

## As Introduced

133rd General Assembly

Regular Session

S. B. No. 1

2019-2020

Senators McColley, Roegner

Cosponsors: Senators Obhof, Brenner, Coley, Hackett, Hoagland, Hottinger, Huffman, S., Huffman, M., Lehner, Rulli, Peterson, Wilson, Terhar

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## A BILL

To amend sections 106.021 and 106.03 and to enact 1  
sections 101.354, 101.355, 121.031, 121.95, 2  
121.951, 121.952, and 121.953 of the Revised 3  
Code to require certain agencies to reduce the 4  
number of regulatory restrictions and to amend 5  
the versions of sections 106.021 and 106.03 of 6  
the Revised Code that are scheduled to take 7  
effect August 18, 2019, to continue the 8  
provision of this act on and after that 9  
effective date. 10

## BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

**Section 1.** That sections 106.021 and 106.03 be amended and 11  
sections 101.354, 101.355, 121.031, 121.95, 121.951, 121.952, 12  
and 121.953 of the Revised Code be enacted to read as follows: 13

**Sec. 101.354.** The joint committee on agency rule review 14  
shall advise and assist state agencies in preparing base and 15  
revised inventories of regulatory restrictions, and shall advise 16  
and assist state agencies in achieving specified percentage 17  
reductions in regulatory restrictions in the Administrative Code 18

in accordance with sections 121.95, 121.951, 121.952, and 19  
121.953 of the Revised Code. 20

Annually, not later than the fifteenth day of June, 21  
beginning in 2020, the executive director of the joint committee 22  
shall prepare an historical report aggregating the reports 23  
received from state agencies for the preceding year. In the 24  
report, the executive director also shall describe the work of 25  
the joint committee over the preceding year with respect to 26  
reduction of regulatory restrictions, and shall indicate, out of 27  
the total number of regulatory restrictions inventoried by state 28  
agencies, the percentage by which state agencies have reduced 29  
those regulatory restrictions. The report also shall provide 30  
recommendations for statutory changes, where appropriate, 31  
brought to the attention of the joint committee as contributing 32  
to the adoption of regulatory restrictions. The report shall be 33  
submitted to the members of the joint committee. 34

The joint committee shall publish the report on its web 35  
site, and shall transmit copies of the report electronically to 36  
the general assembly. 37

**Sec. 101.355.** The joint committee on agency rule review, 38  
in consultation with legislative information systems, shall 39  
create and maintain a system that state agencies shall use to 40  
enter regulatory restriction data, create required inventories, 41  
and transmit copies of inventories, reports, and any other 42  
documents to the joint committee and the general assembly under 43  
sections 121.95, 121.951, and 121.953 of the Revised Code, and 44  
that will assist the joint committee in aggregating reports and 45  
performing other prescribed duties under sections 101.354, 46  
121.95, 121.951, 121.952, and 121.953 of the Revised Code. 47

The joint committee, in consultation with legislative 48

<u>information systems, also shall develop a web site to convey information regarding the reduction of regulatory restrictions by state agencies to the public.</u>	49
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<b>Sec. 106.021.</b> If, upon reviewing a proposed rule or revised proposed rule, the joint committee on agency rule review makes any of the following findings with regard to the proposed rule or revised proposed rule, the joint committee may recommend to the senate and house of representatives the adoption of a concurrent resolution to invalidate the proposed rule or revised proposed rule or a part thereof:	52
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(A) The proposed rule or revised proposed rule exceeds the scope of its statutory authority.	59
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(B) The proposed rule or revised proposed rule conflicts with the legislative intent of the statute under which it was proposed.	61
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(C) The proposed rule or revised proposed rule conflicts with another proposed or existing rule.	64
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(D) The proposed rule or revised proposed rule incorporates a text or other material by reference and either the agency has failed to file the text or other material incorporated by reference as required by section 121.73 of the Revised Code or the incorporation by reference fails to meet the standards stated in sections 121.72, 121.75, and 121.76 of the Revised Code.	66
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(E) The agency has failed to prepare a complete and accurate rule summary and fiscal analysis of the proposed rule or revised proposed rule as required by section 127.18 of the Revised Code.	73
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(F) The agency has failed to demonstrate through the	77

