

As Introduced

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S. B. No. 268

Senators Lang, Cutrona

To amend sections 106.01, 111.15, and 119.03 and to 1
enact sections 106.10 and 111.151 of the Revised 2
Code regarding regulatory-focused 3
nongovernmental organizations and model 4
administrative rules adopted by state agencies. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 106.01, 111.15, and 119.03 be 6
amended and sections 106.10 and 111.151 of the Revised Code be 7
enacted to read as follows: 8

Sec. 106.01. As used in ~~sections 106.01 to 106.042 of the~~ 9
~~Revised Code~~ this chapter, as the case may be: 10

(A) "Agency" means an agency as defined in sections 111.15 11
and 119.01 of the Revised Code. 12

(B) "Review date" means the review date assigned to a rule 13
by an agency under section 111.15 or 119.04 of the Revised Code. 14

(C) "Rule" means (1) a proposed new rule, or a proposed 15
amendment or rescission of an existing rule, that has been filed 16
with the joint committee on agency rule review under division 17

(D) of section 111.15 of the Revised Code or division (C) of 18
section 119.03 of the Revised Code or (2) an existing rule that 19
is subject to review under sections 106.03 and 106.031 of the 20

Revised Code. "Rule" includes an appendix to a rule. 21

"Proposed rule" refers to the original and a revised 22
version of a proposed rule. 23

"Proposed rule" does not include a proposed rule that has 24
been adopted and is being filed in final form. 25

In sections 106.03 and 106.031 of the Revised Code, "rule" 26
does not include a rule of a state college or university, 27
community college district, technical college district, or state 28
community college or a rule that is consistent with and 29
equivalent to the form required by a federal law and that does 30
not exceed the minimum scope and intent of that federal law. 31

Sec. 106.10. (A) As used in this section, "regulatory- 32
focused nongovernmental organization" has the same meaning as in 33
section 111.151 of the Revised Code. 34

(B) Each agency shall disclose the following information 35
to the Ohio ethics commission: 36

(1) Any funding received by the agency from a regulatory- 37
focused nongovernmental organization; 38

(2) Travel and other expenses related to agency staff 39
attendance of events sponsored by a regulatory-focused 40
nongovernmental organization; 41

(3) A record of votes taken by any regulatory-focused 42
nongovernmental organization committee influencing regulatory 43
matters that includes as a member an agency director, deputy 44
director, or agency employee to whom rule making authority has 45
been delegated; 46

(4) A summary of all rules adopted by the agency based on 47
model language drafted by a regulatory-focused nongovernmental 48

organization; 49

(5) The name of each regulatory-focused nongovernmental 50
organization of which the agency director, deputy director, or 51
agency employee to whom rule making authority has been delegated 52
is a member; 53

(6) The title of each committee appointment or leadership 54
position within a regulatory-focused nongovernmental 55
organization held by the agency director, deputy director, or an 56
agency employee to whom rule making authority has been 57
delegated. 58

(C) (1) The head of each agency shall make the disclosures 59
required by division (B) of this section annually in a report 60
submitted by a date prescribed by the Ohio ethics commission. 61

(2) The commission shall create and maintain a publicly 62
accessible web site containing the information required to be 63
submitted under divisions (B) (5) and (6) of this section. 64

(D) All communications between an agency and a regulatory- 65
focused nongovernmental organization concerning the adoption, 66
amendment, or rescission of a rule are public records under 67
section 149.43 of the Revised Code and open to public 68
inspection. 69

Sec. 111.15. (A) As used in this section and section 70
111.151 of the Revised Code: 71

(1) "Rule" includes any rule, regulation, bylaw, or 72
standard having a general and uniform operation adopted by an 73
agency under the authority of the laws governing the agency; any 74
appendix to a rule; and any internal management rule. "Rule" 75
does not include any guideline adopted pursuant to section 76
3301.0714 of the Revised Code, any order respecting the duties 77

of employees, any finding, any determination of a question of 78
law or fact in a matter presented to an agency, or any rule 79
promulgated pursuant to Chapter 119. or division (C) (1) or (2) 80
of section 5117.02 of the Revised Code. "Rule" includes any 81
amendment or rescission of a rule. 82

