



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** Sub. S.B. 3 of the 128th G.A. **Date:** May 12, 2010

**Status:** As Reported by House State Government **Sponsor:** Sen. Faber

**Local Impact Statement Procedure Required:** No — No local cost

**Contents:** Makes changes to state agency regulatory and rulemaking procedures

### State Fiscal Highlights

- If the implementation of the bill results in responsibilities beyond those required by Executive Order 2008-04S, state agencies could incur new administrative costs to follow the regulatory processes laid out in the bill.
- The Entrepreneurship and Small Business Division within the Ohio Department of Development (ODOD) could incur additional GRF costs to comply with the requirements in the bill, including support for the Ohio Small Business Panel.
- The Department of Administrative Services (DAS) and cabinet-level agencies could incur additional costs to develop customer service principles and training programs. DAS would also incur costs to conduct semi-annual public comment meetings and issue recommendations on regulatory processes required under the bill.
- The Office of Compliance Assistance and Pollution Prevention within the Ohio Environmental Protection Agency (EPA) could incur some additional costs for developing a program to provide regulatory compliance assistance to small businesses and other responsibilities under the bill. These expenses would be paid from the Environmental Protection Fund (Fund 5BC0).

### 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 online using the centralized regulatory notification system established in the bill.

Many of the provisions in the bill are similar to those contained in Executive Order 2008-04S, "Implementing Common Sense Business Regulation," signed by Governor Strickland in February 2008. However, the bill also contains provisions that establish new procedures for evaluating and reporting on proposed administrative rules. These provisions could lead to an increase in administrative costs for agencies that promulgate rules. These expenses would vary from agency to agency depending on the number of rules proposed and the nature and complexity of the rules proposed. Based on the number of rules filed with the Small Business Register in calendar year 2009, the agencies most likely to incur higher costs are the Department of Job and Family Services, the Bureau of Workers' Compensation, the Department of Commerce, the Environmental Protection Agency, and the Department of Health. These new costs would be spread across the GRF and other operating funds used by the agencies.

### Department of Administrative Services

The bill imposes several new requirements that would affect DAS, some of which appear similar to the requirements imposed under Executive Order 2008-04S mentioned above. Provisions that are included in the bill and 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 current system exists as part of the Ohio Business Gateway and is found at <http://business.ohio.gov/reform>. The web site contains an option to sign up for e-mail notification of new rules, and allows users to look up Common Sense Business Regulation (CSBR) reviews of rules and make public comments as required under the executive order. The system 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, the bill establishes additional requirements not covered in the executive order. Under the bill, state agencies that propose rules would be required to take into account certain considerations, such as whether or not the rules are duplicative of federal laws or rules, whether all interested parties have been notified of a rule change, and so forth. The bill also requires rulemaking agencies to issue a report describing how these issues were considered in the development of proposed rules. DAS's role would be to develop guidelines for reporting this information and to collect and process these reports. This could add to DAS's administrative costs if there are substantial rule changes proposed among various state agencies.

In addition, the bill would require DAS 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, the bill requires DAS to prepare a priority schedule explaining these impediments and to identify management tools that agencies could use in order to improve their regulatory processes. According to DAS, this requirement would add to the department's workload, but would impose only negligible administrative costs.

### **Customer service provisions**

The bill requires DAS to assist all cabinet-level state agencies in (1) developing customer service principles and best practices and (2) implementing training programs for employees. Under the bill, each agency would be responsible for adopting customer service principles, best practices, and training programs with the assistance of DAS. In addition, each agency would be required to post information on its web site about its regulatory processes, including a customer service survey that may be returned to the agency.

Because the language in the bill appears to give DAS and state agencies some flexibility in determining which employees would be subject to customer service standards and training requirements, how these requirements would be incorporated within job classification series, and how employee customer service performance would be measured, it is difficult to assess the fiscal effect of this mandate. Any new costs

would depend on each agency's assessment of how customer service principles apply to its various functions and are to be incorporated into its operations.

DAS's responsibilities related to this provision would presumably fall to the Classification and Compensation and Performance Management units within the Human Resources Division. The Division's operating expenses are paid from the Human Resources Services Fund (Fund 1250). The fund is supported by payroll assessments charged to state agencies. The current charge is \$15.80 per paycheck. Any new costs incurred by other state agencies in developing customer service standards and training programs would presumably be paid out of their own human resources accounts.

### **State agency ombudspersons**

The bill requires 13 state agencies to appoint an ombudsperson to serve as a liaison between the agency and the businesses affected by rules and regulatory procedures. The role of the agency ombudsperson would be to serve as a liaison between the agency and these regulated entities when normal state agency processes do not suffice. In addition to DAS and Department of Development (ODOD), the agencies that are required to appoint ombudspersons under the bill include the departments of Agriculture, Commerce, 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. Each ombudsperson would report to the agency's director. The bill further requires these agencies 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 employs one or more individuals designated as the agency's regulatory ombudsperson. These agencies are therefore not likely to incur any additional costs as a result of this provision.

### **Department of Development**

Currently, the Entrepreneurship and Small Business Division of the Ohio Department of Development performs the functions of the small business office required under existing law. The bill codifies the name of the Division in the Revised Code and specifies that the statutorily created manager of the office is to be known as the Small Business Advocate. 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. Finally, the bill requires the Small Business Advocate, in addition to the duties of administering the Entrepreneurship and Small Business Division, to establish a toll-free telephone number and an e-mail address for the public to comment on statutes, rules, and state

agency processes that affect individuals and small businesses. The Division has already posted on its web site a toll-free telephone number (1-800-848-1300, extension 6-2718) and a form allowing users to e-mail the Advocate.

The bill also 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. These members would 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.

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 scope of work required to implement the provisions of the bill, the Division could be required to employ additional staff to handle these responsibilities. These costs would likely be borne by GRF line item 195404, Small Business Development. H.B. 1, the main budget act for the FY 2010-FY 2011 biennium, funds this line item at a level of \$1.6 million in each fiscal year.

### **Environmental Protection Agency**

The bill requires the Environmental Protection Agency (EPA) to provide environmental regulatory compliance assistance to small businesses. Any information gathered under this program would remain confidential. The bill further specifies that this information cannot be used against a small business in an enforcement action. Under the bill, a small business is either (1) a "small business stationary source," as defined in Ohio's Air Pollution Control Law or (2) 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,

and that federal law appears to require states to provide similar compliance assistance to small businesses and small business stationary sources (42 U.S.C. § 7661f), 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.

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