

# AN ACT

To amend sections 103.0511, 111.15, 117.20, 119.03, 119.032, 121.39, 122.08, 122.081, 122.94, and 1710.02; to enact sections 107.51, 107.52, 107.53, 107.54, 107.55, 107.61, 107.62, 107.63, 121.81, 121.82, 121.83, and 121.91; and to repeal section 121.24 of the Revised Code to adopt a new business rule review procedure.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 103.0511, 111.15, 117.20, 119.03, 119.032, 121.39, 122.08, 122.081, 122.94, and 1710.02 be amended and that sections 107.51, 107.52, 107.53, 107.54, 107.55, 107.61, 107.62, 107.63, 121.81, 121.82, 121.83, and 121.91 of the Revised Code be enacted to read as follows:

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

(A) The legislative service commission, the joint committee on agency rule review, and the secretary of state, ~~and the office of small business~~;

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

(C) Each agency that files rules and other rule-making and rule-related documents with the legislative service commission, the joint committee on agency rule review, the governor, the secretary of state, ~~the office of small business~~, the general assembly, or a committee of the senate or house of representatives under section 111.15, 117.20, 119.03, 119.031, 119.032, 119.0311, 119.04, 121.24, 121.39, 127.18, 4141.14, 5117.02, or 5703.14 of the Revised Code or any other statute;

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

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

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

The electronic rule-filing system is to enable rules and rule-making and

rule-related documents to be filed, and official responses to these filings to be made, exclusively by electronic means.

Sec. 107.51. As used in sections 107.51 to 107.55 of the Revised Code, "agency" and "draft rule" have the meanings defined in section 121.81 of the Revised Code.

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

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

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

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

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

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

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

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

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

(D) Standards that will promote transparency, predictability, consistency, and flexibility in the implementation and operation of a draft rule, as well as an overall balance in a draft 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 rule to offer advice and assistance to the agency when the draft rule is adopted and 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. 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.

The office shall transmit any such recommendations electronically to the agency. If the office fails to make such a transmission after receiving the draft 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 rules reviewed during the calendar year;

(B) A description of the recommendations made to agencies with regard to draft 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 house of representatives.

Sec. 107.61. The common sense initiative office is established within the office of the governor. The governor shall organize, and as it becomes

necessary or advisable may re-organize, the office. The governor shall appoint professional, technical, and clerical personnel who are necessary if the work of the office is to be carried out efficiently and successfully. The employees are in the unclassified service and serve at the pleasure of the governor. The governor shall provide the office with office space, and with furnishings, equipment, and resources, as is necessary if the work of the office is to be carried out efficiently and successfully. References in law authorizing or requiring action by the "common sense initiative office" imply action being taken by relevant personnel of the office. The governor may delegate any or all of the governor's responsibilities under this section as the governor deems appropriate.

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

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

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

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

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

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

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

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

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

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

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

(1) "Rule" includes any rule, regulation, bylaw, or standard having a general and uniform operation adopted by an agency under the authority of the laws governing the agency; any appendix to a rule; and any internal management rule. "Rule" does not include any guideline adopted pursuant to section 3301.0714 of the Revised Code, any order respecting the duties of employees, any finding, any determination of a question of law or fact in a matter presented to an agency, or any rule promulgated pursuant to Chapter 119., section 4141.14, division (C)(1) or (2) of section 5117.02, or section 5703.14 of the Revised Code. "Rule" includes any amendment or rescission of a rule.

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

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

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

(B)(1) Any rule, other than a rule of an emergency nature, adopted by any agency pursuant to this section shall be effective on the tenth day after the day on which the rule in final form and in compliance with division

(B)(3) of this section is filed as follows:

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

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

An agency that adopts or amends a rule that is subject to division (D) of this section shall assign a review date to the rule that is not later than five years after its effective date. If no review date is assigned to a rule, or if a review date assigned to a rule exceeds the five-year maximum, the review date for the rule is five years after its effective date. A rule with a review date is subject to review under section 119.032 of the Revised Code. This paragraph does not apply to a rule of a state college or university, community college district, technical college district, or state community college.

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

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

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

(2) A rule of an emergency nature necessary for the immediate preservation of the public peace, health, or safety shall state the reasons for the necessity. The emergency rule, in final form and in compliance with division (B)(3) of this section, shall be filed in electronic form with the secretary of state, the director of the legislative service commission, and the joint committee on agency rule review. The emergency rule is effective immediately upon completion of the latest filing, except that if the agency in adopting the emergency rule designates an effective date, or date and time of day, that is later than the effective date and time provided for by division (B)(2) of this section, the emergency rule if filed as required by such division shall become effective at the later date, or later date and time of day, designated by the agency.

An emergency rule becomes invalid at the end of the ninetieth day it is in effect. Prior to that date, the agency may file the emergency rule as a

nonemergency rule in compliance with division (B)(1) of this section. The agency may not refile the emergency rule in compliance with division (B)(2) of this section so that, upon the emergency rule becoming invalid under such division, the emergency rule will continue in effect without interruption for another ninety-day period.

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

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

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

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

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

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

(C) All rules filed pursuant to divisions (B)(1)(a) and (2) of this section shall be recorded by the secretary of state and the director under the title of the agency adopting the rule and shall be numbered according to the numbering system devised by the director. The secretary of state and the director shall preserve the rules 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.

(D) At least sixty-five days before a board, commission, department, division, or bureau of the government of the state files a rule under division (B)(1) of this section, it shall file the full text of the proposed rule in electronic form with the joint committee on agency rule review, and the proposed rule is subject to legislative review and invalidation under division (I) of section 119.03 of the Revised Code. If a state board, commission, department, division, or bureau makes a substantive revision in a proposed rule after it is filed with the joint committee, the state board, commission, department, division, or bureau shall promptly file the full text of the proposed rule in its revised form in electronic form with the joint committee. The latest version of a proposed rule as filed with the joint committee

supersedes each earlier version of the text of the same proposed rule. Except as provided in division (F) of this section, a state board, commission, department, division, or bureau shall also file the rule summary and fiscal analysis prepared under section ~~121.24~~ or 127.18 of the Revised Code, ~~or both~~, in electronic form along with a proposed rule, and along with a proposed rule in revised form, that is filed under this division. If a proposed rule has an adverse impact on businesses, the state board, commission, department, division, or bureau also shall file the business impact analysis, any recommendations received from the common sense initiative office, and the associated memorandum of response, if any, in electronic form along with the proposed rule, or the proposed rule in revised form, that is filed under this division.

