A BILL

To amend sections 106.021, 106.03, and 106.031 and to enact sections 101.354, 101.355, 107.57, 121.031, 121.95, 121.951, 121.952, and 121.953 of the Revised Code to require certain agencies to reduce the number of regulatory restrictions in their administrative rules.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 106.021, 106.03, and 106.031 be amended and sections 101.354, 101.355, 107.57, 121.031, 121.95, 121.951, 121.952, and 121.953 of the Revised Code be enacted to read as follows:

Sec. 101.354. (A) The joint committee on agency rule review shall advise and assist state agencies in preparing base and revised inventories of regulatory restrictions and shall advise and assist state agencies in achieving specified percentage reductions in regulatory restrictions in the Administrative Code in accordance with sections 121.95, 121.951, 121.952, and 121.953 of the Revised Code.
(B) Beginning in 2020, not later than the fifteenth day of June of each year, the executive director of the joint committee shall prepare an historical report aggregating the reports received from state agencies for the preceding year. In the report, the executive director also shall describe the work of the joint committee over the preceding year with respect to reduction of regulatory restrictions and shall indicate, out of the total number of regulatory restrictions inventoried by state agencies, the percentage by which state agencies have reduced those regulatory restrictions. The report also shall provide recommendations for statutory changes, where appropriate, brought to the attention of the joint committee as contributing to the adoption of regulatory restrictions. The executive director shall submit the report to the members of the joint committee, which shall publish the report on its web site and transmit copies of the report electronically to the speaker of the house of representatives and the president of the senate.

Sec. 101.355. The joint committee on agency rule review, in consultation with legislative information systems, shall do both of the following:

(A) Create and maintain a system that state agencies shall use to enter regulatory restriction data, create required inventories, and transmit copies of inventories, reports, and any other documents to the joint committee and the speaker of the house of representatives and the president of the senate under sections 121.95, 121.951, and 121.953 of the Revised Code, and that will assist the joint committee in aggregating reports and performing other prescribed duties under sections 101.354, 121.95, 121.951, 121.952, and 121.953 of the Revised Code;

(B) Establish, maintain, and improve the cut red tape
system, which shall include a web site and shall allow members of the public to request information about regulatory restrictions and to communicate with the joint committee about regulatory restrictions.

Sec. 106.021. If, upon reviewing a proposed rule or revised proposed rule, the joint committee on agency rule review makes any of the following findings with regard to the proposed rule or revised proposed rule, the joint committee may recommend to the senate and house of representatives the adoption of a concurrent resolution to invalidate the proposed rule or revised proposed rule or a part thereof:

(A) The proposed rule or revised proposed rule exceeds the scope of its statutory authority.

(B) The proposed rule or revised proposed rule conflicts with the legislative intent of the statute under which it was proposed.

(C) The proposed rule or revised proposed rule conflicts with another proposed or existing rule.

(D) The proposed rule or revised proposed rule incorporates a text or other material by reference and:

(1) The accompanying citation is not such as reasonably would enable a reasonable person to whom the proposed rule or revised proposed rule applies readily and without charge to find and inspect the incorporated text or other material;

(2) The accompanying citation is not such as reasonably would enable the joint committee readily and without charge to find and inspect the incorporated text or other material, and the agency did not file or otherwise make the incorporated text or other material available without charge to the joint
committee; or

(3) The agency has treated the proposed rule or revised proposed rule in whole or in part as exempt from sections 121.71 to 121.74 of the Revised Code on grounds the incorporated text or other material has one or more of the characteristics described in division (B) of section 121.75 of the Revised Code, but the incorporated text or other material actually does not have any of those characteristics.

(E) The agency has failed to prepare a complete and accurate rule summary and fiscal analysis of the proposed rule or revised proposed rule as required by section 106.024 of the Revised Code.

(F) The agency has failed to demonstrate through the business impact analysis, recommendations from the common sense initiative office, and the memorandum of response that the regulatory intent of the proposed rule or revised proposed rule justifies its adverse impact on businesses in this state.

(G) The agency has failed to justify the proposed adoption, amendment, or rescission of a rule containing a regulatory restriction.

