

OHIO GENERAL ASSEMBLY
JOINT COMMITTEE ON AGENCY RULE REVIEW

SENATE MEMBERS

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VICE-CHAIR

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CECIL THOMAS

TROY BALDERSON
STEPHANIE KUNZE



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GREG FOUCHE
DEPUTY DIRECTOR

HOUSE MEMBERS

MIKE DUFFEY
CHAIR

THERESA GAVARONE
NATHAN H. MANNING

KRISTIN BOGGS
DAN RAMOS

November 16, 2017

Chairman Duffey called the meeting to order at 1:45 p.m.

Deputy Director Fouche called the roll. Representatives Duffey, Gavarone, Manning, Boggs, Ramos and Senators Uecker, Balderson, Kunze, Skindell, and Thomas were in attendance. Deputy Director Fouche stated a quorum was present. Chairman Duffey asked the Committee members to review the October 23, 2017 minutes. The minutes were approved as presented.

Director Wolpert read the No Change Agenda. Chairman Duffey 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. Chairman Duffey called for questions or comments on the Regular Agenda. There were no questions from the Committee or public. Chairman Duffey temporarily recessed the Committee at 1:49 p.m.

Chairman Duffey called the Committee back to order at 1:50 p.m. to discuss rules that are late for five year review. Chairman Duffey called Ross McGregor, former Dean of the Ohio House of Representatives and former JCARR Committee Chair, to explain the Bucket of Invalidation for the late five year review process. Mr. McGregor stated the Bucket of Invalidation was brought about after an analysis by Director Wolpert which indicated many agencies were woefully late in filing rules for five year rule review. Mr. McGregor stated the five year rule review is an important aspect of the JCARR Committee's activities. Mr. McGregor stated this process is trying to avoid over regulation of government by looking at rules every five years to make sure they are still applicable and worthy of being on the books. Mr. McGregor stated when he first started the idea of the Bucket of Invalidation there were over 2,400 rules that had missed their five year rule review. Mr. McGregor stated now, we're down to some 600 and it's a very good indicator that agencies have indeed taken up their responsibilities of filing their rules for five year rule review. Mr. McGregor stated that doesn't mean the bucket doesn't need to come back from time to time. Mr. McGregor presented Chairman Duffey with the Bucket of Invalidation.

Chairman Duffey called Mahjabeen Qadir, Department of Health, to speak on the Department's late five year review rules. Ms. Qadir stated the Department was actively reviewing 3701-49 rules. Ms. Qadir stated January 5, 2018 the Department plans to have a meeting with stakeholders to discuss the rules. Ms. Qadir stated the Department was also actively reviewing 3701-47 rules. Ms. Qadir stated the Department acknowledged current pending legislation that directly impacts the rules. There were no questions from the Committee.

Chairman Duffey called Brock Miskimen, Ohio Department of Natural Resources, to speak on the Department's late five year review rules. Mr. Miskimen stated about half of the Department's overdue rules have been filed with JCARR, the Common Sense Initiative Office (CSIO), or are out for interested party comment. Mr. Miskimen stated the Department will continue to work to bring the other half of overdue rules into compliance. Chairman Duffey thanked Mr. Miskimen for providing the Committee a letter explaining why the Department's rules were overdue. There were no questions from the Committee.

Chairman Duffey called Bryan Singular, Ohio Lottery Commission, to speak on the Commission's late five year review rules. Mr. Singular stated the Commission has recently experienced turnover and the rule coordinator was out for five months for an unexpected injury. Mr. Singular stated some rules have been

filed with CSIO and rule 3770:2-8-01 has been proposed to the Commission. Chairman Duffey asked what date Mr. Singular believes the Commission could file all the overdue rules. Mr. Singular believes the rules can be filed within the first week of January. There were no further questions from the Committee.

Chairman Duffey called Sallie Debolt, State Medical Board, to speak on the Board's late five year review rules. Ms. Debolt stated the Board now had the correct number of staff to effectively complete the rule process. Ms. Debolt stated almost all the rules that are overdue have been filed with CSIO. Ms. Debolt stated 4731-15 and 4731-16 rules have been released from CSIO and will be filed shortly with JCARR. Ms. Debolt stated 4731-18 rules are being currently worked on by the Board. Chairman Duffey asked what date Ms. Debolt believes the Board could file all the overdue rules. Ms. Debolt stated all rules should be filed as early in 2018 as possible. Chairman Duffey asked how long the oldest overdue rules were in the CSIO process. Ms. Debolt stated the oldest rules were filed in August 2017. Representative Ramos asked why rules due during the late Taft Administration have not yet been filed. Ms. Debolt stated the rules have not yet been filed due to staffing issues and the rules seem to be working which caused them not to rise to the top priority. Ms. Debolt stated that attitude has changed. Representative Ramos stated seven years into the administration and you still are not staffed properly. Ms. Debolt stated the Board is now staffed. There were no further questions from the Committee.

