

OHIO GENERAL ASSEMBLY
JOINT COMMITTEE ON AGENCY RULE REVIEW

SENATE MEMBERS

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NATHAN H. MANNING

KRISTIN BOGGS
DAN RAMOS

July 16, 2018

Chairman Uecker called the meeting to order at 1:36 p.m.

Deputy Director Fouche called the roll. Senators Uecker, Hackett, Kunze, Skindell, Thomas and Representatives Duffey, Manning, Gavarone, Boggs, and Ramos were in attendance. Senator Balderson was excused from the meeting. Senator Hackett substituted for Senator Balderson. Deputy Director Fouche stated a quorum was present. Chairman Uecker asked the Committee members to review the June 11, 2018 minutes. The minutes were approved as presented.

Director Wolpert read the No Change Agenda. Chairman Uecker called for questions or comments on the No Change Agenda. There were no questions from the Committee or public. Director Wolpert read the Regular Agenda. Item 12 was put into To Be Refiled status at 8:05 a.m. and item 14 was put into To Be Refiled status at 11:45 a.m. on July 16, 2018. Items 14 and 17 were moved to the review portion of the agenda. Chairman Uecker called for questions or comments on the Regular Agenda. There were no questions from the Committee or public. Chairman Uecker temporarily recessed the Committee at 1:40 p.m.

Chairman Uecker called the Committee back to order at 1:41 p.m. to discuss the review portion of the agenda. Chairman Uecker called Johann Klein, Deputy Director of Legislative Affairs for the Department of Transportation, to provide comments to the Committee on agenda item 14. Mr. Klein stated much of the provisions within proposed rule 5501:2-2-02 were not at the discretion of the state, and changes to the rule could put federal dollars at risk. The 1968 'Federal State Agreement' also directs that only "two advertising devices may be permitted at a single location facing the same direction." Mr. Klein stated without this proposed rule, two advertising devices could each be split into two additional signs using border or trim, resulting in four signs facing a single direction of traffic, a second violation of the Federal State Agreement. Mr. Klein stated the Department is not proposing to alter the border/trim language that has been in administrative code since 1972.

Chairman Uecker stated the rule is based on a 1968 agreement between the State and the federal government. Mr. Klein stated Chairman Uecker was correct. Chairman Uecker stated the rule has been in effect since 1972. Mr. Klein stated the language has been in effect since 1972. Chairman Uecker stated ODOT feels the bonus payments are in jeopardy if the rule is not adhered to. Mr. Klein stated Chairman Uecker was correct. Chairman Uecker asked how much the State would lose in federal funding. Mr. Klein stated the Department could lose up to 10% total of the federal funds received. Mr. Klein stated half of the Department's budget is federal highway monies. Chairman Uecker asked for more information on the bonus payment. Nathan Fling, Department of Transportation, stated the bonus payment amounts to a potential 1 ½% on top of the normal allotment of federal highway money.

Chairman Uecker asked for the amount of bonus payments the Department has received each year. Mr. Fling believes the bonus payment has not been funded for some time. Mr. Fling stated the Department was still subject to the 10% penalty. Chairman Uecker stated the Department has not received a 1 ½% bonus payment and asked who was actually in violation of the agreement. Mr. Fling stated the Department was following direction from FHWA that states if the Department does not follow the agreement the Department is still subject to the 10% penalty. Chairman Uecker stated a border within the sign face was to be considered two different signs but if, there was no border within the sign face and there was two ads it was considered one sign. Mr. Fling stated Chairman Uecker was correct.

Chairman Uecker asked if the feds had tried to update the agreement to keep in line with current technology. Mr. Fling stated the rule did not make a distinction between a one-dimensional border and more.

Senator Thomas asked if a border going down through the middle of the sign face is what made the two billboard permits had their own set of rules. Senator Thomas asked if the Department had been in contact with the feds regarding this issue. Mr. Klein stated the Department has spoken with the Federal Highway Administration numerous times regarding this issue. Mr. Klein stated he has asked the feds to provide something in writing about this particular provision. Senator Hackett asked if the rule had anything to do with distracted driving. Mr. Fling believes the limit on the number of sign faces has to do with distracted driving. Senator Hackett asked if that is what the feds were telling the Department. Mr. Fling stated he believed the original origin of the rule was to minimize the visual distractions.

Representative Ramos asked if there was no border between two different colors if it would count as two separate signs on one sign face. Mr. Fling stated that if there was no dividing line or trim and there was just two ads next two each other on the same sign face it would not be considered as two signs. Representative Ramos asked if doing that would allow individuals follow the rule, potentially advertise two things, and for the Department to receive federal funding. Mr. Fling stated, "Yes, it would." There were no further questions for the witnesses.

Chairman Uecker called Kevin Futryk, Outdoor Advertising Association of Ohio, to provide comments to the Committee on agenda item 14. Mr. Futryk stated the Association's concerns were with the border and trim definition in proposed rule 5501:2-2-02. Mr. Futryk stated they looked forward to working with the Department to come to some sort of compromise. Chairman Uecker asked if the advertisements could have a type of shadowing between them instead of having a border. Mr. Futryk stated the concern the association has is that the Department is no longer regulating border or trim but the ad copy. Senator Thomas asked why the association would not want to compromise as opposed to getting into these other fights. Mr. Futryk stated the goal is to make the rules as clear as possible because modern printing techniques allow for the printed border. There were no further questions for the witness.

