



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 3*

128th General Assembly
(As Reported by H. State Government)

Sens. Faber, Carey, Wagoner, Buehrer, Cafaro, Cates, Coughlin, Fedor, Gibbs, Gillmor, Goodman, Hughes, Niehaus, Patton, Schaffer, Wilson, Stewart

BILL SUMMARY

- Requires rule-making agencies, in the course of developing a rule for proposal and adoption on or after July 1, 2010, to evaluate the rule in light of certain considerations and to prepare a rule evaluation report and file it with the Director of Administrative Services.
- Requires the rule summary and fiscal analysis form (RSFA) that is filed with proposed rules to include a box an agency is to check to indicate that the proposed rule has been reviewed in light of the considerations.
- Specifies that an agency's failure to check the box on the RSFA is grounds for JCARR to (1) recommend invalidation of the proposed rule described in the RSFA or (2) order the agency to revise the RSFA.
- Requires the Director of Administrative Services, not later than July 1, 2010, to establish a centralized electronic system for regulatory notification ("e-notification system") that enables: (1) interested persons to register to receive notices from state agencies concerning development and drafting of rules, (2) the Director to publish on the system summaries of rule evaluation reports, and (3) interested persons to register to receive notices of meetings regarding agency regulatory processes that impede the operation of small businesses.
- Requires the Director to hold semiannual meetings at which interested persons may comment on state agency regulatory processes that are causing unreasonable impediments to the efficient and successful operation of small businesses, and to

* This analysis was prepared before the report of the House State Government Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

prepare a priority schedule for state agencies that identifies processes causing those impediments.

- Requires each director of certain state agencies to appoint an ombudsperson to serve as a problem-solving liaison between the state agency and those who are affected by its rules and regulatory processes when normal state agency processes do not produce a satisfactory result.
- Renames the Office of Small Business in the Department of Development and its office manager the Entrepreneurship and Small Business Division and the Small Business Advocate, respectively, and expands their duties.
- Requires each state department, not later than January 1, 2011, to adopt customer service principles identifying the best practices to be used to provide improved customer service.
- Requires each state department to develop a customer service training program that emphasizes those principles and that employees designated by the department can complete.
- Requires employees who participate in a training program to sign a written statement acknowledging that the employee understands and will follow the department's customer service principles.
- Creates the nine-member Ohio Small Business Panel to meet semiannually to discuss issues relevant to small businesses.
- Requires the Director of Environmental Protection to establish a program that provides environmental regulatory compliance assistance, educational materials regarding environmental rule compliance, and compliance training to small businesses, with confidentiality requirements and no-enforcement provisions applying to information obtained under the program.
- Encourages a rule-making agency, when completing a rule summary and fiscal analysis, to identify and estimate the number of businesses subject to a proposed rule.

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CONTENT AND OPERATION

Common Sense Regulation Act

(R.C. 121.81 and 121.811 to 121.815)

Rule evaluation and report

(R.C. 121.81, 121.811, and 121.812(A) and (B))

The bill creates the Common Sense Regulation Act, which requires a state agency to evaluate a rule under the bill's criteria before it is filed with the Joint Committee on Agency Rule Review (JCARR), and to prepare a rule evaluation report and file it with the Director of Administrative Services.

On and after July 1, 2010, in the course of developing a rule¹ for proposal and adoption, and in any event before proposing the rule by filing it under the Administrative Procedure Act (R.C. Chapter 119.) or the abbreviated rule-making procedure (R.C. 111.15), a state agency² must evaluate the rule in light of each of the following considerations, and prepare a report of its evaluation:

(1) Whether the rule is necessary to give effect to the statute that underlies the rule;

(2) Whether the rule unnecessarily duplicates a federal regulation or the rules of the state agency or of another state agency;

¹ The rule evaluation process established by the bill applies to the adoption of a new rule or the amendment or rescission of an existing rule, and to a rule that replaces an emergency rule upon the emergency rule's expiration.