Chairman Duffey called Diane Lease, Department of Education, to speak on the Department's late five year review rules. Ms. Lease stated the Department originally had six overdue rules. Ms. Lease stated four rules have been filed and the two remaining rules will go to the Board in December. Chairman Duffey asked why the rules had not been previously filed. Ms. Lease stated the Department is working on the language to reflect the funding for the two programs. There were no further questions from the Committee.

Chairman Duffey called Laura Factor, Ohio Environmental Protection Agency (OEPA), to speak on the Agency's late five year review rules. Ms. Factor stated the OEPA has fifteen rules they will be filing with JCARR by the end of the year. Ms. Factor stated eleven rules were released from CSIO yesterday and one rule has been sent out for early stakeholder outreach. Ms. Factor stated there were three rules left regarding water quality the OEPA works on during monthly meetings. Chairman Duffey thanked Ms. Factor for the detailed monthly report of overdue rules the Agency sends to the Chair. There were no questions from the Committee.

Chairman Duffey called Dustin Calhoun, Department of Agriculture, to speak on the Department's late five year review rules. Mr. Calhoun stated the Department was waiting on USDA guidelines for some rules but in the meantime will be filing those rules as no change to come into compliance with five year review. Mr. Calhoun stated the Department was waiting on recommendations from CSIO and some rules have been sent out for stakeholder outreach. Chairman Duffey asked when the Department expected all overdue rules to be filed. Mr. Calhoun stated the rules with regard to the USDA should be filed by the end of the year and the rules within CSIO should be getting filed within two weeks of receiving recommendations. There were no further questions from the Committee.

Chairman Duffey called Jim Tassie, Department of Medicaid, to speak on the Department's late five year review rules. Mr. Tassie stated overdue rules regarding durable medical equipment have been in the stakeholder outreach process since 2015. Mr. Tassie stated the rules are going through the last internal review process and should have an effective date of April 1, 2018. Mr. Tassie stated the Department would continue to work on the remaining rules and the Department has a goal of filing the rules within the first half of the year. There were no questions from the Committee.

Chairman Duffey called Angela Hawkins, Public Utilities Commission of Ohio (PUCO), to speak on the Commission's late five year review rules. Ms. Hawkins stated rules in regards to net metering would be filed as soon as possible. Ms. Hawkins stated she anticipates the Commission to have an order out on rules in regards to renewable energy and energy efficiency by December or January. Ms. Hawkins stated rules in regards to telecom are filed with CSI and the Commission anticipates filing them as early as next week after CSIO issues their recommendation. Chairman Duffey asked Ms. Hawkins to follow up with a letter to the Committee regarding the Commission's legal authority on carrier of last resort. Chairman Duffey asked Ms. Hawkins about general and uniform operation as it appears in section (A)(1) of O.R.C.

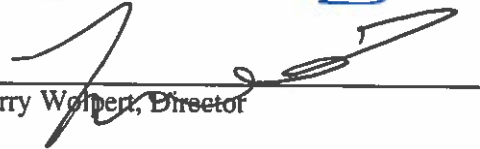
111.15. Ms. Hawkins stated with regard to sub-metering the Commission acted within the bounds of its statutory authority. Chairman Duffey asked if Ms. Hawkins thought that the Shroyer Test applies generally and uniformly to parties. Ms. Hawkins stated that any test is applied on a case by case basis based on the facts of the case before you. Chairman Duffey asked if test itself was applied generally and uniformly. Ms. Hawkins stated that as an agency it is prudent to follow your precedent and apply the tests uniformly. Chairman Duffey asked why there was not a rule from the Commission regarding sub-metering. Ms. Hawkins stated the Commission would be happy to sit down with the Chairman and talk about the issue. Ms. Hawkins stated the Commission believes they are following the duty that they have under their statute. Chairman Duffey asked when the Committee sends a letter to an agency, the PUCO, what is the expected time frame for the agency to respond. Ms. Hawkins stated she believed the Chairman reached out to Chairman Duffey regarding the issue. Chairman Duffey asked that his letter be responded to by letter to which Fletch Zimpher, PUCO, stated the Commission would answer Chairman Duffey's letter by letter. There were no further questions from the Committee.

Chairman Duffey called Missy Craddock, Occupational Therapy, Physical Therapy, and Athletic Trainers Board, to speak on the Board's late five year review rules. Ms. Craddock stated the overdue rules have been reviewed by the Board and will be filed with CSIO. There were no questions for the witness.

Chairman Duffey reminded the public of the next JCARR meeting on Monday, December 11, 2017 at 1:30 p.m. in the William McKinley Hearing Room.

Chairman Duffey adjourned the meeting at 2:26 p.m.


Mike Duffey, Chair


Larry Wolpert, Director