



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **S.B. 293**

132nd General Assembly  
(As Introduced)

**Sens.** Peterson and McColley, Obhof, Wilson, Bacon, Hoagland, Huffman, LaRose, Coley, Uecker, Jordan

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### **BILL SUMMARY**

- Requires agencies to reduce regulatory restrictions by 30% of the amount identified in a base inventory by amending or rescinding rules containing the restrictions.
- Describes a regulatory restriction as requiring or prohibiting an action, and commonly containing words and phrases like "shall," "must," "require," "shall not," "may not," and "prohibit."
- Directs agencies 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.
- 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.
- Limits the total number of regulatory restrictions that may be in effect in Ohio to a number that is 70% of the total regulatory restrictions identified by agencies in their base inventories.
- 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five year review, to review the rule for regulatory restrictions and consider whether the rule should be amended or rescinded to eliminate the restrictions.
- Directs the Joint Committee on Agency Rule Review (JCARR) to compile the inventories and reports of the agencies into a comprehensive inventory and progress report annually before June 15, and to describe the work of the joint committee over the past year in assisting agencies in each report.
- Requires Legislative Information Systems to consult with JCARR to create and maintain a database to be used by agencies and JCARR to compile and send inventories and reports.

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## CONTENT AND OPERATION

### Agencies to reduce regulatory restrictions by 30%

The bill requires state agencies to reduce the number of regulatory restrictions in the agency's rules by 30%, by amending or rescinding rules containing regulatory restrictions.<sup>1</sup> Continuing law defines "state agency" as "every organized body, office, or agency established by the laws of the state for the exercise of any function of state government," except for JobsOhio.<sup>2</sup> 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." The 30% reduction is based on the number of regulatory restrictions identified in a base inventory conducted by all agencies (see "**Agency to produce base inventory of regulatory restrictions,**" below). The bill directs agencies 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

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<sup>1</sup> R.C. 121.931(A).

<sup>2</sup> R.C. 1.60.

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 schedule above, 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.<sup>3</sup>

Additionally, 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. No agency may adopt a regulatory restriction if that restriction would cause the state to exceed the 70% cap on restrictions.<sup>4</sup>

### **Agency to produce base inventory of regulatory restrictions**

The bill requires an agency to review the agency's existing rules to identify rules that have one or more regulatory restrictions and to prepare a base inventory of those existing rules containing regulatory restrictions, stating the number of those rules. Current law does not require an inventory of rules containing regulatory restrictions. The base inventory must be produced before December 31, 2019. In the base inventory of rules containing regulatory restrictions, the agency must indicate all of the following:

- The regulatory restriction;
- The rule in which the regulatory restriction appears;
- The statute under which the regulatory restriction was adopted; and
- Whether removing the regulatory restriction would require a change to a statute.

An agency is not required to include in its inventory internal management rules or rules required to be adopted verbatim by the controlling statute. After completing the inventory, the agency must post it on its website, and send a copy to both the General Assembly (Director of the Legislative Service Commission, President and

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<sup>3</sup> R.C. 123.93 and 123.931.

<sup>4</sup> R.C. 121.932.



Minority Leader of the Senate, and Speaker and Minority Leader of the House of Representatives) and the Joint Committee on Agency Rule Review (JCARR).<sup>5</sup>

### **Agency to prepare annual progress report and revised inventory**

The bill requires an agency, not later than March 15, 2021, to prepare an updated inventory and historical report of its progress in achieving its regulatory reduction goal according to the required regulatory reduction schedule (see "**Agencies must reduce regulatory restrictions by 30%,"** above). Under the bill, an agency calculates the net reduction in regulatory restrictions by adding any restrictions enacted since the previous inventory to the number of restrictions identified in the previous inventory, and then subtracting from that sum the number of restrictions eliminated since the previous inventory. The result is then subtracted from the number of regulatory restrictions identified in the base inventory, and that result divided by the number of restrictions in the base inventory to determine the percentage reduction in regulatory restrictions.

For example: an agency identifies 10 regulatory restrictions in its base inventory. In the next year's inventory, the agency indicates that it has enacted 2 new restrictions, and eliminated 4 restrictions. The calculation would then be: (10 existing restrictions + 2 restrictions enacted) - 4 restrictions eliminated = 8 net restrictions. (10 base restrictions – 8 net restrictions) / 10 base restrictions = .20 or 20%. Therefore, the agency has reduced its net regulatory restrictions from 10 to 8 and has achieved a 20% net reduction in restrictions from the base inventory.

The agency is required to produce the revised inventory and historical report annually by March 15 until the agency has achieved the required 30% reduction in regulatory restrictions. The completed reports are to be sent electronically to the General Assembly and JCARR.<sup>6</sup>

### **Agency to consider eliminating regulatory restrictions before five year review**

Agencies currently are required to review their rules before each five year review by JCARR to make determinations about amending or rescinding a rule according to 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 requires an agency, before a rule's scheduled five year review date, to review the rule to determine

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<sup>5</sup> R.C. 101.68, not in the bill, and 121.93.

<sup>6</sup> R.C. 121.931(B).

whether a rule containing one or more regulatory restrictions should be amended or rescinded to reduce regulatory restrictions.<sup>7</sup>

### **JCARR to compile reports and determine aggregate number of restrictions**

The bill directs JCARR to advise and assist agencies in preparing inventories of regulatory restrictions and in achieving the specified percentage reductions in regulatory restrictions. Additionally, the bill requires JCARR to aggregate the inventories and historical progress reports received from all agencies each year into an annual report, produced by June 15, which shows the agencies' overall progress in reducing regulatory restrictions for that year. The report also must describe the work of JCARR over the previous year and provide recommendations for statutory changes, where appropriate, to statutes that are brought to JCARR's attention as contributing to the adoption of regulatory restrictions. The aggregated report prepared by JCARR must be posted on its website and sent to the General Assembly.<sup>8</sup>

### **Legislative Information Systems to create and maintain database**

The bill requires Legislative Information Systems to consult with JCARR to create and maintain a database for state agencies to use to send copies of inventories, reports, and other documents that will assist JCARR in aggregating reports under the bill.<sup>9</sup> Current law does not provide for such a database.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	04-23-18

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<sup>7</sup> R.C. 106.03.

<sup>8</sup> R.C. 101.352.

<sup>9</sup> R.C. 101.353.

