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# OHIO LEGISLATIVE SERVICE COMMISSION

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**S.B. 268**  
**136<sup>th</sup> General Assembly**

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. Lang and Cutrona

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### SUMMARY

- Requires each state agency that adopts administrative rules to disclose specified information to the Ohio Ethics Commission regarding the agency's involvement with regulatory-focused nongovernmental organizations.
- Requires the Commission to create and maintain a publicly accessible website containing the information required to be submitted under the bill.
- Specifies that all communications between an agency and a regulatory-focused nongovernmental organization concerning the adoption, amendment, or rescission of a rule are public records under Ohio's Public Records Law and open to public inspection.
- Requires a state agency subject to the abbreviated rulemaking procedure, when adopting or amending an administrative rule using language that is based on model language drafted by a regulatory-focused nongovernmental organization, to comply with specified requirements regarding notice, hearing, and evaluation of the effect on stakeholders.
- Requires an agency subject to the APA rulemaking procedure to include in the notice required under continuing law a statement regarding whether a proposed rule, amendment, or recession is based on model language drafted by a regulatory-focused nongovernmental organization.

### DETAILED ANALYSIS

#### **State agencies and regulatory-focused nongovernmental organizations**

The bill regulates disclosure and rulemaking by state agencies that interact with regulatory-focused nongovernmental organizations. For purposes of the bill, a "regulatory-focused nongovernmental organization" is any private organization that drafts model administrative rules intended for adoption by a state agency. A "model administrative rule" is an

administrative rule drafted by one or more members of a regulatory-focused nongovernmental organization to be disseminated by the organization and suggested for adoption in multiple states either verbatim or with minor modification.<sup>1</sup>

## Required disclosure

The bill requires each state agency, including institutions of higher education, that adopts administrative rules to disclose the following information to the Ohio Ethics Commission:

- Any funding received by the agency from a regulatory-focused nongovernmental organization;
- Travel and other expenses related to agency staff attendance of events sponsored by a regulatory-focused nongovernmental organization;
- A record of votes taken by any regulatory-focused nongovernmental organization committee influencing regulatory matters that includes as a member an agency director, deputy director, or agency employee to whom rulemaking authority has been delegated;
- A summary of all rules adopted by the agency based on model language drafted by a regulatory-focused nongovernmental organization;
- The name of each regulatory-focused nongovernmental organization of which the agency director, deputy director, or agency employee to whom rulemaking authority has been delegated is a member;
- The title of each committee appointment or leadership position within a regulatory-focused nongovernmental organization held by the agency director, deputy director, or an agency employee to whom rulemaking authority has been delegated.<sup>2</sup>

Each agency head must make the disclosures annually in a report submitted by a date prescribed by Commission. The Commission must create and maintain a publicly accessible website containing the information required to be submitted under the bill.<sup>3</sup>

The bill specifies that all communications between an agency and a regulatory-focused nongovernmental organization concerning the adoption, amendment, or rescission of a rule are public records under Ohio's Public Records Law and open to public inspection.<sup>4</sup>

If the bill's required disclosure of a private organization's committee voting records were challenged, a reviewing court may examine the state's reasons for requiring the disclosure to determine whether that reason is sufficiently compelling to infringe on the organization's associational rights. At least one court has held that government-mandated disclosure of a private political group's internal communications carries a potential to chill the free exercise of

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<sup>1</sup> R.C. 111.151(A).

<sup>2</sup> R.C. 106.10(B).

<sup>3</sup> R.C. 106.10(C).

<sup>4</sup> R.C. 106.10(D), by reference to R.C. 149.43, not in the bill.

political speech and association protected by the First Amendment to the U.S. Constitution. As a result, before requiring an organization to disclose records of its communications, the court ruled that a state must present a “subordinating interest” and that interest must be “compelling.”<sup>5</sup>

## Rulemaking

An administrative rule can be effective as part of the law only after its adopting agency has taken it through a statutorily prescribed rulemaking procedure. There are two general statutory rulemaking procedures, one in the Administrative Procedure Act<sup>6</sup> (APA) and the other is known as the “abbreviated rulemaking procedure.”<sup>7</sup> Generally, if an agency is not required to follow the APA rulemaking procedure, it must follow the abbreviated rulemaking procedure. The abbreviated rulemaking procedure therefore is a default.

