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S.B. 9
134th General Assembly

Final Analysis

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Effective date: June 8, 2022; appropriation effective March 9, 2022; one conforming amendment effective September 30, 2024

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SUMMARY

Appropriation for the 2022 primary election

- Appropriates \$9 million in FY 2022 to provide financial assistance to county boards of elections in administering Ohio's 2022 primary election.

Reduction in regulatory restrictions

- Requires each state agency to reduce the regulatory restrictions contained in its rules by 30% by June 30, 2025, according to a schedule and criteria set forth in the act.
- Prohibits an agency from adopting new regulatory restrictions that would increase the percentage of restrictions in the agency's rules.
- Beginning July 1, 2025, 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.
- Extends the pre-existing prohibition against adopting a new regulatory restriction without eliminating two existing restrictions (the "two-for-one" rule) from June 30, 2023, to June 30, 2025.
- Allows JCARR to lessen an agency's required reduction in regulatory restrictions if the agency fails to meet a reduction goal and shows cause why the agency's required reduction should be lessened.
- Beginning July 1, 2025, limits the total number of regulatory restrictions that may be in effect in Ohio.
- Requires an agency to produce a revised inventory and historical progress report before September 15, 2022, and annually thereafter until the agency has met its reduction goal.

- Allows an administrative department head to direct otherwise independent officials or state agencies organized under the department to reduce regulatory restrictions.
- Allows the Common Sense Initiative Office (CSIO) to review any rules containing regulatory restrictions that an agency is required to include in its inventory and to direct an agency to eliminate a regulatory restriction, and permits the agency to appeal that decision to JCARR.
- 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.
- 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 establish, maintain, and improve the Cut Red Tape System, which must include a website and must allow members of the public to request information about regulatory restrictions and to communicate with JCARR about regulatory restrictions.

Continuing rule adoption and review process

- Changes the criteria that all agencies must use when conducting a five-year review of an existing rule to match the act's criteria for elimination of regulatory restrictions.
- Requires JCARR to apply the same modified standards when reviewing an existing rule that an agency has decided not to change.
- Allows JCARR to recommend that the General Assembly invalidate a proposed rule or existing rule on the basis that an agency subject to the regulatory restriction-reduction requirement has failed to justify a rule containing a regulatory restriction.
- Requires all agencies adopting a new rule or conducting a five-year review to consider whether the rule implements a federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires.
- Allows JCARR to recommend that the General Assembly invalidate a proposed or existing rule if JCARR determines that it implements a federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires.

Liquor Control Laws – technical and corrective changes

- Makes technical and corrective changes in various provisions of the Liquor Control Law, including allowing a local option election for the sale of beer to be held at a special election on a day on which a primary election may be held.

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DETAILED ANALYSIS

Appropriation for the 2022 primary election

The act appropriates \$9 million to a dedicated fund that the Secretary of State may use to financially assist the county boards of elections in administering the 2022 primary election. The \$9 million is a one-time appropriation in FY 2022, and the Director of Budget and Management must return any portion of the funds not used by October 1, 2022, to the General Revenue Fund.¹

¹ Sections 6 and 7.

Reduction in regulatory restrictions

Reduction goals

Three-year reduction of 30%

The act 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 according to criteria listed in the act. The 30% reduction is based on the number of regulatory restrictions identified in a required base inventory previously conducted by the agency. The act directs each agency to achieve a 10% reduction in regulatory restrictions by June 30, 2023; a 20% reduction by June 30, 2024; and the 30% reduction by June 30, 2025.

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 according to the act's schedule, the act prohibits the agency from adopting any new regulatory restriction unless it simultaneously removes two or more existing regulatory restrictions, beginning July 1, 2025. This prohibition remains in effect until the agency achieves the required 30% reduction. The agency also is barred from merging two existing regulatory restrictions into a single restriction to attempt to reduce the overall number of restrictions.²

The act extends through June 30, 2025, the pre-existing blanket prohibition against state agencies adopting a new regulatory restriction unless the agency simultaneously removes two or more other existing regulatory restrictions (the "two-for-one" rule). The prohibition took effect October 17, 2019, and originally was to expire June 30, 2023.³

Lessened required reduction

If an agency fails to meet a reduction goal listed above within 120 days after the deadline, the act requires the Joint Committee on Agency Rule Review (JCARR) to give the agency an opportunity to appear to show cause why the agency's required reduction should be lessened. If JCARR determines that the agency has shown cause, JCARR must determine a lessened required reduction for that agency and must submit a written report to the Speaker of the House and the President of the Senate, indicating the lessened required reduction for that agency and the reason JCARR determined that lessened reduction.

