

As Introduced

133rd General Assembly

Regular Session

2019-2020

S. B. No. 1

Senators McColley, Roegner

**Cosponsors: Senators Obhof, Brenner, Coley, Hackett, Hoagland, Hottinger,
Huffman, S., Huffman, M., Lehner, Rulli, Peterson, Wilson, Terhar**

A BILL

To amend sections 106.021 and 106.03 and to enact 1
sections 101.354, 101.355, 121.031, 121.95, 2
121.951, 121.952, and 121.953 of the Revised 3
Code to require certain agencies to reduce the 4
number of regulatory restrictions and to amend 5
the versions of sections 106.021 and 106.03 of 6
the Revised Code that are scheduled to take 7
effect August 18, 2019, to continue the 8
provision of this act on and after that 9
effective date. 10

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

Section 1. That sections 106.021 and 106.03 be amended and 11
sections 101.354, 101.355, 121.031, 121.95, 121.951, 121.952, 12
and 121.953 of the Revised Code be enacted to read as follows: 13

Sec. 101.354. The joint committee on agency rule review 14
shall advise and assist state agencies in preparing base and 15
revised inventories of regulatory restrictions, and shall advise 16
and assist state agencies in achieving specified percentage 17
reductions in regulatory restrictions in the Administrative Code 18

in accordance with sections 121.95, 121.951, 121.952, and 19
121.953 of the Revised Code. 20

Annually, not later than the fifteenth day of June, 21
beginning in 2020, the executive director of the joint committee 22
shall prepare an historical report aggregating the reports 23
received from state agencies for the preceding year. In the 24
report, the executive director also shall describe the work of 25
the joint committee over the preceding year with respect to 26
reduction of regulatory restrictions, and shall indicate, out of 27
the total number of regulatory restrictions inventoried by state 28
agencies, the percentage by which state agencies have reduced 29
those regulatory restrictions. The report also shall provide 30
recommendations for statutory changes, where appropriate, 31
brought to the attention of the joint committee as contributing 32
to the adoption of regulatory restrictions. The report shall be 33
submitted to the members of the joint committee. 34

The joint committee shall publish the report on its web 35
site, and shall transmit copies of the report electronically to 36
the general assembly. 37

Sec. 101.355. The joint committee on agency rule review, 38
in consultation with legislative information systems, shall 39
create and maintain a system that state agencies shall use to 40
enter regulatory restriction data, create required inventories, 41
and transmit copies of inventories, reports, and any other 42
documents to the joint committee and the general assembly under 43
sections 121.95, 121.951, and 121.953 of the Revised Code, and 44
that will assist the joint committee in aggregating reports and 45
performing other prescribed duties under sections 101.354, 46
121.95, 121.951, 121.952, and 121.953 of the Revised Code. 47

The joint committee, in consultation with legislative 48

information systems, also shall develop a web site to convey 49
information regarding the reduction of regulatory restrictions 50
by state agencies to the public. 51

Sec. 106.021. If, upon reviewing a proposed rule or 52
revised proposed rule, the joint committee on agency rule review 53
makes any of the following findings with regard to the proposed 54
rule or revised proposed rule, the joint committee may recommend 55
to the senate and house of representatives the adoption of a 56
concurrent resolution to invalidate the proposed rule or revised 57
proposed rule or a part thereof: 58

(A) The proposed rule or revised proposed rule exceeds the 59
scope of its statutory authority. 60

(B) The proposed rule or revised proposed rule conflicts 61
with the legislative intent of the statute under which it was 62
proposed. 63

(C) The proposed rule or revised proposed rule conflicts 64
with another proposed or existing rule. 65

(D) The proposed rule or revised proposed rule 66
incorporates a text or other material by reference and either 67
the agency has failed to file the text or other material 68
incorporated by reference as required by section 121.73 of the 69
Revised Code or the incorporation by reference fails to meet the 70
standards stated in sections 121.72, 121.75, and 121.76 of the 71
Revised Code. 72

(E) The agency has failed to prepare a complete and 73
accurate rule summary and fiscal analysis of the proposed rule 74
or revised proposed rule as required by section 127.18 of the 75
Revised Code. 76

(F) The agency has failed to demonstrate through the 77

business impact analysis, recommendations from the common sense 78
initiative office, and the memorandum of response that the 79
regulatory intent of the proposed rule or revised proposed rule 80
justifies its adverse impact on businesses in this state. 81

(G) The agency has failed to justify the proposed 82
amendment or rescission of a rule containing a regulatory 83
restriction. 84

