



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. S.B. 293

132nd General Assembly
(As Passed by the Senate)

Sens. Peterson and McColley, Obhof, Wilson, Bacon, Hoagland, Huffman, LaRose, Coley, Uecker, Jordan, Balderson, Eklund, Hackett, Hottinger, Lehner, Oelslager, Terhar

BILL SUMMARY

- Requires each state agency to reduce regulatory restrictions by 30% of the amount identified in a base inventory by amending or rescinding rules containing the restrictions.
- Defines "state agency" as essentially all cabinet-level departments, the offices of the Attorney General, Secretary of State, Auditor of State, and Treasurer of State, as well as the State Lottery Commission, Ohio Casino Control Commission, State Racing Commission, and the Public Utilities Commission of Ohio.
- States that rules adopted by an otherwise independent official or agency organized under a state agency are attributed to the state agency for the purposes of the bill.
- Clarifies that each state agency must reduce its overall regulatory restrictions by 30%, but each independent entity or official organized under the agency is not required to meet the 30% threshold.
- Allows an administrative department head to direct otherwise independent officials or state agencies organized under the department to reduce regulatory restrictions.
- Describes a regulatory restriction as requiring or prohibiting an action, and commonly containing words and phrases like "shall," "must," "require," "shall not," "may not," and "prohibit."
- States that a rule of law, phrased in indicative mood, also may constitute a regulatory restriction.

- Directs each agency to achieve a 10% reduction in regulatory restrictions before December 31, 2020; a 20% reduction before December 31, 2021; and the 30% reduction before December 31, 2022.
- Prohibits an agency from adopting new regulatory restrictions that would increase the percentage of restrictions in the agency's rules.
- Requires an agency that does not achieve a reduction in regulatory restrictions according to the required schedule to eliminate two restrictions before enacting a new rule containing a restriction.
- Allows an agency that does not achieve a required percentage reduction in regulatory restrictions by a deadline to appear before the Joint Committee on Agency Rule Review (JCARR) to show cause why the agency could not achieve the required reduction.
- Effective January 1, 2023, limits the total number of regulatory restrictions that may be in effect in Ohio to a number that is 70% of the total regulatory restrictions identified by agencies in their base inventories.
- Requires an agency to produce a base inventory of rules containing regulatory restrictions before December 31, 2019.
- Requires an agency to produce a revised inventory and historical progress report before March 15, 2021, and annually thereafter until the agency has reduced the regulatory restrictions identified in its rules by 30%.
- Requires an agency, as part of a rule's five year review, to review the rule for regulatory restrictions and consider whether the rule should be amended or rescinded to eliminate the restrictions.
- Directs JCARR to compile the inventories and reports of the agencies into a comprehensive inventory and progress report annually before June 15, beginning in 2020, and to describe the work of the joint committee over the past year in assisting agencies in each report.
- Requires JCARR to consult with Legislative Information Systems (LIS) to create and maintain a system to be used by agencies and JCARR to enter data and create, compile, and send inventories and reports.
- Allows JCARR to recommend the adoption of a resolution invalidating a proposed amendment or rescission of a rule containing a regulatory restriction if the amendment or rescission is not justified by the agency.



- Requires JCARR to consult with LIS to create a website to convey information about agency's progress in reducing regulatory restrictions.

CONTENT AND OPERATION

Agencies to reduce regulatory restrictions by 30%

The bill requires state agencies to reduce the number of regulatory restrictions in the agency's rules by 30%, by amending or rescinding rules containing regulatory restrictions.¹ The bill defines "state agency" as an administrative department created under R.C. 121.02 or an administrative department head appointed under R.C. 121.03, (essentially all cabinet-level departments) and state agencies organized under an administrative department or administrative department head. "State agency" also includes the offices of the Attorney General, Secretary of State, Auditor of State, and Treasurer of State, as well as the State Lottery Commission, Ohio Casino Control Commission, State Racing Commission, and the Public Utilities Commission of Ohio.² Rules adopted by an otherwise independent official or entity organized under an agency are attributed to the agency under which the official or entity is organized for the purposes of the bill. This means that an agency must include rules containing regulatory restrictions adopted by those officials or entities in required inventories under the bill. Each state agency is required to reduce its overall regulatory restrictions by 30%, but each otherwise independent official or entity organized under the agency is not required to achieve a 30% reduction so long as the agency overall achieves the goal.