If the agency fails to reduce regulatory restrictions by a required percentage because the agency's base inventory contains regulatory restrictions adopting or implementing a federal law or rule, the agency may submit both of the following to JCARR:

² R.C. 121.951(A).

³ R.C. 121.95(F).

- A modified inventory consisting of the agency’s base inventory minus any rule that the agency identifies as implementing a federal law or rule in a manner that is not more stringent or burdensome than the federal law or rule requires;
- A written analysis explaining how each rule identified by the agency implements a federal law or rule in such a manner.

At its appearance before JCARR, JCARR may lessen the agency’s required reduction in regulatory restrictions based on the modified inventory.⁴

Statewide cap on regulatory restrictions

Effective July 1, 2025, the total number of regulatory restrictions that may be effective at any one time in Ohio is capped at a number determined by JCARR. JCARR must determine that number by calculating:

1. For each agency, the number of regulatory restrictions identified by the agency in its base inventory; minus
2. The number of regulatory restrictions that represents the percentage reduction the agency is required to achieve not later than June 30, 2025 (30%, unless JCARR has lessened that percentage for the agency as described above); and then
3. Totaling the resulting numbers for all state 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 restriction cap.⁵ It is not clear how an agency is to proceed if another law requires the agency to adopt a restriction that would result in the state exceeding the cap.

Covered agencies

Under continuing law and the act, “state agency” means 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 Department of Education, the State Lottery Commission, the Ohio Casino Control Commission, the State Racing Commission, and the Public Utilities Commission of Ohio. With respect to sports gaming, neither the Casino Control Commission nor the Lottery Commission must include rules governing sports gaming in their base inventories, and none of the sports gaming rules adopted by the Casino Control Commission are subject to the two-for-one rule or any of the act’s restriction-reduction requirements.

⁴ R.C. 121.952.

⁵ R.C. 121.953.

Rules adopted by an otherwise independent official or entity organized under a state agency are attributed to the parent agency. 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 must 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.

Certain state boards that must continue to conduct five-year reviews of their rules, and are subject to JCARR review of their rules, are not included in the definition of “state agency,” and therefore are not required to reduce their regulatory restrictions by 30% under the act. However, as discussed below, the act still adds to the factors those boards must consider during a rule’s five-year review and when adopting a new rule (see “**Continuing rule review process**,” below). It appears that the following entities are not subject to continuing law regarding the base inventory or the act’s restriction-reduction requirement, but are subject to the continuing five-year rule review process:

- The Accountancy Board;
- The Architects Board and the Ohio Landscape Architects Board;
- The Ohio Athletic Commission;
- The Chemical Dependency Professionals Board;
- The Chiropractic Board;
- The Cosmetology and Barber Board;
- The Counselor, Social Worker, and Marriage and Family Therapist Board;
- The State Dental Board;
- The Board of Embalmers and Funeral Directors;
- The State Medical Board;
- The Motor Vehicle Repair Board;
- The Board of Nursing;
- The Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board;
- The State Board of Pharmacy;
- The State Board of Registration for Professional Engineers and Surveyors;
- The State Board of Psychology;
- The State Speech and Hearing Professionals Board;

- The State Vision Professionals Board;
- The State Veterinary Medical Licensing Board.⁶

Covered regulatory restrictions

Under continuing law, a “regulatory restriction” requires or prohibits an action. Rules that include the words “shall,” “must,” “require,” “shall not,” “may not,” and “prohibit” are considered to contain regulatory restrictions.

However, the following types of rules or regulatory restrictions are not required to be included in a state agency’s base inventory of regulatory restrictions:⁷

- An internal management rule;
- An emergency rule;
- A rule that state or federal law requires the agency to adopt verbatim;
- A regulatory restriction contained in materials or documents incorporated by reference into a rule;
- Access rules for confidential personal information;
- A rule concerning instant lottery games;
- A rule adopted by the Ohio Casino Control Commission or the State Lottery Commission concerning sports gaming;
- Any other rule that is not subject to review by JCARR.