(2) "Agency" means any governmental entity of the state 83
and includes, but is not limited to, any board, department, 84
division, commission, bureau, society, council, institution, 85
state college or university, community college district, 86
technical college district, or state community college. "Agency" 87
does not include the general assembly, the controlling board, 88
the adjutant general's department, or any court. 89

(3) "Internal management rule" means any rule, regulation, 90
bylaw, or standard governing the day-to-day staff procedures and 91
operations within an agency. 92

(B) (1) Any rule, other than a rule of an emergency nature, 93
adopted by any agency pursuant to this section shall be 94
effective on the tenth day after the day on which the rule in 95
final form and in compliance with division (B) (3) of this 96
section is filed as follows: 97

(a) The rule shall be filed in electronic form with both 98
the secretary of state and the director of the legislative 99
service commission; 100

(b) The rule shall be filed in electronic form with the 101
joint committee on agency rule review. Division (B) (1) (b) of 102
this section does not apply to any rule to which division (D) of 103
this section does not apply. 104

An agency that adopts or amends a rule that is subject to 105
division (D) of this section shall assign a review date to the 106

rule that is not later than five years after its effective date. 107
If a review date assigned to a rule exceeds the five-year 108
maximum, the review date for the rule is five years after its 109
effective date. A rule with a review date is subject to review 110
under section 106.03 of the Revised Code. This paragraph does 111
not apply to a rule of a state college or university, community 112
college district, technical college district, or state community 113
college. 114

If an agency in adopting a rule designates an effective 115
date that is later than the effective date provided for by 116
division (B)(1) of this section, the rule if filed as required 117
by such division shall become effective on the later date 118
designated by the agency. 119

Any rule that is required to be filed under division (B) 120
(1) of this section is also subject to division (D) of this 121
section if not exempted by that division. 122

If a rule incorporates a text or other material by 123
reference, the agency shall comply with sections 121.71 to 124
121.75 of the Revised Code. 125

(2) A rule of an emergency nature necessary for the 126
immediate preservation of the public peace, health, or safety 127
shall state the reasons for the necessity. The emergency rule, 128
in final form and in compliance with division (B)(3) of this 129
section, shall be filed in electronic form with the secretary of 130
state, the director of the legislative service commission, and 131
the joint committee on agency rule review. The emergency rule is 132
effective immediately upon completion of the latest filing, 133
except that if the agency in adopting the emergency rule 134
designates an effective date, or date and time of day, that is 135
later than the effective date and time provided for by division 136

(B) (2) of this section, the emergency rule if filed as required 137
by such division shall become effective at the later date, or 138
later date and time of day, designated by the agency. 139

Except as provided in section 107.43 of the Revised Code, 140
an emergency rule becomes invalid at the end of the one hundred 141
twentieth day it is in effect. Prior to that date, the agency 142
may file the emergency rule as a nonemergency rule in compliance 143
with division (B) (1) of this section. The agency may not refile 144
the emergency rule in compliance with division (B) (2) of this 145
section so that, upon the emergency rule becoming invalid under 146
such division, the emergency rule will continue in effect 147
without interruption for another one hundred twenty-day period. 148

The adoption of an emergency rule under division (B) (2) of 149
this section in response to a state of emergency, as defined 150
under section 107.42 of the Revised Code, may be invalidated by 151
the general assembly, in whole or in part, by adopting a 152
concurrent resolution in accordance with section 107.43 of the 153
Revised Code. 154

(3) An agency shall file a rule under division (B) (1) or 155
(2) of this section in compliance with the following standards 156
and procedures: 157

(a) The rule shall be numbered in accordance with the 158
numbering system devised by the director for the Ohio 159
administrative code. 160

(b) The rule shall be prepared and submitted in compliance 161
with the rules of the legislative service commission. 162

(c) The rule shall clearly state the date on which it is 163
to be effective and the date on which it will expire, if known. 164

