



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 230 of the 128th G.A. **Date:** October 22, 2009
Status: As Reported by House State Government **Sponsor:** Reps. Moran and Zehringer

Local Impact Statement Procedure Required: No — No local cost

Contents: Makes changes to state agency regulatory procedures and customer service requirements

State Fiscal Highlights

STATE FUND

FY 2010 – FUTURE YEARS

General Revenue Fund and Other State Funds

Revenues

- 0 -

Expenditures

Various state agencies – Potential increase in administrative costs from the GRF and various other funds to comply with new procedures for evaluating and reporting on proposed administrative rules

Department of Development – Potential increase in GRF administrative costs to the Entrepreneurship and Small Business Division

Department of Administrative Services – Potential negligible increase in GRF administrative costs for required semiannual meetings

Environmental Protection Agency – Potential increase in OCAPP administrative costs from the Environmental Protection Fund (Fund 5BC0)

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- Rulemaking agencies may incur additional administrative costs to the GRF or other funds in order to follow the regulatory processes laid out in the bill, if these procedures are substantially different from those being followed as a result of Executive Order 2008-04S.
- The Department of Development's Entrepreneurship and Small Business Division may incur additional administrative costs from the GRF associated with new requirements in the bill, including a toll-free telephone number and the Ohio Small Business Panel.
- The Department of Administrative Services may incur negligible administrative costs to conduct semiannual meetings and issue recommendations under the bill.
- The Environmental Protection Agency's Office of Compliance Assistance and Pollution Prevention (OCAPP) may incur some additional administrative costs from the Environmental Protection Fund (Fund 5BC0), associated with new requirements in the bill, including developing a program to provide regulatory compliance assistance to small businesses.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.
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Detailed Fiscal Analysis

State agency rulemaking processes

The bill requires all executive branch state agencies, excluding the offices of the elected state officers, to follow a new set of procedures in developing and evaluating administrative rules (see the LSC bill analysis for specific details). Under the bill, each state agency is required to report on its evaluation of a proposed rule on a form to be prescribed by the Department of Administrative Services (DAS). Once a rule and its report have been reviewed, an agency is required to transmit a copy of the report electronically to DAS, which must publish a summary of the report on-line using the centralized regulatory notification system established in the bill (see further discussion below).

As a result of Executive Order 2008-04S, "Implementing Common Sense Business Regulation," signed by Governor Strickland in February 2008, agencies may already be following procedures similar to those codified in the bill. However, the bill's processes for evaluating and reporting on proposed administrative rules may result in some increased administrative costs to rulemaking agencies. These expenses are likely to vary across agencies depending on the number of rules each agency makes and the nature and complexity of each rule. These expenses would be borne by the GRF or other operating funds, depending on each agency's funding and operational structure.

Department of Administrative Services

The bill imposes several new responsibilities and requirements relating to the DAS. However, Executive Order 2008-04S established similar regulatory guidelines for state agencies. As a result, there appears to be some overlap between the bill and the executive order. Provisions that are included in the bill, but are also required by the executive order include:

- Establishing a centralized electronic system that allows interested parties to register and receive notices regarding agencies' proposed development, amendment, or rescission or any rule of interest to them;
- Formulating rules in a way that takes into account the needs of interested parties and the most current scientific information; and
- Improving customer service provided by state agencies through increased efficiency and productivity.

Each of these items and their potential costs are described below.

Centralized electronic regulatory notification system

As the centralized electronic notification system was required under the executive order, its inclusion in the bill will not impose any additional costs on DAS. The project is supported by GRF line item 100418, Web Site and Business Gateway, which received appropriations of approximately \$2.7 million in FY 2010 and \$2.9 million in FY 2011 under H.B. 1, the main operating budget.

Rule evaluation and semiannual meetings

With regard to developing rules and improving customer service, the bill establishes additional requirements not covered in the executive order. Under the bill, state agencies, when developing a rule, would be required to take into account certain considerations — such as whether or not the rule is duplicative with respect to federal laws or rules, whether all interested parties have been notified of the rule change, etc. — and report on these considerations. DAS would be required to develop the manner and form by which this information is to be reported; it would also be responsible for collecting and processing these reports. This could add to DAS's administrative costs if there are substantial rule changes. As of September 2009, state agencies have proposed 619 new rules in this calendar year.

In addition, the bill would require the Director of Administrative Services or the Director's designee to convene semiannual meetings for interested persons to comment on state agency regulatory processes that cause "unreasonable impediments" to small business operations. Based on comments received at each meeting, DAS would be required to prepare a priority schedule identifying the processes that create such impediments and identify management tools that agencies might use in order to improve their processes. According to DAS, this requirement would add to the department's workload, but would impose only negligible administrative costs.

