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| image001Joe Uecker **14th District** | **Committees**  Local Government, Public Safety & Veterans Affairs – Chair  Government Oversight & Reform – Vice Chair  JCARR – Vice Chair  Agriculture  Transportation, Commerce and Workforce  Public Utilities  Finance Sub Committee: General Government & Agency Review  Ohio Legislative Sportsmen’s Caucus – Co Chair  **Ohio Senate**  Senate Building  Room 226, Second Floor  Columbus, Ohio 43215  (614) 466-8082  Uecker@ohiosenate.gov |  |

**Sponsor Testimony**

## State Senator Joseph Uecker

**Senate Bill 221**

**Senate Government Oversight and Reform Committee**

**November 1, 2017**

Thank you Chairman Coley, Ranking Member Schiavoni, and members of the Government Oversight and Reform Committee for the opportunity to speak on behalf of Senate Bill 221.

The Joint Committee on Agency Rule Review was created in 1977 to review proposed, amended, and rescinded rules from over 110 agencies to ensure they do not exceed their rule-making authority granted to them by the General Assembly. If a rule violates one or more of the six items listed below, the JCARR committee could make a recommendation to invalidate the rule.

* Do the rules exceed the agency's statutory authority;
* Do the rules conflict with an existing rule of that agency or another state agency;
* Do the rules conflict with legislative intent;
* Has the rule-making agency prepared a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment, or rescission (ORC 127.18);
* Has the rule-making agency met the incorporation by reference standards for a text or other material as stated in ORC sections 121.72, 121.75, or 121.76; and,
* If the rule has an adverse impact on business (ORC 107.52), that the rule-making agency has demonstrated through the business impact analysis (BIA), the Common Sense Initiative Office (CSI) recommendations and the agency's memorandum of response to the CSI recommendations, that the rule's regulatory intent justifies its adverse impact on business.

Senate Bill 221 seeks to enhance Ohio’s rulemaking process by prohibiting informal policy making by state agencies thereby providing Ohio businesses and residents with greater transparency on the impact of proposed agency rules.

In recent years the legislature has made significant improvements to the rulemaking process. We have an opportunity with this bill to continue that progress.

This bill contains the following improvements:

* If an agency improperly establishes a rule through policy, instead of through formal rulemaking, the committee will have the authority to call the agency before the committee to explain why they are using informal policy instead of an actual rule.
* The committee may then vote to ask the agency to write a formal rule in lieu of an informal policy.
* This review process also extends to inaction on rules that state agencies are statutorily required to propose but have failed to do so. The bill provides JCARR with the ability to ask why the rules have not been proposed.
* Agencies will be required to follow a process of self-examination to search for policies that should be formalized in rulemaking and a report must be sent to JCARR.
* A person may petition an agency to write rules if they have been partner to an adjudication, an order, or civil action.
* If adversely impacted by a policy that did not go through rulemaking, a person may have a cause of action in court and receive court costs and attorney fees.
* When a rule incorporates another document by reference – for example, a manufacturer’s manual as it relates to safety standards – the agency must include a dated citation for that document and may not automatically include future versions of that document that would not be subject to JCARR review.
* When a rule incorporates another document by reference, but that document is not easily available to the public, then the agency must provide a copy for review at no cost to the requester.
* Adds a 7th prong to JCARR invalidation criteria that would allow the committee to initiate an invalidation if a rule imposes a fee that is not reasonable or fairly related to the cost incurred by the agency. For example, if an agency attempted to profit from fees by charging much higher than cost.
* Allows JCARR to review rules between 5-year rule review periods if a rule has an unforeseen effect on business. This would require a vote of JCARR as an initial hurdle before requesting such review.
* Expands the definition of adverse impact on business to include rules that are likely to reduce the revenue of a business or increase the expenses of the business, as opposed to simply charging a new fee to the business as result of the rule.

Please join me in supporting common sense reforms that will simplify government and allow businesses throughout Ohio to thrive. Thank you for your consideration. I am happy to answer any questions.