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

This division does not apply to any of the following:

- (1) A proposed rule of an emergency nature;
- (2) A rule proposed under section 1121.05, 1121.06, 1155.18, 1163.22, 1349.33, 1707.201, 1733.412, 4123.29, 4123.34, 4123.341, 4123.342, 4123.40, 4123.411, 4123.44, or 4123.442 of the Revised Code;
- (3) A rule proposed by an agency other than a board, commission, department, division, or bureau of the government of the state;
- (4) A proposed internal management rule of a board, commission, department, division, or bureau of the government of the state;
- (5) Any proposed rule that must be adopted verbatim by an agency pursuant to federal law or rule, to become effective within sixty days of adoption, in order to continue the operation of a federally reimbursed program in this state, so long as the proposed rule contains both of the following:
  - (a) A statement that it is proposed for the purpose of complying with a federal law or rule;
  - (b) A citation to the federal law or rule that requires verbatim compliance.
- (6) An initial rule proposed by the director of health to impose safety standards and quality-of-care standards with respect to a health service specified in section 3702.11 of the Revised Code, or an initial rule proposed by the director to impose quality standards on a facility listed in division (A)(4) of section 3702.30 of the Revised Code, if section 3702.12 of the Revised Code requires that the rule be adopted under this section;
- (7) A rule of the state lottery commission pertaining to instant game rules.

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

(E) Whenever a state board, commission, department, division, or bureau files a proposed rule or a proposed rule in revised form under division (D) of this section, it shall also file the full text of the same proposed rule or proposed rule in revised form in electronic form with the secretary of state and the director of the legislative service commission. Except as provided in division (F) of this section, a state board, commission, department, division, or bureau shall file the rule summary and fiscal analysis prepared under section ~~121.24~~ or 127.18 of the Revised Code, ~~or both,~~ in electronic form along with a proposed rule or proposed rule in revised form that is filed with the secretary of state or the director of the legislative service commission.

(F) Except as otherwise provided in this division, the auditor of state or the auditor of state's designee is not required to file a rule summary and fiscal analysis along with a proposed rule, or proposed rule in revised form, that the auditor of state proposes under section 117.12, 117.19, 117.38, or 117.43 of the Revised Code and files under division (D) or (E) of this section. ~~If, however, the auditor of state or the designee prepares a rule summary and fiscal analysis of the original version of such a proposed rule for purposes of complying with section 121.24 of the Revised Code, the auditor of state or designee shall file the rule summary and fiscal analysis in electronic form along with the original version of the proposed rule filed under division (D) or (E) of this section.~~

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

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

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

(b) Mail a copy of the proposed rule to any person or organization that requests a copy within five days after receipt of the request;

(c) Consult with appropriate state and local government agencies, or with persons representative of their interests, including statewide

organizations of local government officials, and consult with accounting professionals and other interested persons;

(d) Conduct, on the date and at the time and place designated in the notice, a public hearing at which any person affected by the proposed rule, including statewide organizations of local government officials, may appear and be heard in person, by attorney, or both, and may present the person's or organization's position or contentions orally or in writing.

(2) Except as otherwise provided in division (A)(2) of this section, comply with divisions (B) to (E) of section 111.15 of the Revised Code. The auditor of state is not required to file a rule summary and fiscal analysis along with any copy of a proposed rule, or proposed rule in revised form, that is filed with the joint committee on agency rule review, the secretary of state, or the director of the legislative service commission under division (D) or (E) of section 111.15 of the Revised Code; ~~however, if the auditor of state or the auditor of state's designee prepares a rule summary and fiscal analysis of the original version of a proposed rule for purposes of complying with section 121.24 of the Revised Code, the auditor of state or designee shall file a copy of the rule summary and fiscal analysis in electronic form along with the original version of the proposed rule filed under division (D) or (E) of section 111.15 of the Revised Code.~~

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

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

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

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

(A) Reasonable public notice shall be given in the register of Ohio at least thirty days prior to the date set for a hearing, in the form the agency determines. The agency shall file copies of the public notice under division (B) of this section. (The agency gives public notice in the register of Ohio

when the public notice is published in the register under that division.)

The public notice shall include:

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

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

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

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

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

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

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

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

The proposed rule, amendment, or rescission shall be available for at least thirty days prior to the date of the hearing at the office of the agency in printed or other legible form without charge to any person affected by the

proposal. Failure to furnish such text to any person requesting it shall not invalidate any action of the agency in connection therewith.

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

The agency shall file the rule summary and fiscal analysis prepared under section ~~121.24~~ or 127.18 of the Revised Code, ~~or both~~, in electronic form along with a proposed rule, amendment, or rescission or proposed rule, amendment, or rescission in revised form that is filed with the secretary of state or the director of the legislative service commission.

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

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

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

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

(D) After complying with divisions (A), (B), (C), and (H) of this section, and when the time for legislative review and invalidation under

division (I) of this section has expired, the agency may issue an order adopting the proposed rule or the proposed amendment or rescission of the rule, consistent with the synopsis or general statement included in the public notice. At that time the agency shall designate the effective date of the rule, amendment, or rescission, which shall not be earlier than the tenth day after the rule, amendment, or rescission has been filed in its final form as provided in section 119.04 of the Revised Code.

