

**As Reported by the Senate State and Local Government and
Veterans Affairs Committee**

129th General Assembly

Regular Session

2011-2012

Sub. H. B. No. 396

Representatives McGregor, Murray

**Cosponsors: Representatives Anielski, Beck, Blair, Blessing, Buchy,
Carney, Celebrezze, Clyde, Combs, Duffey, Goyal, Hackett, Hagan, C., Hayes,
Hottinger, Kozlowski, Letson, McClain, Newbold, O'Brien, Ruhl, Sears,
Sprague, Thompson, Winburn, Young, Yuko Speaker Batchelder**

Senators LaRose, Eklund

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A B I L L

To amend sections 101.35, 103.0511, 107.52, 107.53,	1
107.54, 107.55, 107.62, 107.63, 111.15, 117.20,	2
119.01, 119.03, 119.04, 121.39, 121.73, 121.74,	3
121.81, 121.82, 121.83, 127.18, 1531.08, 3319.22,	4
3319.221, 3333.021, 3333.048, 3737.88, 3746.04,	5
4117.02, 4141.14, 5103.0325, 5117.02, 5703.14,	6
6111.31, and 6111.51; to enact sections 106.01,	7
106.02, 106.021, 106.022, 106.023, 106.03,	8
106.031, 106.04, 106.041, 106.042, 106.05, and	9
106.051; and to repeal sections 119.031 and	10
119.032 of the Revised Code to revise rule-making	11
and rule review procedures.	12

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 101.35, 103.0511, 107.52, 107.53,	13
107.54, 107.55, 107.62, 107.63, 111.15, 117.20, 119.01, 119.03,	14
119.04, 121.39, 121.73, 121.74, 121.81, 121.82, 121.83, 127.18,	15

1531.08, 3319.22, 3319.221, 3333.021, 3333.048, 3737.88, 3746.04, 16
4117.02, 4141.14, 5103.0325, 5117.02, 5703.14, 6111.31, and 17
6111.51 be amended and that sections 106.01, 106.02, 106.021, 18
106.022, 106.023, 106.03, 106.031, 106.04, 106.041, 106.042, 19
106.05, and 106.051 of the Revised Code be enacted to read as 20
follows: 21

Sec. 101.35. There is hereby created in the general assembly 22
the joint committee on agency rule review. The committee shall 23
consist of five members of the house of representatives and five 24
members of the senate. Within fifteen days after the commencement 25
of the first regular session of each general assembly, the speaker 26
of the house of representatives shall appoint the members of the 27
committee from the house of representatives, and the president of 28
the senate shall appoint the members of the committee from the 29
senate. Not more than three of the members from each house shall 30
be of the same political party. In the first regular session of a 31
general assembly, the chairperson of the committee shall be 32
appointed by the speaker of the house from among the house members 33
of the committee, and the vice-chairperson shall be appointed by 34
the president of the senate from among the senate members of the 35
committee. In the second regular session of a general assembly, 36
the chairperson shall be appointed by the president of the senate 37
from among the senate members of the committee, and the 38
vice-chairperson shall be appointed by the speaker of the house 39
from among the house members of the committee. The chairperson, 40
vice-chairperson, and members of the committee shall serve until 41
their respective successors are appointed or until they are no 42
longer members of the general assembly. When a vacancy occurs 43
among the officers or members of the committee, it shall be filled 44
in the same manner as the original appointment. 45

Notwithstanding section 101.26 of the Revised Code, the 46

members, when engaged in their duties as members of the committee 47
on days when there is not a voting session of the member's house 48
of the general assembly, shall be paid at the per diem rate of one 49
hundred fifty dollars, and their necessary traveling expenses, 50
which shall be paid from the funds appropriated for the payment of 51
expenses of legislative committees. 52

The committee has the same powers as other standing or select 53
committees of the general assembly. Six members constitute a 54
quorum, and the concurrence of six members is required for the 55
recommendation of a concurrent resolution invalidating a proposed 56
or ~~effective existing rule, amendment, rescission, or part~~ 57
~~thereof, or for the suspension of a rule, amendment, rescission,~~ 58
~~or part thereof,~~ under ~~division (I) of section 119.03~~ 106.021 or 59
~~section 119.031~~ 106.031 of the Revised Code. 60

When a member of the committee is absent, the president or 61
speaker, as the case may be, may designate a substitute from the 62
same house and political party as the absent member. The 63
substitute shall serve on the committee in the member's absence, 64
and is entitled to perform the duties of a member of the 65
committee. For serving on the committee, the substitute shall be 66
paid the same per diem and necessary traveling expenses as the 67
substitute would be entitled to receive if the substitute were a 68
member of the committee. 69

The president or speaker shall inform the executive director 70
of the committee of a substitution. If the executive director 71
learns of a substitution sufficiently in advance of the meeting of 72
the committee the substitute is to attend, the executive director 73
shall publish notice of the substitution on the internet, make 74
reasonable effort to inform of the substitution persons who are 75
known to the executive director to be interested in rules that are 76
scheduled for review at the meeting, and inform of the 77
substitution persons who inquire of the executive director 78

concerning the meeting. 79

The committee may meet during periods in which the general 80
assembly has adjourned. ~~At~~ 81

At meetings of the committee, the committee may request a 82
~~rule-making~~ an agency, as defined in section ~~119.01~~ 106.01 of the 83
Revised Code, to provide information relative to the agency's 84
implementation of its statutory authority. 85

A member of the committee, and the executive director and 86
staff of the committee, are entitled in their official capacities 87
to attend, but not in their official capacities to participate in, 88
a public hearing conducted by ~~a rule-making~~ an agency on a 89
proposed rule, ~~amendment, or rescission.~~ 90

Sec. 103.0511. The director of the legislative service 91
commission shall establish and maintain, and enhance and improve, 92
an electronic rule-filing system connecting: 93

(A) The legislative service commission, the joint committee 94
on agency rule review, and the secretary of state; 95

(B) The governor, the senate and house of representatives, 96
and the clerks of the senate and house of representatives; 97

(C) Each agency that files rules and other rule-making and 98
rule-related documents with the legislative service commission, 99
the joint committee on agency rule review, the department of 100
aging, the governor, the common sense initiative office, the 101
secretary of state, the general assembly, or a committee of the 102
senate or house of representatives under section 106.02, 106.022, 103
106.031, 107.54, 111.15, 117.20, 119.03, ~~119.031, 119.032,~~ 104
119.0311, 119.04, ~~121.24,~~ 121.39, 121.82, 127.18, ~~4141.14,~~ 173.01, 105
or 5117.02, ~~or 5703.14~~ of the Revised Code or any other statute; 106

107

(D) The several publishers of the Administrative Code; and 108

(E) ~~The common sense initiative office; and~~ 109

~~(F)~~ Any other person or governmental officer or entity whose 110
inclusion in the system is required for the system to be a 111
complete electronic rule-filing system. 112

The electronic rule-filing system is to enable rules and 113
rule-making and rule-related documents to be filed, and official 114
responses to these filings to be made, exclusively by electronic 115
means. 116

Sec. 106.01. As used in sections 106.01 to 106.042 of the 117
Revised Code, as the case may be: 118

(A) "Agency" means an agency as defined in sections 111.15 119
and 119.01 of the Revised Code. 120

(B) "Review date" means the review date assigned to a rule by 121
an agency under section 111.15 or 119.04 of the Revised Code. 122

(C) "Rule" means (1) a proposed new rule, or a proposed 123
amendment or rescission of an existing rule, that has been filed 124
with the joint committee on agency rule review under division (D) 125
of section 111.15 of the Revised Code or division (C) of section 126
119.03 of the Revised Code or (2) an existing rule that is subject 127
to review under sections 106.03 and 106.031 of the Revised Code. 128
"Rule" includes an appendix to a rule. 129

"Proposed rule" refers to the original and a revised version 130
of a proposed rule. 131

"Proposed rule" does not include a proposed rule that has 132
been adopted and is being filed in final form. 133

In sections 106.03 and 106.031 of the Revised Code, "rule" 134
does not include a rule of a state college or university, 135
community college district, technical college district, or state 136
community college or a rule that is consistent with and equivalent 137
to the form required by a federal law and that does not exceed the 138

minimum scope and intent of that federal law. 139

Sec. 106.02. When an agency files a proposed rule and rule 140
summary and fiscal analysis with the joint committee on agency 141
rule review, the joint committee shall review the proposed rule 142
and rule summary and fiscal analysis not later than the 143
sixty-fifth day after the day on which the proposed rule was filed 144
with the joint committee. If, after filing the original version of 145
a proposed rule, the agency makes a revision in the proposed rule, 146
the agency shall file the revised proposed rule and a revised rule 147
summary and fiscal analysis with the joint committee. If the 148
revised proposed rule is filed thirty-five or fewer days after the 149
original version of the proposed rule was filed, the joint 150
committee shall review the revised proposed rule and revised rule 151
summary and fiscal analysis not later than the sixty-fifth day 152
after the original version of the proposed rule was filed. If, 153
however, the revised proposed rule is filed more than thirty-five 154
days after the original version of the proposed rule was filed, 155
the joint committee shall review the revised proposed rule and 156
revised rule summary and fiscal analysis not later than the 157
thirtieth day after the revised proposed rule was filed with the 158
joint committee. 159

When the original version of a proposed rule and rule summary 160
and fiscal analysis is filed with the joint committee in December, 161
the joint committee shall review the proposed rule and rule 162
summary and fiscal analysis as if the proposed rule and rule 163
summary and fiscal analysis had been filed with the joint 164
committee on the first day of the legislative session in the 165
following January. When a revised proposed rule and revised rule 166
summary and fiscal analysis is filed with the joint committee in 167
December, the joint committee shall review the revised proposed 168
rule and revised rule summary and fiscal analysis not later than 169
the thirtieth day after the first day of the legislative session 170

<u>in the following January.</u>	171
<u>A revised proposed rule supersedes each earlier version of</u>	172
<u>the same proposed rule.</u>	173
<u>The joint committee shall not hold its public hearing on a</u>	174
<u>proposed rule earlier than the forty-first day after the proposed</u>	175
<u>rule was filed with the joint committee.</u>	176
<u>Sec. 106.021. If, upon reviewing a proposed rule or revised</u>	177
<u>proposed rule, the joint committee on agency rule review makes any</u>	178
<u>of the following findings with regard to the proposed rule or</u>	179
<u>revised proposed rule, the joint committee may recommend to the</u>	180
<u>senate and house of representatives the adoption of a concurrent</u>	181
<u>resolution to invalidate the proposed rule or revised proposed</u>	182
<u>rule or a part thereof:</u>	183
<u>(A) The proposed rule or revised proposed rule exceeds the</u>	184
<u>scope of its statutory authority.</u>	185
<u>(B) The proposed rule or revised proposed rule conflicts with</u>	186
<u>the legislative intent of the statute under which it was proposed.</u>	187
<u>(C) The proposed rule or revised proposed rule conflicts with</u>	188
<u>another proposed or existing rule.</u>	189
<u>(D) The proposed rule or revised proposed rule incorporates a</u>	190
<u>text or other material by reference and either the agency has</u>	191
<u>failed to file the text or other material incorporated by</u>	192
<u>reference as required by section 121.73 of the Revised Code or the</u>	193
<u>incorporation by reference fails to meet the standards stated in</u>	194
<u>sections 121.72, 121.75, and 121.76 of the Revised Code.</u>	195
<u>(E) The agency has failed to demonstrate through the business</u>	196
<u>impact analysis, recommendations from the common sense initiative</u>	197
<u>office, and the memorandum of response that the regulatory intent</u>	198
<u>of the proposed rule or revised proposed rule justifies its</u>	199
<u>adverse impact on businesses in this state.</u>	200

(F) The agency has failed to prepare a complete and accurate 201
rule summary and fiscal analysis of the proposed rule or revised 202
proposed rule as required by section 127.18 of the Revised Code. 203

Sec. 106.022. As an alternative to recommending the adoption 204
of a concurrent resolution to invalidate a proposed rule because 205
an agency has not prepared a complete and accurate rule summary 206
and fiscal analysis addressing the fiscal effect of the proposed 207
rule on counties, townships, municipal corporations, or school 208
districts, the joint committee on agency rule review may issue a 209
finding that the rule summary and fiscal analysis is incomplete or 210
inaccurate as to that fiscal effect, and order the agency to 211
refile the proposed rule with a revised rule summary and fiscal 212
analysis that addresses that fiscal effect completely and 213
accurately. The joint committee shall transmit the finding and 214
order electronically to the agency, the secretary of state, the 215
director of the legislative service commission, and, if the 216
proposed rule is to replace an emergency rule, the governor. 217

Upon receiving the finding and order, the agency may revise 218
the rule summary and fiscal analysis completely and accurately to 219
address the fiscal effect of the proposed rule on counties, 220
townships, municipal corporations, or school districts, and then 221
refile the proposed rule and revised rule summary and fiscal 222
analysis electronically with the joint committee. 223

If the joint committee finds that the revised rule summary 224
and fiscal analysis continues incompletely or inaccurately to 225
address the fiscal effect of the proposed rule on counties, 226
townships, municipal corporations, or school districts, the joint 227
committee may recommend the adoption of a concurrent resolution to 228
invalidate the proposed rule under division (F) of section 106.021 229
of the Revised Code. The joint committee may make only one finding 230
and order with regard to the same proposed rule. 231

If the proposed rule that is the subject of a finding and 232
order is to replace an emergency rule, the governor may issue an 233
order extending the emergency rule for an additional sixty-five 234
days after the day on which the emergency rule otherwise would 235
become invalid. The governor shall transmit the order 236
electronically to the agency, the joint committee, and the 237
director of the legislative service commission. 238

Sec. 106.023. An agency may not adopt a proposed rule or 239
revised proposed rule or file it in final form unless the proposed 240
rule has been filed with the joint committee on agency rule review 241
under division (D) of section 111.15 or division (C) of section 242
119.03 of the Revised Code and the time for the joint committee to 243
review the proposed rule has expired without recommendation of a 244
concurrent resolution to invalidate the proposed rule. 245

If, before the time for its review of a proposed rule or 246
revised proposed rule expires, the joint committee recommends 247
adoption of a concurrent resolution invalidating the proposed rule 248
or revised proposed rule, the rule-making proceedings pertaining 249
to the proposed rule or revised proposed rule are suspended, and 250
the proposed rule or revised proposed rule may not be adopted or 251
filed in final form during the suspension. The suspension begins 252
when the joint committee votes to recommend invalidation of the 253
proposed rule. The suspension expires on the earlier of the day 254
that is six months after the day the vote was taken or the day 255
both houses have adjourned sine die. 256

Upon expiration of the suspension, the rule-making 257
proceedings may resume. If, however, during the suspension, or at 258
any time thereafter, a concurrent resolution invalidating the 259
proposed rule or revised proposed rule is adopted, the rule, 260
whether then existing or still proposed, is invalid as provided in 261
the concurrent resolution. 262

<u>Sec. 106.03. Prior to the review date of an existing rule,</u>	263
<u>the agency that adopted the rule shall do both of the following:</u>	264
<u>(A) Review the rule to determine all of the following:</u>	265
<u>(1) Whether the rule should be continued without amendment,</u>	266
<u>be amended, or be rescinded, taking into consideration the</u>	267
<u>purpose, scope, and intent of the statute under which the rule was</u>	268
<u>adopted;</u>	269
<u>(2) Whether the rule needs amendment or rescission to give</u>	270
<u>more flexibility at the local level;</u>	271
<u>(3) Whether the rule needs amendment or rescission to</u>	272
<u>eliminate unnecessary paperwork;</u>	273
<u>(4) Whether the rule incorporates a text or other material by</u>	274
<u>reference and, if so, whether the text or other material</u>	275
<u>incorporated by reference is deposited or displayed as required by</u>	276
<u>section 121.74 of the Revised Code and whether the incorporation</u>	277
<u>by reference meets the standards stated in sections 121.72,</u>	278
<u>121.75, and 121.76 of the Revised Code;</u>	279
<u>(5) Whether the rule duplicates, overlaps with, or conflicts</u>	280
<u>with other rules;</u>	281
<u>(6) Whether the rule has an adverse impact on businesses, as</u>	282
<u>determined under section 107.52 of the Revised Code, and whether</u>	283
<u>any such adverse impact has been eliminated or reduced as required</u>	284
<u>under section 121.82 of the Revised Code.</u>	285
<u>In making its review, the agency shall consider the continued</u>	286
<u>need for the rule, the nature of any complaints or comments</u>	287
<u>received concerning the rule, and any relevant factors that have</u>	288
<u>changed in the subject matter area affected by the rule.</u>	289
<u>(B) On the basis of its review of the existing rule, the</u>	290
<u>agency shall determine whether the existing rule needs to be</u>	291
<u>amended or rescinded.</u>	292

(1) If the existing rule needs to be amended or rescinded, 293
the agency, on or before the review date of the existing rule, 294
shall commence the process of amending or rescinding the existing 295
rule in accordance with its review of the rule. 296

(2) If the existing rule does not need to be amended or 297
rescinded, proceedings shall be had under section 106.031 of the 298
Revised Code. 299

Upon the request of the agency that adopted an existing rule, 300
the joint committee on agency rule review may extend the review 301
date of the rule to a date that is not later than one hundred 302
eighty days after the review date assigned to the rule by the 303
agency. The joint committee may further extend a review date that 304
has been extended only if doing so is appropriate under the 305
circumstances. 306

The agency that adopted an existing rule that is exempt from 307
review under this section because of the fourth paragraph in 308
division (C) of section 106.01 of the Revised Code nevertheless 309
shall file a copy of the existing rule with the joint committee. 310
The joint committee, after a hearing on the matter, and by a vote 311
of two-thirds of its members present, may determine that the rule 312
is not entitled to the exemption. Thereafter, the rule is subject 313
to review under this section. 314

Sec. 106.031. If an agency, on the basis of its review of a 315
rule under section 106.03 of the Revised Code, determines that the 316
rule does not need to be amended or rescinded, proceedings shall 317
be had as follows: 318

(A)(1) If, considering only the standard of review specified 319
in division (A)(6) of section 106.03 of the Revised Code, the rule 320
has an adverse impact on businesses that has not been eliminated 321
or reduced, the agency shall prepare a business impact analysis 322
that describes its review of the rule under that division and that 323

explains why the rule is not being amended or rescinded to reduce 324
or eliminate its adverse impact on businesses. If the rule does 325
not have an adverse impact on businesses, the agency may proceed 326
under division (B) of this section. 327

(2) The agency shall transmit a copy of the full text of the 328
rule and the business impact analysis electronically to the common 329
sense initiative office. The office shall make the rule and 330
analysis available to the public on its web site under section 331
107.62 of the Revised Code. 332

(3) The agency shall consider any recommendations made by the 333
office. 334

(4) Not earlier than the sixteenth business day after 335
transmitting the rule and analysis to the office, the agency shall 336
either (a) proceed under divisions (A)(5) and (B) of this section 337
or (b) commence, under division (B)(1) of section 106.03 of the 338
Revised Code, the process of rescinding the rule or of amending 339
the rule to incorporate into the rule features the recommendations 340
suggest will eliminate or reduce the adverse impact the rule has 341
on businesses. If the agency determines to amend or rescind the 342
rule, the agency is not subject to the time limit specified in 343
division (B)(1) of section 106.03 of the Revised Code. 344

(5) If the agency receives recommendations from the office, 345
and determines not to amend or rescind the rule, the agency shall 346
prepare a memorandum of response that explains why the rule is not 347
being rescinded or why the recommendations are not being 348
incorporated into the rule. 349

(B) The agency shall assign a new review date to the rule. 350
The review date assigned shall be not later than five years after 351
the immediately preceding review date pertaining to the rule. If 352
the agency assigns a review date that exceeds the five-year 353
maximum, the review date is five years after the immediately 354

preceding review date. 355

(C)(1) The agency shall file all the following, in electronic 356
form, with the joint committee on agency rule review, the 357
secretary of state, and the director of the legislative service 358
commission: a copy of the rule specifying its new review date, a 359
complete and accurate rule summary and fiscal analysis, and, if 360
relevant, a business impact analysis of the rule, any 361
recommendations received from the common sense initiative office, 362
and any memorandum of response. An agency may comply with the 363
requirement to file a complete and accurate rule summary and 364
fiscal analysis by filing a previously prepared rule summary and 365
fiscal analysis, so long as the previous rule summary and fiscal 366
analysis was complete and accurate at the time it was prepared, 367
continues to be such a complete and accurate explanation of the 368
rule, and the conditions described in division (B)(4), (5), (6), 369
(8), (9), or (10) of section 127.18 of the Revised Code, as they 370
relate to the rule, have not appreciably changed since the 371
previous rule summary and fiscal analysis was prepared. 372

(2) Subject to section 106.05 of the Revised Code, the joint 373
committee does not have jurisdiction to review, and shall reject, 374
the filing of a rule under division (C)(1) of this section if, at 375
any time while the rule is in its possession, it discovers that 376
the rule has an adverse impact on businesses and the agency has 377
not complied with division (A) of this section. The joint 378
committee shall electronically return a rule that is rejected to 379
the agency, together with any documents that were part of the 380
filing. Such a rejection does not preclude the agency from 381
refiling the rule under division (C)(1) of this section after 382
complying with division (A) of this section. When the filing of a 383
rule is rejected under this division, it is as if the filing had 384
not been made. 385

(D) The joint committee shall publish notice of the agency's 386

determination not to amend or rescind the rule in the register of 387
Ohio for four consecutive weeks after the rule is filed under 388
division (C) of this section. 389

(E) During the ninety-day period after a rule is filed under 390
division (C) of this section, but after the four-week notice 391
period required by division (D) of this section has ended, the 392
joint committee, by a two-thirds vote of members present, may 393
recommend to the senate and house of representatives the adoption 394
of a concurrent resolution invalidating the rule if the joint 395
committee finds any of the following: 396

(1) The agency improperly applied the standards in division 397
(A) of section 106.03 of the Revised Code in reviewing the rule 398
and in determining that the rule did not need amendment or 399
rescission. 400

(2) The rule has an adverse impact on businesses, and the 401
agency has failed to demonstrate through a business impact 402
analysis, recommendations from the common sense initiative office, 403
and a memorandum of response that the regulatory intent of the 404
rule justifies its adverse impact on businesses. 405

(3) If the rule incorporates a text or other material by 406
reference, the agency failed to file, or to deposit or display, 407
the text or other material incorporated by reference as required 408
by section 121.73 or 121.74 of the Revised Code or the 409
incorporation by reference fails to meet the standards stated in 410
sections 121.72, 121.75, and 121.76 of the Revised Code. 411

(4) The agency otherwise failed to comply with section 106.03 412
or 106.031 of the Revised Code. 413

When the joint committee recommends that a rule be 414
invalidated, the recommendation does not suspend operation of the 415
rule, and the rule remains operational pending action by the 416
senate and house of representatives on the concurrent resolution 417

embodying the recommendation. If the senate and house of 418
representatives adopt the concurrent resolution, the rule is 419
invalid. If, however, the senate and house of representatives do 420
not adopt the resolution, the rule continues in effect, and shall 421
next be reviewed according to the new review date assigned to the 422
rule. 423

