



PRESS RELEASE
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Senate wants to kill rules, while requiring them

Budget bill cracks down on words like “shall” and “must” but orders rules anyway

Policy Matters Ohio Research Director Zach Schiller issues the following statement about contradictory provisions in the Senate budget.

“In a victory for ideology over common sense, the Ohio Senate approved a budget bill last week that calls for reducing regulatory rules, even while it mandates the creation of many such rules. This contradiction reveals that ham-handed attempts to reduce “regulation” are at odds with the basic, everyday work of the General Assembly.

“The bill says state agencies ‘may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions.’ A regulatory restriction is a rule that includes the words “shall,” “must,” “require,” “shall not,” “may not” and “prohibit.” The language is based on a [flawed study](#) that ranks Ohio versus other states in how many such provisions are in its administrative code – and only reviewed 29 states. Though the provision is based on the notion that such regulatory restrictions harm business, we have no idea how many of these so-called restrictions don’t affect private business at all.

“While it frowns on new rules, the Senate approved a budget bill that contains references to dozens of existing rules, implicitly endorsing them. And its version of House Bill 166 calls for ample new rule-making by, among others:

- The treasurer for the Pay for Success program;
- The director of development services on the industry sector partnership grant program and, in consultation with the chancellor of higher education, on the TechCred program;
- The health director for fetal infant mortality health boards, pregnancy-associated mortality review boards and for lead abatement tax credits;
- The commerce director, in consultation with employers, for a list of tools minors may use under the construction and manufacturing mentorship program;
- Agencies that issue temporary licenses or certificates under provisions in the budget bill to those on active military duty in the uniformed services, or their spouses;
- The job and family services director, who is to adopt rules covering a number of different things, including that institutions or associations that care for children must check the sex offender data base and the child welfare information system before employing someone;
- The director of mental health and addiction services for the medication-assisted treatment drug reimbursement program;
- The director of veterans services and the director of mental health and addiction services for a three-year pilot program to make transcranial magnetic stimulation available for veterans with substance abuse disorders or mental illness (including a

- specific rule requiring that clinical protocols and outcomes are collected and reported quarterly in a report provided by AMVETS); and
- The director of transportation for the Ohio maritime assistance program.

“Even while agencies are mandated to write these new rules, they are required to eliminate two rules for each new one they adopt starting with the effective date of the section through June 30, 2023. Of course, they could write rules that don’t contain these impermissible words, though that likely would make the rules largely voluntary.

“The General Assembly regularly passes legislation with mandates for agencies to write new rules. For example, the recently passed transportation budget, Amended Substitute House Bill 62, calls for the registrar of motor vehicles to adopt rules to implement a section of the bill under which members of the military who are stationed abroad, as well as their spouses and dependents, can electronically renew their vehicle licenses. Just as with this year’s HB 166, House Bill 49, the 2017 operating budget bill, granted new rule-making authority to a slew of agencies, including the Department of Veterans Services, the Department of Medicaid, the Department of Mental Health and Addiction Services, the Department of Health and the Ohio Board of Pharmacy, among others. Even now, the Joint Committee on Agency Rule Review (JCARR) is allowing rules to go forward with terms that this legislation discourages. For example, during one week in February, such rules included minimum requirements for wholesalers of dangerous drugs, Attorney General rules for peace officer certification and training, and background check requirements by the Department of Aging for people working in direct-care positions, among others. Does their use of words such as ‘must’ and ‘require’ make these rules offensive, and therefore require elimination of other rules?

“This provision in the Senate budget bill is more extreme in some ways than a similar one in Senate Bill 1, approved by the Senate and pending in the House. That bill also has a two-for-one provision, but it would only go into effect after agencies examine their regulations vs. targeted reductions and come up short. Like the budget bill, SB 1 would have agencies develop a “base inventory” of regulatory restrictions. Both bills would exempt from this inventory a variety of regulatory restrictions, including emergency rules, those that are required by state or federal law to be adopted verbatim, internal management rules, and others. But unlike SB 1, the provision in the budget bill makes no exceptions for the two-for-one requirement. That means that even if an agency adopts a new rule because it is required by the federal government, the agency would have to remove two others.

“No doubt there is some language that could be excised from the administrative code. But a blanket idea that the words ‘shall’ or ‘prohibit’ are somehow bad words; that requiring businesses and residents alike to follow certain rules is bad for Ohio – these are outlandish notions that have no place in legislation. The Senate’s requirement in the same bill of a variety of new rules illustrates that. The conference committee should delete this language. If it doesn’t, Governor DeWine should veto it.”

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Policy Matters Ohio is a nonprofit, nonpartisan state policy research institute with offices in Cleveland and Columbus.