



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Final Analysis

Cody Weisbrodt

### **Sub. S.B. 221**

132nd General Assembly

(As Passed by the General Assembly)

**Sens.** Uecker, Huffman, Beagle, Sykes, Coley, LaRose, Balderson, Dolan, Hackett, Hoagland, Jordan, Kunze, Manning, McColley, Obhof, Oelslager, Peterson, Terhar

**Reps.** Anielski, Becker, Blessing, Brenner, Butler, Carfagna, Dean, Faber, Gavarone, Green, Hambley, Henne, Hill, Hood, Koehler, Landis, Lanese, Lang, Patton, Perales, Reineke, Retherford, Rezabek, Riedel, Romanchuk, Ryan, Scherer, Seitz, Stein, Wiggam, Young

**Effective date:** August 18, 2019; Section 4, directing LIS to reprogram the electronic rule-filing system, effective February 18, 2019

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## **ACT SUMMARY**

### **Incorporations by reference**

- States that an agency incorporates material into a rule by reference when it refers in the rule to the text or other material as if it were reproduced in the rule.
- Requires an agency to accompany an incorporation by reference with a citation that enables a person to find the incorporated material free of charge.
- Requires an agency to specify the date of incorporation by reference, date of publication, or version or edition of the material to be incorporated and authorizes an agency to include a website address in a rule.

- Prohibits an agency from incorporating by reference material that does not exist at the time of the incorporation by reference of the material into the rule.
- Requires an agency to ensure that material incorporated by reference is available to the public from the agency and requires the agency to make the material available to the public upon request.
- Requires an agency to file material incorporated by reference into a rule with the Joint Committee on Agency Rule Review (JCARR) if the citation accompanying the incorporation by reference is not sufficient for JCARR to access the material readily and free of charge.
- Authorizes JCARR to solicit information in the rule summary and fiscal analysis (RSFA) explaining how a material incorporated by reference is exempt from the incorporation by reference requirements.
- Authorizes JCARR to recommend invalidation of a proposed or existing rule if it does not cite to a readily available source for incorporated material or if the agency has erroneously treated the incorporation as exempt from the incorporation by reference requirements.
- Requires an agency, as part of its five year review process, to review incorporations by reference to ensure that the citations to it allow the material to be accessed readily or free of charge, or to ensure that an exemption applies.
- Exempts from the incorporation by reference requirements published federal laws and regulations, published state laws and regulations, material maintaining federal funding, forms and digital applications, and material restating administrative conclusions or commercial standards.

### **RSFA addition**

- Authorizes JCARR to request an agency to provide an explanation of the relationship between a fee imposed by the rule and the costs incurred by the agency in performing the function for which the fee is charged.



## **Standards for review of rules**

- Adds that a rule would be likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies as an "adverse impact on business" for purposes of the business review of rules law.
- Permits the Chairperson of JCARR to move that JCARR order the agency to submit a rule for periodic review if the Chairperson becomes aware that the rule is having an unintended or unexpected effect on businesses.
- Requires an agency receiving an order to submit a rule having an unintended or unexpected effect on businesses to begin compliance with the order not later than 30 days after it was transmitted.
- Allows JCARR to recommend invalidation of an existing rule if the rule has an unintended or unexpected effect on businesses that is not reasonably within the statute under which the agency adopted the rule.

## **Agency duty to state principles of law or policy in rules**

- Requires an agency, at reasonable intervals, to review its operations to identify principles of law or policy that have not been stated in a rule and that the agency is relying upon (1) in conducting adjudications or other determinations of rights and liabilities or (2) in issuing writings and other materials.
- Requires the agency, if the principle of law or policy establishes a legal regulation or standard that would not otherwise exist, to consider whether the policy should be restated in a rule.
- Requires the agency to consider restating in a rule a principle of law or policy that clarifies or aids in interpreting an existing rule or statute.
- Requires the agency to commence rulemaking no later than six months after determining that a principle of law or policy should be restated in a rule.

- Authorizes a person to petition an agency to restate a principle of law or policy in a rule if the person was a party to an adjudication or other determination that has resulted in an order or other disposition, and the adjudication involved a principle that should have been supplanted by its restatement in a rule.
- Authorizes the JCARR Chairperson, if JCARR becomes aware that an agency subject to its jurisdiction is relying on a principle of law or policy that should have been supplanted by its restatement in a rule, to request the agency to appear before JCARR and address why it is relying on that principle.
- Requires the agency, upon receiving the request, to designate a suitable officer or employee to appear on behalf of the agency before JCARR as directed in the request.
- Declares that the provisions requiring agencies to state principles of law or policy in rules do not apply to certain elected state officers, state institutions of higher education, or the five state retirement systems.