Sec. 106.03. Prior to the review date of an existing rule, 85
the agency that adopted the rule shall do both of the following: 86

(A) Review the rule to determine all of the following: 87

(1) Whether the rule should be continued without 88
amendment, be amended, or be rescinded, taking into 89
consideration the purpose, scope, and intent of the statute 90
under which the rule was adopted; 91

(2) Whether the rule needs amendment or rescission to give 92
more flexibility at the local level; 93

(3) Whether the rule needs amendment or rescission to 94
eliminate unnecessary paperwork; 95

(4) Whether the rule incorporates a text or other material 96
by reference and, if so, whether the text or other material 97
incorporated by reference is deposited or displayed as required 98
by section 121.74 of the Revised Code and whether the 99
incorporation by reference meets the standards stated in 100
sections 121.72, 121.75, and 121.76 of the Revised Code; 101

(5) Whether the rule duplicates, overlaps with, or 102
conflicts with other rules; 103

(6) Whether the rule has an adverse impact on businesses, 104
as determined under section 107.52 of the Revised Code; 105

(7) Whether the rule contains words or phrases having 106
meanings that in contemporary usage are understood as being 107
derogatory or offensive;~~and~~ 108

(8) Whether the rule requires liability insurance, a bond, 109
or any other financial responsibility instrument as a condition 110
of licensure; and 111

(9) Whether a rule that contains one or more regulatory 112
restrictions should be amended or rescinded to reduce regulatory 113
restrictions. 114

In making its review, the agency shall consider the 115
continued need for the rule, the nature of any complaints or 116
comments received concerning the rule, and any relevant factors 117
that have changed in the subject matter area affected by the 118
rule. 119

(B) On the basis of its review of the existing rule, the 120
agency shall determine whether the existing rule needs to be 121
amended or rescinded. 122

(1) If the existing rule needs to be amended or rescinded, 123
the agency, on or before the review date of the existing rule, 124
shall commence the process of amending or rescinding the 125
existing rule in accordance with its review of the rule. 126

(2) If the existing rule does not need to be amended or 127
rescinded, proceedings shall be had under section 106.031 of the 128
Revised Code. 129

Upon the request of the agency that adopted an existing 130
rule, the joint committee on agency rule review may extend the 131
review date of the rule to a date that is not later than one 132
hundred eighty days after the review date assigned to the rule 133
by the agency. Not more than two such extensions may be allowed. 134

Sec. 121.031. The administrative department head of an 135
administrative department created under section 121.02 of the 136
Revised Code, or an administrative department head appointed 137
under section 121.03 of the Revised Code may direct an otherwise 138
independent official or state agency that is organized under the 139
administrative department or administrative department head as 140
necessary to achieve reductions in regulatory restrictions in 141
rules in compliance with sections 121.95, 121.951, 121.952, and 142
121.953 of the Revised Code. 143

Sec. 121.95. As used in sections 121.95, 121.951, 121.952, 144
and 121.953 of the Revised Code, "state agency" means an 145
administrative department created under section 121.02 of the 146
Revised Code or an administrative department head appointed 147
under section 121.03 of the Revised Code, and state agencies 148
organized under an administrative department or administrative 149
department head. "State agency" also includes the offices of the 150
attorney general, secretary of state, auditor of state, and 151
treasurer of state, as well as the department of education, 152
state lottery commission, Ohio casino control commission, state 153
racing commission, and the public utilities commission of Ohio. 154
Rules adopted by an otherwise independent official or entity 155
organized under a state agency shall be attributed to the agency 156
under which the official or entity is organized for the purposes 157
of sections 121.95, 121.951, 121.952, and 121.953 of the Revised 158
Code. 159

Not later than December 31, 2019, a state agency shall 160
review its existing rules to identify rules having one or more 161
regulatory restrictions that require or prohibit an action and 162
prepare an inventory of the regulatory restrictions in its 163
existing rules. Examples of words suggesting that a rule 164
incorporates a regulatory restriction include "shall," "must," 165

"require," "shall not," "may not," and "prohibit." A rule of 166
law, phrased in indicative mood, also may constitute a 167
regulatory restriction. This inventory is the "base inventory." 168

In the inventory, the state agency shall indicate all of 169
the following: 170

(A) The regulatory restriction; 171

(B) The rule number of the rule in which the regulatory 172
restriction appears; 173

(C) The statute under which the regulatory restriction was 174
adopted; 175

(D) Whether removing the regulatory restriction would 176
require statutory change; 177