Sec. 106.04. When the joint committee on agency rule review 424
recommends invalidation of a proposed or existing rule under 425
section 106.021 or 106.031 of the Revised Code, the chairperson of 426
the joint committee, or another member of the joint committee 427
designated by the chairperson, shall prepare the recommendation of 428
invalidation in writing. The recommendation shall identify the 429
proposed or existing rule, the agency that proposed or submitted 430
the proposed or existing rule, and the finding that caused the 431
joint committee to make the recommendation. The recommendation 432
briefly shall explain the finding. 433

The chairperson of the joint committee shall request the 434
legislative service commission to prepare a concurrent resolution 435
to invalidate the proposed or existing rule according to the 436
recommendation. The concurrent resolution shall state the finding 437
that caused the joint committee to recommend invalidation of the 438
rule. 439

Sec. 106.041. The chairperson of the joint committee on 440
agency rule review, or another member of the joint committee 441
designated by the chairperson, shall submit a concurrent 442
resolution to invalidate a proposed or existing rule to the clerk 443
of either house of the general assembly. The recommendation of 444
invalidation and a copy of the proposed or existing rule also 445
shall be submitted to the clerk along with the concurrent 446
resolution. 447

Sec. 106.042. The failure of the general assembly to adopt a 448
concurrent resolution invalidating a proposed or existing rule is 449
not a ratification of the lawfulness or reasonableness of the 450
proposed or existing rule or of the validity of the procedure by 451
which the rule was proposed or adopted. 452

Sec. 106.05. (A) If the joint committee on agency rule review 453
is reviewing a proposed or existing rule under section 106.021 or 454
106.031 of the Revised Code and is uncertain whether the rule has 455
an adverse impact on businesses, or if the rule appears to have an 456
adverse impact on businesses that has not been addressed or that 457
has been inadequately addressed, the joint committee 458
electronically may refer the rule to the common sense initiative 459
office. If an adverse impact to business has been identified and 460
that impact was not evaluated in a business impact analysis 461
previously reviewed by the common sense initiative office, the 462
joint committee may rerefer that rule to the common sense 463
initiative office. The joint committee may transmit a memorandum 464
to the office along with the proposed or existing rule explaining 465
specifically why it is referring or rereferring the rule to the 466
office. The joint committee electronically shall notify the agency 467
if it refers or rerefers the proposed or existing rule to the 468
office. 469

Such a referral or rereferral tolls the running of the time 470
within which the joint committee is required to recommend adoption 471
of a concurrent resolution invalidating the proposed or existing 472
rule. The time resumes running when the proposed or existing rule 473
is returned to the joint committee after the referral or 474
rereferral. The tolling does not affect the continued operation of 475
an existing rule. 476

(B) The office, within thirty days after receiving a proposed 477
or existing rule under division (A) of this section, shall 478

evaluate or reevaluate the rule to determine whether it has an 479
adverse impact on businesses, and shall proceed under division 480
(C)(1) or (2) of this section as is appropriate to its 481
determination. 482

(C)(1) If the office determined that the proposed or existing 483
rule does not have an adverse impact on businesses, the office 484
shall prepare a memorandum stating that finding. The office 485
electronically shall transmit the memorandum to the agency, and 486
shall return the proposed or existing rule to the joint committee. 487
The office also shall transmit a copy of its memorandum to the 488
joint committee along with the proposed or existing rule. The 489
joint committee may review or reject the proposed or existing 490
rule, the same as if the rule had not been referred or rereferred 491
to the office. If, when the proposed or existing rule is returned 492
to the joint committee, fewer than thirty days remain in the time 493
by which a concurrent resolution invalidating the rule must be 494
recommended, the time for making such a recommendation is extended 495
until the thirtieth day after the day on which the rule was 496
returned to the joint committee. 497

(2) If the office determined that the proposed or existing 498
rule has an adverse impact on businesses, the office 499
electronically shall transmit the memorandum to the agency, and 500
shall return the proposed or existing rule to the agency. The 501
office also shall transmit a copy of its memorandum to the joint 502
committee along with the proposed or existing rule. After 503
receiving the memorandum and proposed or existing rule from the 504
office, the agency shall evaluate the impact of the proposed or 505
existing rule on business, complete a business impact analysis, 506
and submit the business impact analysis to the common sense 507
initiative office as described in section 121.82 of the Revised 508
Code. 509

(a) When the office transmits a copy of a proposed rule to 510

the joint committee, if fewer than thirty days remain in the time 511
by which a concurrent resolution invalidating the rule must be 512
recommended, the time for making such a recommendation is extended 513
until the thirtieth day after a copy of the rule was transmitted 514
to the joint committee. The agency, after considering the 515
recommendations, may revise the proposed rule, and, if the agency 516
does so, the agency is exempt from complying with divisions (A), 517
(B), and (C) of section 121.82 of the Revised Code, but shall 518
comply with divisions (D) and (E) of that section. 519

(b) When the office transmits a copy of an existing rule to 520
the joint committee, it is the same as if the agency had withdrawn 521
the rule from the joint committee's jurisdiction. If the agency 522
determines, after considering the recommendations, that the 523
existing rule needs to be amended or rescinded, the agency shall 524
commence the process of doing so under division (A)(4)(b) of 525
section 106.031 of the Revised Code. If, however, the agency 526
determines, after considering the recommendations, that the 527
existing rule does not need to be amended or rescinded, the agency 528
shall resume periodic review of the rule under division (A)(4)(a) 529
of section 106.031 of the Revised Code. 530

Sec. 106.051. The offices of the governor, lieutenant 531
governor, auditor of state, secretary of state, treasurer of 532
state, and attorney general shall comply with the business review 533
provisions of sections 106.03 and 106.031 and 121.81 to 121.83 of 534
the Revised Code, but are not required to submit any document to 535
the common sense initiative office or to prepare any document that 536
would have been prepared in response to recommendations of the 537
common sense initiative office, but rather shall prepare all other 538
documents required under the business review provisions and submit 539
them directly to the joint committee on agency rule review along 540
with the proposed or existing rule. The offices of the governor, 541
lieutenant governor, auditor of state, secretary of state, 542

treasurer of state, and attorney general are subject, however, to 543
section 106.05 of the Revised Code. 544

Sec. 107.52. A draft or existing rule that affects businesses 545
has an adverse impact on businesses if a provision of the draft or 546
existing rule that applies to businesses has any of the following 547
effects: 548

(A) It requires a license, permit, or any other prior 549
authorization to engage in or operate a line of business; 550

(B) It imposes a criminal penalty, a civil penalty, or 551
another sanction, or creates a cause of action, for failure to 552
comply with its terms; or 553

(C) It requires specific expenditures or the report of 554
information as a condition of compliance. 555

Sec. 107.53. The common sense initiative office shall 556
develop, and as it becomes necessary or advisable shall improve, a 557
business impact analysis instrument that shall be used as required 558
by law to evaluate draft and existing rules that might have an 559
adverse impact on businesses. The instrument shall be in writing, 560
and shall include the following: 561

(A) Standards that encourage agencies to propose draft rules, 562
and to evaluate existing rules, and proposed revisions thereto, in 563
such a manner that the rules will be as easy to understand as 564
their subject matter permits; 565

(B) Performance measures that can be applied to evaluate the 566
likely efficiency and effectiveness of a draft or existing rule in 567
achieving its regulatory objectives; 568

(C) Standards for evaluating alternative means of regulation 569
that might reduce or eliminate the adverse impact a draft or 570
existing rule might have on businesses; 571

(D) Standards that will promote transparency, predictability, consistency, and flexibility in the implementation and operation of a draft or existing rule, as well as an overall balance in a draft or existing rule between its regulatory objectives and the costs of compliance it imposes on regulated persons;

(E) Standards that require an agency to encourage businesses that might be adversely impacted by a draft rule to participate in the rule-making process, beginning at the earliest practicable stage, and that will encourage businesses that are or may be adversely impacted by ~~a draft~~ an existing rule to offer advice and assistance to the agency when the ~~draft rule is adopted and~~ existing rule is being implemented and administered; and

(F) Any other standards or measures, or any other criteria, the office concludes will reduce or eliminate adverse impacts on businesses and foster improved regulation and economic development in the state.

Alternative means of regulation include, and are not limited to, less stringent compliance or reporting requirements, less stringent schedules or deadlines, consolidation or simplification of requirements, establishment of performance standards to replace operational standards, and exemption of businesses.

The instrument does not need to be adopted as a rule. The office shall publish the current instrument in the register of Ohio.

Sec. 107.54. (A)(1) When the common sense initiative office receives a draft rule and business impact analysis from an agency, the office shall evaluate the draft rule and analysis against the business impact analysis instrument and any other relevant criteria, and may prepare and transmit recommendations to the agency on how the draft rule might be revised to eliminate or reduce any adverse impact the draft rule might have on businesses.

(2) When the office receives an existing rule and business impact analysis from an agency under division (A)(2) of section 106.031 of the Revised Code, the office shall evaluate the existing rule and analysis against the business impact analysis instrument and any other relevant criteria, and may prepare and transmit recommendations to the agency on how the existing rule might be amended or rescinded to eliminate or reduce any adverse impact the existing rule has on businesses.

(B) The office shall transmit any such recommendations electronically to the agency. If the office fails to make such a transmission after receiving the draft or existing rule and business impact analysis, it is as if the office had elected not to make any recommendations.

Sec. 107.55. The common sense initiative office, annually not later than the first day of February, shall prepare a report of the activities of the office during the preceding calendar year. The report shall include:

(A) A statement of the number of draft and existing rules reviewed during the calendar year;

(B) A description of the recommendations made to agencies with regard to draft and existing rules;

(C) An assessment of the status of the recommendations made;

(D) An explanation of the performance measures developed to evaluate the efficiency and effectiveness of the office;

(E) An evaluation of the work of the office judged against the performance measures; and

(F) Any other information the office believes will explain the work of the office.

The office shall transmit a copy of the report to the governor, the lieutenant governor, the president and minority

leader of the senate, and the speaker and minority leader of the 633
house of representatives. 634

Sec. 107.62. The common sense initiative office shall 635
establish a system through which any person may comment 636
concerning: 637

(A) The adverse impact on businesses a draft rule might have; 638

(B) The adverse impact on businesses that a rule currently in 639
effect is having; or 640

(C) The adverse impact on businesses the implementation or 641
administration of a rule currently in effect is having. 642

The office shall prepare a plan for the comment system, and 643
shall revise or replace the plan to improve the comment system in 644
light of learning, experience, or technological development. The 645
office shall publish the current plan for the comment system in 646
the register of Ohio. 647

At a minimum, the plan for the comment system shall provide 648
for communication of comments as follows: The office shall accept 649
comments in writing that are delivered to the office personally, 650
by mail, or by express. The office shall establish a toll-free 651
telephone number that a person may call to offer comments. (The 652
telephone number shall be connected to a recording device at its 653
answering point.) The office shall create a web site that enables 654
a person to offer comments electronically. The web site also shall 655
provide notification to the public of any draft or existing rule 656
that may have an adverse impact on businesses, which notification 657
shall include copies of the draft or existing rule and the 658
business impact analysis of the draft rule. 659

The office shall forward written, telephoned, and 660
electronically transmitted comments to the state agency having 661
jurisdiction over the rule. The office has no other duty with 662

regard to the comments. 663

Sec. 107.63. As used in this section, "small business" means 664
an independently owned and operated for-profit or nonprofit 665
business entity, including affiliates, that has fewer than five 666
hundred full time employees or gross annual sales of less than six 667
million dollars, and has operations located in the state. 668

The small business advisory council is established in the 669
office of the governor. The council shall advise the governor, the 670
lieutenant governor, and the common sense initiative office on the 671
adverse impact draft and existing rules might have on small 672
businesses. The council shall meet at least quarterly. 673

The council consists of nine members. The governor, or the 674
person to whom the governor has delegated responsibilities for the 675
common sense initiative office under section 107.61 of the Revised 676
Code, shall appoint five members, the president of the senate 677
shall appoint two members, and the speaker of the house of 678
representatives shall appoint two members. A member serves at the 679
pleasure of the member's appointing authority. The appointing 680
authorities shall consult with each other and appoint only 681
individuals who are representative of small businesses, and shall 682
do so in such a manner that the membership of the council is 683
composed of representatives of small businesses that are of 684
different sizes, engaged in different lines of business, and 685
located in different parts of the state. 686

Sec. 111.15. (A) As used in this section: 687

(1) "Rule" includes any rule, regulation, bylaw, or standard 688
having a general and uniform operation adopted by an agency under 689
the authority of the laws governing the agency; any appendix to a 690
rule; and any internal management rule. "Rule" does not include 691
any guideline adopted pursuant to section 3301.0714 of the Revised 692

Code, any order respecting the duties of employees, any finding, 693
any determination of a question of law or fact in a matter 694
presented to an agency, or any rule promulgated pursuant to 695
Chapter 119., ~~section 4141.14, or~~ division (C)(1) or (2) of 696
section 5117.02, ~~or section 5703.14~~ of the Revised Code. "Rule" 697
includes any amendment or rescission of a rule. 698

(2) "Agency" means any governmental entity of the state and 699
includes, but is not limited to, any board, department, division, 700
commission, bureau, society, council, institution, state college 701
or university, community college district, technical college 702
district, or state community college. "Agency" does not include 703
the general assembly, the controlling board, the adjutant 704
general's department, or any court. 705

(3) "Internal management rule" means any rule, regulation, 706
bylaw, or standard governing the day-to-day staff procedures and 707
operations within an agency. 708

~~(4) "Substantive revision" has the same meaning as in 709
division (J) of section 119.01 of the Revised Code. 710~~

(B)(1) Any rule, other than a rule of an emergency nature, 711
adopted by any agency pursuant to this section shall be effective 712
on the tenth day after the day on which the rule in final form and 713
in compliance with division (B)(3) of this section is filed as 714
follows: 715

(a) The rule shall be filed in electronic form with both the 716
secretary of state and the director of the legislative service 717
commission; 718

(b) The rule shall be filed in electronic form with the joint 719
committee on agency rule review. Division (B)(1)(b) of this 720
section does not apply to any rule to which division (D) of this 721
section does not apply. 722

An agency that adopts or amends a rule that is subject to 723

division (D) of this section shall assign a review date to the 724
rule that is not later than five years after its effective date. 725
~~If no review date is assigned to a rule, or if~~ a review date 726
assigned to a rule exceeds the five-year maximum, the review date 727
for the rule is five years after its effective date. A rule with a 728
review date is subject to review under section ~~119.032~~ 106.03 of 729
the Revised Code. This paragraph does not apply to a rule of a 730
state college or university, community college district, technical 731
college district, or state community college. 732

~~If all filings are not completed on the same day, the rule~~ 733
~~shall be effective on the tenth day after the day on which the~~ 734
~~latest filing is completed.~~ If an agency in adopting a rule 735
designates an effective date that is later than the effective date 736
provided for by division (B)(1) of this section, the rule if filed 737
as required by such division shall become effective on the later 738
date designated by the agency. 739

Any rule that is required to be filed under division (B)(1) 740
of this section is also subject to division (D) of this section if 741
not exempted by that division ~~(D)(1), (2), (3), (4), (5), (6),~~ 742
~~(7), or (8) of this section.~~ 743

If a rule incorporates a text or other material by reference, 744
the agency shall comply with sections 121.71 to 121.76 of the 745
Revised Code. 746

(2) A rule of an emergency nature necessary for the immediate 747
preservation of the public peace, health, or safety shall state 748
the reasons for the necessity. The emergency rule, in final form 749
and in compliance with division (B)(3) of this section, shall be 750
filed in electronic form with the secretary of state, the director 751
of the legislative service commission, and the joint committee on 752
agency rule review. The emergency rule is effective immediately 753
upon completion of the latest filing, except that if the agency in 754
adopting the emergency rule designates an effective date, or date 755

and time of day, that is later than the effective date and time 756
provided for by division (B)(2) of this section, the emergency 757
rule, if filed as required by such division, shall become 758
effective at the later date, or later date and time of day, 759
designated by the agency. 760

An emergency rule becomes invalid at the end of the ~~ninetieth~~ 761
one hundred twentieth day it is in effect. Prior to that date, the 762
agency may file the emergency rule as a nonemergency rule in 763
compliance with division (B)(1) of this section. The agency may 764
not refile the emergency rule in compliance with division (B)(2) 765
of this section so that, upon the emergency rule becoming invalid 766
under such division, the emergency rule will continue in effect 767
without interruption for another ~~ninety-day~~ one hundred twenty-day 768
period. 769

(3) An agency shall file a rule under division (B)(1) or (2) 770
of this section in compliance with the following standards and 771
procedures: 772

(a) The rule shall be numbered in accordance with the 773
numbering system devised by the director for the Ohio 774
administrative code. 775

(b) The rule shall be prepared and submitted in compliance 776
with the rules of the legislative service commission. 777

(c) The rule shall clearly state the date on which it is to 778
be effective and the date on which it will expire, if known. 779

(d) Each rule that amends or rescinds another rule shall 780
clearly refer to the rule that is amended or rescinded. Each 781
amendment shall fully restate the rule as amended. 782

If the director of the legislative service commission or the 783
director's designee gives an agency notice pursuant to section 784
103.05 of the Revised Code that a rule filed by the agency is not 785
in compliance with the rules of the legislative service 786

commission, the agency shall within thirty days after receipt of 787
the notice conform the rule to the rules of the commission as 788
directed in the notice. 789

(C) All rules filed pursuant to divisions (B)(1)(a) and (2) 790
of this section shall be recorded by the secretary of state and 791
the director under the title of the agency adopting the rule and 792
shall be numbered according to the numbering system devised by the 793
director. The secretary of state and the director shall preserve 794
the rules in an accessible manner. Each such rule shall be a 795
public record open to public inspection and may be transmitted to 796
any law publishing company that wishes to reproduce it. 797

(D) At least sixty-five days before a board, commission, 798
department, division, or bureau of the government of the state 799
files a rule under division (B)(1) of this section, it shall file 800
the full text of the proposed rule in electronic form with the 801
joint committee on agency rule review, and the proposed rule is 802
subject to legislative review and invalidation under ~~division (I)~~ 803
~~of section 119.03~~ 106.021 of the Revised Code. If a state board, 804
commission, department, division, or bureau makes a ~~substantive~~ 805
revision in a proposed rule after it is filed with the joint 806
committee, the state board, commission, department, division, or 807
bureau shall promptly file the full text of the proposed rule in 808
its revised form in electronic form with the joint committee. ~~The~~ 809
~~latest version of a proposed rule as filed with the joint~~ 810
~~committee supersedes each earlier version of the text of the same~~ 811
~~proposed rule. Except as provided in division (F) of this section,~~ 812
a A state board, commission, department, division, or bureau shall 813
also file the rule summary and fiscal analysis prepared under 814
section 127.18 of the Revised Code in electronic form along with a 815
proposed rule, and along with a proposed rule in revised form, 816
that is filed under this division. If a proposed rule has an 817
adverse impact on businesses, the state board, commission, 818

department, division, or bureau also shall file the business 819
impact analysis, any recommendations received from the common 820
sense initiative office, and the associated memorandum of 821
response, if any, in electronic form along with the proposed rule, 822
or the proposed rule in revised form, that is filed under this 823
division. 824

A proposed rule that is subject to legislative review under 825
this division may not be adopted and filed in final form under 826
division (B)(1) of this section unless the proposed rule has been 827
filed with the joint committee on agency rule review under this 828
division and the time for the joint committee to review the 829
proposed rule has expired without recommendation of a concurrent 830
resolution to invalidate the proposed rule. 831

As used in this division, "commission" includes the public 832
utilities commission when adopting rules under a federal or state 833
statute. 834

This division does not apply to any of the following: 835

(1) A proposed rule of an emergency nature; 836

(2) A rule proposed under section 1121.05, 1121.06, 1155.18, 837
1163.22, 1349.33, 1707.201, 1733.412, 4123.29, 4123.34, 4123.341, 838
4123.342, 4123.40, 4123.411, 4123.44, or 4123.442 of the Revised 839
Code; 840

(3) A rule proposed by an agency other than a board, 841
commission, department, division, or bureau of the government of 842
the state; 843

(4) A proposed internal management rule of a board, 844
commission, department, division, or bureau of the government of 845
the state; 846

(5) Any proposed rule that must be adopted verbatim by an 847
agency pursuant to federal law or rule, to become effective within 848

sixty days of adoption, in order to continue the operation of a 849
federally reimbursed program in this state, so long as the 850
proposed rule contains both of the following: 851

(a) A statement that it is proposed for the purpose of 852
complying with a federal law or rule; 853

(b) A citation to the federal law or rule that requires 854
verbatim compliance. 855

(6) An initial rule proposed by the director of health to 856
impose safety standards and quality-of-care standards with respect 857
to a health service specified in section 3702.11 of the Revised 858
Code, or an initial rule proposed by the director to impose 859
quality standards on a facility listed in division (A)(4) of 860
section 3702.30 of the Revised Code, if section 3702.12 of the 861
Revised Code requires that the rule be adopted under this section; 862

(7) A rule of the state lottery commission pertaining to 863
instant game rules. 864

If a rule is exempt from legislative review under division 865
(D)(5) of this section, and if the federal law or rule pursuant to 866
which the rule was adopted expires, is repealed or rescinded, or 867
otherwise terminates, the rule is thereafter subject to 868
legislative review under division (D) of this section. 869

~~(E)~~ Whenever a state board, commission, department, division, 870
or bureau files a proposed rule or a proposed rule in revised form 871
under division (D) of this section, it shall also file the full 872
text of the same proposed rule or proposed rule in revised form in 873
electronic form with the secretary of state and the director of 874
the legislative service commission. ~~Except as provided in division~~ 875
~~(F) of this section, a~~ A state board, commission, department, 876
division, or bureau shall file the rule summary and fiscal 877
analysis prepared under section 127.18 of the Revised Code in 878
electronic form along with a proposed rule or proposed rule in 879

revised form that is filed with the secretary of state or the 880
director of the legislative service commission. 881

~~(F) Except as otherwise provided in this division, the 882
auditor of state or the auditor of state's designee is not 883
required to file a rule summary and fiscal analysis along with a 884
proposed rule, or proposed rule in revised form, that the auditor 885
of state proposes under section 117.12, 117.19, 117.38, or 117.43 886
of the Revised Code and files under division (D) or (E) of this 887
section. 888~~

Sec. 117.20. (A) In adopting rules pursuant to Chapter 117. 889
of the Revised Code, the auditor of state or the auditor of 890
state's designee shall do both of the following: 891

(1) Before adopting any such rule, except a rule of an 892
emergency nature, do each of the following: 893

(a) At least thirty-five days before any public hearing on 894
the proposed rule-making action, mail or send by electronic mail 895
notice of the hearing to each public office and to each statewide 896
organization that the auditor of state or designee determines will 897
be affected or represents persons who will be affected by the 898
proposed rule-making action; 899

