Analysis.

- 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 business rule review process**

- Provides for transition to the new 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 business rule review process on January 1, 2012.
- Specifies that the new 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 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).
- Requires, not later than 180 days after the JobsOhio bill (H.B. 1) takes effect, the Governor, in consultation with the Director of Development, to determine whether the Office of Small Business should be transferred to the CSIO or alternatively the best way to avoid duplication of services by those offices (Section 9).

### **Small Business Advisory Council**

- Establishes the Small Business Advisory Council in the Governor's Office to advise the Governor, Lieutenant Governor, and the CSIO on the adverse impact proposed rules might have on small businesses.
- Specifies that the Council consists of nine members, five of whom are appointed by the Governor, two of whom are appointed by the President of the Senate, and two of whom are appointed by the Speaker of the House of Representatives.

- Requires the appointing authorities to consult with one another to appoint only individuals who are representatives of small businesses, in such a manner that the Council is composed of representatives of small businesses that are of different sizes, engaged in different lines of business, and located in different parts of the state.
- Requires the Council to meet at least quarterly.
- 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, and that has operations in Ohio (R.C. 107.63).

### **Customer service performance standards for state agencies**

- Requires each state agency to develop customer service performance standards for each employee of the agency whose duties include a significant level of contact with the public.
- Specifies that the standards must be based on the job descriptions of the positions employees 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 to be incorporated into employee policy manuals, job descriptions, and employee performance evaluations.
- 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 employee's compliance with the standards to be evaluated as part of the employee's periodic performance reviews.
- Adds that a state agency's and employees' compliance with the standards may be evaluated as part of any performance audit of the state agency. (R.C. 121.91.)

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## HISTORY

### ACTION

### DATE

Introduced  
Reported, S. Government Oversight & Reform

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