### **Dereliction in adopting rules**

- Authorizes the Chairperson of JCARR, if JCARR becomes aware that an agency subject to its jurisdiction is required to adopt a rule but appears neither to have done so nor to have commenced the rule-making process, to request the agency to appear to explain its apparent dereliction.
- Requires the agency, upon receiving the request, to designate a suitable officer or employee to appear on behalf of the agency before JCARR as directed in the request.

### **JCARR staffing**

- Specifies that the Executive Director of JCARR serves at the pleasure of the President of the Senate and Speaker of the House by mutual consensus.
- Authorizes the Executive Director to employ technical, clerical, and professional employees as are necessary to carry out JCARR's powers and administrative duties.



## Vocational rehabilitation services fee schedule

- Requires the Opportunities for Ohioans with Disabilities Agency to establish the fee schedule by rule adopted under the Administrative Procedure Act.

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## CONTENT AND OPERATION

The act generally revises certain requirements related to agency rulemaking, including changes to incorporation by reference requirements, explanations of imposed fees, rule review standards relating to an adverse impact on businesses, agency's duties when relying on principles of law or policy, dereliction in adopting rules, and staffing of the Joint Committee on Agency Rule Review (JCARR). The General Assembly overrode the Governor's veto of the act. The substantive provisions of the act take effect on August 18, 2019.<sup>1</sup>

In the following table, the first column to the left identifies the general topics addressed by the act. The second column identifies where the relevant provisions are located in the act. The third column summarizes former law. The last column summarizes the law enacted by the act.

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<sup>1</sup> Section 3 of the act.



## Incorporations by reference

Topic	Location	Former Law	Enacted Law
<p><b>Definition of "incorporation by reference"</b></p>	<p>R.C. 121.72 (first paragraph)</p>	<p>Stated that an agency incorporated a text or other material into a rule by reference when it stated in the rule that a text or other material not contained in the rule was to be treated as if it were contained in the rule.</p>	<p>States that an agency incorporates a text or other material into a rule by reference when it refers in the rule to the text or other material as if it were spelled out or otherwise reproduced in the rule.</p>
<p><b>Citation requirement</b></p>	<p>R.C. 121.72 (first paragraph)</p>	<p>Required the agency to explain in the rule how a person who reasonably could be expected to be affected by the rule could obtain copies of the text or other material that had been incorporated by reference.</p> <p>Specified, if the matter incorporated by reference was or reasonably could be expected to be subject to change, that the agency must have identified, and specified the date of, the particular edition or other version of the text or other material that was incorporated by reference.</p>	<p>Requires the agency to accompany the incorporation by reference with a citation that provides information sufficient to enable a reasonable person to whom the rule applies readily and without charge to find or inspect the text or other material that is incorporated by reference.</p> <p>Requires the citation to specify the date of the text or other material or to identify a particular edition or version of the text or other material and, if available, the date of the particular edition or version.</p> <p>Authorizes the citation also to include a website address to the text or other material, and other information that will enable the text or other material to be found readily and without charge.</p>

Topic	Location	Former Law	Enacted Law
<b>Incorporation by reference of only existing matter</b>	R.C. 121.72 (last paragraph)	No provision.	<p>States that an agency is presumed to have incorporated by reference a text or other material that is in existence at the time of its incorporation by reference.</p> <p>Prohibits an agency from incorporating by reference a future version of a text or other material that is not in existence at the time of its incorporation by reference.</p>
<b>Public access to matter incorporated by reference</b>	R.C. 121.74 and 3375.01(L)	Required an agency that incorporated a text or other material by reference into its rules (1) to deposit one complete and accurate copy of the text or other material in each of the five depository libraries designated by the State Library Board to preserve the matter, or (2) to display a complete and accurate copy of the text or other material on a website that the agency maintained and made available.	<p>Requires an agency that adopts a rule that incorporates a text or other material to ensure, before the rule's effective date, that the text or other material is available from the agency.</p> <p>Requires the agency promptly and without charge to make the text or other material available to any person who requests access to the text or other material.</p>
<b>JCARR access to matter incorporated by reference</b>	R.C. 121.73	Required, when an agency filed a rule with JCARR for legislative review that incorporated a text or other material by reference, that the agency also file a complete and accurate copy of the text or other material with JCARR.	Requires, when an agency files a rule with JCARR for legislative review that incorporates a text or other material by reference, that the agency also file the text or other material with, or otherwise make it available to, JCARR, <i>but only if</i> the citation accompanying the incorporation by reference is not such as reasonably would enable JCARR readily and without charge to find and inspect the text or other material that has been incorporated by reference.
<b>Rule Summary and Fiscal Analysis</b>	R.C. 106.024(B)(11) and (12)	Authorized JCARR to solicit information explaining how certain texts or other	Authorizes JCARR to solicit information explaining how a text or other material that