(b) Mail or send by electronic mail a copy of the proposed 900
rule to any person or organization that requests a copy within 901
five days after receipt of the request; 902

(c) Consult with appropriate state and local government 903
agencies, or with persons representative of their interests, 904
including statewide organizations of local government officials, 905
and consult with accounting professionals and other interested 906
persons; 907

(d) Conduct, on the date and at the time and place designated 908
in the notice, a public hearing at which any person affected by 909

the proposed rule, including statewide organizations of local 910
government officials, may appear and be heard in person, by 911
attorney, or both, and may present the person's or organization's 912
position or contentions orally or in writing. 913

(2) ~~Except as otherwise provided in division (A)(2) of this~~ 914
~~section, comply~~ Comply with divisions (B) to (E) of section 111.15 915
of the Revised Code. ~~The auditor of state is not required to file~~ 916
~~a rule summary and fiscal analysis along with any copy of a~~ 917
~~proposed rule, or proposed rule in revised form, that is filed~~ 918
~~with the joint committee on agency rule review, the secretary of~~ 919
~~state, or the director of the legislative service commission under~~ 920
~~division (D) or (E) of section 111.15 of the Revised Code.~~ 921

(B) The auditor of state shall diligently discharge the 922
duties imposed by divisions (A)(1)(a), (b), and (c) of this 923
section, but failure to mail or send by electronic mail any notice 924
or copy of a proposed rule, or to consult with any person or 925
organization, shall not invalidate any rule. 926

(C) Notwithstanding any contrary provision of the Revised 927
Code, the auditor of state may prepare and disseminate, to public 928
offices and other interested persons and organizations, advisory 929
bulletins, directives, and instructions relating to accounting and 930
financial reporting systems, budgeting procedures, fiscal 931
controls, and the constructions by the auditor of state of 932
constitutional and statutory provisions, court decisions, and 933
opinions of the attorney general. The bulletins, directives, and 934
instructions shall be of an advisory nature only. 935

(D) As used in this section, "rule" includes the adoption, 936
amendment, or rescission of a rule. 937

Sec. 119.01. As used in sections 119.01 to 119.13 of the 938
Revised Code: 939

(A)(1) "Agency" means, except as limited by this division, 940
any official, board, or commission having authority to promulgate 941
rules or make adjudications in the civil service commission, the 942
division of liquor control, the department of taxation, the 943
industrial commission, the bureau of workers' compensation, the 944
functions of any administrative or executive officer, department, 945
division, bureau, board, or commission of the government of the 946
state specifically made subject to sections 119.01 to 119.13 of 947
the Revised Code, and the licensing functions of any 948
administrative or executive officer, department, division, bureau, 949
board, or commission of the government of the state having the 950
authority or responsibility of issuing, suspending, revoking, or 951
canceling licenses. 952

~~Except as otherwise provided in division (I) of this section,~~ 953
~~sections~~ Sections 119.01 to 119.13 of the Revised Code do not 954
apply to the public utilities commission. Sections 119.01 to 955
119.13 of the Revised Code do not apply to the utility 956
radiological safety board; to the controlling board; to actions of 957
the superintendent of financial institutions and the 958
superintendent of insurance in the taking possession of, and 959
rehabilitation or liquidation of, the business and property of 960
banks, savings and loan associations, savings banks, credit 961
unions, insurance companies, associations, reciprocal fraternal 962
benefit societies, and bond investment companies; to any action 963
taken by the division of securities under section 1707.201 of the 964
Revised Code; or to any action that may be taken by the 965
superintendent of financial institutions under section 1113.03, 966
1121.06, 1121.10, 1125.09, 1125.12, 1125.18, 1157.09, 1157.12, 967
1157.18, 1165.09, 1165.12, 1165.18, 1349.33, 1733.35, 1733.361, 968
1733.37, or 1761.03 of the Revised Code. 969

Sections 119.01 to 119.13 of the Revised Code do not apply to 970
actions of the industrial commission or the bureau of workers' 971

compensation under sections 4123.01 to 4123.94 of the Revised Code 972
with respect to all matters of adjudication, or to the actions of 973
the industrial commission, bureau of workers' compensation board 974
of directors, and bureau of workers' compensation under division 975
(D) of section 4121.32, sections 4123.29, 4123.34, 4123.341, 976
4123.342, 4123.40, 4123.411, 4123.44, 4123.442, 4127.07, divisions 977
(B), (C), and (E) of section 4131.04, and divisions (B), (C), and 978
(E) of section 4131.14 of the Revised Code with respect to all 979
matters concerning the establishment of premium, contribution, and 980
assessment rates. 981

(2) "Agency" also means any official or work unit having 982
authority to promulgate rules or make adjudications in the 983
department of job and family services, but only with respect to 984
both of the following: 985

(a) The adoption, amendment, or rescission of rules that 986
section 5101.09 of the Revised Code requires be adopted in 987
accordance with this chapter; 988

(b) The issuance, suspension, revocation, or cancellation of 989
licenses. 990

(B) "License" means any license, permit, certificate, 991
commission, or charter issued by any agency. "License" does not 992
include any arrangement whereby a person, institution, or entity 993
furnishes medicaid services under a provider agreement with the 994
department of job and family services pursuant to Title XIX of the 995
"Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as 996
amended. 997

(C) "Rule" means any rule, regulation, or standard, having a 998
general and uniform operation, adopted, promulgated, and enforced 999
by any agency under the authority of the laws governing such 1000
agency, and includes any appendix to a rule. "Rule" does not 1001
include any internal management rule of an agency unless the 1002

internal management rule affects private rights and does not 1003
include any guideline adopted pursuant to section 3301.0714 of the 1004
Revised Code. 1005

(D) "Adjudication" means the determination by the highest or 1006
ultimate authority of an agency of the rights, duties, privileges, 1007
benefits, or legal relationships of a specified person, but does 1008
not include the issuance of a license in response to an 1009
application with respect to which no question is raised, nor other 1010
acts of a ministerial nature. 1011

(E) "Hearing" means a public hearing by any agency in 1012
compliance with procedural safeguards afforded by sections 119.01 1013
to 119.13 of the Revised Code. 1014

(F) "Person" means a person, firm, corporation, association, 1015
or partnership. 1016

(G) "Party" means the person whose interests are the subject 1017
of an adjudication by an agency. 1018

(H) "Appeal" means the procedure by which a person, aggrieved 1019
by a finding, decision, order, or adjudication of any agency, 1020
invokes the jurisdiction of a court. 1021

(I) ~~"Rule making agency" means any board, commission,~~ 1022
~~department, division, or bureau of the government of the state~~ 1023
~~that is required to file proposed rules, amendments, or~~ 1024
~~rescissions under division (D) of section 111.15 of the Revised~~ 1025
~~Code and any agency that is required to file proposed rules,~~ 1026
~~amendments, or rescissions under divisions (B) and (H) of section~~ 1027
~~119.03 of the Revised Code. "Rule making agency" includes the~~ 1028
~~public utilities commission. "Rule making agency" does not include~~ 1029
~~any state supported college or university.~~ 1030

~~(J) "Substantive revision" means any addition to, elimination~~ 1031
~~from, or other change in a rule, an amendment of a rule, or a~~ 1032
~~rescission of a rule, whether of a substantive or procedural~~ 1033

~~nature, that changes any of the following:~~ 1034

~~(1) That which the rule, amendment, or rescission permits,~~ 1035
~~authorizes, regulates, requires, prohibits, penalizes, rewards, or~~ 1036
~~otherwise affects;~~ 1037

~~(2) The scope or application of the rule, amendment, or~~ 1038
~~rescission.~~ 1039

~~(K)~~ "Internal management rule" means any rule, regulation, or 1040
standard governing the day-to-day staff procedures and operations 1041
within an agency. 1042

Sec. 119.03. In the adoption, amendment, or rescission of any 1043
rule, an agency shall comply with the following procedure: 1044

(A) Reasonable public notice shall be given in the register 1045
of Ohio at least thirty days prior to the date set for a hearing, 1046
in the form the agency determines. The agency shall file copies of 1047
the public notice under division (B) of this section. (The agency 1048
gives public notice in the register of Ohio when the public notice 1049
is published in the register under that division.) 1050

The public notice shall include: 1051

(1) A statement of the agency's intention to consider 1052
adopting, amending, or rescinding a rule; 1053

(2) A synopsis of the proposed rule, amendment, or rule to be 1054
rescinded or a general statement of the subject matter to which 1055
the proposed rule, amendment, or rescission relates; 1056

(3) A statement of the reason or purpose for adopting, 1057
amending, or rescinding the rule; 1058

(4) The date, time, and place of a hearing on the proposed 1059
action, which shall be not earlier than the thirty-first nor later 1060
than the fortieth day after the proposed rule, amendment, or 1061
rescission is filed under division (B) of this section. 1062

In addition to public notice given in the register of Ohio, 1063
the agency may give whatever other notice it reasonably considers 1064
necessary to ensure notice constructively is given to all persons 1065
who are subject to or affected by the proposed rule, amendment, or 1066
rescission. 1067

The agency shall provide a copy of the public notice required 1068
under division (A) of this section to any person who requests it 1069
and pays a reasonable fee, not to exceed the cost of copying and 1070
mailing. 1071

(B) The full text of the proposed rule, amendment, or rule to 1072
be rescinded, accompanied by the public notice required under 1073
division (A) of this section, shall be filed in electronic form 1074
with the secretary of state and with the director of the 1075
legislative service commission. (If in compliance with this 1076
division an agency files more than one proposed rule, amendment, 1077
or rescission at the same time, and has prepared a public notice 1078
under division (A) of this section that applies to more than one 1079
of the proposed rules, amendments, or rescissions, the agency 1080
shall file only one notice with the secretary of state and with 1081
the director for all of the proposed rules, amendments, or 1082
rescissions to which the notice applies.) The proposed rule, 1083
amendment, or rescission and public notice shall be filed as 1084
required by this division at least sixty-five days prior to the 1085
date on which the agency, in accordance with division ~~(D)~~(E) of 1086
this section, issues an order adopting the proposed rule, 1087
amendment, or rescission. 1088

If the proposed rule, amendment, or rescission incorporates a 1089
text or other material by reference, the agency shall comply with 1090
sections 121.71 to 121.76 of the Revised Code. 1091

The proposed rule, amendment, or rescission shall be 1092
available for at least thirty days prior to the date of the 1093
hearing at the office of the agency in printed or other legible 1094

form without charge to any person affected by the proposal. 1095
Failure to furnish such text to any person requesting it shall not 1096
invalidate any action of the agency in connection therewith. 1097

If the agency files a ~~substantive~~ revision in the text of the 1098
proposed rule, amendment, or rescission ~~under division (H) of this~~ 1099
~~section~~, it shall also promptly file the full text of the proposed 1100
rule, amendment, or rescission in its revised form in electronic 1101
form with the secretary of state and with the director of the 1102
legislative service commission. 1103

The agency shall file the rule summary and fiscal analysis 1104
prepared under section 127.18 of the Revised Code in electronic 1105
form along with a proposed rule, amendment, or rescission or 1106
proposed rule, amendment, or rescission in revised form that is 1107
filed with the secretary of state or the director of the 1108
legislative service commission. 1109

The director of the legislative service commission shall 1110
publish in the register of Ohio the full text of the original and 1111
each revised version of a proposed rule, amendment, or rescission; 1112
the full text of a public notice; and the full text of a rule 1113
summary and fiscal analysis that is filed with the director under 1114
this division. 1115

(C) When an agency files a proposed rule, amendment, or 1116
rescission under division (B) of this section, it also shall file 1117
in electronic form with the joint committee on agency rule review 1118
the full text of the proposed rule, amendment, or rule to be 1119
rescinded in the same form and the public notice required under 1120
division (A) of this section. (If in compliance with this division 1121
an agency files more than one proposed rule, amendment, or 1122
rescission at the same time, and has given a public notice under 1123
division (A) of this section that applies to more than one of the 1124
proposed rules, amendments, or rescissions, the agency shall file 1125
only one notice with the joint committee for all of the proposed 1126

rules, amendments, or rescissions to which the notice applies.) 1127
The proposed rule, amendment, or rescission is subject to 1128
legislative review and invalidation under sections 106.02, 1129
106.021, and 106.022 of the Revised Code. If the agency makes a 1130
revision in a proposed rule, amendment, or rescission after it is 1131
filed with the joint committee, the agency promptly shall file the 1132
full text of the proposed rule, amendment, or rescission in its 1133
revised form in electronic form with the joint committee. An 1134
agency shall file the rule summary and fiscal analysis prepared 1135
under section 127.18 of the Revised Code in electronic form along 1136
with a proposed rule, amendment, or rescission, and along with a 1137
proposed rule, amendment, or rescission in revised form, that is 1138
filed under this division. If a proposed rule, amendment, or 1139
rescission has an adverse impact on businesses, the agency also 1140
shall file the business impact analysis, any recommendations 1141
received from the common sense initiative office, and the agency's 1142
memorandum of response, if any, in electronic form along with the 1143
proposed rule, amendment, or rescission, or along with the 1144
proposed rule, amendment, or rescission in revised form, that is 1145
filed under this division. 1146

This division does not apply to: 1147

(1) An emergency rule, amendment, or rescission; 1148

(2) A proposed rule, amendment, or rescission that must be 1149
adopted verbatim by an agency pursuant to federal law or rule, to 1150
become effective within sixty days of adoption, in order to 1151
continue the operation of a federally reimbursed program in this 1152
state, so long as the proposed rule contains both of the 1153
following: 1154

(a) A statement that it is proposed for the purpose of 1155
complying with a federal law or rule; 1156

(b) A citation to the federal law or rule that requires 1157

verbatim compliance. 1158

If a rule or amendment is exempt from legislative review 1159
under division (C)(2) of this section, and if the federal law or 1160
rule pursuant to which the rule or amendment was adopted expires, 1161
is repealed or rescinded, or otherwise terminates, the rule or 1162
amendment, or its rescission, is thereafter subject to legislative 1163
review under division (C) of this section. 1164

(D) On the date and at the time and place designated in the 1165
notice, the agency shall conduct a public hearing at which any 1166
person affected by the proposed action of the agency may appear 1167
and be heard in person, by the person's attorney, or both, may 1168
present the person's position, arguments, or contentions, orally 1169
or in writing, offer and examine witnesses, and present evidence 1170
tending to show that the proposed rule, amendment, or rescission, 1171
if adopted or effectuated, will be unreasonable or unlawful. An 1172
agency may permit persons affected by the proposed rule, 1173
amendment, or rescission to present their positions, arguments, or 1174
contentions in writing, not only at the hearing, but also for a 1175
reasonable period before, after, or both before and after the 1176
hearing. A person who presents a position or arguments or 1177
contentions in writing before or after the hearing is not required 1178
to appear at the hearing. 1179

At the hearing, the testimony shall be recorded. Such record 1180
shall be made at the expense of the agency. The agency is required 1181
to transcribe a record that is not sight readable only if a person 1182
requests transcription of all or part of the record and agrees to 1183
reimburse the agency for the costs of the transcription. An agency 1184
may require the person to pay in advance all or part of the cost 1185
of the transcription. 1186

In any hearing under this section the agency may administer 1187
oaths or affirmations. 1188

~~(D)~~(E) After ~~complying with~~ divisions (A), (B), (C), and 1189
~~(H)~~(D) of this section have been complied with, and when the time 1190
for legislative review and invalidation under ~~division (I) of this~~ 1191
~~section~~ sections 106.02, 106.022, and 106.023 of the Revised Code 1192
has expired without recommendation of a concurrent resolution to 1193
invalidate the proposed rule, amendment, or rescission, the agency 1194
may issue an order adopting the proposed rule or the proposed 1195
amendment or rescission of the rule, consistent with the synopsis 1196
or general statement included in the public notice. At that time 1197
the agency shall designate the effective date of the rule, 1198
amendment, or rescission, which shall not be earlier than the 1199
tenth day after the rule, amendment, or rescission has been filed 1200
in its final form as provided in section 119.04 of the Revised 1201
Code. 1202

~~(E)~~(F) Prior to the effective date of a rule, amendment, or 1203
rescission, the agency shall make a reasonable effort to inform 1204
those affected by the rule, amendment, or rescission and to have 1205
available for distribution to those requesting it the full text of 1206
the rule as adopted or as amended. 1207

~~(F)~~(G) If the governor, upon the request of an agency, 1208
determines that an emergency requires the immediate adoption, 1209
amendment, or rescission of a rule, the governor shall issue an 1210
order, the text of which shall be filed in electronic form with 1211
the agency, the secretary of state, the director of the 1212
legislative service commission, and the joint committee on agency 1213
rule review, that the procedure prescribed by this section with 1214
respect to the adoption, amendment, or rescission of a specified 1215
rule is suspended. The agency may then adopt immediately the 1216
emergency rule, amendment, or rescission and it becomes effective 1217
on the date the rule, amendment, or rescission, in final form and 1218
in compliance with division (A)(2) of section 119.04 of the 1219
Revised Code, is filed in electronic form with the secretary of 1220

state, the director of the legislative service commission, and the 1221
joint committee on agency rule review. If all filings are not 1222
completed on the same day, the emergency rule, amendment, or 1223
rescission shall be effective on the day on which the latest 1224
filing is completed. The director shall publish the full text of 1225
the emergency rule, amendment, or rescission in the register of 1226
Ohio. 1227

The emergency rule, amendment, or rescission shall become 1228
invalid at the end of the ~~ninetieth~~ one hundred twentieth day it 1229
is in effect. Prior to that date the agency may adopt the 1230
emergency rule, amendment, or rescission as a nonemergency rule, 1231
amendment, or rescission by complying with the procedure 1232
prescribed by this section for the adoption, amendment, and 1233
rescission of nonemergency rules. The agency shall not use the 1234
procedure of this division to readopt the emergency rule, 1235
amendment, or rescission so that, upon the emergency rule, 1236
amendment, or rescission becoming invalid under this division, the 1237
emergency rule, amendment, or rescission will continue in effect 1238
without interruption for another ~~ninety-day~~ one hundred twenty-day 1239
period, except when ~~division (I)(2)(a) of this section~~ 106.02 of 1240
the Revised Code prevents the agency from adopting the emergency 1241
rule, amendment, or rescission as a nonemergency rule, amendment, 1242
or rescission within the ~~ninety-day~~ one hundred twenty-day period. 1243

This division does not apply to the adoption of any emergency 1244
rule, amendment, or rescission by the tax commissioner under 1245
division (C)(2) of section 5117.02 of the Revised Code. 1246

~~(G)~~(H) Rules adopted by an authority within the department of 1247
job and family services for the administration or enforcement of 1248
Chapter 4141. of the Revised Code or of the department of taxation 1249
shall be effective without a hearing as provided by this section 1250
if the statutes pertaining to such agency specifically give a 1251
right of appeal to the board of tax appeals or to a higher 1252

authority within the agency or to a court, and also give the 1253
appellant a right to a hearing on such appeal. This division does 1254
not apply to the adoption of any rule, amendment, or rescission by 1255
the tax commissioner under division (C)(1) or (2) of section 1256
5117.02 of the Revised Code, or deny the right to file an action 1257
for declaratory judgment as provided in Chapter 2721. of the 1258
Revised Code from the decision of the board of tax appeals or of 1259
the higher authority within such agency. 1260

~~(H) When any agency files a proposed rule, amendment, or 1261
rescission under division (B) of this section, it shall also file 1262
in electronic form with the joint committee on agency rule review 1263
the full text of the proposed rule, amendment, or rule to be 1264
rescinded in the same form and the public notice required under 1265
division (A) of this section. (If in compliance with this division 1266
an agency files more than one proposed rule, amendment, or 1267
rescission at the same time, and has given a public notice under 1268
division (A) of this section that applies to more than one of the 1269
proposed rules, amendments, or rescissions, the agency shall file 1270
only one notice with the joint committee for all of the proposed 1271
rules, amendments, or rescissions to which the notice applies.) If 1272
the agency makes a substantive revision in a proposed rule, 1273
amendment, or rescission after it is filed with the joint 1274
committee, the agency shall promptly file the full text of the 1275
proposed rule, amendment, or rescission in its revised form in 1276
electronic form with the joint committee. The latest version of a 1277
proposed rule, amendment, or rescission as filed with the joint 1278
committee supersedes each earlier version of the text of the same 1279
proposed rule, amendment, or rescission. An agency shall file the 1280
rule summary and fiscal analysis prepared under section 127.18 of 1281
the Revised Code in electronic form along with a proposed rule, 1282
amendment, or rescission, and along with a proposed rule, 1283
amendment, or rescission in revised form, that is filed under this 1284
division. If a proposed rule, amendment, or rescission has an 1285~~

~~adverse impact on businesses, the agency also shall file the~~ 1286
~~business impact analysis, any recommendations received from the~~ 1287
~~common sense initiative office, and the agency's memorandum of~~ 1288
~~response, if any, in electronic form along with the proposed rule,~~ 1289
~~amendment, or rescission, or along with the proposed rule,~~ 1290
~~amendment, or rescission in revised form, that is filed under this~~ 1291
~~division.~~ 1292

~~This division does not apply to:~~ 1293

~~(1) An emergency rule, amendment, or rescission;~~ 1294

~~(2) Any proposed rule, amendment, or rescission that must be~~ 1295
~~adopted verbatim by an agency pursuant to federal law or rule, to~~ 1296
~~become effective within sixty days of adoption, in order to~~ 1297
~~continue the operation of a federally reimbursed program in this~~ 1298
~~state, so long as the proposed rule contains both of the~~ 1299
~~following:~~ 1300

~~(a) A statement that it is proposed for the purpose of~~ 1301
~~complying with a federal law or rule;~~ 1302

~~(b) A citation to the federal law or rule that requires~~ 1303
~~verbatim compliance.~~ 1304

~~If a rule or amendment is exempt from legislative review~~ 1305
~~under division (H)(2) of this section, and if the federal law or~~ 1306
~~rule pursuant to which the rule or amendment was adopted expires,~~ 1307
~~is repealed or rescinded, or otherwise terminates, the rule or~~ 1308
~~amendment, or its rescission, is thereafter subject to legislative~~ 1309
~~review under division (H) of this section.~~ 1310

~~(I)(1) The joint committee on agency rule review may~~ 1311
~~recommend the adoption of a concurrent resolution invalidating a~~ 1312
~~proposed rule, amendment, rescission, or part thereof if it finds~~ 1313
~~any of the following:~~ 1314

~~(a) That the rule making agency has exceeded the scope of its~~ 1315

~~statutory authority in proposing the rule, amendment, or~~ 1316
~~rescission;~~ 1317

~~(b) That the proposed rule, amendment, or rescission~~ 1318
~~conflicts with another rule, amendment, or rescission adopted by~~ 1319
~~the same or a different rule making agency;~~ 1320

~~(c) That the proposed rule, amendment, or rescission~~ 1321
~~conflicts with the legislative intent in enacting the statute~~ 1322
~~under which the rule making agency proposed the rule, amendment,~~ 1323
~~or rescission;~~ 1324

