



# Ohio Legislative Service Commission

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## Bill Analysis

Cody Weisbrodt

### **S.B. 303**

131st General Assembly  
(As Introduced)

**Sens.** Uecker, Coley, LaRose, Seitz, Eklund

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## **BILL SUMMARY**

### **Incorporations by reference**

- Specifies that an agency incorporates material by reference into a rule when it refers in the rule to the material as if it were spelled out or otherwise reproduced in the rule.
- Eliminates the requirement that agencies file a copy of material incorporated by reference with the Joint Committee on Agency Rule Review (JCARR), and instead permits agencies to incorporate material through a citation that identifies where the material may be accessed by JCARR and the public free of charge.
- Requires an agency to attach a copy of material incorporated by reference into a rule only when the material is not easily accessible by JCARR.
- Prohibits agencies from incorporating future material by reference if the material does not exist at the time the rule is adopted.

- Authorizes JCARR to recommend invalidation of a proposed rule when the citation included by the agency is insufficient to allow JCARR to access the incorporated material easily and without charge, or when the agency has treated the incorporated material as if it were exempt from the incorporation by reference standards when the material is not so exempt.
- Specifies that an agency, in reviewing an existing rule for five-year periodic review, must evaluate incorporations by reference in the rule to ensure they meet the new standards for incorporation by reference.
- Requires agencies to make material incorporated by reference into a rule available to the public free of charge.
- Adds materials that are exempt from the incorporation by reference standards, and makes additional, technical changes to the current list of exempted materials.
- Makes conforming changes to existing incorporation by reference laws.

### **Standards for review of rules**

- Permits JCARR to recommend invalidation of a rule if the rule imposes a fee that is not reasonably and fairly related to the cost incurred by the agency in performing the function for which the fee is charged.
- If the Common Sense Initiative Office (CSIO) has not completed its analysis of a rule within 30 days after the rule's transmission to it, provides that CSIO is deemed not to have had any recommendations to make with regard to the rule, and that the agency then may proceed with the rule-making process.
- Permits JCARR, by majority vote, to order an agency to accelerate the five-year, periodic rule review of a rule immediately if the rule has an unforeseen adverse impact on business that is not reasonably within the express or implied scope of the statute under which the rule purportedly was adopted.
- Permits JCARR to recommend invalidation of such a rule if the rule has an unintended effect on business that is not within the express scope of the statute under which the agency adopted the rule.

- Expands the definition of "adverse impact on business" to include situations in which a rule is likely to reduce the revenue or increase the expenses of the lines of business to which the rule applies.

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

- Requires an agency, within three months after the start of a new gubernatorial term, to self-examine its own operations for policies that should be adopted as rules, to transmit its findings to JCARR, and to adopt rules if the agency is relying on policy that has not been adopted as a rule.
- Permits JCARR to require agencies that are found to be conducting business through policy rather than through rule to appear before JCARR to explain why, and requires the agency to adopt rules to supplant the policy.
- Permits a person that has been party to an administrative adjudication or a civil action, which involved a policy that should have been adopted as a rule, to petition the relevant agency in writing to adopt the policy in rules, and requires the relevant agency in response either to adopt rules or to explain why the agency will not adopt rules.
- Creates the right to bring and prosecute a lawsuit if a rule makes an exception to or an amplification of a principle of law, the exception or amplification is not expressly or impliedly authorized by statute, and the plaintiff is adversely affected by the conjoined principle of law and exception or amplification as it applies to the plaintiff.
- Requires the Auditor of State to note in an audit report when the Auditor discovers an agency is conducting business by policy rather than by rule, and requires the Auditor to transmit a copy of the audit report to JCARR.

### **Dereliction in adopting rules**

- Permits JCARR to compel agencies to appear before JCARR when they have not adopted rules as required by statute, and permits JCARR to direct agencies to adopt the rules if they have not done so.

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## CONTENT AND OPERATION

The bill simplifies the Incorporation by Reference into Rules Act.<sup>1</sup> The bill requires principles of law and policy that have not been stated in rules to be restated in rules under standards prescribed by the bill. The bill provides a procedure for advising agencies that have not adopted rules as required by a statute to do so. And, the bill adds to the standards under which proposed and existing rules are reviewed. The following table explains the bill in detail.