(d) Each rule that amends or rescinds another rule shall 165

clearly refer to the rule that is amended or rescinded. Each 166
amendment shall fully restate the rule as amended. 167

(e) A rule that is subject to section 111.151 of the 168
Revised Code shall include a statement prepared by the adopting 169
agency that the agency complied with the requirements of that 170
section. 171

If the director of the legislative service commission or 172
the director's designee gives an agency notice pursuant to 173
section 103.05 of the Revised Code that a rule filed by the 174
agency is not in compliance with the rules of the legislative 175
service commission, the agency shall within thirty days after 176
receipt of the notice conform the rule to the rules of the 177
commission as directed in the notice. 178

(C) All rules filed pursuant to divisions (B) (1) (a) and 179
(2) of this section shall be recorded by the secretary of state 180
and the director under the title of the agency adopting the rule 181
and shall be numbered according to the numbering system devised 182
by the director. The secretary of state and the director shall 183
preserve the rules in an accessible manner. Each such rule shall 184
be a public record open to public inspection and may be 185
transmitted to any law publishing company that wishes to 186
reproduce it. 187

(D) At least sixty-five days before a board, commission, 188
department, division, or bureau of the government of the state 189
files a rule under division (B) (1) of this section, it shall 190
file the full text of the proposed rule in electronic form with 191
the joint committee on agency rule review, and the proposed rule 192
is subject to legislative review and invalidation under section 193
106.021 of the Revised Code. If a state board, commission, 194
department, division, or bureau makes a revision in a proposed 195

rule after it is filed with the joint committee, the state 196
board, commission, department, division, or bureau shall 197
promptly file the full text of the proposed rule in its revised 198
form in electronic form with the joint committee. A state board, 199
commission, department, division, or bureau shall also file the 200
rule summary and fiscal analysis prepared under section 106.024 201
of the Revised Code in electronic form along with a proposed 202
rule, and along with a proposed rule in revised form, that is 203
filed under this division. If a proposed rule has an adverse 204
impact on businesses, the state board, commission, department, 205
division, or bureau also shall file the business impact 206
analysis, any recommendations received from the common sense 207
initiative office, and the associated memorandum of response, if 208
any, in electronic form along with the proposed rule, or the 209
proposed rule in revised form, that is filed under this 210
division. 211

A proposed rule that is subject to legislative review 212
under this division may not be adopted and filed in final form 213
under division (B) (1) of this section unless the proposed rule 214
has been filed with the joint committee on agency rule review 215
under this division and the time for the joint committee to 216
review the proposed rule has expired without recommendation of a 217
concurrent resolution to invalidate the proposed rule. 218

If a proposed rule that is subject to legislative review 219
under this division implements a federal law or rule, the agency 220
shall provide to the joint committee a citation to the federal 221
law or rule the proposed rule implements and a statement as to 222
whether the proposed rule implements the federal law or rule in 223
a manner that is more or less stringent or burdensome than the 224
federal law or rule requires. 225

As used in this division, "commission" includes the public 226
utilities commission when adopting rules under a federal or 227
state statute. 228

This division does not apply to any of the following: 229

(1) A proposed rule of an emergency nature; 230

(2) A rule proposed under section 1121.05, 1121.06, 231
1349.33, 1707.201, 1733.412, 4123.29, 4123.34, 4123.341, 232
4123.342, 4123.345, 4123.40, 4123.411, 4123.44, or 4123.442 of 233
the Revised Code; 234

(3) A rule proposed by an agency other than a board, 235
commission, department, division, or bureau of the government of 236
the state; 237

(4) A proposed internal management rule of a board, 238
commission, department, division, or bureau of the government of 239
the state; 240

(5) Any proposed rule that must be adopted verbatim by an 241
agency pursuant to federal law or rule, to become effective 242
within sixty days of adoption, in order to continue the 243
operation of a federally reimbursed program in this state, so 244
long as the proposed rule contains both of the following: 245

(a) A statement that it is proposed for the purpose of 246
complying with a federal law or rule; 247