Sec. 106.03. Prior to the review date of an existing rule, the agency that adopted the rule shall do both of the following:

(A) Review the rule to determine whether the rule should be amended or rescinded, including for the purpose of accomplishing the reductions in regulatory restrictions required by section 121.951 of the Revised Code, because it does any of the following, or otherwise for the purpose of reducing regulatory restrictions:

(1) Whether the rule should be continued without...
amendment, be amended, or be rescinded, taking into
consideration Exceeds or conflicts with the purpose, scope, and
or intent of the statute under which the rule was adopted;

(2) Whether the rule needs amendment or rescission to give
more Provides inadequate flexibility at the local level;

(3) Whether the rule needs amendment or rescission to
eliminate unnecessary paperwork Creates a compliance or
oversight burden for the state agency, or for any person or
entity, that is greater than the burden that would be created if
the agency accomplished the intended purpose of the restriction
by other means;

(4) Whether the rule incorporates Is no longer useful or
beneficial;

(5) Incorporates a text or other material by reference
and, if so:

(a) Whether the The citation accompanying the
incorporation by reference is such as reasonably would not
reasonably enable a reasonable person to whom the rule applies
readily and without charge to find and inspect the incorporated
text or other material;

(b) Whether the The citation accompanying the
incorporation by reference is such as reasonably would not
reasonably enable the joint committee on agency rule review
readily and without charge to find and inspect the incorporated
text or other material; and or

(c) If the rule has been exempted in whole or in part from
sections 121.71 to 121.74 of the Revised Code on grounds the
incorporated text or other material has one or more of the
characteristics described in division (B) of section 121.75 of
the Revised Code, whether the incorporated text or other material does not actually have any of those characteristics.

(5) Whether the rule duplicates

(6) Duplicates, overlaps with, or conflicts with other rules;

(6) Whether the rule has another state or federal law or rule. A rule duplicates, overlaps with, or conflicts with another law or rule if it imposes a duty or liability on a person or entity that the other law or rule also imposes on that person or entity, in whole or in part, or imposes a duty or liability that may require a person or entity to violate the other law or rule in whole or in part. If the rule duplicates, overlaps with, or conflicts with a rule adopted by another state agency, the two agencies shall determine which agency shall amend or rescind its rule and shall develop and execute a plan to work together to achieve the required oversight.

(7) Has an adverse impact on businesses, as determined under section 107.52 of the Revised Code;

(7) Whether the rule contains (8) Has an adverse impact on any other person or entity;

(9) Contains words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and

(8) Whether the rule requires (10) Requires liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure;

(11) Imposes a more severe duty or liability than
restrictions in neighboring states in order to accomplish the same goal.

In making its review, the agency shall consider the continued need for the rule, the nature of any complaints or comments received concerning the rule, and any relevant factors that have changed in the subject matter area affected by the rule.

(B) On the basis of its review of the existing rule, the agency shall determine whether the existing rule needs to be amended or rescinded.

(1) If the existing rule needs to be amended or rescinded, the agency, on or before the review date of the existing rule, shall commence the process of amending or rescinding the existing rule in accordance with its review of the rule.

(2) If the existing rule does not need to be amended or rescinded, proceedings shall be had under section 106.031 of the Revised Code.

Upon the request of the agency that adopted an existing rule, the joint committee on agency rule review may extend the review date of the rule to a date that is not later than one hundred eighty days after the review date assigned to the rule by the agency. Not more than two such extensions may be allowed.

Sec. 106.031. If an agency, on the basis of its review of a rule under section 106.03 of the Revised Code, determines that the rule does not need to be amended or rescinded, proceedings shall be had as follows:

(A)(1) If, considering only the standard of review specified in division (A) of section 106.03 of the Revised Code, the rule has an adverse impact on businesses, the
agency shall prepare a business impact analysis that describes its review of the rule under that division and that explains why the regulatory intent of the rule justifies its adverse impact on businesses. If the rule does not have an adverse impact on businesses, the agency may proceed under division (B) of this section.

(2) The agency shall transmit a copy of the full text of the rule and the business impact analysis electronically to the common sense initiative office. The office shall make the rule and analysis available to the public on its web site under section 107.62 of the Revised Code.