In the table, the first column to the left identifies the general topics addressed by the bill. The second column identifies where the relevant provisions are located in the bill. The third column summarizes current law. The last column to the right summarizes the changes proposed by the bill.

### Incorporations by reference

Topic	Location	Current Law	Proposed by Bill
Definition of "incorporation by reference"	R.C. 121.72 (first paragraph)	States that an agency incorporates a text or other material into a rule by reference when it states in the rule that a text or other material not contained in the rule is to be treated as if it were contained in the rule.	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.

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<sup>1</sup> R.C. 121.71 to 121.76.



Topic	Location	Current Law	Proposed by Bill
Citation requirement	R.C. 121.72 (first paragraph)	<p>Requires the agency to explain in the rule how a person who reasonably can be expected to be affected by the rule can obtain copies of the text or other material that has been incorporated by reference.</p> <p>Specifies, if the matter incorporated by reference was, is, or reasonably can be expected to be subject to change, that the agency must identify, and specify the date of, the particular edition or other version of the text or other material that is 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 has been 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>
Incorporation by reference of only existing matter	R.C. 121.72 (last paragraph)	No such 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>



Topic	Location	Current Law	Proposed by Bill
Public access to matter incorporated by reference	R.C. 121.74 and 3375.01(L)	Requires an agency that incorporates 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 that have been 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 is maintained and made available by the agency.	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.  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.
JCARR access to matter incorporated by reference	R.C. 121.73	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 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.
Rule Summary and Fiscal Analysis	R.C. 127.18(B)(11) and (12)	Authorizes JCARR to solicit information explaining how certain texts or other materials that have been incorporated by reference to a rule are exempt from the IRRA, and explaining why it is infeasible for the agency to file certain texts or other materials that have been incorporated by reference with JCARR.	Authorizes JCARR to solicit information explaining how a text or other material that has been incorporated by reference is exempt from the IRRA on grounds the incorporation has one or more of the characteristics authorizing the exemption (see Exemptions from IRRA (3), below).



Topic	Location	Current Law	Proposed by Bill
Standard for legislative review of an incorporation by reference	R.C. 106.021(D)	Authorizes JCARR to recommend invalidation of a proposed rule if (1) the agency has failed to file a text or other material that has been incorporated by reference with JCARR, or (2) the incorporation by reference fails 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 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 (2) the agency has treated the rule in whole or in part as exempt from compliance with the IRRA 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 Exemptions from IRRA (3), below).
Agency five-year review of incorporations by reference	R.C. 106.03(A)(4)	Requires 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) is deposited in a depository library or displayed on the agency's website (see above), and (2) meets the standards governing incorporation by reference into rules.	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



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			<p>incorporated text or other material, and (3) if the rule has been exempted in whole or in part from compliance with the IRRA 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 Exemptions from IRRA (3), below).</p>
<p>Standards for five-year legislative review of an incorporation by reference</p>	<p>R.C. 106.031(E)(3)</p>	<p>Authorizes JCARR to recommend invalidation of an existing rule that incorporates 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 website; or</p> <p>--If the rule fails to meet the standards governing incorporations by reference into rules.</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 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 IRRA 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 Exemptions from IRRA (3), below).</p>