(b) A citation to the federal law or rule that requires 248
verbatim compliance. 249

(6) An initial rule proposed by the director of health to 250
impose quality standards on a health care facility as defined in 251
section 3702.30 of the Revised Code; 252

(7) A rule of the state lottery commission pertaining to 253
instant game rules. 254

If a rule is exempt from legislative review under division 255
(D) (5) of this section, and if the federal law or rule pursuant 256
to which the rule was adopted expires, is repealed or rescinded, 257
or otherwise terminates, the rule is thereafter subject to 258
legislative review under division (D) of this section. 259

Whenever a state board, commission, department, division, 260
or bureau files a proposed rule or a proposed rule in revised 261
form under division (D) of this section, it shall also file the 262
full text of the same proposed rule or proposed rule in revised 263
form in electronic form with the secretary of state and the 264
director of the legislative service commission. A state board, 265
commission, department, division, or bureau shall file the rule 266
summary and fiscal analysis prepared under section 106.024 of 267
the Revised Code in electronic form along with a proposed rule 268
or proposed rule in revised form that is filed with the 269
secretary of state or the director of the legislative service 270
commission. 271

Sec. 111.151. (A) As used in this section: 272

(1) "Model administrative rule" means an administrative 273
rule drafted by one or more members of a regulatory-focused 274
nongovernmental organization to be disseminated by the 275
organization and suggested for adoption in multiple states 276
either verbatim or with minor modification. 277

(2) "Regulatory-focused nongovernmental organization" 278
means any private organization that drafts model administrative 279
rules intended for adoption by a state agency. 280

(B) Except as provided in division (F) of this section, an 281

agency shall not adopt or amend a rule under section 111.15 of 282
the Revised Code using language that is based on model language 283
drafted by a regulatory-focused nongovernmental organization 284
unless the agency complies with this section. 285

(C) Before filing a rule based on model language drafted 286
by a regulatory-focused nongovernmental organization under 287
division (B) (1) of section 111.15 of the Revised Code, the 288
agency shall do all of the following: 289

(1) At least sixty days before filing the rule, provide 290
reasonable public notice in the register of Ohio and on the 291
agency's web site in the form described in division (D) of this 292
section of the agency's intent to adopt or amend a rule using 293
language that is based on model language drafted by a 294
regulatory-focused nongovernmental organization. 295

(2) Not earlier than thirty days after providing the 296
notice described in division (C) (1) of this section, conduct a 297
public hearing at which any person affected by the new rule or 298
amendment may appear and be heard in person or through a 299
representative. 300

(3) Convene an advisory committee described in division 301
(E) (1) of this section to prepare and submit the report 302
described in division (E) (2) of this section. 303

(D) The notice required under division (C) (1) of this 304
section shall be in a form determined by the agency. In the 305
form, the agency shall include all the following information: 306

(1) The name of the regulatory-focused nongovernmental 307
organization that drafted the model language for the proposed 308
rule or amendment; 309

(2) The full text of the proposed rule or amendment as 310

drafted by the regulatory-focused nongovernmental organization; 311

(3) A summary of the proposed rule's or amendment's 312
purpose and anticipated effect; 313

(4) Any modification of the model language on which the 314
proposed rule or amendment is based to tailor it to state- 315
specific needs; 316

(5) The specific statutory language authorizing the agency 317
to adopt or amend the rule or, if the agency is relying on 318
general authority to adopt rules implementing a statute, an 319
explanation of how the general authority encompasses the 320
proposed rule or amendment; 321

(6) The date, time, and place of the public hearing 322
required under division (C)(2) of this section, which shall be 323
not earlier than thirty days after publication of the notice 324
required under division (C)(1) of this section. 325

(E)(1) An advisory committee convened under division (C) 326
(3) of this section shall include not less than one individual 327
from each of the following categories: 328

(a) A representative from an industry affected by the 329
rule; 330

(b) A representative from a consumer advocacy group; 331

(c) An academic with subject matter expertise related to 332
the topic of the rule; 333