~~(d) That the rule making agency has failed to prepare a~~ 1325
~~complete and accurate rule summary and fiscal analysis of the~~ 1326
~~proposed rule, amendment, or rescission as required by section~~ 1327
~~127.18 of the Revised Code;~~ 1328

~~(e) That the proposed rule, amendment, or rescission~~ 1329
~~incorporates a text or other material by reference and either the~~ 1330
~~rule making agency has failed to file the text or other material~~ 1331
~~incorporated by reference as required by section 121.73 of the~~ 1332
~~Revised Code or, in the case of a proposed rule or amendment, the~~ 1333
~~incorporation by reference fails to meet the standards stated in~~ 1334
~~section 121.72, 121.75, or 121.76 of the Revised Code;~~ 1335

~~(f) That the rule making agency has failed to demonstrate~~ 1336
~~through the business impact analysis, recommendations from the~~ 1337
~~common sense initiative office, and the memorandum of response the~~ 1338
~~agency has filed under division (H) of this section that the~~ 1339
~~regulatory intent of the proposed rule, amendment, or rescission~~ 1340
~~justifies its adverse impact on businesses in this state.~~ 1341

~~The joint committee shall not hold its public hearing on a~~ 1342
~~proposed rule, amendment, or rescission earlier than the~~ 1343
~~forty first day after the original version of the proposed rule,~~ 1344
~~amendment, or rescission was filed with the joint committee.~~ 1345

~~The house of representatives and senate may adopt a~~ 1346

~~concurrent resolution invalidating a proposed rule, amendment, 1347
rescission, or part thereof. The concurrent resolution shall state 1348
which of the specific rules, amendments, rescissions, or parts 1349
thereof are invalidated. A concurrent resolution invalidating a 1350
proposed rule, amendment, or rescission shall be adopted not later 1351
than the sixty fifth day after the original version of the text of 1352
the proposed rule, amendment, or rescission is filed with the 1353
joint committee, except that if more than thirty five days after 1354
the original version is filed the rule making agency either files 1355
a revised version of the text of the proposed rule, amendment, or 1356
rescission, or revises the rule summary and fiscal analysis in 1357
accordance with division (I)(4) of this section, a concurrent 1358
resolution invalidating the proposed rule, amendment, or 1359
rescission shall be adopted not later than the thirtieth day after 1360
the revised version of the proposed rule or rule summary and 1361
fiscal analysis is filed. If, after the joint committee on agency 1362
rule review recommends the adoption of a concurrent resolution 1363
invalidating a proposed rule, amendment, rescission, or part 1364
thereof, the house of representatives or senate does not, within 1365
the time remaining for adoption of the concurrent resolution, hold 1366
five floor sessions at which its journal records a roll call vote 1367
disclosing a sufficient number of members in attendance to pass a 1368
bill, the time within which that house may adopt the concurrent 1369
resolution is extended until it has held five such floor sessions. 1370~~

~~Within five days after the adoption of a concurrent 1371
resolution invalidating a proposed rule, amendment, rescission, or 1372
part thereof, the clerk of the senate shall send the rule making 1373
agency, the secretary of state, and the director of the 1374
legislative service commission in electronic form a certified text 1375
of the resolution together with a certification stating the date 1376
on which the resolution takes effect. The secretary of state and 1377
the director of the legislative service commission shall each note 1378
the invalidity of the proposed rule, amendment, rescission, or 1379~~

~~part thereof, and shall each remove the invalid proposed rule, 1380
amendment, rescission, or part thereof from the file of proposed 1381
rules. The rule making agency shall not proceed to adopt in 1382
accordance with division (D) of this section, or to file in 1383
accordance with division (B)(1) of section 111.15 of the Revised 1384
Code, any version of a proposed rule, amendment, rescission, or 1385
part thereof that has been invalidated by concurrent resolution. 1386~~

~~Unless the house of representatives and senate adopt a 1387
concurrent resolution invalidating a proposed rule, amendment, 1388
rescission, or part thereof within the time specified by this 1389
division, the rule making agency may proceed to adopt in 1390
accordance with division (D) of this section, or to file in 1391
accordance with division (B)(1) of section 111.15 of the Revised 1392
Code, the latest version of the proposed rule, amendment, or 1393
rescission as filed with the joint committee. If by concurrent 1394
resolution certain of the rules, amendments, rescissions, or parts 1395
thereof are specifically invalidated, the rule making agency may 1396
proceed to adopt, in accordance with division (D) of this section, 1397
or to file in accordance with division (B)(1) of section 111.15 of 1398
the Revised Code, the latest version of the proposed rules, 1399
amendments, rescissions, or parts thereof as filed with the joint 1400
committee that are not specifically invalidated. The rule making 1401
agency may not revise or amend any proposed rule, amendment, 1402
rescission, or part thereof that has not been invalidated except 1403
as provided in this chapter or in section 111.15 of the Revised 1404
Code. 1405~~

~~(2)(a) A proposed rule, amendment, or rescission that is 1406
filed with the joint committee under division (H) of this section 1407
or division (D) of section 111.15 of the Revised Code shall be 1408
carried over for legislative review to the next succeeding regular 1409
session of the general assembly if the original or any revised 1410
version of the proposed rule, amendment, or rescission is filed 1411~~

~~with the joint committee on or after the first day of December of~~ 1412
~~any year.~~ 1413

~~(b) The latest version of any proposed rule, amendment, or~~ 1414
~~rescission that is subject to division (I)(2)(a) of this section,~~ 1415
~~as filed with the joint committee, is subject to legislative~~ 1416
~~review and invalidation in the next succeeding regular session of~~ 1417
~~the general assembly in the same manner as if it were the original~~ 1418
~~version of a proposed rule, amendment, or rescission that had been~~ 1419
~~filed with the joint committee for the first time on the first day~~ 1420
~~of the session. A rule making agency shall not adopt in accordance~~ 1421
~~with division (D) of this section, or file in accordance with~~ 1422
~~division (B)(1) of section 111.15 of the Revised Code, any version~~ 1423
~~of a proposed rule, amendment, or rescission that is subject to~~ 1424
~~division (I)(2)(a) of this section until the time for legislative~~ 1425
~~review and invalidation, as contemplated by division (I)(2)(b) of~~ 1426
~~this section, has expired.~~ 1427

~~(3) Invalidation of any version of a proposed rule,~~ 1428
~~amendment, rescission, or part thereof by concurrent resolution~~ 1429
~~shall prevent the rule making agency from instituting or~~ 1430
~~continuing proceedings to adopt any version of the same proposed~~ 1431
~~rule, amendment, rescission, or part thereof for the duration of~~ 1432
~~the general assembly that invalidated the proposed rule,~~ 1433
~~amendment, rescission, or part thereof unless the same general~~ 1434
~~assembly adopts a concurrent resolution permitting the rule making~~ 1435
~~agency to institute or continue such proceedings.~~ 1436

~~The failure of the general assembly to invalidate a proposed~~ 1437
~~rule, amendment, rescission, or part thereof under this section~~ 1438
~~shall not be construed as a ratification of the lawfulness or~~ 1439
~~reasonableness of the proposed rule, amendment, rescission, or any~~ 1440
~~part thereof or of the validity of the procedure by which the~~ 1441
~~proposed rule, amendment, rescission, or any part thereof was~~ 1442
~~proposed or adopted.~~ 1443

~~(4) In lieu of recommending a concurrent resolution to~~ 1444
~~invalidate a proposed rule, amendment, rescission, or part thereof~~ 1445
~~because the rule making agency has failed to prepare a complete~~ 1446
~~and accurate fiscal analysis, the joint committee on agency rule~~ 1447
~~review may issue, on a one time basis, for rules, amendments,~~ 1448
~~rescissions, or parts thereof that have a fiscal effect on school~~ 1449
~~districts, counties, townships, or municipal corporations, a~~ 1450
~~finding that the rule summary and fiscal analysis is incomplete or~~ 1451
~~inaccurate and order the rule making agency to revise the rule~~ 1452
~~summary and fiscal analysis and refile it with the proposed rule,~~ 1453
~~amendment, rescission, or part thereof. If an emergency rule is~~ 1454
~~filed as a nonemergency rule before the end of the ninetieth day~~ 1455
~~of the emergency rule's effectiveness, and the joint committee~~ 1456
~~issues a finding and orders the rule making agency to refile under~~ 1457
~~division (I)(4) of this section, the governor may also issue an~~ 1458
~~order stating that the emergency rule shall remain in effect for~~ 1459
~~an additional sixty days after the ninetieth day of the emergency~~ 1460
~~rule's effectiveness. The governor's orders shall be filed in~~ 1461
~~accordance with division (F) of this section. The joint committee~~ 1462
~~shall send in electronic form to the rule making agency, the~~ 1463
~~secretary of state, and the director of the legislative service~~ 1464
~~commission a certified text of the finding and order to revise the~~ 1465
~~rule summary and fiscal analysis, which shall take immediate~~ 1466
~~effect.~~ 1467

~~An order issued under division (I)(4) of this section shall~~ 1468
~~prevent the rule making agency from instituting or continuing~~ 1469
~~proceedings to adopt any version of the proposed rule, amendment,~~ 1470
~~rescission, or part thereof until the rule making agency revises~~ 1471
~~the rule summary and fiscal analysis and refiles it in electronic~~ 1472
~~form with the joint committee along with the proposed rule,~~ 1473
~~amendment, rescission, or part thereof. If the joint committee~~ 1474
~~finds the rule summary and fiscal analysis to be complete and~~ 1475
~~accurate, the joint committee shall issue a new order noting that~~ 1476

~~the rule making agency has revised and refiled a complete and~~ 1477
~~accurate rule summary and fiscal analysis. The joint committee~~ 1478
~~shall send in electronic form to the rule making agency, the~~ 1479
~~secretary of state, and the director of the legislative service~~ 1480
~~commission a certified text of this new order. The secretary of~~ 1481
~~state and the director of the legislative service commission shall~~ 1482
~~each link this order to the proposed rule, amendment, rescission,~~ 1483
~~or part thereof. The rule making agency may then proceed to adopt~~ 1484
~~in accordance with division (D) of this section, or to file in~~ 1485
~~accordance with division (B)(1) of section 111.15 of the Revised~~ 1486
~~Code, the proposed rule, amendment, rescission, or part thereof~~ 1487
~~that was subject to the finding and order under division (I)(4) of~~ 1488
~~this section. If the joint committee determines that the revised~~ 1489
~~rule summary and fiscal analysis is still inaccurate or~~ 1490
~~incomplete, the joint committee shall recommend the adoption of a~~ 1491
~~concurrent resolution in accordance with division (I)(1) of this~~ 1492
~~section.~~ 1493

Sec. 119.04. (A)(1) Any rule adopted by any agency shall be 1494
effective on the tenth day after the day on which the rule in 1495
final form and in compliance with division (A)(2) of this section 1496
is filed as follows: 1497

(a) The rule shall be filed in electronic form with both the 1498
secretary of state and the director of the legislative service 1499
commission; 1500

(b) The rule shall be filed in electronic form with the joint 1501
committee on agency rule review. Division (A)(1)(b) of this 1502
section does not apply to any rule to which division ~~(H)~~(C) of 1503
section 119.03 of the Revised Code does not apply. 1504

~~If all filings are not completed on the same day, the rule~~ 1505
~~shall be effective on the tenth day after the day on which the~~ 1506
~~latest filing is completed. If an agency in adopting a rule~~ 1507

designates an effective date that is later than the effective date 1508
provided for by this division, the rule if filed as required by 1509
this division shall become effective on the later date designated 1510
by the agency. 1511

An agency that adopts or amends a rule that is subject to 1512
~~division (H) of section 119.03~~ 106.03 of the Revised Code shall 1513
assign a review date to the rule that is not later than five years 1514
after its effective date. If ~~no review date is assigned to a rule,~~ 1515
~~or if~~ a review date assigned to a rule exceeds the five-year 1516
maximum, the review date for the rule is five years after its 1517
effective date. A rule with a review date is subject to review 1518
under section ~~119.032~~ 106.03 of the Revised Code. This paragraph 1519
does not apply to the department of taxation. 1520

(2) The agency shall file the rule in compliance with the 1521
following standards and procedures: 1522

(a) The rule shall be numbered in accordance with the 1523
numbering system devised by the director for the Ohio 1524
administrative code. 1525

(b) The rule shall be prepared and submitted in compliance 1526
with the rules of the legislative service commission. 1527

(c) The rule shall clearly state the date on which it is to 1528
be effective and the date on which it will expire, if known. 1529

(d) Each rule that amends or rescinds another rule shall 1530
clearly refer to the rule that is amended or rescinded. Each 1531
amendment shall fully restate the rule as amended. 1532

If the director of the legislative service commission or the 1533
director's designee gives an agency notice pursuant to section 1534
103.05 of the Revised Code that a rule filed by the agency is not 1535
in compliance with the rules of the commission, the agency shall 1536
within thirty days after receipt of the notice conform the rule to 1537
the rules of the commission as directed in the notice. 1538

(3) As used in this section, "rule" includes an amendment or
rescission of a rule.

(B) The secretary of state and the director shall preserve
the rules filed under division (A)(1)(a) of this section in an
accessible manner. Each such rule shall be a public record open to
public inspection and may be transmitted to any law publishing
company that wishes to reproduce it.

~~Any rule that has been adopted in compliance with section
119.03 of the Revised Code and that is in effect before January 1,
1977, may be divided into sections, numbered, provided with a
subject heading, and filed with the secretary of state and the
director to comply with the provisions of this section without
carrying out the adoption procedure required by section 119.03 of
the Revised Code. The codification of existing rules to comply
with this section shall not constitute adoption, amendment, or
rescission.~~

Sec. 121.39. (A) As used in this section, "environmental
protection" means any of the following:

(1) Protection of human health or safety, biological
resources, or natural resources by preventing, reducing, or
remediating the pollution or degradation of air, land, or water
resources or by preventing or limiting the exposure of humans,
animals, or plants to pollution;

(2) Appropriation or regulation of privately owned property
to preserve air, land, or water resources in a natural state or to
wholly or partially restore them to a natural state;

(3) Regulation of the collection, management, treatment,
reduction, storage, or disposal of solid, hazardous, radioactive,
or other wastes;

(4) Plans or programs to promote or regulate the

conservation, recycling, or reuse of energy, materials, or wastes. 1569

(B) Except as otherwise provided in division (E) of this 1570
section, when proposed legislation dealing with environmental 1571
protection or containing a component dealing with environmental 1572
protection is referred to a committee of the general assembly, 1573
other than a committee on rules or reference, the sponsor of the 1574
legislation, at the time of the first hearing of the legislation 1575
before the committee, shall submit to the members of the committee 1576
a written statement identifying either the documentation that is 1577
the basis of the legislation or the federal requirement or 1578
requirements with which the legislation is intended to comply. If 1579
the legislation is not based on documentation or has not been 1580
introduced to comply with a federal requirement or requirements, 1581
the written statement from the sponsor shall so indicate. 1582

Also at the time of the first hearing of the legislation 1583
before the committee, a statewide organization that represents 1584
businesses in this state and that elects its board of directors 1585
may submit to the members of the committee a written estimate of 1586
the costs to the regulated community in this state of complying 1587
with the legislation if it is enacted. 1588

At any hearing of the legislation before the committee, a 1589
representative of any state agency, environmental advocacy 1590
organization, or consumer advocacy organization or any private 1591
citizen may present documentation containing an estimate of the 1592
monetary and other costs to public health and safety and the 1593
environment and to consumers and residential utility customers, 1594
and the effects on property values, if the legislation is not 1595
enacted. 1596

(C) Until such time as the statement required under division 1597
(B) of this section is submitted to the committee to which 1598
proposed legislation dealing with environmental protection or 1599
containing a component dealing with environmental protection was 1600

referred, the legislation shall not be reported by that committee. 1601
This requirement does not apply if the component dealing with 1602
environmental protection is removed from the legislation or if 1603
two-thirds of the members of the committee vote in favor of a 1604
motion to report the proposed legislation. 1605

(D) Except as otherwise provided in division (E) of this 1606
section, prior to adopting a rule or an amendment proposed to a 1607
rule dealing with environmental protection or containing a 1608
component dealing with environmental protection, a state agency 1609
shall do all of the following: 1610

(1) Consult with organizations that represent political 1611
subdivisions, environmental interests, business interests, and 1612
other persons affected by the proposed rule or amendment; 1613

(2) Consider documentation relevant to the need for, the 1614
environmental benefits or consequences of, other benefits of, and 1615
the technological feasibility of the proposed rule or amendment; 1616

(3) Specifically identify whether the proposed rule or 1617
amendment is being adopted or amended to enable the state to 1618
obtain or maintain approval to administer and enforce a federal 1619
environmental law or to participate in a federal environmental 1620
program, whether the proposed rule or amendment is more stringent 1621
than its federal counterpart, and, if the proposed rule or 1622
amendment is more stringent, the rationale for not incorporating 1623
its federal counterpart; 1624

(4) Include with the proposed rule or amendment and the rule 1625
summary and fiscal analysis required under section 127.18 of the 1626
Revised Code, when they are filed with the joint committee on 1627
agency rule review in accordance with division (D) of section 1628
111.15 or division ~~(H)~~(C) of section 119.03 of the Revised Code, 1629
one of the following in electronic form, as applicable: 1630

(a) The information identified under division (D)(3) of this 1631

section and, if the proposed rule or amendment is more stringent 1632
than its federal counterpart, as identified in that division, the 1633
documentation considered under division (D)(2) of this section; 1634

(b) If an amendment proposed to a rule is being adopted or 1635
amended under a state statute that establishes standards with 1636
which the amendment shall comply, and the proposed amendment is 1637
more stringent than the rule that it is proposing to amend, the 1638
documentation considered under division (D)(2) of this section; 1639

(c) If division (D)(4)(a) or (b) of this section is not 1640
applicable, the documentation considered under division (D)(2) of 1641
this section. 1642

If the agency subsequently files a revision of such a 1643
proposed rule or amendment in accordance with division (D) of 1644
section 111.15 or division ~~(H)~~(C) of section 119.03 of the Revised 1645
Code, the revision shall be accompanied in electronic form by the 1646
applicable information or documentation. 1647

Division (D) of this section does not apply to any emergency 1648
rule adopted under division (B)(2) of section 111.15 or division 1649
~~(F)~~(G) of section 119.03 of the Revised Code, but does apply to 1650
any such rule that subsequently is adopted as a nonemergency rule 1651
under either of those divisions. 1652

The information or documentation submitted under division 1653
(D)(4) of this section may be in the form of a summary or index of 1654
available knowledge or information and shall consist of or be 1655
based upon the best available generally accepted knowledge or 1656
information in the appropriate fields, as determined by the agency 1657
that prepared the documentation. 1658

(E) The statement required under division (B) and the 1659
information or documentation required under division (D) of this 1660
section need not be prepared or submitted with regard to a 1661
proposed statute or rule, or an amendment to a rule, if the 1662

statute, rule, or amendment is procedural or budgetary in nature, 1663
or governs the organization or operation of a state agency, and 1664
will not affect the substantive rights or obligations of any 1665
person other than a state agency or an employee or contractor of a 1666
state agency. 1667

(F) The insufficiency, incompleteness, or inadequacy of a 1668
statement, information, documentation, or a summary of information 1669
or documentation provided in accordance with division (B) or (D) 1670
of this section shall not be grounds for invalidation of any 1671
statute, rule, or amendment to a rule. 1672

(G) This section applies only to the following: 1673

(1) Legislation and components of legislation dealing with 1674
environmental protection that are introduced in the general 1675
assembly after March 5, 1996; 1676

(2) Rules and rule amendments dealing with environmental 1677
protection that are filed with the joint committee on agency rule 1678
review in accordance with division (D) of section 111.15 or 1679
division ~~(H)~~(C) of section 119.03 of the Revised Code after March 1680
5, 1996. 1681

Sec. 121.73. As used in this section, "rule" has the same 1682
meaning as in section 121.71 of the Revised Code and also includes 1683
the rescission of an existing rule. 1684

(A) When an agency files the original or a revised version of 1685
a rule in proposed form under division (D) of section 111.15 or 1686
division ~~(H)~~(C) of section 119.03, or a rule for review under 1687
section ~~119.032~~ 106.03 of the Revised Code, that incorporates a 1688
text or other material by reference, the agency also shall file in 1689
electronic form, one complete and accurate copy of the text or 1690
other material incorporated by reference with the joint committee 1691
on agency rule review. An agency is not, however, required to file 1692

a text or other material incorporated by reference with the joint 1693
committee if the agency revises a rule in proposed form that 1694
incorporates a text or other material by reference and the 1695
incorporation by reference in the revised version of the rule is 1696
identical to the incorporation by reference in the preceding 1697
version of the rule. 1698

If it is infeasible for the agency to file a text or other 1699
material incorporated by reference electronically, the agency, as 1700
soon as possible, but not later than three days after completing 1701
the electronic filing, shall deliver one complete and accurate 1702
copy of the text or other material incorporated by reference to 1703
the joint committee, and shall attach a memorandum to the text or 1704
other material identifying the filing to which it relates. 1705

An agency is not required to file a text or other material 1706
incorporated by reference into a rule that is proposed for 1707
rescission if it is infeasible for the agency to do so. 1708

An agency shall not file a copy of a text or other material 1709
incorporated by reference with the secretary of state or with the 1710
director of the legislative service commission. 1711

(B) Upon completing its review of a rule in proposed form, or 1712
its review of a rule, that incorporates a text or other material 1713
by reference, the joint committee shall forward its copy of the 1714
text or other material incorporated by reference to the director 1715
of the legislative service commission. The director shall maintain 1716
a file of texts and other materials that are or were incorporated 1717
by reference into rules. 1718

Sec. 121.74. As used in this section, "rule" has the same 1719
meaning as in section 121.71 of the Revised Code and also includes 1720
the rescission of an existing rule. 1721

When an agency files a rule in final form under division 1722

(B)(1) of section 111.15, or division (A)(1) of section 119.04, 1723
~~division (B)(1) of section 1141.14, or division (A) of section~~ 1724
~~5703.14~~ of the Revised Code that incorporates or incorporated a 1725
text or other material by reference, the agency, prior to the 1726
effective date of the rule, shall either: 1727

(A) Deposit one complete and accurate copy of the text or 1728
other material incorporated by reference in each of the five 1729
depository libraries designated by the state library board; or 1730

(B) Display a complete and accurate copy of the text or other 1731
material incorporated by reference on a web site maintained or 1732
made available by the agency. 1733

An agency is not required to comply with this section if the 1734
text or other material incorporated by reference is identical to a 1735
text or other material the agency, at the time compliance with 1736
this section otherwise would be required, already is depositing or 1737
displaying under this section. 1738

Sec. 121.81. As used in sections 121.81 to 121.83 of the 1739
Revised Code: 1740

(A) "Agency" means a state agency that is required to file 1741
proposed rules for legislative review under division (D) of 1742
section 111.15 or division ~~(H)~~(C) of section 119.03 of the Revised 1743
Code. ~~"Agency" does not include the offices of governor,~~ 1744
~~lieutenant governor, auditor of state, secretary of state,~~ 1745
~~treasurer of state, or attorney general.~~ 1746