Topic	Location	Former Law	Enacted Law
		materials that were incorporated by reference to a rule were exempt from the incorporation by reference requirements, and to explain why it was infeasible for the agency to file certain texts or other materials that had been incorporated by reference with JCARR.	is incorporated by reference is exempt from the incorporation by reference requirements on grounds the incorporation has one or more of the characteristics authorizing the exemption (see " <b>Materials exempt from incorporation by reference requirements (3)</b> ," below).
<b>Standard for legislative review of an incorporation by reference</b>	R.C. 106.021(D)	Authorized JCARR to recommend invalidation of a proposed rule if (1) the agency had failed to file a text or other material that had been incorporated by reference with JCARR, or (2) the incorporation by reference failed to meet the standards governing incorporations by reference into rules.	Authorizes JCARR to recommend invalidation of a proposed rule if (1) the citation accompanying the incorporation by reference is not such as would enable a reasonable person to whom the proposed rule applies readily and without charge to find and inspect the incorporated text or other material, (2) the citation accompanying the incorporation by reference is not such as reasonably would enable JCARR readily and without charge to find and inspect the incorporated text or other material, and the agency did not file or otherwise make the incorporated text or other material available without charge to JCARR, or (3) the agency has treated the proposed rule in whole or in part as exempt from compliance with the incorporation by reference requirements on grounds the incorporated matter has one or more of the characteristics that authorize the exemption, but the incorporated matter actually does not have any of those characteristics (see " <b>Materials exempt from incorporation by reference requirements (3)</b> ," below).





Topic	Location	Former Law	Enacted Law
<p><b>Agency five-year review of incorporations by reference</b></p>	<p>R.C. 106.03(A)(4)</p>	<p>Required an agency to review whether a rule incorporates a text or other material by reference and, if so, whether the text or other material (1) was deposited in a depository library or displayed on the agency's website (see above), and (2) met the standards governing incorporation by reference into rules.</p>	<p>Requires an agency to review whether a rule incorporates a text or other material by reference and, if so, whether (1) the citation accompanying the incorporation by reference is such as reasonably would enable a reasonable person to whom the rule applies readily and without charge to find and inspect the incorporated text or other material, (2) the citation accompanying the incorporation by reference is such as reasonably would enable JCARR readily and without charge to find and inspect the incorporated text or other material, and (3) if the rule has been exempted in whole or in part from compliance with the incorporation by reference requirements on grounds the incorporation by reference has one or more of the characteristics authorizing the exemption, whether the incorporation actually has any of those characteristics (see "<b>Materials exempt from incorporation by reference requirements (3)</b>," below).</p>
<p><b>Standards for five-year legislative review of an incorporation by reference</b></p>	<p>R.C. 106.031(E)(3)</p>	<p>Authorized JCARR to recommend invalidation of an existing rule that incorporated a text or other material by reference:</p> <p>--If the agency failed to file the incorporated text or other material with JCARR or to deposit the text or other material in a depository library or to display the text or other material on the agency's</p>	<p>Authorizes JCARR to recommend invalidation of an existing rule that incorporates a text or other material by reference if (1) the citation accompanying the incorporation by reference is not such as reasonably would enable a reasonable person to whom the rule applies readily and without charge to find and inspect the incorporated text or other material, (2) the citation accompanying the incorporation by</p>



