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## JOINT COMMITTEE ON AGENCY RULE REVIEW

### Restatement of principle of law or policy in rule

- Requires state agencies with a continuing law duty to review their operations for principles of law or policies that should be restated in administrative rule to complete a review and file a report with the Joint Committee on Agency Rule Review (JCARR) no later than November 30, 2025.
- Reduces, from six months to three months, the time in which an agency must begin the rulemaking process when the agency identifies a principle of law or policy that should be restated as a rule or is informed of such a principle or policy through a recommendation from JCARR.
- Prohibits an agency that is in the process of supplanting a principle of law or policy from relying on the principle or policy during the rulemaking process if the agency fails to file the rule in final form within one year after specified events occur or if the agency notifies JCARR of the agency's intention to file a revised proposed rule.

### Regulatory restrictions in administrative rules

- Defines a "regulatory restriction" as "any part of a rule that requires or prohibits an action" for purposes of a continuing law requirement that certain state agencies identify and reduce regulatory restrictions in administrative rules adopted by those agencies.
- Requires an agency subject to the reduction requirement that has achieved its statutorily required reduction to eliminate one regulatory restriction for each new regulatory restriction the agency adopts.
- Specifies, for an agency that must eliminate two regulatory restrictions for each new regulatory restriction because it failed to meet the reduction deadline, that removing or replacing "shall," "must," "require," or similar words from a rule does not eliminate a regulatory restriction unless the removal eliminates a requirement or prohibition.
- Requires, no later than November 30, 2025, a covered agency to report to JCARR the number of regulatory restrictions the agency eliminated since the requirement began and the number of times the agency reported removing or replacing "shall," "must," "require," or similar words a reduction.
- Allows JCARR to recommend the General Assembly adopt a concurrent resolution invalidating a rule, or a part thereof, proposed by a covered agency when the agency proposes to remove or replace "shall," "must," "require," or similar words in a rule without removing a regulatory restriction as defined by the bill.
- Allows a state agency subject to a statewide cap on regulatory restrictions that will take effect on July 1, 2025, to appear before JCARR to show cause why the agency should be permitted to adopt a rule that would cause the number of restrictions to exceed the cap.

- Requires JCARR to provide annually to the General Assembly a summary of all rules containing regulatory restrictions JCARR has authorized an agency to adopt above the statewide cap.

## **Restatement of principle of law or policy in rule**

(R.C. 101.352, 121.93, and 121.931; Section 701.110)

### **Review of principles of law and policies**

The bill requires each state agency with a continuing law duty to review its operations for principles of law and policies that should be restated in an administrative rule to complete a review and file a report with the Joint Committee on Agency Rule Review (JCARR) no later than November 30, 2025. Under continuing law, these agencies must perform similar reviews at least once during a governor's term. The requirement applies to all state agencies but does not apply to any legislative agency or the Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General, state institutions of higher education, or the state retirement systems.<sup>130</sup>

The bill applies the continuing law review requirements to the review under the bill. An agency reviews its operations and identifies principles of law and policies that have not been stated in a rule, but that the agency is relying on for either of the following activities:

- Conducting adjudications or other determinations of rights and liabilities;
- Issuing writings and other materials, such as instructions, policy statements, guidelines, advisories, circulars, letters, and opinions.

The agency must transmit a report to JCARR stating that the agency has completed the review. In its report, the agency must detail specific steps the agency is taking regarding those reviews.

If the agency determines a principle of law or policy identified during a review period has a general and uniform operation and establishes a legal regulation or standard that would not exist without the principle or policy, the agency must determine whether the principle or policy should be replaced with a rule. In making the determination, the agency must decide whether supplanting the policy or principal with a rule will achieve any of several goals identified in continuing law. If, based on those goals, an agency determines it should supplant a principle or policy with a rule, the agency begins the rulemaking process.

Under continuing law, a person also may petition an agency to restate a principle or policy in a rule if both of the following apply:

- The person was a party to an adjudication or other determination before an agency that resulted in an order or was a party to a lawsuit that ended in a judgment;

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<sup>130</sup> R.C. 121.933, not in the bill.

- The adjudication, determination, or lawsuit involved a principle of law or policy relied on by the agency that should have been supplanted by a rule but has not been so supplanted.

If, based on the standards the agency applies during its own review, an agency determines the principle or policy that is the subject of the petition should be replaced with a rule, the agency grants the petition and begins the rulemaking process.

Also under continuing law, if JCARR becomes aware that an agency is relying on a principle of law or policy that should have been replaced with a rule, JCARR may call the agency to appear before JCARR to address why the agency is relying on the policy or principle. After the appearance, JCARR applies the standards the agency applies during the agency's reviews and may recommend the agency supplant the principle or policy with a rule. JCARR must support its recommendation with a brief rationale of why the principle of law or policy should be supplanted by a rule. If an agency receives a recommendation from JCARR, it must begin the rulemaking process.