(B) "Draft rule" means any newly proposed rule and any 1747
proposed amendment, adoption, or rescission of a rule prior to the 1748
filing of that rule for legislative review under division (D) of 1749
section 111.15 or division ~~(H)~~(C) of section 119.03 of the Revised 1750
Code and includes a proposed amendment, adoption, or rescission of 1751
a rule in both its original and any revised form. "Draft rule" 1752

does not include an emergency rule adopted under division (B)(2) 1753
of section 111.15 or division ~~(F)~~(G) of section 119.03 of the 1754
Revised Code, but does include a rule that is proposed to replace 1755
an emergency rule that expires under those divisions. 1756

Sections 121.81 to 121.83 and 121.91 of the Revised Code are 1757
complementary to sections 107.51 to 107.55 and 107.61 to 107.63 of 1758
the Revised Code. 1759

Sec. 121.82. In the course of developing a draft rule that is 1760
intended to be proposed under division (D) of section 111.15 or 1761
division ~~(H)~~(C) of section 119.03 of the Revised Code, an agency 1762
shall: 1763

(A) Evaluate the draft rule against the business impact 1764
analysis instrument. If, based on that evaluation, the draft rule 1765
will not have an adverse impact on businesses, the agency may 1766
proceed with the rule-filing process. If the evaluation determines 1767
that the draft rule will have an adverse impact on businesses, the 1768
agency shall incorporate features into the draft rule that will 1769
eliminate or adequately reduce any adverse impact the draft rule 1770
might have on businesses; 1771

(B) Prepare a business impact analysis that describes its 1772
evaluation of the draft rule against the business impact analysis 1773
instrument, that identifies any features that were incorporated 1774
into the draft rule as a result of the evaluation, and that 1775
explains how those features, if there were any, eliminate or 1776
adequately reduce any adverse impact the draft rule might have on 1777
businesses; 1778

(C) Transmit a copy of the full text of the draft rule and 1779
the business impact analysis electronically to the common sense 1780
initiative office, which information shall be made available to 1781
the public on the office's web site in accordance with section 1782
107.62 of the Revised Code; 1783

(D) Consider any recommendations made by the common sense 1784
initiative office with regard to the draft rule, and either 1785
incorporate into the draft rule features the recommendations 1786
suggest will eliminate or reduce any adverse impact the draft rule 1787
might have on businesses or document, in writing, the reasons 1788
those recommendations are not being incorporated into the draft 1789
rule; and 1790

(E) Prepare a memorandum of response identifying features 1791
suggested by any recommendations that were incorporated into the 1792
draft rule and features suggested by any recommendations that were 1793
not incorporated into the draft rule, explaining how the features 1794
that were incorporated into the draft rule eliminate or reduce any 1795
adverse impact the draft rule might have on businesses, and 1796
explaining why the features that were not incorporated into the 1797
draft rule were not incorporated. 1798

An agency may not file a proposed rule for legislative review 1799
under division (D) of section 111.15 or division ~~(H)~~(C) of section 1800
119.03 of the Revised Code earlier than the sixteenth business day 1801
after electronically transmitting the draft rule to the common 1802
sense initiative office. 1803

Sec. 121.83. (A) When an agency files a proposed rule for 1804
legislative review under division (D) of section 111.15 of the 1805
Revised Code or division (H) of section 119.03 of the Revised 1806
Code, the agency electronically shall file one copy of the 1807
business impact analysis, any recommendations received from the 1808
common sense initiative office, and the agency's memorandum of 1809
response, if any, along with the proposed rule. 1810

(B) ~~The~~ (1) Subject to section 106.05 of the Revised Code, 1811
the joint committee on agency rule review does not have 1812
jurisdiction to review, and shall reject, the filing of a proposed 1813
rule if, at any time while the proposed rule is in its possession, 1814

it discovers that the proposed rule might have an adverse impact 1815
on businesses and the agency has not included with the filing a 1816
business impact analysis or has included a business impact 1817
analysis that is inadequately prepared. The joint committee 1818
electronically shall return a filing that is rejected to the 1819
agency. Such a rejection does not preclude the agency from 1820
refiling the proposed rule after complying with section 121.82 of 1821
the Revised Code. When a filing is rejected under this division, 1822
it is as if the filing had not been made. 1823

(2) If the last previously filed version of a proposed rule, 1824
the filing of a later version of which has been rejected by the 1825
joint committee, remains in the possession of the joint committee, 1826
and if the time for legislative review of that previously filed 1827
version has expired, or if fewer than thirty days remain before 1828
the time for legislative review of that previously filed version 1829
expires, then the time for legislative review of that previously 1830
filed version is revived or extended, and recommendation of a 1831
concurrent resolution to invalidate that previously filed version 1832
may be adopted not later than the sixty-fifth day after the day on 1833
which the filing of the later version of the proposed rule was 1834
rejected. This deadline is subject to extension under section 1835
106.02 of the Revised Code. 1836

Sec. 127.18. (A) As used in this section: 1837

(1) "~~Rule-making agency~~ Agency" has the same meaning as 1838
defined in division (I) of section 119.01 106.01 of the Revised 1839
Code. 1840

(2) "Rule" includes the adoption, amendment, or rescission of 1841
a rule. 1842

(3) "Proposed rule" means the original version of a proposed 1843
rule, and each revised version of the same proposed rule, that is 1844
filed with the joint committee on agency rule review under 1845

division (D) of section 111.15 or division ~~(H)~~(C) of section 1846
119.03 of the Revised Code. 1847

(B) ~~A rule-making~~ An agency shall prepare, in the form 1848
prescribed by the joint committee on agency rule review ~~under~~ 1849
~~division (E) of this section~~, a complete and accurate rule summary 1850
and fiscal analysis of each proposed rule that it files under 1851
division (D) of section 111.15 or division ~~(H)~~(C) of section 1852
119.03 of the Revised Code. The rule summary and fiscal analysis 1853
shall include all of the following information: 1854

(1) The name, address, and telephone number of the 1855
~~rule-making~~ agency, and the name ~~and~~, telephone number, and 1856
electronic mail address of an individual or office within the 1857
agency designated by that agency to be responsible for 1858
coordinating and making available information in the possession of 1859
the agency regarding the proposed rule; 1860

(2) The Ohio Administrative Code rule number of the proposed 1861
rule; 1862

(3) A brief summary of, and the legal basis for, the proposed 1863
rule, including citations identifying the statute that prescribes 1864
the procedure in accordance with which the ~~rule-making~~ agency is 1865
required to adopt the proposed rule, the statute that authorizes 1866
the agency to adopt the proposed rule, and the statute that the 1867
agency intends to amplify or implement by adopting the proposed 1868
rule; 1869

(4) An estimate, in dollars, of the amount by which the 1870
proposed rule would increase or decrease revenues or expenditures 1871
during the current biennium; 1872

(5) A citation identifying the appropriation that authorizes 1873
each expenditure that would be necessitated by the proposed rule; 1874

(6) A summary of the estimated cost of compliance with the 1875
rule to all directly affected persons; 1876

(7) The reasons why the rule is being proposed; 1877

(8) If the rule has a fiscal effect on school districts, 1878
counties, townships, or municipal corporations, an estimate in 1879
dollars of the cost of compliance with the rule, or, if dollar 1880
amounts cannot be determined, a written explanation of why it was 1881
not possible to ascertain dollar amounts; 1882

(9) If the rule has a fiscal effect on school districts, 1883
counties, townships, or municipal corporations and is the result 1884
of a federal requirement, a clear explanation that the proposed 1885
state rule does not exceed the scope and intent of the 1886
requirement, or, if the state rule does exceed the minimum 1887
necessary federal requirement, a justification of the excess cost, 1888
and an estimate of the costs, including those costs for local 1889
governments, exceeding the federal requirement; 1890

(10) If the rule has a fiscal effect on school districts, 1891
counties, townships, or municipal corporations, a comprehensive 1892
cost estimate that includes the procedure and method of 1893
calculating the costs of compliance and identifies major cost 1894
categories including personnel costs, new equipment or other 1895
capital costs, operating costs, and indirect central service costs 1896
related to the rule. The fiscal analysis shall also include a 1897
written explanation of the agency's and the affected local 1898
government's ability to pay for the new requirements and a 1899
statement of any impact the rule will have on economic 1900
development. 1901

(11) If the rule incorporates a text or other material by 1902
reference, and the agency claims the incorporation by reference is 1903
exempt from compliance with sections 121.71 to 121.74 of the 1904
Revised Code because the text or other material is generally 1905
available to persons who reasonably can be expected to be affected 1906
by the rule, an explanation of how the text or other material is 1907
generally available to those persons; 1908

(12) If the rule incorporates a text or other material by reference, and it was infeasible for the agency to file the text or other material electronically, an explanation of why filing the text or other material electronically was infeasible;

(13) If the rule is being rescinded and incorporates a text or other material by reference, and it was infeasible for the agency to file the text or other material, an explanation of why filing the text or other material was infeasible;

(14) Any other information the joint committee on agency rule review considers necessary to make the proposed rule or the fiscal effect of the proposed rule fully understandable.

(C) The ~~rule-making~~ agency shall file the rule summary and fiscal analysis in electronic form along with the proposed rule that it files under ~~divisions~~ division (D) ~~and (E)~~ of section 111.15 or divisions (B) and ~~(H)~~ (C) of section 119.03 of the Revised Code. The joint committee on agency rule review shall not accept any proposed rule for filing unless a copy of the rule summary and fiscal analysis of the proposed rule, completely and accurately prepared, is filed along with the proposed rule.

(D) The joint committee on agency rule review shall review the fiscal effect of each proposed rule that is filed under division (D) of section 111.15 or division ~~(H)~~ (C) of section 119.03 of the Revised Code.

(E) The joint committee on agency rule review shall prescribe the form in which each rule-making agency shall prepare its rule summary and fiscal analysis of a proposed rule.

~~(F) This section does not require the auditor of state or the auditor of state's designee to prepare or attach a rule summary and fiscal analysis to any copy of a rule proposed under section 117.12, 117.19, 117.38, or 117.43 of the Revised Code.~~

Sec. 1531.08. In conformity with Section 36 of Article II, 1939
Ohio Constitution, providing for the passage of laws for the 1940
conservation of the natural resources of the state, including 1941
streams, lakes, submerged lands, and swamplands, and in conformity 1942
with this chapter and Chapter 1533. of the Revised Code, the chief 1943
of the division of wildlife has authority and control in all 1944
matters pertaining to the protection, preservation, propagation, 1945
possession, and management of wild animals and may adopt rules 1946
under section 1531.10 of the Revised Code for the management of 1947
wild animals. Notwithstanding division (B) of section 119.03 of 1948
the Revised Code, such rules in proposed form shall be filed under 1949
this section. Each year there shall be a public fish hearing and 1950
public game hearing. The results of the investigation and public 1951
hearing shall be filed in the office of the chief and shall be 1952
kept open for public inspection during all regular office hours. 1953
Modifying or rescinding such rules does not require a public 1954
hearing. 1955

The chief may adopt, amend, rescind, and enforce rules 1956
throughout the state or in any part or waters thereof as provided 1957
by sections 1531.08 to 1531.12 and other sections of the Revised 1958
Code. The rules shall be filed in proposed form and available at 1959
the central wildlife office and at each of the wildlife district 1960
offices, including the Lake Erie unit located at Sandusky, at 1961
least thirty days prior to the date of the hearing required by 1962
division ~~(C)~~(D) of section 119.03 of the Revised Code. The rules 1963
shall be based upon a public hearing and investigation of the best 1964
available biological information derived from professionally 1965
accepted practices in wildlife and fisheries management. 1966

Each rule adopted under this section shall clearly and 1967
distinctly describe and set forth the waters or area or part 1968
thereof affected by the rule and whether the rule is applicable to 1969
all wild animals or only to certain kinds of species designated 1970

therein. 1971

The chief may regulate any of the following: 1972

(A) Taking and possessing wild animals, at any time and place 1973
or in any number, quantity, or length, and in any manner, and with 1974
such devices as ~~he~~ the chief prescribes; 1975

(B) Transportation of such animals or any part thereof; 1976

(C) Buying, selling, offering for sale, or exposing for sale 1977
any such animal or part thereof; 1978

(D) Taking, possessing, transporting, buying, selling, 1979
offering for sale, and exposing for sale commercial fish or any 1980
part thereof, including species taken, length, weight, method of 1981
taking, mesh sizes, specifications of nets and other fishing 1982
devices, seasons, and time and place of taking. 1983

When the chief increases the size of a fish named in section 1984
1533.63 of the Revised Code, any fish that were legally taken, 1985
caught, or possessed prior to the increase may be possessed after 1986
the increase if the possession of the fish has been reported to 1987
the chief prior to the increase, but on or after the date of the 1988
increase the fish may not be sold to a buyer in this state. 1989

Sec. 3319.22. (A)(1) The state board of education shall issue 1990
the following educator licenses: 1991

(a) A resident educator license, which shall be valid for 1992
four years, except that the state board, on a case-by-case basis, 1993
may extend the license's duration as necessary to enable the 1994
license holder to complete the Ohio teacher residency program 1995
established under section 3319.223 of the Revised Code; 1996

(b) A professional educator license, which shall be valid for 1997
five years and shall be renewable; 1998

(c) A senior professional educator license, which shall be 1999

valid for five years and shall be renewable; 2000

(d) A lead professional educator license, which shall be 2001
valid for five years and shall be renewable. 2002

(2) The state board may issue any additional educator 2003
licenses of categories, types, and levels the board elects to 2004
provide. 2005

(3) The state board shall adopt rules establishing the 2006
standards and requirements for obtaining each educator license 2007
issued under this section. 2008

(B) The rules adopted under this section shall require at 2009
least the following standards and qualifications for the educator 2010
licenses described in division (A)(1) of this section: 2011

(1) An applicant for a resident educator license shall hold 2012
at least a bachelor's degree from an accredited teacher 2013
preparation program or be a participant in the teach for America 2014
program and meet the qualifications required under section 2015
3319.227 of the Revised Code. 2016

(2) An applicant for a professional educator license shall: 2017

(a) Hold at least a bachelor's degree from an institution of 2018
higher education accredited by a regional accrediting 2019
organization; 2020

(b) Have successfully completed the Ohio teacher residency 2021
program established under section 3319.223 of the Revised Code, if 2022
the applicant's current or most recently issued license is a 2023
resident educator license issued under this section or an 2024
alternative resident educator license issued under section 3319.26 2025
of the Revised Code. 2026

(3) An applicant for a senior professional educator license 2027
shall: 2028

(a) Hold at least a master's degree from an institution of 2029

higher education accredited by a regional accrediting organization; 2030
2031

(b) Have previously held a professional educator license issued under this section or section 3319.222 or under former section 3319.22 of the Revised Code; 2032
2033
2034

(c) Meet the criteria for the accomplished or distinguished level of performance, as described in the standards for teachers adopted by the state board under section 3319.61 of the Revised Code. 2035
2036
2037
2038

(4) An applicant for a lead professional educator license shall: 2039
2040

(a) Hold at least a master's degree from an institution of higher education accredited by a regional accrediting organization; 2041
2042
2043

(b) Have previously held a professional educator license or a senior professional educator license issued under this section or a professional educator license issued under section 3319.222 or former section 3319.22 of the Revised Code; 2044
2045
2046
2047

(c) Meet the criteria for the distinguished level of performance, as described in the standards for teachers adopted by the state board under section 3319.61 of the Revised Code; 2048
2049
2050

(d) Either hold a valid certificate issued by the national board for professional teaching standards or meet the criteria for a master teacher or other criteria for a lead teacher adopted by the educator standards board under division (F)(4) or (5) of section 3319.61 of the Revised Code. 2051
2052
2053
2054
2055

(C) The state board shall align the standards and qualifications for obtaining a principal license with the standards for principals adopted by the state board under section 3319.61 of the Revised Code. 2056
2057
2058
2059

(D) If the state board requires any examinations for educator
licensure, the department of education shall provide the results
of such examinations received by the department to the chancellor
of the Ohio board of regents, in the manner and to the extent
permitted by state and federal law.

(E) Any rules the state board of education adopts, amends, or
rescinds for educator licenses under this section, division (D) of
section 3301.07 of the Revised Code, or any other law shall be
adopted, amended, or rescinded under Chapter 119. of the Revised
Code except as follows:

(1) Notwithstanding division ~~(D)~~(E) of section 119.03 and
division (A)(1) of section 119.04 of the Revised Code, in the case
of the adoption of any rule or the amendment or rescission of any
rule that necessitates institutions' offering preparation programs
for educators and other school personnel that are approved by the
chancellor of the Ohio board of regents under section 3333.048 of
the Revised Code to revise the curriculum of those programs, the
effective date shall not be as prescribed in division ~~(D)~~(E) of
section 119.03 and division (A)(1) of section 119.04 of the
Revised Code. Instead, the effective date of such rules, or the
amendment or rescission of such rules, shall be the date
prescribed by section 3333.048 of the Revised Code.

(2) Notwithstanding the authority to adopt, amend, or rescind
emergency rules in division ~~(F)~~(G) of section 119.03 of the
Revised Code, this authority shall not apply to the state board of
education with regard to rules for educator licenses.

(F)(1) The rules adopted under this section establishing
standards requiring additional coursework for the renewal of any
educator license shall require a school district and a chartered
nonpublic school to establish local professional development
committees. In a nonpublic school, the chief administrative
officer shall establish the committees in any manner acceptable to

such officer. The committees established under this division shall 2092
determine whether coursework that a district or chartered 2093
nonpublic school teacher proposes to complete meets the 2094
requirement of the rules. The department of education shall 2095
provide technical assistance and support to committees as the 2096
committees incorporate the professional development standards 2097
adopted by the state board of education pursuant to section 2098
3319.61 of the Revised Code into their review of coursework that 2099
is appropriate for license renewal. The rules shall establish a 2100
procedure by which a teacher may appeal the decision of a local 2101
professional development committee. 2102

(2) In any school district in which there is no exclusive 2103
representative established under Chapter 4117. of the Revised 2104
Code, the professional development committees shall be established 2105
as described in division (F)(2) of this section. 2106

Not later than the effective date of the rules adopted under 2107
this section, the board of education of each school district shall 2108
establish the structure for one or more local professional 2109
development committees to be operated by such school district. The 2110
committee structure so established by a district board shall 2111
remain in effect unless within thirty days prior to an anniversary 2112
of the date upon which the current committee structure was 2113
established, the board provides notice to all affected district 2114
employees that the committee structure is to be modified. 2115
Professional development committees may have a district-level or 2116
building-level scope of operations, and may be established with 2117
regard to particular grade or age levels for which an educator 2118
license is designated. 2119

Each professional development committee shall consist of at 2120
least three classroom teachers employed by the district, one 2121
principal employed by the district, and one other employee of the 2122
district appointed by the district superintendent. For committees 2123

with a building-level scope, the teacher and principal members 2124
shall be assigned to that building, and the teacher members shall 2125
be elected by majority vote of the classroom teachers assigned to 2126
that building. For committees with a district-level scope, the 2127
teacher members shall be elected by majority vote of the classroom 2128
teachers of the district, and the principal member shall be 2129
elected by a majority vote of the principals of the district, 2130
unless there are two or fewer principals employed by the district, 2131
in which case the one or two principals employed shall serve on 2132
the committee. If a committee has a particular grade or age level 2133
scope, the teacher members shall be licensed to teach such grade 2134
or age levels, and shall be elected by majority vote of the 2135
classroom teachers holding such a license and the principal shall 2136
be elected by all principals serving in buildings where any such 2137
teachers serve. The district superintendent shall appoint a 2138
replacement to fill any vacancy that occurs on a professional 2139
development committee, except in the case of vacancies among the 2140
elected classroom teacher members, which shall be filled by vote 2141
of the remaining members of the committee so selected. 2142

Terms of office on professional development committees shall 2143
be prescribed by the district board establishing the committees. 2144
The conduct of elections for members of professional development 2145
committees shall be prescribed by the district board establishing 2146
the committees. A professional development committee may include 2147
additional members, except that the majority of members on each 2148
such committee shall be classroom teachers employed by the 2149
district. Any member appointed to fill a vacancy occurring prior 2150
to the expiration date of the term for which a predecessor was 2151
appointed shall hold office as a member for the remainder of that 2152
term. 2153

The initial meeting of any professional development 2154
committee, upon election and appointment of all committee members, 2155

shall be called by a member designated by the district 2156
superintendent. At this initial meeting, the committee shall 2157
select a chairperson and such other officers the committee deems 2158
necessary, and shall adopt rules for the conduct of its meetings. 2159
Thereafter, the committee shall meet at the call of the 2160
chairperson or upon the filing of a petition with the district 2161
superintendent signed by a majority of the committee members 2162
calling for the committee to meet. 2163

(3) In the case of a school district in which an exclusive 2164
representative has been established pursuant to Chapter 4117. of 2165
the Revised Code, professional development committees shall be 2166
established in accordance with any collective bargaining agreement 2167
in effect in the district that includes provisions for such 2168
committees. 2169

If the collective bargaining agreement does not specify a 2170
different method for the selection of teacher members of the 2171
committees, the exclusive representative of the district's 2172
teachers shall select the teacher members. 2173

If the collective bargaining agreement does not specify a 2174
different structure for the committees, the board of education of 2175
the school district shall establish the structure, including the 2176
number of committees and the number of teacher and administrative 2177
members on each committee; the specific administrative members to 2178
be part of each committee; whether the scope of the committees 2179
will be district levels, building levels, or by type of grade or 2180
age levels for which educator licenses are designated; the lengths 2181
of terms for members; the manner of filling vacancies on the 2182
committees; and the frequency and time and place of meetings. 2183
However, in all cases, except as provided in division (F)(4) of 2184
this section, there shall be a majority of teacher members of any 2185
professional development committee, there shall be at least five 2186
total members of any professional development committee, and the 2187

exclusive representative shall designate replacement members in 2188
the case of vacancies among teacher members, unless the collective 2189
bargaining agreement specifies a different method of selecting 2190
such replacements. 2191

(4) Whenever an administrator's coursework plan is being 2192
discussed or voted upon, the local professional development 2193
committee shall, at the request of one of its administrative 2194
members, cause a majority of the committee to consist of 2195
administrative members by reducing the number of teacher members 2196
voting on the plan. 2197

(G)(1) The department of education, educational service 2198
centers, county boards of developmental disabilities, regional 2199
professional development centers, special education regional 2200
resource centers, college and university departments of education, 2201
head start programs, the eTech Ohio commission, and the Ohio 2202
education computer network may establish local professional 2203
development committees to determine whether the coursework 2204
proposed by their employees who are licensed or certificated under 2205
this section or section 3319.222 of the Revised Code, or under the 2206
former version of either section as it existed prior to October 2207
16, 2009, meet the requirements of the rules adopted under this 2208
section. They may establish local professional development 2209
committees on their own or in collaboration with a school district 2210
or other agency having authority to establish them. 2211