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

(F) If the governor, upon the request of an agency, determines that an emergency requires the immediate adoption, amendment, or rescission of a rule, the governor shall issue an order, the text of which shall be filed in electronic form with the agency, the secretary of state, the director of the legislative service commission, and the joint committee on agency rule review, that the procedure prescribed by this section with respect to the adoption, amendment, or rescission of a specified rule is suspended. The agency may then adopt immediately the emergency rule, amendment, or rescission and it becomes effective on the date the rule, amendment, or rescission, in final form and in compliance with division (A)(2) of section 119.04 of the Revised Code, ~~are~~ is filed in electronic form with the secretary of state, the director of the legislative service commission, and the joint committee on agency rule review. If all filings are not completed on the same day, the emergency rule, amendment, or rescission shall be effective on the day on which the latest filing is completed. The director shall publish the full text of the emergency rule, amendment, or rescission in the register of Ohio.

The emergency rule, amendment, or rescission shall become invalid at the end of the ninetieth day it is in effect. Prior to that date the agency may adopt the emergency rule, amendment, or rescission as a nonemergency rule, amendment, or rescission by complying with the procedure prescribed by this section for the adoption, amendment, and rescission of nonemergency rules. The agency shall not use the procedure of this division to readopt the emergency rule, amendment, or rescission so that, upon the emergency rule, amendment, or rescission becoming invalid under this division, the emergency rule, amendment, or rescission will continue in effect without interruption for another ninety-day period, except when division (I)(2)(a) of this section prevents the agency from adopting the emergency rule, amendment, or rescission as a nonemergency rule,

amendment, or rescission within the ninety-day period.

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

(G) Rules adopted by an authority within the department of job and family services for the administration or enforcement of Chapter 4141. of the Revised Code or of the department of taxation shall be effective without a hearing as provided by this section if the statutes pertaining to such agency specifically give a right of appeal to the board of tax appeals or to a higher authority within the agency or to a court, and also give the appellant a right to a hearing on such appeal. This division does not apply to the adoption of any rule, amendment, or rescission by the tax commissioner under division (C)(1) or (2) of section 5117.02 of the Revised Code, or deny the right to file an action for declaratory judgment as provided in Chapter 2721. of the Revised Code from the decision of the board of tax appeals or of the higher authority within such agency.

(H) When any agency files a proposed rule, amendment, or rescission under division (B) of this section, it shall also file in electronic form with the joint committee on agency rule review the full text of the proposed rule, amendment, or rule to be rescinded in the same form and the public notice required under division (A) of this section. (If in compliance with this division an agency files more than one proposed rule, amendment, or rescission at the same time, and has given a public notice under division (A) of this section that applies to more than one of the proposed rules, amendments, or rescissions, the agency shall file only one notice with the joint committee for all of the proposed rules, amendments, or rescissions to which the notice applies.) If the agency makes a substantive revision in a proposed rule, amendment, or rescission after it is filed with the joint committee, the agency shall promptly file the full text of the proposed rule, amendment, or rescission in its revised form in electronic form with the joint committee. The latest version of a proposed rule, amendment, or rescission as filed with the joint committee supersedes each earlier version of the text of the same proposed rule, amendment, or rescission. An agency shall file the rule summary and fiscal analysis prepared under section ~~121.24~~ or 127.18 of the Revised Code, ~~or both~~, in electronic form along with a proposed rule, amendment, or rescission, and along with a proposed rule, amendment, or rescission in revised form, that is filed under this division. If a proposed rule, amendment, or rescission has an adverse impact on businesses, the agency also shall file the business impact analysis, any recommendations received from the common sense initiative office, and the

agency's memorandum of response, if any, in electronic form along with the proposed rule, amendment, or rescission, or along with the proposed rule, amendment, or rescission in revised form, that is filed under this division.

This division does not apply to:

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

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

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

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

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

(a) That the rule-making agency has exceeded the scope of its statutory authority in proposing the rule, amendment, or rescission;

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

(c) That the proposed rule, amendment, or rescission conflicts with the legislative intent in enacting the statute under which the rule-making agency proposed the rule, amendment, or rescission;

(d) That the rule-making agency has failed to prepare a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment, or rescission as required by section ~~121.24~~ or 127.18 of the Revised Code; ~~or both, or that;~~

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

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

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

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

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

the invalid proposed rule, amendment, rescission, or part thereof from the file of proposed rules. The rule-making agency shall not proceed to adopt in accordance with division (D) of this section, or to file in accordance with division (B)(1) of section 111.15 of the Revised Code, any version of a proposed rule, amendment, rescission, or part thereof that has been invalidated by concurrent resolution.

Unless the house of representatives and senate adopt a concurrent resolution invalidating a proposed rule, amendment, rescission, or part thereof within the time specified by this division, the rule-making agency may proceed to adopt in accordance with division (D) of this section, or to file in accordance with division (B)(1) of section 111.15 of the Revised Code, the latest version of the proposed rule, amendment, or rescission as filed with the joint committee. If by concurrent resolution certain of the rules, amendments, rescissions, or parts thereof are specifically invalidated, the rule-making agency may proceed to adopt, in accordance with division (D) of this section, or to file in accordance with division (B)(1) of section 111.15 of the Revised Code, the latest version of the proposed rules, amendments, rescissions, or parts thereof as filed with the joint committee that are not specifically invalidated. The rule-making agency may not revise or amend any proposed rule, amendment, rescission, or part thereof that has not been invalidated except as provided in this chapter or in section 111.15 of the Revised Code.

(2)(a) A proposed rule, amendment, or rescission that is filed with the joint committee under division (H) of this section or division (D) of section 111.15 of the Revised Code shall be carried over for legislative review to the next succeeding regular session of the general assembly if the original or any revised version of the proposed rule, amendment, or rescission is filed with the joint committee on or after the first day of December of any year.

