

**OPINION NO. 79-088****Syllabus:**

Although R.C. 3745.03 exempts the rulemaking procedures of the Environmental Board of Review from the provisions of R.C. Chapter 119, R.C. 111.15 nevertheless requires the proposed rules of the Environmental Board of Review to be filed with the Clerk of the Senate for legislative review pursuant to R.C. 119.03(I), unless the proposed rules come within the exceptions set forth in R.C. 111.15(D) (1) through (7).

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**To: Thomas M. Phillips, Chairman, Environmental Board of Review, Columbus, Ohio**  
**By: William J. Brown, Attorney General, November 27, 1979**

I have before me your request for my opinion regarding the enactment of Substitute House Bill No. 257 (eff. January 1, 1978<sup>1</sup>), which established a joint legislative committee to review the proposed rules of state agencies and which permits the General Assembly, through this committee, to invalidate the proposed rules. Your questions may be stated as follows:

1. Do the provisions of Substitute House Bill 257 apply to the Environmental Board of Review in any way whatsoever?
2. If so, to what extent does House Bill 257 apply to the rules and regulations of the Environmental Board of Review?

Substitute House Bill 257 amended portions of R.C. 111.15, 119.01, and 119.03, and also enacted a new statute, R.C. 101.35. The effect of the bill was to establish a system of legislative review of rules proposed by the various state agencies. The proposed rules of state agencies become subject to legislative review under either R.C. 111.15 or R.C. 119.03. R.C. 111.15, 119.03, and 101.35 have been amended since the enactment of House Bill 257. See Am. Sub. S.B. No. 321 (eff. April 14, 1978), Am. Sub. H.B. No. 204 (eff. July 30, 1979<sup>2</sup>) and Am. S.B. No. 8 (eff. Sept. 19, 1979<sup>3</sup>). My discussion of your questions is based on the law as amended by these acts.

The major provisions governing the review of proposed rules by the legislative

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<sup>1</sup>Certain provisions of this Act became effective on Oct. 31, 1977.

<sup>2</sup>Certain provisions of this Act became or will become effective on Sept. 1, 1979 and Jan. 1, 1980.

<sup>3</sup>Certain provisions of this Act will become effective on Jan. 1, 1980.

committee are contained in R.C. Chapter 119, the Ohio Administrative Procedure Act. R.C. 119.03(H) and (I) require an agency to file copies of its proposed rules with the Clerk of the Senate so that the joint legislative committee may have the opportunity to review such rules.

Whether the Environmental Board of Review (Board) is an "agency" as defined in R.C. 119.01(A) is not readily apparent. However, it is not necessary to determine whether the Board is an "agency" as defined in R.C. 119.01(A) and, hence, subject to R.C. Chapter 119, because R.C. 3745.03 expressly provides that the Board's rulemaking authority is not subject to R.C. Chapter 119. The relevant paragraph of R.C. 3745.03 states:

The authority and the duty of the board to adopt regulations under this section shall not be governed by or be subject to Chapter 119. of the Revised Code.

R.C. 3745.03 became effective October 23, 1972, and has remained unchanged by the enactment and amendment of the sections that provide for the legislative review procedure described above. Thus, if compliance with the procedure were required only by R.C. Chapter 119, the Board would not have to comply. However, since compliance with the review procedure in R.C. 119.03(I) is required by both R.C. 111.15 and R.C. 119.03, it is necessary to determine whether R.C. 111.15 applies to the Environmental Board of Review.

I am aware of no statutory provision which exempts the Board from compliance with R.C. Chapter 111. Rather, it is clear from the language of R.C. 111.15 that the Board's rules are subject to the provisions of that section. R.C. 111.15(A) and (B) provide in pertinent part:

(A) As used in this section:

(1) "Rule" includes any rule, regulation, bylaw, or standard having a general and uniform operation adopted by an agency under the authority of the laws governing the agency, and includes any rule, regulation, bylaw, or standard governing the internal management of an agency. . . . "Rule" includes any amendment, rescission, or repeal of a rule. The legislative reference board shall, by rule, define "rule, regulation, bylaw, or standard governing the internal management of an agency."