(3) The agency shall consider any recommendations made by the office.

(4) Not earlier than the sixteenth business day after transmitting the rule and analysis to the office, the agency shall either (a) proceed under divisions (A)(5) and (B) of this section or (b) commence, under division (B)(1) of section 106.03 of the Revised Code, the process of rescinding the rule or of amending the rule to incorporate into the rule features the recommendations suggest will eliminate or reduce the adverse impact the rule has on businesses. If the agency determines to amend or rescind the rule, the agency is not subject to the time limit specified in division (B)(1) of section 106.03 of the Revised Code.

(5) If the agency receives recommendations from the office, and determines not to amend or rescind the rule, the agency shall prepare a memorandum of response that explains why the rule is not being rescinded or why the recommendations are not being incorporated into the rule.
(B) The agency shall assign a new review date to the rule. The review date assigned shall be not later than five years after the immediately preceding review date pertaining to the rule. If the agency assigns a review date that exceeds the five-year maximum, the review date is five years after the immediately preceding review date. The immediately preceding review date includes the date of the review of a rule under section 106.032 of the Revised Code.

(C)(1) The agency shall file all the following, in electronic form, with the joint committee on agency rule review, the secretary of state, and the director of the legislative service commission: a copy of the rule specifying its new review date, a complete and accurate rule summary and fiscal analysis, and, if relevant, a business impact analysis of the rule, any recommendations received from the common sense initiative office, and any memorandum of response.

(2) Subject to section 106.05 of the Revised Code, the joint committee does not have jurisdiction to review, and shall reject, the filing of a rule under division (C)(1) of this section if, at any time while the rule is in its possession, it discovers that the rule has an adverse impact on businesses and the agency has not complied with division (A) of this section. The joint committee shall electronically return a rule that is rejected to the agency, together with any documents that were part of the filing. Such a rejection does not preclude the agency from refiling the rule under division (C)(1) of this section after complying with division (A) of this section. When the filing of a rule is rejected under this division, it is as if the filing had not been made.

(D) The joint committee shall publish notice of the
agency's determination not to amend or rescind the rule in the register of Ohio for four consecutive weeks after the rule is filed under division (C) of this section.

(E) During the ninety-day period after a rule is filed under division (C) of this section, but after the four-week notice period required by division (D) of this section has ended, the joint committee may recommend to the senate and house of representatives the adoption of a concurrent resolution invalidating the rule if the joint committee finds any of the following:

(1) The agency improperly applied the standards in division (A) of section 106.03 of the Revised Code in reviewing the rule and in determining that the rule did not need amendment or rescission.

(2) The rule has an adverse impact on businesses, and the agency has failed to demonstrate through a business impact analysis, recommendations from the common sense initiative office, and a memorandum of response that the regulatory intent of the rule justifies its adverse impact on businesses.

(3) If the rule incorporates a text or other material by reference, any of the following applies:

(a) The citation accompanying the incorporation by reference is not such as reasonably would enable a reasonable person to whom the rule applies readily and without charge to find and inspect the incorporated text or other material;

(b) The citation accompanying the incorporation by reference is not such as reasonably would enable the joint committee readily and without charge to find and inspect the incorporated text or other material; or
(c) The rule has been exempted in whole or in part from sections 121.71 to 121.74 of the Revised Code on grounds the incorporated text or other material has one or more of the characteristics described in division (B) of section 121.75 of the Revised Code, but the incorporated text or other material actually does not have any of those characteristics.

(4) The agency has failed to justify the retention of a rule containing a regulatory restriction.

If the agency fails to comply with section 106.03 or 106.031 of the Revised Code, the joint committee shall afford the agency an opportunity to appear before the joint committee to show cause why the agency has not complied with either or both of those sections. If the agency appears before the joint committee at the time scheduled for the agency to show cause, and fails to do so, the joint committee, by vote of a majority of its members present, may recommend the adoption of a concurrent resolution invalidating the rule for the agency's failure to show cause. Or if the agency fails to appear before the joint committee at the time scheduled for the agency to show cause, the joint committee, by vote of a majority of its members present, may recommend adoption of a concurrent resolution invalidating the rule for the agency's default.