Local professional development committees established by 2212
county boards of developmental disabilities shall be structured in 2213
a manner comparable to the structures prescribed for school 2214
districts in divisions (F)(2) and (3) of this section, as shall 2215
the committees established by any other entity specified in 2216
division (G)(1) of this section that provides educational services 2217
by employing or contracting for services of classroom teachers 2218
licensed or certificated under this section or section 3319.222 of 2219

the Revised Code, or under the former version of either section as 2220
it existed prior to October 16, 2009. All other entities specified 2221
in division (G)(1) of this section shall structure their 2222
committees in accordance with guidelines which shall be issued by 2223
the state board. 2224

(2) Any public agency that is not specified in division 2225
(G)(1) of this section but provides educational services and 2226
employs or contracts for services of classroom teachers licensed 2227
or certificated under this section or section 3319.222 of the 2228
Revised Code, or under the former version of either section as it 2229
existed prior to October 16, 2009, may establish a local 2230
professional development committee, subject to the approval of the 2231
department of education. The committee shall be structured in 2232
accordance with guidelines issued by the state board. 2233

Sec. 3319.221. (A) The state board of education shall adopt 2234
rules establishing the standards and requirements for obtaining a 2235
school nurse license and a school nurse wellness coordinator 2236
license. At a minimum, the rules shall require that an applicant 2237
for a school nurse license be licensed as a registered nurse under 2238
Chapter 4723. of the Revised Code. 2239

(B) If the state board requires any examinations for 2240
licensure under this section, the department of education shall 2241
provide the examination results received by the department to the 2242
chancellor of the Ohio board of regents, in the manner and to the 2243
extent permitted by state and federal law. 2244

(C) Any rules for licenses described in this section that the 2245
state board adopts, amends, or rescinds under this section, 2246
division (D) of section 3301.07 of the Revised Code, or any other 2247
law shall be adopted, amended, or rescinded under Chapter 119. of 2248
the Revised Code, except that the authority to adopt, amend, or 2249
rescind emergency rules under division ~~(F)~~(G) of section 119.03 of 2250

the Revised Code shall not apply to the state board with respect 2251
to rules for licenses described in this section. 2252

(D) Any registered nurse employed by a school district in the 2253
capacity of school nurse on January 1, 1973, or any registered 2254
nurse employed by a city or general health district on January 1, 2255
1973, to serve full-time in the capacity of school nurse in one or 2256
more school districts, shall be considered to have fulfilled the 2257
requirements for the issuance of a school nurse license under this 2258
section. 2259

Sec. 3333.021. As used in this section, "university" means 2260
any college or university that receives a state appropriation. 2261

(A) This division does not apply to proposed rules, 2262
amendments, or rescissions subject to legislative review under 2263
~~division (I) of section 119.03~~ 106.02 of the Revised Code. No 2264
action taken by the chancellor of the Ohio board of regents that 2265
could reasonably be expected to have an effect on the revenue or 2266
expenditures of any university shall take effect unless at least 2267
two weeks prior to the date on which the action is taken, the 2268
chancellor has filed with the speaker of the house of 2269
representatives, the president of the senate, the legislative 2270
budget office of the legislative service commission, and the 2271
director of budget and management a fiscal analysis of the 2272
proposed action. The analysis shall include an estimate of the 2273
amount by which, during the current and ensuing fiscal biennium, 2274
the action would increase or decrease the university's revenues or 2275
expenditures and increase or decrease any state expenditures and 2276
any other information the chancellor considers necessary to 2277
explain the action's fiscal effect. 2278

(B) Within three days of the date the chancellor files with 2279
the clerk of the senate a proposed rule, amendment, or rescission 2280
that is subject to legislative review and invalidation under 2281

~~division (I) of section 119.03~~ 106.02 of the Revised Code, the 2282
chancellor shall file with the speaker of the house of 2283
representatives, the president of the senate, ~~the legislative~~ 2284
~~budget office of~~ the legislative service commission, and the 2285
director of budget and management a fiscal analysis of the 2286
proposed rule. The analysis shall include an estimate of the 2287
amount by which, during the current and ensuing fiscal biennium, 2288
the action would increase or decrease any university's revenues or 2289
expenditures and increase or decrease state revenues or 2290
expenditures and any other information the chancellor considers 2291
necessary to explain the fiscal effect of the rule, amendment, or 2292
rescission. No rule, amendment, or rescission shall take effect 2293
unless the chancellor has complied with this division. 2294

Sec. 3333.048. (A) Not later than one year after ~~the~~ 2295
~~effective date of this section~~ October 16, 2009, the chancellor of 2296
the Ohio board of regents and the superintendent of public 2297
instruction jointly shall do the following: 2298

(1) In accordance with Chapter 119. of the Revised Code, 2299
establish metrics and educator preparation programs for the 2300
preparation of educators and other school personnel and the 2301
institutions of higher education that are engaged in their 2302
preparation. The metrics and educator preparation programs shall 2303
be aligned with the standards and qualifications for educator 2304
licenses adopted by the state board of education under section 2305
3319.22 of the Revised Code and the requirements of the Ohio 2306
teacher residency program established under section 3319.223 of 2307
the Revised Code. The metrics and educator preparation programs 2308
also shall ensure that educators and other school personnel are 2309
adequately prepared to use the value-added progress dimension 2310
prescribed by section 3302.021 of the Revised Code. 2311

(2) Provide for the inspection of institutions of higher 2312

education desiring to prepare educators and other school 2313
personnel. 2314

(B) Not later than one year after ~~the effective date of this~~ 2315
~~section~~ October 16, 2009, the chancellor shall approve 2316
institutions of higher education engaged in the preparation of 2317
educators and other school personnel that maintain satisfactory 2318
training procedures and records of performance, as determined by 2319
the chancellor. 2320

(C) If the metrics established under division (A)(1) of this 2321
section require an institution of higher education that prepares 2322
teachers to satisfy the standards of an independent accreditation 2323
organization, the chancellor shall permit each institution to 2324
satisfy the standards of either the national council for 2325
accreditation of teacher education or the teacher education 2326
accreditation council. 2327

(D) The metrics and educator preparation programs established 2328
under division (A)(1) of this section may require an institution 2329
of higher education, as a condition of approval by the chancellor, 2330
to make changes in the curricula of its preparation programs for 2331
educators and other school personnel. 2332

Notwithstanding division ~~(D)~~ (E) of section 119.03 and 2333
division (A)(1) of section 119.04 of the Revised Code, any 2334
metrics, educator preparation programs, rules, and regulations, or 2335
any amendment or rescission of such metrics, educator preparation 2336
programs, rules, and regulations, adopted under this section that 2337
necessitate institutions offering preparation programs for 2338
educators and other school personnel approved by the chancellor to 2339
revise the curricula of those programs shall not be effective for 2340
at least one year after the first day of January next succeeding 2341
the publication of the said change. 2342

Each institution shall allocate money from its existing 2343

appropriations to pay the cost of making the curricular changes. 2344

(E) The chancellor shall notify the state board of the 2345
metrics and educator preparation programs established under 2346
division (A)(1) of this section and the institutions of higher 2347
education approved under division (B) of this section. The state 2348
board shall publish the metrics, educator preparation programs, 2349
and approved institutions with the standards and qualifications 2350
for each type of educator license. 2351

(F) The graduates of institutions of higher education 2352
approved by the chancellor shall be licensed by the state board in 2353
accordance with the standards and qualifications adopted under 2354
section 3319.22 of the Revised Code. 2355

Sec. 3737.88. (A)(1) The fire marshal shall have 2356
responsibility for implementation of the underground storage tank 2357
program and corrective action program for releases of petroleum 2358
from underground storage tanks established by the "Resource 2359
Conservation and Recovery Act of 1976," 90 Stat. 2795, 42 U.S.C.A. 2360
6901, as amended. To implement the programs, the fire marshal may 2361
adopt, amend, and rescind such rules, conduct such inspections, 2362
require annual registration of underground storage tanks, issue 2363
such citations and orders to enforce those rules, enter into 2364
environmental covenants in accordance with sections 5301.80 to 2365
5301.92 of the Revised Code, and perform such other duties, as are 2366
consistent with those programs. The fire marshal, by rule, may 2367
delegate the authority to conduct inspections of underground 2368
storage tanks to certified fire safety inspectors. 2369

(2) In the place of any rules regarding release containment 2370
and release detection for underground storage tanks adopted under 2371
division (A)(1) of this section, the fire marshal, by rule, shall 2372
designate areas as being sensitive for the protection of human 2373
health and the environment and adopt alternative rules regarding 2374

release containment and release detection methods for new and 2375
upgraded underground storage tank systems located in those areas. 2376
In designating such areas, the fire marshal shall take into 2377
consideration such factors as soil conditions, hydrogeology, water 2378
use, and the location of public and private water supplies. Not 2379
later than July 11, 1990, the fire marshal shall file the rules 2380
required under this division with the secretary of state, director 2381
of the legislative service commission, and joint committee on 2382
agency rule review in accordance with divisions (B) and ~~(H)~~(C) of 2383
section 119.03 of the Revised Code. 2384

(3) Notwithstanding sections 3737.87 to 3737.89 of the 2385
Revised Code, a person who is not a responsible person, as 2386
determined by the fire marshal pursuant to this chapter, may 2387
conduct a voluntary action in accordance with Chapter 3746. of the 2388
Revised Code and rules adopted under it for either of the 2389
following: 2390

(a) A class C release; 2391

(b) A release, other than a class C release, that is subject 2392
to the rules adopted by the fire marshal under division (B) of 2393
section 3737.882 of the Revised Code pertaining to a corrective 2394
action, provided that both of the following apply: 2395

(i) The voluntary action also addresses hazardous substances 2396
or petroleum that is not subject to the rules adopted under 2397
division (B) of section 3737.882 of the Revised Code pertaining to 2398
a corrective action. 2399

(ii) The fire marshal has not issued an administrative order 2400
concerning the release or referred the release to the attorney 2401
general for enforcement. 2402

The director of environmental protection, pursuant to section 2403
3746.12 of the Revised Code, may issue a covenant not to sue to 2404
any person who properly completes a voluntary action with respect 2405

to any such release in accordance with Chapter 3746. of the 2406
Revised Code and rules adopted under it. 2407

(B) Before adopting any rule under this section or section 2408
3737.881 or 3737.882 of the Revised Code, the fire marshal shall 2409
file written notice of the proposed rule with the chairperson of 2410
the state fire council, and, within sixty days after notice is 2411
filed, the council may file responses to or comments on and may 2412
recommend alternative or supplementary rules to the fire marshal. 2413
At the end of the sixty-day period or upon the filing of 2414
responses, comments, or recommendations by the council, the fire 2415
marshal may adopt the rule filed with the council or any 2416
alternative or supplementary rule recommended by the council. 2417

(C) The state fire council may recommend courses of action to 2418
be taken by the fire marshal in carrying out the fire marshal's 2419
duties under this section. The council shall file its 2420
recommendations in the office of the fire marshal, and, within 2421
sixty days after the recommendations are filed, the fire marshal 2422
shall file with the chairperson of the council comments on, and 2423
proposed action in response to, the recommendations. 2424

(D) For the purpose of sections 3737.87 to 3737.89 of the 2425
Revised Code, the fire marshal shall adopt, and may amend and 2426
rescind, rules identifying or listing hazardous substances. The 2427
rules shall be consistent with and equivalent in scope, coverage, 2428
and content to regulations identifying or listing hazardous 2429
substances adopted under the "Comprehensive Environmental 2430
Response, Compensation, and Liability Act of 1980," 94 Stat. 2779, 2431
42 U.S.C.A. 9602, as amended, except that the fire marshal shall 2432
not identify or list as a hazardous substance any hazardous waste 2433
identified or listed in rules adopted under division (A) of 2434
section 3734.12 of the Revised Code. 2435

(E) Except as provided in division (A)(3) of this section, 2436
the fire marshal shall have exclusive jurisdiction to regulate the 2437

storage, treatment, and disposal of petroleum contaminated soil 2438
generated from corrective actions undertaken in response to 2439
releases of petroleum from underground storage tank systems. The 2440
fire marshal may adopt, amend, or rescind such rules as the fire 2441
marshal considers to be necessary or appropriate to regulate the 2442
storage, treatment, or disposal of petroleum contaminated soil so 2443
generated. 2444

(F) The fire marshal shall adopt, amend, and rescind rules 2445
under sections 3737.88 to 3737.882 of the Revised Code in 2446
accordance with Chapter 119. of the Revised Code. 2447

Sec. 3746.04. Within one year after September 28, 1994, the 2448
director of environmental protection, in accordance with Chapter 2449
119. of the Revised Code, shall adopt, and subsequently may amend, 2450
suspend, or rescind, rules that do both of the following: 2451

(A) Revise the rules adopted under Chapters 3704., 3714., 2452
3734., 6109., and 6111. of the Revised Code to incorporate the 2453
provisions necessary to conform those rules to the requirements of 2454
this chapter. The amended rules adopted under this division also 2455
shall establish response times for all submittals to the 2456
environmental protection agency required under this chapter or 2457
rules adopted under it. 2458

(B) Establish requirements and procedures that are reasonably 2459
necessary for the implementation and administration of this 2460
chapter, including, without limitation, all of the following: 2461

(1) Appropriate generic numerical clean-up standards for the 2462
treatment or removal of soils, sediments, and water media for 2463
hazardous substances and petroleum. The rules shall establish 2464
separate generic numerical clean-up standards based upon the 2465
intended use of properties after the completion of voluntary 2466
actions, including industrial, commercial, and residential uses 2467
and such other categories of land use as the director considers to 2468

be appropriate. The generic numerical clean-up standards 2469
established for each category of land use shall be the 2470
concentration of each contaminant that may be present on a 2471
property that shall ensure protection of public health and safety 2472
and the environment for the reasonable exposure for that category 2473
of land use. When developing the standards, the director shall 2474
consider such factors as all of the following: 2475

(a) Scientific information, including, without limitation, 2476
toxicological information and realistic assumptions regarding 2477
human and environmental exposure to hazardous substances or 2478
petroleum; 2479

(b) Climatic factors; 2480

(c) Human activity patterns; 2481

(d) Current statistical techniques; 2482

(e) For petroleum at industrial property, alternatives to the 2483
use of total petroleum hydrocarbons. 2484

The generic numerical clean-up standards established in the 2485
rules adopted under division (B)(1) of this section shall be 2486
consistent with and equivalent in scope, content, and coverage to 2487
any applicable standard established by federal environmental laws 2488
and regulations adopted under them, including, without limitation, 2489
the "Federal Water Pollution Control Act Amendments of 1972," 86 2490
Stat. 886, 33 U.S.C.A. 1251, as amended; the "Resource 2491
Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 2492
6921, as amended; the "Toxic Substances Control Act," 90 Stat. 2493
2003 (1976), 15 U.S.C.A. 2601, as amended; the "Comprehensive 2494
Environmental Response, Compensation, and Liability Act of 1980," 2495
94 Stat. 2779, 42 U.S.C.A. 9601, as amended; and the "Safe 2496
Drinking Water Act," 88 Stat. 1660 (1974), 42 U.S.C.A. 300f, as 2497
amended. 2498

In order for the rules adopted under division (B)(1) of this 2499

section to require that any such federal environmental standard 2500
apply to a property, the property shall meet the requirements of 2501
the particular federal statute or regulation involved in the 2502
manner specified by the statute or regulation. 2503

The generic numerical clean-up standards for petroleum at 2504
commercial or residential property shall be the standards 2505
established in rules adopted under division (B) of section 2506
3737.882 of the Revised Code. 2507

(2)(a) Procedures for performing property-specific risk 2508
assessments that would be performed at a property to demonstrate 2509
that the remedy evaluated in a risk assessment results in 2510
protection of public health and safety and the environment instead 2511
of complying with the generic numerical clean-up standards 2512
established in the rules adopted under division (B)(1) of this 2513
section. The risk assessment procedures shall describe a 2514
methodology to establish, on a property-specific basis, allowable 2515
levels of contamination to remain at a property to ensure 2516
protection of public health and safety and the environment on the 2517
property and off the property when the contamination is emanating 2518
off the property, taking into account all of the following: 2519

(i) The implementation of treatment, storage, or disposal, or 2520
a combination thereof, of hazardous substances or petroleum; 2521

(ii) The existence of institutional controls or activity and 2522
use limitations that eliminate or mitigate exposure to hazardous 2523
substances or petroleum through the restriction of access to 2524
hazardous substances or petroleum; 2525

(iii) The existence of engineering controls that eliminate or 2526
mitigate exposure to hazardous substances or petroleum through 2527
containment of, control of, or restrictions of access to hazardous 2528
substances or petroleum, including, without limitation, fences, 2529
cap systems, cover systems, and landscaping. 2530

(b) The risk assessment procedures and levels of acceptable risk set forth in the rules adopted under division (B)(2) of this section shall be based upon all of the following:

(i) Scientific information, including, without limitation, toxicological information and actual or proposed human and environmental exposure;

(ii) Locational and climatic factors;

(iii) Surrounding land use and human activities;

(iv) Differing levels of remediation that may be required when an existing land use is continued compared to when a different land use follows the remediation.

(c) Any standards established pursuant to rules adopted under division (B)(2) of this section shall be no more stringent than standards established under the environmental statutes of this state and rules adopted under them for the same contaminant in the same environmental medium that are in effect at the time the risk assessment is conducted.

(3) Minimum standards for phase I property assessments. The standards shall specify the information needed to demonstrate that there is no reason to believe that contamination exists on a property. The rules adopted under division (B)(3) of this section, at a minimum, shall require that a phase I property assessment include all of the following:

(a) A review and analysis of deeds, mortgages, easements of record, and similar documents relating to the chain of title to the property that are publicly available or that are known to and reasonably available to the owner or operator;

(b) A review and analysis of any previous environmental assessments, property assessments, environmental studies, or geologic studies of the property and any land within two thousand

feet of the boundaries of the property that are publicly available 2561
or that are known to and reasonably available to the owner or 2562
operator; 2563

(c) A review of current and past environmental compliance 2564
histories of persons who owned or operated the property; 2565

(d) A review of aerial photographs of the property that 2566
indicate prior uses of the property; 2567

(e) Interviews with managers of activities conducted at the 2568
property who have knowledge of environmental conditions at the 2569
property; 2570

(f) Conducting an inspection of the property consisting of a 2571
walkover; 2572

(g) Identifying the current and past uses of the property, 2573
adjoining tracts of land, and the area surrounding the property, 2574
including, without limitation, interviews with persons who reside 2575
or have resided, or who are or were employed, within the area 2576
surrounding the property regarding the current and past uses of 2577
the property and adjacent tracts of land. 2578

The rules adopted under division (B)(3) of this section shall 2579
establish criteria to determine when a phase II property 2580
assessment shall be conducted when a phase I property assessment 2581
reveals facts that establish a reason to believe that hazardous 2582
substances or petroleum have been treated, stored, managed, or 2583
disposed of on the property if the person undertaking the phase I 2584
property assessment wishes to obtain a covenant not to sue under 2585
section 3746.12 of the Revised Code. 2586

(4) Minimum standards for phase II property assessments. The 2587
standards shall specify the information needed to demonstrate that 2588
any contamination present at the property does not exceed 2589
applicable standards or that the remedial activities conducted at 2590
the property have achieved compliance with applicable standards. 2591

The rules adopted under division (B)(4) of this section, at a minimum, shall require that a phase II property assessment include all of the following:

(a) A review and analysis of all documentation prepared in connection with a phase I property assessment conducted within the one hundred eighty days before the phase II property assessment begins. The rules adopted under division (B)(4)(a) of this section shall require that if a period of more than one hundred eighty days has passed between the time that the phase I assessment of the property was completed and the phase II assessment begins, the phase II assessment shall include a reasonable inquiry into the change in the environmental condition of the property during the intervening period.

(b) Quality assurance objectives for measurements taken in connection with a phase II assessment;

(c) Sampling procedures to ensure the representative sampling of potentially contaminated environmental media;

(d) Quality assurance and quality control requirements for samples collected in connection with phase II assessments;

(e) Analytical and data assessment procedures;

(f) Data objectives to ensure that samples collected in connection with phase II assessments are biased toward areas where information indicates that contamination by hazardous substances or petroleum is likely to exist.