business impact analysis, recommendations from the common sense initiative office, and the memorandum of response that the regulatory intent of the proposed rule or revised proposed rule justifies its adverse impact on businesses in this state.	78 79 80 81
<u>(G) The agency has failed to justify the proposed amendment or rescission of a rule containing a regulatory restriction.</u>	82 83 84
<b>Sec. 106.03.</b> Prior to the review date of an existing rule, the agency that adopted the rule shall do both of the following:	85 86
(A) Review the rule to determine all of the following:	87
(1) Whether the rule should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted;	88 89 90 91
(2) Whether the rule needs amendment or rescission to give more flexibility at the local level;	92 93
(3) Whether the rule needs amendment or rescission to eliminate unnecessary paperwork;	94 95
(4) Whether the rule incorporates a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by section 121.74 of the Revised Code and whether the incorporation by reference meets the standards stated in sections 121.72, 121.75, and 121.76 of the Revised Code;	96 97 98 99 100 101
(5) Whether the rule duplicates, overlaps with, or conflicts with other rules;	102 103
(6) Whether the rule has an adverse impact on businesses, as determined under section 107.52 of the Revised Code;	104 105

(7) Whether the rule contains words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; <u>and</u>	106 107 108
(8) Whether the rule requires liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure; <u>and</u>	109 110 111
<u>(9) Whether a rule that contains one or more regulatory restrictions should be amended or rescinded to reduce regulatory restrictions.</u>	112 113 114
In making its review, the agency shall consider the continued need for the rule, the nature of any complaints or comments received concerning the rule, and any relevant factors that have changed in the subject matter area affected by the rule.	115 116 117 118 119
(B) On the basis of its review of the existing rule, the agency shall determine whether the existing rule needs to be amended or rescinded.	120 121 122
(1) If the existing rule needs to be amended or rescinded, the agency, on or before the review date of the existing rule, shall commence the process of amending or rescinding the existing rule in accordance with its review of the rule.	123 124 125 126
(2) If the existing rule does not need to be amended or rescinded, proceedings shall be had under section 106.031 of the Revised Code.	127 128 129
Upon the request of the agency that adopted an existing rule, the joint committee on agency rule review may extend the review date of the rule to a date that is not later than one hundred eighty days after the review date assigned to the rule by the agency. Not more than two such extensions may be allowed.	130 131 132 133 134

<u>Sec. 121.031. The administrative department head of an administrative department created under section 121.02 of the Revised Code, or an administrative department head appointed under section 121.03 of the Revised Code may direct an otherwise independent official or state agency that is organized under the administrative department or administrative department head as necessary to achieve reductions in regulatory restrictions in rules in compliance with sections 121.95, 121.951, 121.952, and 121.953 of the Revised Code.</u>	135
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<u>Sec. 121.95. As used in sections 121.95, 121.951, 121.952, and 121.953 of the Revised Code, "state agency" means an administrative department created under section 121.02 of the Revised Code or an administrative department head appointed under section 121.03 of the Revised Code, and state agencies organized under an administrative department or administrative department head. "State agency" also includes the offices of the attorney general, secretary of state, auditor of state, and treasurer of state, as well as the department of education, state lottery commission, Ohio casino control commission, state racing commission, and the public utilities commission of Ohio. Rules adopted by an otherwise independent official or entity organized under a state agency shall be attributed to the agency under which the official or entity is organized for the purposes of sections 121.95, 121.951, 121.952, and 121.953 of the Revised Code.</u>	144
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<u>Not later than December 31, 2019, a state agency shall review its existing rules to identify rules having one or more regulatory restrictions that require or prohibit an action and prepare an inventory of the regulatory restrictions in its existing rules. Examples of words suggesting that a rule incorporates a regulatory restriction include "shall," "must,"</u>	160
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"require," "shall not," "may not," and "prohibit." A rule of  
law, phrased in indicative mood, also may constitute a  
regulatory restriction. This inventory is the "base inventory."

In the inventory, the state agency shall indicate all of 169  
the following: 170

(A) The regulatory restriction; 171

(B) The rule number of the rule in which the regulatory 172  
restriction appears; 173

(C) The statute under which the regulatory restriction was 174  
adopted; 175

(D) Whether removing the regulatory restriction would 176  
require statutory change; 177

(E) Any other information the joint committee on agency 178  
rule review considers necessary. 179

The state agency shall compute and state the total number 180  
of regulatory restrictions indicated in the inventory. 181

The state agency shall post the inventory on its web site, 182  
and shall electronically transmit a copy of the inventory to the 183  
joint committee. The joint committee shall review the inventory, 184  
and shall transmit the inventory electronically to the general 185  
assembly after it has been reviewed. 186

