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SUBSTITUTE SENATE BILL 221 – AGENCY RULE-MAKING REFORM

PROPONENT TESTIMONY

OHIO HOUSE GOVERNMENT ACCOUNTABILITY AND OVERSIGHT COMMITTEE

JUNE 20, 2018

Chairman Blessing, Vice-chair Reineke, Ranking Member Clyde and members of the Ohio House Government Accountability and Oversight Committee, my name is Chris Ferruso, and I serve as the Legislative Director for the National Federation of Independent Business/Ohio (NFIB/Ohio). I am here on behalf of the nearly 23,000 governing members in this state to lend our support for Substitute Senate Bill 221. I would be remiss if we did not thank Senator Uecker for introducing this important bill.

By way of background, a typical NFIB/Ohio member employs 20 or fewer and has less than \$2 million in annual sales. Our members come from all industries, and we look like any Main Street in your legislative districts.

Regulations and regulatory reform continue to be a pressing issue for small business owners. In fact, in the NFIB Research Foundation's quadrennial publication Problems and Priorities, unreasonable government regulations is the number two concern both in Ohio and nationally. This survey of small business owners poses 75 different business issues that our members may encounter in their operations. They are asked to rank the biggest problem or impediment facing their respective businesses.

While we firmly believe in the great work that has and continues to be done by Lt. Gov. Mary Taylor and her team at the Common Sense Initiative Office (CSI), we also feel that Ohio can continue to foster a collaborative environment between regulators and those communities they regulate.

The cost associated with compliance is typically greater for small businesses. Most of our members do not have a compliance officer to comb through the volumes of state and federal regulations. The business owner typically serves this role. This redirection of resources away from day-to-day business operations to respond to or address a new agency policy or rule, or one of the thousands that are now in place or are being interpreted differently is imprudent. I submit to this committee that a small business owner's resources are best put toward growing their business and thus stimulating the economy.

I believe we all want to ensure our water and air are clean, and the public is safe and free from harm. However, there must be a proper balance between the regulator and the regulated community, and the right to redress any grievances that may arise.

We believe Senate Bill 221 contains several key components to achieve this balance and does so through meaningful reforms of the Joint Committee on Agency Rule Review (JCARR) process. Below are the provisions NFIB/Ohio feels will achieve this goal.

First, requiring prompt access to text or material that is incorporated by reference without charge. As previously stated, it costs small businesses more to comply with regulations. Additionally, JCARR can recommend invalidation of rule based upon lack of access to the referenced material. If an agency references a text in their rule, it should be made available at no additional cost to a business.

Next, the additional requirement to an existing prong of the JCARR rule invalidation process if a fee is charged to the regulated community; an explanation of how the fee directly relates to the cost actually incurred by the agency in performing the function for which the fee is charged. Agencies will have to justify their fees. Agencies should be a zero-sum operation, and not be in the business of generating revenue from businesses through increased fees.

Senate Bill 221 also adds to the existing definition of "adverse impact on business" in ORC 107.52 to state a rule "... would be likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies." This important expansion of the definition recognizes there can be costs associated with complying with rules and they can be significant. It is important that regulators are cognizant that additional costs are, in fact, adverse to businesses.

Further, SB 221 allows the chair of JCARR to have an agency submit a rule for review if the chair becomes aware a rule has an unexpected impact that is not expressly stated or implied in statute. This provision will allow a rule to be reconsidered within the required five-year review process to prevent unintended consequences. This is in an important business/consumer protection.

Finally, SB 221 requires agencies to review, at reasonable intervals, policies, and principles of law that are not stated in a rule when used in conducting adjudications or other determinations of rights or liabilities or issuing writings or other materials like policy statements or opinions. This review may result in the determination that a policy requires a rule to be issued and go through the JCARR process. Additionally, this provision allows businesses and individuals who have been impacted by such a policy or principle of law to petition the agency to restate the policy or principal in a rule. The agency may grant or deny the petition. If the petition is granted, the rule-making process will commence. If denied, the petitioner may request a hearing to make his or her case further. The agency has the final determination, and the result of the hearing is not appealable. While an agency has the ultimate decision on any petition, we support the establishment of a process to allow an impacted party to have a measure of redress.

NFIB/Ohio believes Senate Bill 221 will benefit our small business members and the business community as a whole. It will build upon the success of the CSI Office and keep state agencies focused on engaging the constituencies they regulate while also providing impacted parties redress. The bill also further strengthens the ability of JCARR to invalidate a rule. This bill passed the Ohio Senate on a bipartisan vote of 30-3. We urge swift passage of Senate Bill 221. Thank you for your consideration and I would be happy to try and address any questions the committee may have.