Criteria for elimination

The act requires a state agency to review its base inventory of rules containing regulatory restrictions to determine whether each rule should be amended or rescinded. To achieve its reduction goals, a state agency must evaluate its regulatory restrictions using the same criteria that continuing law requires the agency to use for a five-year review of each of its existing rules. The act modifies these criteria (see “**Agency review**,” below).⁸

Agency implementation

Progress report and revised inventory

Under the act, not later than September 15, 2022, each agency must prepare an updated inventory and historical report of its progress in achieving its regulatory reduction goal according to the act’s schedule. In the report, the agency must explain how it applied the required criteria for amending or rescinding rules and must calculate its percentage reduction

⁶ R.C. 121.95(A) and 121.954, and R.C. 121.95, as amended by H.B. 29 of the 134th General Assembly.

⁷ R.C. 121.95(B) and (E).

⁸ R.C. 106.03(A) and 121.951(A).

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 September 15 of each year until it has achieved the required reduction in regulatory restrictions. The agency must send its completed reports electronically to JCARR, which must review them and send them to the Speaker of the House and the President of the Senate.⁹

Administrative department head authority

The act authorizes an administrative department head of a department subject to the restriction-reduction requirements to direct otherwise independent officials or state agencies organized under the department to reduce regulatory restrictions in accordance with the act.¹⁰

Common Sense Initiative Office

The act also allows the Common Sense Initiative Office (CSIO) to review any rules containing regulatory restrictions that a state agency must include in its inventory of regulatory restrictions, either in the course of evaluating draft rules and business impact analyses under continuing law or at any other time.

If CSIO determines, based on the act's criteria for eliminating regulatory restrictions, that an agency should eliminate a regulatory restriction, CSIO must notify the agency that it must eliminate that regulatory restriction, and the agency must eliminate it. If the agency objects to eliminating the regulatory restriction, the agency may appeal CSIO's decision to JCARR. If JCARR also determines, based on the criteria for elimination, that the agency should eliminate the regulatory restriction, the agency must eliminate it.¹¹

JCARR administration

Assistance to agencies and annual report

The act directs JCARR to advise and assist agencies in preparing their inventories of regulatory restrictions and in achieving the act's reduction goals. Not later than June 15, 2022, JCARR must prepare a report aggregating the agency base inventories. Beginning in 2023, by December 15 of each year, JCARR must aggregate all the agencies' inventories and historical

⁹ R.C. 121.951(B).

¹⁰ R.C. 121.031, by reference to R.C. 121.02 and 121.03.

¹¹ R.C. 107.57.

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 reports on its website, send it to the Speaker of the House and the President of the Senate, and provide it to the members of JCARR.¹²

Database

The act 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.¹³

Cut Red Tape System

Under the act, JCARR also must consult with LIS to establish, maintain, and improve the Cut Red Tape System, which must include a website and must allow members of the public to request information about regulatory restrictions and to communicate with JCARR about regulatory restrictions.¹⁴

Continuing rule review process

Five-year review of existing rules

Agency review

Under continuing law, a state agency must review each of its existing rules every five years to determine whether to amend or rescind them, based on listed criteria. The act changes those criteria and applies them to both rules that are subject to the act's requirement to eliminate regulatory restrictions and all other rules that are subject to the five-year review, including rules adopted by agencies that are not covered by the act's requirements concerning regulatory restrictions (see the independent boards listed above under "**Covered agencies**"). The act alters the criteria by doing all of the following:

- Removing a requirement to consider whether a rule needs amendment or rescission to eliminate unnecessary paperwork;
- Adding requirements that the agency consider whether the rule should be amended or rescinded because it does any of the following, or otherwise for the purpose of reducing regulatory restrictions:

¹² R.C. 101.354.

¹³ R.C. 101.355(A).

¹⁴ R.C. 101.355(B).