(E) Any other information the joint committee on agency 178
rule review considers necessary. 179

The state agency shall compute and state the total number 180
of regulatory restrictions indicated in the inventory. 181

The state agency shall post the inventory on its web site, 182
and shall electronically transmit a copy of the inventory to the 183
joint committee. The joint committee shall review the inventory, 184
and shall transmit the inventory electronically to the general 185
assembly after it has been reviewed. 186

The inventory requirement does not apply to an internal 187
management rule or any rule required to be adopted verbatim by 188
the controlling statute. 189

Sec. 121.951. (A) (1) A state agency shall amend or rescind 190
rules identified in its inventory of regulatory restrictions as 191
necessary to reduce the total number of regulatory restrictions 192

<u>by thirty per cent, according to the following schedule:</u>	193
<u>(a) A ten per cent reduction not later than December 31,</u>	194
<u>2020;</u>	195
<u>(b) A twenty per cent reduction not later than December</u>	196
<u>31, 2021; and</u>	197
<u>(c) The thirty per cent reduction not later than December</u>	198
<u>31, 2022.</u>	199
<u>When a reduction of any percentage in regulatory</u>	200
<u>restrictions, whether or not as specified in this section, has</u>	201
<u>been achieved, the state agency may not adopt or maintain</u>	202
<u>regulatory restrictions that would negate the reduction.</u>	203
<u>(2) If a specified percentage reduction has not been</u>	204
<u>achieved according to the schedule, the state agency may not</u>	205
<u>adopt a new regulatory restriction unless it simultaneously</u>	206
<u>removes two or more other existing regulatory restrictions,</u>	207
<u>until the specified thirty per cent reduction has been achieved.</u>	208
<u>The state agency may not fulfill this requirement by merging two</u>	209
<u>or more existing regulatory restrictions into a single surviving</u>	210
<u>regulatory restriction.</u>	211
<u>(3) The state agency is encouraged to continue to reduce</u>	212
<u>regulatory restrictions after the specified thirty per cent</u>	213
<u>reduction has been achieved.</u>	214
<u>(B) Not later than March 15, 2021, and annually</u>	215
<u>thereafter, the state agency shall prepare an historical report</u>	216
<u>of its progress in reducing regulatory restrictions over the</u>	217
<u>preceding year under divisions (A) (1) and (2) of this section.</u>	218
<u>The state agency shall include a revised inventory of regulatory</u>	219
<u>restrictions with the report.</u>	220

In the revised inventory, in addition to the information 221
required by section 121.95 of the Revised Code, the state agency 222
shall compute the net reduction in regulatory restrictions by 223
adding the number of regulatory restrictions carried forward 224
from the previous inventory to the number of regulatory 225
restrictions added since the previous inventory, and then 226
subtracting from the sum of the carried over and new regulatory 227
restrictions the number of regulatory restrictions eliminated 228
since the previous inventory. The state agency then shall 229
subtract the net reduction from the number of regulatory 230
restrictions in the base inventory, and divide the result by the 231
number of regulatory restrictions in the base inventory to 232
determine the percentage reduction in regulatory restrictions. 233

The state agency shall transmit the report electronically 234
to the joint committee on agency rule review. The joint 235
committee shall review the report, and shall transmit it 236
electronically to the general assembly. The state agency shall 237
continue preparing and transmitting a report until it has 238
reported that it has achieved the specified thirty per cent 239
reduction in regulatory restrictions. 240

Sec. 121.952. If a state agency fails to reduce regulatory 241
restrictions by a required percentage within one hundred twenty 242
days after a reduction deadline in section 121.951 of the 243
Revised Code, the joint committee on agency rule review shall 244
afford the state agency an opportunity to appear before the 245
joint committee to show cause why the agency has not achieved 246
the required reduction in regulatory restrictions. If the state 247
agency appears before the joint committee at the time scheduled 248
for the state agency to show cause, and the joint committee, by 249
vote of a majority of its members present in a meeting at which 250
a quorum of its members are present, determines that the state 251

agency has shown cause, the joint committee shall provide to the 252
general assembly recommendations of statutory changes as 253
determined necessary to accommodate the state agency's inability 254
to achieve a required reduction in regulatory restrictions. 255

