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## Chapter 10

# The Executive Branch



Image courtesy of Robin Stein, LSC

Governor's Formal Office, Statehouse

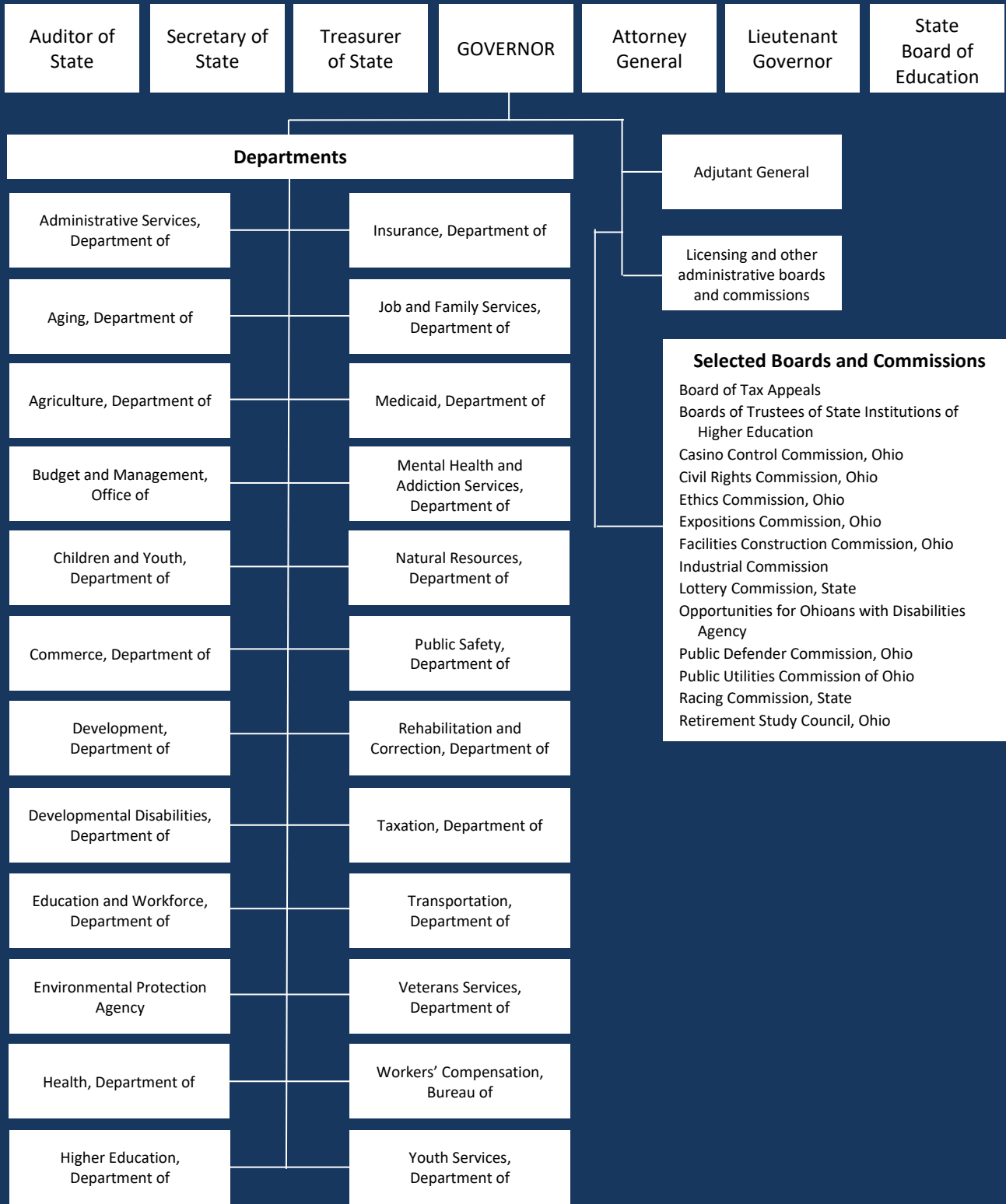
### The Organization of the Executive Branch

The executive branch of Ohio's state government includes six elected officials: the Governor and Lieutenant Governor (elected as a team), the Attorney General, the Secretary of State, the Auditor of State, and the Treasurer of State. All are elected in even-numbered, nonpresidential election years to serve four-year terms.