² A state agency to which the bill's rule evaluation process applies is a discrete unit that is organized as a part of, and that carries out one or more functions of, state government and that is authorized or required by statute to adopt rules. Elected state officers or their offices, the General Assembly or any legislative agency, and the courts or any judicial agency do not have to perform rule evaluation under the bill.

(3) Whether the state agency has notified all interested persons who have registered through the centralized electronic system for regulatory notification (hereinafter the "e-notification system") (see "**E-notification system**," below) to receive notice that the agency is developing and drafting the rule for proposal and adoption, and whether the state agency has afforded those persons an opportunity to comment to the state agency concerning the substance and drafting of the rule;

(4) Whether the rule is drafted so that its desired outcome will be achieved, and whether the desired outcome of the rule is based on the best information, including scientific and technical data, that reasonably can be obtained;

(5) Whether the rule will be understandable to the persons to whom the rule is addressed;

(6) Whether the rule can be applied consistently by the state agency to the persons who will be affected by the rule;

(7) Whether, when achieving its underlying regulatory objectives, the rule is a reasonable balance between its underlying regulatory objectives and the regulatory burden it imposes;

(8) Whether it would be advisable for the rule to expire on a specific future date.

The bill requires the Director of Administrative Services to prescribe the form of the rule evaluation report, designing the form so that it will elicit from a state agency when the form is completed whether the state agency has evaluated a rule in light of all eight of the foregoing considerations. The form also must require the state agency to explain the following in particular:

(1) If the rule is duplicative, why the duplication is necessary;

(2) If the state agency has not notified all interested persons who have registered through the e-notification system to receive notice that the agency is developing and drafting the rule for proposal and adoption, why this is the case; and

(3) If the rule, when achieving its regulatory objectives, is not a reasonable balance between its underlying regulatory objectives and the regulatory burden it imposes, why this is the case.

If an existing rule is reviewed under the provisions of current law that requires an agency to review each of its rules once every five years, but the rule is not changed, the agency may include in the report the reason why the rule was left unchanged.

Certification and filing of the rule evaluation report; grounds for invalidation of the rule

(R.C. 121.812(C) and (D) and 127.18)

The bill requires the head of the state agency or the state agency's chief legal officer to review a rule and the rule evaluation report for clarity to ensure the state agency has made a good faith effort to evaluate the rule in light of the eight considerations listed above. The rule evaluation report must indicate whether the agency head or chief legal officer has completed this review.

The state agency then must transmit a copy of its report electronically to the Director of Administrative Services or the Director's designee, who must publish a summary of the report on the web site of the e-notification system.

Continuing law requires that a rule-making agency prepare a rule summary and fiscal analysis (RSFA) of each proposed rule it files with JCARR. The bill specifies that the RSFA must include a box the rule-making agency can check to indicate that it has evaluated the rule in accordance with the bill, and that its rule evaluation report was reviewed by the head of the state agency or the state agency's chief legal officer. Failure to evaluate the rule and to check the box constitutes only failure to prepare a complete and accurate RSFA of the rule. Under continuing law, such a failure is one reason, among others, for JCARR to (1) recommend that the House of Representatives and Senate adopt a concurrent resolution invalidating the proposed rule or (2) order the rule-making agency to revise the RSFA (R.C. 119.03(I)(1)(d), not in the bill). The apparent intent is that, if JCARR does not recommend invalidation, the rule-making agency, in effect, is to be given a second opportunity to comply with the bill.

E-notification system

(R.C. 103.051 and 121.813)

The bill requires the Director of Administrative Services, not later than July 1, 2010, to establish, and thereafter to maintain and improve, a centralized electronic system for regulatory notification ("e-notification system") that enables (1) interested persons to register to receive notices and other information from a state agency concerning a rule that the state agency is developing and drafting, (2) the Director to publish on the system summaries of rule evaluation reports the Director receives, and (3) interested persons to register to receive notices of the semiannual meetings regarding agency regulatory processes that impede the operation of small businesses, which are explained immediately below. The Director must design the e-notification system so that it enables interested persons to comment electronically on agency regulatory processes.