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

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

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

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

An order issued under division (I)(4) of this section shall prevent the rule-making agency from instituting or continuing proceedings to adopt any version of the proposed rule, amendment, rescission, or part thereof until the rule-making agency revises the rule summary and fiscal analysis and refiles it in electronic form with the joint committee along with the proposed rule,

amendment, rescission, or part thereof. If the joint committee finds the rule summary and fiscal analysis to be complete and accurate, the joint committee shall issue a new order noting that the rule-making agency has revised and refiled a complete and accurate rule summary and fiscal analysis. The joint committee shall send in electronic form to the rule-making agency, the secretary of state, and the director of the legislative service commission a certified text of this new order. The secretary of state and the director of the legislative service commission shall each link this order to the proposed rule, amendment, rescission, or part thereof. The rule-making agency may then proceed to adopt in accordance with division (D) of this section, or to file in accordance with division (B)(1) of section 111.15 of the Revised Code, the proposed rule, amendment, rescission, or part thereof that was subject to the finding and order under division (I)(4) of this section. If the joint committee determines that the revised rule summary and fiscal analysis is still inaccurate or incomplete, the joint committee shall recommend the adoption of a concurrent resolution in accordance with division (I)(1) of this section.

Sec. 119.032. (A) As used in this section:

(1) "Agency" includes both an agency as defined in division (A)(2) of section 111.15 and an agency as defined in division (A) of section 119.01 of the Revised Code.

(2) "Review date" means the review date assigned to a rule by an agency under division (B) or (E)(2) of this section or under section 111.15, 119.04, or 4141.14 of the Revised Code or a review date assigned to a rule by the joint committee on agency rule review under division (B) of this section.

(3)(a) "Rule" means only a rule whose adoption, amendment, or rescission is subject to review under division (D) of section 111.15 or division (H) of section 119.03 of the Revised Code.

(b) "Rule" does not include a rule adopted, amended, or rescinded by the department of taxation under section 5703.14 of the Revised Code, a rule of a state college or university, community college district, technical college district, or state community college, or a rule that is consistent with and equivalent to the form required by a federal law and that does not exceed the minimum scope and intent of that federal law.

(B) Not later than March 25, 1997, each agency shall assign a review date to each of its rules that is currently in effect and shall notify the joint committee on agency rule review of the review date for each such rule. The agency shall assign review dates to its rules so that approximately one-fifth of the rules are scheduled for review during each calendar year of the

five-year period that begins March 25, 1997, except that an agency, with the joint committee's approval, may set a review schedule for the agency's rules in which there is no requirement that approximately one-fifth of the agency's rules be assigned a review date during each calendar year of the five-year period but in which all of the agency's rules are assigned a review date during that five-year period. An agency may change the review dates it has assigned to specific rules so long as the agency complies with the five-year time deadline specified in this division.

Upon the request of the agency that adopted the rule, the joint committee on agency rule review may extend a review date of a rule to a date that is not later than one hundred eighty days after the original review date assigned to the rule by the agency under this division, division (E)(2) of this section, or section 111.15, 119.04, or 4141.14 of the Revised Code. The joint committee may further extend a review date that has been extended under this paragraph if appropriate under the circumstances.

(C) Prior to the review date of a rule, the agency that adopted the rule shall review the rule to determine all of the following:

(1) Whether the rule should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted;

(2) Whether the rule needs amendment or rescission to give more flexibility at the local level;

(3) Whether the rule needs amendment or rescission to eliminate unnecessary paperwork, or whether the rule incorporates a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by section 121.74 of the Revised Code and whether the incorporation by reference meets the standards stated in sections 121.72, 121.75, and 121.76 of the Revised Code;

(4) Whether the rule duplicates, overlaps with, or conflicts with other rules;

(5) Whether the rule has an adverse impact on businesses, as determined under section 107.52 of the Revised Code, and whether any such adverse impact has been eliminated or reduced as required under section 121.82 of the Revised Code.

(D) In making the review required under division (C) of this section, the agency shall consider the continued need for the rule, the nature of any complaints or comments received concerning the rule, and any relevant factors that have changed in the subject matter area affected by the rule.

(E)(1) On or before the designated review date of a rule, the agency that

adopted the rule shall proceed under division (E)(2) or (5) of this section to indicate that the agency has reviewed the rule.

(2) If the agency has determined that the rule does not need to be amended or rescinded, the agency shall file all the following, in electronic form, with the joint committee on agency rule review, the secretary of state, and the director of the legislative service commission: a copy of the rule, a statement of the agency's determination, and an accurate rule summary and fiscal analysis for the rule as described in section 127.18 of the Revised Code. The agency shall assign a new review date to the rule, which shall not be later than five years after the rule's immediately preceding review date. After the joint committee has reviewed such a rule for the first time, including any rule that was in effect on September 26, 1996, the agency in its subsequent reviews of the rule may provide the same fiscal analysis it provided to the joint committee during its immediately preceding review of the rule unless any of the conditions described in division (B)(4), (5), (6), (8), (9), or (10) of section 127.18 of the Revised Code, as they relate to the rule, have appreciably changed since the joint committee's immediately preceding review of the rule. If any of these conditions, as they relate to the rule, have appreciably changed, the agency shall provide the joint committee with an updated fiscal analysis for the rule. If no review date is assigned to a rule, or if a review date assigned to a rule exceeds the five-year maximum, the review date for the rule is five years after its immediately preceding review date. The joint committee shall give public notice in the register of Ohio of the agency's determination after receiving a notice from the agency under division (E)(2) of this section. The joint committee shall transmit a copy of the notice in electronic form to the director of the legislative service commission. The director shall publish the notice in the register of Ohio for four consecutive weeks after its receipt.

(3) During the ninety-day period following the date the joint committee receives a notice under division (E)(2) of this section but after the four-week period described in division (E)(2) of this section has ended, the joint committee, by a two-thirds vote of the members present, may recommend the adoption of a concurrent resolution invalidating the rule if the joint committee determines that ~~either any~~ either any of the following ~~applies~~ apply:

(a) The agency improperly applied the criteria described in divisions (C) and (D) of this section in reviewing the rule and in recommending its continuance without amendment or rescission.

(b) The agency failed to file proper notice with the joint committee regarding the rule, or if the rule incorporates a text or other material by reference, the agency failed to file, or to deposit or display, the text or other

material incorporated by reference as required by section 121.73 or 121.74 of the Revised Code or the incorporation by reference fails to meet the standards stated in section 121.72, 121.75, or 121.76 of the Revised Code.