In addition to these officials, the executive branch includes the State Board of Education (comprised of 11 members elected from individual districts and eight members appointed by the Governor with the advice and consent of the Senate), the Chancellor of Higher Education (appointed by the Governor with the advice and consent of the Senate), the Adjutant General (appointed by the Governor as the military chief of staff), and the departments and other agencies responsible for administering laws and implementing state policy. The executive branch also includes many independent boards and commissions established for specific purposes. The Governor supervises these departments and agencies and appoints department directors as well as members of numerous boards and commissions, many also with the advice and consent of the Senate. The Superintendent of Public Instruction, however, is appointed by and is under the policy supervision of the State Board of Education. H.B. 33 of the 135<sup>th</sup> General Assembly renamed the Department of Education as the Department of Education and Workforce and transferred most of the powers and duties assigned to the State Board of Education and the Superintendent of Public Instruction to the Department.

## Organizational Chart of the Executive Branch

[ohio.gov/government](http://ohio.gov/government)



## Relationship of Executive Branch to Legislative Branch

The various agencies of Ohio’s state government, including departments, boards, and commissions, as well as offices of the several elected state officials, often participate in the legislative process. They frequently serve as important sources of information. Their reports, research, opinions, and activities can raise issues that require legislative action to resolve. Their testimony receives considerable attention in legislative committee hearings. Most agencies closely follow the progress of legislation affecting their functions.

Frequently, agencies designate a person to function as a liaison to the General Assembly. Legislative liaisons respond to questions about what they perceive to be the effects of a given proposal on their agencies. Legislative liaisons can assist legislators and their staffs by:

- Providing information about agency operations;
- Researching questions on proposed legislation;
- Facilitating and expediting information requests;
- Assisting in handling constituent problems;
- Directing inquiries to the appropriate people within their agencies; and
- Relaying legislators’ concerns to the agency directors.

The Governor maintains a staff to follow legislation of special interest to the Governor. Members of the Governor’s staff assist in the development of the administration’s budget and legislative agenda.

## Overview of Administrative Rulemaking Procedure

The General Assembly often enacts laws granting executive branch agencies authority to adopt rules to carry out certain policies or to administer the agencies’ statutorily assigned programs. A “rule” is a formal, written statement of law adopted by a state agency under the authority delegated to the agency by statute. Because administrative rules, once adopted, have the force of law, it is important to be familiar with Ohio’s rulemaking process .

### Rulemaking Procedure in General

A rule becomes effective only if the agency adopting it has complied with the statutorily prescribed rulemaking process. There are two general statutory processes under which rules may be adopted. One appears in Revised Code Chapter 119 and the other in Revised Code section 111.15. In general, if an agency is not statutorily required to follow the Chapter 119 rulemaking procedure, it must follow the section 111.15 procedure. Rules adopted under the former are called “119” rules. Rules adopted under the latter are called “111” rules. A rule is amended or rescinded under the same rulemaking procedures applied to its adoption.

In addition to empowering agencies to make rules, the General Assembly also reviews the adoption process. The Joint Committee on Agency Rule Review (JCARR) is a permanent legislative committee established to review administrative rules and, in some cases, recommend that the General Assembly invalidate them. (See [Chapter 7](#) for a discussion of JCARR’s legislative oversight

role.) In limited circumstances, the General Assembly may invalidate a rule without a recommendation from JCARR.

### **Business Review of 119 and 111 Rules**

Whenever an agency is drafting a proposed 119 or 111 rule, the agency first must evaluate the draft rule against a business impact analysis instrument. If, based on that evaluation, the draft rule will not have a statutorily defined “adverse impact on businesses,” the agency may proceed with the rulemaking process. If, however, the draft rule will have an adverse impact on businesses, the agency must comply with a business review process. The process includes preparing a business impact analysis of the draft rule and electronically transmitting that analysis and the draft rule to the Common Sense Initiative Office (CSI), before proceeding with the rulemaking process. CSI evaluates the analysis and draft rule and may recommend to the agency revisions that eliminate or reduce any adverse impact the rule might have on businesses. Additionally, if the proposed rule requires a person to obtain a financial responsibility instrument, such as a bond or insurance, to be licensed, an agency must certify to CSI that the agency investigated and determined that the instrument is available in the required amount.

The agency then either incorporates the recommendations into the draft rule or documents in writing the reasons why the recommendations are not being incorporated. The agency also prepares a memorandum of response identifying recommended provisions that were and were not incorporated into the draft rule. In the memorandum, the agency explains how the incorporated provisions eliminate or reduce any adverse impact the draft rule might have on businesses and why other provisions were not incorporated into the draft rule. The agency cannot begin the rulemaking process earlier than the 16<sup>th</sup> business day after it transmitted the draft rule and business impact analysis electronically to CSI.