(5) Standards governing the conduct of certified professionals, criteria and procedures for the certification of professionals to issue no further action letters under section 3746.11 of the Revised Code, and criteria for the suspension and revocation of those certifications. The director shall take an action regarding a certification as a final action. The issuance, denial, renewal, suspension, and revocation of those

certifications are subject to Chapter 3745. of the Revised Code, 2623
except that, in lieu of publishing an action regarding a 2624
certification in a newspaper of general circulation as required in 2625
section 3745.07 of the Revised Code, such an action shall be 2626
published on the environmental protection agency's web site and in 2627
the agency's weekly review not later than fifteen days after the 2628
date of the issuance, denial, renewal, suspension, or revocation 2629
of the certification and not later than thirty days before a 2630
hearing or public meeting concerning the action. 2631

The rules adopted under division (B)(5) of this section shall 2632
do all of the following: 2633

(a) Provide for the certification of environmental 2634
professionals to issue no further action letters pertaining to 2635
investigations and remedies in accordance with the criteria and 2636
procedures set forth in the rules. The rules adopted under 2637
division (B)(5)(a) of this section shall do at least all of the 2638
following: 2639

(i) Authorize the director to consider such factors as an 2640
environmental professional's previous performance record regarding 2641
such investigations and remedies and the environmental 2642
professional's environmental compliance history when determining 2643
whether to certify the environmental professional; 2644

(ii) Ensure that an application for certification is reviewed 2645
in a timely manner; 2646

(iii) Require the director to certify any environmental 2647
professional who the director determines complies with those 2648
criteria; 2649

(iv) Require the director to deny certification for any 2650
environmental professional who does not comply with those 2651
criteria. 2652

(b) Establish an annual fee to be paid by environmental 2653

professionals certified pursuant to the rules adopted under 2654
division (B)(5)(a) of this section. The fee shall be established 2655
at an amount calculated to defray the costs to the agency for the 2656
required reviews of the qualifications of environmental 2657
professionals for certification and for the issuance of the 2658
certifications. 2659

(c) Develop a schedule for and establish requirements 2660
governing the review by the director of the credentials of 2661
environmental professionals who were deemed to be certified 2662
professionals under division (D) of section 3746.07 of the Revised 2663
Code in order to determine if they comply with the criteria 2664
established in rules adopted under division (B)(5) of this 2665
section. The rules adopted under division (B)(5)(c) of this 2666
section shall do at least all of the following: 2667

(i) Ensure that the review is conducted in a timely fashion; 2668

(ii) Require the director to certify any such environmental 2669
professional who the director determines complies with those 2670
criteria; 2671

(iii) Require any such environmental professional initially 2672
to pay the fee established in the rules adopted under division 2673
(B)(5)(b) of this section at the time that the environmental 2674
professional is so certified by the director; 2675

(iv) Establish a time period within which any such 2676
environmental professional who does not comply with those criteria 2677
may obtain the credentials that are necessary for certification; 2678

(v) Require the director to deny certification for any such 2679
environmental professional who does not comply with those criteria 2680
and who fails to obtain the necessary credentials within the 2681
established time period. 2682

(d) Require that any information submitted to the director 2683
for the purposes of the rules adopted under division (B)(5)(a) or 2684

(c) of this section comply with division (A) of section 3746.20 of 2685
the Revised Code; 2686

(e) Authorize the director to suspend or revoke the 2687
certification of an environmental professional if the director 2688
finds that the environmental professional's performance has 2689
resulted in the issuance of no further action letters under 2690
section 3746.11 of the Revised Code that are not consistent with 2691
applicable standards or finds that the certified environmental 2692
professional has not substantially complied with section 3746.31 2693
of the Revised Code; 2694

(f) Authorize the director to suspend for a period of not 2695
more than five years or to permanently revoke a certified 2696
environmental professional's certification for any violation of or 2697
failure to comply with an ethical standard established in rules 2698
adopted under division (B)(5) of this section; 2699

(g) Require the director to revoke the certification of an 2700
environmental professional if the director finds that the 2701
environmental professional falsified any information on the 2702
environmental professional's application for certification 2703
regarding the environmental professional's credentials or 2704
qualifications or any other information generated for the purposes 2705
of or use under this chapter or rules adopted under it; 2706

(h) Require the director permanently to revoke the 2707
certification of an environmental professional who has violated or 2708
is violating division (A) of section 3746.18 of the Revised Code; 2709

(i) Preclude the director from revoking the certification of 2710
an environmental professional who only conducts investigations and 2711
remedies at property contaminated solely with petroleum unless the 2712
director first consults with the director of commerce. 2713

(6) Criteria and procedures for the certification of 2714
laboratories to perform analyses under this chapter and rules 2715

adopted under it. The issuance, denial, suspension, and revocation 2716
of those certifications are subject to Chapter 3745. of the 2717
Revised Code, and the director of environmental protection shall 2718
take any such action regarding a certification as a final action. 2719

The rules adopted under division (B)(6) of this section shall 2720
do all of the following: 2721

(a) Provide for the certification to perform analyses of 2722
laboratories in accordance with the criteria and procedures 2723
established in the rules adopted under division (B)(6)(a) of this 2724
section and establish an annual fee to be paid by those 2725
laboratories. The fee shall be established at an amount calculated 2726
to defray the costs to the agency for the review of the 2727
qualifications of those laboratories for certification and for the 2728
issuance of the certifications. The rules adopted under division 2729
(B)(6)(a) of this section may provide for the certification of 2730
those laboratories to perform only particular types or categories 2731
of analyses, specific test parameters or group of test parameters, 2732
or a specific matrix or matrices under this chapter. 2733

(b) Develop a schedule for and establish requirements 2734
governing the review by the director of the operations of 2735
laboratories that were deemed to be certified laboratories under 2736
division (E) of section 3746.07 of the Revised Code in order to 2737
determine if they comply with the criteria established in rules 2738
adopted under division (B)(6) of this section. The rules adopted 2739
under division (B)(6)(b) of this section shall do at least all of 2740
the following: 2741

(i) Ensure that the review is conducted in a timely fashion; 2742

(ii) Require the director to certify any such laboratory that 2743
the director determines complies with those criteria; 2744

(iii) Require any such laboratory initially to pay the fee 2745
established in the rules adopted under division (B)(6)(a) of this 2746

section at the time that the laboratory is so certified by the 2747
director; 2748

(iv) Establish a time period within which any such laboratory 2749
that does not comply with those criteria may make changes in its 2750
operations necessary for the performance of analyses under this 2751
chapter and rules adopted under it in order to be certified by the 2752
director; 2753

(v) Require the director to deny certification for any such 2754
laboratory that does not comply with those criteria and that fails 2755
to make the necessary changes in its operations within the 2756
established time period. 2757

(c) Require that any information submitted to the director 2758
for the purposes of the rules adopted under division (B)(6)(a) or 2759
(b) of this section comply with division (A) of section 3746.20 of 2760
the Revised Code; 2761

(d) Authorize the director to suspend or revoke the 2762
certification of a laboratory if the director finds that the 2763
laboratory's performance has resulted in the issuance of no 2764
further action letters under section 3746.11 of the Revised Code 2765
that are not consistent with applicable standards; 2766

(e) Authorize the director to suspend or revoke the 2767
certification of a laboratory if the director finds that the 2768
laboratory falsified any information on its application for 2769
certification regarding its credentials or qualifications; 2770

(f) Require the director permanently to revoke the 2771
certification of a laboratory that has violated or is violating 2772
division (A) of section 3746.18 of the Revised Code. 2773

(7) Information to be included in a no further action letter 2774
prepared under section 3746.11 of the Revised Code, including, 2775
without limitation, all of the following: 2776

(a) A summary of the information required to be submitted to the certified environmental professional preparing the no further action letter under division (C) of section 3746.10 of the Revised Code; (b) Notification that a risk assessment was performed in accordance with rules adopted under division (B)(2) of this section if such an assessment was used in lieu of generic numerical clean-up standards established in rules adopted under division (B)(1) of this section; (c) The contaminants addressed at the property, if any, their source, if known, and their levels prior to remediation; (d) The identity of any other person who performed work to support the request for the no further action letter as provided in division (B)(2) of section 3746.10 of the Revised Code and the nature and scope of the work performed by that person; (e) A list of the data, information, records, and documents relied upon by the certified environmental professional in preparing the no further action letter. (8) Methods for determining fees to be paid for the following services provided by the agency under this chapter and rules adopted under it: (a) Site- or property-specific technical assistance in developing or implementing plans in connection with a voluntary action; (b) Reviewing applications for and issuing consolidated standards permits under section 3746.15 of the Revised Code and monitoring compliance with those permits; (c) Negotiating, preparing, and entering into agreements necessary for the implementation and administration of this chapter and rules adopted under it;

(d) Reviewing no further action letters, issuing covenants 2807
not to sue, and monitoring compliance with any terms and 2808
conditions of those covenants and with operation and maintenance 2809
agreements entered into pursuant to those covenants, including, 2810
without limitation, conducting audits of properties where 2811
voluntary actions are being or were conducted under this chapter 2812
and rules adopted under it. 2813

The fees established pursuant to the rules adopted under 2814
division (B)(8) of this section shall be at a level sufficient to 2815
defray the direct and indirect costs incurred by the agency for 2816
the administration and enforcement of this chapter and rules 2817
adopted under it other than the provisions regarding the 2818
certification of professionals and laboratories. 2819

(9) Criteria for selecting the no further action letters 2820
issued under section 3746.11 of the Revised Code that will be 2821
audited under section 3746.17 of the Revised Code, and the scope 2822
and procedures for conducting those audits. The rules adopted 2823
under division (B)(9) of this section, at a minimum, shall require 2824
the director to establish priorities for auditing no further 2825
action letters to which any of the following applies: 2826

(a) The letter was prepared by an environmental professional 2827
who was deemed to be a certified professional under division (D) 2828
of section 3746.07 of the Revised Code, but who does not comply 2829
with the criteria established in rules adopted under division 2830
(B)(5) of this section as determined pursuant to rules adopted 2831
under division (B)(5)(d) of this section; 2832

(b) The letter was submitted fraudulently; 2833

(c) The letter was prepared by a certified environmental 2834
professional whose certification subsequently was revoked in 2835
accordance with rules adopted under division (B)(5) of this 2836
section, or analyses were performed for the purposes of the no 2837

further action letter by a certified laboratory whose 2838
certification subsequently was revoked in accordance with rules 2839
adopted under division (B)(6) of this section; 2840

(d) A covenant not to sue that was issued pursuant to the 2841
letter was revoked under this chapter; 2842

(e) The letter was for a voluntary action that was conducted 2843
pursuant to a risk assessment in accordance with rules adopted 2844
under division (B)(2) of this section; 2845

(f) The letter was for a voluntary action that included as 2846
remedial activities engineering controls or institutional controls 2847
or activity and use limitations authorized under section 3746.05 2848
of the Revised Code. 2849

The rules adopted under division (B)(9) of this section shall 2850
provide for random audits of no further action letters to which 2851
the rules adopted under divisions (B)(9)(a) to (f) of this section 2852
do not apply. 2853

(10) A classification system to characterize ground water 2854
according to its capability to be used for human use and its 2855
impact on the environment and a methodology that shall be used to 2856
determine when ground water that has become contaminated from 2857
sources on a property for which a covenant not to sue is requested 2858
under section 3746.11 of the Revised Code shall be remediated to 2859
the standards established in the rules adopted under division 2860
(B)(1) or (2) of this section. 2861

(a) In adopting rules under division (B)(10) of this section 2862
to characterize ground water according to its capability for human 2863
use, the director shall consider all of the following: 2864

(i) The presence of legally enforceable, reliable 2865
restrictions on the use of ground water, including, without 2866
limitation, local rules or ordinances; 2867

(ii) The presence of regional commingled contamination from multiple sources that diminishes the quality of ground water; 2868
2869

(iii) The natural quality of ground water; 2870

(iv) Regional availability of ground water and reasonable alternative sources of drinking water; 2871
2872

(v) The productivity of the aquifer; 2873

(vi) The presence of restrictions on the use of ground water implemented under this chapter and rules adopted under it; 2874
2875

(vii) The existing use of ground water. 2876

(b) In adopting rules under division (B)(10) of this section to characterize ground water according to its impacts on the environment, the director shall consider both of the following: 2877
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2879

(i) The risks posed to humans, fauna, surface water, sediments, soil, air, and other resources by the continuing presence of contaminated ground water; 2880
2881
2882

(ii) The availability and feasibility of technology to remedy ground water contamination. 2883
2884

(11) Governing the application for and issuance of variances under section 3746.09 of the Revised Code; 2885
2886

(12)(a) In the case of voluntary actions involving contaminated ground water, specifying the circumstances under which the generic numerical clean-up standards established in rules adopted under division (B)(1) of this section and standards established through a risk assessment conducted pursuant to rules adopted under division (B)(2) of this section shall be inapplicable to the remediation of contaminated ground water and under which the standards for remediating contaminated ground water shall be established on a case-by-case basis prior to the commencement of the voluntary action pursuant to rules adopted under division (B)(12)(b) of this section; 2887
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(b) Criteria and procedures for the case-by-case 2898
establishment of standards for the remediation of contaminated 2899
ground water under circumstances in which the use of the generic 2900
numerical clean-up standards and standards established through a 2901
risk assessment are precluded by the rules adopted under division 2902
(B)(12)(a) of this section. The rules governing the procedures for 2903
the case-by-case development of standards for the remediation of 2904
contaminated ground water shall establish application, public 2905
participation, adjudication, and appeals requirements and 2906
procedures that are equivalent to the requirements and procedures 2907
established in section 3746.09 of the Revised Code and rules 2908
adopted under division (B)(11) of this section, except that the 2909
procedural rules shall not require an applicant to make the 2910
demonstrations set forth in divisions (A)(1) to (3) of section 2911
3746.09 of the Revised Code. 2912

(13) A definition of the evidence that constitutes sufficient 2913
evidence for the purpose of division (A)(5) of section 3746.02 of 2914
the Revised Code. 2915

At least thirty days before filing the proposed rules 2916
required to be adopted under this section with the secretary of 2917
state, director of the legislative service commission, and joint 2918
committee on agency rule review in accordance with divisions (B) 2919
and ~~(H)~~(C) of section 119.03 of the Revised Code, the director of 2920
environmental protection shall hold at least one public meeting on 2921
the proposed rules in each of the five districts into which the 2922
agency has divided the state for administrative purposes. 2923

Sec. 4117.02. (A) There is hereby created the state 2924
employment relations board, consisting of three members to be 2925
appointed by the governor with the advice and consent of the 2926
senate. Members shall be knowledgeable about labor relations or 2927
personnel practices. No more than two of the three members shall 2928

belong to the same political party. A member of the state 2929
employment relations board during the member's period of service 2930
shall hold no other public office or public or private employment 2931
and shall allow no other responsibilities to interfere or conflict 2932
with the member's duties as a full-time state employment relations 2933
board member. Of the initial appointments made to the state 2934
employment relations board, one shall be for a term ending October 2935
6, 1984, one shall be for a term ending October 6, 1985, and one 2936
shall be for a term ending October 6, 1986. Thereafter, terms of 2937
office shall be for six years, each term ending on the same day of 2938
the same month of the year as did the term that it succeeds. Each 2939
member shall hold office from the date of the member's appointment 2940
until the end of the term for which the member is appointed. Any 2941
member appointed to fill a vacancy occurring prior to the 2942
expiration of the term for which the member's predecessor was 2943
appointed shall hold office for the remainder of the term. Any 2944
member shall continue in office subsequent to the expiration of 2945
the member's term until the member's successor takes office or 2946
until a period of sixty days has elapsed, whichever occurs first. 2947
The governor may remove any member of the state employment 2948
relations board, upon notice and public hearing, for neglect of 2949
duty or malfeasance in office, but for no other cause. 2950

(B)(1) The governor shall designate one member of the state 2951
employment relations board to serve as chairperson of the state 2952
employment relations board. The chairperson is the head of the 2953
state employment relations board and its chief executive officer. 2954

(2) The chairperson shall exercise all administrative powers 2955
and duties conferred upon the state employment relations board 2956
under this chapter and shall do all of the following: 2957

(a) Employ, promote, supervise, and remove all employees of 2958
the state employment relations board, and establish, change, or 2959
abolish positions and assign or reassign the duties of those 2960

employees as the chairperson determines necessary to achieve the 2961
most efficient performance of the duties of the state employment 2962
relations board under this chapter; 2963

(b) Determine the utilization by the state personnel board of 2964
review of employees of the state employment relations board as 2965
necessary for the state personnel board of review to exercise the 2966
powers and perform the duties of the state personnel board of 2967
review. 2968

(c) Maintain the office of the state employment relations 2969
board in Columbus and manage the office's daily operations, 2970
including securing offices, facilities, equipment, and supplies 2971
necessary to house the state employment relations board, employees 2972
of the state employment relations board, the state personnel board 2973
of review, and files and records under the control of the state 2974
employment relations board and under the control of the state 2975
personnel board of review; 2976

(d) Prepare and submit to the office of budget and management 2977
a budget for each biennium according to section 107.03 of the 2978
Revised Code, and include in the budget the costs of the state 2979
employment relations board and its staff and the costs of the 2980
state employment relations board in discharging any duty imposed 2981
by law upon the state employment relations board, the chairperson, 2982
or any of the employees or agents of the state employment 2983
relations board, and the costs of the state personnel board of 2984
review in discharging any duty imposed by law on the state 2985
personnel board of review or an agent of the state personnel board 2986
of review. 2987

(C) The vacancy on the state employment relations board does 2988
not impair the right of the remaining members to exercise all the 2989
powers of the state employment relations board, and two members of 2990
the state employment relations board, at all times, constitute a 2991
quorum. The state employment relations board shall have an 2992

official seal of which courts shall take judicial notice. 2993

(D) The state employment relations board shall make an annual 2994
report in writing to the governor and to the general assembly, 2995
stating in detail the work it has done. 2996

(E) Compensation of the chairperson and members shall be in 2997
accordance with division (J) of section 124.15 of the Revised 2998
Code. The chairperson and the members are eligible for 2999
reappointment. In addition to such compensation, all members shall 3000
be reimbursed for their necessary expenses incurred in the 3001
performance of their work as members. 3002

(F)(1) The chairperson, after consulting with the other state 3003
employment relations board members and receiving the consent of at 3004
least one other board member, shall appoint an executive director. 3005
The chairperson also shall appoint attorneys and shall appoint an 3006
assistant executive director who shall be an attorney admitted to 3007
practice law in this state and who shall serve as a liaison to the 3008
attorney general on legal matters before the state employment 3009
relations board. 3010

(2) The state employment relations board shall appoint 3011
members of fact-finding panels and shall prescribe their job 3012
duties. 3013

(G)(1) The executive director shall serve at the pleasure of 3014
the chairperson. The executive director, under the direction of 3015
the chairperson, shall do all of the following: 3016

(a) Act as chief administrative officer for the state 3017
employment relations board; 3018

(b) Ensure that all employees of the state employment 3019
relations board comply with the rules of the state employment 3020
relations board; 3021

(c) Do all things necessary for the efficient and effective 3022

implementation of the duties of the state employment relations 3023
board. 3024

(2) The duties of the executive director described in 3025
division (G)(1) of this section do not relieve the chairperson 3026
from final responsibility for the proper performance of the duties 3027
described in that division. 3028

(H) The attorney general shall be the legal adviser of the 3029
state employment relations board and shall appear for and 3030
represent the state employment relations board and its agents in 3031
all legal proceedings. The state employment relations board may 3032
utilize regional, local, or other agencies, and utilize voluntary 3033
and uncompensated services as needed. The state employment 3034
relations board may contract with the federal mediation and 3035
conciliation service for the assistance of mediators, arbitrators, 3036
and other personnel the service makes available. The chairperson 3037
shall appoint all employees on the basis of training, practical 3038
experience, education, and character, notwithstanding the 3039
requirements established by section 119.09 of the Revised Code. 3040
The chairperson shall give special regard to the practical 3041
training and experience that employees have for the particular 3042
position involved. The executive director, assistant executive 3043
director, administrative law judges, employees holding a fiduciary 3044
or administrative relation to the state employment relations board 3045
as described in division (A)(9) of section 124.11 of the Revised 3046
Code, and the personal secretaries and assistants of the state 3047
employment relations board members are in the unclassified 3048
service. All other full-time employees of the state employment 3049
relations board are in the classified service. All employees of 3050
the state employment relations board shall be paid in accordance 3051
with Chapter 124. of the Revised Code. 3052

(I) The chairperson shall select and assign administrative 3053
law judges and other agents whose functions are to conduct 3054

hearings with due regard to their impartiality, judicial 3055
temperament, and knowledge. If in any proceeding under this 3056
chapter, any party prior to five days before the hearing thereto 3057
files with the state employment relations board a sworn statement 3058
charging that the administrative law judge or other agent 3059
designated to conduct the hearing is biased or partial in the 3060
proceeding, the state employment relations board may disqualify 3061
the person and designate another administrative law judge or agent 3062
to conduct the proceeding. At least ten days before any hearing, 3063
the state employment relations board shall notify all parties to a 3064
proceeding of the name of the administrative law judge or agent 3065
designated to conduct the hearing. 3066

(J) The principal office of the state employment relations 3067
board is in Columbus, but it may meet and exercise any or all of 3068
its powers at any other place within the state. The state 3069
employment relations board may, by one or more of its employees, 3070
or any agents or agencies it designates, conduct in any part of 3071
this state any proceeding, hearing, investigation, inquiry, or 3072
election necessary to the performance of its functions; provided, 3073
that no person so designated may later sit in determination of an 3074
appeal of the decision of that cause or matter. 3075

(K) In addition to the powers and functions provided in other 3076
sections of this chapter, the state employment relations board 3077
shall do all of the following: 3078

(1) Create a bureau of mediation within the state employment 3079
relations board, to perform the functions provided in section 3080
4117.14 of the Revised Code. This bureau shall also establish, 3081
after consulting representatives of employee organizations and 3082
public employers, panels of qualified persons to be available to 3083
serve as members of fact-finding panels and arbitrators. 3084

(2) Conduct studies of problems involved in representation 3085
and negotiation and make recommendations for legislation; 3086

(3) Hold hearings pursuant to this chapter and, for the 3087
purpose of the hearings and inquiries, administer oaths and 3088
affirmations, examine witnesses and documents, take testimony and 3089
receive evidence, compel the attendance of witnesses and the 3090
production of documents by the issuance of subpoenas, and delegate 3091
these powers to any members of the state employment relations 3092
board or any administrative law judge employed by the state 3093
employment relations board for the performance of its functions; 3094

(4) Train representatives of employee organizations and 3095
public employers in the rules and techniques of collective 3096
bargaining procedures; 3097

(5) Make studies and analyses of, and act as a clearinghouse 3098
of information relating to, conditions of employment of public 3099
employees throughout the state and request assistance, services, 3100
and data from any public employee organization, public employer, 3101
or governmental unit. Public employee organizations, public 3102
employers, and governmental units shall provide such assistance, 3103
services, and data as will enable the state employment relations 3104
board to carry out its functions and powers. 3105

(6) Make available to employee organizations, public 3106
employers, mediators, fact-finding panels, arbitrators, and joint 3107
study committees statistical data relating to wages, benefits, and 3108
employment practices in public and private employment applicable 3109
to various localities and occupations to assist them to resolve 3110
issues in negotiations; 3111

(7) Notwithstanding section 119.13 of the Revised Code, 3112
establish standards of persons who practice before it; 3113

(8) Adopt, amend, and rescind rules and procedures and 3114
exercise other powers appropriate to carry out this chapter. 3115
Before the adoption, amendment, or rescission of rules and 3116
procedures under this section, the state employment relations 3117

board shall do all of the following: 3118

(a) Maintain a list of interested public employers and 3119
employee organizations and mail notice to such groups of any 3120
proposed rule or procedure, amendment thereto, or rescission 3121
thereof at least thirty days before any public hearing thereon; 3122

(b) Mail a copy of each proposed rule or procedure, amendment 3123
thereto, or rescission thereof to any person who requests a copy 3124
within five days after receipt of the request therefor; 3125

(c) Consult with appropriate statewide organizations 3126
representing public employers or employees who would be affected 3127
by the proposed rule or procedure. 3128

Although the state employment relations board is expected to 3129
discharge these duties diligently, failure to mail any notice or 3130
copy, or to so consult with any person, is not jurisdictional and 3131
shall not be construed to invalidate any proceeding or action of 3132
the state employment relations board. 3133

(L) In case of neglect or refusal to obey a subpoena issued 3134
to any person, the court of common pleas of the county in which 3135
the investigation or the public hearing occurs, upon application 3136
by the state employment relations board, may issue an order 3137
requiring the person to appear before the state employment 3138
relations board and give testimony about the matter under 3139
investigation. The court may punish a failure to obey the order as 3140
contempt. 3141

(M) Any subpoena, notice of hearing, or other process or 3142
notice of the state employment relations board issued under this 3143
section may be served personally, by certified mail, or by leaving 3144
a copy at the principal office or personal residence of the 3145
respondent required to be served. A return, made and verified by 3146
the individual making the service and setting forth the manner of 3147
service, is proof of service, and a return post office receipt, 3148

when certified mail is used, is proof of service. All process in 3149
any court to which application is made under this chapter may be 3150
served in the county wherein the persons required to be served 3151
reside or are found. 3152

(N) All expenses of the state employment relations board, 3153
including all necessary traveling and subsistence expenses 3154
incurred by the members or employees of the state employment 3155
relations board under its orders, shall be paid pursuant to 3156
itemized vouchers approved by the chairperson of the state 3157
employment relations board, the executive director, or both, or 3158
such other person as the chairperson designates for that purpose. 3159