(c) The rule has an adverse impact on businesses, as determined under section 107.52 of the Revised Code, and the agency has not eliminated or reduced that impact as required under section 121.82 of the Revised Code.

(4) If the joint committee does not take the action described in division (E)(3) of this section regarding a rule during the ninety-day period after the date the joint committee receives a notice under division (E)(2) of this section regarding that rule, the rule shall continue in effect without amendment and shall be next reviewed by the joint committee by the date designated by the agency in the notice provided to the joint committee under division (E)(2) of this section.

(5) If the agency has determined that a rule reviewed under division (C) of this section needs to be amended or rescinded, the agency, on or before the rule's review date, shall file the rule as amended or rescinded in accordance with section 111.15, 119.03, or 4141.14 of the Revised Code, as applicable.

(6) Each agency shall provide the joint committee with a copy of the rules that it has determined are rules described in division (A)(3)(b) of this section. At a time the joint committee designates, each agency shall appear before the joint committee and explain why it has determined that such rules are rules described in division (A)(3)(b) of this section. The joint committee, by a two-thirds vote of the members present, may determine that any of such rules are rules described in division (A)(3)(a) of this section. After the joint committee has made such a determination relating to a rule, the agency shall thereafter treat the rule as a rule described in division (A)(3)(a) of this section.

(F) If an agency fails to provide the notice to the joint committee required under division (E)(2) of this section regarding a rule or otherwise fails by the rule's review date to take any action regarding the rule required by this section, the joint committee, by a majority vote of the members present, may recommend the adoption of a concurrent resolution invalidating the rule. The joint committee shall not recommend the adoption of such a resolution until it has afforded the agency the opportunity to appear before the joint committee to show cause why the joint committee should not recommend the adoption of such a resolution regarding that rule.

(G) If the joint committee recommends adoption of a concurrent resolution invalidating a rule under division (E)(3) or (F) of this section, the adoption of the concurrent resolution shall be in the manner described in

division (I) of section 119.03 of the Revised Code.

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.

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

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

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

(C) Until such time as the statement required under division (B) of this section is submitted to the committee to which proposed legislation dealing

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

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

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

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

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

(4) Include with the proposed rule or amendment and the rule summary and fiscal analysis required under ~~sections 121.24 and section~~ 127.18 of the Revised Code, when they are filed with the joint committee on agency rule review in accordance with division (D) of section 111.15 or division (H) of section 119.03 of the Revised Code, one of the following in electronic form, as applicable:

(a) The information identified under division (D)(3) of this section and, if the proposed rule or amendment is more stringent than its federal counterpart, as identified in that division, the documentation considered under division (D)(2) of this section;

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

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

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

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

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

(E) The statement required under division (B) and the information or documentation required under division (D) of this section need not be prepared or submitted with regard to a proposed statute or rule, or an amendment to a rule, if the statute, rule, or amendment is procedural or budgetary in nature, or governs the organization or operation of a state agency, and will not affect the substantive rights or obligations of any person other than a state agency or an employee or contractor of a state agency.

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

(G) This section applies only to the following:

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

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

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

(A) "Agency" means a state agency that is required to file proposed rules for legislative review under division (D) of section 111.15 or division (H) of section 119.03 of the Revised Code. "Agency" does not include the offices of governor, lieutenant governor, auditor of state, secretary of state,

treasurer of state, or attorney general.

(B) "Draft rule" means any newly proposed rule and any proposed amendment, adoption, or rescission of a rule prior to the filing of that rule for legislative review under division (D) of section 111.15 or division (H) of section 119.03 of the Revised Code and includes a proposed amendment, adoption, or rescission of a rule in both its original and any revised form. "Draft rule" does not include an emergency rule adopted under division (B)(2) of section 111.15 or division (F) of section 119.03 of the Revised Code, but does include a rule that is proposed to replace an emergency rule that expires under those divisions.

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

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

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

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

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

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

(E) Prepare a memorandum of response identifying features suggested

by any recommendations that were incorporated into the draft rule and features suggested by any recommendations that were not incorporated into the draft rule, explaining how the features that were incorporated into the draft rule eliminate or reduce any adverse impact the draft rule might have on businesses, and explaining why the features that were not incorporated into the draft rule were not incorporated.

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

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

(B) The joint committee on agency rule review does not have jurisdiction to review, and shall reject, the filing of a proposed rule if, at any time while the proposed rule is in its possession, it discovers that the proposed rule might have an adverse impact on businesses and the agency has not included with the filing a business impact analysis or has included a business impact analysis that is inadequately prepared. The joint committee electronically shall return a filing that is rejected to the agency. Such a rejection does not preclude the agency from refiling the proposed rule after complying with section 121.82 of the Revised Code. When a filing is rejected under this division, it is as if the filing had not been made.

Sec. 121.91. (A) Each state agency shall develop, and as it becomes necessary or advisable may improve, customer service standards for each employee of the agency whose duties include a significant level of contact with the public. The agency shall base the standards on the job descriptions of the positions that the employees hold in the agency. An agency is not required to adopt the standards by rule.

Each state agency shall reduce the standards to writing, and the standards shall be incorporated into employee policy manuals, job descriptions, and employee performance evaluations.

(B) The state agency, and its officers and employees, shall comply with the customer service performance standards that have been developed under division (A) of this section. A state agency's compliance with the standards shall be evaluated, by the director of budget and management and the committees of the senate and house of representatives having jurisdiction

over the state operating budget, as part of the consideration of the state agency's biennial budget. (If the evaluation is of the office of budget and management, evaluation by the committees is sufficient.) An employee's compliance with the standards shall be evaluated as part of the employee's periodic performance reviews. A state agency's and employee's compliance with the standards may be evaluated as part of any performance audit of the state agency.

Sec. 122.08. (A) There is hereby created within the department of development an office to be known as the office of small business. The office shall be under the supervision of a manager appointed by the director of development.