Topic	Location	Former Law	Enacted Law
		<p>website; or</p> <p>--If the rule failed to meet the standards governing incorporations by reference into rules.</p>	<p>reference is not such as reasonably would enable JCARR readily and without charge to find and inspect the incorporated text or other material, or (3) the rule has been exempted in whole or in part from the incorporation by reference requirements on grounds the incorporation by reference has one or more of the characteristics authorizing the exemption, but the incorporation actually does not have any of those characteristics (see "<b>Materials exempt from incorporation by reference requirements (3)</b>," below).</p>
<p><b>Materials exempt from incorporation by reference requirements</b></p>	<p>R.C. 121.75 (amended) and 121.76 (repealed)</p>	<p>Divided the exemptions into three classes:</p> <p>(1) Exempted generally the incorporation by reference of:</p> <p>--A section of the Revised Code;</p> <p>--An uncodified Ohio statute; and</p> <p>--A rule in the Administrative Code.</p> <p>(2) Exempted the incorporation by reference of:</p> <p>--An internal management rule;</p> <p>--A rule insofar as it is necessary to obtain or maintain authorization of a federally delegated program, or insofar as it is necessary to maintain compliance with federal requirements in order to receive federal funds.</p>	<p>Divides the exemptions into three classes:</p> <p>(1) Exempts generally the incorporation by reference of:</p> <p>--A section of the Revised Code;</p> <p>--An uncodified Ohio statute;</p> <p>--An act of the General Assembly in the Laws of Ohio;</p> <p>--A rule in the Administrative Code;</p> <p>--A rule in the Register of Ohio; and</p> <p>--A rule in the Monthly Record.</p> <p>(2) Exempts the following so long as the date of the text or other material that has been incorporated by reference is specified:</p>

Topic	Location	Former Law	Enacted Law
		<p>Recommended that a rule exempted under (2) nevertheless incorporate by reference a particular edition or other version of the text or other material that was incorporated by reference.</p> <p>(3) Exempted the incorporation by reference of the following, so long as the incorporation by reference consisted of a citation that was intelligible to the persons who reasonably could be expected to be affected by the rule and that, if the incorporated matter was or reasonably could be expected to be subject to change, identified, and specified the date of, the particular edition or other version that was incorporated:</p> <p>--A section of the United States Code;</p> <p>--An uncodified federal statute, if it had been appended as a legislative note to a section in the U.S. Code;</p> <p>--An Ohio act in the Laws of Ohio, or a federal act in the Statutes at Large;</p> <p>--A federal regulation in the Federal Register or Code of Federal Regulations; or</p> <p>--A text or other material, including generally accepted industry standards, that was generally available to persons who</p>	<p>--A section of the United States Code;</p> <p>--An uncodified federal statute that has been appended as a legislative note to a section in the U.S. Code;</p> <p>--A federal act in the Statutes at Large;</p> <p>--A federal regulation in the Federal Register; and</p> <p>--A federal regulation in the Code of Federal Regulations.</p> <p>(3) Exempts an incorporation by reference insofar as the incorporated text or other material has any of the following characteristics:</p> <p>--It addresses the internal management of an agency;</p> <p>--It obtains or maintains authorization of a federally delegated program in Ohio;</p> <p>--It addresses or provides for the receipt of federal funds by the state under a federally funded program;</p> <p>--It is a form to be filled out or a digital application into which data is entered to fill out a form or its equivalent, but only if the form or application merely collects information and does not establish</p>

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		reasonably could be expected to be affected by the rule.	<p>principles of law or policy;</p> <p>--It states or restates federal legislative or administrative conclusions, such as interest rates or poverty levels, that are readily ascertainable from reliable sources, and that are not reasonably susceptible to state legislative or administrative variation;</p> <p>--It states or restates generally accepted commercial, industrial, building, fire, plumbing, electrical, safety, or other codes or standards that are readily available to or ascertainable by the persons the standards are likely to affect; or</p> <p>--It is copyrighted text or other material with regard to which permission to use has been obtained.</p>
<b>Definition of "rule" as used in incorporation by reference requirements</b>	R.C. 121.71(B)	Specified that "rule" included an appendix or an attachment to a rule.	Removes "or an attachment" from the definition.

### Rule Summary and Fiscal Analysis (RSFA) Addition

Topic	Location	Former Law	Enacted Law
<b>Additional information that may be solicited on RSFA</b>	R.C. 106.024	Specified the information that JCARR was permitted to solicit on the RSFA form.	Authorizes JCARR to request an agency to provide an explanation of the relationship between a fee imposed by the rule and the costs incurred by the agency in performing the function for which the fee is charged.

Topic	Location	Former Law	Enacted Law
<b>Renumbers RSFA statute</b>	R.C. 127.18 (106.024)	No provision.	Renumbers the section (R.C. 127.18) as R.C. 106.024.