The bill provides that the e-notification system is complementary to the *Register of Ohio*. The Director of the Legislative Service Commission and the Director of Administrative Services are required to consult with each other and link the e-notification system and the *Register of Ohio*.

Meetings regarding regulatory impediments to the operation of small businesses

(R.C. 121.81(B) and 121.814)

Under the bill, the Director of Administrative Services or the Director's designee must convene semiannual meetings, at convenient times and locations, at which interested persons may comment on agency regulatory processes that are causing unreasonable impediments to the efficient and successful operation of small businesses.³ Comments at a semiannual meeting may be recorded. The Director or designee must transmit notice of a semiannual meeting, at least one month in advance of the meeting, to interested persons who have registered to receive notices of the meetings through the e-notification system.

Based on comments made at each semiannual meeting, the Director or designee must prepare a priority schedule identifying agency processes that are causing unreasonable impediments to the efficient and successful operation of small businesses, and identifying innovative management tools, such as kaizen, value stream mapping, networking, and root cause analysis, that a state agency might bring to bear to reduce or eliminate these impediments. In identifying agency processes that are causing unreasonable impediments, the Director or designee particularly must take account of state agency processes that derogate the eight considerations listed above that are used to evaluate a rule.

The Director or designee must transmit a copy of the priority schedule to each state agency that is identified in the priority schedule, and must monitor the efforts state agencies are making to reduce or eliminate impediments identified in the priority schedule. The Director or designee must post the priority schedule on the web site of the e-notification system. Each state agency identified in a priority schedule must make efforts to reduce or eliminate the identified impediments and any other impediments it may discover. At each semiannual meeting after the first, the Director or designee must report to those in attendance on the progress state agencies are making in reducing or eliminating previously identified impediments to the efficient and successful operation of small businesses.

³ The bill defines a "small business" as an independently owned and operated for-profit or nonprofit business entity, including affiliates, and regardless of legal form, that has fewer than 400 employees.

Appointment of state agency ombudspersons

(R.C. 121.815)

The bill requires the directors of each of the following state agencies to appoint an ombudsperson: the Departments of Administrative Services, Agriculture, Commerce, Development, Health, Insurance, Job and Family Services, Natural Resources, Taxation, and Transportation; the Environmental Protection Agency; the Industrial Commission; and the Bureau of Workers' Compensation. An ombudsperson must report to, and is entitled to have regular direct access to and the attention of, the Director or other head of the state agency.

An ombudsperson must serve as a problem-solving liaison between the state agency and those who are affected by its rules and regulatory processes when normal state agency processes do not produce a satisfactory result. A small business also may request the Small Business Advocate (formerly the manager of the Office of Small Business--see "**Entrepreneurship and Small Business Division; Small Business Advocate**," below) to assist when normal state agency processes do not produce a satisfactory result. But the ombudsperson or Small Business Advocate may not become involved with resolving matters that are the subject of an ongoing judicial or administrative enforcement action.

If the ombudsperson, with or without the assistance of the Small Business Advocate, is unable to resolve a matter, the ombudsperson may call upon a person designated by the Governor to assist in resolving the matter. The Governor's designee must assist in a neutral way to resolve the matter and must identify options, and strategies and tactics, for resolving the matter, but may not impose a resolution or make or reverse legal decisions to resolve the matter.

A state agency required to appoint an ombudsperson must publish on its web site the name, address, telephone number, and e-mail address of its ombudsperson, together with a brief explanation of the ombudsperson's role in resolving matters.

An ombudsperson is required to consult with the Small Business Advocate and negotiate arrangements to facilitate mutual interaction and avoid duplication of effort.