(B) The office shall do all of the following:

(1) Act as liaison between the small business community and state governmental agencies;

(2) Furnish information and technical assistance to persons and small businesses concerning the establishment and maintenance of a small business, and concerning state laws and rules relevant to the operation of a small business. In conjunction with these duties, the office shall keep a record of all proposed and currently effective state agency rules affecting ~~individuals, small businesses, or small organizations, as defined in section 121.24 of the Revised Code,~~ and may testify before the joint committee on agency rule review concerning any proposed rule affecting ~~individuals, small businesses, or small organizations.~~

(3) Prepare and publish the small business register under section 122.081 of the Revised Code;

(4) Receive complaints from small businesses concerning governmental activity, compile and analyze those complaints, and periodically make recommendations to the governor and the general assembly on changes in state laws or agency rules needed to eliminate burdensome and unproductive governmental regulation to improve the economic climate within which small businesses operate;

(5) Receive complaints or questions from small businesses and direct those businesses to the appropriate governmental agency. If, within a reasonable period of time, a complaint is not satisfactorily resolved or a question is not satisfactorily answered, the office shall, on behalf of the small business, make every effort to secure a satisfactory result. For this purpose, the office may consult with any state governmental agency and may make any suggestion or request that seems appropriate.

(6) Utilize, to the maximum extent possible, the printed and electronic media to disseminate information of current concern and interest to the

small business community and to make known to small businesses the services available through the office. The office shall publish such books, pamphlets, and other printed materials, and shall participate in such trade association meetings, conventions, fairs, and other meetings involving the small business community, as the manager considers appropriate.

(7) Prepare for inclusion in the department of development's annual report to the governor and general assembly, a description of the activities of the office and a report of the number of rules affecting ~~individuals~~, small businesses, ~~and small organizations~~ that were ~~filed with~~ recorded by the office ~~under division (B)(2) of section 121.24 of the Revised Code~~, during the preceding calendar year;

(8) Operate the Ohio first-stop business connection to assist individuals in identifying and preparing applications for business licenses, permits, and certificates and to serve as the central public distributor for all forms, applications, and other information related to business licensing. Each state agency, board, and commission shall cooperate in providing assistance, information, and materials to enable the connection to perform its duties under this division.

(C) The office may, upon the request of a state agency, assist the agency with the preparation of any rule that will affect ~~individuals~~, small businesses, ~~or small organizations~~.

(D) The director of development shall assign employees and furnish equipment and supplies to the office as the director considers necessary for the proper performance of the duties assigned to the office.

Sec. 122.081. (A) The office of small business in the department of development shall prepare and publish a "small business register" or contract with any person as provided in this section to prepare and publish the register. The small business register shall contain the following information regarding each proposed rule ~~filed with~~ recorded by the office of small business ~~under division (B)(2) of section 121.24 of the Revised Code~~:

- (1) The title and administrative code rule number of the proposed rule;
- (2) A brief summary of the proposed rule;
- (3) The date on which the proposed rule was ~~filed with~~ recorded by the office of small business ~~under division (B)(2) of section 121.24 of the Revised Code~~; and
- (4) The name, address, and telephone number of ~~the an~~ individual or office within the agency that proposed the rule who ~~has been designated as being responsible for complying with division (E) of section 121.24 of the Revised Code with regard to~~ can provide information about the proposed

rule.

(B) The small business register shall be published on a weekly basis. The information required under division (A) of this section shall be published in the register no later than two weeks after the proposed rule to which the information relates is ~~filed with~~ recorded by the office of small business ~~under division (B)(2) of section 121.24 of the Revised Code.~~ The office of small business shall furnish the small business register, on a single copy or subscription basis, to any person who requests it and pays a single copy price or subscription rate fixed by the office. The office shall furnish the ~~chairmen~~ chairpersons of the standing committees of the senate and house of representatives having jurisdiction over ~~individuals, small businesses, and small organizations~~ with free subscriptions to the small business register.

(C) Upon the request of the office of small business, the director of administrative services shall, in accordance with the competitive selection procedure of Chapter 125. of the Revised Code, let a contract for the compilation, printing, and distribution of the small business register.

(D) The office of small business shall adopt, and may amend or rescind, in accordance with Chapter 119. of the Revised Code, such rules as are necessary to enable it to properly carry out this section.

Sec. 122.94. The director of ~~the department of~~ development shall:

(A) Promulgate rules in accordance with Chapter 119. of the Revised Code for the conduct of the minority business development division's business and for carrying out the purposes of sections 122.92 to 122.94 of the Revised Code;

(B) Prepare an annual report to the governor and the general assembly on or before the first day of February of its activities for the preceding calendar year. ~~In addition to the submissions required by section 101.68 of the Revised Code, the director shall submit copies of the annual report to the chairmen of the standing committees of the senate and house of representatives having jurisdiction over individuals, small businesses, and small organizations, as those terms are defined in section 121.24 of the Revised Code.~~

Sec. 1710.02. (A) A special improvement district may be created within the boundaries of any one municipal corporation, any one township, or any combination of contiguous municipal corporations and townships for the purpose of developing and implementing plans for public improvements and public services that benefit the district. A district may be created by petition of the owners of real property within the proposed district, or by an existing qualified nonprofit corporation. If the district is created by an existing

qualified nonprofit corporation, the purposes for which the district is created may be supplemental to the other purposes for which the corporation is organized. All territory in a special improvement district shall be contiguous; except that the territory in a special improvement district may be noncontiguous if at least one special energy improvement project is designated for each parcel of real property included within the special improvement district. Additional territory may be added to a special improvement district created under this chapter for the purpose of developing and implementing plans for special energy improvement projects if at least one special energy improvement project is designated for each parcel of real property included within such additional territory and the addition of territory is authorized by the initial plan proposed under division (F) of this section or a plan adopted by the board of directors of the special improvement district under section 1710.06 of the Revised Code.