### Standards for review of rules

Topic	Location	Former Law	Enacted Law
<b>Definition of "adverse impact on businesses"</b>	R.C. 107.52(D)	No provision.	Adds, to the definition of what constitutes an "adverse impact on business" for purposes of the business review of rules law, an additional meaning: that the rule would be likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.
<b>Review of a rule having an unintended or unexpected effect on businesses</b>	R.C. 106.032	No provision.	<p>Specifies, if the Chairperson of JCARR becomes aware that an existing rule has had or is having an unintended or unexpected effect on businesses that is not reasonably within the express or implied scope of the statute under which the rule purportedly was adopted, that the Chairperson can move that JCARR order the agency that is administering the existing rule to submit the existing rule for review under the procedure of the Periodic Review of Rules Act (R.C. 106.031) that applies when an agency, upon conducting periodic review of its rules, determines that a rule does not require amendment or rescission.</p> <p>Declares such a motion to be out of order if JCARR previously has adopted such a motion within the immediately preceding five-year period.</p> <p>Specifies that JCARR can adopt the motion by vote of a majority of its members.</p> <p>Requires JCARR to prepare the order in writing, and to transmit the order electronically to the agency, the Director of the Legislative Service Commission (LSC), and the Common</p>

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			<p>Sense Initiative Office (CSIO).</p> <p>Requires JCARR to indicate in the order the date on which it was transmitted.</p> <p>Requires the Director of LSC to publish the order in the Register of Ohio.</p> <p>Requires the agency, upon receiving the order, to comply with the order as soon as reasonably possible, but specifies that the agency must begin compliance not later than 30 days after the date on which the order was transmitted.</p> <p>Specifies, when an agency complies with the order, that proceedings are to be had as described above.</p> <p>Clarifies that the next periodic review date of a rule that is subjected to special periodic review as described above is to be computed with reference to the special periodic review.</p> <p>Adds, to the standards under which JCARR can recommend invalidation of an existing rule under the Periodic Review of Rules Act, another standard: that the existing rule has an unintended or unexpected effect on businesses that is not reasonably within the express or implied scope of the statute under which the agency purportedly adopted the existing rule.</p>

**Agency duty to state principles of law or policy in rules**

Topic	Location	Former Law	Enacted Law
<b>Agency duty to state principles of law or policy in rules</b>	R.C. 121.93	No provision.	Requires an agency, at reasonable intervals, to review its operations to identify principles of law or policy that have not been stated in a rule and that the agency is relying upon (1) in conducting adjudications or other determinations of rights and



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			<p>liabilities or (2) in issuing writings and other materials, such as instructions, directives, policy statements, guidelines, handbooks, manuals, advisories, notices, circulars, advertisements, forms, letters, and opinions.</p> <p>Requires an agency to complete at least one of the reviews during a Governor's term.</p> <p>Requires an agency, within three months after the expiration of a Governor's term, electronically to transmit to JCARR, a notice stating that the agency has completed one or more of the reviews, specifying the exact number of reviews completed during the Governor's expired term.</p> <p>Requires the agency to determine whether a principle of law or policy thus identified has a general and uniform operation, and establishes a legal regulation or standard that would not exist in its absence.</p> <p>Requires the agency, if the principle of law or policy has these characteristics, to consider whether the principle of law or policy should be supplanted by its restatement in a rule to achieve one or more of the following as they are relevant to the principle of law or policy: (1) assert the general and uniform operation of the principle of law or policy, (2) make the principle of law or policy more readily available to the public, (3) make the principle of law or policy more readily available to persons who are specifically affected by the principle of law or policy, (4) enable the principle of law or policy to be better known in advance of its application, (5) enable greater public participation in improvement and further development of the principle of law or policy, (6) enable greater participation by persons specifically affected by the principle of law or policy in the improvement and further development of the principle of law or policy, (7) make the principle of law or policy more easily</p>

Topic	Location	Former Law	Enacted Law
			<p>understandable, or (8) make the principle of law or policy more readily available to those legally charged with monitoring or reviewing the agency's operations.</p> <p>Specifies, if a principle of law or policy aids in the interpretation of an existing rule or statute, the agency must consider whether the aiding effect clarifies or otherwise resolves an uncertainty in the existing rule or statute.</p> <p>Specifies, if the principle of law or policy can be so characterized, the agency must consider whether the principle of law or policy should be supplanted by its restatement in an interpretive rule.</p> <p>Prohibits the agency from presuming that a principle of law or policy that aids in the interpretation of an existing rule or statute is simply a reiteration of the existing rule or statute.</p> <p>Requires the agency, if it determines for any of the foregoing reasons that rulemaking is indicated, to commence the rule-making process as soon as it is reasonably feasible to do so, but not later than the date that is six months after the determination was made.</p> <p>Specifies that the agency may continue to rely upon the principle of law or policy, but only while it is complying with the preceding paragraph.</p> <p>Specifies that the agency may not rely upon the principle of law or policy in advising with regard to or in determining the rights or liabilities of a person if the agency fails to commence the rule-making process by the deadline specified in the preceding paragraph, or if, after commencing the rule-making process, the agency neglects or abandons the rule-making process before it is completed.</p>