Entrepreneurship and Small Business Division; Small Business Advocate

(R.C. 103.0511, 121.24, 121.814(A), 122.08, and 122.081; Section 3)

Under existing law, the Office of Small Business in the Department of Development is under the supervision of a manager appointed by the Director of Development. The Office performs various duties for the small business community,

including, for example, receiving complaints from small businesses concerning governmental activities, publishing the Small Business Register, and generally helping small businesses resolve regulatory and licensing problems with state government.

The bill provides that the Office's manager is to be known as the Small Business Advocate, who is to assume all of the current Office manager's duties. In addition, the Small Business Advocate must attend and participate in each semiannual meeting held by the Director of Administrative Services regarding impediments to the efficient and successful operation of small businesses.

The bill also renames the Office of Small Business the Entrepreneurship and Small Business Division. In addition to performing duties currently performed by the Office of Small Business, the Entrepreneurship and Small Business Division also must:

(1) Act as liaison facilitating interactions between the small business community and state governmental agencies.

(2) Establish and maintain a toll-free telephone number persons may call during regular business hours, and an e-mail address to which persons may transmit e-mail at any time, to comment to the Small Business Advocate concerning statutes and rules and state agency processes affecting individuals, small businesses, and small organizations. The telephone answering point must be equipped to record calls that are received after regular business hours.

(3) Consult with each state agency ombudsperson and negotiate arrangements to facilitate mutual interaction and avoid duplication of effort.

The bill states that it re-names and re-characterizes the Office of Small Business as the Entrepreneurship and Small Business Division, but does not otherwise affect the organization or the organizational position of the Office-now-Division as part of the Department of Development. The bill notes that it contains other provisions pertaining to the Office-now-Division that affect its functions.

Improving customer service provided by state departments

(R.C. 121.82)

The bill declares that it is the policy of Ohio to improve the customer service provided by state departments and requires each department to emphasize improved customer service, efficiency, and productivity in employee orientation and employee training. In light of this policy, not later than January 1, 2011, each of the following state departments, with the assistance of the Department of Administrative Services (DAS), must adopt customer service principles identifying the best practices to be used to

provide improved customer service: the Office of Budget and Management, the Departments of Administrative Services, Alcohol and Drug Addiction Services, Aging, Agriculture, Commerce, Development, Developmental Disabilities, Health, Insurance, Job and Family Services, Mental Health, Natural Resources, Public Safety, Rehabilitation and Correction, Transportation, Veterans Services, and Youth Services, and the Environmental Protection Agency.

Further, not later than January 1, 2011, each of these state departments, with DAS's assistance, must develop a customer service training program that employees designated by each department can complete to improve customer service, efficiency, and productivity. The program must emphasize the customer service principles adopted by the department. Employees who participate in a training program, upon its completion, are required to sign a written statement acknowledging that the employee understands the customer service principles adopted by the department and will follow them.

The bill also requires that each state department, on its web site, in a frequently-asked-question format, post answers to frequently asked questions about the department's regulatory mission and processes and include a customer service survey that users may complete online, or download, complete, and e-mail to the department. A department is required to review all customer service surveys that are completed and returned to the department, and may send the surveys to the Governor or the Governor's designee.

Ohio Small Business Panel

(R.C. 122.084)

Under the bill, the Entrepreneurship and Small Business Division must establish the Ohio Small Business Panel. The Panel is required to meet semiannually to discuss issues relevant to small businesses, including matters such as the special challenges involved in establishing and in efficiently and successfully operating a small business, and the statutes and rules and state agency processes that are involved in or relate to the operation of small businesses. As a result of its discussions, the Panel may make recommendations for changes in statutes and rules and in state agency processes that are needed to reduce or eliminate burdensome or unproductive governmental regulation to improve the economic climate within which small businesses operate.

The Panel may report its recommendations, together with supporting commentary, in a communique. The Small Business Advocate may transmit the communique electronically to the Governor, General Assembly, and each state agency to which the recommendations apply.

