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# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. McColley and Roegner

Emily E. Wendel, Attorney

### Summary

#### Overview

- Requires each state agency to reduce the regulatory restrictions contained in its rules by 30% by 2022, according to a schedule set forth in the bill.
- Prohibits an agency from adopting new regulatory restrictions that would increase the percentage of restrictions in the agency's rules.
- Requires an agency that does not achieve a reduction in regulatory restrictions according to the required schedule to eliminate two restrictions before enacting a new rule containing a restriction.
- Effective January 1, 2023, limits the total number of regulatory restrictions that may be in effect in Ohio to a number that is 70% of the current total number of regulatory restrictions.
- Specifies which entities are considered state agencies under the bill and how rules adopted by an otherwise independent official or agency organized under a state agency are counted for the purposes of the bill.
- Provides guidelines for determining which rules contain regulatory restrictions.
- Requires an agency to produce a base inventory of rules containing regulatory restrictions before December 31, 2019.
- Requires an agency to produce a revised inventory and historical progress report before March 15, 2021, and annually thereafter until the agency has reduced the regulatory restrictions identified in its rules by 30%.
- Requires an agency, as part of a rule's five year review, to review the rule for regulatory restrictions and consider whether the rule should be amended or rescinded to eliminate the restrictions.

- Allows an administrative department head to direct otherwise independent officials or state agencies organized under the department to reduce regulatory restrictions.
- Allows an agency that does not achieve a required percentage reduction in regulatory restrictions by a deadline to appear before the Joint Committee on Agency Rule Review (JCARR) to show cause why the agency could not achieve the required reduction.

## **Joint Committee on Agency Rule Review**

- Directs JCARR to compile the agencies' inventories and reports into an annual comprehensive inventory and progress report that includes a description of JCARR's work over the past year in assisting agencies.
- Allows JCARR to recommend that the General Assembly invalidate a proposed amendment or rescission of a rule containing a regulatory restriction if the agency does not justify the amendment or rescission.
- Requires JCARR to consult with Legislative Information Systems (LIS) to create and maintain a system for agencies to enter regulatory restriction data and create, compile, and send inventories and reports.
- Requires JCARR to consult with LIS to create a website to convey information to the public about agencies' progress in reducing regulatory restrictions.

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## **Detailed Analysis**

### **Overview**

#### **Reduction in regulatory restrictions**

The bill requires each state agency to reduce the number of regulatory restrictions in the agency's rules by 30% by amending or rescinding rules that contain regulatory restrictions. The 30% reduction is based on the number of regulatory restrictions identified in a base inventory conducted by the agency under the bill. The bill directs each agency to achieve a 10% reduction in regulatory restrictions before December 31, 2020; a 20% reduction before December 31, 2021; and the 30% reduction before December 31, 2022. Current law does not address regulatory restrictions or provide for their reduction.

After an agency has achieved a reduction in regulatory restrictions, it cannot adopt additional regulatory restrictions that would cancel out the reduction. The agency also is encouraged to continue to reduce regulatory restrictions after the 30% reduction has been achieved.

If an agency does not achieve the required reduction in regulatory restrictions according to the bill's schedule, the bill prohibits the agency from adopting any new regulatory restriction unless it simultaneously removes two or more existing regulatory restrictions. This prohibition remains in effect until the agency achieves the required 30% reduction in regulatory restrictions. The agency also is barred from merging two existing regulatory restrictions into a single restriction in order to attempt to reduce the overall number of restrictions. The Joint Committee on Agency Rule Review (JCARR) may recommend statutory changes to the General

Assembly to accommodate an agency that shows cause why the agency could not achieve the required reduction.

Additionally, effective January 1, 2023, the total number of regulatory restrictions that may be effective at any one time in Ohio is capped at 70% of the number identified by all state agencies in the base inventories created by the agencies. An agency must contact JCARR before adopting a rule containing a regulatory restriction, and if JCARR determines that the state has reached the cap of regulatory restrictions, the agency may not adopt the restriction. No agency may adopt a regulatory restriction if that restriction would cause the state to exceed the 70% cap on restrictions.<sup>1</sup>

### **Covered agencies**

The bill defines "state agency" as an administrative department created under R.C. 121.02; an administrative department head appointed under R.C. 121.03, (essentially all cabinet-level departments); or a state agency organized under an administrative department or administrative department head. The term 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 an agency are attributed to the parent agency for the purposes of the bill. This means that a parent agency must include rules containing regulatory restrictions adopted by those otherwise independent officials or entities as part of its total number of regulatory restrictions. Each state agency is required to reduce its overall regulatory restrictions by 30%, but each otherwise independent official or entity organized under the agency is not required to achieve a 30% reduction so long as the parent agency overall achieves the goal.<sup>2</sup>

### **Covered regulatory restrictions**

For the purposes of the bill, a "regulatory restriction" requires or prohibits an action, and commonly contains words and phrases like "shall," "must," "require," "shall not," "may not," and "prohibit." A rule of law, phrased in indicative mood (for example: an agency will reduce rules), can also constitute a regulatory restriction. However, internal management rules and rules required to be adopted verbatim by a controlling statute are not included in the inventory of regulatory restrictions.<sup>3</sup>

## **Agency implementation**

### **Inventory of regulatory restrictions**

The bill requires each agency, before December 31, 2019, to review its existing rules, prepare a base inventory of regulatory restrictions, and determine the number of those

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<sup>1</sup> R.C. 121.95, 121.951, 121.952, and 121.953.

