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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 103  
134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Merrin

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### SUMMARY

- Reduces the duration of most emergency administrative rules from 120 days to ten days.
- Prohibits an agency from adopting a new emergency rule that contains the substance of a previous emergency rule or a restriction from a previous emergency rule so that the substance or restriction continues in effect without interruption for more than ten days.
- Eliminates the Governor's authority to extend an emergency rule for an additional 120 days when the Joint Committee on Agency Rule Review orders an adopting agency to revise the emergency rule's replacement.
- Requires an adopting agency to electronically file the final version of an emergency rule with the Common Sense Initiative Office.
- Requires the Office to review a final emergency rule and determine whether it has an adverse impact on business; and, if the rule has such an impact, permits the Office to prepare and transmit to the adopting agency recommendations on how to eliminate or reduce the impact.
- Requires the Office to include in its annual report to specified executive and legislative officials the number of emergency rules the Office reviewed during the year and a description of any recommendations it made to the adopting agencies.

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## DETAILED ANALYSIS

### Duration of emergency administrative rules

The bill reduces the duration of most emergency administrative rules from 120 days to ten days.<sup>1</sup> An emergency rule includes a newly adopted rule as well as an amendment to or rescission of an existing rule. An administrative rule is a formal, written statement of general principles of law that the General Assembly directs an agency to adopt under a statutorily prescribed rulemaking procedure. There are two general statutory rulemaking procedures, one in the Administrative Procedure Act<sup>2</sup> (APA) and the other in R.C. 111.15. Generally, if an agency is not directed to follow the APA, it must follow the rulemaking procedure in R.C. 111.15. The procedure an agency must follow is a matter of legislative choice. As a result, the General Assembly has directed some agencies to follow the APA for certain functions and R.C. 111.15 for other functions. The major difference between the two procedures is that the APA requires an agency to give public notice of its intention to adopt a rule and then conduct a public hearing on the proposed rule, while notice and a hearing is not required for rules adopted under R.C. 111.15.

Both rulemaking procedures contain provisions for adopting emergency rules. The APA permits the Governor, at the request of an agency, to determine that an emergency requires the immediate adoption of an emergency rule. If the Governor makes that determination and issues an order to suspend the APA procedure, the agency may immediately adopt the emergency rule without complying with the notice, public hearing, and other requirements of the APA rule adoption procedure.

Similarly, an agency that adopts rules under R.C. 111.15 may immediately adopt an emergency rule without complying with the requirements that apply to R.C. 111.15 rulemaking, provided the action is “of an emergency nature necessary for the immediate preservation of the public peace, health, or safety.” Unlike emergency APA rulemaking, the Governor’s authorization is not required for an emergency R.C. 111.15 rule. Instead, the agency that adopts the rule must include with the rule a statement of the necessity.<sup>3</sup>

Regardless of which rule adoption procedure an agency follows, current law specifies that most emergency rules are valid only for 120 days, unless, in the meantime, the agency readopts the rule under the normal, nonemergency rulemaking procedure. The APA contains the following two exceptions to the limits on the duration of emergency rules, neither of which are affected by the bill:

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<sup>1</sup> R.C. 111.15(B)(2) and 119.03(G).

<sup>2</sup> R.C. Chapter 119.

<sup>3</sup> R.C. 111.15(B)(2) and 119.03(G).

- An emergency rule adding a substance to a controlled substance schedule becomes invalid after 180 days, unless the Ohio Pharmacy Board readopts the rule under the nonemergency procedures;
- An emergency rule required to implement the Energy Credit Program<sup>4</sup> adopted by the Director of Development continues in effect until amended or rescinded by the Director (these rules are subject to a different emergency rulemaking process).<sup>5</sup>

## **Extensions of emergency administrative rules**

Continuing law prohibits an agency from using emergency rulemaking procedures to readopt an emergency rule so that it will continue in effect without interruption past the date it becomes invalid. The bill adds a prohibition against adopting a new emergency rule that contains the substance of or restriction from the previous emergency rule or so that the substance or restriction will continue in effect past the date the rule becomes invalid. Thus, under the bill an agency may not use the emergency procedures to extend an emergency rule, the substance of an emergency rule, or a restriction in an emergency rule beyond ten days.<sup>6</sup>

The bill also eliminates the Governor's authority to extend an emergency rule for an additional 120 days when the Joint Committee on Agency Rule Review (JCARR) orders revisions to the rule's replacement. As noted above, after adopting an emergency rule, an agency may begin the process of adopting a permanent replacement using the ordinary rulemaking process. Under that process, most proposed rules must be filed with JCARR at least 65 days before they can be adopted, and they are subject to legislative review and possible invalidation.<sup>7</sup> If, during legislative review, JCARR finds it worthwhile for an agency to revise a proposed rule in lieu of recommending the rule be invalidated, it may grant the agency one opportunity to make revisions. When JCARR orders revisions to a proposed rule intended to replace an emergency rule, current law allows the Governor to extend the emergency rule for an additional 120 days. Under the bill, an emergency rule cannot be extended beyond its original expiration date while its replacement is undergoing legislative review and revision.<sup>8</sup>

## **Review by Common Sense Initiative Office**

The bill requires an agency that adopts an emergency rule to electronically file the final version of the rule with the Common Sense Initiative Office. Under continuing law, the agency also must file the final emergency rule with the Secretary of State, Director of the Legislative Service Commission, and JCARR.<sup>9</sup>

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<sup>4</sup> R.C. 5117.01 through 5117.12.

<sup>5</sup> R.C. 111.15 and 119.03 and R.C. 5117.02, not in the bill.

<sup>6</sup> R.C. 111.15(B)(2) and 119.03(G)(1).

<sup>7</sup> R.C. 111.15(D) and 119.03(B) and (C).

<sup>8</sup> R.C. 106.022 and 119.03(G)(1)(a).

<sup>9</sup> R.C. 111.15(B)(2) and 119.03(G)(1).

When the Office receives an emergency rule from an adopting agency, the bill requires the Office to determine whether the rule has an adverse impact on businesses. If the Office finds the rule does not, the Office must prepare and transmit a memorandum stating that finding to the adopting agency and JCARR. If the Office finds an adverse impact on businesses, the Office must evaluate the emergency rule against any relevant criteria. The Office may then prepare and transmit to the agency recommendations on how to eliminate or reduce the impact. If the Office fails to transmit a memorandum to the adopting agency, it is as if the Office chose not to make any recommendations. The Office's evaluation does not prevent an emergency rule from taking effect. Continuing law requires the Office to review and make similar determinations with respect to newly proposed, nonemergency rules and existing rules that are subject to periodic review.<sup>10</sup>

Under continuing law, the Office prepares an annual report of its activities during the preceding calendar year for review by the Governor, Lieutenant Governor, Senate President, Speaker of the House, and the Senate and House minority leaders. The bill requires the Office to include both of the following in the report:

- The number of emergency rules the Office reviewed during the year covered by the report;
- A description of any recommendations made to agencies with regard to the emergency rules.<sup>11</sup>

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## HISTORY

Action	Date
Introduced	02-10-21

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H0103-I-134/ks

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<sup>10</sup> R.C. 107.54.

<sup>11</sup> R.C. 107.55.