(O) Whenever the state employment relations board determines 3160
that a substantial controversy exists with respect to the 3161
application or interpretation of this chapter and the matter is of 3162
public or great general interest, the state employment relations 3163
board shall certify its final order directly to the court of 3164
appeals having jurisdiction over the area in which the principal 3165
office of the public employer directly affected by the application 3166
or interpretation is located. The chairperson shall file with the 3167
clerk of the court a certified copy of the transcript of the 3168
proceedings before the state employment relations board pertaining 3169
to the final order. If upon hearing and consideration the court 3170
decides that the final order of the state employment relations 3171
board is unlawful or is not supported by substantial evidence on 3172
the record as a whole, the court shall reverse and vacate the 3173
final order or modify it and enter final judgment in accordance 3174
with the modification; otherwise, the court shall affirm the final 3175
order. The notice of the final order of the state employment 3176
relations board to the interested parties shall contain a 3177
certification by the chairperson of the state employment relations 3178
board that the final order is of public or great general interest 3179
and that a certified transcript of the record of the proceedings 3180

before the state employment relations board had been filed with 3181
the clerk of the court as an appeal to the court. For the purposes 3182
of this division, the state employment relations board has 3183
standing to bring its final order properly before the court of 3184
appeals. 3185

(P) Except as otherwise specifically provided in this 3186
section, the state employment relations board is subject to 3187
Chapter 119. of the Revised Code, including the procedure for 3188
submission of proposed rules to the general assembly for 3189
legislative review under division ~~(H)~~(C) of section 119.03 of the 3190
Revised Code. 3191

Sec. 4141.14. ~~(A)~~ All rules of the director of the department 3192
of job and family services adopted pursuant to this chapter shall 3193
be approved by the unemployment compensation review commission 3194
before the rules become effective. All such rules shall specify on 3195
their face their effective date and the date on which they will 3196
expire, if known. Approval by the unemployment compensation review 3197
commission shall also be required before amendments to, or 3198
rescission of, any rules of the director adopted pursuant to this 3199
chapter become effective. If the commission disapproves a rule of 3200
the director, it shall determine and promulgate a rule that it 3201
considers appropriate after affording a hearing to the director. 3202
3203

~~(B)(1) Any rule promulgated pursuant to this section shall be 3204
effective on the tenth day after the day on which the rule in 3205
final form and in compliance with division (B)(2) of this section 3206
is filed as follows: 3207~~

~~(a) The rule shall be filed in electronic form with both the 3208
secretary of state and the director of the legislative service 3209
commission; 3210~~

~~(b) The rule shall be filed in electronic form with the joint 3211~~

~~committee on agency rule review. Division (B)(1)(b) of this 3212~~
~~section does not apply to any rule to which division (H) of 3213~~
~~section 119.03 of the Revised Code does not apply. 3214~~

~~If all filings are not completed on the same day, the rule 3215~~
~~shall be effective on the tenth day after the day on which the 3216~~
~~latest filing is completed. If the department of job and family 3217~~
~~services or the unemployment compensation review commission in 3218~~
~~adopting a rule pursuant to this chapter designates an effective 3219~~
~~date that is later than the effective date provided for by this 3220~~
~~division, the rule if filed as required by this division shall 3221~~
~~become effective on the later date designated by the department or 3222~~
~~commission. 3223~~

~~If the commission or department adopts or amends a rule that 3224~~
~~is subject to division (H) of section 119.03 of the Revised Code, 3225~~
~~the commission or department shall assign a review date to the 3226~~
~~rule that is not later than five years after its effective date. 3227~~
~~If no review date is assigned to a rule, or if a review date 3228~~
~~assigned to a rule exceeds the five year maximum, the review date 3229~~
~~for the rule is five years after its effective date. A rule with a 3230~~
~~review date is subject to review under section 119.032 of the 3231~~
~~Revised Code. 3232~~

~~(2) The department and commission shall file the rule in 3233~~
~~compliance with the following standards and procedures: 3234~~

~~(a) The rule shall be numbered in accordance with the 3235~~
~~numbering system devised by the director for the Ohio 3236~~
~~administrative code. 3237~~

~~(b) The rule shall be prepared and submitted in compliance 3238~~
~~with the rules of the legislative service commission. 3239~~

~~(c) The rule shall clearly state the date on which it is to 3240~~
~~be effective and the date on which it will expire, if known. 3241~~

~~(d) Each rule that amends or rescinds another rule shall 3242~~

~~clearly refer to the rule that is amended or rescinded. Each~~ 3243
~~amendment shall fully restate the rule as amended.~~ 3244

~~If the director of the legislative service commission or the~~ 3245
~~director's designee gives the department of job and family~~ 3246
~~services or the unemployment compensation review commission notice~~ 3247
~~pursuant to section 103.05 of the Revised Code that a rule filed~~ 3248
~~by the department or review commission is not in compliance with~~ 3249
~~the rules of the legislative service commission, the department or~~ 3250
~~review commission shall within thirty days after receipt of the~~ 3251
~~notice conform the rule to the rules of the commission as directed~~ 3252
~~in the notice.~~ 3253

~~The secretary of state and the director of the legislative~~ 3254
~~service commission shall preserve the rules filed under division~~ 3255
~~(B)(1)(a) of this section in an accessible manner. Each such rule~~ 3256
~~shall be a public record open to public inspection and may be~~ 3257
~~transmitted to any law publishing company that wishes to reproduce~~ 3258
~~it.~~ 3259

~~(C) As used in this section:~~ 3260

~~(1) "Rule" includes an amendment or rescission of a rule.~~ 3261

~~(2) "Substantive revision" has the same meaning as in~~ 3262
~~division (J) of section 119.01 of the Revised Code.~~ 3263

Sec. 5103.0325. Notwithstanding ~~division (B) of section~~ 3264
~~119.032~~ 106.03 of the Revised Code, the department of job and 3265
family services shall review once every two years the department's 3266
rules governing visits and contacts by a public children services 3267
agency or private child placing agency with a child in the 3268
agency's custody and placed in foster care in this state. The 3269
department shall adopt rules in accordance with Chapter 119. of 3270
the Revised Code to ensure compliance with the department's rules 3271
governing agency visits and contacts with a child in its custody. 3272

Sec. 5117.02. (A) The director of development shall adopt 3273
rules, or amendments and rescissions of rules, pursuant to section 3274
4928.52 of the Revised Code, for the administration of the Ohio 3275
energy credit program under sections 5117.01 to 5117.12 of the 3276
Revised Code. 3277

(B) As a means of efficiently administering the program, the 3278
director may extend, by as much as a total of thirty days, any 3279
date specified in such sections for the performance of a 3280
particular action by an individual or an officer. 3281

(C)(1) Except as provided in division (C)(2) of this section, 3282
the director shall adopt, in accordance with divisions (A), (B), 3283
(C), (D), (E), and ~~(H)~~(F) of section 119.03 and section 119.04 of 3284
the Revised Code, whatever rules, or amendments or rescissions of 3285
rules are required by or are otherwise necessary to implement 3286
sections 5117.01 to 5117.12 of the Revised Code. A rule, 3287
amendment, or rescission adopted under this division is not exempt 3288
from the hearing requirements of section 119.03 of the Revised 3289
Code pursuant to division ~~(G)~~(H) of that section, or subject to 3290
section 111.15 of the Revised Code. 3291

(2) If an emergency necessitates the immediate adoption of a 3292
rule, or the immediate adoption of an amendment or rescission of a 3293
rule that is required by or otherwise necessary to implement 3294
sections 5117.01 to 5117.12 of the Revised Code, the director 3295
immediately may adopt the emergency rule, amendment, or rescission 3296
without complying with division (A), (B), (C), (D), (E), or ~~(H)~~(F) 3297
of section 119.03 of the Revised Code so long as the ~~commissioner~~ 3298
director states the reasons for the necessity in the emergency 3299
rule, amendment, or rescission. The emergency rule, amendment, or 3300
rescission is effective on the day the emergency rule, amendment, 3301
or rescission, in final form and in compliance with division 3302
(A)(2) of section 119.04 of the Revised Code, is filed in 3303

electronic form with the secretary of state, the director of the 3304
legislative service commission, and the joint committee on agency 3305
rule review. If all filings are not completed on the same day, the 3306
emergency rule, amendment, or rescission is effective on the day 3307
on which the latest filing is completed. An emergency rule, 3308
amendment, or rescission adopted under this division is not 3309
subject to section 111.15 or division ~~(F)~~(G) of section 119.03 of 3310
the Revised Code. An emergency rule, amendment, or rescission 3311
adopted under this division continues in effect until amended or 3312
rescinded by the director in accordance with division (C)(1) or 3313
(2) of this section, except that the rescission of an emergency 3314
rescission does not revive the rule rescinded. 3315

(D) Except where otherwise provided, each form, application, 3316
notice, and the like used in fulfilling the requirements of 3317
sections 5117.01 to 5117.12 of the Revised Code shall be approved 3318
by the director. 3319

Sec. 5703.14. ~~(A) Any rule adopted by the board of tax 3320
appeals and any rule of the department of taxation adopted by the 3321
tax commissioner shall be effective on the tenth day after the day 3322
on which the rule in final form and in compliance with division 3323
~~(B)~~ of this section is filed by the board or the commissioner as 3324
follows: 3325~~

~~(1) The rule shall be filed in electronic form with both the 3326
secretary of state and the director of the legislative service 3327
commission; 3328~~

~~(2) The rule shall be filed in electronic form with the joint 3329
committee on agency rule review. Division (A)(2) of this section 3330
does not apply to any rule to which division (H) of section 119.03 3331
of the Revised Code does not apply. 3332~~

~~If all filings are not completed on the same day, the rule 3333
shall be effective on the tenth day after the day on which the 3334~~

~~latest filing is completed. If the board or the commissioner in~~ 3335
~~adopting a rule designates an effective date that is later than~~ 3336
~~the effective date provided for by this division, the rule if~~ 3337
~~filed as required by this division shall become effective on the~~ 3338
~~later date designated by the board or commissioner.~~ 3339

~~(B) The board and commissioner shall file the rule in~~ 3340
~~compliance with the following standards and procedures:~~ 3341

~~(1) The rule shall be numbered in accordance with the~~ 3342
~~numbering system devised by the director for the Ohio~~ 3343
~~administrative code.~~ 3344

~~(2) The rule shall be prepared and submitted in compliance~~ 3345
~~with the rules of the legislative service commission.~~ 3346

~~(3) The rule shall clearly state the date on which it is to~~ 3347
~~be effective and the date on which it will expire, if known.~~ 3348

~~(4) Each rule that amends or rescinds another rule shall~~ 3349
~~clearly refer to the rule that is amended or rescinded. Each~~ 3350
~~amendment shall fully restate the rule as amended.~~ 3351

~~If the director of the legislative service commission or the~~ 3352
~~director's designee gives the board or commissioner notice~~ 3353
~~pursuant to section 103.05 of the Revised Code that a rule filed~~ 3354
~~by the board or commissioner is not in compliance with the rules~~ 3355
~~of the legislative service commission, the board or commissioner~~ 3356
~~shall within thirty days after receipt of the notice conform the~~ 3357
~~rule to the rules of the legislative service commission as~~ 3358
~~directed in the notice.~~ 3359

~~All rules of the department and board filed pursuant to~~ 3360
~~division (A)(1) of this section shall be recorded by the secretary~~ 3361
~~of state and the director under the name of the department or~~ 3362
~~board and shall be numbered in accordance with the numbering~~ 3363
~~system devised by the director. The secretary of state and the~~ 3364
~~director shall preserve the rules in an accessible manner. Each~~ 3365

~~such rule shall be a public record open to public inspection and 3366
may be transmitted to any law publishing company that wishes to 3367
reproduce it. Each such rule shall also be made available to 3368
interested parties upon request directed to the department. 3369~~

(C) Applications for review of any rule adopted and 3370
promulgated by the tax commissioner may be filed with the board of 3371
tax appeals by any person who has been or may be injured by the 3372
operation of the rule. The appeal may be taken at any time after 3373
the rule is filed with the secretary of the state, the director of 3374
the legislative service commission, and, if applicable, the joint 3375
committee on agency rule review. Failure to file an appeal does 3376
not preclude any person from seeking any other remedy against the 3377
application of the rule to the person. The applications shall set 3378
forth, or have attached thereto and incorporated by reference, a 3379
true copy of the rule, and shall allege that the rule complained 3380
of is unreasonable and shall state the grounds upon which the 3381
allegation is based. Upon the filing of the application, the board 3382
shall notify the commissioner of the filing of the application, 3383
fix a time for hearing the application, notify the commissioner 3384
and the applicant of the time for the hearing, and afford both an 3385
opportunity to be heard. The appellant, the tax commissioner, and 3386
any other interested persons that the board permits, may introduce 3387
evidence. The burden of proof to show that the rule is 3388
unreasonable shall be upon the appellant. After the hearing, the 3389
board shall determine whether the rule complained of is reasonable 3390
or unreasonable. A determination that the rule complained of is 3391
unreasonable shall require a majority vote of the three members of 3392
the board, and the reasons for the determination shall be entered 3393
on the journal of the board. 3394

Upon determining that the rule complained of is unreasonable, 3395
the board shall file copies of its determination as follows: 3396

~~(1)~~(A) The determination shall be filed in electronic form 3397

with both the secretary of state and the director of the 3398
legislative service commission, who shall note the date of their 3399
receipt of the certified copies conspicuously in their files of 3400
the rules of the department; 3401

~~(2)~~(B) The determination shall be filed in electronic form 3402
with the joint committee on agency rule review. Division (C)(2) of 3403
this section does not apply to any rule to which division ~~(H)~~(C) 3404
of section 119.03 of the Revised Code does not apply. 3405

On the tenth day after the determination has been received by 3406
the secretary of state, the director, and, if applicable, the 3407
joint committee, the rule referred to in the determination shall 3408
cease to be in effect. If all filings of the determination are not 3409
completed on the same day, the rule shall remain in effect until 3410
the tenth day after the day on which the latest filing is 3411
completed. This section does not apply to licenses issued under 3412
sections 5735.02, 5739.17, and 5743.15 of the Revised Code, which 3413
shall be governed by sections 119.01 to 119.13 of the Revised 3414
Code. 3415

The board is not required to hear an application for the 3416
review of any rule where the grounds of the allegation that the 3417
rule is unreasonable have been previously contained in an 3418
application for review and have been previously heard and passed 3419
upon by the board. 3420

~~(D) As used in this section, "substantive revision" has the 3421
same meaning as in division (J) of section 119.01 of the Revised 3422
Code.~~ 3423

Sec. 6111.31. All substantive wetland, stream, or lake 3424
mitigation standards, criteria, scientific methods, processes, or 3425
other procedures or policies that are used in a uniform manner by 3426
the director of environmental protection in evaluating the 3427
adequacy of a mitigation proposal contained in an application for 3428

a section 401 water quality certification shall be adopted and 3429
reviewed in accordance with sections 119.03 and ~~119.032~~ 106.03 of 3430
the Revised Code before those standards, criteria, or scientific 3431
methods have the force of law. Until that time, any such 3432
mitigation standards, criteria, scientific methods, processes, or 3433
other procedures or policies that are used by or approved for use 3434
by the director to evaluate, measure, or determine the success, 3435
approval, or denial of a mitigation proposal, but that have not 3436
been subject to review under sections 119.03 and ~~119.032~~ 106.03 of 3437
the Revised Code shall not be used as the basis for any 3438
certification or permit denial or as a standard applied to 3439
mitigation unless the applicant has been notified in advance that 3440
additional mitigation standards, criteria, scientific methods, 3441
processes, or procedures will be considered as part of the review 3442
process. 3443

Sec. 6111.51. (A)(1) The director of environmental protection 3444
shall adopt rules that establish criteria for three levels of 3445
credible data related to surface water monitoring and assessment. 3446
The rules pertaining to each level shall establish requirements 3447
for data assessment, sample collection and analytical methods, and 3448
quality assurance and quality control procedures that must be 3449
followed in order to classify data as credible at that level. The 3450
rules shall provide that level three credible data are collected 3451
by employing the most stringent methods and procedures, level two 3452
credible data are collected using methods and procedures that are 3453
less stringent than methods and procedures used to collect level 3454
three credible data, but more stringent than methods and 3455
procedures used to collect level one, and level one credible data 3456
are collected by employing the least stringent methods and 3457
procedures. 3458

The requirements established in the rules for each level of 3459

credible data shall be commensurate with, and no more stringent 3460
than necessary to support, the purposes for which the data will be 3461
used. In adopting rules under this section, the director shall 3462
consider the cost of data collection methods and procedures to 3463
persons or entities collecting data, and the burden of compliance 3464
with those methods and procedures for those persons or entities, 3465
while ensuring the degree of accuracy commensurate with the 3466
purpose for which the data will be used. No data shall be 3467
classified as credible data unless they have been collected in 3468
compliance with the applicable methods and procedures for 3469
collecting the data established in rules adopted under this 3470
section. 3471

(2) The director shall file the rules required to be adopted 3472
under division (A)(1) of this section with the secretary of state, 3473
the director of the legislative service commission, and the joint 3474
committee on agency rule review in accordance with divisions (B) 3475
and ~~(H)~~(C) of section 119.03 of the Revised Code not later than 3476
one year after ~~the effective date of this section~~ October 21, 3477
2003. As soon as practicable thereafter, the director shall 3478
proceed to adopt the rules in accordance with all other applicable 3479
provisions of Chapter 119. of the Revised Code. 3480

(B)(1) Level three credible data shall be used for the 3481
purposes specified in section 6111.52 of the Revised Code. 3482

(2) Levels two and three credible data shall be used for the 3483
purpose of evaluating the effectiveness of pollution controls for 3484
point sources and nonpoint sources and initial screening of water 3485
quality problems to determine if additional study is needed. 3486

(3) Levels one, two, and three credible data shall be used 3487
for public awareness and education activities. 3488

(C) No data shall be considered credible unless the data 3489
originate from studies and samples collected by the environmental 3490

protection agency, its contractors, federal or state environmental 3491
agencies, or qualified data collectors. However, data submitted 3492
pursuant to the requirements of a permit issued by an agency of 3493
the state or submitted as a result of findings and orders issued 3494
by the director or pursuant to a court order shall be considered 3495
credible unless the director identifies reasons why the data are 3496
not credible. 3497

(D) If the director has obtained credible data for a surface 3498
water, the director also may use historical data for the purpose 3499
of determining whether any water quality trends exist for that 3500
surface water. 3501

(E) Sections 6111.50 to 6111.56 of the Revised Code do not 3502
apply to civil or criminal enforcement actions brought under 3503
section 6111.07 of the Revised Code. 3504

(F) The director's use of credible data shall be consistent 3505
with the Federal Water Pollution Control Act. 3506

(G) Nothing in sections 6111.50 to 6111.56 of the Revised 3507
Code is an exception to statutory, common, or municipal law of 3508
trespass. 3509

Section 2. That existing sections 101.35, 103.0511, 107.52, 3510
107.53, 107.54, 107.55, 107.62, 107.63, 111.15, 117.20, 119.01, 3511
119.03, 119.04, 121.39, 121.73, 121.74, 121.81, 121.82, 121.83, 3512
127.18, 1531.08, 3319.22, 3319.221, 3333.021, 3333.048, 3737.88, 3513
3746.04, 4117.02, 4141.14, 5103.0325, 5117.02, 5703.14, 6111.31, 3514
and 6111.51 of the Revised Code are repealed. 3515

Section 3. That sections 119.031 and 119.032 of the Revised 3516
Code are repealed. 3517

Section 4. Sections 106.02, 106.021, 106.022, 106.04, and 3518
106.041 of the Revised Code are a continuation, although with 3519

revisions, of former division (I) of section 119.03 of the Revised Code. Division (C) of section 119.03 of the Revised Code is a continuation, although with revisions, of former division (H) of that section. And sections 106.03 and 106.031 of the Revised Code are a continuation, although with revisions, of former section 119.032 of the Revised Code. The seventh paragraph of section 106.01 of the Revised Code is a continuation, although with revisions, of division (A)(3)(b) of former section 119.03 of the Revised Code.

Section 5. The date by which the periodic review of an existing rule is to be completed has been referred to as its "119.032 review date." The Revised Code section referred to is the number of the Revised Code section under which periodic review of existing rules formerly was carried out. Because of the recodification of that former section by this act, periodic review of existing rules is to be carried out under sections 106.03 and 106.031 of the Revised Code. A reference to the "119.032 review date" of a rule therefore shall be read as if it referred to periodic review of the rule under sections 106.03 and 106.031 of the Revised Code.

It is recommended that the date by which the periodic review of an existing rule is to be completed be referred to as its "periodic review date."

Section 6. Legislative Information Systems, in consultation with the Director of the Legislative Service Commission, the Executive Director of the Joint Committee on Agency Rule Review, the Common Sense Initiative Office, and any other person or agency involved in the electronic rule filing system, shall program or reprogram the electronic rule filing system as necessary to enable electronic filing and other electronic processing of rules and rule-making documents as required by this act. Legislative

Information Systems shall complete the programming or 3551
reprogramming as soon as reasonably possible after the effective 3552
date of this section but not later than the day that is six months 3553
after that effective date. 3554

If at the time a provision of this act that contemplates 3555
electronic filing or other electronic processing of rules or 3556
rule-making documents takes effect, electronic filing or other 3557
electronic processing is not available, the provision shall be 3558
complied with manually until electronic filing or other electronic 3559
processing is available. 3560

Section 7. (A) Sections 106.02, 106.021, and 106.022 of the 3561
Revised Code do not apply to a proposed rule or revised proposed 3562
rule that was filed under division (D) of section 111.15 or former 3563
division (H) of section 119.03 of the Revised Code and, on the 3564
effective date of this section, is pending before the Joint 3565
Committee on Agency Rule Review for review under former division 3566
(I) of section 119.03 of the Revised Code. The Joint Committee 3567
shall review the proposed rule or revised proposed rule under 3568
former division (I) of section 119.03 of the Revised Code as if 3569
the division had not been repealed. 3570

(B) Sections 106.03 and 106.031 of the Revised Code do not 3571
apply to an existing rule that was filed under former section 3572
119.032 of the Revised Code and, on the effective date of this 3573
section, is pending before the Joint Committee on Agency Rule 3574
Review for review under that former section. The Joint Committee 3575
shall review the existing rule under former section 119.032 of the 3576
Revised Code as if the section had not been repealed. 3577

Section 8. The General Assembly, applying the principle 3578
stated in division (B) of section 1.52 of the Revised Code that 3579
amendments are to be harmonized if reasonably capable of 3580

simultaneous operation, finds that the following sections, 3581
presented in this act as composites of the sections as amended by 3582
the acts indicated, are the resulting versions of the sections in 3583
effect prior to the effective date of the sections as presented in 3584
this act: 3585

Section 3737.88 of the Revised Code as amended by both Am. 3586
Sub. H.B. 153 and Sub. S.B. 171 of the 129th General Assembly. 3587

Section 5117.02 of the Revised Code as amended by both Am. 3588
Sub. S.B. 3 and the version of Am. Sub. S.B. 11 of the 123rd 3589
General Assembly effective on April 1, 2002. 3590

Section 5703.14 of the Revised Code as amended by both Am. 3591
Sub. S.B. 3 and the version of Am. Sub. S.B. 11 of the 123rd 3592
General Assembly effective on April 1, 2002. 3593