- Creates a compliance or oversight burden for the agency, or for any person or entity, that is greater than the burden that would be created if the agency accomplished the intended purpose of the restriction by other means;
 - Is no longer useful or beneficial;
 - Duplicates, overlaps with, or conflicts with a state or federal law;
 - Has an adverse impact on any person or entity;
 - Imposes a more severe duty or liability than restrictions in neighboring states in order to accomplish the same goal;
 - Implements a federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires.
- Adding a requirement that if a rule duplicates, overlaps with, or conflicts with a rule adopted by another state agency, the two agencies must determine which agency must amend or rescind its rule and develop and execute a plan to work together to achieve the required oversight.

Under continuing law, an agency must evaluate whether a rule should be amended or rescinded because it does any of the following:

- Exceeds or conflicts with the purpose, scope, or intent of the statute under which the rule was adopted;
- Provides inadequate flexibility at the local level;
- Improperly incorporates a text or other material by reference;
- Duplicates, overlaps with, or conflicts with other rules;
- Has an adverse impact on businesses, as determined by CSIO;
- Contains words or phrases whose meanings, in contemporary usage, are understood as being derogatory or offensive;
- Requires liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

Because the act aligns the five-year review criteria with the criteria for eliminating regulatory restrictions, an agency that reviews all of its regulatory restrictions over the course of three years under the act will already have completed the required five-year review for those rules.¹⁵

JCARR review

If the state agency conducts a five-year rule review and determines that the rule should not be changed, continuing law requires JCARR to review that decision and allows JCARR to

¹⁵ R.C. 106.03 and 121.951.

recommend that the General Assembly invalidate the rule if JCARR disagrees with the agency's assessment of the rule. Under the act, JCARR must apply the same modified standards discussed above when reviewing an existing rule. The act allows JCARR to recommend invalidation of a rule if it independently determines that the rule implements a federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires. When an agency is subject to the act's requirement to reduce regulatory restrictions (see "**Covered agencies**," above), the act also allows JCARR to recommend invalidation if the agency has failed to justify the retention of a rule containing a regulatory restriction.¹⁶

Review of proposed rules

Under continuing law, when a state agency adopts a new rule, it also must file the proposed rule with JCARR for review, and JCARR may recommend that the General Assembly adopt a concurrent resolution to invalidate the rule if JCARR makes certain findings. The act expands the permitted reasons for JCARR to recommend the invalidation of a proposed rule to include both of the following:

- That the agency has failed to justify the proposed adoption, amendment, or rescission of a rule containing a regulatory restriction (applies to agencies covered by the act's requirement to reduce regulatory restrictions);
- That the proposed rule implements a federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires (applies to all state agencies).

At the time a state agency files a proposed rule implementing a federal law or rule with JCARR, the act requires the agency to provide JCARR with a citation to the federal law or rule the proposed rule implements and a statement as to whether the proposed rule implements the federal law or rule in a manner that is more or less stringent or burdensome than the federal law or rule requires.¹⁷

Liquor Control Laws – technical and corrective changes

The act makes technical and corrective changes in the following Liquor Control Laws:

- Corrects an erroneous cross-reference in the law that allows a political organization or 501(c)(3) charitable organization to give away beer or intoxicating liquor, without a liquor permit, as a fundraising prize;
- Does both of the following regarding the law that allows a trade marketing professional, broker, or solicitor of alcoholic beverages to use social media for on-premises brand promotions and product location communications:
 - Includes a required cross-reference; and

¹⁶ R.C. 106.031.

¹⁷ R.C. 106.021, 111.15, and 119.03.

- Changes a reference to the term “tastings” to “tasting samples” to provide consistency among various liquor law provisions.
- Allows a county board of elections to hold a local option election for the sale of beer at a special election held on a day on which a primary election may be held, thus making local option elections for beer consistent with other local option elections (as recently amended in S.B. 102 of 134th General Assembly).¹⁸

HISTORY

Action	Date
Introduced	01-21-21
Reported, S. Gov’t Oversight & Reform	03-02-21
Passed Senate (25-8)	03-10-21
Reported, H. Government Oversight	02-09-22
Passed House (61-33)	03-02-22
Senate concurred in House amendments (27-6)	03-02-22

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¹⁸ R.C. 4301.171(G)(1), 4301.245(B)(2), 4301.58(E), and 4305.14.