Sec. 121.953. Effective January 1, 2023, the state is 256
limited in the number of regulatory restrictions that may be 257
effective at any one time to a number that is seventy per cent 258
of the aggregate total of regulatory restrictions identified by 259
all state agencies in the base inventories prepared under 260
section 121.95 of the Revised Code, as determined by the joint 261
committee on agency rule review. A state agency shall contact 262
the joint committee before submitting a proposed rule containing 263
a regulatory restriction, and the joint committee shall 264
determine whether adopting the regulatory restriction would 265
cause the state to exceed the number of regulatory restrictions 266
permitted under this section. A state agency may not adopt a 267
rule if by adopting the rule the state agency would cause the 268
number of regulatory restrictions to exceed the state limit as 269
determined by the joint committee. 270

Section 2. That existing sections 106.021 and 106.03 of 271
the Revised Code are hereby repealed. 272

Section 3. That the versions of sections 106.021 and 273
106.03 of the Revised Code that are scheduled to take effect 274
August 18, 2019, be amended to read as follows: 275

Sec. 106.021. If, upon reviewing a proposed rule or 276
revised proposed rule, the joint committee on agency rule review 277
makes any of the following findings with regard to the proposed 278
rule or revised proposed rule, the joint committee may recommend 279
to the senate and house of representatives the adoption of a 280
concurrent resolution to invalidate the proposed rule or revised 281

proposed rule or a part thereof:	282
(A) The proposed rule or revised proposed rule exceeds the scope of its statutory authority.	283 284
(B) The proposed rule or revised proposed rule conflicts with the legislative intent of the statute under which it was proposed.	285 286 287
(C) The proposed rule or revised proposed rule conflicts with another proposed or existing rule.	288 289
(D) The proposed rule or revised proposed rule incorporates a text or other material by reference and:	290 291
(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;	292 293 294 295
(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	296 297 298 299 300 301
(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.	302 303 304 305 306 307 308
(E) The agency has failed to prepare a complete and	309

accurate rule summary and fiscal analysis of the proposed rule 310
or revised proposed rule as required by section 106.024 of the 311
Revised Code. 312

(F) The agency has failed to demonstrate through the 313
business impact analysis, recommendations from the common sense 314
initiative office, and the memorandum of response that the 315
regulatory intent of the proposed rule or revised proposed rule 316
justifies its adverse impact on businesses in this state. 317

(G) The agency has failed to justify the proposed 318
amendment or rescission of a rule containing a regulatory 319
restriction. 320

Sec. 106.03. Prior to the review date of an existing rule, 321
the agency that adopted the rule shall do both of the following: 322

(A) Review the rule to determine all of the following: 323

(1) Whether the rule should be continued without 324
amendment, be amended, or be rescinded, taking into 325
consideration the purpose, scope, and intent of the statute 326
under which the rule was adopted; 327

(2) Whether the rule needs amendment or rescission to give 328
more flexibility at the local level; 329

(3) Whether the rule needs amendment or rescission to 330
eliminate unnecessary paperwork; 331

(4) Whether the rule incorporates a text or other material 332
by reference and, if so: 333

(a) Whether the citation accompanying the incorporation by 334
reference is such as reasonably would enable a reasonable person 335
to whom the rule applies readily and without charge to find and 336
inspect the incorporated text or other material; 337

(b) Whether the citation accompanying the incorporation by reference is such as reasonably would enable the joint committee on agency rule review readily and without charge to find and inspect the incorporated text or other material; and

(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 actually has any of those characteristics.

(5) Whether the rule duplicates, overlaps with, or conflicts with other rules;

(6) Whether the rule has an adverse impact on businesses, as determined under section 107.52 of the Revised Code;

(7) Whether the rule contains words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; ~~and~~

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

(9) Whether a rule that contains one or more regulatory restrictions should be amended or rescinded to reduce regulatory restrictions.

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 366
agency shall determine whether the existing rule needs to be 367
amended or rescinded. 368

(1) If the existing rule needs to be amended or rescinded, 369
the agency, on or before the review date of the existing rule, 370
shall commence the process of amending or rescinding the 371
existing rule in accordance with its review of the rule. 372

(2) If the existing rule does not need to be amended or 373
rescinded, proceedings shall be had under section 106.031 of the 374
Revised Code. 375

Upon the request of the agency that adopted an existing 376
rule, the joint committee on agency rule review may extend the 377
review date of the rule to a date that is not later than one 378
hundred eighty days after the review date assigned to the rule 379
by the agency. Not more than two such extensions may be allowed. 380

Section 4. That the existing versions of sections 106.021 381
and 106.03 of the Revised Code that are scheduled to take effect 382
August 18, 2019, are hereby repealed. 383