(d) The owner of a small business, as defined in section 334
1109.35 of the Revised Code, whose business likely will be 335
affected by the rule. 336

(2) An advisory committee described in division (E)(1) of 337

this section shall prepare a written report evaluating the 338
rule's or amendment's effect on stakeholders and submit it to 339
the agency. The agency shall post the report on the agency's web 340
site in a manner that is accessible to the public. 341

(F) This section does not apply to a rule of an emergency 342
nature adopted under division (B) (2) of section 111.15 of the 343
Revised Code. 344

Sec. 119.03. In the adoption, amendment, or rescission of 345
any rule, an agency shall comply with the following procedure: 346

(A) Reasonable public notice shall be given in the 347
register of Ohio at least thirty days prior to the date set for 348
a hearing, in the form the agency determines. The agency shall 349
file copies of the public notice under division (B) of this 350
section. (The agency gives public notice in the register of Ohio 351
when the public notice is published in the register under that 352
division.) 353

The public notice shall include: 354

(1) A statement of the agency's intention to consider 355
adopting, amending, or rescinding a rule; 356

(2) A synopsis of the proposed rule, amendment, or rule to 357
be rescinded or a general statement of the subject matter to 358
which the proposed rule, amendment, or rescission relates; 359

(3) A statement of the reason or purpose for adopting, 360
amending, or rescinding the rule; 361

(4) A statement as to whether the the proposed rule, 362
amendment, or rescission is based on model language drafted by a 363
regulatory-focused nongovernmental organization, as defined in 364
section 111.151 of the Revised Code, and, if so, the name of the 365

organization and any statement explaining the rule prepared by 366
the organization; 367

(5) The date, time, and place of a hearing on the proposed 368
action, which shall be not earlier than the thirty-first nor 369
later than the fortieth day after the proposed rule, amendment, 370
or rescission is filed under division (B) of this section. 371

In addition to public notice given in the register of 372
Ohio, the agency may give whatever other notice it reasonably 373
considers necessary to ensure notice constructively is given to 374
all persons who are subject to or affected by the proposed rule, 375
amendment, or rescission. 376

The agency shall provide a copy of the public notice 377
required under division (A) of this section to any person who 378
requests it and pays a reasonable fee, not to exceed the cost of 379
copying and mailing. 380

(B) The full text of the proposed rule, amendment, or rule 381
to be rescinded, accompanied by the public notice required under 382
division (A) of this section, shall be filed in electronic form 383
with the secretary of state and with the director of the 384
legislative service commission. (If in compliance with this 385
division an agency files more than one proposed rule, amendment, 386
or rescission at the same time, and has prepared a public notice 387
under division (A) of this section that applies to more than one 388
of the proposed rules, amendments, or rescissions, the agency 389
shall file only one notice with the secretary of state and with 390
the director for all of the proposed rules, amendments, or 391
rescissions to which the notice applies.) The proposed rule, 392
amendment, or rescission and public notice shall be filed as 393
required by this division at least sixty-five days prior to the 394
date on which the agency, in accordance with division (E) of 395

this section, issues an order adopting the proposed rule, 396
amendment, or rescission. 397

If the proposed rule, amendment, or rescission 398
incorporates a text or other material by reference, the agency 399
shall comply with sections 121.71 to 121.75 of the Revised Code. 400

The proposed rule, amendment, or rescission shall be 401
available for at least thirty days prior to the date of the 402
hearing at the office of the agency in printed or other legible 403
form without charge to any person affected by the proposal. 404
Failure to furnish such text to any person requesting it shall 405
not invalidate any action of the agency in connection therewith. 406

If the agency files a revision in the text of the proposed 407
rule, amendment, or rescission, it shall also promptly file the 408
full text of the proposed rule, amendment, or rescission in its 409
revised form in electronic form with the secretary of state and 410
with the director of the legislative service commission. 411

The agency shall file the rule summary and fiscal analysis 412
prepared under section 106.024 of the Revised Code in electronic 413
form along with a proposed rule, amendment, or rescission or 414
proposed rule, amendment, or rescission in revised form that is 415
filed with the secretary of state or the director of the 416
legislative service commission. 417