The Panel consists of the following nine members: the Small Business Advocate, four members appointed by the Governor, two members appointed by the President of the Senate, and two members appointed by the Speaker of the House of Representatives. Each member must be representative of the small business community. Initial appointments to the Panel are to be made on or before January 1, 2010. Members of the Panel must serve without compensation and without reimbursement for expenses.

Terms of office of members of the Panel, except the Small Business Advocate, are for three years, beginning January 1 and ending at the close of business on December 31. A vacancy on the Panel is filled in the same manner as the initial appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed holds office for the remainder of the term. The Small Business Advocate's term of office is for the entirety of the Advocate's employment as the Small Business Advocate.

The Small Business Advocate is the chairperson of the Panel, and must appoint a secretary from among the Panel's members.

Five members of the Panel constitute a quorum, and the affirmative vote of five members is necessary for any action the Panel takes.

Small business environmental regulatory compliance assistance

Environmental regulatory compliance assistance program

(R.C. 3745.016(A) and (B))

The bill provides that the Director of Environmental Protection must establish, as part of the Environmental Protection Agency (EPA), a program for providing environmental regulatory compliance assistance to small businesses. Under the bill, a "small business" is either a "small business stationary source," as defined in Ohio's Air Pollution Control Law;⁴ or, if the business does not have a source of an air pollutant, an independently owned or operated business having 100 or fewer employees. The Program must:

⁴ A "small business stationary source" is any building, structure, facility, or installation that emits any federally regulated air pollutant and that is owned or operated by a person who employs 100 or fewer individuals; is a small business concern as defined in the federal "Small Business Act," 15 U.S.C. 632; is not a major stationary source as defined in section 302(j) of the federal Clean Air Act; does not emit 50 tons or more per year of any federally regulated air pollutant or any hazardous air pollutant; and emits less than 75 tons per year of all federally regulated air pollutants.

(1) Upon the request of a small business, provide environmental regulatory compliance assistance, including on-site environmental regulatory compliance assistance, to assist the small business in identifying relevant environmental regulations and compliance requirements and in completing application and reporting forms relating to environmental regulatory requirements;

(2) Develop educational materials for small businesses regarding state and federal environmental regulatory compliance requirements, and distribute the materials to them free of charge;

(3) Reach out to small businesses and provide them with training on state and federal environmental regulatory compliance requirements free of charge; and

(4) Provide other environmental regulatory compliance assistance to small businesses that will help to improve their compliance with environmental regulation and thereby help to improve the overall cleanliness of Ohio's environment.

Program confidentiality

(R.C. 3745.016(C))

Any information, regardless of its form or characteristics, that is created or obtained by the EPA in the course of administering the Environmental Regulatory Compliance Assistance Program that identifies or describes an individual facility or operation at a small business is confidential and not a public record open to public inspection unless:

- The information reveals a clear and immediate danger to the environment and the health, safety, or welfare of the public;
- The information is obtained independently by the Director or authorized employees or agents of the EPA as part of a compliance inspection or investigation or in a judicial or administrative enforcement proceeding; or
- The information is emissions data or otherwise pertains to a contaminant source, and treating the information as confidential would be inconsistent with the requirements of law.

Information that is confidential under the Program may not be used in any manner for purposes of the enforcement of any environmental compliance requirement or as evidence in any judicial or administrative enforcement proceeding, but this confidentiality law does not confer immunity on a small business from judicial or administrative enforcement that is based upon information obtained by the Director or

employees or agents of the EPA, insofar as they are not engaged in administering the Program.

Rule summary and fiscal analysis

(R.C. 127.18)

The bill provides that a rule-making agency, when completing a rule summary and fiscal analysis of a proposed rule, is encouraged to identify and estimate the number of businesses subject to the proposed rule.

HISTORY

ACTION	DATE
Introduced	02-10-09
Reported, S. State & Local Gov't & Veterans Affairs	03-11-09
Passed Senate (30-0)	03-11-09
Reported, H. State Government	---

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