### **Changes to restatement process**

The bill also makes changes to the processes a state agency uses when it must restate a principle of law or policy in a rule. The bill shortens the time period, from six months to three months, in which the agency must begin the rulemaking process after either determining or receiving a recommendation to restate a principle of law or policy in rule. Continuing law allows an agency to rely on a principle or policy while it is in the process of adopting a rule to supplant the principle or policy. If the agency fails to begin rulemaking within the required time (currently, six months; under the bill, three months) or the agency neglects or abandons the process before completing it, the agency must stop relying on the principal or policy. The bill adds the following reasons under which an agency must stop relying on a principle or policy after beginning the rulemaking process:

- The agency fails to file the rule in final form within one year after it determines rule making is necessary or within one year after receiving a written recommendation from JCARR.
- The agency notifies JCARR the agency intends to file a revised proposed rule under continuing law.

For additional details about the rulemaking process, see the LSC Members Brief, [Administrative Rulemaking \(PDF\)](#), which is available on LSC's website: [lsc.ohio.gov/Publications](http://lsc.ohio.gov/Publications).

## **Regulatory restrictions in administrative rules**

(R.C. 106.021, 121.95, 121.951, and 121.931; Section 701.120)

### **Definition and reduction requirement**

For purposes of a continuing law requirement that cabinet-level state agencies and certain other state agencies identify and reduce regulatory restrictions in administrative rules adopted by those agencies, the bill defines "regulatory restriction" as "any part of a rule that requires or prohibits an action." Current law describes a regulatory restriction as any part of a rule that requires or prohibits an action. However, current law also specifies that any rule

including the words “shall,” “must,” “require,” “shall not,” “may not,” or “prohibit” is considered to contain a regulatory restriction.

Under the continuing law reduction requirement, not later than June 30, 2025, a covered state agency must reduce the number of regulatory restrictions in the agency’s administrative rules by 30% through amending or rescinding rules that contain such restrictions. The 30% reduction is based on the number of regulatory restrictions identified in a base inventory previously prepared by each agency.

If an agency fails to achieve the required reduction by the June 30 deadline, the agency may not adopt a new regulatory restriction unless it simultaneously removes two or more existing regulatory restrictions until it reaches the required reduction. The bill specifies that, for an agency that failed to achieve the reduction, removing or replacing “shall,” “must,” “require,” “shall not,” “may not,” “prohibit,” or similar words in a portion of a rule does not eliminate a regulatory restriction unless the removal eliminates a requirement or prohibition from the rule.

The bill also prohibits an agency that does achieve the required reduction by June 30 from adopting a new regulatory restriction unless it simultaneously removes at least one existing regulatory restriction. The agency may not fulfill this requirement by merging two or more existing restrictions into a single surviving restriction.

For any rule proposed for adoption on or after the bill’s effective date, if the proposing agency is subject to the reduction requirement, JCARR may recommend the General Assembly adopt a concurrent resolution invalidating the proposed rule, or a part thereof, if the rule removes or replaces “shall,” “must,” “require,” “shall not,” “may not,” “prohibit,” or similar words but does not remove a regulatory restriction as defined under the bill.

## **Report**

Under the bill, not later than November 30, 2025, each agency subject to the reduction requirement must prepare a report reviewing every rule the agency has amended or rescinded for the purpose of achieving the 30% reduction required under continuing law. In the report, the agency must identify:

- The number of regulatory restrictions the agency eliminated or reduced; and
- The number of times the agency removed or replaced “shall,” “must,” “require,” or similar words in a portion of a rule without eliminating or reducing regulatory restrictions, as defined by the bill, but described the elimination or reduction as eliminating or reducing a regulatory restriction.

Each state agency must transmit the report electronically to JCARR. JCARR must review the reports and transmit them electronically to the Speaker of the House and the Senate President.

## **Statewide cap on regulatory restrictions**

The bill allows a state agency to appear before JCARR to show cause why the agency should be permitted to adopt a rule that would cause the number of regulatory restrictions to exceed a statewide limit on regulatory restrictions in continuing law.

Effective July 1, 2025, continuing law prohibits the total number of regulatory restrictions that may be effective at any one time in Ohio from exceeding a number determined by JCARR. JCARR determines that number by calculating, for each agency, the number of regulatory restrictions identified by the agency in its base inventory, minus the number of regulatory restrictions that represents the 30% reduction each agency must achieve by June 30, 2025, and then totaling the resulting numbers for all state agencies. Under the bill, if JCARR determines the agency has shown cause to exceed the agency's limit, it may, by a majority vote, permit the agency to adopt the rule. If this were challenged, a reviewing court might examine whether the bill attempts to give the General Assembly, through JCARR, an impermissible "legislative veto" by allowing JCARR, a committee within the General Assembly, to determine whether a rule may be adopted,

Under the bill, JCARR must prepare a report summarizing all the rules it has authorized a state agency to adopt above the statewide limit. The bill requires JCARR to transmit the report electronically to the Speaker of the House and the Senate President not later than December 31 of each year.