(2) "Agency" means any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or general and technical college. "Agency" does not include the general assembly or any court.

(B) Any rule adopted by any agency pursuant to this section shall. . . . (Emphasis added.)

R.C. 111.15(D), which was added by Substitute House Bill 257 and amended by Amended Senate Bill 8, states in pertinent part:

(D) At least sixty days before a board, commission, department, division, or bureau of the government of the state adopts and promulgates a rule under division (B) of this section, it shall file two copies of the full text of the proposed rule with the clerk of the senate, and the proposed rule shall be subject to review and invalidation under division (I) of section 119.03 of the Revised Code. . . . This division does not apply to any of the following:

(1) A proposed rule of an emergency nature;

. . .

(3) A proposed temporary rule as defined in division (J) of section 119.01 of the Revised Code;

. . .

(5) A proposed rule concerning the internal management of a board . . . of the government of the state;

. . .

(7) Any proposed rule that must be adopted verbatim by an agency pursuant to federal law or rule, to become effective within sixty days of adoption, in order to continue the operation of a federally reimbursed program in this state, so long as the proposed rule contains both of the following:

(a) a statement that it is proposed for the purpose of complying with a federal law or rule;

(b) a citation to the federal law or rule that requires verbatim compliance. (Emphasis added.)

It follows, then, that R.C. 111.15(D) applies to rules of the Board which have not yet been adopted. The exceptions to R.C. 111.15(D) which exempt some rules from the filing requirements are also applicable to the Board. If a rule proposed by the Board comes within one of these exceptions—as, for example, if a rule is confined in operation to the internal management of the Board—the rule need not be filed for review pursuant to R.C. 111.15(D); unless the rule comes within one of these exceptions, it must be filed. R.C. 111.15(D) expressly directs the filing of proposed rules with the Clerk of the Senate as is also required by R.C. 119.03(H). R.C. 111.15 states that such rules are then "subject to review and invalidation" under R.C. 119.03(I). Thus, R.C. 111.15 incorporates the review and invalidation procedures of R.C. 119.03. The question, then, is whether the provision of R.C. 3745.03 which exempts the Board from R.C. Chapter 119 also exempts the Board from the requirements of R.C. 119.03 made applicable by R.C. 111.15.

R.C. 3745.03 makes no reference to R.C. 111.15 and therefore does not exclude the Environmental Board of Review from the requirements of R.C. 111.15. As set forth above, R.C. 111.15 specifically requires that, except for particular exceptions, a board file a copy of its proposed rules with the Clerk of the Senate. After filing, the rules are subject to review and invalidation under the provisions of R.C. 119.03(I). Hence, I must conclude that the General Assembly intended that the Board promulgate rules by complying with all the requirements of R.C. 111.15, including those relating to legislative review. My conclusion is supported by R.C. 1.51, which provides that if a general provision [R.C. 111.15(D)] conflicts with a special provision [that part of R.C. 3745.03 quoted above], the special provision controls, "unless the general provision is the later adoption and the manifest intent is that the general provision prevail." R.C. 111.15(D) is the later adoption, and in the enactment of Sub. H.B. No. 257 and the subsequent amendments there appears a manifest intent that, except as expressly exempted, all proposed rules of the various state agencies be subject to review by the General Assembly. Hence, the proposed rules of the Board are subject to legislative review and invalidation under R.C. 111.15.

You suggest that language found in R.C. 111.15(A) exempts rules defined in R.C. 119.01 from the scope of R.C. 111.15. That language was repealed by Am. Sub. S.B. No. 321 (eff. April 14, 1978). Therefore, I can find no provision effectively exempting the rules of the Board from the legislative review.

Accordingly, it is my opinion, and you are advised, that although R.C. 3745.03 exempts the rulemaking procedures of the Environmental Board of Review from the provisions of R.C. Chapter 119, R.C. 111.15 nevertheless requires the proposed rules of the Environmental Board of Review to be filed with the Clerk of the Senate for legislative review pursuant to R.C. 119.03(I), unless the proposed rules come within the exceptions set forth in R.C. 111.15(D) (1) through (7).