When the joint committee recommends that a rule be invalidated, the recommendation does not suspend operation of the rule, and the rule remains operational pending action by the senate and house of representatives on the concurrent resolution embodying the recommendation. If the senate and house of representatives adopt the concurrent resolution, the rule is invalid. If, however, the senate and house of representatives do not adopt the resolution, the rule continues in effect, and
shall next be reviewed according to the new review date assigned to the rule.

Sec. 107.57. (A) In the course of evaluating draft rules and business impact analyses under sections 107.51 to 107.55 of the Revised Code, or at any other time, the common sense initiative office may review any rules containing regulatory restrictions that a state agency is required to include in its inventory of regulatory restrictions under section 121.95 of the Revised Code. If the common sense initiative office determines, based on the criteria described in division (A) of section 106.03 of the Revised Code, that a state agency should eliminate a regulatory restriction, the common sense initiative office shall notify the state agency that it is required to eliminate that regulatory restriction, and the state agency shall eliminate it.

(B) If a state agency objects to the elimination of a regulatory restriction that the common sense initiative office has determined should be eliminated under division (A) of this section, the state agency may appeal that decision to the joint committee on agency rule review. If the joint committee also determines, based on the criteria described in division (A) of section 106.03 of the Revised Code, that the state agency should eliminate the regulatory restriction, the state agency shall eliminate it.

(C) As used in this section, "state agency" has the same meaning as in section 121.95 of the Revised Code, except that it does not include the offices of the attorney general, the secretary of state, the auditor of state, or the treasurer of state.

Sec. 121.031. The administrative department head of an
administrative department created under section 121.02 of the Revised Code or an administrative department head appointed under section 121.03 of the Revised Code may direct an otherwise independent official or state agency that is organized under the administrative department or administrative department head as necessary to achieve reductions in regulatory restrictions in rules in compliance with sections 121.95, 121.951, 121.952, and 121.953 of the Revised Code.

**Sec. 121.95.** (A) As used in sections 121.95, 121.951, 121.952, and 121.953 of the Revised Code, "state agency" means an administrative department created under section 121.02 of the Revised Code, an administrative department head appointed under section 121.03 of the Revised Code, and a state agency organized under an administrative department or administrative department head. "State agency" also includes the offices of the attorney general, the secretary of state, the auditor of state, and the treasurer of state, as well as the department of education, the state lottery commission, the Ohio casino control commission, the state racing commission, and the public utilities commission of Ohio. Rules adopted by an otherwise independent official or entity organized under a state agency shall be attributed to the agency under which the official or entity is organized for the purposes of sections 121.95, 121.951, 121.952, and 121.953 of the Revised Code.

(B) Not later than December 31, 2019, a state agency shall review its existing rules to identify rules having one or more regulatory restrictions that require or prohibit an action and prepare a base inventory of the regulatory restrictions in its existing rules. Rules that include the words "shall," "must," "require," "shall not," "may not," and "prohibit" shall be considered to contain regulatory restrictions.
(C) In the base inventory, the state agency shall indicate all of the following concerning each regulatory restriction:

(1) A description of the regulatory restriction;

(2) The rule number of the rule in which the regulatory restriction appears;

(3) The statute under which the regulatory restriction was adopted;

(4) Whether state or federal law expressly and specifically requires the agency to adopt the regulatory restriction or the agency adopted the regulatory restriction under the agency's general authority;

(5) Whether removing the regulatory restriction would require a change to state or federal law, provided that removing a regulatory restriction adopted under a law granting the agency general authority shall be presumed not to require a change to state or federal law;

(6) Any other information the joint committee on agency rule review considers necessary.

(D) The state agency shall compute and state the total number of regulatory restrictions indicated in the base inventory, shall post the base inventory on its web site, and shall electronically transmit a copy of the inventory to the joint committee. The joint committee shall review the base inventory, then transmit it electronically to the speaker of the house of representatives and the president of the senate.