Topic	Location	Current Law	Proposed by Bill
Exemptions from IRRA	R.C. 121.75 (amended) and 121.76 (repealed)	<p>Divides the exemptions into three classes:</p> <p>(1) Exempts generally from the IRRA, the incorporation by reference of:</p> <ul style="list-style-type: none"> <li>--A section of the Revised Code;</li> <li>--An uncodified Ohio statute; and</li> <li>--A rule in the Administrative Code.</li> </ul> <p>(2) Exempts from the IRRA, the incorporation by reference of:</p> <ul style="list-style-type: none"> <li>--An internal management rule;</li> <li>--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.</li> </ul> <p>Recommends that a rule exempted under (2) nevertheless incorporate by reference a particular edition or other version of the text or other material that is being incorporated by reference.</p> <p>(3) Exempts from the IRRA, the incorporation by reference of the following, so long as the incorporation by reference consists of a citation that will be intelligible to the persons who reasonably can be expected to be affected by the rule and that, if the incorporated matter was, is, or reasonably can be expected to be subject to change, identifies, and specifies the date of, the particular edition or other version that is incorporated:</p> <ul style="list-style-type: none"> <li>--A section of the United States Code;</li> </ul>	<p>Divides the exemptions into three classes:</p> <p>(1) Exempts generally from the IRRA, the incorporation by reference of:</p> <ul style="list-style-type: none"> <li>--A section of the Revised Code;</li> <li>--An uncodified Ohio statute;</li> <li>--An act of the General Assembly in the Laws of Ohio;</li> <li>--A rule in the Administrative Code;</li> <li>--A rule in the Register of Ohio; and</li> <li>--A rule in the Monthly Record.</li> </ul> <p>(2) Exempts the following from the IRRA, so long as the date of the text or other material that has been incorporated by reference is specified:</p> <ul style="list-style-type: none"> <li>--A section of the United States Code;</li> <li>--An uncodified federal statute that has been appended as a legislative note to a section in the United States Code;</li> <li>--A federal act in the Statutes at Large;</li> <li>--A federal regulation in the Federal Register; and</li> <li>--A federal regulation in the Code of Federal Regulations.</li> </ul> <p>(3) Exempts an incorporation by reference from the IRRA, insofar as the incorporated text or other material has any of the following characteristics:</p>



Topic	Location	Current Law	Proposed by Bill
		<p>--An uncodified federal statute, if it has been appended as a legislative note to a section in the United States 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 is generally available to persons who reasonably can be expected to be affected by the rule.</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 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>



Topic	Location	Current Law	Proposed by Bill
Definition of "rule" as used in IRRA	R.C. 121.71(B)	Specifies that "rule" includes an appendix or an attachment to a rule.	Removes "or an attachment" from the definition.

### Standards for review of rules

Topic	Location	Current Law	Proposed by Bill
Additional JCARR review prong	R.C. 106.021(G)	No such provision.	Adds, to the standards under which JCARR reviews and can recommend invalidation of proposed rules, a new, seventh standard: that the proposed rule or revised proposed rule imposes a fee that is not reasonably and fairly related to the cost actually incurred by the agency in performing the function for which the fee is charged.
Definition of "adverse impact on businesses"	R.C. 107.52(D)	No such 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 reasonably would be likely to reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.



Topic	Location	Current Law	Proposed by Bill
Deadline for CSIO review of rules	R.C. 107.54(B) and 121.82	States that an agency may not file a proposed rule for legislative review earlier than the 16th business day after transmitting the rule to the Common Sense Initiative Office, which reviews rules having an adverse impact on businesses before they are filed under the appropriate rule-making procedure. If CSIO fails to transmit recommendations with regard a rule after its receipt, presumably within 16 business days, it is as if the CSIO had elected not to make any recommendations to the agency.	Provides after an agency transmits a rule to CSIO, that if CSIO has not completed its evaluation of the rule on or before the 30th day after the day on which the rule was transmitted to CSIO, CSIO is deemed not to have had any recommendations to make with regard to the rule, and the agency may proceed to propose the rule under the appropriate rule-making procedure.
Review of a rule having an unintended or unforeseen effect on businesses	R.C. 106.032	No such provision.	Specifies, if the chairperson of JCARR becomes aware that an existing rule has had or is having an unintended or unforeseen 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. Specifies that JCARR can adopt the motion by vote of a majority of its members.



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			<p>Requires JCARR to prepare the order in writing, and to transmit the order electronically to the agency, the Director of LSC, and 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>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 unforeseen 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 and policy in rules

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



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			<p>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 understandable, or (8) make the principle of law or policy more readily available to those legally</p>



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			<p>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 rulemaking 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</p>





Topic	Location	Current Law	Proposed by Bill
			<p>paragraph. 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 rulemaking process by the deadline specified in the preceding paragraph, or if, after commencing the rulemaking process, the agency neglects or abandons the rulemaking 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 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>
Implementation of the duty: rulemaking petitions	R.C. 121.931	No such provision.	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



Topic	Location	Current Law	Proposed by Bill
			<p>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> <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 rulemaking process as soon as it is reasonably feasible to do so, but</p>



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			<p>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. 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 rulemaking process by the deadline specified in the preceding paragraph, or if, after commencing the rulemaking process, the agency neglects or abandons the rulemaking 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</p>



