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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 11
136th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Reps. Ferguson and Lorenz

Local Impact Statement Procedure Required: No

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Revised

Highlights

- The bill will create one-time costs for the Legislative Information Systems (LIS) to modify the existing Electronic Rule-Filing (ERF) System to capture additional information required to be included in the rule summary and fiscal analysis of the rule (RSFA). Costs will be absorbed utilizing existing budgetary resources.
- The Joint Committee on Agency Rule Review (JCARR) may incur additional costs to complete an alternative RSFA. These costs will be reimbursed by either the agency proposing a rule or the chamber from which the JCARR chairperson who requested it, depending how much the cost estimates vary.

Detailed Analysis

The bill modifies the review process for proposed administrative rules, which are primarily reviewed by the Joint Committee on Agency Rule Review (JCARR). While JCARR retains its ability to review and invalidate rules, the bill introduces additional mechanisms, including the option for a JCARR chairperson to request a third-party fiscal analysis, and it alters the requirements for how JCARR handles rules with fiscal impacts of \$100,000 or more. The bill also establishes an annual regulatory budget and mandates public access to agency guidance documents.

Changes to the RSFA; alternative analysis

The bill makes information related to the costs of a proposed administrative rule a mandatory part of an agency's rule summary and fiscal analysis (RSFA). Currently, JCARR may dispense with cost-related information if it is not necessary to make the proposed rule or its fiscal effect fully understandable. The bill also requires agencies to compare proposed rules with approaches used by the federal government and surrounding states when addressing the same issues.

The changes to the RSFA will necessitate a modification of the existing Electronic Rule-Filing (ERF) System, which is administered by the Legislative Information Services (LIS).

LIS staff have indicated that the system modifications may take several months to program and implement. The development work is expected to require consultant services; however, this one-time cost will be absorbed utilizing existing budgetary resources. The operations of LIS are supported by GRF line item 035410, Legislative Information Systems.

The bill also allows a JCARR chairperson to request an alternative fiscal analysis. However, this request will require approval through a resolution by their respective legislative chamber. If approved, an independent third party will be contracted to prepare the alternate analysis, and the timeline for the invalidating concurrent resolution to be adopted is paused. If the request is denied, the regular timeline of the review process continues. The clerks will be required to make the alternative RSFA available to the members of their respective chambers and the Director of the Legislative Service Commission must publish it in the Register of Ohio.

The cost of completing the alternative RSFA will be paid from JCARR's current operating budget (GRF line item 029321, Operating Expenses, provides 100% of JCARR's funding). If the cost estimated by the alternative RSFA varies from the estimates in the agency's rule summary and fiscal analysis by more than 10%, the agency that proposed the rule must reimburse JCARR's costs. Otherwise, costs will be reimbursed from the regular appropriation to the chamber of the General Assembly to which the requesting chairperson belongs. The fiscal impact will depend on the frequency of alternative RSFA requests as well as the contracting costs.

Legislative approval and expiration of certain rules

The bill requires the General Assembly to enact legislation approving a proposed administrative rule if the RSFA (or alternative RSFA) indicates the rule will increase the proposing agency's expenditures during the current biennium by \$100,000 or more, or compliance with the rule will cost a directly affected person \$100,000 or more.

In this instance, JCARR is required to immediately transmit the rule and RSFA to the Senate and House clerks. The agency cannot adopt the rule unless a specific law is passed by the Ohio General Assembly authorizing its adoption. The bill specifies that rules that require legislative approval automatically expire five years after the effective date of the law authorizing their adoption or five years after the effective date of the most recent law renewing it. Agencies that want to extend these rules must submit them and a new fiscal analysis to the legislature at least 180 days prior to expiration. These rules may not be readopted in substantially the same form without a law from the General Assembly.

Any fiscal effects associated with the new legislative approval process will depend on the particular rules each agency proposes. The bill is not anticipated to alter the workload of JCARR. However, the administrative workload of affected state agencies, especially those with a high volume of rule submissions, may be affected for rules with fiscal impacts exceeding \$100,000. This potential impact is related to the possibility that the increased legislative oversight may introduce additional procedural steps or potentially extend the rule approval timeframe. The resulting costs are expected to be minimal and variable, reflecting the fluctuating volume of rule submissions that meet the bill's threshold.