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A “rule” is a written statement of law adopted by a state agency under statutory authority delegated to the agency. Most rules are adopted according to one of two statutorily prescribed rulemaking procedures as outlined in Revised Code Chapter 119 and Revised Code section 111.15. The main difference between the procedures is that an agency adopting a 119 rule must give public notice of and hold public hearings on a rule; an agency adopting a 111 rule does not do either. Every administrative rule is either published or referenced in the Ohio Administrative Code.

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### **Rules Adopted under Revised Code Chapter 119**

An agency that intends to adopt a 119 rule must give public notice of its intention in the *Register of Ohio* at least 30 days before the date set for a hearing on the rule. Furthermore, at least 65 days before adopting the rule, the agency must electronically file the proposed rule with the Secretary of State, the Director of the Legislative Service Commission (LSC), and JCARR. In addition to other documents, the filing for a proposed rule, if the proposed rule has an adverse impact on businesses, also must include the business impact analysis, any CSI recommendations,

and the agency's memorandum of response, The agency must hold a public hearing on the proposed rule not earlier than the 31<sup>st</sup> day nor later than the 40<sup>th</sup> day after this filing.

The Governor may suspend the normal 119 rulemaking procedure for a particular 119 rule if the Governor determines that an emergency exists. The agency then may adopt the rule immediately without complying with the notice, hearing, and other requirements that normally apply when adopting 119 rules. An emergency 119 rule takes effect immediately upon being filed but expires on the 121<sup>st</sup> day after its effective date – unless, in the meantime, the agency readopts the rule according to the normal 119 procedure or, under certain circumstances, the General Assembly invalidates the emergency rule.

### **Rules Adopted under Revised Code Section 111.15**

An agency that intends to adopt a 111 rule must electronically file the proposed rule with the Secretary of State, the LSC Director, and JCARR at least 65 days before adopting the rule. In addition to other documents, if the proposed rule has an adverse impact on businesses, the agency also must file the business impact analysis, any CSI recommendations, and the agency's memorandum of response. Agencies do not give public notice of proposed 111 rules, nor are these rules subject to a public hearing.

An agency may adopt an emergency 111 rule immediately without complying with the proposal requirements that normally apply to 111 rules. (The Governor's authorization is not required.) An emergency 111 rule takes effect immediately upon being filed, or on a later date and time specified by the adopting agency, but expires on the 121<sup>st</sup> day after adoption – unless, in the meantime, the agency readopts the rule according to the normal 111 procedure or, under certain circumstances, the General Assembly invalidates the emergency rule.

#### **Register of Ohio**

The *Register of Ohio* is an electronic publication to which members of the public may refer for notice of and information about rulemaking processes. The *Register* publishes all rulemaking documents filed with LSC. The *Register* is located at the following website: [registerofohio.state.oh.us](http://registerofohio.state.oh.us).

### **Periodic Rule Review**

Every state agency must assign a date for its review of each of its rules. JCARR can order an agency to review a rule earlier than that date if the rule is having an unintended or unexpected effect on business. The review is to determine whether the rule should be amended or rescinded because it does any of the following:

- Exceeds or conflicts with the scope and intent of the statute under which the rule was adopted;
- Provides inadequate flexibility at the local level;
- Creates a compliance or oversight burden that is greater than the burden that would be created if the agency accomplished the intended purpose by other means;
- Is no longer useful or beneficial;
- Improperly incorporates material by reference;

- Duplicates, overlaps with, or conflicts with other rules;
- Has an adverse impact on businesses or any other person or entity;
- Contains words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive;
- Requires liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure;
- Imposes a more severe duty or liability than restrictions in neighboring states in order to accomplish the same goal;
- Implements a federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires;
- Contains a regulatory restriction that needs to be reduced to comply with Ohio's regulatory restriction reduction requirements (see "**Reduction in Regulatory Restrictions**," on the next page).

During its review, the agency must consider the continued need for the rule, complaints or comments received concerning the rule, and relevant changes in the subject area affected by the rule.

Before a rule's review date, the agency must determine whether or not the rule should be amended or rescinded. If the agency decides that a rule should be amended or rescinded, it must follow the same procedure it used in adopting the rule. If the agency has determined that the rule does not need to be amended or rescinded, the agency must comply with a business review process similar to the process discussed previously and electronically file a copy of the rule, a complete and accurate rule summary and fiscal analysis, and, if applicable, a business impact analysis of the rule, any recommendations received from CSI, and any memorandum of response with the Secretary of State, the LSC Director, and JCARR.