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			<p>explaining 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>



Topic	Location	Current Law	Proposed by Bill
			<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 rulemaking 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. 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 rulemaking process by the deadline specified in the preceding paragraph, or if, after commencing the rulemaking process, the agency neglects or abandons the rulemaking 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</p>



Topic	Location	Current Law	Proposed by Bill
			<p>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>
Implementation of the duty: audits	R.C. 117.115	No such provision.	Requires the Auditor of State or independent certified public accountant who is conducting an audit of a state agency, as part of inquiring into the agency's compliance with the law pertaining to the agency, to inquire whether the agency is or appears to be relying upon a principle of law or policy that has not been restated in a rule and that, under the standards described above, should be supplanted by its restatement in a rule.



Topic	Location	Current Law	Proposed by Bill
			<p>Specifies, if the audit was performed by an independent certified public accountant, that the Auditor of State, as part of analyzing the accountant's report, must analyze any notation that the agency is or appears to be relying upon a principle of law or policy that has not been restated in a rule and that, under the standards described above, should be supplanted by its restatement in a rule.</p> <p>Specifies that any such principle of law or policy is to be identified in the audit report.</p> <p>Requires the Auditor of State to transmit a copy of an audit report that identifies such a principle of law or policy to JCARR.</p>
Implementation of the duty: related cause of action	R.C. 121.932	No such provision.	<p>Creates a right to bring and prosecute a lawsuit if (1) a rule makes an exception to or an amplification of a principle of law, (2) the exception or amplification is not expressly or impliedly authorized by a statute, and (3) the plaintiff is adversely affected by the conjoined principle of law and exception or amplification as it applies to the plaintiff.</p> <p>Confers jurisdiction over the lawsuit in the court of common pleas, and specifies that the</p>



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			<p>lawsuit is to be governed by the Rules of Civil Procedure.</p> <p>Specifies, if the plaintiff proves that the plaintiff is adversely affected by the conjoined principle of law and exception or amplification as it applies to the plaintiff, that the court must enter a judgment declaring the exception void.</p> <p>Specifies, if the exception or amplification is declared void, that the person is entitled to costs and attorney's fees.</p>
Implementation of the duty: JCARR inquiry	R.C. 101.352	No such provision.	<p>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.</p> <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>



Topic	Location	Current Law	Proposed by Bill
			<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 electronic mail 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</p>



Topic	Location	Current Law	Proposed by Bill
			<p>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 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 rulemaking process as soon as it is reasonably feasible to do so, but not later than the date that is six</p>



Topic	Location	Current Law	Proposed by Bill
			<p>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. 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 rulemaking process by the deadline specified in the preceding paragraph, or if, after commencing the rulemaking process, the agency neglects or abandons the rulemaking process before it is completed.</p> <p>Specifies that the principle of law of 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>
Exemption from the duty of the statewide elected officers	R.C. 121.933	No such provision.	Declares that the provisions requiring agencies to state principles of law or policy in rules do not apply to the following elected state officers or their offices: the Governor, the



Topic	Location	Current Law	Proposed by Bill
			Lieutenant Governor, the Secretary of State, the Auditor of State, the Treasurer of State, and the Attorney General.

### Dereliction in adopting rules

Topic	Location	Current Law	Proposed by Bill
Agency dereliction in adopting rules	R.C. 101.353.	No such 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, 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</p>



Topic	Location	Current Law	Proposed by Bill
			<p>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 web site, 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 electronic mail 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</p>



Topic	Location	Current Law	Proposed by Bill
			<p>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 vote of a majority of its members, to advise the agency to commence rulemaking 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>

The main provisions of the bill as described above take effect on the date that is six months after the effective date of the bill.<sup>2</sup> The bill otherwise has a standard 90-day effective date.

Finally, the bill includes a transition provision directing 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 enable the changes made by the bill to be fulfilled. LIS must complete the programming or reprogramming as soon as reasonably possible after the effective date of the bill, but not later than the date that is six months after that effective date.<sup>3</sup> This deadline corresponds to the special effective date described above.

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<sup>2</sup> Section 3 of the bill.

<sup>3</sup> Section 4 of the bill.

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## HISTORY

ACTION

DATE

Introduced

03-30-16

S0303-I-131.docx/ks