The agency shall file the hearing report relating to a 418
proposed rule, amendment, or rescission in electronic form with 419
the secretary of state and the director of the legislative 420
service commission at the same time the agency files the hearing 421
report with the joint committee on agency rule review. 422

The director of the legislative service commission shall 423
publish in the register of Ohio the full text of the original 424

and each revised version of a proposed rule, amendment, or 425
rescission; the full text of a public notice; the full text of a 426
rule summary and fiscal analysis; and the full text of a hearing 427
report that is filed with the director under this division. 428

(C) When an agency files a proposed rule, amendment, or 429
rescission under division (B) of this section, it also shall 430
file in electronic form with the joint committee on agency rule 431
review the full text of the proposed rule, amendment, or rule to 432
be rescinded in the same form and the public notice required 433
under division (A) of this section. (If in compliance with this 434
division an agency files more than one proposed rule, amendment, 435
or rescission at the same time, and has given a public notice 436
under division (A) of this section that applies to more than one 437
of the proposed rules, amendments, or rescissions, the agency 438
shall file only one notice with the joint committee for all of 439
the proposed rules, amendments, or rescissions to which the 440
notice applies.) The proposed rule, amendment, or rescission is 441
subject to legislative review and invalidation under sections 442
106.02, 106.021, and 106.022 of the Revised Code. If the agency 443
makes a revision in a proposed rule, amendment, or rescission 444
after it is filed with the joint committee, the agency promptly 445
shall file the full text of the proposed rule, amendment, or 446
rescission in its revised form in electronic form with the joint 447
committee. 448

An agency shall file the rule summary and fiscal analysis 449
prepared under section 106.024 of the Revised Code in electronic 450
form along with a proposed rule, amendment, or rescission, and 451
along with a proposed rule, amendment, or rescission in revised 452
form, that is filed under this division. 453

If a proposed rule, amendment, or rescission has an 454

adverse impact on businesses, the agency also shall file the 455
business impact analysis, any recommendations received from the 456
common sense initiative office, and the agency's memorandum of 457
response, if any, in electronic form along with the proposed 458
rule, amendment, or rescission, or along with the proposed rule, 459
amendment, or rescission in revised form, that is filed under 460
this division. 461

The agency shall file the hearing report in electronic 462
form with the joint committee before the joint committee holds 463
its public hearing on the proposed rule, amendment, or 464
rescission. The filing of a hearing report does not constitute a 465
revision of the proposed rule, amendment, or rescission to which 466
the hearing report relates. 467

If the proposed rule, amendment, or rescission requires 468
liability insurance, a bond, or any other financial 469
responsibility instrument as a condition of licensure, the 470
agency shall conduct a diligent search to determine if the 471
liability insurance, bond, or other financial responsibility 472
instrument is readily available in the amounts required as a 473
condition of licensure, and shall certify to the joint committee 474
that the search was conducted. 475

If the proposed rule, amendment, or rescission implements 476
a federal law or rule, the agency shall provide to the joint 477
committee a citation to the federal law or rule the proposed 478
rule, amendment, or rescission implements and a statement as to 479
whether the proposed rule implements the federal law or rule in 480
a manner that is more or less stringent or burdensome than the 481
federal law or rule requires. 482

A proposed rule, amendment, or rescission that is subject 483
to legislative review under this division may not be adopted 484

under division (E) of this section or filed in final form under 485
section 119.04 of the Revised Code unless the proposed rule, 486
amendment, or rescission has been filed with the joint committee 487
on agency rule review under this division and the time for 488
legislative review of the proposed rule, amendment, or 489
rescission has expired without adoption of a concurrent 490
resolution to invalidate the proposed rule, amendment, or 491
rescission. 492

This division does not apply to: 493

(1) An emergency rule, amendment, or rescission; 494

(2) A proposed rule, amendment, or rescission that must be 495
adopted verbatim by an agency pursuant to federal law or rule, 496
to become effective within sixty days of adoption, in order to 497
continue the operation of a federally reimbursed program in this 498
state, so long as the proposed rule contains both of the 499
following: 500