Whether an agency is required to follow the APA or abbreviated rulemaking procedure is a matter of legislative choice. The major difference between the two is that the APA requires an agency to give public notice of its intention to adopt a rule and then to conduct a public hearing on the proposed rule. The abbreviated rulemaking procedure does not impose a similar notice and public hearing requirement.

For more information on administrative rulemaking, see the LSC *Members Brief Administrative Rulemaking (PDF)*.<sup>8</sup>

### Abbreviated rulemaking

The bill requires a state agency subject to the abbreviated rulemaking procedure, when adopting or amending an administrative rule using language that is based on model language drafted by a regulatory-focused nongovernmental organization, to comply with all the following requirements:

- At least 60 days before filing the rule, provide reasonable public notice of the agency’s intent to adopt or amend a rule using language that is based on model language drafted by a regulatory-focused nongovernmental organization in the Register of Ohio and on the agency’s website (see “**Agency notice**,” below);
- Not earlier than 30 days after providing the notice described above, conduct a public hearing at which any person affected by the new rule or amendment may appear and be heard in person or through a representative.

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<sup>5</sup> See, e.g., *Federal Election Com. v. Machinists Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Circ. 1981)(citing *NAACP v. Alabama*, 357 U.S. 449, 463 (1958)).

<sup>6</sup> R.C. Chapter 119.

<sup>7</sup> R.C. 111.15.

<sup>8</sup> This brief is available on LSC’s website, [lsc.ohio.gov](https://lsc.ohio.gov), under “Publications.”

- Convene an advisory committee to prepare and submit a report (see “**Advisory committee**,” below).<sup>9</sup>

The bill’s rulemaking requirements do not apply to a rule of an emergency nature.<sup>10</sup>

### **Agency notice**

The agency must determine the form of the required notice, but the bill requires the agency to include all the following information in the notice:

- The name of the regulatory-focused nongovernmental organization that drafted the model language for the proposed rule or amendment;
- The full text of the proposed rule or amendment as drafted by the regulatory-focused nongovernmental organization;
- A summary of the proposed rule’s or amendment’s purpose and anticipated effect;
- Any modification of the model language on which the proposed rule or amendment is based to tailor it to state-specific needs;
- The specific statutory language authorizing the agency to adopt or amend the rule or, if the agency is relying on general authority to adopt rules implementing a statute, an explanation of how the general authority encompasses the proposed rule or amendment;
- The date, time, and place of the public hearing required under by the bill, which must be no earlier than 30 days after the notice’s publication.<sup>11</sup>

### **Advisory committee**

An advisory committee convened by an agency under the bill must include not less than one individual from each of the following categories:

- A representative from an industry affected by the rule;
- A representative from a consumer advocacy group;
- An academic with subject matter expertise related to the topic of the rule;
- The owner of a small business whose business likely will be affected by the rule.

An advisory committee must prepare a written report evaluating the rule’s or amendment’s effect on stakeholders and submit it to the agency. The agency must post the report on the agency’s website in a manner that is accessible to the public.<sup>12</sup>

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<sup>9</sup> R.C. 111.151(C).

<sup>10</sup> R.C. 111.151(F).

<sup>11</sup> R.C. 111.151(D).

<sup>12</sup> R.C. 111.151(E).

### Statement of compliance

The bill requires a state agency that files an administrative rule under the abbreviated procedure to include a statement that the agency complied with the rulemaking requirements described above, if applicable.<sup>13</sup>

### APA rulemaking

The bill requires an agency subject to the APA rulemaking procedure to include in the notice required under continuing law a statement as to whether a proposed rule, amendment, or recession is based on model language drafted by a regulatory-focused nongovernmental organization, and, if so, the name of the organization and any statement explaining the rule prepared by the organization.<sup>14</sup>

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## HISTORY

| Action     | Date     |
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| Introduced | 09-23-25 |

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<sup>13</sup> R.C. 111.15(B)(3)(e).

<sup>14</sup> R.C. 119.03.