According to data provided by LIS from the ERF System, approximately 81 of 8,184 rules filed between January 1, 2023 and December 31, 2024 may have required legislative approval for

their adoption under the bill. However, this estimate may be high due to the reasons described in the paragraph below. A listing of each state agency and number of rules filed meeting this threshold during this two-year period is provided in the “**Appendix**” at the end of this fiscal note.

The LIS estimate was generated by searching all rules filed during the specified period and filtering the result to display only rules for which the RSFA estimated a “cost” of \$100,000 or more. It should be noted that rules can be revised and refiled during the legislative review process. When a rule is revised and refiled, the agency must file a revised RSFA. A revised RSFA potentially can increase or decrease a rule’s estimated cost. Note, some of the rules identified were the same rule filed multiple times during that biennium. It also should be noted that, under the bill, a rule’s “cost” as estimated in an RSFA likely would require additional analysis by JCARR to determine whether the rule requires a bill approving it (e.g., eliminating fees that would result in lost revenue). Additionally, some rules are filed as part of a package of rules, and the cost associated with the rule may be the cost of the package, not the individual rule itself.

Agency guidance documents

The bill requires that agencies must publicly post all “guidance documents” they use on a website managed by the Director of the Department of Administrative Services (DAS) within 180 days after the bill’s effective date.¹ Any document created after the bill’s effective date must be posted the same day it is issued. These documents must be categorized by the agency into specific topics. The bill requires that any rescinded guidance documents are kept on the site and clearly noted as rescinded, along with the date of rescission, as well as any court case that mandated the rescission, if applicable.

The DAS Director must create the website to which agencies will publish guidance documents no later than 90 days after the bill’s effective date, which will likely pose some administrative costs.

Regulatory agendas, budgets, and actions

The bill requires, during December and June of each year, the Director of Office of Budget and Management (OBM) to publish a “unified regulatory agenda” listing all regulatory and deregulatory actions under development or review at each state agency. The agenda also includes a regulatory plan detailing all regulatory actions and deregulatory actions an agency expects to issue in the current and following fiscal year. At least 60 days before each publication, each agency must provide the information to be compiled into the unified regulatory agenda to the OBM Director.

In the December issue of the unified regulatory agenda, the OBM Director establishes an annual regulatory budget. An agency cannot take a “regulatory action” unless the action conforms with the regulatory budget or the OBM Director authorized the action in writing. The OBM Director must issue guidance on how a state agency shall comply with the requirements,

¹ A “guidance document” is any written principle of law or policy that has not been stated in a rule and that an agency is relying on in conducting adjudications or other determinations of rights and liabilities or in issuing writings and other materials (not including any rule, regulation, bylaw, or standard governing the day-to-day staff procedures and operations within an agency).

which includes setting standards for estimating costs. Through the regulatory budget, agencies will offset the costs of new regulatory actions through deregulatory actions.

OBM will realize an increase in administrative workload to prepare the unified regulatory agenda, regulatory budget, and to issue guidance for compliance. Any costs related to producing the report will likely be minimal.

Appendix

Rules Filed with Fiscal Impacts Greater than \$100,000, CY 2023-CY 2024	
State Agency/Program	Number of Rules*
Secretary of State	2
Department of Commerce – Division of Financial Institutions	1
Department of Commerce – Real Estate Appraiser Board	1
Department of Commerce – Division of Cannabis Control	1
Medical Marijuana Control Program	2
Department of Natural Resources	1
State Board of Education	2
Department of Health	5
Casino Control Commission	1
Bureau of Workers' Compensation	10
Department of Public Safety – State Highway Patrol	1
Accountancy Board	1
Department of Mental Health and Addiction Services	1
Department of Developmental Disabilities	24
Department of Medicaid	27
Water Development Authority	1
Total	81

*These numbers may include revised filings or filings that are part of a packet.