Topic	Location	Former Law	Enacted Law
			<p>Specifies that the principle of law or policy as it is restated in a rule does not need to be wholly congruent with the supplanted principle of law or policy, and authorizes the agency lawfully to improve or develop further the supplanted principle of law or policy as it is restated in a rule.</p> <p>Specifies that a principle of law or policy that is relied upon directly or by clear implication from a statute applying to the agency does not need to be supplanted by rule.</p> <p>Specifies that the duty to adopt nonrule principles of law or policy as rules does not apply if the principles of law or policy would result in an internal management rule. (An "internal management rule" is a rule governing day-to-day staff procedures and operations within an agency.)</p>
<p><b>Implementation of the duty: rule-making petitions</b></p>	<p>R.C. 121.931</p>	<p>No provision.</p>	<p>Authorizes a person to petition an agency in writing to restate a principle of law or policy in a rule if (1) the person was a party to an adjudication or other determination before an agency that has resulted in an order or other disposition, or was a party to a lawsuit in which judgment has been entered and (2) the adjudication or other determination, or the lawsuit, involved a principle of law or policy relied upon by the agency that should have been supplanted by its restatement in a rule but that has not been so supplanted.</p> <p>Requires the petition briefly to explain why the principle of law or policy should, under the standards described above, be supplanted by its restatement in a rule.</p> <p>Requires the person to send the petition to the agency not later than the 90th day after the order or other disposition was issued or the judgment was entered.</p>

Topic	Location	Former Law	Enacted Law
			<p>Requires the person also to send a copy of the petition to JCARR.</p> <p>Requires the agency, not later than the 30th day after receiving a timely petition, to consider the petition in light of the standards described above, and to notify the petitioner in writing, by certified mail, return receipt requested, whether it grants or intends to deny the petition.</p> <p>Specifies, if the agency grants the petition, that it must commence the rule-making process as soon as it is reasonably feasible to do so, but not later than the date that is six months after the petition was granted.</p> <p>Specifies that the agency may continue to rely upon the principle of law or policy, but only while it is complying with the preceding paragraph.</p> <p>Specifies that the agency may not rely upon the principle of law or policy in advising with regard to or in determining the rights or liabilities of a person if the agency fails to commence the rule-making process by the deadline specified in the preceding paragraph, or if, after commencing the rule-making process, the agency neglects or abandons the rule-making process before it is completed.</p> <p>Specifies that the principle of law or policy as it is restated in a rule does not need to be wholly congruent with the supplanted principle of law or policy, and authorizes the agency lawfully to improve or develop further the supplanted principle of law or policy as it is restated in a rule.</p> <p>Specifies, if the agency intends to deny the petition, that it must send the petitioner a notice affording the petitioner an opportunity for a hearing on the petition and briefly explaining</p>

Topic	Location	Former Law	Enacted Law
			<p>why the agency intends to deny the petition.</p> <p>Requires the petitioner to request a hearing within 15 days after receiving the notice, and specifies, if the petitioner does not timely request a hearing, that the agency must deny the petition and notify the petitioner in writing.</p> <p>Requires the agency, if the petitioner responds in writing within the 15-day period requesting a hearing, to promptly notify the petitioner, by certified mail, return receipt requested, of the time and place for the hearing, which cannot be earlier than the 30th day after the notice was sent to the petitioner.</p> <p>Requires the agency at the hearing to explain why, notwithstanding the standards described above, it intends to deny the petition, and requires the petitioner to explain why, under those standards, the petitioner believes the agency's intention to be erroneous.</p> <p>Specifies that the hearing is to be informal.</p> <p>Allows the petitioner to have the assistance of counsel at the hearing.</p> <p>Requires the agency, not later than the 30th day after the hearing concludes, to grant or deny the petition.</p> <p>Requires the agency, if it grants the petition, to commence the rule-making process as soon as it is reasonably feasible to do so, but not later than the date that is six months after the petition was granted.</p> <p>Specifies that the agency may continue to rely upon the principle of law or policy, but only while it is complying with the preceding paragraph.</p>



