

Senate Bill 15: Regulatory Flexibility Analysis

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Executive Summary

Senate Bill 15 would:

- Require state agencies to submit a regulatory flexibility analysis to JCARR that determines the impact pending legislation would have on individuals, small businesses and small organizations in Ohio.
- Require state agencies to file a five item economic impact statement with the Office of Small Business with an opportunity to comment before filing the bill for discussion with the assigned committees of the General Assembly.
- Install five default measures to assess if negative economic impacts entailed by proposed legislature can be averted.

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I. Purpose of S.B. 15

S.B. 15 is highly desirable for small businesses in Ohio. It is intended to expand the standard procedures used to ensure that pending legislation has no negative effect -- or the least possible negative effect -- on small business interests. It is designed to implement the regulatory framework required to minimize any avoidable negative impact the legislation may have before it is even considered for discussion in any committees.

II. Current legislation

O.R.C. Title I Sec. 119 already provides functions similar to those called for in S.B. 15. The current procedures for rule proposal by a rule-making agency is summarized as follows:

If the agency believes it to be "reasonably likely"¹ that the adoption of a rule will affect individuals, small business or small organizations (as defined by O.R.C. 121.24) the rule must be subjugated to a "complete and accurate"¹ rule summary and fiscal analysis (RSFA). The rule along with the RSFA must then be filed with the Office of Small Business in the Ohio Department of Development (ODOD) at least 60 days before the final submission to the Secretary of State, the Legislative Service Commission and the Joint Committee on Agency Rule Review (JCARR). Persons interested in the rule then have 40 days to submit comments to the agency or JCARR concerning the expected effect. During that period, specified committees may further request of the agency to "testify or produce information requested by the committees concerning [the] expected effect."¹ JCARR currently requires the submission of a four-page form to fulfill the RSFA requirement, which is composed of a number of questions "pertaining to a proposed rule's fiscal impact, cost of compliance estimates, and agency and local governments' ability to pay for new

¹ Gridley, Wendy H., "Bill Analysis, Senate Bill 15"

requirements imposed by the rule.”¹ Moreover, O.R.C. Title 1 sections 119.032 and 119.12 mandate a periodic review of existent legislation and judicial review of existent legislation if challenged, respectively.

III. Key elements of S.B. 15

S.B. 15 would expand the current requirements by calling for a *regulatory flexibility analysis* as well as an *economic impact statement* to be filed with JCARR in addition to the RFSA and the rule itself. The economic impact statement would also have to be filed with the Office of Small Business. The regulatory flexibility analysis consists of five “methods of reducing the proposed rule’s impact”¹ which must be considered before a rule may be passed:

1. The establishment of less stringent compliance or reporting requirements.
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements.
3. The consolidation or simplification of compliance or reporting requirements.
4. The establishment of performance standards to replace design or operational standards requiring the rule.
5. The exemption of individuals, small business, or small organizations from all or any part of the requirements in the rule.¹

The economic impact statement must address the following 5 issues:

1. A statement of the agency’s findings after completing the regulatory flexibility analysis.
2. An identification and estimate of the number of individuals, small businesses, or small organizations subject to the proposed rule
3. The projected reporting, record-keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.
4. Statement of the probable effect on impacted individuals, small businesses, or small organizations
5. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.¹

The flexibility analysis and the economic impact statement form the heart of S.B. 15. They represent comprehensive tools to review and avoid potentially harmful legislation. In essence, they represent an expansion of the checks and balances on our legislative system, which operates in favor of individuals, small businesses and small organizations.

IV. Conclusion

In conclusion, it is in our best interest to stand behind S.B. 15. Its purpose is the protection of small business interests in Ohio and it allows for a comprehensive way of doing so. In connection with its Model Legislation Initiative, the SBA set forth five provisions that need to be met in order to ensure the highest degree of efficacy for regulatory flexibility analyses:

1. A small business definition that is consistent with state practices and permitting authorities;
2. A requirement that state agencies perform an economic impact analysis on the effect of a rule on small businesses before they regulate;

3. A requirement that state agencies consider alternatives for small businesses that are less burdensome while meeting the agency's regulatory goals;
4. A provision that requires state governments to periodically review existing regulations;
5. Judicial review to give "teeth" To the law².

Taking the steps proposed in S.B. 15 would move Ohio within one step of the state the SBA determines as ideal. The only shortfall that Ohio would have should S.B. 15 pass would be the absence of easily accessible bi-directional communication platform (e.g. internet based) that allows for rapid review of relevant (as opposed to all as is currently the case) pending legislation and the submission of commentary on such legislation. ² Nonetheless, S.B. 15 is a drastic improvement over the status quo and should be supported.

In 2005, the COSE advocacy committee and the COSE Board endorsed S.B. 15. Then COSE Chairman, Jeanne Coughlin, President, The Coughlin Group Inc. sent a letter of support to the sponsors:

COSE has long been in favor of requiring state agencies to conduct a regulatory analysis to show the affects a proposed rule may have on small business. We believe understanding how rules and laws will affect small business is vital in the success of the region and state. The legislation found in SB 15 begins to address some of these issues. The COSE Board believes strongly in backing legislation that will help policy makers understand the true impacts of legislation on small business. Therefore, the COSE Board recently endorsed SB 15.

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² U.S. Small Business Administration, "Regulatory Flexibility: What It Is And Why It Matters"