(E) The following types of rules or regulatory restrictions are not required to be included in a state agency's inventory of regulatory restrictions:
(1) An internal management rule;

(2) An emergency rule;

(3) A rule that state or federal law requires the state agency to adopt verbatim;

(4) A regulatory restriction contained in materials or documents incorporated by reference into a rule pursuant to sections 121.71 to 121.75 of the Revised Code;

(5) A rule adopted pursuant to section 1347.15 of the Revised Code;

(6) A rule concerning instant lottery games;

(7) Any other rule that is not subject to review under Chapter 106. of the Revised Code.

Sec. 121.951. (A)(1) Using the criteria listed in division (A) of section 106.03 of the Revised Code, a state agency shall amend or rescind rules identified in its base inventory of regulatory restrictions as necessary to reduce the total number of regulatory restrictions by thirty per cent, according to the following schedule:

(a) A ten per cent reduction not later than December 31, 2020;

(b) A twenty per cent reduction not later than December 31, 2021; and

(c) The thirty per cent reduction not later than December 31, 2022.

When a state agency has achieved a reduction of any percentage in regulatory restrictions, whether or not as specified in this section, the state agency may not adopt or
maintain regulatory restrictions that would negate the reduction.

(2) If a state agency has not achieved a specified percentage reduction according to the schedule, the state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions, until the specified thirty per cent reduction has been achieved. The state agency may not fulfill this requirement by merging two or more existing regulatory restrictions into a single surviving regulatory restriction.

(3) A state agency is encouraged to continue to reduce regulatory restrictions after it has achieved the specified thirty per cent reduction.

(B)(1) Not later than March 15, 2021, and annually thereafter, a state agency shall prepare an historical report of its progress in reducing regulatory restrictions over the preceding year under divisions (A)(1) and (2) of this section. The state agency shall explain in the report how it applied the criteria described in division (A) of section 106.03 of the Revised Code to its determinations as to which regulatory restrictions to amend or rescind. The state agency shall include a revised inventory of regulatory restrictions with the report.

(2) In the revised inventory, in addition to the information required by section 121.95 of the Revised Code, the state agency shall compute the percentage net reduction in regulatory restrictions by subtracting the current number of regulatory restrictions from the number of regulatory restrictions identified in the base inventory and then dividing the resulting number by the number of regulatory restrictions in the base inventory.
(3) The state agency shall transmit the report electronically to the joint committee on agency rule review. The joint committee shall review the report and shall transmit it electronically to the speaker of the house of representatives and the president of the senate. The state agency shall continue preparing and transmitting annual reports until it has reported that it has achieved the required reduction in regulatory restrictions.

Sec. 121.952. If a state agency fails to reduce regulatory restrictions by a required percentage within one hundred twenty days after a reduction deadline in section 121.951 of the Revised Code, the joint committee on agency rule review shall afford the state agency an opportunity to appear before the joint committee to show cause why the agency's required reduction in regulatory restrictions should be lessened. If the joint committee determines that the state agency has shown cause, the joint committee shall determine a lessened required reduction in regulatory restrictions for that agency and shall submit a written report to the speaker of the house of representatives and the president of the senate, indicating the lessened required reduction in regulatory restrictions for that agency and the reason the joint committee determined that lessened required reduction.

Sec. 121.953. Effective January 1, 2023, the number of regulatory restrictions in this state shall not exceed a number of regulatory restrictions determined by the joint committee on agency rule review in accordance with this section. The joint committee shall determine that number by calculating, for each agency, the number of regulatory restrictions identified by the agency in the base inventory prepared under section 121.95 of the Revised Code, minus the number of regulatory restrictions...
that represents the percentage reduction the state agency is required to achieve not later than January 1, 2023, and then totaling the resulting numbers for all state agencies. A state agency shall contact the joint committee before submitting a proposed rule containing a regulatory restriction, and the joint committee shall determine whether adopting the regulatory restriction would cause the state to exceed the number of regulatory restrictions permitted under this section. A state agency may not adopt a rule if by adopting the rule the state agency would cause the number of regulatory restrictions to exceed the state limit as determined by the joint committee.

Section 2. That existing sections 106.021, 106.03, and 106.031 of the Revised Code are hereby repealed.