Topic	Location	Former Law	Enacted Law
			<p>Specifies that the agency may not rely upon the principle of law or policy in advising with regard to or in determining the rights or liabilities of a person if the agency fails to commence the rule-making process by the deadline specified in the preceding paragraph, or if, after commencing the rule-making process, the agency neglects or abandons the rule-making process before it is completed.</p> <p>Specifies that the principle of law or policy as it is restated in a rule does not need to be wholly congruent with the supplanted principle of law or policy, and authorizes the agency lawfully to improve or develop further the supplanted principle of law or policy as it is restated in a rule.</p> <p>Requires the agency to deny the petition if the petitioner failed to appear at the hearing, or if the petitioner failed to persuade the agency that its intention to deny the petition is erroneous.</p> <p>Requires the agency to send notice in writing to the petitioner of the outcome.</p> <p>Specifies, if the outcome is denial of the petition, that the notice must explain briefly why the agency is denying the petition.</p> <p>Declares that the petitioner is not entitled to appeal the outcome.</p>
<b>Implementation of the duty: JCARR inquiry</b>	R.C. 101.352	No provision.	Specifies, if JCARR becomes aware that an agency subject to its jurisdiction is relying upon a principle of law or policy that, under the standards described above, should have been supplanted by its restatement in a rule, the chairperson of JCARR, in the chairperson's sole discretion, may request the agency to appear before JCARR to address why, notwithstanding the standards described above, it is so relying.

Topic	Location	Former Law	Enacted Law
			<p>Specifies that the request must specify the time and place at which a designee of the agency is to appear before JCARR to address, and answer JCARR's questions concerning, the agency's reliance.</p> <p>Specifies that the date set for the appearance cannot be earlier than 30 days after the request was transmitted to the agency.</p> <p>Requires JCARR to transmit the request to the agency electronically.</p> <p>Requires JCARR also to publish the request on its website, as part of the relevant meeting agenda, and to indicate in conjunction with the published request that any person is invited to appear before JCARR when the agency appears to offer and make comments to JCARR concerning the agency's reliance.</p> <p>Requires the agency, upon receiving the request, to designate a suitable officer or employee of the agency to appear on behalf of the agency before JCARR as directed in the request.</p> <p>Requires the agency electronically to notify JCARR of the name, title, telephone number, and email address of the officer or employee who has been designated to appear before JCARR in response to the request.</p> <p>Requires the agency's designee, upon appearing before JCARR, to address why the agency is relying upon a principle of law or policy that, notwithstanding the standards described above, has not been supplanted by its restatement in a rule.</p> <p>Authorizes the members of JCARR to question the agency's designee concerning the agency's reliance, and authorizes any</p>

Topic	Location	Former Law	Enacted Law
			<p>person to offer and make comments to JCARR concerning the agency's reliance.</p> <p>Authorizes JCARR, after the appearance has concluded, by vote of a majority of its members, in writing to recommend to the agency that it supplant the principle of law or policy that it is relying upon by its restatement in a rule.</p> <p>Requires JCARR to support its recommendation with a brief rationale of why, under the standards described above, the principle of law or policy should be supplanted by its restatement in a rule.</p> <p>Requires JCARR to transmit the recommendation electronically to the agency.</p> <p>Requires the agency, after receiving the recommendation from JCARR, to commence the rule-making process as soon as it is reasonably feasible to do so, but not later than the date that is six months after the recommendation was received.</p> <p>Specifies that the agency may continue to rely upon the principle of law or policy, but only while it is complying with the preceding paragraph.</p> <p>Specifies that the agency may not rely upon the principle of law or policy in advising with regard to or in determining the rights or liabilities of a person if the agency fails to commence the rule-making process by the deadline specified in the preceding paragraph, or if, after commencing the rule-making process, the agency neglects or abandons the rule-making process before it is completed.</p> <p>Specifies that the principle of law of policy as it is restated in a</p>