The inventory requirement does not apply to an internal 187  
management rule or any rule required to be adopted verbatim by 188  
the controlling statute. 189

**Sec. 121.951.** (A) (1) A state agency shall amend or rescind 190  
rules identified in its inventory of regulatory restrictions as 191  
necessary to reduce the total number of regulatory restrictions 192

<u>by thirty per cent, according to the following schedule:</u>	193
<u>(a) A ten per cent reduction not later than December 31, 2020;</u>	194
<u>(b) A twenty per cent reduction not later than December 31, 2021; and</u>	195
<u>(c) The thirty per cent reduction not later than December 31, 2022.</u>	196
<u>When a reduction of any percentage in regulatory restrictions, whether or not as specified in this section, has been achieved, the state agency may not adopt or maintain regulatory restrictions that would negate the reduction.</u>	197
<u>(2) If a specified percentage reduction has not been achieved according to the schedule, the state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions, until the specified thirty per cent reduction has been achieved. The state agency may not fulfill this requirement by merging two or more existing regulatory restrictions into a single surviving regulatory restriction.</u>	198
<u>(3) The state agency is encouraged to continue to reduce regulatory restrictions after the specified thirty per cent reduction has been achieved.</u>	199
<u>(B) Not later than March 15, 2021, and annually thereafter, the state agency shall prepare an historical report of its progress in reducing regulatory restrictions over the preceding year under divisions (A) (1) and (2) of this section. The state agency shall include a revised inventory of regulatory restrictions with the report.</u>	200

In the revised inventory, in addition to the information required by section 121.95 of the Revised Code, the state agency shall compute the net reduction in regulatory restrictions by adding the number of regulatory restrictions carried forward from the previous inventory to the number of regulatory restrictions added since the previous inventory, and then subtracting from the sum of the carried over and new regulatory restrictions the number of regulatory restrictions eliminated since the previous inventory. The state agency then shall subtract the net reduction from the number of regulatory restrictions in the base inventory, and divide the result by the number of regulatory restrictions in the base inventory to determine the percentage reduction in regulatory restrictions. 221  
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The state agency shall transmit the report electronically to the joint committee on agency rule review. The joint committee shall review the report, and shall transmit it electronically to the general assembly. The state agency shall continue preparing and transmitting a report until it has reported that it has achieved the specified thirty per cent reduction in regulatory restrictions. 234  
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**Sec. 121.952.** If a state agency fails to reduce regulatory restrictions by a required percentage within one hundred twenty days after a reduction deadline in section 121.951 of the Revised Code, the joint committee on agency rule review shall afford the state agency an opportunity to appear before the joint committee to show cause why the agency has not achieved the required reduction in regulatory restrictions. If the state agency appears before the joint committee at the time scheduled for the state agency to show cause, and the joint committee, by vote of a majority of its members present in a meeting at which a quorum of its members are present, determines that the state 241  
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agency has shown cause, the joint committee shall provide to the general assembly recommendations of statutory changes as determined necessary to accommodate the state agency's inability to achieve a required reduction in regulatory restrictions. 252  
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**Sec. 121.953.** Effective January 1, 2023, the state is limited in the number of regulatory restrictions that may be effective at any one time to a number that is seventy per cent of the aggregate total of regulatory restrictions identified by all state agencies in the base inventories prepared under section 121.95 of the Revised Code, as determined by the joint committee on agency rule review. A state agency shall contact the joint committee before submitting a proposed rule containing a regulatory restriction, and the joint committee shall determine whether adopting the regulatory restriction would cause the state to exceed the number of regulatory restrictions permitted under this section. A state agency may not adopt a rule if by adopting the rule the state agency would cause the number of regulatory restrictions to exceed the state limit as determined by the joint committee. 256  
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**Section 2.** That existing sections 106.021 and 106.03 of the Revised Code are hereby repealed. 271  
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**Section 3.** That the versions of sections 106.021 and 106.03 of the Revised Code that are scheduled to take effect August 18, 2019, be amended to read as follows: 273  
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**Sec. 106.021.** If, upon reviewing a proposed rule or revised proposed rule, the joint committee on agency rule review makes any of the following findings with regard to the proposed rule or revised proposed rule, the joint committee may recommend to the senate and house of representatives the adoption of a concurrent resolution to invalidate the proposed rule or revised 276  
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proposed rule or a part thereof:	282
(A) The proposed rule or revised proposed rule exceeds the scope of its statutory authority.	283 284
(B) The proposed rule or revised proposed rule conflicts with the legislative intent of the statute under which it was proposed.	285 286 287
(C) The proposed rule or revised proposed rule conflicts with another proposed or existing rule.	288 289
(D) The proposed rule or revised proposed rule incorporates a text or other material by reference and:	290 291
(1) The accompanying citation is not such as reasonably would enable a reasonable person to whom the proposed rule or revised proposed rule applies readily and without charge to find and inspect the incorporated text or other material;	292 293 294 295
(2) The accompanying citation is not such as reasonably would enable the joint committee readily and without charge to find and inspect the incorporated text or other material, and the agency did not file or otherwise make the incorporated text or other material available without charge to the joint committee; or	296 297 298 299 300 301
(3) The agency has treated the proposed rule or revised proposed rule in whole or in part as exempt from sections 121.71 to 121.74 of the Revised Code on grounds the incorporated text or other material has one or more of the characteristics described in division (B) of section 121.75 of the Revised Code, but the incorporated text or other material actually does not have any of those characteristics.	302 303 304 305 306 307 308
(E) The agency has failed to prepare a complete and	309

