



OHIO LEGISLATIVE SERVICE COMMISSION

Jason Glover

Fiscal Note & Local Impact Statement

Bill: S.B. 221 of the 132nd G.A.

Status: As Enacted¹

Sponsor: Sen. Uecker

Local Impact Statement Procedure Required: No

Subject: Revises rulemaking and rule review procedures

Fiscal Highlights

- The bill expands the authority of the Joint Committee on Agency Rule Review (JCARR) in certain ways. Any additional costs generated for JCARR will be minimal at most and absorbed within the agency's existing staffing and funding levels.
- Agencies under JCARR jurisdiction may experience an increase or decrease in administrative costs associated with various provisions of the bill that change rule-making procedures.
- The Office of Legislative Information Systems (LIS) may incur minimal one-time costs to update the electronic rule filing system as required by the bill.

Detailed Fiscal Analysis

The bill makes various changes to rulemaking and rule review procedures affecting the Joint Committee on Agency Rule Review (JCARR) and the various state agencies, boards, and commissions that fall under its jurisdiction. In general, the bill addresses issues associated with incorporations of rules by reference, the standards JCARR uses to review rules, an agency's duty to state principles of law or policy in rules, and agency dereliction in adopting rules. Fiscal effects of these provisions are described below.

Joint Committee on Agency Rule Review

The bill expands the authority of JCARR in certain ways. For example, the bill permits JCARR to:

- Require an agency to appear for a hearing if the committee becomes aware that an agency is conducting business through policy rather than rule or if an agency is required by statute to adopt a rule, but has not;
- Recommend invalidating proposed rules in additional circumstances;

¹ The act was vetoed by the Governor on August 2, 2018, but on November 14, 2018, the House and Senate voted to override the Governor's veto.

- Order an agency to immediately review a rule outside of the normal five-year rule review process if the rule has an unexpected adverse impact on business that is not reasonably within the scope of the relevant statute;²
- Request, as part of the rule summary and fiscal analysis (RSFA), an explanation of the relationship between a fee imposed by rule and the costs incurred by the agency in performing the function for which the fee is charged.

As a result of the bill, JCARR may have to expend additional time and effort in its review of rules, the cost of which would be no more than minimal annually and, according to JCARR staff, can be absorbed within existing staff and budgetary resources.

State agency rule-making procedures

There are a number of provisions in the bill that may result in increased administrative costs for state agencies under JCARR's jurisdiction. For example, the bill:

- Requires an agency, at reasonable intervals, to self-examine its operations for policies (not related to internal management) that should be adopted as rules; within three months after the start of a new gubernatorial term, to transmit its findings to JCARR; and to commence the rule-making process for any necessary rules as soon as reasonably feasible but no later than six months after a determination is made (the bill exempts elected state officials, state institutions of higher education, and the five retirement systems from these requirements);
- May require an agency to immediately review a rule outside of the normal five-year rule review process, as described above;
- May require an agency to include additional information in the RSFA, as described above; and
- May require an agency to prepare for and attend JCARR hearings in the circumstances described above and write formal rules.

On the other hand, the bill contains provisions that might reduce some costs associated with rulemaking, including:

- Authorization for agencies to incorporate materials that are easily accessible to JCARR and the public through a citation (instead of filing a copy of all incorporated material with JCARR, as is currently required); and
- Elimination of a requirement to have texts and other materials incorporated by reference deposited in five libraries across the state.

² The bill also expands "adverse impact on business" to include situations in which a rule is likely to directly reduce the revenue or increase the expenses of the lines of business to which the rule applies.

Instead, the bill requires an agency to ensure that the text or other material is available from the agency.

Legislative Information Systems

The bill requires Legislative Information Systems (LIS), in consultation with the Director of the Legislative Service Commission and the Executive Director of JCARR, to program or reprogram the electronic rule filing system as necessary to implement the bill no later than the date the main provisions of the bill become effective (six months after the effective date of the bill). As a result, LIS may incur minimal one-time costs to update the electronic rule filing system, as some modifications may need to be made.

Opportunities for Ohioans with Disabilities Agency

The bill requires the Opportunities for Ohioans with Disabilities Agency to establish a fee schedule for vocational rehabilitation services by rule. Current law requires the agency to establish a fee schedule, but does not specify the method. This provision appears to codify current practice, as the fee schedule is currently adopted in rule 3304-2-52 of the Ohio Administrative Code.