For the purposes of the bill, a "regulatory restriction" requires or prohibits an action, and commonly contains words and phrases like "shall," "must," "require," "shall not," "may not," and "prohibit." A rule of law, phrased in indicative mood (for example: an agency will reduce rules), can also constitute a regulatory restriction. The 30% reduction is based on the number of regulatory restrictions identified in a base inventory conducted by all agencies (see "**Agency to produce base inventory of regulatory restrictions**," below). The bill directs each agency to achieve a 10% reduction in regulatory restrictions before December 31, 2020; a 20% reduction before December 31, 2021; and the 30% reduction before December 31, 2022. Current law does not address regulatory restrictions or provide for their reduction.

After an agency has achieved a reduction in regulatory restrictions, it cannot adopt additional regulatory restrictions that would cancel out the reduction. The agency

¹ R.C. 121.931(A).

² R.C. 121.93.



also is encouraged to continue to reduce regulatory restrictions after the 30% reduction has been achieved.

If an agency does not achieve the required reduction in regulatory restrictions according to the schedule above, the bill prohibits the agency from adopting any new regulatory restriction unless it simultaneously removes two or more existing regulatory restrictions. This prohibition remains in effect until the agency achieves the required 30% reduction in regulatory restrictions. The agency also is barred from merging two existing regulatory restrictions into a single restriction in order to attempt to reduce the overall number of restrictions.³ The Joint Committee on Agency Rule Review (JCARR) may recommend statutory changes to the General Assembly to accommodate an agency that shows cause why the agency could not achieve the required reduction (see "**Agency to appear before JCARR if reduction is not achieved**," below).

Additionally, effective January 1, 2023, the total number of regulatory restrictions that may be effective at any one time in Ohio is capped at 70% of the number identified by all state agencies in the base inventories created by the agencies. An agency must contact JCARR before adopting a rule containing a regulatory restriction, and if JCARR determines that the state has reached the cap of regulatory restrictions, the agency may not adopt the restriction. No agency may adopt a regulatory restriction if that restriction would cause the state to exceed the 70% cap on restrictions.⁴

Administrative department heads may direct reduction in regulatory restrictions

The bill authorizes the heads of administrative departments created under R.C. 121.02 or administrative department heads appointed under R.C. 121.03 to direct otherwise independent officials or state agencies organized under the department to reduce regulatory restrictions in accordance with the bill.⁵ Current law does not grant administrative department heads this power.

Agency to produce base inventory of regulatory restrictions

The bill requires an agency to review the agency's existing rules to identify rules that have one or more regulatory restrictions and to prepare a base inventory of those existing rules containing regulatory restrictions, stating the number of those rules. Current law does not require an inventory of rules containing regulatory restrictions. The base inventory must be produced before December 31, 2019. In the base inventory

³ R.C. 123.93 and 123.931.

⁴ R.C. 121.933.

⁵ R.C. 121.031.



of rules containing regulatory restrictions, the agency must provide all of the following information:

- The regulatory restriction;
- The rule in which the regulatory restriction appears;
- The statute under which the regulatory restriction was adopted;
- Whether removing the regulatory restriction would require a change to a statute; and
- Any other information JCARR considers necessary.

An agency is not required to include in its inventory internal management rules or rules required to be adopted verbatim by the controlling statute. After completing the inventory, the agency must post it on its website, and send a copy to JCARR, which will review the inventory and send it to the General Assembly.⁶

Agency to prepare annual progress report and revised inventory

The bill requires an agency, not later than March 15, 2021, to prepare an updated inventory and historical report of its progress in achieving its regulatory reduction goal according to the required regulatory reduction schedule (see "**Agencies must reduce regulatory restrictions by 30%,"** above). Under the bill, an agency calculates the net reduction in regulatory restrictions by adding any restrictions enacted since the previous inventory to the number of restrictions identified in the previous inventory, and then subtracting from that sum the number of restrictions eliminated since the previous inventory. The result is then subtracted from the number of regulatory restrictions identified in the base inventory, and that result divided by the number of restrictions in the base inventory to determine the percentage reduction in regulatory restrictions.