(a) A statement that it is proposed for the purpose of 501
complying with a federal law or rule; 502

(b) A citation to the federal law or rule that requires 503
verbatim compliance. 504

(3) A proposed rule, amendment, or rescission that, as set 505
forth in section 3719.41 of the Revised Code, must be adopted by 506
the state board of pharmacy pursuant to federal law or rule, to 507
become effective within sixty days of adoption, so long as the 508
proposed rule contains a statement that it is proposed for the 509
purpose of complying with federal law or rule. 510

If a rule or amendment is exempt from legislative review 511
under division (C) (2) of this section, and if the federal law or 512
rule pursuant to which the rule or amendment was adopted 513

expires, is repealed or rescinded, or otherwise terminates, the 514
rule or amendment, or its rescission, is thereafter subject to 515
legislative review under division (C) of this section. 516

(D) On the date and at the time and place designated in 517
the notice, the agency shall conduct a public hearing at which 518
any person affected by the proposed action of the agency may 519
appear and be heard in person, by the person's attorney, or 520
both, may present the person's position, arguments, or 521
contentions, orally or in writing, offer and examine witnesses, 522
and present evidence tending to show that the proposed rule, 523
amendment, or rescission, if adopted or effectuated, will be 524
unreasonable or unlawful. An agency may permit persons affected 525
by the proposed rule, amendment, or rescission to present their 526
positions, arguments, or contentions in writing, not only at the 527
hearing, but also for a reasonable period before, after, or both 528
before and after the hearing. A person who presents a position 529
or arguments or contentions in writing before or after the 530
hearing is not required to appear at the hearing. 531

At the hearing, the testimony shall be recorded. Such 532
record shall be made at the expense of the agency. The agency is 533
required to transcribe a record that is not sight readable only 534
if a person requests transcription of all or part of the record 535
and agrees to reimburse the agency for the costs of the 536
transcription. An agency may require the person to pay in 537
advance all or part of the cost of the transcription. 538

In any hearing under this section the agency may 539
administer oaths or affirmations. 540

The agency shall consider the positions, arguments, or 541
contentions presented at, or before or after, the hearing. The 542
agency shall prepare a hearing summary of the positions, 543

arguments, or contentions, and of the issues raised by the 544
positions, arguments, or contentions. The agency then shall 545
prepare a hearing report explaining, with regard to each issue, 546
how it is reflected in the rule, amendment, or rescission. If an 547
issue is not reflected in the rule, amendment, or rescission, 548
the hearing report shall explain why the issue is not reflected. 549
The agency shall include the hearing summary in the hearing 550
report as an appendix thereto. And, in the hearing report, the 551
agency shall identify the proposed rule, amendment, or 552
rescission to which the hearing report relates. 553

(E) After divisions (A), (B), (C), and (D) of this section 554
have been complied with, and when the time for legislative 555
review under sections 106.02, 106.022, and 106.023 of the 556
Revised Code has expired without adoption of a concurrent 557
resolution to invalidate the proposed rule, amendment, or 558
rescission, the agency may issue an order adopting the proposed 559
rule or the proposed amendment or rescission of the rule, 560
consistent with the synopsis or general statement included in 561
the public notice. At that time the agency shall designate the 562
effective date of the rule, amendment, or rescission, which 563
shall not be earlier than the tenth day after the rule, 564
amendment, or rescission has been filed in its final form as 565
provided in section 119.04 of the Revised Code. 566

(F) Prior to the effective date of a rule, amendment, or 567
rescission, the agency shall make a reasonable effort to inform 568
those affected by the rule, amendment, or rescission and to have 569
available for distribution to those requesting it the full text 570
of the rule as adopted or as amended. 571