Customer service provisions

With regard to improving customer service, DAS would be required to assist state agencies with developing customer service principles and best practices. It would also be required to help state agencies implement training programs for employees. Presumably, DAS's Human Resources Division would coordinate these initiatives. It is not clear what costs DAS or other state agencies would incur for employee customer service training programs.

State agency ombudspersons

The bill requires the departments of Administrative Services, Agriculture, Commerce, Development, Health, Insurance, Job and Family Services, Natural Resources, Taxation, and Transportation, along with the Environmental Protection Agency, the Bureau of Workers' Compensation, and the Industrial Commission, to appoint an ombudsperson to serve as a liaison between the agency and those affected by its rules and regulatory procedures when normal state agency processes do not suffice. Each ombudsperson would report to the agency's director. The bill requires an

agency that is required to have an ombudsperson to publish the ombudsperson's name, address, telephone number, and e-mail address on the agency's web site, along with an explanation of the ombudsperson's role. Under Executive Order 2008-04S, each of the above state agencies already has one or more individuals designated as the agency's regulatory ombudsperson(s). These agencies are therefore not likely to incur any additional costs as a result of the bill.

Small Business Advocate and Ohio Small Business Panel

Under current law, the Ohio Department of Development (ODOD) is required to house an office of small business, led by a statutorily created manager appointed by the Director of Development. ODOD's Entrepreneurship and Small Business Division and its Director perform these functions under the Department's current operating structure. The bill codifies the name of the Division in permanent law and specifies that the statutorily created manager of the office is to be known as the Small Business Advocate. The bill requires the Small Business Advocate, in addition to the duties of administering the Entrepreneurship and Small Business Division already existing in current law, to establish a toll-free telephone number and an e-mail address for the public to comment on statutes, rules, and state agency processes regarding individuals, small businesses, and small organizations. The bill also requires the Small Business Advocate to consult with the state agency ombudspersons appointed under the bill in order to facilitate mutual interaction and avoid duplication of efforts across agencies and to attend and participate in the semiannual meetings convened by the Director of Administrative Services regarding regulatory impediments to small businesses.

The bill creates the Ohio Small Business Panel, consisting of nine members representing small businesses, to be chaired by the Small Business Advocate. In addition to the Small Business Advocate, four members would be appointed by the Governor, two members would be appointed by the Speaker of the House, and two members would be appointed by the President of the Senate. The bill requires members to serve without compensation or reimbursement for expenses. The bill requires the Small Business Panel to meet semiannually to discuss issues facing small businesses, including the statutes, rules, and state agency processes relating to small businesses. The bill permits the Panel to make recommendations for statutory and regulatory changes in order to reduce or eliminate regulatory burdens and improve the economic climate for small businesses. The bill allows the recommendations to be reported electronically to the Governor, General Assembly, and each state agency to which the recommendations might apply.

The bill's requirement that the Entrepreneurship and Small Business Division establish a toll-free telephone number and e-mail address would likely create some additional administrative costs to ODOD. While the bill does not explicitly provide for administrative support to the Small Business Panel, the costs associated with holding meetings and producing reports would also likely be borne by the Division. Depending on the ultimate scope of work required to implement the provisions of the bill, the

Division may require an unknown number of additional staff. However, according to ODOD, it may be possible to implement some of the bill's requirements, such as the toll-free telephone line, using current resources. These costs would likely be borne by GRF line item 195404, Small Business Development, which is supported at a level of approximately \$1.6 million in FY 2010 and FY 2011 under H.B. 1.

Environmental regulatory compliance assistance

The bill requires the Director of Environmental Protection to 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 or if the business does not meet the definition of a small business stationary source, an independently owned or operated business having 100 or fewer employees. Most likely, this program would be overseen by the Office of Compliance Assistance and Pollution Prevention (OCAPP), a nonregulatory program within EPA that provides information and resources to help small businesses comply with environmental regulations. Also part of OCAPP's mission is helping customers identify and implement pollution prevention measures that can save money, increase business performance, and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and environmental assessments, workshops/training, a plain-English publications library, and assistance in completing permit application forms. Given that the responsibilities are very similar to OCAPP's current functions, any additional costs to EPA would likely be minimal. OCAPP is funded through the Environmental Protection Fund (Fund 5BC0) appropriation item 715676, Assistance and Prevention, at a level of \$775,000 in both FY 2010 and FY 2011.