For example: an agency identifies 10 regulatory restrictions in its base inventory. In the next year's inventory, the agency indicates that it has enacted 2 new restrictions, and eliminated 4 restrictions. The calculation would then be: (10 existing restrictions + 2 restrictions enacted) - 4 restrictions eliminated = 8 net restrictions. (10 base restrictions – 8 net restrictions) / 10 base restrictions = .20 or 20%. Therefore, the agency has reduced its net regulatory restrictions from 10 to 8 and has achieved a 20% net reduction in restrictions from the base inventory.

⁶ R.C. 101.68, not in the bill, and 121.93.

The agency is required to produce the revised inventory and historical report annually by March 15 until the agency has achieved the required 30% reduction in regulatory restrictions. The completed reports are to be sent electronically to JCARR, which will review the report and send it to the General Assembly.⁷

Agency to consider eliminating regulatory restrictions before five year review

Agencies currently are required to review their rules before each five year review by JCARR to make determinations about amending or rescinding a rule according to criteria such as whether a rule adversely impacts businesses, duplicates another rule, or contains words or phrases that are offensive in contemporary usage. The bill requires an agency, before a rule's scheduled five year review date, to review the rule to determine whether a rule containing one or more regulatory restrictions should be amended or rescinded to reduce regulatory restrictions.⁸

Agency to appear before JCARR if reduction is not achieved

Under the bill, if an agency fails to meet a reduction goal discussed above within 120 days of the deadline, JCARR must give the agency an opportunity to appear to show cause why the agency has not achieved the required reduction in regulatory restrictions on schedule.⁹ If JCARR, by a majority vote of its members present in a meeting at which a quorum of its members are present, determines that the agency has shown cause, JCARR must provide recommended statutory changes to the General Assembly to accommodate the agency's failure to meet the required reduction.

JCARR to compile reports and determine aggregate number of restrictions

The bill directs JCARR to advise and assist agencies in preparing inventories of regulatory restrictions and in achieving the specified percentage reductions in regulatory restrictions. Beginning in 2020, the bill requires JCARR to aggregate the inventories and historical progress reports received from all agencies each year into an annual report, produced by June 15, which shows the agencies' overall progress in reducing regulatory restrictions for that year. The report also must describe the work of JCARR over the previous year and provide recommendations for statutory changes, where appropriate, to statutes that are brought to JCARR's attention as contributing to the adoption of regulatory restrictions. The aggregated report prepared by JCARR must

⁷ R.C. 121.931(B).

⁸ R.C. 106.03.

⁹ R.C. 121.932.



be posted on its website, sent to the General Assembly, and provided to the members of JCARR.¹⁰

JCARR may invalidate proposed amendment or rescission

The bill adds an additional "prong" to the current list of findings under which JCARR can recommend that the Senate and the House of Representatives adopt a concurrent resolution invalidating a proposed rule, rule amendment, or rule rescission. The bill adds that JCARR can recommend the adoption of a concurrent resolution invalidating a proposed amendment or rescission of a rule containing a regulatory restriction, the amendment or rescission of which is not justified by the agency.¹¹

JCARR to create and maintain system and website

The bill requires JCARR to consult with Legislative Information Systems (LIS) to create and maintain a system for state agencies to use to enter regulatory restriction data, create required inventories, and to send copies of inventories, reports, and other documents that will assist JCARR in aggregating reports under the bill.¹² JCARR also must consult LIS to develop a website to convey information about the reduction of regulatory restrictions to the public. Current law does not provide for a system or website.

HISTORY

ACTION	DATE
Introduced	04-23-18
Reported, S. Transportation, Commerce, & Workforce	06-27-18
Passed Senate (23-9)	06-27-18

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¹⁰ R.C. 101.352.

¹¹ R.C. 106.021(G).

¹² R.C. 101.353.