(G) (1) If the governor, upon the request of an agency, 572
determines that an emergency requires the immediate adoption, 573

amendment, or rescission of a rule, the governor shall issue an 574
order, the text of which shall be filed in electronic form with 575
the agency, the secretary of state, the director of the 576
legislative service commission, and the joint committee on 577
agency rule review, that the procedure prescribed by this 578
section with respect to the adoption, amendment, or rescission 579
of a specified rule is suspended. The agency may then adopt 580
immediately the emergency rule, amendment, or rescission and it 581
becomes effective on the date the rule, amendment, or 582
rescission, in final form and in compliance with division (A) (2) 583
of section 119.04 of the Revised Code, is filed in electronic 584
form with the secretary of state, the director of the 585
legislative service commission, and the joint committee on 586
agency rule review. The director shall publish the full text of 587
the emergency rule, amendment, or rescission in the register of 588
Ohio. 589

Except as provided in division (G) (2) of this section, or 590
section 107.43 of the Revised Code, the emergency rule, 591
amendment, or rescission shall become invalid at the end of the 592
one hundred twentieth day it is in effect. Prior to that date 593
the agency may adopt the emergency rule, amendment, or 594
rescission as a nonemergency rule, amendment, or rescission by 595
complying with the procedure prescribed by this section for the 596
adoption, amendment, and rescission of nonemergency rules. The 597
agency shall not use the procedure of division (G) (1) of this 598
section to readopt the emergency rule, amendment, or rescission 599
so that, upon the emergency rule, amendment, or rescission 600
becoming invalid under division (G) (1) of this section, the 601
emergency rule, amendment, or rescission will continue in effect 602
without interruption for another one-hundred-twenty-day period, 603
except when section 106.02 of the Revised Code prevents the 604

agency from adopting the emergency rule, amendment, or 605
rescission as a nonemergency rule, amendment, or rescission 606
within the one-hundred-twenty-day period. 607

Division (G)(1) of this section does not apply to the 608
adoption of any emergency rule, amendment, or rescission by the 609
tax commissioner under division (C)(2) of section 5117.02 of the 610
Revised Code. 611

(2) An emergency rule or amendment adding a substance to a 612
controlled substance schedule shall become invalid at the end of 613
the one hundred eightieth day it is in effect. Prior to that 614
date, the state board of pharmacy may adopt the emergency rule 615
or amendment as a nonemergency rule or amendment by complying 616
with the procedure prescribed by this section for adoption and 617
amendment of nonemergency rules. The board shall not use the 618
procedure of division (G)(1) of this section to readopt the 619
emergency rule or amendment so that, upon the emergency rule or 620
amendment becoming invalid under division (G)(2) of this 621
section, the emergency rule or amendment will continue in effect 622
beyond the one-hundred-eighty-day period. 623

(3) The general assembly, by adopting a concurrent 624
resolution, and in accordance with section 107.43 of the Revised 625
Code, may do either of the following: 626

(a) Invalidate, in whole or in part, an emergency rule 627
adopted or amended by an agency in response to a state of 628
emergency, as defined under section 107.42 of the Revised Code, 629
under division (G)(1) of this section; 630

(b) Authorize an agency to readopt, in whole or in part, a 631
rule that was rescinded in response to a state of emergency 632
under division (G)(1) of this section. 633

(H) Rules adopted by an authority within the department of 634
job and family services for the administration or enforcement of 635
Chapter 4141. of the Revised Code or of the department of 636
taxation shall be effective without a hearing as provided by 637
this section if the statutes pertaining to such agency 638
specifically give a right of appeal to the board of tax appeals 639
or to a higher authority within the agency or to a court, and 640
also give the appellant a right to a hearing on such appeal. 641
This division does not apply to the adoption of any rule, 642
amendment, or rescission by the tax commissioner under division 643
(C) (1) or (2) of section 5117.02 of the Revised Code, or deny 644
the right to file an action for declaratory judgment as provided 645
in Chapter 2721. of the Revised Code from the decision of the 646
board of tax appeals or of the higher authority within such 647
agency. 648

Section 2. That existing sections 106.01, 111.15, and 649
119.03 of the Revised Code are hereby repealed. 650