accurate rule summary and fiscal analysis of the proposed rule 310  
or revised proposed rule as required by section 106.024 of the 311  
Revised Code. 312

(F) The agency has failed to demonstrate through the 313  
business impact analysis, recommendations from the common sense 314  
initiative office, and the memorandum of response that the 315  
regulatory intent of the proposed rule or revised proposed rule 316  
justifies its adverse impact on businesses in this state. 317

(G) The agency has failed to justify the proposed 318  
amendment or rescission of a rule containing a regulatory 319  
restriction. 320

**Sec. 106.03.** Prior to the review date of an existing rule, 321  
the agency that adopted the rule shall do both of the following: 322

(A) Review the rule to determine all of the following: 323

(1) Whether the rule should be continued without 324  
amendment, be amended, or be rescinded, taking into 325  
consideration the purpose, scope, and intent of the statute 326  
under which the rule was adopted; 327

(2) Whether the rule needs amendment or rescission to give 328  
more flexibility at the local level; 329

(3) Whether the rule needs amendment or rescission to 330  
eliminate unnecessary paperwork; 331

(4) Whether the rule incorporates a text or other material 332  
by reference and, if so: 333

(a) Whether the citation accompanying the incorporation by 334  
reference is such as reasonably would enable a reasonable person 335  
to whom the rule applies readily and without charge to find and 336  
inspect the incorporated text or other material; 337

(b) Whether the citation accompanying the incorporation by reference is such as reasonably would enable the joint committee on agency rule review readily and without charge to find and inspect the incorporated text or other material; and 338  
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(c) If the rule has been exempted in whole or in part from sections 121.71 to 121.74 of the Revised Code on grounds the incorporated text or other material has one or more of the characteristics described in division (B) of section 121.75 of the Revised Code, whether the incorporated text or other material actually has any of those characteristics. 342  
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(5) Whether the rule duplicates, overlaps with, or conflicts with other rules; 348  
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(6) Whether the rule has an adverse impact on businesses, as determined under section 107.52 of the Revised Code; 350  
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(7) Whether the rule contains words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and 352  
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(8) Whether the rule requires liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure; and 355  
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(9) Whether a rule that contains one or more regulatory restrictions should be amended or rescinded to reduce regulatory restrictions. 358  
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In making its review, the agency shall consider the continued need for the rule, the nature of any complaints or comments received concerning the rule, and any relevant factors that have changed in the subject matter area affected by the rule. 361  
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(B) On the basis of its review of the existing rule, the agency shall determine whether the existing rule needs to be amended or rescinded. 366  
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(1) If the existing rule needs to be amended or rescinded, the agency, on or before the review date of the existing rule, shall commence the process of amending or rescinding the existing rule in accordance with its review of the rule. 369  
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(2) If the existing rule does not need to be amended or rescinded, proceedings shall be had under section 106.031 of the Revised Code. 373  
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Upon the request of the agency that adopted an existing rule, the joint committee on agency rule review may extend the review date of the rule to a date that is not later than one hundred eighty days after the review date assigned to the rule by the agency. Not more than two such extensions may be allowed. 376  
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**Section 4.** That the existing versions of sections 106.021 and 106.03 of the Revised Code that are scheduled to take effect August 18, 2019, are hereby repealed. 381  
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