If the agency notifies JCARR that a rule should continue as is, JCARR must give public notice of the agency's determination in the *Register of Ohio* for four consecutive weeks. During the 90-day period following receipt of an agency's notice and after the four-week public notice period has ended, JCARR may recommend invalidation of a rule if any of the following applies:

- The agency, in reviewing the rule and in recommending its continuance without amendment or rescission, improperly applied the review criteria specified in the Revised Code;
- The rule has an adverse impact on business and the agency has failed to demonstrate that the regulatory intent of the rule justifies its adverse impact;
- The agency improperly incorporated material by reference into the rule;
- The agency is subject to the requirements described under [Reduction in Regulatory Restrictions](#) and has failed to justify the retention of a rule containing a regulatory restriction;

- The rule implements a federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires.

The General Assembly may adopt a concurrent resolution invalidating a rule following a recommendation from JCARR to do so. If JCARR does not make a recommendation for invalidation during the 90-day period following an agency's filing notice with JCARR, the rule continues in effect without amendment until its next review date. For more detail about rule invalidation, see [Chapter 7](#).

### Quasi-Judicial and Other Authority of Agencies

The General Assembly may delegate to administrative agencies quasi-judicial authority in addition to quasi-legislative (rulemaking) authority. Quasi-judicial authority is the power to adjudicate (decide) specific cases. Adjudication is much like a lawsuit in a court; however, adjudications result in an administrative agency's, and not a court's, application of the law to decide a specific case. An example of an adjudication is an administrative agency's decision whether a particular individual meets the eligibility criteria specified in one of the agency's rules for participation in a governmental program.

Although quasi-legislative and quasi-judicial powers are perhaps most commonly thought of when the General Assembly delegates authority to administrative agencies, the General Assembly may delegate other types of authority as well, such as the power to issue, deny, suspend, or revoke licenses, the power to set fees, and the power to inspect.

### Reduction in Regulatory Restrictions

Through June 30, 2025, the law stipulates that "a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions." This reduction requirement, referred to as the "two-for-one rule," does not apply to rules, but rather to regulatory restrictions contained in rules. A "regulatory restriction" is a provision of a rule that requires or prohibits an action. This requirement applies to agencies and departments within the Governor's cabinet and the State Lottery Commission, the Ohio Casino Control Commission, the State Racing Commission, and the Public Utilities Commission.

When reducing regulatory restrictions, these state agencies also must reduce regulatory restrictions by 30% not later than June 30, 2025, in accordance with a statutory schedule and specific criteria. Beginning July 1, 2025, these state agencies cannot adopt a regulatory restriction if doing so would cause the total number of regulatory restrictions in effect at any one time in Ohio to exceed a statewide cap determined by JCARR.

### Incorporations by Reference into Rules

An agency incorporates text or other material into a rule by reference when it refers in the rule to the text or other material as if it were spelled out or otherwise reproduced in the rule. When an agency incorporates material into a rule by reference, the agency must provide a citation in the rule that provides information that enables a reasonable person to find and inspect the incorporated material without charge. The citation must specify the date/edition/version of the incorporated material, and may link to a website where the material is located or that has information about where to locate the material. JCARR reviews incorporations by reference and

can recommend invalidation of a rule if the incorporated material is not made accessible to JCARR or if the incorporation by reference fails to meet the standards for incorporation by reference.

### **Principles of Law or Policy**

At least once during a governor's term, each executive agency must review its operations to determine if the agency utilizes a principle of law or policy that ought to be stated in a rule. If so, the agency must state the principle or policy in a rule or discontinue its reliance on the principle or policy. JCARR or a person impacted by a principle or policy may initiate a process to require an agency to state the principle or policy in a rule.

### **Publication of Rules in the Ohio Administrative Code**

The Ohio Administrative Code is the principal means of communicating the law embodied in rules. The Code contains the full text of, or a reference to, every rule that has been adopted by state administrative agencies. The great majority of rules are published in full. The only exceptions are "internal management rules," which are published by reference, and "school rules," which are published in full in electronic versions of the Administrative Code but by reference in print versions. "Internal management rules" are rules that govern an agency's day-to-day staff procedures and operations and that do not affect the rights of private individuals. "School rules" are rules adopted by state institutions of higher education. Copies of rules that have been published by reference are available from LSC or the adopting agency.