The district shall be governed by the board of trustees of a nonprofit corporation. This board shall be known as the board of directors of the special improvement district. No special improvement district shall include any church property, or property of the federal or state government or a county, township, or municipal corporation, unless the church or the county, township, or municipal corporation specifically requests in writing that the property be included within the district, or unless the church is a member of the existing qualified nonprofit corporation creating the district at the time the district is created. More than one district may be created within a participating political subdivision, but no real property may be included within more than one district unless the owner of the property files a written consent with the clerk of the legislative authority, the township fiscal officer, or the village clerk, as appropriate. The area of each district shall be contiguous; except that the area of a special improvement district may be noncontiguous if all parcels of real property included within such area contain at least one special energy improvement thereon.

(B) Except as provided in division (C) of this section, a district created under this chapter is not a political subdivision. A district created under this chapter shall be considered a public agency under section 102.01 and a public authority under section 4115.03 of the Revised Code. Each member of the board of directors of a district, each member's designee or proxy, and each officer and employee of a district shall be considered a public official or employee under section 102.01 of the Revised Code and a public official and public servant under section 2921.42 of the Revised Code. Districts created under this chapter are not subject to ~~section 121.251~~ sections 121.81 to 121.83 of the Revised Code. Districts created under this chapter are

subject to sections 121.22 and 121.23 of the Revised Code.

(C) Each district created under this chapter shall be considered a political subdivision for purposes of section 4905.34 of the Revised Code.

Membership on the board of directors of the district shall not be considered as holding a public office. Directors and their designees shall be entitled to the immunities provided by Chapter 1702. and to the same immunity as an employee under division (A)(6) of section 2744.03 of the Revised Code, except that directors and their designees shall not be entitled to the indemnification provided in section 2744.07 of the Revised Code unless the director or designee is an employee or official of a participating political subdivision of the district and is acting within the scope of the director's or designee's employment or official responsibilities.

District officers and district members and directors and their designees or proxies shall not be required to file a statement with the Ohio ethics commission under section 102.02 of the Revised Code. All records of the district shall be treated as public records under section 149.43 of the Revised Code, except that records of organizations contracting with a district shall not be considered to be public records under section 149.43 or section 149.431 of the Revised Code solely by reason of any contract with a district.

(D) Except as otherwise provided in this section, the nonprofit corporation that governs a district shall be organized in the manner described in Chapter 1702. of the Revised Code. Except in the case of a district created by an existing qualified nonprofit corporation, the corporation's articles of incorporation are required to be approved, as provided in division (E) of this section, by resolution of the legislative authority of each participating political subdivision of the district. A copy of that resolution shall be filed along with the articles of incorporation in the secretary of state's office.

In addition to meeting the requirements for articles of incorporation set forth in Chapter 1702. of the Revised Code, the articles of incorporation for the nonprofit corporation governing a district formed under this chapter shall provide all the following:

(1) The name for the district, which shall include the name of each participating political subdivision of the district;

(2) A description of the territory within the district, which may be all or part of each participating political subdivision. The description shall be specific enough to enable real property owners to determine if their property is located within the district.

(3) A description of the procedure by which the articles of incorporation may be amended. The procedure shall include receiving approval of the

amendment, by resolution, from the legislative authority of each participating political subdivision and filing the approved amendment and resolution with the secretary of state.

(4) The reasons for creating the district, plus an explanation of how the district will be conducive to the public health, safety, peace, convenience, and welfare of the district.

(E) The articles of incorporation for a nonprofit corporation governing a district created under this chapter and amendments to them shall be submitted to the municipal executive, if any, and the legislative authority of each municipal corporation or township in which the proposed district is to be located. Except in the case of a district created by an existing qualified nonprofit corporation, the articles or amendments shall be accompanied by a petition signed either by the owners of at least sixty per cent of the front footage of all real property located in the proposed district that abuts upon any street, alley, public road, place, boulevard, parkway, park entrance, easement, or other existing public improvement within the proposed district, excluding church property or property owned by the state, county, township, municipal, or federal government, unless a church, county, township, or municipal corporation has specifically requested in writing that the property be included in the district, or by the owners of at least seventy-five per cent of the area of all real property located within the proposed district, excluding church property or property owned by the state, county, township, municipal, or federal government, unless a church, county, township, or municipal corporation has specifically requested in writing that the property be included in the district. Pursuant to Section 2o of Article VIII, Ohio Constitution, the petition required under this division may be for the purpose of developing and implementing plans for special energy improvement projects, and, in such case, is determined to be in furtherance of the purposes set forth in Section 2o of Article VIII, Ohio Constitution. If a special improvement district is being created under this chapter for the purpose of developing and implementing plans for special energy improvement projects, the petition required under this division shall be signed by one hundred per cent of the owners of the area of all real property located within the proposed special improvement district, at least one special energy improvement project shall be designated for each parcel of real property within the special improvement district, and the special improvement district may include any number of parcels of real property as determined by the legislative authority of each participating political subdivision in which the proposed special improvement district is to be located. For purposes of determining compliance with these requirements,

the area of the district, or the front footage and ownership of property, shall be as shown in the most current records available at the county recorder's office and the county engineer's office sixty days prior to the date on which the petition is filed.

Each municipal corporation or township with which the petition is filed has sixty days to approve or disapprove, by resolution, the petition, including the articles of incorporation. In the case of a district created by an existing qualified nonprofit corporation, each municipal corporation or township has sixty days to approve or disapprove the creation of the district after the corporation submits the articles of incorporation or amendments thereto. This chapter does not prohibit or restrict the rights of municipal corporations under Article XVIII of the Ohio Constitution or the right of the municipal legislative authority to impose reasonable conditions in a resolution of approval. The acquisition, installation, equipping, and improvement of a special energy improvement project under this chapter shall not supersede any local zoning, environmental, or similar law or regulation.

(F) Persons proposing creation and operation of the district may propose an initial plan for public services or public improvements that benefit all or any part of the district. Any initial plan shall be submitted as part of the petition proposing creation of the district or, in the case of a district created by an existing qualified nonprofit corporation, shall be submitted with the articles of incorporation or amendments thereto.