<sup>2</sup> R.C. 121.95.

<sup>3</sup> R.C. 121.95.

restrictions. In the base inventory, the agency must provide all of the following information concerning each regulatory restriction:

- The rule in which the restriction appears;
- The statute under which the restriction was adopted;
- Whether removing the restriction would require a change to a statute; and
- Any other information JCARR considers necessary.

The inventory is not required to include internal management rules or rules required to be adopted verbatim by a controlling statute. After completing the inventory, the agency must post it on its website and send a copy to JCARR, which must review the inventory and send it to the General Assembly.<sup>4</sup>

### **Progress report and revised inventory**

Not later than March 15, 2021, the agency must prepare an updated inventory and historical report of its progress in achieving its regulatory reduction goal according to the bill's schedule. The agency must calculate its percentage reduction in regulatory restrictions by subtracting the current number of restrictions from the number of restrictions identified in the original inventory and dividing that result by the number of restrictions in the original inventory.

For example, if an agency identified ten restrictions in its original inventory and since then has added two new restrictions and eliminated four restrictions, the agency would have eight current restrictions. Ten original restrictions minus eight current restrictions equals a reduction of two restrictions. Two restrictions divided by ten original restrictions equals 0.2, or 20%. Therefore, the agency has achieved a 20% net reduction in restrictions.

The agency must produce a new revised inventory and historical report by March 15 of each year until the agency has achieved the required 30% reduction in regulatory restrictions. The agency must send its completed reports electronically to JCARR, which must review them and send them to the General Assembly.<sup>5</sup>

### **Elimination of regulatory restrictions before five-year review**

Under current law, JCARR reviews each agency rule every five years. In anticipation of the JCARR review, an agency must review its rules to determine whether to amend or rescind them, based on criteria such as whether a rule adversely impacts businesses, duplicates another rule, or contains words or phrases that are offensive in contemporary usage. The bill adds to those criteria the issue of whether a rule containing one or more regulatory restrictions should be amended or rescinded to reduce regulatory restrictions.<sup>6</sup>

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<sup>4</sup> R.C. 101.68, not in the bill, and 121.95.

<sup>5</sup> R.C. 121.951(B).

<sup>6</sup> R.C. 106.03.

## **Administrative department head authority**

The bill authorizes the head of an administrative department created under R.C. 121.02 or an administrative department head appointed under R.C. 121.03 to direct otherwise independent officials or state agencies organized under the department to reduce regulatory restrictions in accordance with the bill.<sup>7</sup>

## **Failure to meet reduction goal**

Under the bill, if an agency fails to meet a reduction goal discussed above within 120 days of the deadline, JCARR must give the agency an opportunity to appear to show cause why the agency has not achieved the required reduction on schedule. If JCARR determines that the agency has shown cause, JCARR must provide recommended statutory changes to the General Assembly to accommodate the agency's failure to meet the required reduction.<sup>8</sup>

## **Joint Committee on Agency Rule Review**

### **Assistance to agencies and annual report**

The bill directs JCARR to advise and assist agencies in preparing their inventories of regulatory restrictions and in achieving the bill's reduction goals. Beginning in 2020, by June 15 of each year, JCARR must aggregate all the agencies' inventories and historical progress reports into an annual report that shows the agencies' overall progress in reducing regulatory restrictions. The annual report also must describe JCARR's work over the previous year and provide any appropriate recommendations for changes to statutes that contribute to the adoption of regulatory restrictions. JCARR must post the annual report on its website, send it to the General Assembly, and provide it to the members of JCARR.<sup>9</sup>

### **Rule invalidation**

The bill allows JCARR to recommend that the General Assembly invalidate a proposed rule, rule amendment, or rule rescission if JCARR finds that the rule contains a regulatory restriction and the agency has not justified the proposed change to the rule. Under continuing law, JCARR may recommend rule invalidation for other listed reasons.<sup>10</sup>

### **Database and website**

The bill requires JCARR to consult with Legislative Information Systems (LIS) to create and maintain a system for state agencies to use to enter regulatory restriction data, create required inventories, and send copies of inventories, reports, and other documents that will assist JCARR in aggregating reports under the bill.<sup>11</sup> JCARR also must consult with LIS to develop a website to convey information about the reduction of regulatory restrictions to the public.

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<sup>7</sup> R.C. 121.031.

<sup>8</sup> R.C. 121.952.

<sup>9</sup> R.C. 101.354.

<sup>10</sup> R.C. 106.021(G).

<sup>11</sup> R.C. 101.355.

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## History

Action	Date
Introduced	02-12-19