Chairman Uecker called Chris Schraff, Supreme Council of the House of Jacob, to provide opponent testimony on agenda item 17. Mr. Schraff believes the proposed rules conflict with legislative intent and conflict with an existing rule. Chairman Uecker asked what this would mean to the organization that you are representing. Mr. Schraff stated it would mean that going forward the House of Jacob would be legally obligated to increase staffing hours for their water supply systems operator. Chairman Uecker asked for the approximate cost. Mr. Schraff stated he had not done an estimate for his church but Bill Dowling, The Bath United Church of Christ, had estimated \$10,000 per year. There were no further questions for the witness.

Chairman Uecker called Frank Leone, Environmental Engineering Service, to provide opponent testimony on agenda item 17. Mr. Leone believes OEPA is exceeding their statutory authority, the proposed rules conflict with legislative intent, and OEPA failed to complete an accurate Rule Summary and Fiscal Analysis (RSFA). There were no questions for the witness. Chairman Uecker directed the members to written testimony on the iPads.

Chairman Uecker called Andrew Barienbrock, OEPA, to provide comments and answer questions from the Committee. Mr. Barienbrock believes that OEPA has worked with commenters by refiling the proposed rules to increase flexibility and clarity that was requested by the commenter, while upholding the integrity of the operator certification program and protecting public health. Ann Fischbein, OEPA, stated the proposed rules were within the Agency's statutory authority and the proposed rules do not conflict with existing rules.

Vice-Chairman Duffey asked if the new cost to Ohioans to comply with the proposed rules is approximately \$75 million. Mr. Barienbrock stated the costs Vice-Chairman Duffey was looking at were not new costs but costs that are already associated with the current rules. Vice-Chairman Duffey asked if OEPA had detailed new incremental costs of the changes along with current costs in the RSFA. Mr. Barienbrock stated OEPA was outlining all of the costs associated with the proposed rules. Vice-Chairman Duffey asked where in the RSFA the cost explained of the new changes being proposed. Mr. Barienbrock stated there was a breakdown of costs.

Vice-Chairman Duffey asked why the Agency did not provide an estimate in dollars for effected local governments. Mandi Payton, OEPA, stated the Agency would need to get back to Vice-Chairman Duffey with an answer to his

question. Vice-Chairman Duffey asked what the Agency was generally trying to achieve in the proposed rule and what "potential to serve" meant. Mr. Barienbrock stated the potential to serve was included in the proposed rule package based on definitions currently in the Ohio Administrative Code (O.A.C.) 3745-81-01 which gives the director broad authority where the director can determine population on a case by case basis.

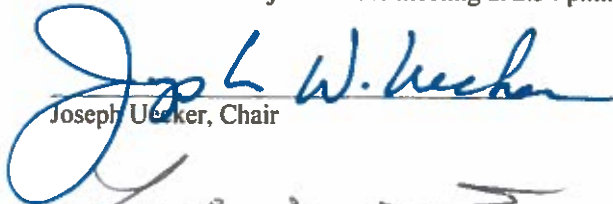
Vice-Chairman Duffey asked Mr. Barienbrock to provide the Committee with a current problem occurring the existing rule would not help solve. Mr. Barienbrock stated the minimum staffing provision was put into the rules 12 years ago to ensure that qualified individuals physically present at a public water system. Mr. Barienbrock stated before the minimum staffing requirement was put into rule operators may have visited a facility once a quarter or were always onsite. Vice-Chairman Duffey asked for specific examples of a public health incident in Ohio within the past five years relating to the proposed rule. Mr. Barienbrock stated one example would be Unitech Environmental Services in Vermillion, Ohio. Vice-Chairman Duffey stated he would not be making a motion to recommend invalidation on the proposed rule package but did not believe the Agency filled out the RSFA correctly. Ms. Payton stated the proposed rule were filed for five-year review and the RSFA included all of the cost of compliance for the rule.

Chairman Uecker stated to the Committee that they could ask the Agency to put the rules into TBR status and refile them later when the costs have been provided. Senator Thomas believed that would be appropriate. Representative Ramos asked what the potential damage would be in delaying the proposed rules implementation. Mr. Barienbrock believes delaying the rules would not cause an immediate public impact but the Agency would like to have the rules in place to address certain issues. Vice-Chairman Duffey stated it was up to the Agency whether they put the rules into TBR status. Mr. Barienbrock stated the new costs of the proposed rule is approximately \$1.8 million dollars on the wastewater collection system side and approximately \$273,000 on the water distribution side.

Chairman Uecker asked if union contracts were excluded from the proposed rules. Mr. Barienbrock stated union contracts were not covered in the proposed rules. Senator Hackett asked if The Bath United Church of Christ's concerns were addressed in the refiled version of the proposed rules. Mr. Barienbrock stated the concerns were addressed in the refiled version of the proposed rules. There were no further questions for the witnesses and the Committee made no motions.

Chairman Uecker reminded the public of the next JCARR meeting on Monday, August 13, 2018 at 1:30 p.m. in the Senate Finance Hearing Room.

Chairman Uecker adjourned the meeting at 2:54 p.m.



Joseph Uecker, Chair



Larry Wolpert, Director