An initial plan may include provisions for the following:

(1) Creation and operation of the district and of the nonprofit corporation to govern the district under this chapter;

(2) Hiring employees and professional services;

(3) Contracting for insurance;

(4) Purchasing or leasing office space and office equipment;

(5) Other actions necessary initially to form, operate, or organize the district and the nonprofit corporation to govern the district;

(6) A plan for public improvements or public services that benefit all or part of the district, which plan shall comply with the requirements of division (A) of section 1710.06 of the Revised Code and may include, but is not limited to, any of the permissive provisions described in the fourth sentence of that division or listed in divisions (A)(1) to (7) of that section;

(7) If the special improvement district is being created under this chapter for the purpose of developing and implementing plans for special energy improvement projects, provision for the addition of territory to the special improvement district.

After the initial plan is approved by all municipal corporations and townships to which it is submitted for approval and the district is created, each participating subdivision shall levy a special assessment within its boundaries to pay for the costs of the initial plan. The levy shall be for no more than ten years from the date of the approval of the initial plan; except that if the proceeds of the levy are to be used to pay the costs of a special energy improvement project, the levy of a special assessment shall be for no more than thirty years from the date of approval of the initial plan. In the event that additional territory is added to a special improvement district, the special assessment to be levied with respect to such additional territory shall commence not earlier than the date such territory is added and shall be for no more than thirty years from such date. For purposes of levying an assessment for this initial plan, the services or improvements included in the initial plan shall be deemed a special benefit to property owners within the district.

(G) Each nonprofit corporation governing a district under this chapter may do the following:

(1) Exercise all powers of nonprofit corporations granted under Chapter 1702. of the Revised Code that do not conflict with this chapter;

(2) Develop, adopt, revise, implement, and repeal plans for public improvements and public services for all or any part of the district;

(3) Contract with any person, political subdivision as defined in section 2744.01 of the Revised Code, or state agency as defined in section 1.60 of the Revised Code to develop and implement plans for public improvements or public services within the district;

(4) Contract and pay for insurance for the district and for directors, officers, agents, contractors, employees, or members of the district for any consequences of the implementation of any plan adopted by the district or any actions of the district.

The board of directors of a special improvement district may, acting as agent and on behalf of a participating political subdivision, sell, transfer, lease, or convey any special energy improvement project owned by the participating political subdivision upon a determination by the legislative authority thereof that the project is not required to be owned exclusively by the participating political subdivision for its purposes, for uses determined by the legislative authority thereof as those that will promote the welfare of the people of such participating political subdivision; to improve the quality of life and the general and economic well-being of the people of the participating political subdivision; better ensure the public health, safety, and welfare; protect water and other natural resources; provide for the

conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or provide for safe and natural areas and resources. The legislative authority of each participating political subdivision shall specify the consideration for such sale, transfer, lease, or conveyance and any other terms thereof. Any determinations made by a legislative authority of a participating political subdivision under this division shall be conclusive.

Any sale, transfer, lease, or conveyance of a special energy improvement project by a participating political subdivision or the board of directors of the special improvement district may be made without advertising, receipt of bids, or other competitive bidding procedures applicable to the participating political subdivision or the special improvement district under Chapter 153. or 735. or section 1710.11 of the Revised Code or other representative provisions of the Revised Code.

SECTION 2. That existing sections 103.0511, 111.15, 117.20, 119.03, 119.032, 121.39, 122.08, 122.081, 122.94, and 1710.02 of the Revised Code are repealed.

SECTION 3. That section 121.24 of the Revised Code is repealed, effective January 1, 2012.

SECTION 4. The amendments by this act to sections 103.0511, 111.15, 117.20, 119.03, 119.032, 121.39, 122.08, 122.081, 122.94, and 1710.02 of the Revised Code take effect on January 1, 2012.

SECTION 5. The enactment by this act of sections 107.51 to 107.55 and 121.81 to 121.83 of the Revised Code first applies to a proposed rule, the original and any revised version of which is filed with the Joint Committee on Agency Rule Review on or after January 1, 2012, and to any rule that is scheduled for review under section 119.032 of the Revised Code on or after January 1, 2012. If rule-making proceedings are commenced and completed before January 1, 2012, sections 107.51 to 107.55 and 121.81 to 121.83 of the Revised Code do not apply to the proceedings, and section 121.24 of the Revised Code applies to the proceedings instead. If rule-making proceedings

are commenced but not completed before January 1, 2012, section 121.24 of the Revised Code applies to the original version of the proposed rule if it is filed with the Joint Committee before that date, and sections 107.51 to 107.55 and 121.81 to 121.83 of the Revised Code apply to any revised version of the proposed rule that is filed on or after that date.

Section 121.24 and sections 107.51 to 107.55 and 121.81 to 121.83 of the Revised Code do not apply to a proposed rule that is deemed the original version of a proposed rule by the carry-over provisions in division (I)(2) of section 119.03 of the Revised Code. Whether section 121.24 or sections 107.51 to 107.55 and 121.81 to 121.83 of the Revised Code applied to such a proposed rule before its carry over, the results of that application are carried over with the proposed rule.

SECTION 6. The Common Sense Initiative Office shall publish the first edition of the Business Impact Analysis Instrument in the Register of Ohio as soon as practicable after the effective date of this act but not later than October 3, 2011.

SECTION 7. Notwithstanding the delayed effective date applying to the amendments by this act to section 103.0511 of the Revised Code, the electronic rule-filing system shall be modified to connect the Common Sense Initiative Office into the system as soon as practicable after the effective date of this act but not later than August 15, 2011.

SECTION 8. The Governor shall set up the Common Sense Initiative Office and have it in operation as soon as practicable after the effective date of this act but not later than August 15, 2011.

SECTION 9. Not later than 180 days after the effective date of Am. Sub. H.B. 1 of the 129th General Assembly, the Governor, in consultation with the Director of Development, shall determine whether the Office of Small Business in the Department of Development shall be transferred to the Common Sense Initiative Office or, in the alternative, the best way to avoid duplication of services offered to small businesses by those offices.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Am. Sub. S. B. No. 2

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_