Topic	Location	Former Law	Enacted Law
			rule does not need to be wholly congruent with the supplanted principle of law or policy, and authorizes the agency lawfully to improve or develop further the supplanted principle of law or policy as it is restated in a rule.
<b>Exemption from the duty</b>	R.C. 121.933	No provision.	<p>Declares that the provisions requiring agencies to state principles of law or policy in rules do not apply to the following:</p> <p>(1) The elected state officers or their offices: the Governor, the Lieutenant Governor, the Secretary of State, the Auditor of State, the Treasurer of State, and the Attorney General;</p> <p>(2) A state institution of higher education; or</p> <p>(3) The five state retirement systems: the Public Employees Retirement System, the Ohio Police and Fire Pension Fund, the State Teachers Retirement System, the School Employees Retirement System, and the State Highway Patrol Retirement System.</p>

### Dereliction in adopting rules

Topic	Location	Former Law	Enacted Law
<b>Agency dereliction in adopting rules</b>	R.C. 101.353.	No provision.	<p>Specifies, if JCARR becomes aware, such as through its own inquiries or by receiving complaints from interested parties or stakeholders, that an agency subject to its jurisdiction is required expressly or impliedly by a statute to adopt a rule but appears neither to have done so nor to have commenced the rule-making process, the Chairperson of JCARR, in the Chairperson's sole discretion, may request the agency to appear before JCARR to explain its apparent dereliction.</p> <p>Requires the request to specify the time and place at which a designee of the agency is to appear before JCARR to address,</p>

Topic	Location	Former Law	Enacted Law
			<p>and answer JCARR's questions concerning, the agency's apparent dereliction.</p> <p>Requires the request to identify the statute that expressly or impliedly requires rule-making and that apparently has not been complied with.</p> <p>Requires JCARR to transmit the request to the agency electronically.</p> <p>Requires JCARR also to publish the request on its website, and to indicate in conjunction with the published request that any person is invited to appear before JCARR when the agency appears to offer and make comments to JCARR concerning the agency's dereliction.</p> <p>Requires the agency, upon receiving the request, to designate a suitable officer or employee to appear on behalf of the agency before JCARR as directed in the request.</p> <p>Requires the agency electronically to notify JCARR of the name, title, telephone number, and email address of the designee.</p> <p>Requires the designee, upon appearing before JCARR, to address why the agency apparently has neither adopted a rule nor commenced the rule-making process as expressly or impliedly required by the statute.</p> <p>Authorizes the members of JCARR to question the designee concerning the agency's apparent dereliction, and authorizes any person to offer and make comments to JCARR concerning the agency's apparent dereliction.</p> <p>Authorizes JCARR, after the appearance has concluded, by</p>



Topic	Location	Former Law	Enacted Law
			<p>vote of a majority of its members, to advise the agency to commence rule-making proceedings under the statute, as soon as it is reasonably feasible for the agency to do so.</p> <p>Requires JCARR to transmit the advisory electronically to the agency, and also to publish the advisory on its website.</p>

### JCARR staffing

Topic	Location	Former Law	Enacted Law
<b>Executive Director serves at the pleasure of President and Speaker</b>	R.C. 101.35	No provision.	Specifies that the Executive Director of JCARR serves at the pleasure of the Senate President and Speaker of the House by mutual consensus.
<b>Employees</b>	R.C. 101.35	No provision.	Authorizes the Executive Director to employ technical, clerical, and professional employees as are necessary to carry out JCARR's powers and administrative duties.

### Vocational rehabilitation services fee schedule

Topic	Location	Former Law	Enacted Law
<b>Opportunities for Ohioans with Disabilities Agency (OODA) rehabilitation services fee schedule</b>	R.C. 3304.15(D)	Required OODA to "establish" the fee schedule.	Requires OODA to establish the fee schedule by rule adopted under the Administrative Procedure Act.



Finally, the act includes a transition provision directing Legislative Information Systems (LIS), in consultation with the LSC Director and the Executive Director of JCARR, to program or reprogram the electronic rule-filing system as necessary to enable the changes made by the act to be fulfilled. LIS must complete the programming or reprogramming as soon as reasonably possible, but not later than August 19, 2019.<sup>2</sup>

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## HISTORY

ACTION	DATE
Introduced	10-19-17
Reported, S. Gov't Oversight & Reform	03-21-18
Passed Senate (30-3)	04-11-18
Reported, H. Gov't Accountability & Oversight	06-27-18
Passed House (73-20)	06-27-18
Senate concurred in House amendments (23-6)	06-27-18
Passed Senate notwithstanding Governor's veto (24-8)	11-14-18
Passed House notwithstanding Governor's veto (70-22)	11-14-18

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<sup>2</sup> Section 4 of the act.

